

## Loadmill Website Terms of Use

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1. **Background.** The Site is intended to provide information about us, our products and services and help you get in touch with us. The Site also provides users with an option to register and access Loadmill’s software and load testing service (“Software”). We make the Software available to our customers on a SaaS basis through the Site in accordance with, and subject to, the Loadmill Service Terms and Conditions, available at: <https://docs.loadmill.com/assests/service-terms.pdf> (“Loadmill Service Terms”).
2. **Modification.** We reserve the right, at our discretion, to change these Terms at any time. Such change will be effective ten (10) days following posting of the revised Terms on the Site, and your continued use of the Site thereafter means that you accept those changes.
3. **Ability to Accept Terms.** The Site is only intended for individuals aged thirteen (13) years or older. If you are under 13 years please do not visit or use the Site. If you are between 13 and 18 years of age, then you must review these Terms with you parent or guardian before visiting or using the Site to make sure that you and your parent or guardian understand these Terms and agree to them.
4. **Site Access.** For such time as these Terms are in effect, we hereby grant you permission to visit and use the Site provided that you comply with these Terms and applicable law.
5. **Restrictions.** You shall not: (i) copy, distribute or modify any part of the Site without our prior written authorization; (ii) use, modify, create derivative works of, transfer (by sale, resale, license, sublicense, download or otherwise), reproduce, distribute, display or disclose Materials (defined below), except as expressly authorized herein; (iii) disrupt servers or networks connected to the Site; (iv) use or launch any automated system (including without limitation, “robots” and “spiders”) to access the Site; and/or (v) circumvent, disable or otherwise interfere with security-related features of the Site or features that prevent or restrict use or copying of any Materials or that enforce limitations on use of the Site.
6. **Payments to Loadmill.** Except as expressly set forth in the Terms, your general right to access and use the Site is currently for free. You will not be charged for any such access or use of the Site unless you first agree to such charges, but please be aware that any failure to pay applicable charges may result in you not having access to some or all of the Site. Notwithstanding the foregoing, you may be charged additional payments for your use of the Software, as set forth in the Loadmill Service Terms.
7. **Intellectual Property Rights.**
  - 7.1. Materials and Marks. The (i) content on the Site, including without limitation, the text, documents, articles, brochures, descriptions, products, software, graphics, photos, sounds, videos, interactive features, and services (“Materials”), and (iii) the trademarks, service marks and logos contained therein (“Marks”), are the property of Loadmill and/or its licensors and may be protected by applicable copyright or other intellectual property laws and treaties. “Loadmill”, the Loadmill logo, and other marks are Marks of Loadmill or its affiliates. All other trademarks, service marks, and logos used on the Site are the trademarks, service marks, or logos of their respective owners. We reserve all rights not expressly granted in and to the Site and the Materials.
  - 7.2. Use of Materials. Materials on the Site are provided to you for your information and personal use only and may not be used, modified, copied, distributed, transmitted, broadcast, displayed, sold, licensed, de-compiled, or otherwise exploited for any other purposes whatsoever without our prior written consent. If you download or print a copy of the Materials, you must retain all copyright and other proprietary notices contained therein.
8. **Information Description.** We attempt to be as accurate as possible. However, we cannot and do not warrant that the Materials available on the Site are accurate, complete, reliable, current, or error-free. We reserve the right to make changes in or to the Materials, or any part thereof, in our sole judgment, without the requirement of giving any notice prior to or after making such changes to the Materials. Your use of the Materials, or any part thereof, is made solely at your own risk and responsibility.

**9. Links.**

- 9.1. The Site may contain links, and may enable you to post content, to third party websites that are not owned or controlled by Loadmill. We are not affiliated with, have no control over, and assume no responsibility for the content, privacy policies, or practices of, any third party websites. You: (i) are solely responsible and liable for your use of and linking to third party websites and any content that you may send or post to a third party website; and (ii) expressly release Loadmill from any and all liability arising from your use of any third party website. Accordingly, we encourage you to read the terms and conditions and privacy policy of each third party website that you may choose to visit.
- 9.2. Loadmill permits you to link to the Site provided that: (i) you link to but do not replicate any page on this Site; (ii) the hyperlink text shall accurately describe the Materials as they appear on the Site; (iii) you shall not misrepresent your relationship with Loadmill or present any false information about Loadmill and shall not imply in any way that we are endorsing any services or products, unless we have given you our express prior consent; (iv) you shall not link from a website which: (a) prohibits linking to third parties; (b) contains content that is offensive or controversial (both at our discretion), or (c) contains content that infringes any intellectual property, privacy rights, or other rights of any person or entity; and/or (v) you, and your website, comply with these Terms and applicable law.

- 10. Privacy.** We will use any personal information that we may collect or obtain in connection with the Site in accordance with our privacy policy which is available at <https://docs.loadmill.com/assess/privacy-policy.pdf>. You agree that we may use personal information that you provide or make available to us in accordance with the Privacy Policy.

**11. Warranty Disclaimers.**

- 11.1. This section applies whether or not the services provided under the Site are for payment. Applicable law may not allow the exclusion of certain warranties, so to that extent certain exclusions set forth herein may not apply.
- 11.2. THE SITE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. LOADMILL HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND THOSE ARISING BY STATUTE OR FROM A COURSE OF DEALING OR USAGE OF TRADE. LOADMILL DOES NOT GUARANTEE THAT THE SITE WILL BE FREE OF BUGS, SECURITY BREACHES, OR VIRUS ATTACKS. THE SITE MAY OCCASIONALLY BE UNAVAILABLE FOR ROUTINE MAINTENANCE, UPGRADING, OR OTHER REASONS. YOU AGREE THAT LOADMILL WILL NOT BE HELD RESPONSIBLE FOR ANY CONSEQUENCES TO YOU OR ANY THIRD PARTY THAT MAY RESULT FROM TECHNICAL PROBLEMS OF THE INTERNET, SLOW CONNECTIONS, TRAFFIC CONGESTION OR OVERLOAD OF OUR, YOUR, OR OTHER SERVERS. WE DO NOT WARRANT, ENDORSE OR GUARANTEE ANY CONTENT, PRODUCT, OR SERVICE THAT IS FEATURED OR ADVERTISED ON THE SITE BY A THIRD PARTY. YOUR RELIANCE ON, OR USE OF, ANY MATERIALS, IS AT YOUR SOLE RISK.
- 11.3. EXCEPT AS EXPRESSLY STATED IN OUR PRIVACY POLICY, LOADMILL DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE SECURITY OF ANY INFORMATION YOU MAY PROVIDE OR ACTIVITIES YOU ENGAGE IN DURING THE COURSE OF YOUR USE OF THE SITE.

**12. Limitation of Liability.**

- 12.1. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, LOADMILL SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES OF ANY KIND, OR FOR ANY LOSS OF DATA, REVENUE, PROFITS OR REPUTATION, ARISING UNDER THESE TERMS OR OUT OF YOUR USE OF, OR INABILITY TO USE, THE SITE, EVEN IF LOADMILL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitations may not apply to you.
- 12.2. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF LOADMILL FOR ANY DAMAGES ARISING UNDER THESE TERMS OR OUT OF YOUR USE OF, OR INABILITY TO USE, THE SITE EXCEED THE TOTAL AMOUNT OF FEES, IF ANY, PAID BY YOU TO LOADMILL FOR USING THE SITE DURING THE THREE (3) MONTHS PRIOR TO BRINGING THE CLAIM.
- 13. Indemnity.** You agree to defend, indemnify and hold harmless Loadmill and our affiliates, and our respective officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses,

liabilities, costs and expenses (including but not limited to attorney's fees) arising from: (i) your use of, or inability to use, the Site; (ii) your interaction with any Site user; or (iii) your violation of these Terms.

14. **Term and Termination.** These Terms are effective until terminated by Loadmill or you. Loadmill, in its sole discretion, has the right to terminate these Terms and/or your access to the Site, or any part thereof, immediately at any time and with or without cause (including, without any limitation, for a breach of these Terms). Loadmill shall not be liable to you or any third party for termination of the Site, or any part thereof. If you object to any term or condition of these Terms, or any subsequent modifications thereto, or become dissatisfied with the Site in any way, your only recourse is to immediately discontinue use of the Site. Upon termination of these Terms, you shall cease all use of the Site. This Section 14 and Sections 7 (Intellectual Property Rights), 10 (Privacy), 11 (Warranty Disclaimers), 12 (Limitation of Liability), 13 (Indemnity), and 15 (Independent Contractors) to 17 (General) shall survive termination of these Terms.
15. **Independent Contractors.** You and Loadmill are independent contractors. Nothing in these Terms creates a partnership, joint venture, agency, or employment relationship between you and Loadmill. You must not under any circumstances make, or undertake, any warranties, representations, commitments or obligations on behalf of Loadmill.
16. **Assignment.** These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you but may be assigned by Loadmill without restriction or notification to you.
17. **General.** Loadmill reserves the right to discontinue or modify any aspect of the Site at any time. These Terms and the relationship between you and Loadmill shall be governed by and construed in accordance with the laws of the State of Israel, without regard to its principles of conflict of laws. You agree to submit to the personal and exclusive jurisdiction of the courts located in Tel Aviv-Jaffa, Israel and waive any jurisdictional, venue, or inconvenient forum objections to such courts, provided that Loadmill may seek injunctive relief in any court of competent jurisdiction. These Terms shall constitute the entire agreement between you and Loadmill concerning the Site. If any provision of these Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms, which shall remain in full force and effect. No waiver of any term of these Terms shall be deemed a further or continuing waiver of such term or any other term, and a party's failure to assert any right or provision under these Terms shall not constitute a waiver of such right or provision. YOU AGREE THAT ANY CAUSE OF ACTION THAT YOU MAY HAVE ARISING OUT OF OR RELATED TO THE SITE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

*Last updated: November 29, 2017*