

***TrackIT-Log* Company / Business License**

COMPANY / BUSINESS LICENSE AGREEMENT 2019

These are the terms and conditions under which **the 'licensee'** is permitted to use the material described below (**the 'licensed material'**), as provided by InfoTech-IT.

TERMS

1.0 INTERPRETATION

1.01 In this agreement unless the context requires otherwise, the following expressions have the following meanings:

"Customer Support": the helpdesk (as set out below) providing reasonable email support.

"Commencement Date": as per the date of subscription.

"License Fee": as per the non-refundable amount stated on the subscription form.

"Licensed Material": those agreed InfoTech-IT elements indicated on your subscription form.

"Term": twelve (12) months.

1.02 The Agreement contains the entire agreement and undertaking between the parties relating to the licensed material and supersedes any prior agreement.

1.03 The termination of this agreement will not prejudice the rights and remedies of either party against the other in respect of any prior breach of covenant, terms, warranty or condition.

1.04 The failure of any party to enforce any provision of this agreement on any one occasion will not affect its right to enforce another provision or the same provision on another occasion.

2.0 DELIVERY AND GRANT OF RIGHTS

2.01 In consideration of the payments made by the licensee, and subject to the licensee observing its obligations under this agreement, InfoTech-IT grants to the licensee the following non-exclusive rights (the "rights") for the term:

- (a) Access via the network at any time to the TrackIT-Log web server, for the purpose of accessing the licensed material for which it is intended.

- 2.02 The rights are personal to the company and do not extend to any other company. The licensee may not assign, sub-license, transfer, charge or otherwise dispose of its rights under this agreement without the prior written consent of InfoTech-IT.
- 2.03 The licensee is responsible for the provision of payment for the computer / device equipment and telecommunication services necessary for access to and use of the licensed material. InfoTech-IT will not issue credits or refunds against charges incurred by the licensee in relation to such telecommunication services or those incurred contacting customer support. The licensee accepts that InfoTech-IT has no control over such telecommunication services and that InfoTech-IT will have no liability to the licensee for the acts or omissions of providers of telecommunication services or for faults in or failures of their apparatus or of the licensee's computer equipment.

3.0 USAGE RESTRICTIONS

Except as expressly permitted, the licensee warrants that it will not, nor will it license or permit others to, directly or indirectly, without InfoTech-IT's prior written consent:

- (a) Sell, distribute, license, rent or otherwise exploit the licensed material, or any element of it, for any commercial purpose.
- (b) Make the licensed material, or any element of it, available by any means to persons other than the licensee.
- (c) Make the licensed material, or any element of it, available on, or by, electronic bulletin boards, news groups, websites, file transfer protocol or any other means of posting or transmitting material on the internet, an on-line service or wide area network.
- (d) Use the licensed material to create any derivative work, product or service, or merge the licensed material with any other product, database, or service.
- (e) Alter, amend, modify, translate, or change the licensed material.
- (f) Undertake any activity that may have a damaging effect on InfoTech-IT's ability to achieve revenue through selling and marketing the licensed material.
- (g) Otherwise use the licensed material supplied in accordance with this agreement in a manner that would infringe the copyright or other proprietary rights contained within it.
- (h) Make the licensed material or any part of it available by remote access to any person other than the licensee.
- (j) Make mass, automated or systematic extractions from or hard copy storage of the licensed material.

4.0 TERM AND TERMINATION

- 4.01 This agreement will begin on the commencement date and continue for the term. InfoTech-IT may agree to renew the term for additional twelve (12) month period, subject to payment of the appropriate subscription fee and acceptance thereof by InfoTech-IT.
- 4.02 At the time when TrackIT-Log is no longer required, and payment of the subscription ceases, TrackIT-Log will allow ninety (90) days of 'Read Only' use.
- 4.03 Without prejudice to any other rights InfoTech-IT may have, InfoTech-IT may suspend the provision of the licensed material to the licensee with immediate effect on written notice without liability if InfoTech-IT believes the licensed material is being used in a manner that contravenes the provisions of this agreement or in the event of delay or failure to pay.
- 4.04 When calculating the reasonable annual access fee payable by the licensee, InfoTech-IT will be entitled to review and consider an increase each two (2) years, but not limited to any change in the business of the licensee or any increase in supply or other costs incurred by InfoTech-IT.

5.0 LICENSE FEE

- 5.01 The licensee agrees to pay to InfoTech-IT the license fee prior to the anniversary of the subscription renewal date.

6.0 LICENSEE'S UNDERTAKINGS

- 6.01 The licensee will take all reasonable steps to ensure that the licensed material is used only in accordance with the terms and conditions of this agreement.
- 6.02 The licensee will notify InfoTech-IT immediately of infringements that come to the licensee's notice and the licensee agrees to cooperate with InfoTech-IT as appropriate to stop further abuse should it occur.

7.0 WARRANTIES, UNDERTAKINGS AND INDEMNITIES

- 7.01 InfoTech-IT warrants to the licensee that it has full right and authority to grant the rights to the licensee and that the use by the licensee of the licensed material in accordance with this agreement will not infringe the rights of any third party.
- 7.02 InfoTech-IT will indemnify the licensee for the amount of any award of damages against the licensee by a court of competent jurisdiction as a result of any claim arising from a breach of the warranty provided that the licensee must inform

InfoTech-IT immediately upon becoming aware of any claim, not attempt to compromise or settle the claim and give reasonable assistance to InfoTech-IT who will be entitled to assume sole conduct of any defence and will have the right at its option:

- (a) To procure the right for the licensee to continue using the licensed material.
- (b) To replace the licensed material with non-infringing substitutes provided that such substitutes do not entail a material reduction in performance or function.

7.03 InfoTech-IT will not be liable to the licensee for any loss or damage whatsoever resulting from omissions or inaccuracies in the licensed material regardless of how caused. InfoTech-IT does not warrant that access to the licensed material will be free from errors or faults. In the event of a fault, the licensee will notify InfoTech-IT by email using the 'Help' facility in the software.

7.04 Without prejudice to the generality of the foregoing, InfoTech-IT will not be liable for any claim arising from:

- (a) Any failure or malfunction resulting wholly or to any material extent from the licensee's negligence, operator error, use other than in accordance with the user documentation or any other misuse or abuse of the licensed materials.
- (b) The failure by the licensee to implement recommendations previously advised by InfoTech-IT in respect of, or solutions for, faults in the licensed material.
- (c) The decompilation or modification of the licensed material or its merger with any other program or any maintenance repair adjustment alteration or enhancement of the licensed material by any person other than InfoTech-IT or its authorised agent.
- (c) The licensee being unable to exercise the rights due to the licensed material being unavailable as a result of any act or omission of InfoTech-IT.

7.05 The licensee will use its best efforts to safeguard the intellectual property, confidential information including without limitation the terms of this agreement, and proprietary rights of InfoTech-IT.

7.06 The licensed material is provided "as is." Neither InfoTech-IT nor anyone else makes any warranties of any kind, either express or implied, including, but not limited to, warranties of satisfactory quality, accuracy or fitness for a particular purpose except as otherwise expressly provided, all conditions, warranties, terms, representations, and undertakings express or implied, statutory or otherwise in respect of the licensed material are to the fullest extent permitted by law expressly excluded.

No oral or written information or advice given by any representative of InfoTech-IT or by anyone else will create any warranties.

7.07 The content of the licensed material is subject to change without notice.

8.0 LIABILITY

8.01 Neither party excludes or limits liability to the other party for death or personal injury caused by its own negligence or any other liability the exclusion or limitation of which is prohibited by law.

8.02 The liability of InfoTech-IT in respect of any and all claims (whether in contract or in tort) arising out of or in connection with this agreement is limited in respect of each event or series of connected events to an amount equal to the fees paid under this agreement.

8.03 Notwithstanding anything else contained in this agreement, in no event will InfoTech-IT be liable to the licensee for:

- (a) Loss of profits, business, revenue, goodwill, anticipated savings.
- (b) Indirect, special, incidental or consequential loss or damage.
- (c) Any inaccuracy in the licensed material.

9.0 PRIVACY

The company agrees to:

- (a) Handle all information in accordance with any reasonable and lawful direction of InfoTech-IT and all privacy principles which govern, or would govern, the handling of such information by InfoTech-IT, including without limitation the information privacy principles prescribed by current Privacy Acts.
- (b) Comply with all applicable guidelines, determinations or recommendations made by a commissioner or any other regulatory body which administers the applicable privacy principles and shall submit to investigations and enforcement procedures by those commissioners and regulatory bodies.

10.0 SEVERABILITY

In the event any provision of this agreement is held by a court or other tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this agreement will remain in full force and effect.

11.0 WAIVERS

No provision of this agreement or breach thereof may be waived except in a writing signed by the party against whom the waiver is sought to be enforced.

The parties each agree to the terms of this agreement.

Customer Support

Click **Help**, then select **Assistance** and complete the form .