

TRACKLEFT SERVICE TERMS AND CONDITIONS

Version 1.0
Effective Date: June 24, 2015

THE ORDER FORM(S) OF EAM PRODUCTS, LLC d/b/a TRACKLEFT ("**TRACKLEFT**" OR "WE", "US", "OUR", OR SIMILAR DESIGNATIONS) AND THESE SERVICE TERMS AND CONDITIONS (COLLECTIVELY, THIS "**AGREEMENT**") SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN YOU AND TRACKLEFT CONCERNING YOUR USE OF THE TRACKLEFT SERVICE. BY ORDERING OR OTHERWISE USING THE SERVICE, YOU AGREE TO AND ACCEPT THIS AGREEMENT, INCLUDING THE SPECIFIC LIMITATIONS SET FORTH IN SECTIONS [2, 3, 5, 6, AND 11-13]. YOU MAY USE THE SERVICE ONLY IN ACCORDANCE WITH THIS AGREEMENT. NO OTHER CONTRACT OR TERMS CONCERNING THE SERVICE MAY BE CREATED IN ANY OTHER MANNER, INCLUDING BY MEANS OF YOUR PURCHASE ORDERS OR SIMILAR DOCUMENTS (EVEN IF SIGNED OR ACKNOWLEDGED BY TRACKLEFT), WHICH SHALL NOT MODIFY OR AMEND THIS AGREEMENT. IF YOU DO NOT AGREE WITH ALL THE TERMS OF THIS AGREEMENT, YOU SHALL NOT BE ENTITLED TO USE THE SERVICE.

1. Definitions. As used in this Agreement and in any Order Form(s), the following terms shall have the following meaning:

"Content" means the audio and visual information, documents, software, products, and services contained or made available to you in the course of using the Service.

"Customer Data" means any data, information, or material provided or submitted by you to the Service in the course of using the Service.

"Effective Date" means the earlier of either the date first set forth in your initial Order Form or the date you first begin using the Service.

"Initial Term" means the initial period during which you are obligated to pay for the Service equal to the billing frequency selected by you during the subscription process and stated in your initial Order Form (e.g., if the billing frequency is quarterly, the Initial Term is the first quarter).

"Intellectual Property Rights" means any unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

"Administrator(s)" means those Users designated by you who are authorized to purchase licenses by executing written or electronic Order Forms and to create User accounts and otherwise administer your use of the Service.

“License Term(s)” means the period(s) during which a specified number of Users are licensed to use the Service pursuant to the Order Form(s).

“Order Form(s)” means the form evidencing the initial subscription for the Service and any subsequent order forms submitted electronically or in written form, specifying, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Order Form to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of this Agreement shall prevail).

“TrackLeft Technology” means all of our proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs, and other tangible or intangible technical material or information) made available to you by us in providing the Service.

“Service” means the specific edition of our web application that allows you to create and manage step-by-step sales processes, which is developed, operated, and maintained by us, accessible at <http://trackleft.com> or another designated website or IP address, or ancillary online or offline products and services provided to you by us, and to which you are being granted access under this Agreement, including the TrackLeft Technology and the Content.

“User(s)” means your employees, representatives, consultants, contractors, or agents who are authorized to use the Service and have been supplied user identifications and passwords by you (or by us at your request).

The terms **“you”** or **“your”** refers to the customer, whether an individual person or legal entity, identified in the initial Order Form, and any subsequent Order Forms, which is ordering the Service on behalf of itself and its Users.

2. License Grant and Restrictions.

2.1 We hereby grants you a nonexclusive, nontransferable, worldwide right to use the Service, solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by us and our licensors.

2.2 You may not access the Service if you are a direct competitor of TrackLeft, except with our prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

2.3 You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet “links” to the Service or “frame” or “mirror” any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a

competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Service.

2.4 You may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents, or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

3. Your Responsibilities. You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, state, national, and foreign, laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications, and the transmission of technical or personal data. You shall: (i) notify us immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to us immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another TrackLeft user or provide false identity information to gain access to or use the Service.

4. Account Information and Data. We do not own any Customer Data. You, not us, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and we shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. In the event this Agreement is terminated (other than by reason of your breach), we will make available to you a file of the Customer Data within thirty (30) days of termination if you so requests at the time of termination. We reserve the right to withhold, remove, and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and we shall have no obligation to maintain or forward any Customer Data.

5. Intellectual Property Ownership. We (and our licensors, where applicable) shall exclusively own all right, title, and interest, including all related Intellectual Property Rights, in and to the TrackLeft Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the TrackLeft Technology or the Intellectual Property Rights owned by us. Our name, TrackLeft, and the TrackLeft's logo(a), and the product names associated with the Service are trademarks of TrackLeft or third parties, and no right or license is granted to use them.

6. Third Party Interactions. In connection with your use of the Service, you may enter into correspondence with, purchase goods and/or services from, participate in promotions with, or enter other agreements with third-party service providers. For example, and without limiting the generality of the foregoing, in connection with your use of the Service, you may engage with third-party professionals providing sales and management consulting and training. Any such activity, and any terms, conditions, warranties, or representations associated with such activity, is solely between you and the applicable third party. TrackLeft and its licensors shall have no liability, obligation, or responsibility for any such correspondence, purchase, promotion, or agreement between you and any such third party. We do not endorse any sites on the Internet that are linked through the Service. We provides these links to you only as a matter of convenience, and in no event shall TrackLeft or its licensors be responsible for any content, products, services, promotions, or other materials on or available from such sites. We provide the Service to you pursuant to the terms and conditions of this Agreement. You recognizes, however, that certain third party providers of ancillary software, hardware, products or services may require your agreement to additional or different license or other terms prior to your use of or access to such software, hardware, products or services.

7. Charges and Payment of Fees. You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. The initial charges will be equal to the current number of total User licenses requested times the User license fee currently in effect. Payments must be made annually in advance unless otherwise mutually agreed upon in an Order Form. All payment obligations are non-cancelable and all amounts paid are nonrefundable. You are responsible for paying for all User licenses ordered for the entire License Term, whether or not such User licenses are actively used. You must provide us with valid credit card or other approved purchase order information as a condition to signing up for the Service. An authorized Administrator may add licenses by executing an additional written Order Form. Added licenses will be subject to the following: (i) added licenses will be coterminous with the preexisting License Term (either Initial Term or renewal term); (ii) the license fee for the added licenses will be the then current, generally applicable license fee; and (iii) licenses added in the middle of a billing month will be charged in full for that billing month. We reserve the right to modify our fees and charges and to introduce new charges at any time, upon at least thirty (30) days prior notice to you, which notice may be provided by email, and which shall be effective upon renewal and thereafter. All pricing terms are confidential, and you agrees not to disclose them to any third party.

8. Excess Data Storage Fees. The maximum disk storage space provided to you at no additional charge is five (5) MB per User. If the amount of disk storage required exceeds these limits, you will be charged the then-current storage fees. We will use reasonable efforts to notify you when the average storage used per license reaches approximately ninety percent (90%) of the maximum; however, any failure by us to so notify you shall not affect your responsibility for such additional storage charges. We reserve the right to establish or modify its general practices and limits relating to storage of Customer Data.

9. Billing and Renewal.

9.1 We charge and collect in advance for use of the Service. We will automatically issue an invoice to you each year on the subsequent anniversary or as otherwise mutually agreed upon. The renewal charge will be equal to the then-current number of total User licenses times the license fee in effect during the prior term, unless we have given you at least thirty (30) days prior written notice of a fee increase, which shall be effective upon renewal and thereafter. Fees for other services will be charged on an as-quoted basis. Our fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only U.S. (federal or state) taxes based solely on our income.

9.2 You agree to provide us with complete and accurate billing and contact information. This information includes your legal name or your legal company name, street address, email address, and name and telephone number of an authorized billing contact and Administrator. You agree to update this information within thirty (30) days of any change to it. If the contact information you have provided is false or fraudulent, we reserve the right to terminate your access to the Service in addition to any other legal remedies.

9.3 If you believe your bill is incorrect, you must contact us in writing (which may be provided via email in accordance with this Agreement) within thirty (30) days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

10. Nonpayment and Suspension.

10.1 In addition to any other rights granted to us herein, we reserve the right to suspend or terminate this Agreement and your access to the Service if your account becomes delinquent. Delinquent invoices and accounts are subject to interest of one percent (1%) per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. You will continue to be charged for User licenses during any period of suspension. If either party initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with Section 9 above. You agree that we may bill you for such unpaid fees.

10.2 We reserve the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. You agree and acknowledge that we have no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if your account is thirty (30) days or more past due.

11. Termination upon Expiration/Reduction in Number of Licenses.

11.1 This Agreement commences on the Effective Date. The Initial Term will be as mutually agreed upon in your initial Order Form, commencing on the start date of the Order Form.

11.2 Upon the expiration of the Initial Term, this Agreement will automatically renew for successive one-year terms at our then current fees. Either party may terminate this Agreement or reduce the number of licenses, effective only upon the expiration of the then current License Term, by notifying the other party in writing at least thirty (30) days prior to the expiration of the

term. In the case of free trials, notifications provided through the Service indicating the remaining number of days in the free trial shall constitute notice of termination.

12. **Termination for Cause.** Any breach of your payment obligations or unauthorized use of the TrackLeft Technology or Service will be deemed a material breach of this Agreement. We may, in our sole discretion, terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement. In addition, we may terminate a free account at any time in our sole discretion.

13. **WAIVER; DELAYS.** EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 14, THE SERVICE IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TRACKLEFT SPECIFICALLY DISCLAIMS ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. This waiver of warranty affects your specific legal rights; you may have rights which may vary depending upon where you are located. Some jurisdictions do not allow limitations on implied warranties, so the limitations above may not apply to you.

THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. TRACKLEFT IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

14. **LIMITED WARRANTY AND INDEMNIFICATION.** TrackLeft represents and warrants that the Service will perform substantially in accordance with the documentation made available to you by TrackLeft through or in connection with the Service (e.g., FAQs, user manual and guides, and similar documents) and that it has the legal right to grant the licenses granted herein. TrackLeft agrees to defend you and your Users from and against any third party claim or action based on any alleged infringement of any United States patent, copyright, trade secret, or other proprietary right as a result of the use of the Service according to the terms and conditions of this Agreement, and TrackLeft agrees to indemnify you and your Users from any damages awarded against you in any such infringement claim or action or settlement thereof; provided, however, that (i) TrackLeft is promptly notified in writing of such claim, (ii) you grant TrackLeft sole control of the defense and any related settlement negotiations, and (iii) you cooperate with TrackLeft in defense of such claim. Notwithstanding the foregoing, TrackLeft shall have no obligation to indemnify you or your Users under this Agreement in the event the third-party infringement claim arises from your own infringing activity or that of another user.

15. **LIMITATION OF LIABILITY.** EXCEPT FOR TRACKLEFT'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 14, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TRACKLEFT (AND ITS LICENSORS OR SUPPLIERS) SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE USE OF THE PLATFORM, HOWEVER SUCH DAMAGES ARISE AND/OR WHETHER SUCH DAMAGES ARE CLAIMED IN TORT, CONTRACT OR OTHER ACTION, EVEN IF TRACKLEFT HAS BEEN INFORMED OF THE POSSIBILITY

OF SUCH DAMAGES. EXCEPT FOR TRACKLEFT'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 14, IN NO EVENT SHALL TRACKLEFT'S LIABILITY FOR ANY CLAIM WHATSOEVER HEREUNDER (OR ASSOCIATED HEREWITH) EXCEED THE AMOUNT PAID BY YOU FOR THE SERVICE IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM. Some jurisdictions do not allow for the exclusion or limitation of incidental or consequential damages, so the limitations above may not apply to you.

16. DMCA COMPLIANCE.

16.1 It is the policy of TrackLeft to respond to notices of alleged copyright infringement, in compliance with the Digital Millennium Copyright Act ("DMCA") and other applicable laws. Our response to these notices may include removing or disabling access to Content claimed to be the subject of infringing activity and/or terminating user accounts. If we remove or disable access to any Content in response to such a notice, we will make a good-faith attempt to contact the user that uploaded the Content, so that they may make a counter notification. TrackLeft will, in appropriate circumstances, terminate the accounts of repeat infringers.

16.2 If a copyright owner or an agent thereof believes that any Content or link on the Platform infringes upon such owner's copyrights, the copyright owner may submit a notice pursuant to the DMCA, a copy of which can be found here: <http://www.copyright.gov/legislation/pl1105-304.pdf> ("DMCA"). Our designated DMCA copyright agent to receive notices of infringing material is: general@trackleft.com. Only DMCA notices should go to our DMCA copyright agent. DMCA notices may not be valid if they fail to comply with all of the requirements of the DMCA.

16.3 In some instances a User who has uploaded or posted Customer Data which has been removed pursuant to a DMCA notice may supply a counter-notification. The owner of such affected Customer Data may make a counter-notification pursuant to sections 512(g)(2) and (3) of the DCMA. When we receive a counter-notification, TrackLeft may reinstate the posts or material in question. To file a counter-notification, the user must provide a written communication (by email to our copyright agent) that sets forth all of the items required by the DMCA.

17. General.

17.1 Publicity. TrackLeft may represent in press releases, on its website, and on other promotional materials that you are a subscriber of the Service.

17.2 Notices. All notices to either party shall be in writing and shall be considered given on the date of (i) confirmed delivery if sent by overnight courier or express mail service, (ii) confirmed delivery if sent by postage pre-paid certified or registered mail (or the equivalent), return receipt requested (iii) personal delivery, or (iv) confirmed delivery if sent by email with electronic return receipt or response (including automated response) from the receiving party.

17.3 Assignment. Neither party shall assign or otherwise transfer any of their rights or obligations without the prior written consent of the other party, which shall not be unreasonably

withheld; provided, however, that either party may assign this Agreement, without consent, in connection with sale of a majority of such party's voting interests or substantially all of its assets to an acquiring party.

17.4 Governing Law; Jurisdiction; Arbitration. Except to the extent applicable law, if any, provides otherwise, this Agreement shall be governed, construed and enforced in all respects by the laws of the State of Michigan, excluding its choice of law/conflict of law provisions, and shall not be governed by the United Nations Convention on Contracts for the Sale of Goods. Unless TrackLeft elects (in its sole option) to proceed in your local jurisdiction, the jurisdiction and venue of any arbitration, litigation or other dispute resolution method between the parties (which arises out of or relates to this Agreement) shall be exclusively in Oakland County, Michigan; you expressly submit and consent to such exclusive jurisdiction and venue. Other than TrackLeft's right to seek injunctive relief, any claim or dispute arising out of or relating to this Agreement shall be decided by confidential binding arbitration before a single arbitrator. The parties shall equally split the arbitrator's fees.

17.5 Export Controls. You agree to comply with all applicable laws, domestic or foreign. You further understand that the Service may be subject to restrictions and controls imposed by the U.S. Export Administration Act, as amended, and agree, if informed by TrackLeft, to comply with applicable export and import control laws and regulations issued from time to time by the U.S. Department of Commerce and other governmental agencies, foreign or domestic.

17.6 Entire Agreement; Amendments; Waiver. This Agreement constitutes the entire understanding and agreement between you and TrackLeft with respect to its subject matter. This Agreement may only be amended by mutual, written agreement of the parties (which may include in your case agreement via electronic consent, including without limitation, click-through consent). If there is any conflict between an Order Form or these Service Terms and Conditions, these Service Terms and Conditions shall govern. Your purchase orders or similar documents (even if signed by TrackLeft) shall not modify or amend this Agreement. The failure of either party to object to or act with respect to any conduct of the other party that is in violation of the terms of this Agreement shall not be construed as a waiver thereof. If any provision of this Agreement is for any reason and/or to any extent determined to be unenforceable under applicable law, the remaining provisions of this Agreement shall remain in full force and effect.

17.7 Providing Notice. Should you wish to or are required to notify TrackLeft under this Agreement, use the contact information provided on the TrackLeft website located at <http://www.trackleft.com>.

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