

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES - TRACKMYMACHINES

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: any day (other than a Saturday or Sunday or Christmas Shutdown) when banks are generally open for normal business in England.

Change Control Procedures: the procedures set out in Schedule 1.

Charges: the charges in respect of the Deliverables as set out in the Quote, together with any charges arising from the Change Control Procedures.

Commencement Date: the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.

Confidential Information: has the meaning given in clause 11.1.

Contract: the contract between the Supplier and the Customer for the supply of Deliverables in accordance with these Conditions.

Customer: the person, firm or company purchasing the Deliverables from the Supplier.

Deliverables: the provision of the Services and Service Hardware which the Supplier agrees to supply to the Customer as set out and identified in the Quote.

Force Majeure Event: has the meaning given in clause 10.

Intellectual Property Rights: all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trademarks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.

Order: the Customer's written acceptance of the Supplier's Quote

Services: software subscription services which the Supplier agrees to supply to the Customer

Service Hardware: hardware supplied to the Customer to support the provision of the Services

Supplier: TrackMyMachines Ltd trading as TrackMyMachines registered company number 14889462 of 133 Lathe Road, Rotherham, United Kingdom, S604LL

Free Trial Period: the period for which the Charges are not applicable in order that Customer can evaluate the Services.

Quote: the document that describes the Deliverables and the Charges for the Customer

- 1.1 Clause and schedule headings do not affect the interpretation of this agreement.
- 1.2 References to clauses and schedules are (unless otherwise provided) references to the clauses and schedules of this agreement.
- 1.3 In the event and to the extent only of any conflict between the clauses and the schedules, the clauses shall prevail.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.5 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 References to **including** and **include(s)** mean respectively including without limitation and include(s) without limitation.
- 1.7 References to **content** include any kind of text, information, image, or audio or video material which can be incorporated in the Software.
- 1.8 **Writing** or **written** includes fax and email.

2. **BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase Deliverables in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which

date the Contract shall come into existence (**Commencement Date**).

- 2.3 Written acceptance of the Order, in accordance with clause 2.2, shall be deemed to have occurred upon the earlier of (i) Supplier's signature on an Order submitted by the Customer or (ii) the Supplier commences work on the Deliverables.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, advertising, catalogues or brochures issued by the Supplier are issued or published for the sole purpose of giving an approximate idea of the Deliverables described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer or the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 Any Quote given by the Supplier shall not constitute an offer, and is only valid for the period stated on the Quote from its date of issue.

Provision of the Deliverables

- 1.9 The Supplier shall supply to the Customer:
 - (1.9.1) Service Hardware; and
 - (1.9.2) Services

2. CUSTOMER RESPONSIBILITIES

- 2.1 The Customer acknowledges that the Supplier's ability to provide the Deliverables is dependent upon the full and timely co-operation of the Customer (which the Customer agrees to provide), as well as the accuracy and completeness of any information and data the Customer provides to the Supplier. Accordingly, the Customer shall:
 - (2.1.1) provide the Supplier with access to, and use of, all information, data and documentation reasonably required

by the Supplier for the performance by the Supplier of its obligations under the Contract; and

- (2.7.1) ensure that the terms of the Order and any material information is complete and accurate;
- (2.7.2) co-operate with the Supplier in all matters relating to the Deliverables;
- (2.7.3) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier for the performance of its obligations under the Contract;
- (2.7.4) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Deliverables, and ensure that such information is accurate in all material respects;
- (2.7.5) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (2.7.6) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

3. **CHARGES AND PAYMENT**

- 3.1 The Supplier shall issue VAT invoices from time to time in respect of the Charges, and the Customer shall pay to the Supplier the Charges as set out in the Contract.
- 3.2 The Supplier shall invoice for the Software on Supplier's Acceptance or on the first day the Services are provided to the Customer following the expiry of any Free Trial Period.
- 3.3 All Charges are exclusive of VAT.
- 3.4 If the Customer fails to pay any amount payable by it under the Contract, the Supplier shall be entitled, but not obliged, to charge the Customer interest on the overdue amount. Such interest shall be payable by the Customer forthwith on demand, from the due

date up to the date of actual payment, after as well as before judgment, at the rate of 5% per annum above the base rate for the time being of Barclays Bank Plc. Such interest shall accrue on a daily basis and be compounded quarterly. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

4. WARRANTIES

- 4.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform the Contract.
- 4.2 The Supplier shall perform the Services with reasonable care and skill.
- 4.3 This agreement sets out the full extent of the Supplier's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into this agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

5. LIMITATION OF REMEDIES AND LIABILITY

- 5.1 Nothing in this Contract shall operate to exclude or limit the Supplier's liability for:
 - (5.1.1) death or personal injury caused by its negligence; or
 - (5.1.2) any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (5.1.3) fraud; or
 - (5.1.4) any other liability which cannot be excluded or limited under applicable law.
- 5.2 Neither party shall be liable to the other party for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.
- 5.3 Subject to clause 5.1, each party's respective aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this Contract or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall

in no circumstances exceed the total Charges payable by the Customer to the Supplier under this agreement in that calendar year.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 All Intellectual Property Rights in the Deliverables, but excluding any Confidential Information of the Customer, arising in connection with this Contract shall be the property of the Supplier, and the Supplier hereby grants the Customer a non-exclusive licence of such Intellectual Property Rights for the purpose of operating the Services and Service Hardware.

6.2 The Supplier shall indemnify the Customer against all damages, losses and expenses arising as a result of any action or claim that the Software infringes any Intellectual Property Rights of a third party in the UK.

6.3 The indemnities in clause 6.2 are subject to the following conditions:

(6.3.1) the indemnified party promptly notifies the indemnifier in writing of the claim;

(6.3.2) the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;

(6.3.3) the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and

(6.3.4) the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.

6.4 The indemnities in clause 6.2 may not be invoked to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified party.

7. TITLE AND RISK

7.1 Risk shall pass on delivery of the Service Hardware to the Customer's address.

Title in the Service Hardware shall remain with the Supplier.

The Supplier may at any time without any liability to the Customer:

(7.1.1) repossess and dismantle and use or sell all or any of the Service Hardware and by doing so terminate the Customer's right to use them; and

(7.1.2) for that purpose (or determining what if any Service Hardware is held by the Customer and inspecting them) enter any premises of or occupied by the Customer.

8. TERM AND TERMINATION

8.1 The Contract shall commence on the Commencement Date, in accordance with clause 2.2, and continue until terminated in accordance with these Conditions.

8.2 Either party may terminate this agreement immediately at any time by written notice to the other party if:

(8.2.1) The Customer uses the Software on a "pay-as-you-go" basis, subject to any minimum notice period as set out in the Contract; or

(8.2.2) that other party commits any material breach of its obligations under this agreement which (if remediable) is not remedied within 30 days after the service of written notice specifying the breach and requiring it to be remedied; or

(8.2.3) that other party:

(i) ceases to trade (either in whole, or as to any part or division involved in the performance of this agreement); or

(ii) becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party; or

(iii) a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of that party, or notice of an intention to appoint such a person is given or documents relating to such an appointment are filed with any court; or

(iv) the ability of that party's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of that party's creditors accept, by agreement or pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or

- (v) any process is instituted which lead to that could party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction).

8.3 On termination of the Contract by the Supplier pursuant to clause 8.2, all licences granted by the Supplier under this agreement shall terminate immediately.

8.4 On expiry or termination of the Contract for any reason, the Customer shall promptly return all Service Hardware to the Supplier.

8.5 On expiry or termination of the Contract, all provisions of the Contract shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

9. **CHANGE CONTROL**

Any request to change the scope of the Services shall be processed in accordance with the Change Control Procedure.

10. **FORCE MAJEURE**

10.1 The definition in this clause applies in this agreement.

Force Majeure Event: any event arising which is beyond the reasonable control of the affected party (including any industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, civil riot or war).

10.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this agreement shall forthwith notify the other and shall inform the other of the period for which it is estimated that such failure or delay will continue. The affected party shall take reasonable steps to mitigate the effect of the Force Majeure Event.

11. **CONFIDENTIALITY**

11.1 The definition in this clause applies in this Contract.

Confidential Information: all information, whether technical or commercial (including but not limited to, all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:

- (11.1.1) identified as confidential at the time of disclosure; or
- (11.1.2) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

11.2 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

11.3 Confidential Information shall be used by the receiving party solely to the extent necessary for the performance of its obligations under the Contract. Confidential Information may be disclosed by the receiving party only to its employees, affiliates and professional advisers on a need-to-know basis, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

11.4 The obligations set out in this clause 11 shall not apply to Confidential Information which the receiving party can demonstrate:

- (11.4.1) is or has become publicly known other than through breach of this clause 11; or
- (11.4.2) was in possession of the receiving party prior to disclosure by the other party; or
- (11.4.3) was received by the receiving party from an independent third party who has full right of disclosure; or
- (11.4.4) was independently developed by the receiving party without use or reference to Confidential Information; or
- (11.4.5) was required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

11.5 Upon expiration or termination of the Contract, the receiving party shall cease all use of the Confidential Information. The obligations of

confidentiality in this clause 11 shall not be affected by the expiry or termination of the Contract.

12. NOTICES

12.1 A notice given under this Contract:

(12.1.1) shall be in writing in the English language (or be accompanied by a properly prepared translation into English);

(12.1.2) shall be sent for the attention of the person, and to the address, fax number or e-mail address given in respect of this clause 12 (or such other person, address, fax number or e-mail address as the receiving party may have notified to the other, such notice to take effect five days from the notice being received); and

(12.1.3) shall be:

- (i) delivered personally; or
- (ii) sent by fax or e-mail; or
- (iii) sent by pre-paid first-class post, recorded delivery or registered post; or
- (iv) (if the notice is to be served or posted outside the country from which it is sent) sent by registered airmail.

12.2 A notice is deemed to have been received:

(12.2.1) if delivered personally, at the time of delivery; or

(12.2.2) in the case of fax or e-mail, at the time of transmission, provided a confirmatory copy is sent by first-class pre-paid post or by personal delivery before the end of the next Business Day; or

(12.2.3) in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; or

(12.2.4) in the case of registered airmail, five days from the date of posting; or

(12.2.5) if deemed receipt under the previous paragraphs of this clause 12.2 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of receipt.

- 12.3 To prove service, it is sufficient to prove that the notice was transmitted by fax to the fax number or e-mail address of the relevant party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

13. PUBLICITY

All media releases, public announcements and public disclosures by either party relating to this agreement or its subject matter, including promotional or marketing material, shall be co-ordinated with the other party and approved jointly by the parties prior to release.

14. ASSIGNMENT

Neither party may assign or transfer any of its rights or obligations under this agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

15. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties regarding its subject matter and supersedes and replaces any and all prior agreements, understandings or arrangements between the parties, whether oral or in writing, with respect to the same. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this Contract except as expressly stated in this Contract. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into this Contract (unless such untrue statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided in this Contract.

16. THIRD PARTY RIGHTS

This Contract is made for the benefit of the parties to it and is not intended to benefit, or be enforceable by, any other person.

17. VARIATION AND WAIVER

- 17.1 A variation of this Contract shall be in writing and signed by or on behalf of both parties to this agreement.

17.2 A waiver of any right under this Contract is only effective if it is in writing, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.

17.3 Unless specifically provided otherwise, rights arising under this Contract are cumulative and do not exclude rights provided by law.

18. SEVERANCE

18.1 If any provision (or part of a provision) of this Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

19. GOVERNING LAW AND JURISDICTION

19.1 This Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

19.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

This Contract has been entered into on the Commencement Date.

Schedule 1 Change control procedure

1. The Supplier and the Customer shall discuss any change to this Contract (**Change**) proposed by the other at each Phase and such discussion shall result in either:
 - (a) a written request for a Change by the Customer; or
 - (b) a written recommendation for a Change by the Supplier,or, if neither the Customer nor the Supplier wishes to submit a request or recommendation, the proposal for the Change will not proceed.
2. Where a written request for a Change is received from the Customer, the Supplier shall, unless otherwise agreed, submit an additional Quote to the Customer within the period agreed between them or, if no such period is agreed, within five Business Days from the date of receipt of such request for a Change, or inform the Customer that the Supplier is not able to comply with such written request for a Change.
3. A written recommendation for a Change by the Supplier shall be submitted as an additional Quote direct to the Customer at the time of such recommendation.
4. The date of expiry of validity of the CCN shall be 10 Business Days from the date the CCN was submitted to the Customer
5. Each CCN shall contain full details of the change and the price, if any, of the Change.
6. For each CCN submitted, the Customer shall, within the period of validity of the CCN as set out in paragraph 4 of this Schedule 1 evaluate the CCN, and as appropriate either:
 - (i) request further information; or
 - (ii) approve the CCN; or
 - (iii) notify the Supplier of the rejection of the CCN.
7. On approval in writing of the CNN by the Customer in accordance with paragraph 6 of this Schedule 1, the Change shall be immediately effective and the Customer and the Supplier shall

perform their respective obligations on the basis of the agreed amendment.