

# Terms and Conditions for use of TPTracker®

THIS DOCUMENT SETS OUT THE LEGALLY BINDING TERMS AND CONDITIONS FOR USE OF TPTRACKER.CO.UK SOFTWARE ('the Service').

**SUPPLIER: TPTracker Ltd**

**Registered in England and Wales with company number 4945414**

Registered office at Office, 31 Cattle Market Street, Norwich NR1 3DY

**Revision date: 01.05.23**

## 1. ACCEPTANCE OF TERMS AND CONDITIONS

1.1. By logging in to TPTracker.co.uk and using the Service provided, you agree that you have read, understand and accept the terms and conditions of use and all other operating rules, policies and procedures referenced herein, to the exclusion of all other terms.

1.2. You may not login and use the Service if you do not unconditionally accept these terms.

1.3. These terms apply to all users of the Service, registered or otherwise, including, without limitation, users who send or submit content, information and other data through the Service.

## 2. DEFINITIONS

THE FOLLOWING DEFINITIONS APPLY IN THESE TERMS AND CONDITIONS.

**Business Day:** A day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Client:** The person or organisation who purchases the Service from the Supplier.

**Client Content:** Means any content created or supplied or made available by the Client to the Supplier in accordance with the Contract, including without limitation all and any text, graphics, logos, photographs, images, and moving images.

**Client Default:** Has the meaning set out in clause 5.2.

**Confidential Information:** Means any and all confidential information (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, known-how, intellectual property, assets, strategy, products and Clients.

**Contract:** The provision of the Service for a specified License Period and subject to the Terms and Conditions as defined in this document.

**Control:** Shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression 'Change of Control' shall be construed accordingly.

**Data Controller:** Has the meaning set out in the Data Protection Act 2018 and GDPR

**Data Protection legislation:** Means the Data Protection Act 2018 and GDPR

**Data Subject:** An individual who is the subject of Personal Data.

**Force Majeure:** Means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder. Force Majeure does not include, without limitation, inability to pay or market or other circumstances which may make the terms of the Contract unattractive to a party.

**GDPR:** Means the General Data Protection Regulation (EU 2016/679)

**Intellectual Property Rights:** Patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**License Fee:** The fee charged by the Supplier for provision of the Service, for a specified period of time, covering a specified range of functionality and for a specified maximum database capacity.

**License Period:** The period of time covered by the license fee.

**Personal Data:** Has the meaning set out in the Data Protection Act 2018 and GDPR and relates only to personal data, or any part of such personal data, in respect of which the Client is the Data Controller and in relation to which the Supplier is providing Services.

**Processing and process:** Have the meaning set out in the Data Protection Act 2018 and GDPR

**Service:** The service supplied by the Supplier to the Client in relation to TPTracker.

### 3. INTERPRETATION

THE FOLLOWING RULES OF INTERPRETATION APPLY IN THESE TERMS AND CONDITIONS.

4.1. A reference to 'a statute' or 'statutory provision' is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

4.2. Any words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

4.3. A reference to 'writing' or 'written' includes emails.

4.4. Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's website, catalogues or brochures, are issued

or published for the sole purpose of giving an approximate idea of the Service described in them. They shall not form part of the Terms and Conditions or have any contractual force.

4.5. These Terms and Conditions apply to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

4.6. Any estimate given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

## 4. SUPPLY OF SERVICES

4.1. The Supplier shall endeavour to make the Service available to the client at all times, subject to clause 4.5.

4.2. The Supplier reserves the right to amend the Service if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Service, and the Supplier shall notify the Client in any such event.

4.3. The Supplier warrants to the Client that the Service will be provided using reasonable care and skill.

4.4. The Client will have no entitlement to or interest in any internet protocol addresses, web coding, functionality and design or any TPTracker branding associated with the Service during the Contract or on termination of the Contract.

4.5. The Supplier represents and warrants that it shall make all commercially reasonable efforts to provide the Client with prior email notification of all scheduled and emergency interruptions to the availability of the Service and shall use reasonable endeavours to keep such interruptions to a minimum.

4.6. The Supplier represents and warrants that:

4.6.1. The Supplier has the right, power and authority to enter into this Contract and grant to the Client the rights (if any) contemplated herein;

4.6.2. The Service will be performed:

4.6.2.1 By suitably competent personnel who shall exercise all due skill and care and all due diligence in the execution thereof as to conform with all statutory requirements and applicable regulations relating to the Service;

4.6.2.2 In such a way as not to cause any fault or malfunction in any related software, products or system of the Client; and

4.6.2.3 In such a way as not to cause any interruption to the business processes of the Client (other than any agreed and unavoidable interruption which is required in order to perform the Service in a proper and efficient manner).

4.7. The representations and warranties specified above are subject to the Client giving notice to the Supplier as soon as it is reasonably able upon becoming aware of any breach of representation or warranty. When notifying the Supplier of the breach the Client shall use reasonable endeavours to

provide the Supplier with such documented information, details and assistance as the Supplier may reasonably request.

4.8. All other representations and warranties, whether statutory or implied, are hereby expressly excluded to the fullest extent permitted by law.

4.9. Any representations and warranties given by the Supplier with respect to the performance of the Service shall not apply to the extent that the defect or error is wholly caused by any Client Content or third party software used in connection with the systems.

## 5. CLIENT'S OBLIGATIONS

5.1. The Client shall:

5.1.1. Co-operate with the Supplier in all matters relating to the Service;

5.1.2. Provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Service, and ensure that such information is complete and accurate in all material respects.

5.2. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ('Client Default'):

5.2.1. Without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Service until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;

5.2.2. The Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 5.2.

## 6. CHARGES AND PAYMENT

6.1. The Charges for the Service shall be calculated on the basis of the functionality required by the Client and the capacity of the database required by the Client.

6.2. The Supplier reserves the right to increase the License Fee on an annual basis with effect from each anniversary of the Commencement Date.

6.3. The Client shall pay each Licence Fee

6.3.1. Before the commencement of each License Period;

6.3.2. In full and in cleared funds to a bank account nominated in writing by the Supplier.

6.4. The Supplier reserves the right, in its sole discretion, to suspend any or all of the Service if any payments owing under this Contract are overdue, and shall have no liability of any kind to the Client as a result of any suspension of any or all of the Service in accordance with this clause.

6.5. All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Service.

6.6. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 7. INTELLECTUAL PROPERTY RIGHTS

7.1. All Intellectual Property Rights in or arising out of or in connection with the Service (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by the Supplier.

## 8. DATA PROTECTION AND DATA PROCESSING

8.1 The Supplier shall (and shall procure that any of its personnel involved in the provision of the Service) shall comply with any notification requirements under the Data Protection Legislation and both Parties shall duly observe all their obligations under the Data Protection Legislation which arise in connection with this Contract, and the Supplier shall comply with the directions specified in article 28(3) of the GDPR.

8.2 Notwithstanding the general obligation in clause 8.1, where the Supplier is processing Personal Data as a Data Processor for the Client, the Supplier shall:

8.2.1 Ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data;

8.2.2 Provide the Client with such information as the Client may reasonably require to satisfy itself that the Supplier is complying with its obligations under the Data Protection Legislation;

8.2.3 Promptly notify the Client of any breach of the security measures required to be put in place pursuant to clause 8.2.2; and

8.2.4 Ensure it does not knowingly or negligently do or omit to do anything which places the Client in breach of the Client's obligations under the Data Protection Legislation.

8.3 The Supplier shall process the Personal Data only in accordance with the Client's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Client.

8.4 The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.

8.5 Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

8.6 The Supplier warrants that, having regard to the state of technological development and the costs of implementing any measures, it will:

8.6.1 Take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:

The harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and

The nature of the data to be protected; and

8.6.2 Take reasonable steps to ensure compliance those measures.

8.7 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 8.

8.8 The Client acknowledges that the Supplier is reliant on the Client for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Client's instructions.

8.9 The Supplier may authorise a third party (subcontractor) to process the Personal Data provided that the subcontractor's contract:

8.9.1 Is on terms which are substantially the same as those set out in the Contract; and

8.9.2 Terminates automatically on termination of the Contract for any reason.

8.10 The Supplier warrants that the Service will be hosted on web-servers located on the UK mainland at all times.

8.11 The provisions of this clause 8 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

## 9. LIMITATION OF LIABILITY

9.1. Nothing in the Contract shall limit or exclude the Supplier's liability for:

9.1.1. Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

9.1.2. Fraud or fraudulent misrepresentation; or

9.1.3. Breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

9.2. Subject to clause 9.1, the Supplier shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

9.2.1. Loss of profits;

9.2.2. Loss of sales or business;

9.2.3. Loss of agreements or contracts;

9.2.4. Loss of anticipated savings;

9.2.5. Loss of use or corruption of software, data or information;

9.2.6. Loss of damage to goodwill; and

9.2.7. Any indirect or consequential loss.

9.3. Subject to clause 9.1, the Supplier's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to £2,000,000.

9.4. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.5. This clause 9 shall survive termination of the Contract.

## 10. TERMINATION

10.1. Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party one month's written notice.

10.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

10.2.1. The other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within one month of that party being notified in writing to do so;

10.2.2. The other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

10.2.3. The other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

10.2.4. The other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10.3. Without affecting any other right or remedy available to it, the Supplier may terminate the Contract if the Client has not renewed the License Fee for a period of 30 days.

10.4. Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if there is a change of Control of the Client.

10.5. Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Client and the Supplier if the Client becomes subject to any of the events listed in clause 10.2.2 to clause 10.2.4 or the Supplier reasonably believes that the Client is about to become subject to any of them.

## 11. CONSEQUENCES OF TERMINATION

11.1. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

11.2. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11.3. The Client's TPTracker site will be deleted 30 days after termination of the contract, or earlier if requested by the Client. This will include deletion of all data and records held in the site. After deletion, the data and records cannot be recovered.

## 12. GENERAL

12.1. **Succession:** This Contract shall be binding upon, and ensure to the benefit of each of the parties, their respective personal representatives and their respective successors in title.

12.2. **Force majeure:** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control.

12.3 **Assignment and other dealings:** The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

12.3.1 The Client shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

12.4 **Confidentiality:** Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Clients, clients or suppliers of the other party, except as permitted by clause 12.3.1:



12.4.1 Each party may disclose the other party's confidential information: To its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; and

As may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.4.2 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

**12.5 Entire Agreement:** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12.5.1 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

12.5.2 Nothing in this clause shall limit or exclude any liability for fraud.

**12.6 Variation:** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**12.7 Waiver:** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**12.8 Severance:** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**12.9 Notices:** Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Engagement Letter.

12.9.1 Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email, at 9.00am on the next Business Day after transmission.

12.9.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

12.10 **Third Party Rights:** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

12.10.1 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

12.11 **Governing Law:** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

12.12 **Jurisdiction:** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

12.13 **Call Recording:** The Supplier may record telephone calls for training and development purposes.

12.14 **Interpretation of Functionality:** Any reference to functionality, content or design works mentioned in an estimate or a functional specification is given with the proviso that it is the Supplier's interpretation that takes precedence as to what is meant and therefore included in the estimate or price. Clarification of what is meant on any particular point can be requested by the Client at any time. It is at the Supplier's discretion to confirm whether any assumed or implied functionality is included as part of the price stated. Any Services carried out hold a limited discretionary warranty and are only developed and tested on specific supported browsers.

12.15 **Freedom of Information:** The Supplier acknowledges that the Client is subject to the requirements of the FOIA and the EIRs.

12.15.1 The Supplier shall provide all necessary assistance and cooperation as reasonably requested by the Client to enable the Client to comply with its obligations under the FOIA and EIRs;

12.15.2 The Supplier shall in respect of any Requests for Information received, not respond to these and transfer these to the Client as soon as practicable and in any event within two Business Days of receipt.

12.15.3 The Supplier acknowledges that the Client may be required under the FOIA and EIRs to disclose information (including commercially sensitive information) without consulting or obtaining consent from the Supplier. The Client will be responsible for determining in its absolute discretion whether any such information is exempt from disclosure.

12.15.4 Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety, subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs. The Client will be responsible for determining in its absolute discretion whether any such information is exempt from disclosure.