

Loadmill Service Terms and Conditions

The following Loadmill Service Terms and Conditions (“**Agreement**”) are entered into between you (a Customer, as defined below) and Loadmill Ltd. (“**Loadmill**”, “**we**”, “**our**” or “**us**”) and govern your access to, and use of: (i) the Loadmill software-as-a-service platform and related documentation, and features, as well as any fixes, updates or upgrades thereto (“**Software**”); (ii) related load testing services (“**Test Services**”); and (iii) Reports (as defined below). (i) – (iii) shall hereinafter be referred to as the “**Services**”.

By accepting this Agreement, accessing and/or using Loadmill’s Services or any part thereof, you expressly acknowledge and agree that you have understood and agree to comply with, and be legally bound by, this Agreement. You hereby waive any applicable rights to require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent not prohibited under applicable law. If you do not agree to be bound by this Agreement, please do not accept this Agreement, sign in, access or use the Services or any part thereof.

1. **Ability to Accept.** By accessing and/or using the Software, you affirm that you are over are over eighteen (18) years of age.
2. **Subscription.**
 - 2.1. **Subscription to Use the Software.** Subject to the terms and conditions of this Agreement, your registration of any Account (defined below) at <https://www.loadmill.com/>, and payment of any applicable Fees (defined below) (if any), Loadmill grants you, and you accept, a limited, personal, revocable, non-exclusive, non-sublicensable, non-assignable and non-transferable right to: (i) access and use the Software on a device which you own or control; and (ii) receive Test Services and Reports, all during the Subscription Term (as defined below), for your internal purposes only and in accordance with your applicable Subscription Plan (defined below) (“**Subscription**”). Loadmill offers Subscriptions under various Subscription plans, which contain different features and functionalities and may include different Test Services and allow access to different features of the Software (each, a “**Subscription Plan**”). Upon registering an Account (defined below) at <https://www.loadmill.com/>, Loadmill will grant you a Subscription based on the Subscription Plan offered by Loadmill to Customers for free (“**Free Subscription Plan**”), in accordance with the terms and conditions of this Agreement.
 - 2.2. **Subscription Plan Changes.** You may change your Subscription Plan at any time by completing and submitting Loadmill’s then-current designated online Subscription update form (“**Update Form**”). In the Update Form, you will be requested: (i) to choose a new Subscription Plan; (ii) to provide current, complete and accurate information in connection with your Subscription; and (iii) to pay the applicable Fees (if required). If you choose to change your Subscription Plan, you agree to provide complete and accurate information in connection with your Update Form. You If you choose to change your Subscription Plan, your new Subscription Plan shall become effective upon confirmation of your Subscription change by Loadmill. The Fees will be updated accordingly so that you will be refunded and/or additionally charged (as applicable) the difference between the price of your Subscription Plan prior to the update and your new Subscription Plan, calculated on a prorated basis (with respect to the remainder of the then-current Subscription Plan term at the time the change becomes effective), in the subsequent Billing Cycle (as defined below) following the Subscription Plan change.
 - 2.3. **Subscription Term.** The right to use the Software and to receive Test Services is provided on a Subscription-basis for a the period specified in the applicable Subscription Plan (“**Initial Term**”), as may be changed by you from time to time by in accordance with Section 2.2. Subject to continued payment of applicable Fees (defined below) by you, the Initial Term shall renew automatically on the same terms and conditions for equivalent, successive renewal terms (each, a “**Renewal Term**”), unless either party provides the other a written notice of its intention not to renew at least 90 days prior to the end of the then applicable term. The Initial Term and each Renewal Term shall collectively be referred to as the “**Subscription Term**”. Notwithstanding the foregoing, while you are using the Software under the Free Subscription Plan, the Subscription Term shall continue until termination of this Agreement, your Subscription and/or your Account in accordance with this Agreement. Without derogating from the foregoing, the Subscription Term shall automatically terminate upon termination of these Terms and/or your Subscription, or upon termination of your access to the Site and/or your Account, in accordance with Section 17 (“**Term and Termination**”) below.

- 2.4. **Suspension.** If we believe that: (i) you are using the Software in a manner that may cause harm to Loadmill or any third party; or (ii) your use of the Software is not in accordance with this Agreement, then we may, without derogating from our other rights, suspend your access to and use of the Software, your Account and/or your Subscription, until such time as we believe the threat of harm, or actual harm, has passed.
3. **Test Services.** Loadmill shall provide the Test Services, subject to the terms, and in accordance with the information, parameters and criteria set forth in your Subscription Plan that you have chosen and this Agreement. We make available the Test Services to individuals, organizations and entities such as you, that have a Subscription (“**Customers**”), as follows:
- (a) Customers may register to receive Subscription for Test Services targeted with respect to servers, devices, websites, applications or networks owned, controlled and operated by the ordering Customer (“**Applications**”), which are identified by the ordering Customer.
 - (b) Loadmill provides the Test Services on a crowd-sourced basis, by using traffic from websites and/or mobile applications across the world operated by Loadmill’s partners (each, a “**Partner**”) to test the Customer’s Application(s).

If you have registered an Account with Loadmill and accepted this Agreement, you may become a Customer by purchasing a Subscription. If you also wish to become a Partner, you may join at: <https://www.loadmill.com/app/join-affiliate>. Prior to becoming a Partner, you must accept and agree to be bound by the Loadmill Partner Terms, available at: <https://docs.loadmill.com/assets/partner-terms.pdf>.

4. **Reports.** The Software allows you to access results, information and reports obtained from and created in connection with the Test Services (“**Reports**”). The Reports shall include, without limitation, information regarding your Application such as response time statistics, location based statistics and error statistics. The Software may allow you to share your Reports, or part thereof, publicly or with your colleagues via the Software, at your discretion.
5. **Account.** In order to use the Software, you must create an Account on Loadmill’s website, at: <https://www.loadmill.com/> in connection with your use of the Software (“**Account**”). If you choose to create an Account, you agree to provide accurate and complete information about yourself. You hereby agree: (a) not to allow anyone other than yourself to access or use your Account, not to create an Account for any third party, not to allow anyone other than yourself to place orders via your Account and not to use the account of any third party without their permission; (b) to provide accurate and complete Account and login information; (c) to remain solely responsible and liable for the activity that occurs in connection with your Account; (d) to keep your Account password secure; and (e) to notify Loadmill immediately of any breach of security or unauthorized use of your Account.
6. **Restricted Use.** You shall not, and shall not allow any third party to: (a) copy, distribute, broadcast, rent, lease, lend, use for timesharing or service-bureau services, export, modify, adapt, translate, enhance, customize, or otherwise create derivative works of, the Software or any part thereof; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of, the Software or any part thereof; (c) remove or distort any proprietary notices, labels or legends on or in the Services; (d) use any automated means to access or use the Services, nor circumvent or disable any security or technological features of the Services; (e) use, send, upload, post, transmit or introduce any device, code, routine or other item (including without limitation bots, viruses, worms, and Trojan horses) that interferes (or attempts to interfere) with the operation or integrity of the Software, nor any content that is unlawful, infringing, defamatory, deceptive, obscene fraudulent, harassing, pornographic, or abusive; (f) use the Services to design or develop any competing product or service that competes with the Services; (g) use the Services for any unlawful or fraudulent purpose, to breach this Agreement, or infringe or misappropriate any third party intellectual property, privacy, or publicity right; (h) take any action that imposes or may impose, as determined in Loadmill’s sole discretion, a disproportionately large load of incoming requests on the Software infrastructure; (i) violate or abuse password protections governing access to the Software; (j) use or direct the Services to interact with IPs or devices for which you are not expressly authorized to do so; (k) use the Services, directly or indirectly, to initiate, propagate, participate in, direct or attempt any unauthorized access, attack, hack, or sending of malicious or potentially damaging network messages to any server, device, website, application or network; or (l) use the Services, directly or indirectly, to initiate, propagate, participate in, direct or attempt any bandwidth saturation or overload to any server, device, website, application or network, other than the Customer’s Application(s).

7. **Test Data.**

- 7.1. Test Data. For the purpose of and in connection with the provision of the Services, Loadmill shall collect and you may provide to Loadmill certain public and/or non-public data directly or indirectly pertaining to you and/or your Applications ("**Test Data**").
- 7.2. Authorization. You hereby grant to Loadmill a non-exclusive right to collect, use, process, display, analyze copy and store the Test Data in order to: (1) create Reports and provide the Services; and (2) administer and make improvements to the Services. You hereby acknowledge that the Software does not operate as an archive or file storage service. You are solely responsible for the backup of Test Data and you alone can implement back up plans and safeguards appropriate for your requirements.
- 7.3. Liability for Test Data. UNDER NO CIRCUMSTANCES WHATSOEVER WILL LOADMILL BE LIABLE IN ANY WAY FOR ANY SECURITY DATA INCLUDING, WITHOUT LIMITATION, FOR ANY ERRORS OR OMISSIONS THEREIN, FOR ANY INFRINGEMENT OF THIRD PARTY RIGHTS, OR LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE COLLECTION OR USE BY LOADMILL OF THE SECURITY DATA, OR THE TRANSFER OF SECURITY DATA TO YOU.

8. **Proprietary Rights.**

- 8.1. Ownership. The Software is licensed and not sold to you under this Agreement. You expressly acknowledge that as between you and Loadmill, Loadmill solely and exclusively owns any and all worldwide right, title and interest in and to the Software and Test Services, including all worldwide intellectual property rights therein, and including any modifications thereto and any Reports and data derived thereunder, regardless of whether they are developed by either party. Nothing in this Agreement constitutes a waiver of Loadmill's intellectual property rights under any law.
- 8.2. Feedback. If you contact Loadmill with any suggestions or feedback data regarding the Services, which may include suggestions for, or feedback concerning, customizations, features, improvements, modifications, corrections, enhancements, derivatives or extensions (collectively, "**Feedback**"), such feedback shall be deemed to be the sole property of Loadmill and Loadmill will be free to adopt such Feedback for any of its products or services, use it in any other manner, disclose, reproduce, license or otherwise distribute and exploit the Feedback as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise. You hereby waive any right to the Feedback, including but not limited to, any right for royalties or any other consideration, and undertake to treat the Feedback as Confidential Information (as defined below) of Loadmill.
9. **Third Party Software.** You expressly acknowledge that the Software may include third party components ("**Third Party Software**"), which shall be used by you solely in conjunction with the Software, and shall not be used for any other purpose without the prior written consent of Loadmill. Such Third Party Software is provided "As-Is" without any warranty of any kind, and subject to the license terms attached to such Third Party Software, the provisions of this Agreement shall apply to all such Third Party Software providers and Third Party Software as if they were Loadmill and the Software respectively. In the event of any inconsistencies or conflicting provisions between the Third Party Software licenses and the provisions of this Agreement, the provisions of the Third Party Software licenses shall prevail.
10. **Confidentiality.** Each party agrees to keep confidential and to use only for purposes of performing its obligations under this Agreement, any proprietary or confidential information of the other party disclosed pursuant to this Agreement ("**Confidential Information**"). The obligation of confidentiality shall not apply to information which is publicly available through authorized disclosure or which is required by law, government order or request to be disclosed (provided that the receiving party shall give written notice to the other party prior to such disclosure and reasonably cooperate, at the objecting party's expense, to take legal steps to resist or narrow such request). You acknowledge that the Services and any information in connection therewith shall be deemed as Loadmill's Confidential Information. Upon any termination of this Agreement, each party shall return to the other party all Confidential Information of the other party, and all copies thereof, in the possession, custody or control of the party unless otherwise expressly provided in this Agreement.
11. **Privacy and Anonymous Information.**

- 11.1. We will use any personal information that we may collect or obtain in connection with the Services in accordance with Loadmill's privacy policy which is available at: <https://docs.loadmill.com/assets/privacy-policy.pdf>. You are aware that you are not legally obligated to provide Loadmill with, or authorize Loadmill to collect, any personal information, and you hereby confirm that you do so at your own free will.
- 11.2. You hereby represent that you have obtained, and shall continue to obtain and maintain, all necessary consents, rights and authorizations, and that you have displayed, and shall continue to display, all necessary notices, as required under applicable privacy laws and regulations in order to provide Loadmill with, and authorize Loadmill to collect, personal information in connection with the Services.
- 11.3. You hereby represent and warrant that you shall not provide to Loadmill any personal information of users of your Application or any of your other websites or applications, including without limitation, user names, IP addresses and/or passwords.

12. **Payments.**

- 12.1. Fees. Your creation of an Account and use of the Software under the Free Subscription Plan is currently for free. However, Loadmill will charge you, in accordance with this Agreement and your Order, a periodic, non-refundable fee, as set forth in the Update Form, in consideration for certain paid Subscription Plans ("Fees"). Please be aware that any failure to pay applicable charges will result in you not having access to the features and functionalities of Software and/or the Test Service offered under such paid Subscription Plans.
- 12.2. Payment Terms. Payments for paid Subscription Plans and made to Loadmill shall be made on a recurring basis, upon purchase of your paid Subscription Plan for the Initial Term, and in the beginning of each Renewal Term with respect to such Renewal Term, and shall be changed to the means of payment that you provide in your Update Form (each such payment shall be referred to as a "**Billing Cycle**"). The Billing Cycles shall renew automatically at each Renewal Term, subject to Subscription Plan changes according to Section 2.2. The Fees are non-refundable and, unless otherwise stated in the Order, are exclusive of all taxes, levies, or duties, which are your responsibility. If you are located in a jurisdiction which requires you to deduct or withhold taxes or other amounts from any amounts due to us, you must notify us in writing. In such a case, we reserve the right to assess the withheld amount or to increase the gross amount of the applicable payment so that, after the deduction or withholding for taxes, the net amount paid to us will not be less than the amount we would have received without the required deduction or withholding. The available payment methods and the required payment schedule are set forth in the Order.
- 12.3. Payment Processing. Your payment will be processed through a third party payment processing service, and additional terms may apply to such payments. We currently engage a third party, for online payment processing services, and in addition to these Terms, you agree that such third party terms and conditions shall apply to your online payments of the Fees. We reserve the right to use other third party payment processing services for such purposes in the future.

13. **Warranty Disclaimer.**

- 13.1. THE SERVICES ARE PROVIDED "AS IS", AND LOADMILL DISCLAIMS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF THIRD PARTY RIGHTS, INCLUDING INTELLECTUAL PROPERTY RIGHTS. LOADMILL WILL NOT BE LIABLE OR RESPONSIBLE FOR: (a) ANY TECHNICAL PROBLEMS OF THE INTERNET (INCLUDING WITHOUT LIMITATION SLOW INTERNET CONNECTIONS OR OUTAGES); AND/OR (b) ANY ISSUE THAT IS ATTRIBUTABLE TO YOUR HARDWARE OR SOFTWARE OR YOUR INTERNET OR DATA SERVICES.
- 13.2. THE SOFTWARE MAY CONTAIN BUGS, ERRORS, INTERRUPTIONS AND OTHER FAILURES IN THE PERFORMANCE AND OPERATION OF THE SOFTWARE OR ANY TEST SERVICES. LOADMILL MAY NOT BE ABLE TO OFFER TECHNICAL SUPPORT FOR THESE ISSUES. YOUR USE OF THE SERVICES IS AT YOUR OWN RISK TAKING

INTO THE FACT THAT NOT ALL FEATURES MAY BE FULLY IMPLEMENTED OR REFINED. THIS AGREEMENT DOES NOT INCLUDE THE RIGHT TO ANY FUTURE VERSIONS OF THE SOFTWARE, INCLUDING ANY REVISIONS, UPDATES, UPGRADES OR NEW RELEASE OF THE SOFTWARE, WHICH SHALL BE RELEASED SUBJECT TO OUR SOLE DISCRETION.

- 13.3. YOU SPECIFICALLY ACKNOWLEDGE THAT LOADMILL SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY BANDWIDTH SATURATION OR OVERLOAD TO ANY OF YOUR SERVERS, DEVICES, WEBSITES, APPLICATIONS OR NETWORKS CAUSED AS A RESULT OF OR IN CONNECTION WITH YOUR USE OF THE SOFTWARE OR PERFORMANCE OF THE TEST SERVICES, AND/OR ANY LOSSES OR DAMAGES ARISING THEREFROM, INCLUDING WITHOUT LIMITATION ANY INTERRUPTION TO OR CESSATION OF THE OPERATION OF SUCH SERVER, DEVICE, WEBSITE, APPLICATION OR NETWORK.
- 13.4. LOADMILL DOES NOT OFFER A WARRANTY OR MAKE ANY REPRESENTATION REGARDING ANY CONTENT OR INFORMATION AVAILABLE THROUGH THE SERVICES, INCLUDING WITHOUT LIMITATION THE REPORTS. YOUR USE OF AND RELIANCE UPON THE SERVICES ARE ENTIRELY AT YOUR SOLE DISCRETION AND RISK, AND LOADMILL SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER TO YOU OR TO ANY THIRD PARTY IN CONNECTION WITH ANY OF THE FOREGOING.
14. **Limitation of Liability.** IN NO EVENT WILL LOADMILL BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF USE, DATA, GOODWILL, BUSINESS, PROFITS, USE OF MONEY, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, FINES OR OTHER PENALTIES FOR NONCOMPLIANCE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OF THE SOFTWARE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, CONFIDENTIAL INFORMATION, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT LOADMILL (AND ITS LICENSORS) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN ADDITION, LOADMILL'S TOTAL CUMULATIVE LIABILITY FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT WILL BE LIMITED TO AND WILL NOT EXCEED THE FEES ACTUALLY PAID TO US BY YOU DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.
15. **Indemnification.** You agree to defend, indemnify and hold harmless Loadmill, its affiliates, and its 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 Services; (ii) your violation of this Agreement; (iii) your violation of any applicable laws or regulations (including, without limitation, applicable privacy laws); (iv) your violation of any third party right, including without limitation any copyright, property, or privacy right (for example, any claim that Security Data infringes or violates the rights of any third party); (v) any data or information provided by you to Loadmill or obtained by Loadmill from you or the users of your Application in connection with the performance of the Services by Loadmill; or (vi) any claim against Loadmill by any of the users of your Application resulting from or in connection with the Services, including without limitation any claim regarding violation of such users' privacy rights. Without derogating from or excusing your obligations under this Section, Loadmill reserves the right (at your expense), but is not under any obligation, to assume the exclusive defense and control of any matter which is subject to an indemnification by you if you choose not to defend or settle it. You agree not to settle any matter subject to an indemnification by you without first obtaining Loadmill's express written approval.
16. **Modification to Software.** Loadmill reserves the right, at any time, to: (i) discontinue, change, update or modify the Service or any aspect or feature thereof; and (ii) remove or limit your access to any aspect or feature of the Services.
17. **Term and Termination**
- 17.1. This Agreement is effective until terminated in accordance with this Section.

- 17.2. The Agreement and the license granted hereunder shall terminate immediately upon written notice from Loadmill to you in the event of your use of the Services for purposes other than the purposes permitted under this Agreement by you and/or any other failure by you to comply with any provision of this Agreement.
- 17.3. Upon termination of this Agreement, you shall cease all access to and use of the Services. This Section 17.3 and Sections 6 (“*Restricted Use*”), 8 (“*Proprietary Rights*”), 10 (“*Confidentiality*”), 11 (“*Privacy and Anonymous Information*”), 13 (“*Warranty Disclaimer*”), 14 (“*Limitation of Liability*”), 15 (“*Indemnification*”), and 18 (“*Assignment*”) to 21 (“*General*”) shall survive termination of this Agreement.
18. **Assignment.** This Agreement, 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.
19. **Modification of Agreement.** Loadmill reserves the right to modify this Agreement at any time by publishing the revised Agreement on Loadmill’s website, at: <https://docs.loadmill.com/assets/service-terms.pdf>. Such change will be effective ten (10) days following the foregoing notification thereof, and your continued use of the Services or any part thereof thereafter means that you accept those changes.
20. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Israel and only the competent courts located in Tel Aviv-Jaffa, Israel, shall have jurisdiction over any dispute arising from this Agreement.
21. **General.** If any provision, or part thereof, of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable and such reform shall not affect the enforceability of such provision under other circumstances, or of the remaining provisions hereof under all circumstances. This Agreement, and any other legal notices published by us in connection with the Services, shall constitute the entire agreement between you and Loadmill concerning the Services. No waiver of any term of this Agreement 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 this Agreement 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 SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

Last updated: **December 12, 2017**