



## SightWorks Platform - Terms of Service

SIGHTWORKS, INC. - SIGHTWORKS PLATFORM - TERMS OF SERVICE

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Welcome to SightWorks' online platform services website (the "Site") provided by SightWorks, Inc., an Oregon corporation with offices at 5200 SW Macadam Avenue, Suite 500, Portland, OR 97239 ("SightWorks"). Any person who wishes to access the Site to purchase or use any products, services or other offerings made available through the Site must accept the terms and conditions of these Terms of Service (these "Terms") without change. These Terms set forth the terms and conditions under which SightWorks and/or its third party providers will provide Platform Services (as defined in the written Master Agreement between Client and (as defined below) and Sightworks) and are incorporated by reference into the Master Agreement. To the extent that Client has not entered a written Master Agreement with Sightworks, acceptance of these Terms also constitutes acceptance of SightWorks' standard Master Agreement, available to Client upon request. Capitalized terms that are not otherwise defined in these Terms shall have the meanings set forth in the Master Agreement. The terms and conditions of the Master Agreement will apply to these Terms except that in the event of any conflict between the express terms and conditions of these Terms and the terms of the Master Agreement, the terms of these Terms shall govern with respect to all Platform Services and related license grants, but only to the extent of such conflict.

PLEASE READ THESE TERMS CAREFULLY BEFORE YOU USE THE PLATFORM SERVICES. BY CLICKING ON THE "ACCEPT" BUTTON, YOU ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THESE TERMS, AS INCORPORATED WITHIN THE MASTER AGREEMENT, INCLUDING ANY MATERIALS AVAILABLE ON THE SITE INCORPORATED BY REFERENCE HEREIN, INCLUDING, WITHOUT LIMITATION, THE TERMS OF USE AND PRIVACY POLICY DESCRIBED IN SECTION 3.4 BELOW. IF YOU ARE ENTERING INTO THESE TERMS ON BEHALF OF A BUSINESS, COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS, IN WHICH CASE THE TERM "CLIENT" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT UNCONDITIONALLY AGREE TO THESE TERMS, CLICK THE "CANCEL" BUTTON AND YOU WILL NOT HAVE ANY RIGHT TO USE THE SITE OR SERVICES. ANY CONTINUED USE OF THE SITE OR SERVICES SHALL ALSO CONSTITUTE ASSENT TO THESE TERMS.

SightWorks reserves the right to change any of the terms and conditions contained in these Terms, including the Services, or any policies or guidelines governing the Site or Services, at any time and in its sole discretion. Any changes will be effective upon posting of the revisions and a notice on the Site. Your continued use of the Site and the Services following any revision to these Terms will constitute your acceptance of the changes or modifications to these Terms. If you do not agree to any changes to these Terms, do not continue to use the Services or this Site.



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**1. Definitions.** The following capitalized terms will have the meanings set forth below:

**1.1 “Base Software”** means SightWorks’ core software product made available to Client via the Site, which such software may be embedded in or provided in connection with certain Deliverables.

**1.2 “Platform Services Fees”** means the subscription fees to be paid by Client to SightWorks for the Platform Services provided by SightWorks, as such fees are set forth in an SOW.

**1.3 “Software Application or Tool”** means any software tool licensed by SightWorks to Client in addition to the Base Software, as such Software Tools are set forth in an SOW. Software Tools may include, for instance, content management systems (CMS), e-commerce functionality and search engine optimization (SEO).

**1.4 “Solution”** means, collectively, the Base Software and any Software Tools licensed by Client under this Agreement.

**2. Ordering.** Client may from time to time order Platform Services by entering one or more SOW(s) with SightWorks. Each SOW will include (a) a description of the specific Platform Services to be provided by SightWorks on behalf of Client, including, without limitation, the specific Solution being licensed, (b) the authorized scope of Client’s right to access and use the Site, Platform Services and Solution (i.e., number of permitted individual active users), (c) the duration of Client’s right to access and use the Site, Platform Services and Solution (the “License Term”), (d) relevant pricing and payment terms, including the Platform Services Fees, and (e) other relevant order terms.

## **3. Platform Services; License Grants and Restrictions.**

**3.1 Platform Services.** During the applicable License Term, SightWorks will set up, configure and maintain the Site and Solution (including any Deliverables or Client Materials included therein) on a virtual server located on a system operated by SightWorks’ hosting provider. Client understands and agrees that SightWorks is not a domain name registrar and does not maintain Client’s subscription or right to any domain or URL that Client may utilize. Client is solely responsible for securing its domain name and for the payment of all applicable fees in connection with the reservation and use thereof. SightWorks shall have no liability under this Agreement or otherwise for any unavailability or suspension of access to Client’s website(s) for non-payment of domain name registration/renewal fees.

**3.1.1 Service Level Agreement.** SightWorks shall be responsible to maintain and repair the Site and Solution and keep it in good working condition, but SightWorks makes no guarantee that the Site, Platform Services or Solution will be accessible 24 hours a day, 7 days a week, 365 days a year.

**3.1.2 Support and Maintenance.** SightWorks will comply with the terms and conditions of its Support and Maintenance Agreement (“S&M Agreement”) set forth at <http://www.sightworks.com/terms> (or such other location as SightWorks may specify). SightWorks reserves the right to amend the S&M Agreement from time to time effective upon posting of the revised S&M Agreement to the URL or other notice to Client.

**3.1.3 User Accounts.** SightWorks will provide a license key to Client which may be used to create individual user accounts to permit Client’s employees and contractors (“Client Users”) to access and use the SightWorks Software. Client is solely responsible for (a) creating and administering Client



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User accounts, (b) the confidentiality of Client User passwords and (c) its Client Users' access and use of the SightWorks Software. Any breach of these Terms by any Client User will be deemed a breach by Client.

**3.2 License Grant.** Subject to the terms of these Terms, within the Territory, if applicable, and during the License Term, Client is granted a limited, revocable, non-exclusive, non-transferable license, without sublicense rights, to permit authorized users to access, use, perform and display the Platform Services and Solution within the Site for Client's own business purposes and in accordance with the any limitations set forth in the applicable SOW.

**3.3 Content.** SightWorks has no control over, and accepts no responsibility for, the content of the information passing through SightWorks' servers. Except as expressly set forth in these Terms, use of any information obtained via SightWorks servers is at Client's own risk. Client acknowledges that, unless configured otherwise by Client, all content made available through websites for which Platform Services are provided shall be publicly accessible and viewable. SightWorks specifically denies any responsibility for the accuracy or quality of information obtained through its services. Additionally SightWorks is not responsible for the security of any data or information provided by Client or its users (collectively, "Client Content") while in transit over the Internet. It is the responsibility of the Client that all Client Materials, Client Content and other content and materials placed on SightWorks' servers are in "server ready" condition, requiring no additional action by SightWorks. SightWorks will make no effort to validate any such information for content, correctness or usability. If such information is not "server-ready," SightWorks may reject this material. SightWorks will notify Client of its refusal of the material and afford Client the opportunity to modify the material to satisfy SightWorks' requirements. Client is solely responsible for all Client Materials and Client Content, including its compliance with applicable laws and for any infringement or misappropriation of the intellectual property rights of any third party in connection therewith. SightWorks may restrict or remove from its servers any content that violates these Terms or related policies or guidelines, or is otherwise objectionable or potentially infringes or misappropriates any third party's rights or that potentially violates any laws or potentially exposes SightWorks to civil or criminal liability. If SightWorks becomes aware that Client has possibly violated this Agreement, or any related policies or guidelines, third party rights or laws, SightWorks may immediately take corrective action, as it deems appropriate. It is SightWorks' policy to terminate repeat violators. SightWorks will not refund to Client any Platform Services Fees Client paid in advance of the corrective action.

**3.4 Site Use Policies.** The SightWorks' Terms of Use ("Terms of Use") states the general policies and procedures for use of the Platform Services via the Site. SightWorks' Privacy Policy ("Privacy Policy") describes how SightWorks collects, stores, processes and uses information associated with Client's use of the Platform Services. The Terms of Use and the Privacy Policy are posted on SightWorks' web site at <http://www.sightworks.com/terms> (or such other location as SightWorks may specify) and may be updated from time-to-time. Without limiting the foregoing, Client shall not use the Platform Services in connection with any (i) infringement or misappropriation of any intellectual property rights; (ii) defamation, libel, slander, obscenity, or violation of the rights of privacy or publicity; (iii) SPAMMING; or (iv) other conduct that, is offensive, harassing or illegal. Client shall indemnify SightWorks from and against any and all losses, damages and liabilities incurred by SightWorks as a result of a breach of the foregoing restrictions or in any way associated with the Client Content or Client Materials.

**3.5 Additional License Restrictions.** Except as otherwise expressly permitted under these Terms, Client agrees not to: (a) disassemble, reverse compile, reverse engineer or otherwise attempt to discover the source code of or trade secrets embodied in the Site or Solution (or any portion thereof); (b)



distribute, lend, rent, sell, transfer or grant sublicenses to, or otherwise make available the Site or Solution (or any portion thereof) to third parties, including, but not limited to, making such Site or Solution available (i) through resellers, OEMs, other distributors, or (ii) as an application service provider, service bureau, or rental source; (c) embed or incorporate in any manner the Site or Solution (or any element thereof) into other applications of Client or third parties; (d) create modifications to or derivative works of the Site or Solution; (e) knowingly allow any user or individual or entity under the control of Client to access the Site or Solution without a valid license from SightWorks for such access; (f) use or transmit the Site or Solution in violation of any applicable law, rule or regulation, including any export/import laws, (g) in any way access, use, or copy any portion of the Site or Solution code (including the logic and/or architecture thereof and any trade secrets included therein) to directly or indirectly develop, promote, distribute, sell or support any product or service that is competitive with the Site or Solution or (h) remove, obscure or alter any copyright notices or any name, logo, tagline or other designation of SightWorks displayed on any portion of the Site or Solution ("SightWorks Marks"). Client shall not permit any third party to perform any of the foregoing actions and shall be responsible for all damages and liabilities incurred as a result of such actions.

**4. Proprietary Rights; License to Client Content and Client Materials.** As between the parties hereto, exclusive of any Client Material incorporated therein, SightWorks will retain all right, title and interest in and to the SightWorks Marks, the Site and Solution, including all updates, any related documentation, including all intellectual property and proprietary rights incorporated into or related to the foregoing. All rights not expressly licensed by SightWorks under these Terms are reserved. Client will not directly or indirectly obtain or attempt to obtain at any time, any right, title or interest by registration or otherwise in or to the SightWorks Marks. Client acknowledges that the goodwill associated with the SightWorks Marks belongs exclusively to SightWorks and, upon request, Client will modify or cease its use of any SightWorks Marks. Client grants SightWorks a worldwide, royalty-free, non-exclusive, perpetual, irrevocable and fully sublicensable license to use, distribute, reproduce, modify, adapt, publish, translate, publicly perform and publicly display all Client Material and Client Content (in whole or in part) solely for the purposes of providing the Platform Services.

## 5. Solution Warranties.

5.1 SightWorks represents and warrants to Client that Solution will conform to its applicable specifications for a period of ninety (90) days from delivery thereof. After such point, SightWorks will address errors in the SightWorks Software through its provision of support and maintenance services. SightWorks' sole liability and Client's sole remedy for any breach of the foregoing warranty will be for SightWorks to use commercially reasonable efforts to correct any reproducible error in the SightWorks Software that causes such non-conformance. SightWorks does not warrant that use of the Solution will be error-free or uninterrupted. The foregoing warranty will not apply to the extent that any non-conformance is the result of (a) misuse of the Solution, (b) any modification or alteration of the Solution by person other than SightWorks or its authorized agents, (c) the combination of the Solution with other software, hardware or technology, or (d) the Client Materials. Any correction to the Solution provided to Client will not extend the original warranty period for the Solution set forth herein.

5.2 No portion of the Site or Solution, when delivered or made available, will contain, any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus," "preventative routines" or other computer software routines intentionally designed to permit access to or use of either the Site or Solution or Client's computer systems by SightWorks or a third party.



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**5.3 Disclaimer.** THE EXPRESS WARRANTIES IN THIS SECTION 5 ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SITE OR SOLUTION, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.

**6. License Term.** SightWorks will provide the Platform Services set forth in any SOW for the initial License Term. Thereafter, the applicable License Term will automatically renew for successive one (1) year periods unless either party provides written notice to the other party not less than thirty (30) days' prior to the conclusion of the then-current term .

**7. Platform Services Fees.** Unless otherwise set forth in a SOW, Client will pay to SightWorks the applicable Platform Services Fee in advance not later than the first day of each calendar month. Without limiting any other right SightWorks may have under these Terms, the Master Agreement, or otherwise, in the event that Client's account is more than sixty (60) days past due, SightWorks may, without liability and in its sole discretion, suspend Customer's access to the Site, Platform Services and Solution until such time as all outstanding amounts are paid in full.