

The Search Monitor Terms of Use Agreement

The following are the terms and conditions for use of The Search Monitor Product ("TSM Product"), provided to you by The Search Monitor ("Partnership" or "us"). By enrolling as a "Subscriber," clicking the "I Accept" button, and completing the registration process, and/or if you have been granted a 'Beta' account and you login to use your 'Beta' account, then you agree to be bound by these terms and conditions, including all payment terms, policies, practices, rules, standards and guidelines related to The Search Monitor and posted on www.thesearchmonitor.com, in effect from time to time (collectively, the "Agreement"). In this Agreement, "you", and "your" refers to the Subscriber. You agree that any of your agents, representatives, employees, or any person or entity acting on your behalf with respect to the use of the TSM Product, shall be bound by, and shall abide by, these Terms of Use. You further agree that you are bound by these Terms of Use whether you are acting on your own behalf or on behalf of a third party.

1) **NON-EXCLUSIVE LICENSE.**

- a) Partnership hereby grants you a non-exclusive license to use the TSM Product in accordance with this TOU.
 - b) You and/or your clients, agents, contractors, and/or employees may not. (1) rent, lease, transfer or otherwise transfer rights to the TSM Product; (2) provide or assign to third parties access to your account or distribute the keyword research data to third parties, except that if you are an advertising agency, you may provide access to your account and/or distribute such data to your clients for whom you are acting as an agent or agency; (3) reverse engineer or disassemble the TSM Product; and/or (4) take any action that imposes an unreasonable or disproportionately large load on our infrastructure (as determined by Partnership).
- 2) **TERM.** The term of this TOU shall be the term selected by you on the accompanying purchase order or during online sign-up, as applicable to you. The term shall begin on the date set forth on the purchase order or for online sign-up, the date that you signed-up, and shall continue in accordance with the term period selected by You ("Term Period"). This TOU shall automatically renew thereafter for additional Term Periods, unless terminated in accordance with this TOU.
- 3) **ACCESS.** You agree that you will not use any automated means to access your account with Partnership or to monitor or copy the content contained therein except those automated means expressly made available by Partnership, if any, or authorized in advance and in writing by us.
- 4) **SECURITY.** The Subscriber is responsible for all activities that occur under the Subscriber's password or account, and it is the Subscriber's responsibility to keep its password(s) and/or account information confidential.
- 5) **DATA OWNERSHIP.** Partnership will not explicitly share Subscriber's keyword list with any third parties; however, you acknowledge and understand that Partnership compiles statistics for all of its clients, and in some instances your keyword list may overlap with the list of other clients. Partnership owns all rights, title, and interest to the keyword research statistics that it compiles, and grants Subscriber the right to use such data during the Term Period in accordance with this TOU.
- 6) **PAYMENT.** You agree to pay to Partnership all applicable charges to your account in United States dollars.
- a) **Billing Schedule.** Your account will be charged in full at the beginning of the initial term and subsequent renewal terms, or when, and if, you add items to your service, in an amount equal to the total charges for the Term Period including applicable subscription fees, set-up fees, support fees, added items, and taxes, if any ("Account Charges"). If you exceed the keyword size of your package, you will be charged for additional keyword use on a monthly basis in arrears for the prior month based on the largest keyword amount used during the course of the prior month.
 - b) **Method of Payment.** Subscriber expressly authorizes Partnership to charge your credit card, or charge card Account Charges associated with your account hereunder.
 - c) **Failure to Make Payment.** In the event of any failure by you to make payment, or if you charge-back, you will be responsible for all reasonable expenses (including attorneys' fees) incurred by Partnership in collecting such amounts plus interest at the rate of 10% per annum or the maximum amount permitted by law, whichever is greater.
 - d) **Refunds.** 100% of all Account Charges are NON-REFUNDABLE.
 - e) **Rate Changes.** Partnership reserves the right to change the rates for its TSM Product in its sole discretion. You will receive at least 30 days written notice of any rate changes. Rate changes will go into effect at the start of your next renewal term after receipt of such notice (for example, if you are on a month-to-month term, rate changes will start at the beginning of the first month after the 30 day notice period. If you are on an annual term, rate changes will start on at the start of your next renewal term period).
- 7) **NO ASSIGNMENT OR RESALE.** Except as otherwise indicated herein, you may not resell, assign, or transfer any of your rights under this TOU, and if you attempt to resell, assign, or transfer your rights, we may immediately terminate this TOU without liability to us.
- 8) **LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES.**

- a) **Limitation of Liability.** The information and services included in or available through the TSM Product may include inaccuracies or typographical errors. Partnership may make improvements and/or changes to the TSM Product at any time without liability to you and without notice obligation. Partnership does not represent or warrant that the TSM Product will be uninterrupted or error-free, that defects will be corrected timely, or that the TSM Product or the server that makes it available, are free of viruses or other harmful components. Partnership does not warrant or represent that the use or the results of the use of the TSM Product or the materials made available as part of the TSM Product will be correct, accurate, timely, or otherwise reliable. Furthermore, Partnership does not represent or warrant that the TSM Product, and/or payment plans will meet your objectives or needs.
 - b) **EXCLUSIVE REMEDY.** Partnership's cumulative liability to you or any other party for any loss or damages, regardless of the form of action, shall not exceed an amount equal to all amounts actually realized and received by Partnership from Client during the twelve (12) month period immediately preceding any such liability.
 - c) **DISCLAIMER OF WARRANTIES.** YOU EXPRESSLY AGREE THAT YOUR USE OF THE TSM PRODUCT IS AT YOUR OWN RISK. THE TSM PRODUCT IS AVAILABLE ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ACCURACY, OR IMPLIED WARRANTIES ARISING FROM COURSE OF PERFORMANCE OR COURSE OF CONDUCT AND WE DISCLAIM ANY WARRANTY REGARDING THE AVAILABILITY, ACCURACY OR CONTENT OF TSM PRODUCT AND/ OR INFORMATION, PRODUCTS OR SERVICES AVAILABLE THROUGH THE TSM PRODUCT, OR ANY ECONOMIC BENEFIT YOU MAY GAIN FROM USE OF THE TSM PRODUCT. SOME STATES DO NOT ALLOW EXCLUSION OF AN IMPLIED WARRANTY, SO THIS DISCLAIMER MAY NOT APPLY TO YOU.
 - d) **EXCLUSION OF CONSEQUENTIAL AND OTHER DAMAGES.** Partnership will not be liable to Subscriber or any third-party claimant for any direct, indirect, special, punitive, consequential, or incidental damages (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or any other pecuniary loss) arising out of this TOU and/or the use of or inability to use the TSM Product, regardless of the form of action whether in contract, tort, warranty, negligence, strict liability, breach of any statutory duty, indemnity or contribution, or otherwise, even if Partnership has been advised of the possibility of such damages. The exclusion contained in this paragraph shall apply regardless of any failure of the exclusive remedy provided in the foregoing paragraph.
 - e) The foregoing exclusions and disclaimers are an essential part of this agreement and formed the basis for determining the price charged for the products.
- 9) **REPRESENTATIONS.**
- a) **Your Representations.** You represent and warrant (i) that you have sufficient authority to enter into this TOU; (ii) that you are in compliance with all applicable laws; (iii) that you shall not be in violation of any obligation, contract or agreement by entering into this TOU, by performing your obligations under these terms or by authorizing and permitting Partnership to perform the TSM Product hereunder; (iv) that you shall comply with all of the terms and conditions of this TOU, as amended from time to time; and (v) that all information provided by you is truthful, accurate, and complete, and is not misleading in any way; (vi) your use of the TSM Product is for the sole purpose and benefit of you or the organization, firm, or company that you represent, and is not for the purpose of sharing information gleaned from the system with, disseminating information to, or evaluation for the purpose of developing a competing product or service offering; and (vii) you and/or your firm, organization, or client(s) are not a competitor of or intending to become a competitor of the TSM Product.
 - b) **Partnership Representations.** Partnership represents and warrants (i) that it has sufficient authority to enter into this TOU.; (ii) that it is in compliance with all applicable laws; (iii) that it shall not be in violation of any obligation, contract or agreement by entering into this TOU, by performing its obligations under these terms or by authorizing and permitting you to use the TSM Product hereunder; (iv) that it shall comply with all of the terms and conditions of this TOU, as amended from time to time; and (v) that all information provided by it is truthful, accurate, and complete, and is not misleading in any way.
- 10) **INDEMNIFICATION.**
- a) **Your Indemnification.** You agree to indemnify and hold us (and our partners, directors, officers, employees and agents) harmless against any and all expenses and losses of any kind (including reasonable attorneys' fees and costs) incurred by us (and our directors, officers, employees and agents) in connection with any claims of any kind made by a third party arising out of your use of the TSM Product, and/or a breach of your representations or warranties.
 - b) **Partnership Indemnification.** Partnership agrees to indemnify and hold you (and your directors, officers, employees and agents) harmless against any and all expenses and losses of any kind (including reasonable attorneys' fees and costs) incurred by you (and our directors, officers, employees and agents) in connection with any claims of any kind made by a third party arising out of a breach of Partnership's representations or warranties.

- 11) **NOTICES.** We will provide all notices to you to the contact person and at the address, email address, or fax number identified on your account or on your purchase order. You must send all notices to us at. support@thesearchmonitor.com or such other address as provided on to you in writing from time to time.
- 12) **NO AGENCY.** The parties to this TOU are independent contractors and this TOU does not create and shall not be construed to create an agency, partnership, joint venture or other association relationship between the parties.
- 13) **TERMINATION; CANCELLATION.**
 - a) **Your Right To Terminate.** You may terminate this TOU and your account by providing written notice to us, or by using an online cancellation method if one is provided. Cancellation requests issued at least 24 hours prior to the end of the current Term Period, will be effective at the end of your current Term Period, otherwise, your TOU will auto renew for an additional Term Period.
 - b) **Our Right to Terminate.** Partnership may, in its sole discretion, terminate your account in the following circumstances. (1) your failure to make payment in accordance with Partnership's terms, (2) if Partnership has a good faith reason to believe that you violated this TOU, and/or (3) if Partnership has a good faith reason to believe that you are building, developing, or contracting for the development of a competing product to the TSM Product. All decisions made by Partnership in this matter will be final and neither Partnership nor its partners, employees, directors, or assigns shall have any liability with respect to such decisions.
 - c) **Effect of Termination.** Upon termination, you will no longer be able to access your account. Regardless of which party terminates this TOU, You will be responsible for all charges incurred up to and through the date of termination including payment obligations during the remainder of any unexpired initial Term or renewal term and such charges will be due and payable immediately.
- 14) **Survival.** Sections 1b (3), 8, 9a vi and vii, 10, 15, 18, 19, and 23 shall survive termination.
- 15) **PROPRIETARY RIGHTS.** Title, ownership rights, and intellectual property rights in and to the TSM Product, content, and keyword research data shall remain with Partnership. The TSM Product, and the intellectual property operating it are protected by international copyright treaties. This License gives you no rights to such content, keyword research data, or code, except as explicitly stated herein.
- 16) **LINKS.** Subscriber acknowledges that the TSM Product may contain hyperlinks to third party web sites. Subscriber understands and agrees that the linked sites are not under the control of Partnership, and Partnership is not responsible for, and makes no representations or warranties with respect to, the contents or privacy policies or practices of any linked sites or any link contained therein. The inclusion of a linked site is for Subscriber's convenience only and is not intended and should not be construed as an endorsement or recommendation by Partnership of the linked site or its content.
- 17) **MARKETING.** Neither Party, without the prior written permission of the other, shall use the other party's name or trademarks or publish any materials about the other party.
- 18) **CONFIDENTIALITY.** "Confidential Information" means any information disclosed to one party ("Transmitter") by the other ("Receiver"), either directly or indirectly, in writing, orally or by inspection of tangible objects, other than information that the Receiver can establish (i) was publicly known and made generally available in the public domain prior to the time of disclosure; (ii) becomes publicly known and made generally available after disclosure other than through the Receiver's action or inaction; or (iii) is in the Receiver's possession, without confidentiality restrictions, at the time of disclosure as shown by Receiver's files and records immediately prior to the time of disclosure. The Receiver shall not at any time (a) disclose, sell, license, transfer or otherwise make available to any person or entity any Confidential Information, (b) use any Confidential Information, or (c) reproduce or otherwise copy any Confidential Information, except as necessary in connection with the purpose for which such Confidential Information is disclosed to you or as required by applicable law. Each party agrees to take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. All Confidential Information shall at all times remain Transmitter's personal property and all documents, electronic media and other tangible items containing or relating to any Confidential Information shall be delivered to Transmitter immediately upon Transmitter's request.
- 19) **TSM Damages for Your Breach.** The following damages provision is in place to compensate TSM in the event of unauthorized use by you or receipt of information regarding the TSM Product by competitors from you because such damage may be difficult to measure: You agree and understand that TSM shall be entitled to damages in the amount of \$500,000 per incident for a breach by you of any of the following sections which are to the benefit of a competitor or intended competitor of the TSM Product: 9 (a) v, vi, and/or vii, 1 (b) 1, 2, and/or 3, 3, 4, and/or 18 and you agree to pay such damages. This provision does not limit TSM's rights to seek any other remedies available in law or in equity or otherwise.
- 20) **CONSTRUCTION.** Partnership may change this TOU and/or rates at any time upon written notice to you. Any use of the TSM Product after such notice shall be deemed to be continued acceptance of this TOU including its amendments and modifications. Partnership reserves the right to discontinue offering the TSM Product at any time and in such instance you shall be entitled to a refund of all pre-paid money less any money owed.

- 21) **FORCE MAJEUR.** If the performance of any part of these Terms by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, fire, judicial or governmental action, labor dispute, war, insurrection, technical failure, act of God or any other causes beyond the control of that party, that party shall be excused from such performance to the extent that it is prevented, hindered or delayed by such causes.
- 22) **Assignment by Partnership.** Partnership may assign this agreement due to a merger or acquisition. Should Partnership re-organize as a corporate entity, the Partners may assign this agreement to such corporate entity. You will receive written notice of any such assignment.
- 23) **MISCELLANEOUS.** This TOU (i) shall be governed by and construed in accordance with the internal substantive laws of Florida, without giving effect to its principles of conflicts of law; and (ii) constitute the complete and entire expression of the agreement between the parties, and shall supersede any and all other agreements, whether written or oral, between the parties concerning the subject matter hereof. You submit to jurisdiction and venue in the state and federal courts located in the State of Florida, Orange County and further agree that any cause of action you may bring arising under this TOU will be brought by you exclusively in a state or federal court located in the State of Florida, Orange, County. The breaching party agrees to pay all legal expenses of the other, including reasonable attorney's fees, of the non-breaching party, provided that Partnership shall not have any liability in excess of the exclusive remedy provision provided herein. In the event that any provision of this TOU is held by a court of competent jurisdiction to be contrary to the law, the remaining provisions of this TOU will remain in full force and effect. The waiver of any breach or default of this TOU will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving part.