

Smartvid.io Inc., DBA Newmetrix Services Agreement

(CLICK-THRU SINGLE USER VERSION)

This Newmetrix Services Agreement (the “Agreement”) is a legally binding agreement between you and **Smartvid.io, Inc., DBA Newmetrix**, a Delaware corporation with a business address at 245 Main Street, 2nd Floor, Cambridge MA 02142 (“we”, “us,” “our”). As used in this Agreement, references to “you” and “your” mean the individual who purchases access to our on-line services (defined below as the “Service”). By indicating below that you accept, or by signing up for, or logging onto, our Service, you acknowledge that you have read and understand and agree that you will be bound by the terms and conditions of this Agreement and the limited warranty and limitation of liability set out in it, effective on the date you log in and accept these terms (the “Effective Date”).

IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, do not log in or otherwise attempt to access our Service.

1. DEFINITIONS

“**Malicious Code**” means viruses, worms, time bombs, Trojan horses, intentional disabling devices, and other harmful or malicious code, files, scripts, agents or programs.

“**Software**” means our proprietary software and other copyrighted materials and methodologies that operate the Service, including any associated mobile applications and any modifications, corrections, improvements, enhancements or releases provided through the Service.

“**Service**” means access to our cloud-based platform to help users manage, collaborate and analyze their industrial video and photos and perform other related tasks, including a license to use the Software and associated hosting services.

“**Third-Party Licensors**” means the third parties that license content to us for access through the Service.

“**Your Data**” means all videos, photos, digital content, data or other information owned by you and submitted by you to the Service.

2. THE SERVICE

2.1. Service. We will: (i) provide you with access to the Service, twenty-four hours a day, seven days a week, except for: (a) planned downtime (of which we will give at least 8 hour notice via the Service and which we will schedule to the extent practicable within the weekend hours from 6:00 p.m. PST Friday to 8:00 a.m. Monday EST), or (b) any unavailability caused by circumstances beyond our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving our employees), Internet service provider failures or delays, or denial of service attacks; (ii) provide the Software only in accordance with applicable laws and government regulations; and (iii) use commercially reasonable efforts to provide email or phone support available during 8AM EST to 6PM PST Monday through Friday EST.

2.2. License. Subject to your performance of your obligations under the Agreement, including without limitation timely payment of all amounts due, we grant you a limited, non-exclusive, non-transferable, non-assignable (except as otherwise provided in Section 12.4 below), worldwide right and license (without the right to grant sublicenses) to use, access and search the Software (and download, print and display the educational content provided through the Software) through the Service during the Term of the Agreement.

2.3 Our Protection of Your Data. We will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We will not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with Section 5.3 (Compelled Disclosure) or as expressly permitted in writing by you, or (c) access Your Data except to provide the Service, improve the Service, and address service or technical problems, or at your request in connection with customer support matters. We may share Your Data with independent contractors who assist with our provision of the Service to you, subject to appropriate confidentiality agreements.

2.4. Your Responsibilities. You will (i) comply with the Newmetrix Acceptable Use Policy for Service hereto attached as Exhibit A, (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which you acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Service, and notify us promptly of any such unauthorized access or use, (iv) use the Service only in accordance with applicable laws and government regulations, and (v) be responsible for the day-to-day functional operation of all computers and networks used by you to access the Service, and ensure that such computers and networks have the technical capacity to successfully access the Internet and use the features associated with the Service.

3. FEES & PAYMENT

3.1. Fees and Payment. Charges applicable to the Service are set forth in the registration process for the Service and in any registration processes for premium services and supplemental services. We will charge your credit card in advance on a monthly basis. This is done automatically after you enroll for the Service, until we or you terminate your access to the Service. You agree to pay all fees and other charges incurred by you or on your account at the rates in effect during the billing period in which the charges were incurred, including any surcharges incurred while using any premium or supplemental services or features for which a surcharge is made upon you or us. After termination of your account, we will not charge you again when the next monthly payment is due, but you will not be entitled to a refund for any pre-paid monthly fees. All payments must be made in United States Dollars or the equivalent in other currencies.

3.2. Tax Responsibilities. You will pay any and all applicable sales, use and like taxes which accrue as a result of a use of the Service by you or on your account. other than taxes levied or imposed based upon our net income. In the event that we pay any such taxes on your behalf, we will invoice you for such taxes and you agree to pay such taxes in accordance with this Agreement.

3.3 Non-Payment Suspension. Delinquent charges (in the event that the credit card lender you selected refuses full payment) are subject to immediate suspension and/or termination without notice. Until we are notified, you will remain responsible for any unauthorized use of our Service and systems occurring on your license and account, including without limitation all charges.

4. PROPRIETARY RIGHTS

4.1. Reservation of Rights in Service. Subject to the limited rights expressly granted hereunder, we and our Third-Party Licensors reserve all rights, title and interest in and to the Service, and all components thereof including the Software, and all related intellectual property rights. No rights are granted to you hereunder other than as expressly set forth herein.

4.2. Restrictions. You will not (i) make the Software or Service available to anyone else, or allow any third parties to link to the Software or the Service, or permit any third party to access the Service, (ii) create derivative works based on the Service except as authorized herein, (iii) copy, frame or mirror any part or content of the Service, other than copying or framing on your own intranets or otherwise for your own internal business purposes, (iv) reverse engineer the Service or the Software, (v) access the Service in order to (a) build a competitive product or service, or (b) reproduce, modify, distribute or republish any part of the Software or the Service, or attempt to do so, (vi) sell, resell, rent or lease the Service or any component thereof, (vii) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (viii) interfere with or disrupt the integrity or performance of the Service or third-party data contained therein, or (ix) attempt to gain unauthorized access to the Service or their related systems or networks.

4.3. Your Data. Subject to the limited rights granted by you hereunder, we acquire no right, title or interest from you or your licensors under this Agreement in or to Your Data, including any intellectual property rights therein.

4.4. Suggestions. We will have a royalty-free, worldwide, irrevocable, perpetual, transferable, sublicensable license to use and incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by you relating to the Service.

5. CONFIDENTIALITY

5.1. Definition of Confidential Information. As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information will include Your Data; our Confidential Information will include the Service and the Software; and Confidential Information of each party will include the terms and conditions of this Agreement and all commercial terms, as well as business and marketing plans, customer lists, trade secrets, strategic plans, supplier information, mergers/acquisitions, non-public company financials, technology and technical information, product plans and designs, business processes, or any other secret or confidential information whatsoever, whether belonging to the disclosing party or any of the disclosing party's customers or gained by the other party during performance of the Service under this Agreement. However, Confidential Information (other than Your Data) will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

5.2. Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in

writing, to limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any commercial terms to any third party other than its legal counsel and accountants without the other party's prior written consent.

5.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is required by law to do so, provided the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is required by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

5.4. Return of Confidential Information. Upon either party's request after the effective date of termination of the Service, the Receiving Party will return or destroy and delete (and certify such destruction and deletion) the Disclosing Party's Confidential Information in the Receiving Party's possession or under its control.

6. DATA STORAGE AND LEGAL RESPONSE OBLIGATIONS

6.1 Data Ownership. You will have exclusive ownership, control of, and access to, Your Data. The placement or presence of Your Data on data storage systems owned by us, or within our possession or control, is not intended to, and does not constitute, a transfer of title and ownership in Your Data.

6.2 Geographical Location of Data Storage Devices. We will store Your Data solely on servers or data storage devices physically present in the United States of America, unless you otherwise agree in writing. We will not move, copy or backup Your Data to a server or data storage facility physically located outside the United States without first notifying you of the proposed move and obtaining your written consent.

7. WARRANTIES AND DISCLAIMERS

7.1. Our Warranties. We warrant that (i) we have validly entered into this Agreement and have the legal power to do so, (ii) the functionality of the Service will not be materially decreased during the Service term, (iii) we will not transmit Malicious Code to you, and (iv) we and our Third-Party Licensors are the legal owners of and have full right, title and interest in the Service, and that the Service and the Software have been developed by us or we are currently the legal owner of distribution rights for the Service or the Software from Third-Party Licensors.

For any breach of a warranty above, your exclusive remedy will be as provided in Section 10.2 (Termination for Cause) below.

7.2. Your Warranties. You warrant that you are older than 18 years old, have validly entered into this Agreement and have the legal power to do so.

7.3. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

8. MUTUAL INDEMNIFICATION

8.1. Indemnification by Us. We will defend you against any claim, demand, suit, or proceeding made or brought against you by a third party alleging that the use of the Software as permitted hereunder infringes or misappropriates any patents, copyrights, license, trademarks, or any other intellectual property rights of a third party (a "Claim Against You"), and will indemnify you for any damages, attorney fees and costs finally awarded against you as a result of, and for amounts paid by you under a court approved settlement of, a Claim Against You; provided that you (a) promptly give us written notice of the Claim Against You; (b) give us sole control of the defense and settlement of the Claim Against You (provided that we may not settle any Claim Against You unless the settlement unconditionally releases you of all liability); and (c) provide to us all reasonable assistance, at our expense. In the event of a Claim Against You, or if we reasonably believe the Software may infringe or misappropriate, we may in our discretion and at no cost to you (i) modify the Software so that it no longer infringe or misappropriate, without breaching our warranties under "our Warranties" above, (ii) obtain a license for your continued use of the Software in accordance with this Agreement, or (iii) terminate your Service upon 30 days' written notice and refund to you any prepaid fees covering the pro rata of the remaining term after the effective date of termination.

8.2. Indemnification by You. You will defend us against any claim, demand, suit or proceeding made or brought against us by a third party alleging that Your Data, or your use of the Service in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "Claim Against Us"), and will indemnify us for any damages, attorney fees and costs finally awarded against us as a result of, or for any amounts paid by us under a court-approved settlement of, a Claim Against Us; provided that we (a) promptly give you written notice of the Claim Against Us; (b) give you sole control of the defense and settlement of the Claim Against us (provided that you may not settle any Claim Against us unless the settlement unconditionally releases us of all liability); and (c) provide to you all reasonable assistance, at your expense.

8.3. Exclusive Remedy. This Section 8 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

9. LIMITATION OF LIABILITY

9.1. Limitation of Liability. NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE LESSER OF \$1,000 OR THE AMOUNT PAID BY YOU TO US IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY YOU TO US.

9.2. Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

9.3. Exceptions. THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 9.1 (LIMITATION OF LIABILITY) SHALL NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS IN SECTION 4.1 (RESTRICTIONS) OR SECTION 8 (MUTUAL INDEMNIFICATION) UNDER THIS AGREEMENT OR DAMAGES CAUSED BY EITHER PARTY'S WILLFUL MISCONDUCT.

10. TERMS AND TERMINATION

10.1. Term of Agreement. This Agreement commences on the Effective Date and continues until the end of the term period as specified in your Order Form (the "Initial Term"). This Agreement will automatically renew for successive renewal terms of one (1) year each unless terminated as provided in Section 10.3.

10.2. Termination for Cause. Either party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

10.3. Other Termination. After the Initial Term, either party has the right to terminate this Agreement for convenience upon thirty (30) days prior written notice to the other party. We have the right, upon written notice to you, to terminate this Agreement if: (a) you fail to timely pay us any amount due to us under this Agreement, provided such breach is not cured by you within thirty (30) calendar days following our written notice to you of such breach; or (b) we determine to cease its business operations related to providing the Service, provided that we provide thirty (30) calendar days prior written notice to you.

10.4. Refund or Payment upon Termination. Upon any termination by you for cause under Section 10.2, we will refund you any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by us under Section 10.2, you will pay any unpaid fees covering the remainder of the term after the effective date of termination. In no event will any termination relieve you of the obligation to pay any fees payable to us for the period prior to the effective date of termination.

10.5. Other Obligations upon Termination. Upon the termination of this Agreement for any reason: (a) your access to the Service will terminate; (b) you will return to us any and all documentation or other deliverables provided to you by us; and (c) your payment obligation for Service already rendered will survive.

10.6. Surviving Provisions. Sections 4 (Proprietary Rights), 5 (Confidentiality), 7 (Warranties and Disclaimer), 8 (Mutual Indemnification), 9 (Limitation of Liability), 10.4 (Refund or Repayment upon

Termination), 11 (Notices, Governing Law and Jurisdiction) and 12 (General Provisions) will survive any termination or expiration of this Agreement.

11. NOTICES, GOVERNING LAW AND JURISDICTION

11.1. General. This Agreement will be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts, and may be amended from time to time only by a writing signed by both parties. Each party agrees to the applicable governing law without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts.

11.2. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder will be in writing and will be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email will not be sufficient for notices of termination or an indemnifiable claim).

11.3. Waiver of Jury Trial. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement. All matters of construction, validity, performance, enforcement, claims, disputes and other matters in question between the parties hereto will be decided by arbitration in accordance with the rules of the American Arbitration Association. The award rendered by the arbitrators will be final and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof. You will pay on demand all of our reasonable attorney fees and other costs incurred by us to collect any fees or charges due us under this Agreement.

12. GENERAL PROVISIONS

12.1. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

12.2. Waiver. No failure or delay by either party in exercising any right under this Agreement will imply or constitute a waiver of that right whether of a similar nature or otherwise.

12.3. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.

12.4. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all subsequent renewal and orders based on this contract), without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph will be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, we will refund to you any prepaid fees covering the remainder of the term of all Service after

the effective date of termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.5. Entire Agreement. This Agreement, including all exhibits, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto, the terms of such exhibit will prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in your Purchase Order or other order documentation will be incorporated into or form any part of this Agreement, and all such terms or conditions will be null and void.

Exhibit A: Newmetrix Acceptable Use Policy for Newmetrix Service

This Acceptable Use Policy (“Policy”) outlines unacceptable use of Newmetrix Service, which interact with, or access, the Internet (the “Service”). This Policy is in addition to any other terms and conditions under which Newmetrix provides the Service to you.

Questions about this Policy (e.g., whether any contemplated use is permitted) and reports of violations of this Policy should be directed to support@newmetrix.com.

The examples listed in this Policy are not exhaustive and the prohibitions contained in the Agreement apply to the extent their application is broader than the examples of prohibited activity listed below in this Policy. Prohibited uses and activities include, without limitation, any use of the Service in a manner that, in our reasonable judgment, involves, facilitates, or attempts any of the following:

- Violating any law of, or committing conduct that is tortuous or unlawful in, any applicable jurisdiction;
- Displaying, performing, sending, receiving or storing any content that is obscene, pornographic, lewd, lascivious, or excessively violent, regardless of whether the material or its dissemination is unlawful;
- Advocating or encouraging violence against any government, organization, group, individual or property, or providing instruction, information, or assistance in causing or carrying out such violence, regardless of whether such activity is unlawful;
- Accessing, sending, receiving, displaying, performing, disclosing, storing, or executing any content a) in violation of any copyright, right of publicity, patent, trademark, service mark, trade name, trade secret or other intellectual property right, b) in violation of any applicable agreement, or c) without authorization;
- Deleting or altering author attributions, copyright notices, or trademark notices, unless expressly permitted in writing by the owner;
- Obtaining unauthorized access to any system, network, service, or account;
- Interfering with service to any user, site, account, system, or network by use of any program, script, command, or otherwise;
- Introducing or activating any viruses, worms, harmful code and/or Trojan horses;
- Sending or posting unsolicited messages or e-mail, whether commercial or not, a) to any recipients who have requested that messages not be sent to them, or b) to a large number of recipients, including users, newsgroups, or bulletin boards, at one time;

- Evading spam filters, or sending or posting a message or e-mail with deceptive, absent, or forged header or sender identification information;
- Holding Newmetrix or its affiliates up to public scorn or ridicule; and/or
- Reselling Newmetrix's services, in whole or in part, to any entity or individual, without Newmetrix's prior written consent, or misrepresenting your relationship with Newmetrix.

[END OF EXHIBIT A]