

ChaosSearch Terms of Service

Last Updated: August 23, 2020

YOU AGREE TO BE BOUND BY THE TERMS OF THIS CHAOSSEARCH TERMS OF SERVICE AGREEMENT (“AGREEMENT”). IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MAY NOT USE OR ACCESS CHAOSSEARCH SERVICE. “YOU” OR “CUSTOMER” MEANS THE NATURAL PERSON OR THE ENTITY YOU REPRESENT THAT IS AGREEING TO BE BOUND BY THIS AGREEMENT, THEIR EMPLOYEES AND THIRD PARTY CONTRACTORS THAT PROVIDE SERVICE TO YOU. YOU SHALL BE LIABLE FOR ANY FAILURE BY SUCH EMPLOYEES AND THIRD PARTY CONTRACTORS TO COMPLY WITH THE TERMS OF THIS AGREEMENT.

1. Grant and Use Rights

ChaosSearch hereby grants You a non-exclusive, non-transferable license, without rights to sublicense, to use the ChaosSearch Service (the “Service”) for Your internal operations only for the time period (the “Subscription Term”) that You have paid/or agree to pay the applicable fees. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service or Software (as defined below), or any intellectual property rights. The Service is intended for Your organization’s use only and is subject to modification from time to time and at ChaosSearch’s sole discretion. All rights not expressly granted to You are reserved by ChaosSearch. Except as expressly set forth herein, ChaosSearch alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Service or the Software or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by You or any other party relating to the Service and/or the Software, which are hereby assigned to ChaosSearch.

2. Restrictions

2.1. You will not, and will not permit any third party to: reverse engineer (except to the extent statutory law expressly prohibits or limits restrictions on reverse engineering, but only to the extent required by such statute), decompile, disassemble or otherwise attempt to discover the source code, object code or

underlying structure, ideas or algorithms of the Services or any software, documentation or data related to the Services (“Software”); modify, translate, or create derivative works based on the Services or Software; use in excess as set forth below; use the Services or Software for timesharing or service bureau purposes or for any purpose other than its own internal business purposes; or use the Services or Software other than in accordance with this Agreement and in compliance with all applicable laws and regulations (including but not limited to any European privacy laws) and intellectual property.

3. Support Services

3.1 Support for the Service shall be provided to You in accordance with the terms specified at <https://chaossearch.io/support-terms-and-conditions/> (“Support”).

4. Acceptable Use; Passwords; Primary Contact

4.1. By agreeing to these Terms of Service, You are also agreeing to the Acceptable Use Policy located at <http://chaossearch.io/acceptable-use-policy/> (“Acceptable Use Policy”).

4.2. You are responsible for establishing a username and password (or any other means required by ChaosSearch) for verifying that only Your designated employees have access to any administrative functions of the Services. You will be responsible for maintaining the security of Your account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Your account with or without Your knowledge or consent.

4.3. You will designate an employee who will be responsible for all matters relating to this Agreement (“Primary Contact”). You may change the individual designated as Primary Contact at any time by providing written notice to ChaosSearch. ChaosSearch is not liable for any losses, damages, claims, demands, actions, costs and expenses (including reasonable attorneys’ fees and court costs) arising from or created by any of Your acts or omissions related to the access or use of the Service

5. Confidentiality

5.1. Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose information relating to the

Disclosing Party's technology or business (hereinafter referred to as "Proprietary Information" of the Disclosing Party).

5.2. The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary Information solely to those employees, contractors or agents with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of or reference to any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. In any event, ChaosSearch may collect data with respect to and report on aggregate measures of the Services' performance and other measures to enhance the performance of the Services.

5.3. ChaosSearch agrees that all information and data generated, processed, or stored on the Service (as intended usage of the Service), including Customer's log and machine-generated data produced by applications and systems are Customer's Proprietary Information. Except for such Proprietary Information, Customer acknowledges that ChaosSearch does not wish to receive any Proprietary Information from Customer that is not necessary for ChaosSearch to perform its obligations under this Agreement, and, unless the parties specifically agree otherwise, ChaosSearch may reasonably presume that any unrelated information received from Customer is not confidential or Proprietary Information.

5.4. Both Parties will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a Party with a governmental authority (provided such party will use

reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirers.

6. Security; Data Privacy.

ChaosSearch will implement reasonable and appropriate measures designed to help secure any content that You make available for processing, analysis or other use by the Service in accordance with this Agreement against accidental or unlawful loss, access or disclosure. You acknowledge and agree that ChaosSearch is not responsible for Your AWS S3 environments and has no obligation with respect to the protection of Your content that You store in your AWS S3 environments. When You transmit Your content to the Service for processing, You are transmitting Your Content to the Service which is hosted by Amazon Web Services in the United States. ChaosSearch will not access or use Your content except as necessary to maintain or provide the Service, or as necessary to comply with the law or a binding order of a governmental body. ChaosSearch will not disclose Your content to any government or third party except as necessary to comply with the law or a binding order of a governmental body.

7. Payment.

7.1. The Service is sold on a subscription basis and includes Service Support and Maintenance during the contracted term, thereafter shall automatically renew for additional annual subscription terms, unless either You or ChaosSearch provides written notification of cancellation thirty (30) days prior to the end of the current Subscription Term. Support and Maintenance is not sold separately.

7.2. ChaosSearch Service fees are quoted and payable to ChaosSearch in US currency only. Fees shall be due and payable at the beginning of the Subscription Term, unless otherwise agreed to by the parties. Fees may be set forth in an order form. Payment obligations are non-cancelable and fees paid/payable are non-refundable. If Your use of the Service exceeds the Service Capacity that You are currently enrolled in, You will be invoiced at the then current price for such overages for the applicable month, in arrears. Fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and such taxes, levies and duties shall be added to the Service fees. The subscription fees of the then current list

price are based on the annual period that begins on the subscription start date and each yearly anniversary thereof. You are responsible for maintaining complete and accurate billing and contact information for the Service.

7.3. ChaosSearch reserves the right to modify the fees at any time, upon 30 days prior written notice to You, which may be provided by e-mail; such new prices shall not apply for subscription for Service which has already been paid, but shall apply to any subscription completed after the effective date of change of the fees.

8. Cancellation or Termination of Service

8.1. Payments shall be made for a full year and no refund is available. If You cancel during your subscription's yearly cycle, all amounts due and payable through the Subscription Term shall immediately become due and payable. You will have access to the ChaosSearch Service and Support until the last day of Your Subscription Term. There is no pro-rata credit or refund for that Subscription Term.

8.2. ChaosSearch may, without prior notice, immediately terminate, limit Your access to or suspend Your account and use of the Service if You fail to comply with any term of this Agreement. ChaosSearch expressly reserves the right to suspend Your account and use of the Service in the event You fail to pay the fees in full and on time.

9. Warranty

9.1. ChaosSearch warrants the Service shall perform materially in accordance with the accompanying documentation and this Agreement. As Your sole and exclusive remedy for any breach of the foregoing limited warranty, ChaosSearch will, in its sole discretion, either (i) use commercially reasonable efforts to remedy the nonconformity within a commercially reasonable period of time or (ii) terminate the Agreement and refund the prepaid fees for the unused subscription period.

9.2. The warranty set forth above is void to the extent any failure to perform in accordance with the documentation or this Agreement is the result of or arises from (i) the Service not being used in accordance with the applicable documentation or the terms of this Agreement, (ii) the Service being modified or altered by a third party without ChaosSearch's knowledge and written

permission, (iii) any hardware, software, data, materials or other products or services not developed or provided by ChaosSearch, including, but not limited to Amazon Web Services or Your AWS S3 environment.

9.3. ChaosSearch does not warrant that the Services shall be uninterrupted and error free.

9.4. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS SECTION X, THE SERVICE, SOFTWARE, ANY DOCUMENTATION, AND ANY UPDATES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. CHAOSSEARCH AND ITS LICENSORS AND SUPPLIERS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. THE FOREGOING LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER CHAOSSEARCH OR ITS SUPPLIERS OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

10. Indemnity

10.1. **Indemnification by ChaosSearch.** ChaosSearch will defend (at ChaosSearch's expense) You from any third party claims, demands, suits or proceedings (a "Claim") brought against You alleging that Your use of the Service in accordance with its documentation and this Agreement infringes any copyright or trade secret right of a third party and shall pay all damages (including reasonable attorneys' fees) that are finally awarded by a court of competent jurisdiction or agreed to by ChaosSearch in settlement of such Claims. If You are enjoined from using the Service or ChaosSearch reasonably believes You will be enjoined, ChaosSearch shall have the right, at its sole option, to obtain for You the right to continue use of the Service or to replace or modify the Service so that it is no longer infringing. If neither of the foregoing options is reasonably available to ChaosSearch, then ChaosSearch may terminate Your use of the Service and the Agreement and refund to You any prepaid fees for the unexpired Subscription Term. Notwithstanding the foregoing, ChaosSearch shall not be required to indemnify You with respect to any Claim based upon or arising out of: (a) any use of the Service not in accordance with the Agreement or the applicable

documentation; (b) the combination, operation or use of the Service with other product, service, equipment, business method, software or content or data not developed by ChaosSearch; (c) any modifications made by any person other than ChaosSearch or its authorized agents or subcontractors; or (d) ChaosSearch's compliance with any designs, specifications, or instructions provided by You or a third party on Your behalf; This Section constitutes Your sole and exclusive remedy and ChaosSearch's only liability in respect of claims of intellectual property infringement.

10.2. *Indemnification by You.* You will defend (at Your expense) ChaosSearch from any Claims brought against ChaosSearch arising out of or related to (i) Your use of the Service in violation of this Agreement, the documentation or any applicable law or (ii) Your content or (iii) ChaosSearch's compliance with any designs, specifications, or instructions provided by You or a third party on your behalf. You shall pay all damages (including reasonable attorneys' fees) that are finally awarded by a court of competent jurisdiction or agreed to by You in settlement of such claims.

10.3. *Indemnification Process.* The foregoing obligations are conditioned on the indemnified party: (a) notifying the indemnifying party promptly in writing of such action, provided, that any failure to promptly notify the indemnifying party shall not relieve the indemnifying party of its obligations except to the extent it was unduly prejudiced; (b) giving the indemnifying party sole control of the defense thereof and any related settlement negotiations, provided that any settlement shall fully release the indemnified party from liability and shall not impose any obligations on the indemnified party without the indemnified party's consent; and (c) cooperating and, at the indemnifying party's written request and expense, assisting in such defense. The indemnifying party will not reimburse the indemnified party for any expenses incurred by the indemnified party without the prior written approval of the indemnifying party. The indemnified party will have the right to participate in the defense and settlement of a claim at the indemnified party's expense.

11. Limitation of Liability and Indemnity

11.1. *EXCLUSION OF CONSEQUENTIAL DAMAGES.* IN NO EVENT SHALL CHAOSSEARCH OR ITS SUPPLIERS HAVE LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING,

WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION AND DATA), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF CHAOSSEARCH AND ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

11.2. **LIMIT ON CUMULATIVE LIABILITY.** IN NO EVENT WILL THE TOTAL CUMULATIVE LIABILITY OF CHAOSSEARCH FOR ALL CLAIMS ARISING UNDER AND DURING THE ENTIRE TERM OF THIS AGREEMENT AND FOR ANY ACTION ARISING FROM OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU TO CHAOSSEARCH FOR THE SERVICE DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM AROSE. THE EXISTENCE OF MULTIPLE CLAIMS WILL NOT INCREASE THIS LIMIT. THE PARTIES ACKNOWLEDGE THAT THIS SECTION X REFLECTS THE AGREED UPON ALLOCATION OF RISK BETWEEN THE PARTIES. THIS LIMITATION OF LIABILITY WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

12. Other Provisions

12.1. **Governing Law.** This Agreement, and all disputes arising out of or related thereto, shall be governed by and construed under the laws of the Commonwealth of Massachusetts without reference to conflict of laws principles. The state and federal courts located in the Commonwealth of Massachusetts, shall have sole and exclusive jurisdiction over any disputes arising hereunder, and each party hereby irrevocably consents to the sole and exclusive personal jurisdiction of such 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 and **irrevocably waives any right to a trial by jury.**

12.2. **Assignment.** You shall not assign this Agreement or any rights or obligations hereunder, directly or indirectly, by operation of law, merger, acquisition of stock or assets, or otherwise, without the prior written consent of ChaosSearch. Such consent will not be unreasonably withheld. Subject to the

foregoing, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

12.3. **Export Controls.** You acknowledge that this website, the Service, and the underlying software may include U.S. technical data subject to restrictions under export control laws and regulations administered by the United States government. Diversion contrary to U.S. law is prohibited. Without limiting the foregoing, You agree that (1) You are not, and are not acting on behalf of, any person who is a citizen, national, or resident of, or who is controlled by the government of Cuba, Iran, North Korea, Sudan, or Syria, or any other country to which the United States has prohibited export transactions; (2) You are not, and are not acting on behalf of, any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (3) You will not use the Software for, and will not permit the Software to be used for, any purposes prohibited by law.

12.4. **Force Majeure.** ChaosSearch will not be liable for inadequate performance to the extent caused by a circumstance beyond its reasonable control, including, without limitation, failure of the internet, labor strikes or shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes, material shortages and other acts not caused by ChaosSearch.

12.5. **Modification.** This is the entire agreement between the parties relating to the subject matter hereof and all other terms, including the terms of any purchase order submitted by You, are rejected. Using the ChaosSearch Service after a notice of changes has been sent to You or published on the ChaosSearch Service shall constitute consent to the changed terms. The waiver of a breach of any term hereof shall in no way be construed as a waiver of any term or other breach hereof. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law the remaining provisions of this Agreement shall remain in full force and effect.

12.6. **Promotion.** You agree that ChaosSearch may use Your name in promotional material including its website.

12.7. **Functionality.** You agree that You are not entering into the Agreement or subscribing to the ChaosSearch Service contingent on the provision of any future

functionality relating in any way to the ChaosSearch Service and no statement or other information made or provided orally or otherwise shall be binding unless specifically set forth in the Agreement.

12.8. **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party person or entity any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

12.9. **Notices.** Any notice given to a party under or in connection with this Agreement shall be delivered by hand, by electronic mail, or a next working day delivery service if to ChaosSearch, to ChaosSearch at 205 Portland Street, Boston, MA 02110 Attn: Legal Department or if to You, to Your principal place of business as designated in Your account information. Notices shall be deemed given (i) upon personal delivery to the party to be notified; (ii) when received by electronic or confirmed facsimile transmission if received during normal business hours of the recipient on a business day, or if not, then on the next business day with a copy sent via any other method of notice; or (iv) one (1) business day after deposit with an internationally recognized overnight courier, with written verification of receipt. In addition, ChaosSearch may provide You with notices (i) through the Service, which notices will take effect upon Your next login and/or (ii) by email to Your email address provided by You in Your account information, which notices will take effect two days after being sent.

12.10. **Survival.** Any provisions of this Agreement containing restrictions, ownership provisions, warranties and warranty disclaimers, confidentiality obligations, limitations of liability and/or indemnity terms, and any provision of this Agreement which, by its nature, is intended to survive shall remain in effect following any termination or expiration of the Agreement.