

## Introduction

These Terms and Conditions outlined below should be read and fully understood before using the Tracksall website hosted software, SmartPhone Applications and Mobile Computing Applications. Tracksall is a GPS Tracking Device and System Tracking tool designed for businesses, corporate and government organisations. Tracksall websites are owned by Tracksall Pty. Ltd a company incorporated in the state of Queensland Australia, having its principal office at Level 7, 9 Lawson Street Southport Qld 4215.

Definitions "Confidential Information" includes all information exchanged between the Tracksall and You, whether in writing, electronically or orally, including the Software, but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party. "Data" means any data inputted by you or any users of your smartphone or mobile computing device or any other computer into the Software. "Intellectual Property Right" means any patent, trade mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered. "Software" means the Tracksall software available (as may be changed or updated from time to time by Tracksall) via the Website or any mobile application download. "Website" means the Internet site at the domain [www.tracksall.com.au](http://www.tracksall.com.au) or any other site operated by Tracksall .

1. Overview Tracksall Software is a GPS Tracking System Software from Tracksall and its partners. You understand and agree that the Software licence is provided on a monthly or other periodical prepaid subscription on a per GPS Device basis. In the case of Tracksall an individual licence is required for each vehicle, asset or person being GPS tracked or monitored. The Software and Website is provided on an "as is" and "as available" basis. Tracksall disclaims all responsibility and liability for the availability, timeliness, security or reliability of the Software. Tracksall also reserves the right to modify, suspend or discontinue the Software with or without notice at any time and without any liability to you. It is Your responsibility to ensure that Your data is exported to your local personal computer and backed up regularly.

2. Use of Software You agree that you are responsible for your own communications, internet connectivity, internet fees and mobile data fees and for any consequences thereof. You agree that you will use the Software in compliance with all applicable local, state, national, and international laws, rules and regulations, including any privacy laws and laws relating to the export of data from your country of business.

You agree that you will not use the Software to upload or distribute any content that infringes upon another party's intellectual property rights or other proprietary, contractual or fiduciary rights or obligations or is unlawful, defamatory, abusive, fraudulent, contains viruses, or is objectionable as may be reasonably determined by Tracksall .

You agree that you will not authorize or encourage any third party to use the Software to upload or distribute any content that infringes upon another party's intellectual property rights or other proprietary, contractual or fiduciary rights or obligations or is unlawful, defamatory, abusive, fraudulent, contains viruses, or is objectionable as may be reasonably determined by Tracksall.

You agree that you will not tamper with or encourage others to tamper with the GPS products or Software in order to affect the quality of collected data or prevent others from using the Software.

You agree that will keep safe your online username and password and will not disclose it to others.

You agree that you will use the software in accordance with user manuals available online from within the software.

You agree that you must maintain all software including antivirus and spyware on all computers, smartphones and mobile computers using the Software and provide a suitable internet connection.

### 3. Software Availability and Support

Tracksall will aim to provide software availability of 99.97% uptime. However Tracksall will not and cannot be held liable for data loss. Tracksall will make all efforts to prevent

disruptions to the software during normal business hours and during any software any upgrades, however there may be times when the Website and or the Software is inaccessible. Updates and upgrades are scheduled to avoid peak usage times based on Australian Eastern Standard Time Zones GMT+10 or ADST GMT+11. Tracksall is committed to providing excellent customer service and we aim to answer most online support issues within 1 business day GMT+10 AEST or GMT+11 ADST, however, Tracksall makes no guarantee on the period of time before support is provided.

#### 4. Payment

In return for a pre-paid monthly or annual fee per user, (at Tracksall's discretion) Tracksall will provide the Software on a per user or per asset basis. You must pre-pay your monthly user licence fees, you must pay this fee regardless of whether you intend to use the software on each day of the pre-paid monthly period. A credit or refund cannot be claimed if you have not used the software during any portion of the prepaid period. Payment is strictly by an online payment gateway or by direct debit facility at Tracksall's discretion. Payment will start the day that you place this order. The first payment will be a pro-rata charge for the remaining portion of the monthly billing cycle. Billing is generated and payment is due on the first day of each month. If you do not prepay your account when due Tracksall has the right to terminate your service within 7 calendar days and without warning. You will be charged monthly in advance. All Software remains the property of Tracksall and you have rights to use the Software and access or retrieve data only when your fees are paid in full.

#### 5. Intellectual Property Rights

Intellectual Property Rights in the Software, the Website and any documentation relating to the Software remain the property of Tracksall. Intellectual Property Rights in the Data remain your property. You must maintain copies of all Data inputted into the Software. Tracksall adheres to its best practice policies and procedures to prevent data loss but does not make any guarantees that there will be no loss of Data. Tracksall expressly excludes liability for any loss of Data no matter how caused.

#### 6. Representations and Warranties

You acknowledge that you are authorised to use the Software and the Website and to access the information. If You are using the Software and accessing the Website on behalf of or for the benefit of an organisation then Tracksall will assume that You have the right to do so and that the organisation will be liable for your actions or omissions (including any breach of these Terms). The provision of, access to, and use of, the Software is on an "as is, where is" basis and at your own risk. You expressly acknowledge that due to circumstances often beyond the control of Tracksall, including (but not limited to) software viruses, power failure, electrical or topological interference, equipment malfunction, tampering by unauthorised persons and the actions and omissions by suppliers of telephone and internet services, the Software may not operate as designed. Tracksall does not warrant that the use of the Software will be uninterrupted or error free due to the above factors. It is your sole responsibility to determine that the Software meets the needs of your organisation and its use. Tracksall gives no warranty regarding the Software and the Website. Without limiting the foregoing, Tracksall does not warrant that the Software will meet your requirements or that it will be suitable for your purposes. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement. You warrant and represent that You are acquiring the right to access and use the Software and agreeing to these Terms and Conditions of this agreement for the purposes and on behalf of a business or organisation and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Software, the website or these Terms.

#### 7. Privacy

Unless the relevant party has the prior written consent of the other or unless required to do so by law: Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms and Conditions. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as stated by these Terms and Conditions. Each party's obligations under this clause will survive termination of these Terms

and Conditions. The provisions of the above clauses shall not apply to any information which: Is or becomes public knowledge other than by a breach of this clause; Is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; Is independently developed without access to the Confidential Information.

#### 8. Limitation of Liability

To the maximum extent permitted by law, Tracksall excludes all liability and responsibility to You (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of Data, profits and savings) or damage resulting, directly or indirectly, from the use of, or reliance on, the Software. If You suffer loss or damage as a result of Tracksall's negligence or failure to comply with these Terms and Conditions, any claim by You against Tracksall arising from Tracksall's negligence or failure will be limited in respect of any one incident, or series of connected incidents to the balance of your prepaid account.

#### 9. Termination

Your account will be automatically terminated if you do not prepay your account within seven (7) calendar days from when the account falls due. If you breach these Terms and Conditions, Tracksall may at its discretion terminate your use of the Software and the Website and may also suspend for any definite or indefinite period of time, your use of the Software and the website and access to any stored data.

#### 10. Entire Agreement

These Terms and Conditions represent the entire agreement between us in relation to the use of the Website and the Software and supersedes any prior agreement, understanding or arrangement between you and Tracksall, whether oral or in writing. You may not assign or transfer any rights to any other person without Tracksall's prior written consent. If any part or provision of these Terms and Conditions is invalid, unenforceable or in conflict with the law, that part or provision of the Terms and Conditions will be replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on both parties. If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing. A person who is not a party to these Terms has no right to benefit under or to enforce any term of these Terms

#### 11. Governing Law and Jurisdiction

These Terms of Use will be governed by and construed in accordance with the laws of The Commonwealth of Australia in the State of Queensland Any claims, legal proceeding or litigation arising in connection with the software or website will be brought solely in The State of Queensland Australia, and you consent to the jurisdiction of such courts. These Terms and Conditions apply to the entire content of the website at [www.tracksall.com.au](http://www.tracksall.com.au), and the respective smartphone and mobile computing applications. By registering and using the website and respective smartphone and mobile computing applications you agree to and accept the terms and conditions of use.