

## **TRACKEAT TERMS AND CONDITIONS**

**THIS AGREEMENT IS MADE BETWEEN ENTOPY LIMITED AND THE TRACKEAT LICENSEE REFERRED TO AS THE “END USER”. THIS AGREEMENT CONSITUTES THE WHOLE AGREEMENT AND ITS ACCEPTANCE IS MADE BETWEEN BOTH PARTIES UPON THE REGISTRATION TO THE TRACKEAT PLATFORM.**

### **Procut notice:**

THE TRACKEAT PRODUCT IS WHOLLY OWNED BY ENTOPY LIMITED.

### **Company details:**

ENTOPY LIMITED is a company registered in England and Wales with registered company number 09158789, whose registered office is at Cleveland House, Old Station Road, Newmarket, Suffolk, CB8 8QE.

### **Our role:**

ENTOPY LIMITED is a software development company. It has developed the TrackEat tool to enable businesses to set up and manage their own online services. TrackEat provides its services to businesses using the tool. ENTOPY LIMIED accepts no responsibility for the delivery of services sold through the TrackEat platform and considers itself separate to customers of restaurants, cafes, pubs, shops, butchers, green grocers and any other type of business that it serves.

### **This agreement:**

This agreement will be considered accepted upon the creation of a new TRACKEAT account and the acceptance of our terms and conditions as part of the 'on-boarding' process.

### **Prices:**

The prices will be those listed on <https://www.trackeat.co.uk>, and outlined in schedule 4. Prices are subject to change in accordance with Section 2.1.

### **Payment Terms and Direct Debit:**

Unless otherwise agreed in an Order, Payment for Hosting Services will be made monthly in advance.

To use the TRACKEAT product, the End User is required to set up a monthly Direct Debit which will be debited in monthly intervals in accordance with the payment terms outlined in section 2.

End Users can view their account status which includes their balance and next payment due notice within their account settings at any time.

## SCHEDULE 1

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement, the following phrases and expressions shall have the following meanings:

“Confidential Information”	any information directly related to either party's trade secrets, know how, Embedded Software, source code, databases, programs, business, current and future plans and products, technical information, financial projections, customer information, reports, data or the like other than information which (i) is or becomes generally available to the public other than as a result of disclosure in breach of this Agreement (ii) was or becomes available to the Recipient on a non-confidential basis as evidenced by documentation in the Recipient's possession or (iii) was developed by or for the Recipient independently of and without reference to any of the Disclosing Party's Confidential Information. The commercial terms of this Agreement (but not the existence) shall also be deemed "Confidential Information"
“End User Data”	the data generated by the Products during the course of the End User's use of the Solution.
“End User”	is the final purchaser or licensee that has acquired a Solution for its own internal use and not for resale, remarketing or distribution
“First Line Technical Support”	means initial support level responsible for basic End User customer issues
“Hosting Services”	means the services Entopy shall provide to the End Users so the End Users can access and use the Platform, as further set out in this Agreement
“Hosted System Support Services”	as set out in Schedule 3: Hosted System Maintenance and Support

“Normal Business Hours”	normal UK office hours (9 am to 5 pm GMT Monday to Friday excluding UK public holidays)
“Platform”	the Entopy web based platform on which the Product User Interface is hosted
“Product User Interface”	means the user interface to the End User Data generated by the Products
“Services”	means Support Services and Hosting Services
“Support Services”	as set out in Schedule 2: Software Maintenance and Support
“Second Line Technical Support”	means a more in-depth technical support level than First Line for more complex End User customer issues requiring more experienced and knowledgeable personnel on a particular product or service
“Third Line Technical Support”	means an expert level of technical report for solving the most difficult and complex End User customer issues beyond the level of knowledge and expertise of Second Line Technical Support personnel
“TRACKEAT”	The TrackEat product that enables businesses to set up and manage a professional online takeout service

## 2. **PRICES AND PAYMENT**

- 2.1 The prices will be those listed on <https://www.trackeat.co.uk>, and outlined in schedule 4. All prices are exclusive of any applicable VAT or other taxes or duties for which the End User shall be additionally liable. Prices shall remain valid until notice of a price change is given by Entopy.
- 2.2 Entopy will invoice the End User for Products and Services and payment will be made in accordance with the Payment Terms as agreed on Agreement frontsheet.
- 2.3 If any payment is not made by the due date, Entopy shall notify the End User and if the End User has not made payment or provided bona fide justification for withholding payment within seven calendar days, Entopy shall be entitled (without prejudice to any other right or remedy available to Entopy):
- 2.3.1 to charge interest on the outstanding amount at the rate of 3% per annum above National Westminster Bank Plc Base rate from time to time; and/or
  - 2.3.2 to require payment in advance of the Delivery Date of undelivered Products and Services; and/or
  - 2.3.3 if payment is not made within thirty (30) days of Entopy giving notice as described above, at Entopy's sole discretion, to suspend all Services and deliveries under this Agreement; and/or
  - 2.3.4 if payment is not made within forty-five (45) days of Entopy giving notice as described above, at Entopy's sole option, to terminate this Agreement.

## 3. **ACCEPTANCE OF PRODUCTS**

- 3.1 Acceptance of Products will occur on the first day of each calendar month in relation to the next monthly payment.

## 4. **DOCUMENTATION**

- 4.1 Entopy will supply English language versions of the user manual ("Documentation") either in hard or soft copy format as reasonably agreed between the parties.

## 5. **INTELLECTUAL PROPERTY RIGHTS**

- 5.1 Entopy warrants that the use of the Product in the Field of Use will not infringe any valid copyright, trademark or patent of any third party. If notified promptly in writing of any claim brought against the End User which would be in breach of that warranty, Entopy will defend such action at Entopy's expense and will pay the costs and damages awarded against the End User in such action, provided that Entopy will have sole control of and authority with

respect to the defence of any such action and all negotiations for its settlement or compromise. If a final injunction is obtained in such action against End Users's use of the Product or if in Entopy's opinion the Product is likely to become the subject of a claim of infringement, Entopy will, at its option and expense either (i) procure for End User the right to continue using the Products or (ii) replace or modify the Products so that they become non-infringing, but so that they shall have materially the same operational characteristics, function, and performance; or (iii) accept return of the Product and refund or credit the amount of the original net purchase price, less a reasonable charge for depreciation and damage. No costs or expenses will be incurred for Entopy' account without Entopy's prior written consent. In no event will Entopy' total liability to End User under or as a result of compliance with the provisions of this clause exceed the sum paid to Entopy for the allegedly infringing Product. The foregoing states Entopy' entire liability with respect to infringement of Intellectual Property rights by the Product, or any part, or by its operation.

5.2 Entopy shall remain the owner of all copyrights, trademarks, trade secrets, inventions, patents, intellectual property and other proprietary rights in all materials, designs, processes, engineering details and other data in and to Entopy' Confidential Information, the Documentation and the Solution.

5.3 Entopy hereby grants to End User a non-exclusive license to:

5.3.1 use the Software (only in conjunction with the Products);

5.3.2 interoperate with the Software in order to integrate it with the End User Product

5.3.3 use the documentation supplied with the Software (the "Documentation") and make reasonable copies for training, reference and back-up purposes;

5.4 Except as permitted by Clauses 2, or 9.3, End User may not:

5.4.1 use, copy, modify, transmit, adapt, vary or create derivative works based on the Software or Documentation in whole or part;

5.4.2 rent, lease, sub-license, sell or otherwise transfer the Software to any third party or allow it (or the Documentation) to be accessed by or copied onto another person's computer unless the License to use the Software is rightfully transferred together with the Product with which it was supplied.

5.4.3 Unless permitted by law or expressly permitted by this Agreement, End User may not directly or indirectly, modify translate, reverse engineer, decompile, or disassemble the Software;

## 6. CONFIDENTIALITY

- 6.1 Each party agrees to use the other's Confidential Information solely for the purposes of benefiting the business relationship between the parties and to maintain such Confidential Information in confidence. The receiving party ("Recipient") agrees not to disclose Confidential Information of the other party ("Disclosing Party") to anyone else except those of the Recipient's directors, officers, employees, agents, consultants, , advisors and affiliates (collectively "Agent") involved in furthering that purpose whose duties justify the need to know such Confidential Information.
- 6.2 The Recipient's Agents who are to receive Confidential Information shall be advised of the confidential nature of the Confidential Information and shall have agreed in writing to keep such information confidential. The Recipient agrees that at no time shall it or its Agents use or knowingly permit any other person or entity to examine, use, or derive benefit from the Confidential Information.
- 6.3 The Recipient shall not copy any Confidential Information of the Disclosing Party except as may be strictly necessary for the purpose above or as agreed in this Agreement. Upon the Disclosing Party's request, the Recipient shall immediately (i) return all Confidential Information it has received, including items containing or representing Confidential Information and all copies made by such party or its Agents; (ii) erase or destroy all Confidential Information it has received which is contained in computer memory or data storage apparatus; and (iii) destroy all materials incorporating such Confidential Information which were prepared by or for such party or its Agents.
- 6.4 The End User shall own all rights, title and interest in and to all of the End User Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the End User Data.
- 6.5 Entopy shall follow its archiving procedures for End User Data as set out in its Back-Up Policy as may be notified to the End User from time to time. In the event of any loss or damage to End User Data, the End User's sole and exclusive remedy shall be for Entopy to use reasonable commercial endeavours to restore the lost or damaged End User Data from the latest back-up of such End User Data maintained by Entopy in accordance with the archiving procedure described in its Back-Up Policy. Entopy shall not be responsible for any loss, destruction, alteration or disclosure of End User Data caused by any third party (except those third parties sub-contracted by Entopy to perform services related to End User Data maintenance and back-up).
- 6.6 Each party agrees that, in the performance of its respective obligations under the Agreement, it shall comply with the provisions of the Data Protection Act 1998 and the GDPR ("the Acts")

to the extent it applies to each of them. Where used in this Clause, the expressions "Personal Data", and "Data Processor" shall bear their respective meanings given in the Acts.

**7. FORCE MAJEURE**

Neither Party shall be under any liability to the other in respect of failure to deliver or perform or delay in delivery or performing any obligations under this Agreement due to any cause outside its reasonable control including but not limited to acts of God, fire, accident, earthquake, storm, flood, epidemic, drought or other natural catastrophes, war, sabotage, riot, explosion and civil disturbances, acts of Government, currency restriction, labour disputes, strikes or lockouts, unavailability of materials or failure of supplier, carrier or sub-contractor to deliver on time.

**8. TRAINING, SUPPORT AND MAINTENANCE**

8.1 VAR shall provide First Line Technical Support and Second Line Technical Support to End Users in the Field of Use, and shall provide sufficient trained personnel to adequately provide such support.

**9. HOSTING SERVICES**

9.1 The Platform will be deployed as a hosted service via Amazon Web Services (AWS).

9.2 Entopy shall use commercially reasonable endeavours to make the Hosting Services available 24 hours a day, seven days a week, except for:

9.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and

9.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that Entopy has used reasonable endeavours to give the End User at least 6 Normal Business Hours' notice in advance.

9.3 Entopy will, as part of the Hosting Services provide the End User with Entopy's Hosted System Support Services during Normal Business Hours. Entopy may amend the Hosted System Support Services in its sole and absolute discretion from time to time.

9.4 In relation to End Users:

9.4.1 Entopy shall maintain a written list of current End Users of the Platform, for the sole purpose of enabling Entopy to verify compliance by the End User with the terms of this Agreement;

- 9.4.2 End User shall use its reasonable endeavours to ensure that each End User keeps a secure password for their use of the Platform and that each End User keeps their password confidential;
- 9.4.3 Entopy may audit the Platform regarding the name and password for each End User. Such audit may be conducted no more than once per quarter, at Entopy's expense, and shall be exercised with reasonable prior notice, in a manner so as to not substantially interfere with End User's normal conduct of business; and
- 9.4.4 if such audit reveals that passwords have been provided to individuals who are not End Users, and without prejudice to Entopy's other rights, the End User shall promptly disable such passwords and shall not issue any new passwords to such individuals unless or until such users are properly licensed under this Agreement.

## 10. **LIMITATION OF LIABILITY**

- 10.1 With respect to Support Services, Entopy' liability is limited to the re-performance of the service.
- 10.2 Entopy has no liability for customers of its customers and the fulfillment or service level of products procured through Entopy's TrackEat software platform. For the avoidance of doubt, Entopy's customer is the business that is using the TrackEat software to enable its own online store/menu. Entopy has no responsibility beyond its customer and therefore carries no liability for the quality of its customers services or any other aspects outside of the core functionality of the TrackEat platform as listed in this Agreement.
- 10.3 Entopy shall have no liability whatsoever for any damages suffered, directly or indirectly, by any person as a result of (i) the operation or use of the Solution in combination with any other hardware or software not supplied by Entopy; (ii) any modification to the Products or any of its components, including without limitation the Software, made by End User or any third party; and/or (iii) use of any third party software provided by Entopy.
- 10.4 Except for breach of confidentiality or infringement of the other parties intellectual property rights, neither party shall be liable to the other by reason of any representation, warranty, tort (including negligence), condition or other term, or any duty at common law or under statute, or under these express provisions, for any loss of profit, revenue or income, any liability under any claim brought or intimated by a third party or any expenditure directly or indirectly caused by, related to or arising out of any defects or other failures in Products supplied by Entopy or Services carried out by Entopy or otherwise or any other consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever which arise out of or in connection with the supply of the Products or Services or their use by End Users.

10.5 Except for breach of confidentiality or infringement of the other parties intellectual property rights, each party's' liability or the amount of any indemnity, damages or compensation payable on any claim or claims whatsoever concerning or relating, directly or indirectly to the Products supplied or services provided by Entopy and including but not limited to claims based on negligence, misrepresentation, breach of contract, or warranty, shall not in aggregate exceed the monies paid or payable to Entopy under the relevant Order.

10.6 The warranties in this Agreement replace and exclude to the extent permitted by law, all other conditions, warranties and representations (express or implied), statutory or otherwise.

10.7 Nothing in this Agreement will exclude or limit either party's liability for death or personal injury arising from that party's negligence, nor for liability arising from a party's fraudulent misrepresentation

## 11. **TERMINATION**

11.1 This Agreement can be terminated by the End User at any time.

11.2 Either Party may terminate this Agreement forthwith by:

11.2.1 Cancelling their subscription to the TrackEat platform. Such cancellation tools are accessible within the account settings pages of the TrackEat software platform.

11.3 This Agreement will automatically be extended for an additional 1 month upon the first day of the previous month. For the avoidance of doubt, on the first of May, this agreement will automatically extend to the end of June.

11.4 Notwithstanding termination of this Agreement, subject to End User continuing to abide by the terms of this Agreement including payment terms, Entopy shall satisfy all Orders for Products and Services placed by End User prior to termination.

11.5 Termination of this Agreement shall be without prejudice to the rights and remedies of the Party which may have accrued to either Party as at the date of termination.

11.6 End User confirms and agrees that it shall have no rights to compensation or indemnity for loss of goodwill or any other such rights or losses on termination or expiry of this Agreement

11.7 Upon termination or expiry of this Agreement for any reason and subject to this clause 11, the End User will return to Entopy all material and documents relating to its business and cease access to the Platform.

## 12. **GENERAL PROVISIONS**

- 12.1 Other than as expressly provided herein, neither party shall assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other (which consent shall not be unreasonably withheld).
- 12.2 Neither party shall act or describe itself as the agent of the other, nor shall it make any commitments on the other's behalf.
- 12.3 If either party does not enforce a right available to it under this Agreement in any particular instance, then that will not prevent it from enforcing that right in future or in any other instance.
- 12.4 If any provisions of this Agreement are held invalid under any applicable law, rule, regulation or treaty, then if the Agreement can continue without the invalid provision, then it shall be severed.
- 12.5 Any notice may be given by sending the same by registered post, or facsimile addressed to the address above. Any notice sent by fax shall be deemed to be delivered the next working day following transmission, any notice sent by post shall be deemed to be delivered three working days following the date of posting.
- 12.6 Save as otherwise expressly agreed in this Agreement nothing in this Agreement confers or is intended to confer on any person who is not a party to this Agreement any right and/or benefit bestowed on third parties by law.
- 12.7 These provisions and any documents incorporated by reference constitute the entire agreement between the End User and Entopy and supersede any prior communications whether verbal or in writing between the parties and there are no other understandings, representations or promises, written or oral, not included here or upon which either Party has relied.

## 13. **DISPUTES AND LAW**

- 13.1 In the event of any dispute between the parties other than collection of a debt or where either party is seeking injunctive relief, either party will give written notice to the other of the existence and nature of the dispute and the parties shall endeavour within a period of one (1) month (the initial period) from the date of the said notice to reach an amicable agreement after which by mutual agreement the dispute may be referred to the arbitration of an independent person based in England. Their decision shall be final and binding on the parties for the purposes of this contract. Notwithstanding these actions any formal dispute which arises between the parties concerning this Agreement shall be determined by the Courts in England and both Entopy and End User each hereby submit to the exclusive jurisdiction of the Courts of England for such purpose.

13.2 This Agreement shall be governed and construed in accordance with English Law.

## SCHEDULE 2

### SOFTWARE MAINTENANCE AND SUPPORT

In addition to the definitions contained in Schedule 1 of the Agreement, the following terms shall have the following meanings:

“Enhancement(s)” means a change(s) to the Software, which is intended to improve, or add to the functionality of the Software by adding significant new features or functions

“Update(s)” means a change(s) to the Software which is intended to fix or improve the functionality of the Software and to correct a Defect as defined in this Schedule. An Update may include some new functionality but the purpose of the Update is to improve aspects of the Software which will not generally impact on the use of the Software by the user, would not require any training for the user and would not require a significant amendment to the user manual.

“Defect” means any significant failure by the Software to perform in accordance with the published specification.

#### **1. SOFTWARE MAINTENANCE AND SUPPORT covers:**

1. Regular Updates and patches
2. Helpdesk telephone support
3. Training courses on new products and Updates

Support includes helpdesk telephone support during normal Entopy office hours of 9.00 am to 6.00 pm GMT (this will exclude bank holidays etc) plus Updates and software patches and training courses. These items are described in more detail below.

#### ***Regular Updates and patches***

Entopy will supply all Updates to End User and these will be supplemented by software patches as required.

Entopy shall decide in its absolute discretion what constitutes an Enhancement and an Update. Enhancements are chargeable items and need to be agreed on an Order.

### **SCHEDULE 3**

#### **HOSTED SYSTEM MAINTENANCE AND SUPPORT**

Entopy provides its hosting via Amazon Web Services (AWS). Whilst we will endeavour to provide a professional and reliable service to the you at all times we do not guarantee that our hosted services will be available at all times and will not be liable for any losses incurred, costs, compensation or loss of earnings due to the hosted services being unavailable. This may include such things as a technical failure, which is beyond our control.

Entopy will use commercially reasonable efforts to make the software and other hosted features are each available with a Monthly Uptime Percentage of at least 99.99%, in each case during any monthly billing cycle.

Entopy takes reasonable measures to maintain the privacy and integrity of the data and files stored. However, Customer acknowledges that 100% security cannot be guaranteed in Internet systems. Entopy cannot be held responsible for breaches in the system security, in any form.

Entopy makes daily backups of the Systems databases and files. In the event of a system-wide data loss event, Entopy will attempt to replace all System content with the most recent reliable backup. However, Entopy cannot be held responsible for the files and data stored on the System.

**SCHEDULE 4: PRICE LIST**

Monthly subscription:

£50.00