

Terms of Service Provision

1 Introduction

1.1 The Site is operated by trackingThis Limited (a company registered in England & Wales with registration number 07335017) whose registered address is 4 Heath Square, Boltro Road, Haywards Heath, RH16 1BL. If you have any questions regarding this Site you can contact us by email at enquiries@trackingthis.com.

1.2 It is important that you read and understand these terms and conditions (“terms”) before using the Site. By accessing or using the Site, you agree to be legally bound by these terms, as they may be modified from time to time. If you disagree with these terms or any part of them, you must not use our Site.

1.3 We reserve the right to change these terms at any time. Amendments will take effect when posted on our Site but will (insofar as the change relates to a fee-based function of the Site) only apply to a contract relating to a fee-based function of the Site existing at the time the change was posted when that contract is renewed.

1.4 Our Site is intended for use by businesses that are based in the United Kingdom.

2 Definitions

2.1 In this Agreement, unless the context otherwise requires the following expressions have the following meanings:

“You” means the Service User;

“We” means the Service Provider;

“Service Fee” means the fee which covers the provision of the Services and is payable monthly unless agreed otherwise;

“Service Interruption” means a period during Core Operating Hours during which there is partial loss of the Service;

“Downtime” means a period during Core Operating Hours during which there is total loss of the Service;

“Month” means a calendar month and “monthly” shall be construed accordingly;

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"Content" means any record that has been uploaded to the site concerning equipment and facilities' records, individuals' training, insurance and safety records ("Content");

"Material" means anything on the site which is not Content;

"Super User" means a named user who has received a base level of training on how to use the system;

"Equipment, Asset, Facility" means any physical item to which an online record relates;

"Core Operating Hours" means 09:00-17:00 UK Time Monday to Friday and on which banks are customarily open for business in London UK;

"Fee-Based Function" means any function of the site which is only available to users paying a fee;

"Intellectual Property" means property in which intellectual property rights of whatever nature (including but not limited to patents, trade marks, database rights and present and future copyright) subsist and, where the context so admits, includes such intellectual property rights;

3 Service and Disclaimer

3.1 Our Site provides an on-line repository for storage of Content to assist in work-place compliance assessment of equipment, facilities, employees, freelancers and contractors ("Purpose"). The Content is intended to be uploaded to the Site by the individual to which the Content relates, the equipment owner or members, employees, agents and contractors thereof and unless specifically indicated has not been independently verified. All Content is the sole responsibility of the person from whom the Content originated. We do not screen or verify the Content uploaded and therefore cannot and do not guarantee the accuracy, integrity or quality of the Content.

3.2 You acknowledge that any reliance on the Content or other material contained on this Site is entirely at your own risk and all other warranties, undertakings, conditions and terms, express or implied, whether by common law, statute, custom, trade usage, course of dealings or otherwise (including without limitation as to quality, fitness for purpose, performance or suitability for purpose) in respect of the Site are hereby excluded to the fullest extent permitted by law.

3.3 Nothing in these terms shall exclude our liability to you for fraudulent misrepresentation by us or our respective employees or for death or personal injury resulting from our negligence or that of our respective employees.

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3.4 SUBJECT TO THE PROVISIONS OF CONDITION 3.3, OUR LIABILITY TO YOU ARISING FROM YOUR USE OF OUR SITE, WHETHER ARISING IN CONTRACT, TORT, NEGLIGENCE, BREACH OF STATUTORY DUTY OR OTHERWISE SHALL NOT EXCEED THE MOST RECENT ANNUAL FEE YOU HAVE PAID TO US FOR ANY ONE INCIDENT OR SERIES OF INCIDENTS.

3.5 WE SHALL NOT HOWEVER BE LIABLE TO YOU 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 YOU:

- (I) OF AN INDIRECT OR CONSEQUENTIAL NATURE;
- (II) FOR ANY ECONOMIC LOSS WHATSOEVER INCLUDING (BUT NOT LIMITED TO) LOSS OF TURNOVER, PROFITS, BUSINESS, GOODWILL OR REPUTATION;
- (III) RESULTING FROM A GOVERNMENT OR REGULATORY AUTHORITY IMPOSING A FINE, PENALTY OR OBLIGATION ON YOU.

3.6 You acknowledge that we cannot guarantee that our Site will always be available to you, owing to the nature of the internet. In addition, you acknowledge that our Site may be unavailable owing to maintenance, but where possible we will carry out such maintenance outside core operating hours, and we will try to minimise the period of any disruption. Where planned maintenance is to take place *trackingThis* will give notice in a reasonable and practicable period of time before making the site unavailable. YOU AGREE THAT ANY SUCH MATTERS AS ARE REFERRED TO IN THIS CLAUSE 3.6, SERVICE INTERRUPTION AND DOWNTIME SHALL BE DEALT WITH IN ACCORDANCE WITH THE PROVISIONS OF CLAUSE 7 BELOW AND OUR MAXIMUM LIABILITY FOR SUCH MATTERS (INCLUDING SERVICE INTERRUPTION AND DOWNTIME) SHALL BE LIMITED TO THE SUMS REFERRED TO IN CLAUSE 7.3.

3.7 In agreeing the limitations referred to in this clause 3 the parties acknowledge and accept that they are of equal bargaining power and the limitations have been negotiated between them. They further agree that the limitations in clause 7 are a genuine pre-estimate of the loss likely to be sustained by the Service user.

4 Grant of License

4.1 Unless otherwise stated, we or our licensors own the intellectual property rights in the Site and material on the Site. Subject to the licence below, all these intellectual property rights are reserved.

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4.2 Subject to your acceptance of and continued compliance with these terms you may view, download and print pages from the Site solely for the Purpose subject to the restrictions set out below and elsewhere in these terms.

4.3 You must not:

- (a) re-publish material from this Site (including re-publication on another website);
- (b) sell, rent or sub-license material from the Site;
- (c) show any material from the Site in public;
- (d) reproduce, duplicate, copy or otherwise exploit material on our Site for a commercial purpose;
- (e) redistribute material from this Site except for content specifically and expressly made available for redistribution. Where content is specifically made available for redistribution, it may only be redistributed within your organisation.

5 Code of Conduct

5.1 You agree that you will not (and will use your best endeavours to ensure that your members, employees, agents and contractors will not) use our Site:

- (a) to upload any content that is false, unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libellous, invasive of another's privacy, hateful or racially, ethnically or otherwise objectionable;
- (b) to impersonate any person or entity, falsely state or otherwise misrepresent your affiliation with a person or entity or disguise the origin of any content;
- (c) to upload any content that you do not have a right to transmit under any law or under contractual or fiduciary relationships;
- (d) to upload any content that infringes any intellectual property rights of any party;
- (e) to upload any unsolicited or unauthorised advertising, promotional materials, 'junk mail', 'spam', 'chain letters' or any other form of solicitation;
- (f) to reverse engineer, decompile, copy or adapt any software or other code or scripts forming part of the Site nor attempt to transmit to or via the Site any information that contains a virus, worm, Trojan horse, or other harmful or disruptive component;

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(g) for any purpose that is unlawful, prohibited by any applicable law or regulation or is otherwise inconsistent with these terms;

(h) in such a way that disrupts, interferes with or restricts the use of the Site by other third party users.

5.2 If accessing any part of our Site that requires you to enter a password you agree to keep any personal login name and password for use on the Site confidential, and to be responsible for any loss or damage resulting from use of your password by any third party.

5.3 We reserve the right to terminate your access to password-protected areas of our Site should we consider that your use of the Site is detrimental to the Site or to other users.

5.4 You acknowledge that although we do not screen the Content we shall have the right (though not the obligation) in our sole discretion to move, modify or remove any Content which is in breach of condition 5.1.

6 Registration and Qualification to Use the Site

6.1 Before using our Site you are required to register with us by completing the [registration form](#) and submitting it to us or such other means as we may require. Some functions of the Site are only available on payment of a fee.

6.2 If you apply for access to a fee-based function of the Site:

(a) the price you will pay will be that stated on our Site or at such other place as we determine at the time you place your order;

(c) your application is an offer by you to enter into a legal contract with us;

(d) payment must be made in advance where made with the use of a credit or debit card, account terms will apply in other cases as agreed on an individual basis;

(e) a binding contract will only come into existence when you receive notification from us that we have accepted your order and that a binding contract exists from the date and time specified in the notification.

6.3 In consideration of your use of our Site, you agree to:

(a) provide true, accurate, current and complete information when filling out our registration form; and

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(b) maintain and promptly update your registration information to keep it true, accurate, current and complete.

If we have reasonable grounds at any time to suspect that any information is untrue, inaccurate, not current or incomplete, we have the right to suspend or terminate your use of the Site.

7 Service Level Agreement (SLA)

7.1 If you discover a Service Interruption or Downtime, you must report the matter to us via our fault reporting procedure. It is from the moment the report is received that a period of Service Interruption or Downtime starts.

7.2 If the total Downtime in any month exceeds 0.5% of the month's total Core Operating Hours you will be entitled to a 5% credit of your monthly service fee for each additional hour that it is unavailable with a maximum credit of 100% of your monthly service fee.

7.3 trackingThis will prioritise issues reported and use best endeavors to begin investigating any issue as follows:

Priority	Time to Action (TTA)
P1 – Critical Business Impact - a total loss of service	1 Hour
P2 – Severe Business Impact - an issue that has no reasonable work around and prevents the Company from conducting business in a required timeframe	4 Hours
P3 – Inconvenient Business Impact - an issue that does not prevent use of the system but does cause inconvenience. For example, system slowness or an issue that requires a significant workaround.	24 Hours
P4 – No Business Impact- an issue or error on the site that does not affect the functionality such as a cosmetic or typographic error.	30 Working Days

8 Hosting Services

8.1 Following acceptance of this agreement Service Provider shall provide or procure the provision of a system of integrated computer hardware, operating systems software, computer peripherals and facilities (the "System Environment") to allow the Service User over the internet to

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access and use the Site during any Service Term in accordance with and subject to the Service Levels specified under SLA's

8.2 The Hosting Service shall include the following support service

- an advisory and explanatory service with respect to the Site involving the provision of a telephone and email consultation service (help-line) to be provide during Core Operating Hours.
- Incident logging, Incident priority allocation, including liaison with third parties and to follow up calls to achieve resolution of the Incident
- regular communication from the Service Provider providing information on matters of general interest with respect to the Site and Hosting Service
- Service Level monitoring and provision of monitoring statistics, upon request

8.3 The Hosting Service shall include the following facilities and services provided in accordance with TrackingThis standard procedures from time to time

8.3.1 standard operational activities involving the maintenance of the System Environment

8.3.2 start-up, shut down and reboots of System Environment machines and operating systems

8.3.3 access to storage for databases as agreed from time to time

8.3.4 daily back up and storage for three weeks of such backups of the Site and Content stored by the operation of the Site

8.3.5 the supply of System Environment consumables such as magnetic tapes and cartridges to maintain the operations of the System Environment and the supply of subsequent media requirements and replacements.

8.3.6 administration of System Environment security, administration of operating system level user accounts and passwords, administration of System Environment firewalls

8.3.7 monitoring of the System Environment and when reasonably requested by the Customer gathering of metrics using standard monitoring tools, monitoring of disk space utilisation; memory usage, network I/O, number of users logged in, performance and resource utilisation including system availability and login failures

8.3.8 capacity planning/tuning

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9 Confidentiality

In relation to Confidential Information of the Disclosing Party, each party as Recipient agrees:

- a) to keep the Confidential Information confidential;
- b) not to use the Confidential Information otherwise than for the purposes of this Agreement;
and
- c) to disclose the Confidential Information only on a need-to-know basis and in confidence to those of its employees, officers, agents and sub-contractors who require knowledge thereof for the purposes of this Agreement and who are subject to obligations of confidentiality to the Recipient and in confidence to those of its professional advisors and/or auditors who are required to provide advice in respect of this Agreement.
- d) For the avoidance of doubt, the Service Provider's ability to use and disclose Confidential Information for the purposes of this Agreement under clauses (b) and (c) above, does not permit it to use any Content to which it has access when using the Site, including, without limitation, in order to contact the Service User's customers.
- e) The restrictions on disclosure contained in clause (c) shall not apply to Confidential Information:
 - i) which is in the public domain at the date of disclosure or subsequently enters the public domain otherwise than as a consequence of any unauthorised disclosure, act or omission by the Recipient, its officers, employees, agents, sub-contractors, professional advisers or auditors; or
 - ii) which is lawfully and properly in the possession of the Recipient at the time of disclosure and which was not obtained directly or indirectly from the Disclosing Party as evidenced by the written records of the Recipient; or
 - iii) which is received from a third party, so far as the Recipient is aware, otherwise than in breach (whether directly or indirectly) of any confidentiality or fiduciary obligation to the Disclosing Party and where such third party had a bona fide right to disclose the same to the Recipient.
 - iv) Nothing in this clause shall prevent the Recipient from making a disclosure of Confidential Information to the extent required by any applicable law or by any supervisory or regulatory body to whose rules the Recipient is subject or with whose rules it is necessary for the Recipient to comply provided always that the Recipient shall notify the Disclosing Party of such a disclosure as soon as reasonably practicable upon becoming aware that such a disclosure may be required to be made.

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No announcement concerning the subject matter of this Agreement or any ancillary matter shall be made by either party at any time except as required by law or by any legal or regulatory authority or with the prior written approval of the other party.

10 Licence

Subject to clause 9, you grant to us a worldwide, royalty-free, irrevocable, non-exclusive licence (including the right to sub-license) to use, reproduce, modify, adapt, publish, translate, distribute, perform or display the Content (in whole or part) up-loaded.

11 Indemnity

You agree to indemnify and hold us and our respective subsidiaries, affiliates, employees, officers, agents or partners harmless from and against any direct or indirect loss or damage (including consequential loss and loss of profits, goodwill or business opportunities) arising from any third party claim in relation to any content you upload on our Site or your breach of any of the provisions of these terms.

12 Trade Marks

Any trade marks, product names and company names or logos cited herein are the property of their respective owners. No permission is given by us in respect of the use of any such brand names, product names or titles or copyrights and such use may constitute an infringement of the holder's rights.

13 Entire Agreement

These terms, together with our [Privacy Policy](#), which is hereby incorporated as if set forth fully herein, represent the entire agreement between us with respect to your use of and the availability of this Site, and supersede all prior or contemporaneous communications and proposals, whether electronic, oral, or written between us with respect to this Site.

14 Term and Termination

14.1 Subject to the provisions of conditions 14.2 and 14.3, the right to use and access a fee-based function of the Site shall commence on the date the contract between us is formed and shall expire 12 months thereafter. At the expiry of any term you may renew the contract for a further period of 12 months if you provide/confirm the information required by condition 6.2 and pay the then current appropriate fee.

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14.2 Either Party may forthwith terminate this Agreement by giving written notice to the other Party if:

- a. that other Party commits any other breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 28 days after being given written notice giving full particulars of the breach and requiring it to be remedied;
- b. a receiver is appointed, of any of the property or assets of that other Party;
- c. that other Party becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
- d. that other Party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such a manner that the Company resulting there from effectively agrees to be bound by or assume the obligations imposed on that other Party under this Agreement);
- e. anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other Party;
- f. that other Party ceases, or threatens to cease, to carry on business;
- g. control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement.
- h. Service levels are continuously/repeatedly breached.

14.3 We may also terminate provision of the Site where we decide to withdraw this Site (whether on a temporary or permanent basis) or decide no longer to permit access to the Site by you (by use of passwords or changes of passwords or by any other means). In such cases, where you have paid for any Site and have not received all of the Site you have paid for we shall return the pro-rata amount of the fee corresponding to that period of the contract for which the Site will not be available.

14.4 In the event of termination occurring due to trackingThis becoming subject to administration the data will be accessible in a format that will allow that information to be used on another application at no extra cost.

15 Contacting Each Other

If you wish to send us any notice or letter then it needs to be sent to our registered office and should be marked for the attention of the Managing Director. If we wish to send you a letter or notice we will use the address you have given when registering.

All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on

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behalf of, a duly authorised officer of the Party giving the notice.

Notices shall be deemed to have been duly given:

- when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
- on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid.

16 Dispute Resolution

- All disputes or differences between the parties arising out of or in connection with this Agreement including any question regarding its existence, validity or termination (“Dispute”) shall, at the written request of either party, be mediated, as follows.
- If the parties do not agree a resolution of the Dispute within ten (10) Business Days of the date of service of any such request, either party may require the other party by notice in writing to attempt to settle the Dispute by mediation in accordance with the Centre for Dispute Resolution (“CEDR”) Model Mediation Procedure.
- Within five (5) Business Days of the date of service of such notice the parties shall each propose a mediator and shall seek to agree as to the selection of a mediator.
- If the parties are unable to agree on a mediator, either of the parties may apply to CEDR to appoint a mediator as soon as practicable.
- The parties shall within five (5) Business Days of the appointment of the mediator (the “Mediator”) meet with him in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiations. If considered appropriate, the parties (or either of them) may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- All negotiations connected with the Dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future proceedings.
- The costs and expenses of the mediation shall be borne equally by the parties. Each party shall bear its own costs and expenses of its participation in the mediation.

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If the parties fail to reach agreement within ten (10) Business Days of the Mediator being appointed then the Dispute may be referred to the courts. The parties agree and undertake not to refer any Dispute to the courts unless and until the dispute resolution procedures of this clause 16 have been followed and the said period of ten (10) Business Days has expired, except in circumstances where immediate injunctive or other relief is required from the courts.

17 Force Majeure

17.1 No Party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to circumstances beyond a Party's control and which could not have been prevented by a Party having in place adequate disaster recovery, back-up and/or security procedures (force majeure) whereupon notice of such shall be given to the other Party, and the time for performance of that obligation shall be extended accordingly.

17.2 If any Party is affected by force majeure it shall forthwith notify the other Party of the nature and extent thereof.

17.3 If the force majeure in question prevails for a continuous period in excess of 1 month, the Parties shall enter into bona fide discussions with a view to alleviating the effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

18 Law and jurisdiction

These terms shall be governed by and construed in accordance with English law. Each party irrevocably agrees to submit to the non-exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with these terms.

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