



Terms of Service

Welcome to Thematic. These are our terms of use, or "Terms." Please read these Terms carefully before you start to use our online products or services ("Services"). If you access our Services, you agree to be bound by these Terms, and you represent that you have the right to bind your organization to these Terms. If you do not wish to agree to these Terms, or if you do not have the authority to bind your organization, you may not use our Services. For purposes of these Terms, "you" means you and the organization you represent and also refers to any person ("User") accessing the Services by any method on your behalf.

1. Fees and Payments

Our Services are offered by subscription. You agree to pay Thematic any fees for Services you purchase or use. You are responsible for all applicable sales, use, and value-added taxes (other than taxes based on Thematic's income). Unless otherwise agreed to by the parties in writing, by accessing our Services, you authorize Thematic to charge the credit card or other form of payment held on file for any fees owed by you in connection with your access and use of the Services. You waive any right to receive any additional notice of such pre-authorized charges. In the case of any transaction that is rejected for non-sufficient funds or otherwise fails for any reason, you agree that Thematic may at its discretion attempt to process the charge again by any method authorized. You agree to update your information with us in the event of any change, including any change to your credit card information. Except as expressly set forth in this Agreement, all fees are non-cancellable and non-refundable once invoiced, and you will not withhold, reduce, or set off any fees owed, nor reduce contracted volumes or Services, during the agreed subscription term.

2. Accessing Our Services

You may access and use the Services in accordance with and subject to these Terms and the terms and conditions contained in any other agreement mutually executed by you and Thematic (collectively, the "Agreement"). Subject to the terms and conditions of the Agreement, Thematic hereby grants to you and your Users a limited, worldwide, non-exclusive, non-transferable, non-sublicensable right to access and use the Services for your internal business purposes.

By accessing our Services, you agree: (i) Not to distribute, transfer, sublicense, or otherwise make available the Services (or any portion of the Services) to third parties other than your Users. (ii) Not to use the Services in violation of any applicable law or regulation, or any other agreement with Thematic. (iii) Not to infringe Thematic's rights or to access the Services in a manner that inhibits or restricts other users' use of Thematic. (iv) That you will not reverse engineer, decompile, or otherwise attempt to derive the source code, techniques, processes, algorithms, know-how, or other information embodied in the Services. To the extent the foregoing is prohibited by applicable

law, you agree to first request any such information from Thematic under reasonable terms

3. Your Responsibilities When Accessing Our Services

When using our Services, you may provide us with data about or relating to your customers, including their names and any other relevant identifiers, such as account numbers ("Recipient Data"). You acknowledge that you are solely responsible for the accuracy and quality of any and all Recipient Data. You represent and warrant (i) that your provision of Recipient Data to us complies with all applicable privacy or data protection laws and agreements; (ii) that you will ensure that you and Thematic have the right to collect, use, and share Recipient Data via the Services; and (iii) that you will provide adequate notice to, and obtain any necessary consents from, your customers with respect to any Recipient Data shared with Thematic. You shall indemnify, defend, and hold harmless Thematic from and against any and all claims or liability of any kind arising out of a breach of the foregoing warranties.

4. Term and Termination of The Agreement

4.1 Trial.

Thematic may offer a free trial, in which your data is analyzed free of charge and you can view complete or partial results of the analysis. Thematic reserves the right to change the nature and the process of the free trial at any time. Thematic reserves the right to delete your trial data within 3 months after the trial is completed.

4.2 Subscription Term.

The Agreement will continue in effect until terminated as set forth herein. Unless otherwise agreed to by the parties in writing, your subscription for our Services will automatically renew for the same subscription term. If you do not wish to renew your subscription, you must provide us written notice of your intent not to renew at least 30 days prior to the end of the current subscription term.

4.3. Termination.

The Agreement may be terminated (i) by either party if the other party materially breaches the Agreement and does not cure the breach within 30 days after receiving written notice of the breach from the non-breaching party, (ii) as set forth in Section 8.1, or (iii) by either party if the other party provides proof that it made a general assignment for the benefit of creditors, suffered or permitted the appointment of a receiver for its business or assets, or availed itself of or became subject to any proceeding under the U.S. Bankruptcy Act or any other foreign or domestic statute, law, rule, or regulation relating to insolvency or the protection of rights of creditors. Thematic may, in its sole discretion, suspend or terminate your access to our Services if it determines that you have materially violated any of these Terms, and any suspension or termination

related to the foregoing will not relieve you of your payment obligations under the Agreement.

4.4. Effect of Termination.

Upon termination of the Agreement, your right to access our Services shall immediately cease. Please note that any data and content you have uploaded into our Services may be deleted from our systems immediately upon termination of the Agreement or cancellation of your account. We are not liable for any loss or damage following, or as a result of, the cancellation of your account, and it is your responsibility to ensure that any content or data that you require is backed up or replicated before cancellation. Sections 5, 6, 7, 8.3, 9, and 10 shall survive the termination of the Agreement.

4.5. One-off payments.

In the case of a one-off payment for ad hoc analysis of the data, the analysis will be available for at least 12 months after the analysis is completed. Thematic reserves the right to delete your data after that period. Thematic will make the best attempt to notify you about the deletion of the data.

5. Intellectual Property

We (and our licensors or partners, as applicable) retain all ownership rights in and to the Services, all updates and upgrades to the Services, and all other derivative works of the Services, including any suggestions, ideas, feedback, or other information you may provide to us relating to the Services. Thematic may collect and use data derived from your use of the Services ("Usage Data") for its own internal business purposes and may only disclose Usage Data in an anonymous, aggregated format that in no way identifies you or any of your customers.

6. Confidentiality

"Confidential Information" means, with respect to a party (the "disclosing party"), information that pertains to such party's business, including, without limitation, technical, marketing, financial, employee, planning, product roadmaps and documentation, performance results, pricing, and other proprietary information. Confidential Information will be designated and/or marked as confidential when disclosed, provided that any information that the party receiving such information (the "receiving party") knew or reasonably should have known is considered confidential or proprietary by the disclosing party will be considered Confidential Information of the disclosing party even if not designated or marked as such. The receiving party shall preserve the confidentiality of the disclosing party's Confidential Information and treat such Confidential Information with at least the same degree of care that the receiving party uses to protect its own Confidential Information, but not less than a reasonable standard of care. The receiving party will use the Confidential Information of the disclosing party only to exercise rights and perform obligations under the Agreement. Confidential Information of the disclosing party will be disclosed only to those employees and contractors of the receiving party with a need to know such information. The receiving party shall not be liable to the disclosing party for the release of Confidential Information if

such information (a) was known to the receiving party on or before the effective date of the Agreement without restriction as to use or disclosure, (b) is released into the public domain through no fault of the receiving party, (c) was independently developed solely by the employees of the receiving party who have not had access to Confidential Information, or (d) is divulged pursuant to any legal proceeding or otherwise as required by law, provided that, to the extent legally permissible, the receiving party will notify the disclosing party promptly of such required disclosure and reasonably assist the disclosing party in efforts to limit such required disclosure.

7. Warranty Disclaimer

YOU ACCEPT THE SERVICES "AS IS," WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

8. Indemnification and Limitation of Liability

8.1. Indemnity

Thematic will defend at its own expense any action against you or your Users brought by a third party to the extent that the action is based upon a claim that the Services infringe or misappropriate any copyright or trade secret rights, and Thematic will pay those costs and damages finally awarded against you in any such action that are specifically attributable to such claim, or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on (i) you notifying Thematic promptly in writing of such action, (ii) you giving Thematic sole control of the defense thereof and any related settlement negotiations, and (iii) your cooperation and, at Thematic's reasonable request and expense, assistance in such defense. If the Services become, or in Thematic's opinion are likely to become, the subject of an infringement claim, Thematic may, at its option and expense, either procure for you the right to continue exercising the rights licensed to you in the Agreement or replace or modify the Services to render them non-infringing and functionally equivalent. If neither of the foregoing options is, in Thematic's reasonable opinion, commercially reasonable, Thematic may terminate the Agreement and will refund to you a pro rata portion of any applicable prepaid fees. This Section 8.1 states Thematic's entire liability and your sole and exclusive remedy for infringement claims and actions.

8.2. Exclusions.

Thematic's obligations set forth in Section 8.1 shall not apply to the extent a claim arises out of (i) your breach of the Agreement, (ii) unauthorized use of the Services, or (iii) third-party components (including in combination with the Services) not provided by Thematic.

8.3. LIMITATION OF LIABILITY.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY, WHETHER UNDER THEORY OF CONTRACT, TORT, OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING ANY DAMAGE TO BUSINESS REPUTATION, LOST PROFITS, OR LOST DATA), WHETHER FORESEEABLE OR NOT AND WHETHER SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, BOTH PARTIES' AGGREGATE CUMULATIVE LIABILITY IN CONNECTION WITH THE AGREEMENT SHALL NOT EXCEED, IN THE AGGREGATE AND REGARDLESS OF WHETHER UNDER THEORY OF CONTRACT, TORT, OR OTHERWISE, THE TOTAL OF THE FEES ACTUALLY PAID BY YOU UNDER THE AGREEMENT DURING THE ONE-YEAR PERIOD PRIOR TO THE DATE THAT SUCH LIABILITY FIRST ARISES. HOWEVER, THERE IS NO LIMITATION ON DIRECT LOSS, CLAIM, OR DAMAGES ARISING AS A RESULT OF AN INFRINGEMENT OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS OR IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS. Notwithstanding any provision of the Agreement to the contrary, neither party excludes or limits its liability for (i) personal injury or death caused by its negligence, (ii) fraud, or (iii) any other liability THAT may not be lawfully excluded or limited.

9. Privacy

Thematic's Privacy Policy, found [here](#), describes how we handle the information you provide to us when you use our Services or access our website.

10. General

Each party will be excused from any delay or failure in performance hereunder caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, acts of God, earthquake, labor disputes and strikes, riots, war, and governmental requirements. The obligations and rights of the party so excused will be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay. The parties are independent contractors with respect to each other, and nothing in the Agreement shall be construed as creating an employer-employee relationship, a partnership, or a joint venture between the parties. The Agreement controls the actions of all party representatives, officers, agents, employees, and associated individuals. The terms of the Agreement shall be binding on the parties and all successors to the foregoing. Except as otherwise set forth herein, neither party will assign, transfer, or delegate its rights or obligations under the Agreement (in whole or in part) without the other party's prior written consent, except pursuant to a transfer of all or substantially all of such party's business and assets, whether by merger, sale of assets, sale of stock, or otherwise. Any attempted assignment, transfer, or delegation in violation of the foregoing shall be null and void. All modifications to or waivers of any terms of the Agreement must be in a writing that is signed by the parties hereto and expressly references the Agreement. The Agreement shall be governed by the laws of State of Delaware, without regard to its conflict of laws rules. The exclusive venue and jurisdiction for any and all disputes, claims, and controversies arising from or relating to the Agreement shall be subject of State of Delaware Courts. Each party waives any objection (on the grounds of lack of jurisdiction, forum non conveniens, or otherwise) to the

exercise of such jurisdiction over it by any such courts. If any provision of the Agreement conflicts with governing law or if any provision is held to be null, void, or otherwise ineffective or invalid by a court of competent jurisdiction, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law. No waiver of any breach of any provision of the Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. The Agreement includes any documents agreed to by the parties in writing and all other documents expressly referenced herein. Collectively, the foregoing constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications, including, without limitation, any quotations or proposals or other documents submitted by the parties. The terms on any purchase order or similar document submitted by you to Thematic will have no effect and are hereby rejected. All notices, consents, and approvals under the Agreement must be delivered in writing by courier or by certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth in the Agreement or as otherwise designated by the parties from time to time, and, if sent to Thematic.