



TERMS OF USE

Date Last Modified: December 17, 2014

The www.trackhs.com website (the “**Website**”) is made available by Track Hospitality Software, LLC, a Minnesota limited liability company, d/b/a Track (“**Track**”). By accessing and/or using the Website, or registering for a user account (“**Account**”), you agree to be bound by these Terms of Use (“**Terms of Use**”). If you do not agree to these Terms of Use, do not continue to access and/or use the Website.

THESE TERMS OF USE CONTAIN A MANDATORY ARBITRATION PROVISION (SECTION 17), CLASS ACTION WAIVER (SECTION 17) AND JURY TRIAL WAIVER (SECTION 18) THAT AFFECT YOUR RIGHT TO BRING A CLAIM IN COURT, AS A MEMBER OF A CLASS ACTION AND IN FRONT OF A JURY. PLEASE REVIEW THESE TERMS OF USE CAREFULLY BEFORE YOU CONTINUE TO ACCESS AND/OR USE THE WEBSITE.

Track may modify these Terms of Use from time to time and any such modifications shall be effective immediately upon posting of the modified version. Track will use commercially reasonable efforts to provide adequate notice of any such modifications. If you continue to access and/or use the Website or your Account you accept such modified terms. If you do not agree to such modified terms, do not continue to access and/or use the Website or your Account.

- 1. Compliance.** To ensure you are not violating any part of these Terms of Use, Track recommends that you always review the current Terms of Use each time you visit the Website before you continue to access or use the Website or your Account. All access to and use of the Website, your Account and the information contained on or provided through the Website are subject to these Terms of Use.
- 2. General Use.** The Website is made available, subject to these Terms of Use, to allow you to obtain information regarding Track’s services and products, view testimonials, request demos, post and review posts on Track’s blog and contact Track. Subject to these Terms of Use, and unless otherwise agreed in writing by Track, Track grants you a limited, non-exclusive, non-transferable, revocable, non-sublicensable license to access and use the Website solely for those purposes described in this Section 2 and for your internal benefit. Except as otherwise expressly set forth herein, you shall have no other rights to the Website, and no other rights shall be implied.
- 3. Accounts.** You may not have more than one (1) Account. The security, confidentiality and integrity of your Account and password are your sole responsibility and you agree to bear all liability for the same as well as all use and/or charges incurred from use of the Website with your Account and/or password. You are responsible for taking all reasonable steps to ensure that no unauthorized person shall have access to your Account or password. Notwithstanding anything to the contrary, you hereby authorize Track to use and disclose your Account information if required by applicable law or where necessary to enforce these Terms of Use and/or to protect any of Track’s or other parties’ legal rights. By registering for an Account you hereby authorize Track to use your Account information to send you commercial communications, including, but not limited to, marketing materials related to the Website or Track’s services and products; provided that you may unsubscribe from such communications by contacting Track as set forth in Section 25 below.
- 4. Prohibited Uses.** In addition to uses otherwise prohibited by Track, these Terms of Use or applicable law, you may not, and you may not allow any third party to, do any of the following:
 - Access or use the Website if you or such third parties are under eighteen (18) years old. The Website is intended only for use by those eighteen (18) years old or older, and by accessing and/or using the Website you represent and warrant that you meet such age requirements.
 - Change or delete any copyright or proprietary notice from the Website or any site accessible through the Website.

- Use or access the Website to send unsolicited commercial email to any person, or to threaten, harm or harass another user's Account, use and/or access to the Website, including, but not limited to, attempting to gain access to another user's Account, password and/or personal information.
- Use or access the Website by artificial means or in a manner that, in Track's sole discretion, would inflict an excessive load on Track's or its vendors' hardware or software.
- Post, upload or transmit:
 - any data, content or materials contained on or provided through the Website outside of the Website, in whole or in part.
 - any data, content or materials meant to market or advertise non-Track services, or solicit any other users of the Website for such purposes and/or use data, content or materials gathered from the Website for such purposes.
 - any data, content or materials of any type that infringes or violates any rights of any party, including, but not limited to, any patent (including any business process patent), copyright, trademark, trade secret or any proprietary or other right of Track or a third party.
 - any data, content or materials that are illegal, threatening, obscene, defamatory, harmful, invasive to privacy or otherwise violate the rights of Track or a third party, including, but not limited to, any malicious software or computer code (such as a virus).
 - any disabling code (defined as computer code designed to interfere with the normal operation of the Website or Track's or its vendors' hardware or software) or any program routine, device or other undisclosed feature, including, but not limited to, a time bomb, virus, software lock, drop-dead device, malicious logic, worm, Trojan horse, or trap door which is designed to delete, disable, deactivate, interfere with or otherwise harm the Website or Track's or its vendors' hardware or software.
- Decompile, disassemble or otherwise reverse engineer or attempt to reconstruct or derive any source code (or underlying ideas, algorithms, structure or organization), modify or create a derivative work of the Website (or any portion of the Website) or from any other information by any means whatsoever.
- Distribute, disclose or allow use of any portion of the Website or your Account in any format through any timesharing device, service bureau, network or by any other means, to or by any unauthorized third party.
- Use or access the Website or any information provided through the Website in violation of federal, state or local law or other applicable rules or regulations or for any benchmarking, monitoring or testing availability or performance, or any other competitive use, including, but not limited to, creating services or software that are substantially similar to the Website or Track's services and products.

5. Obligations. You acknowledge and agree that you are using the Website at your sole risk and that you are personally responsible for verifying its suitability for your needs. By submitting information to the Website or to Track (by any means), you accept sole responsibility for transmission of such information and any resultant damages to you or a third party.

6. Ownership. Although some material on the Website may be the intellectual property of a third party that Track has a right to use, you acknowledge that as between you and Track, Track owns all right, title and interest in, and retains any copyright and other intellectual property rights in and to the Website and all data and information provided on or through the Website by Track and its authorized suppliers (for the avoidance of doubt, this expressly excludes any and all user-generated content). You must comply with all copyright, trademark, legal notices and similar restrictions. For the avoidance of doubt, Track is the owner of the Website and no other party will acquire any interest in the Website by reason of these Terms of Use. If you submit, post or upload any content, business information, ideas, data, concepts or inventions through the Website or to Track (by any means), you grant to Track a royalty-free, perpetual, irrevocable, world-wide, non-exclusive, sub-licensable (through multiple tiers) license to use, reproduce, create derivative works from, modify, publish, edit, translate, distribute, perform and display, including digitally or electronically, such content, business information, ideas, concepts or inventions in any media or medium, or any form, format or forum now known or hereafter developed. To the extent you are not the lawful owner of such rights, you represent and warrant that you have authority from the owner of such content or intellectual property to grant such rights to Track.

7. User-Generated Content. Any user-generated content is the sole responsibility of the user that submitted that content. You agree that the content you generate shall be truthful and not misleading. Track reserves the right (but is not obligated) to edit or remove any user-generated content in whole or part, at any time and for any or no reason. Track does not control the content generated by users and is under no circumstances liable in any way for any user-generated content that is posted or made available through the Website. Track does not endorse any user-generated content or data, and does not warrant or guarantee the integrity, truthfulness, accuracy or quality of any user-generated content. You agree that Track is not liable for any loss or damage of any kind resulting from the access or use of any user-generated content posted on the Website.

8. Links. The Website may contain links to third party websites. Track has no control over and is not responsible for those third party sites or the content provided on or through such sites. You should review the applicable terms of use and/or privacy policies for such sites before using them. You hereby accept sole liability for the use of such links to third party websites and you acknowledge and agree that you access those third party sites at your sole risk.

9. Disclaimer. THE WEBSITE AND ANY DATA OR INFORMATION CONTAINED ON OR PROVIDED THROUGH THE WEBSITE ARE PROVIDED ON AN "AS IS" BASIS. ACCESS TO THE WEBSITE IS VOLUNTARY AND AT

YOUR SOLE RISK. EXCEPT AS SET FORTH IN THESE TERMS OF USE, TRACK DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS OR ENDORSEMENTS OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT) WITH REGARD TO THE WEBSITE OR WITH RESPECT TO ANY DATA OR INFORMATION CONTAINED ON OR PROVIDED THROUGH THE WEBSITE. YOU ACKNOWLEDGE AND AGREE THAT TRACK AND ITS EMPLOYEES, MANAGERS, MEMBERS AND GOVERNORS, AND THEIR AFFILIATES, AGENTS, ATTORNEYS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY THE “RELEASED PARTIES”), SHALL NOT BE LIABLE FOR ANY PERSONAL INJURY, INCLUDING, BUT NOT LIMITED TO, DEATH, CAUSED BY YOUR USE OR MISUSE OF THE WEBSITE OR INFORMATION PROVIDED ON OR THROUGH THE WEBSITE.

- 10. Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TRACK OR ANY OTHER RELEASED PARTY BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES WHATSOEVER, ANY LOSS OF USE, LOSS OF PROFITS, BUSINESS INTERRUPTION, LITIGATION OR ANY OTHER PECUNIARY LOSS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, DUTY TO WARN AND STRICT LIABILITY), PRODUCT LIABILITY OR OTHERWISE, ARISING OUT OF OR RELATED TO THESE TERMS OF USE, THE WEBSITE OR INFORMATION PROVIDED ON OR THROUGH THE WEBSITE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 11. Limitation of Liability.** YOU AGREE THAT UNDER NO CIRCUMSTANCES SHALL TRACK AND THE OTHER RELEASED PARTIES BE LIABLE FOR DAMAGES EXCEEDING THE SUM OF \$50.00. THE EXISTENCE OF MULTIPLE CLAIMS SHALL NOT INCREASE THIS LIMIT.
- 12. Time Limit for Making Claims Against Track.** Any claims against Track or any other Released Party arising out of or related to these Terms of Use and/or the Website must be brought within one (1) year of the date of the event giving rise to such action occurred.
- 13. Acknowledgement Regarding Disclaimers and Limitation of Liability as Fundamental Elements of Your Agreement with Track.** YOU ACKNOWLEDGE AND AGREE THAT THE DISCLAIMER AND LIMITATIONS OF LIABILITY SET FORTH IN THE FOREGOING SECTIONS ARE FUNDAMENTAL ELEMENTS OF THESE TERMS OF USE AND THE WEBSITE WOULD NOT BE PROVIDED TO YOU ABSENT SUCH DISCLAIMER AND LIMITATIONS OF LIABILITY. SOME JURISDICTIONS DO NOT ALLOW EXCLUSIONS OR DISCLAIMERS OF IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO SUCH SECTIONS MAY NOT APPLY TO YOU.
- 14. Indemnification.** You shall indemnify, defend and hold Track and the other Released Parties harmless from and against all claims, rights, costs (including, but not limited to, reasonable attorney’s fees), liabilities or causes of action brought against such parties arising out of or related to your use of the Website or your breach of these Terms of Use.
- 15. Assignment.** You may not assign or transfer these Terms of Use, or any of your rights or obligations hereunder, including, but not limited to, your Account, without the prior written consent of Track, and any attempted assignment or transfer without Track’s prior written consent shall be null and void. All of the terms and provisions of these Terms of Use shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns.
- 16. Governing Law.** These Terms of Use shall be governed by, construed and enforced according to the laws of the State of Minnesota, without regard to its conflict or choice of law principles; provided that to the extent the substantive and procedural laws of the United States would apply to these Terms of Use, they shall supersede the application of Minnesota law. Subject to Section 17 below, any action arising out of or relating to these Terms of Use shall be brought only in the state or federal courts of Hennepin County, Minnesota, and all parties expressly consent to such court’s jurisdiction and irrevocably waive any objection with respect to the same, including any objection based on forum non conveniens. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms of Use.
- 17. Arbitration & Class Waiver.** If any claim arising out of or related to these Terms of Use and/or the Website cannot be settled by the disputants, the claim shall be resolved pursuant to informal arbitration by an arbitrator selected under the Commercial Arbitration Rules of the American Arbitration Association (as then in effect for expedited proceedings) and located in Hennepin County, Minnesota, and such arbitration shall be conducted in that same location under such rules. Notwithstanding the foregoing, no disputant shall be required to seek arbitration regarding any cause of action that would entitle such disputant to injunctive relief. Each of the disputants shall be entitled to present evidence and argument to the arbitrator. The arbitrator shall permit reasonable pre-hearing discovery of facts, to the extent necessary to establish a claim or a defense to a claim, subject to supervision by the arbitrator. The determination of the arbitrator shall be conclusive and binding upon the disputants and a court judgment upon the same may be entered in any court having competent jurisdiction thereof. The arbitrator shall give written notice to the disputants stating the arbitrator’s determination, and shall furnish to each disputant a signed copy of such

determination. Subject to Section 20 below, the expenses of arbitration shall be borne equally by the opposing disputants. ALL PARTIES EXPRESSLY WAIVE THEIR RIGHTS AND ABILITIES TO MAINTAIN A CLASS ACTION OR SIMILAR PROCEEDING IN ANY FORUM, INCLUDING, BUT NOT LIMITED TO, ARIBTRATION AND COURT, AND ANY AND ALL CLAIMS MAY ONLY BE BROUGHT IN A PARTY'S INDIVIDUAL CAPACITY AND NOT AS A MEMBER OF ANY PURPORTED CLASS ACTION OR SIMILAR PROCEEDING.

- 18. Jury Waiver.** THE PARTIES VOLUNTARILY, KNOWINGLY AND INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING WHICH MAY RIGHTFULLY BE BROUGHT IN COURT ARISING OUT OF OR RELATED TO THESE TERMS OF USE AND/OR THE WEBSITE, REGARDLESS OF WHETHER SUCH ACTION OR PROCEEDING CONCERNS ANY CONTRACTUAL, TORTIOUS OR OTHER CLAIM. YOU ACKNOWLEDGE THAT YOU UNDERSTAND THE LEGAL EFFECT OF THIS WAIVER.
- 19. Personal Information.** Track collects and uses your personal information in accordance with Track's Privacy Policy which is incorporated herein by reference. To access Track's Privacy Policy, [CLICK HERE](#).
- 20. Costs of Litigation.** To the extent not prohibited by law, you shall be responsible for all charges, fees and expenses (including reasonable attorney's fees) incurred by Track in enforcing or attempting to enforce its rights hereunder, regardless of whether suit is commenced. In the event applicable law would convert this provision into a bilateral (i.e. "prevailing party") fee shifting provision, this provision shall be deemed severed from these Terms of Use and the remainder of these Terms of Use will remain in full force and effect.
- 21. Suspension, Termination & Cancellation.** Track reserves the right, in its sole discretion, to take any of the actions set forth in this Section 21. These actions include the right to suspend or terminate the Website and/or your Account without notice for any reason, including, but not limited to, if Track believes that you are in violation of any of the provisions of these Terms of Use. Track reserves the right to demand proof of eligibility at any time, and suspend or terminate your Account if satisfactory evidence of eligibility is not promptly provided. Track may deny you access to areas of the Website requiring an Account if Track has grounds to suspect that the user information you have provided is inaccurate, not current or incomplete. If Track believes your Account and password are being used without your authorization, Track may, without notice, deny or block a transaction made through your Account and password until such time as Track is satisfied that only you are accessing your Account. In the event you desire to terminate your Account you may do so by contacting Track as set forth in Section 25 below.
- 22. Force Majeure.** Track shall not be responsible for delays or failures of performance resulting from acts beyond the reasonable control of Track. Such acts shall include, but are not limited to, acts of God, strikes, public internet and private internet connection failures, lockouts, riots, acts of war, acts of terror, epidemics, government regulations, fire, communication line failures, power failures, earthquakes and other disasters.
- 23. Miscellaneous.** Section headings are not to be considered part of these Terms of Use. They are included solely for convenience and not intended to be full or accurate descriptions of the content hereof. Except as otherwise expressly set forth herein, should any provision of these Terms of Use be held invalid or unenforceable, such invalidity will not invalidate the whole of these Terms of Use, but rather that invalid provision will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of these Terms of Use will remain in full force and effect; provided that if the last sentence of Section 17 above is held invalid or unenforceable in a particular scenario, all of Section 17 above shall be deemed severed from these Terms of Use for such scenario. Each party hereto agrees to execute and deliver such other documents, instruments and agreements and to take such further action as is reasonably requested by the other party to consummate or to evidence the consummation of the transactions contemplated herein. These Terms of Use constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to the subject matter hereof. There are no warranties, representations or agreements among the parties with respect to subject matter hereof, except as set forth or referred to herein. For the avoidance of doubt, these Terms of Use govern your use and access to the Website and Track's other services and products are subject to the applicable agreement with Track. Nothing in these Terms of Use is intended to confer upon any person other than the parties hereto, and their respective heirs, successors and permitted assigns, any rights or remedies under or by reason of these Terms of Use. Any and all rights and obligations contained in these Terms of Use which by their nature and/or context are intended to survive termination of these Terms of Use shall so survive, including, but not limited to, the limitation of liability, disclaimer and indemnification. No breach or right under these Terms of Use may be waived unless in writing signed by the waiving party. The Website may not be available in all areas and are subject to applicable laws and regulations. If you are accepting these Terms of Use on behalf of an entity, you represent and warrant that you are an authorized representative of such entity and have the ability to bind such entity to these Terms of Use.
- 24. Intellectual Property.** If you find or suspect an intellectual property infringement (e.g. trademark, copyright), please report it to Track using the contact information located in Section 25 below and include the following information. Upon receiving such information, Track will investigate the matter.
 - Your name, address, telephone number and email address so Track may contact you for further information.

- A description of the intellectual property in question.
- A description of where the intellectual property is located on the Website.
- If applicable, a statement by the owner that they believe the intellectual property in question was used without their permission.

25. Track Contact Information. If you have any questions or comments regarding these Terms of Use or the Website, or if you need to contact Track for any reason, Track's contact information is as follows:

Track Hospitality Software, LLC
Attn: Website Administrator
9900 Hemingway Avenue South
Cottage Grove, Minnesota 55016
support@trackhs.com
Phone: 651.757.4900
Fax: 651.578.0383