

# Tracknact

## Terms and Conditions of Use

### 1. License Grant and Restrictions in Usage

Subject to the terms of this Agreement, Company grants the Customer a limited, non-exclusive and user non-transferable license to access and use the subscription service via a web browser pursuant to the terms of this agreement and any applicable documentation provided to the Customer by the Company.

By using the provided license, the Customer is agreeing not to:

- Copy the visualisations that constitute the subscription service;
- Use the subscription service in contravention of the agreed purpose;
- Modify, translate, adapt or otherwise create derivative works or improvements of the visualisations;
- Attempt to reverse engineer, decode or otherwise attempt to derive or gain access to the underlying data and data structures of the visualisations available or any part thereof the subscription service;
- Rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the license, subscription service or any features or functionality of the subscription service, to any third party for any reason, including by making the subscription service available on a network where it is capable of being accessed by more than one device at any time or transferring a license; or
- Remove, disable, circumvent or otherwise create or implement any workaround to any or security features in or protecting the subscription service and associated visualisations.

### 2. Acceptance of this Agreement

'Customer' is defined as being the person or user viewing the subscribed services dashboard data. The 'Company' is Tracknact, trading as Key Data Consulting Pty Ltd.

Selecting the 'tick' below the "I accept", or otherwise accessing and viewing the data on the subscribed service, represents his/her (the user/customer's) acceptance of the terms of this Agreement.

You acknowledge and agree that the subscription service and associated visualisations are provided under license, and not sold, to you.

### 3. Restrictions and Responsibilities

The Customer agrees to indemnify the Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and legal fees) in connection with any claim or action arising from an alleged violation of this agreement or otherwise from the Customer's use of the subscription service. Although the Company has no obligation to monitor the Customer's use of the

subscription service, the Company may do so and may prohibit any use of the subscription services it believes may be (or alleged to be) in violation of the agreement.

The Customer is responsible for maintaining security of the Customer account, passwords (including all administrative and customer passwords), and for all uses of the Customer account with or without the Customer's knowledge or consent.

### **3. Warranty and Disclaimer**

The Company will use all reasonable efforts to maintain the subscription service in a manner that minimizes potential for error and interruptions in the provision of the subscription service. The subscription service, or aspects of the subscription service may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by the Company or by third-party hardware provider, or because of other causes beyond the Company's reasonable control. The Company will however use reasonable efforts to provide advance notice in writing or by email of any scheduled disruption to the subscription service or of any unscheduled emergency maintenance. However, the Company does not warrant that the subscription service will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the subscription service and associated visualisations and analytics.

The Company's obligation and the Customer's exclusive remedy during the Licence Period and any Renewal Period are limited, in the Company's absolute discretion. The Company, at its own expense, using all reasonable endeavours to rectify any non-conformance of the subscription service by repair within a reasonable period of time; or

The Customer acknowledges and accepts that it is the Customer's sole responsibility to ensure that the facilities and functions of the subscription service meet the Customer's requirements and the subscription service and associated visualisations are appropriate for the specific application of the Customer.

The Company will not be liable for any failure of the subscription service to provide any function not described in writing to the Customer or any failure attributable to:

- (a) any attempted modification to the subscription service and associated visualisations other than by the Company;
- (b) accident, abuse or misapplication of subscription service and associated visualisation by the Customer;
- (c) use of the subscription service and associated visualisation with other software or equipment without the Company's written consent;
- (d) or use other than in accordance with this Agreement.

If, upon investigation, a problem with the subscription service and associated visualisation is determined not to be the Company's responsibility, the Company may invoice the Customer immediately for all reasonable costs and expenses incurred by the Company in the course of or in consequence of such investigation should it be deemed that a problem resulted from the Customers usage in contravention to the terms described.

#### **4. Data Ownership and Usage.**

Customer data collected by the Company remains owned by the Customer. Data collected includes route and location data as provide by the Customer and as received from transmitting devices. Should the Customer request access to the underlying captured data, the company will take necessary steps to provide this to the Customer.

The primary use of collected Customer data is to provide analytical subscription services. Data may be anonymised and aggregated to create statistical reports for the Company to understand our Customer base and to improve our service. Aggregated data will not relate to or identify any particular Customers usage or otherwise of the service. The Company may use anonymised data to provide additional benefits to the Customer.

#### **5. Indemnity**

The Customer must indemnify and hold the Company harmless from and against all claims and losses arising from loss, damage, liability, injury to the Customer, its employees and third parties, infringement of third-party intellectual property, or third-party losses by reason of or arising out of any information supplied to the Customer by the Company, its employees or suppliers, or supplied to the Company by the Customer within or without the scope of this Agreement.

#### **6. Limitation on liability**

The liability of the Company under or in connection with this agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise must not exceed the fees paid by the Customer to the Company for the subscription service under this agreement in the 12 months prior to the act that gave rise to the liability, in each case, whether or not the Company has been advised of the possibility of such damages.

Neither party is liable to the other party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill.

#### **7. General**

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

This Agreement is not assignable, transferable or sublicensable by the Customer except with the Company's prior written consent. The Company may transfer and assign any of its rights and obligations under this Agreement without consent.

This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and



modifications must be in a writing signed by both parties, except as otherwise provided in this Agreement.

No agency, partnership, joint venture, or employment is created as a result of this Agreement and the Customer does not have any authority of any kind to bind the Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and legal fees.

This Agreement takes effect, is governed by, and will be construed in accordance with the laws from time to time in force in Queensland, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Queensland.