# Loadmill Partner Agreement

The following Loadmill Partner Agreement ("**Agreement**") is entered into between you or the entity which you represent ("**you**") and Loadmill Ltd. ("**Loadmill**", "**we**", "**our**" or "**us**") and govern your engagement with Loadmill in connection with the Services provided by Loadmill to its Customers (as such capitalized terms are defined below).

By clicking the "accept", "save", "submit" or "ok" button, you expressly acknowledge and agree that you are entering into a legal agreement with Loadmill, and that you have understood and agree to comply with, and be legally bound by, the terms and conditions of 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 it.

1. **Background.** Loadmill provides to its customers (each, a "**Customer**"), via its Software-as-a-Service platform, various load testing services ("**Services**"), which allow Customers to evaluate the performance of their servers, devices, websites, applications or networks ("**Tested Applications**"). Loadmill powers the Services with respect to the Tested Applications by generating simple HTTP requests from traffic in websites owned, operated and controlled by persons or entities engaged with Loadmill (such persons or entities shall hereinafter be referred to as "**Partners**" and such website shall hereinafter be referred to as "**Partner Website**") to the Tested Applications. In the course of providing Services to its Customers, Loadmill wishes to enter in this Agreement with you, and you hereby agree to become a Loadmill Partner, all in accordance with the terms and conditions herein.

2. **Ability to Accept.** By accepting this Agreement, you affirm that you are over are over eighteen (18) years of age.

3. **Project Description.** Subject to the terms and conditions set forth in this Agreement, the scope of your cooperation with Loadmill will include integration of software provided to you by Loadmill ("**Software**") with your Partner Website, for the purpose of powering the Services by using traffic from your Partner Website ("**Project**"). Subject to your acceptance of this Agreement, Loadmill will provide you with the Software.

4. **Grant of License.** Subject to the terms and conditions of this Agreement, Loadmill grants you a limited, personal, revocable, non-exclusive, non-sublicensable, non-assignable and non-transferable right to: (i) integrate the Software solely into your Partner Website; (ii) use the Software internally and solely for the purpose of performing the Project, all in accordance with any applicable use restrictions set forth herein.

5. **Partner Obligations:**

   During the Performance of the Project, you hereby agree:

   5.1. to be responsible for integrating the Software with your Partner Website, in accordance with written instructions provided to you by Loadmill;

   5.2. to cooperate with Loadmill as may be required for the performance of the Project; and

   5.3. to comply with Loadmill's instructions and guidelines in connection with the use of the Software.

6. **Partner Website.** You hereby represent and warrant that your Partner Website must be owned, operated and controlled by you. You hereby agree: (a) not to allow anyone other than yourself to access or use your Software; (b) to provide accurate and complete Account and login information; (c) to remain solely responsible and liable for the activity that occurs in your Partner Website; (d) to remain solely responsible for the activity of the users of your Partner Website ("**Partner Users**"); and (e) to notify Loadmill immediately of any breach of security or unauthorized access to your Partner Website.

7. **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 Software; (d) use any automated means to access or use the Software, nor circumvent or disable any security or technological features of the Software; (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 Software to design or develop any competing product or service that competes with the Software; (g) use the Software 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 Software to interact with IPs or devices for which you are not expressly authorized to do so; (k) use the Software, 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 Software, directly or indirectly, to initiate, propagate, participate in, direct or attempt any bandwidth saturation or overload to any server, device, website, application or network.

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 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 Software, 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 Software, Project 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. As a Partner User uses your Partner Website, we will collect or obtain certain personal information or other information of your Partner Users for the purpose of providing the Services to our Customers ("**Partner User Information**"). Such information includes, without limitation, the IP addresses and the user agent information (e.g. browser type and version, OS type and

version) of your Partner Users.

11.2. We will use any personal information or Partner User Information that we may collect or obtain in connection with the Project 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 Partner User Information, and you hereby confirm that you do so at your own free will.

11.3. You hereby represent that you have obtained, and shall continue to obtain and maintain, all necessary consents, rights and authorizations, and displayed, and shall continue to display, all necessary notices, as required under applicable law in order to provide Loadmill with, and authorize Loadmill to collect, personal information and Partner User Information in connection with the Project, including without limitation, from your Partner Users. You further acknowledge that if you do not agree to the collection and/or use of Partner User Information by Loadmill, Loadmill may terminate your partnership and this Agreement.

11.4. You hereby specifically acknowledge that certain Partner User Information may be collected by Loadmill's Customers via their Tested Applications in connection with their use of the Services. The collection and use of and Partner User Information by any Customer shall be governed by the applicable Customer's privacy policy, and Loadmill shall not be responsible for any collection or use of and Partner User Information by Customers. 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 allow the collection and use of and Partner User Information by Customers.

12. **No Consideration.** You hereby agree that unless otherwise agreed in writing between you and Loadmill, your participation in the Project is voluntary and that you shall not be entitled to receive any consideration, payment or reimbursement with respect to your participation in the Project and/or the fulfillment of your obligations under this Agreement.

13. **Warranty Disclaimer.**

13.1. THE SOFTWARE IS 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. LOADMILL MAY NOT BE ABLE TO OFFER TECHNICAL SUPPORT FOR THESE ISSUES. YOUR USE OF THE SOFTWARE 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 DEVICES, NETWORKS OR SERVERS CAUSED AS A RESULT OF OR IN CONNECTION WITH YOUR USE OF THE SOFTWARE, AND/OR ANY LOSSES OR DAMAGES ARISING THEREFROM, INCLUDING WITHOUT LIMITATION ANY INTERRUPTION TO OR CESSATION OF THE OPERATION OF SUCH DEVICE, NETWORK, SERVER, OR ANY RELATED WEBSITE, APPLICATION OR PLATFORM IN CONNECTION THEREWITH.

13.4. LOADMILL DOES NOT OFFER A WARRANTY OR MAKE ANY REPRESENTATION

REGARDING ANY CONTENT OR INFORMATION AVAILABLE THROUGH THE SOFTWARE, INCLUDING WITHOUT LIMITATION ANY RESULTS AND/OR REPORTS DEFIVED THEREFROM OR PRODUCED IN CONNECTION THEREWITH. YOUR USE OF AND RELIANCE UPON THE SOFTWARE IS 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 YOU BY US 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 Software; (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; (v) any data or information provided by you to Loadmill or obtained by Loadmill from you or your Partner Users in connection with the performance of the Project;  or (vi) any claim against Loadmill by any of your Partner Users, including without limitation any claim regarding violation of such Partner 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 Software or any aspect or feature thereof; and (ii) remove or limit your access to any aspect or feature of the Software.

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.

    17.3. Upon termination of this Agreement, you shall cease all access to and use of the Services. This Section 17.3 and Sections 7 ("*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/partner-terms.pdf. Such change will be effective ten (10) days following the foregoing notification thereof, and your continued use of the Software 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 Software, shall constitute the entire agreement between you and Loadmill concerning the Software. 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 SOFTWARE AND/OR THE PROJECT MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES.  OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

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