**AGREEMENT WITH REGARD**
**TO THE**
**TRACKBEE SOFTWARE**

**Date of latest revision: March 2023**

This Agreement contains the terms and conditions in connection with the use of the e-commerce marketing Software solution provided by Trackbee and includes this Agreement, the Terms of Use, the Privacy Policy, the Data Processing Agreement and other terms and conditions displayed to Contractor at the time Contractor first uses (certain) features on the Website. These terms and conditions may be amended by Trackbee from time to time.

Contractor agrees that by signing up, registering, accessing or using the Software (including any content or information provided as part of the use of the Website or the Software) it is entering into a legally binding Agreement. This Agreement is entered into between EC Solutions B.V., registered in the trade register of the Chamber of Commerce under number 87446448, having its registered office in Enschede and its place of business in (7511 NG) Enschede at Boulevard no. 1945 47 and Contractor.

If Contractor does not agree to this Agreement, the Terms of Use, the Privacy Policy, the Data Processing Agreement and other terms, Contractor should not sign up, register, access and/or use the Software, in any way. By signing up, registering, accessing and/or using the Software Contractor expressly agrees to this Agreement, the Terms of Use, the Privacy Policy, the Data Processing Agreement.

Contractor also confirms that it is over eighteen (18) years of age and fully capable and competent to enter into this Agreement, the Terms of Use, the Privacy Policy, the Data Processing Agreement and other terms and conditions. Accordingly, the Website and Software are intended for use by adults (eighteen (18) years of age or older) and for professional/business (B2B) use only. In case Contractor is younger than eighteen (18) years of age it is prohibited to sign up, register, access and/or use the Software.

**Article 1. Definitions**

In this Agreement, the following terms are used in the following meanings unless expressly stated otherwise:

1.1. Trackbee: EC Solutions B.V., registered in the trade register of the Chamber of Commerce under number 87446448, having its registered office in Enschede and its principal place of business in (7511 NG) Enschede at Boulevard no. 1945 47.

1.2. Contractor: the other party, being a (legal) person acting in the context of profession or business, who enters into this Agreement with Trackbee.

1.3. Agreement: the binding agreement between Trackbee and Contractor, in any form, as well as the amendment(s) and addition(s) thereto and any (further) instructions given/granted under the Agreement.

1.4. Terms of Use: the Terms of Use inextricably linked to this Agreement, as included and specified in Annex I and findable on the Website.

1.5. Privacy Policy: the Privacy Policy inextricably linked to this Agreement, as included and specified in Annex II and available on the Website.

1.6. Data Processing Agreement: the Data Processing Agreement inextricably linked to this Agreement, as included and specified in Annex III and findable on https://trackbee.io/data-processing-agreement.

1.7. Annex(es): the documents attached to this Agreement which form an integral part thereof and in which the agreements laid down in this Agreement are specified in more detail.

1.8. Licence: the worldwide, non-exclusive, non-transferable, revocable and limited right to sign up, register, access and/or use the Software the Software.

1.9. Party(ies): Trackbee, Contractor or both Parties.

1.10. Fee: the Fee agreed between Parties as included and specified in article 5.

1.11. Software: the e-commerce marketing Software solution conceived, developed, created, operated and marketed by Trackbee and offered via the Website.

1.12. Written or In Writing: the term "Written" or ‘’In Writing’’ shall also include by email or other electronic medium.

1.13. Website: the Website operated by Trackbee on which the Software is offered, being https://trackbee.io.

**Article 2. Subject of this Agreement**

1.1. Trackbee provides e-commerce marketing software as a service solution via the Website. This e-commerce marketing software creates a data link between Contractor's webshop and the Software, after which the data is automatically sent by Contractor's webshop to the Software. Trackbee offers Contractor various functions, tools and capacities of the Software that are tailored to the specific needs of Contractor. The various functions, tools and capacities of the Software are listed and specified on the Website.

1.2. Trackbee grants Contractor, during the term of this Agreement, a License to the Website and the Software.

1.3. The Licence grants Contractor the following limited rights:

I. to use the Software by logging into it via the Website or a customised gateway;
II. to upload data to and download data from the Software;
III. use the Software's built-in functions and tools to retrieve, collect, process and analyse data from the Contractor;
IV. view and analyse the results of data processing through the Software or by downloading the reports and data.

**Article 3. Account**

2.1. To use the Software, Contactor must first create a user account on the Website. When registering, Contractor chooses a username and password. Both the user name and password are strictly personal and non-transferable. Contractor therefore undertakes not to pass on the

access data to third parties and to take appropriate measures to keep them confidential and prevent unauthorised use of the user account by third parties.

2.2. Contractor is solely responsible for the confidentiality of its account and login details. By extension, Contractor is solely responsible for all activities that take place under its account and/or through the use of its login details.

2.3. In the event Contractor becomes aware of any unauthorised use of its login details and/or account, Contractor shall immediately notify Trackbee.

2.4. Contractor shall be solely responsible for using software to detect and disinfect viruses, spyware, malware and other harmful or otherwise unwanted components of all downloads that may compromise the security of its account or otherwise cause damage.

**Article 4. Agreement**

4.1. This Agreement shall become effective upon Contractor's express acceptance of this Agreement and Trackbee's acceptance and confirmation of the Agreement by granting Contractor access to the Software.

4.2. Parties therefore expressly agree that a valid Agreement can also be established by using electronic forms of communication. The absence of a signature does not affect the binding force of the offer and its acceptance.

4.3. Any deviation from or amendment to the Agreement shall bind Trackbee only if agreed In Writing between Parties.

4.4. If Contractor refers to multiple persons or legal entities, they shall all be jointly and severally liable for compliance with the Agreement. If the Agreement is concluded by a third party on behalf of Contractor, such third party guarantees that Contractor has accepted these conditions, in the absence of which the third party shall be bound by these conditions as if it were Contractor itself.

4.5. Subject to Trackbee's express Written consent, Contractor shall be prohibited from assigning any rights or obligations under the Agreement to any third party.

4.6. Trackbee shall be entitled to make changes and updates to the Website and the Software.

4.7. Trackbee shall be entitled to refuse a request to enter into an Agreement in whole or in part for reasons of its own, or to suspend the performance of Agreements already in force. This authority may be invoked inter alia due to the content, nature, purport or form of such request, as well as due to technical objections, refusal of payment or advance payment, or conflict of the request with the interests of Trackbee or third parties including other Contractors.

**Article 5. Prices and payments**

5.1. Contractor shall pay a Fee to Trackbee. The Fee shall be based on Trackbee's price list taking into account the functions, tools and capabilities of the Software chosen by Contractor. Trackbee's current price list is available at https://trackbee.io/pricing.

5.2. Annually, the Fee as of 1 January of each calendar year - if necessary in arrears - will be indexed by Trackbee on the basis of the CBS index for ICT services. The Fee will not be changed if an indexation of prices results in lower prices than the last applicable prices. The last applicable prices will then remain unchanged.

5.3. Trackbee shall have the right, at its sole discretion, to change or increase its price list at any time. Such changes shall be available on the Website.

5.4. The Fee will be charged by means of a (monthly) invoice. The first monthly period starts on the date Contractor first purchases a paid subscription plan for its account and is repeated on the corresponding day of each subsequent month.

5.5. Contractor must ensure that, if applicable, a SEPA direct debit authorisation is correctly completed and signed and that there is always sufficient balance on the relevant bank account to enable Trackbee to actually collect amounts due to it. Unjustified reversal of a direct debit by Contractor shall be for its account. The direct debit will take place before or no later than the first day of the following month. Each payment term should be regarded as a fatal term of payment.

5.6. Payment shall be made in euros (€) and within fourteen (14) days of the invoice date, being the fatal term of payment.

5.7. Contractor shall be required to provide Trackbee with valid credit card details and authorisation to prepare the invoice for its use of the Software. If Contractor pays the invoice by bank transfer, its payment shall be made to Trackbee's bank account number specified in the invoice.
5.8. Contractor may not invoke any right of discount, suspension or withholding. Compensation by Contractor shall be permitted only if Trackbee has acknowledged Contractor's claim In Writing.
5.9. If Contractor fails to pay the Fee due to EC Solutions within the period set out in paragraph 4 of this article, Contractor shall be in default by operation of law and shall be liable to Trackbee for contractual interest of 1.5% per month (cumulative) on the amount due, with each month commenced counting as a full month, without prejudice to any other rights that Trackbee may enforce against Contractor for non-payment or late payment.
5.10. If Trackbee is forced to outsource its claim, all costs related thereto shall be borne by Contractor, both judicial and extrajudicial, with a minimum of € 750.00 (seven hundred and fifty euros). The amount to be claimed in this case means the total of the outstanding invoice amounts plus the (contractual) interest due and the collection costs.
5.11. Payments, regardless of the appointment, shall first be deemed to have been made in settlement of the interest and costs that have fallen due, and subsequently in settlement of the oldest, outstanding invoice.

**Article 6. Prohibitions**

6.1. Contractor shall only use the Website and the Software in accordance with applicable laws and regulations.
6.2. Contractor is expressly prohibited from accessing or attempting to access the Website and/or the Software by any means other than through the interface of the Website.
6.3. As an extension of what is provided in paragraph 2 of this article, Contractor is expressly prohibited from obtaining or attempting to obtain unauthorised access to Trackbee's computer systems and/or participating in activities that disrupt, degrade, interfere with the quality of the Software (or the servers and networks related to the Website), interfere with its performance or impair its functionality.
6.4. In the event of a breach of one or more provisions of this article by Contractor, Contractor shall owe Trackbee an immediately due and payable penalty of € 50,000.00 (in words: fifty thousand euros) plus a penalty of € 5,000.00 (in words: five thousand euros) for each day that the breach continues. Trackbee shall be entitled to claim additional compensation if the damage exceeds the penalty amount.

**Article 7. Disclaim of warranties**

7.1. To the fullest extent permitted by applicable laws and regulations, Trackbee disclaims all warranties, express or implied, with respect to the Website or information thereon, the Software or its products, or otherwise with respect to this Agreement, including any implied warranties of merchantability, fitness for a particular purpose, or arising in the course of trade or course of performance.
7.2. Trackbee, further to what is provided in paragraph 1 of this article, disclaims any warranty as to whether the Website and/or Software or information will operate uninterrupted and error-free, or whether the servers are free of viruses, spyware, malware or other harmful components. Further, Trackbee makes no representation or warranty as to the results that may be obtained through the Software, the Website and/or associated products. No advice or information, whether oral or Written, given by Trackbee through the Software, the Website and/or otherwise shall create any warranty, representation and/or guarantee not expressly stated herein.

**Article 8. Duration and termination Agreement**

8.1. This Agreement shall commence on the date Contractor first accessed the Software and is entered into for an indefinite period of time.
8.2. Access to the Software shall be provided to Contractor on a monthly basis, whereby this Agreement may be terminated at any time – In Writing with acknowledgement of receipt – by either Party subject to a notice period of one (1) month. Upon termination, Contractor will lose the right to access or use the Software and the Licence will be revoked. In case of termination before the end of the billing period, the amounts paid for the Software will not be refunded.

8.3. Trackbee shall be entitled to terminate this Agreement In Writing with immediate effect if Contractor fails to perform its obligations under this Agreement.
8.4. Trackbee is further entitled to terminate this Agreement In Writing with immediate effect if any of the following circumstances occur:
   I. Contractor’s bankruptcy is filed for;
   II. Contractor is declared bankrupt;
   III. Contractor is granted suspension of payment (provisional or otherwise);
   IV. Contractor’s business is terminated or transferred in whole or in part to a third party.
8.5. If, at the time of termination, Trackbee has already performed services in execution of this Agreement, such services and the related payment obligations of Contractor shall not be subject to cancellation. In addition, Trackbee may, where applicable, be entitled to compensation of its full damages under other provisions of this Agreement.

**Article 9. Liability and damages**

9.1. Trackbee shall not be liable for damage incurred by Contractor unless such damage is the direct result of an attributable failure or wrongful act by Trackbee. In such case Trackbee shall only be liable to the extent such liability is covered by Trackbee's insurance, up to the amount of the payment made by the insurer.
9.2. If, for whatever reason, Trackbee's insurer does not pay out or the damage is not covered by the insurance, liability shall be limited to the invoice amount of the Agreement up to a maximum of € 5,000.00 (five thousand euros).
9.3. Trackbee shall not be liable for any consequential damage, indirect damage, trading loss, loss of profits, immaterial damage and/or punitive damage. Trackbee shall further not be liable in case of force majeure, as defined in article 10 of this Agreement. Trackbee shall also not be liable for damages concerning errors made because Contractor or a third party provided incorrect or incomplete information.
9.4. Contractor shall indemnify Trackbee against any claims from any other party that may arise due to Contractor's failure to perform or properly perform any obligation under this Agreement. This shall not apply if (i) Contractor can demonstrate that the damage is not related to a culpable act or omission attributable to it or (ii) such damage was caused by intent or deliberate recklessness on the part of Trackbee. This indemnification shall also apply with respect to third parties and employees of Trackbee engaged by Trackbee, as well as with respect to companies affiliated with Trackbee.
9.5. Any rights of action and recourse shall be exercised by Contractor and/or its affiliates only against Trackbee. No action, claim, claim for damages or otherwise in connection with this Agreement shall be brought by Contractor against Trackbee's (current or former) employees, directors and (directors of) shareholders. They may rely on this provision and, if necessary, the foregoing shall apply as an irrevocable third-party clause for no consideration.
9.6. If Trackbee uses a third party for the performance of this Agreement, this shall be under the sole responsibility of Trackbee. Contractor and/or its affiliates shall not hold a third party involved in the execution of this Agreement, its (current or former) employees, directors thereof and (directors of) shareholders thereof liable in connection with the execution of this Agreement. They may rely on this provision and, if necessary, the foregoing shall apply as an irrevocable third-party clause for no consideration. Upon breach of this provision, Trackbee shall be entitled to compensation for damages and costs arising therefrom.
9.7. If this Agreement is performed for the benefit of several legal entities or natural persons, the limitation of liability in respect of this Agreement will apply to all the legal entities or natural persons concerned jointly, and they must divide the maximum amount of damages to be paid among themselves.
9.8. Contractor must report any damage for which Trackbee may be held liable to Trackbee as soon as possible but in any event within ten (10) days of the damage occurring, all under penalty of forfeiting any right to compensation for the damage.
9.9. Notwithstanding the statutory limitation periods, Contractor's rights of action arising from the Agreement and other powers vis-à-vis Trackbee shall lapse after the expiry of one (1) year after the damage for which Contractor holds Trackbee liable first manifested itself and shall in any event lapse after the expiry of three (3) years after the damage-causing event occurred.

**Article 10. Force majeure**

10.1. Circumstances beyond the control and control of Trackbee, whether or not foreseeable at the time of entering into this Agreement, which are of such a nature that compliance with this Agreement can no longer reasonably be required of Trackbee, shall constitute force majeure, irrespective of whether permanent or temporary, and shall release Trackbee from its obligations to perform.

10.2. Force majeure shall mean in any case: war, riots, pandemics, molestation, terrorism, natural disasters, storm damage, fire, earthquakes, floods, abnormal weather conditions, snow, snowfall, frost, icy conditions, work strikes, occupations, lockouts or lack of personnel, theft of goods, computer failures hacks in the systems and/or data and the possible consequences thereof, disruptions in electricity supplies, internet connections and cable, telephone or other communication networks such as e-mail, default of third parties engaged by Trackbee, as well as any hindrance caused by governmental measures.

10.3. In the event of force majeure, Trackbee shall be entitled, without judicial intervention, to dissolve this Agreement in whole or in part, without Contractor being entitled to claim compensation.

**Article 11. Intellectual property rights**

10.1. Contractor expressly acknowledges that all intellectual property rights relating to the Website and Software belong to Trackbee, its suppliers or other right holders. Trackbee grants Contractor the License for the purposes described in this Agreement and subject to the express terms and conditions of this Agreement and the Terms of Use.

10.2. Intellectual property rights shall mean patent, copyright, trademark, trade name, design and model rights and/or other (intellectual) property rights, including sui generis rights to databases and topography of semiconductor products, or other products, as well as, whether patentable or not, technical and/or commercial know-how, methods, concepts and trade secrets.

10.3. With respect to the Website and Software developed by Trackbee and in respect of which Trackbee owns or may assert copyright or other intellectual property rights, it reserves all intellectual property rights.

10.4. Further to paragraph 3 of this article, without Trackbee's express Written consent, Contractor shall not be permitted to disclose, reproduce and/or exploit the Website and Software, with or without the involvement of third parties.

10.5. Contractor shall notify Trackbee In Writing as soon as possible of any liability or legal action pending against it based on the assertion that the goods sold by Trackbee infringe any applicable intellectual property right.

10.6. Trackbee shall not accept any liability due to any infringement referred to in paragraph 5 of this article if the infringement is related to Contractor having adapted or modified the Website and Software without Trackbee's express Written consent.

10.7. The Website and all parts thereof, with the exception of certain hyperlinks, are the property of Trackbee. Contractor may not disclose, copy or store the Website or any part thereof without Trackbee's express Written consent. Such permission is not required for personal, non-commercial use.

10.8. In the event of breach of one or more provisions of this article by Contractor, Contractor shall owe Trackbee an immediately payable penalty of € 50,000.00 (in words: fifty thousand euros) plus a penalty of € 5,000.00 (in words: five thousand euros) for each day that the breach continues. Trackbee shall be entitled to claim additional compensation if the damage exceeds the penalty amount.

**Article 12. Terms of use, Privacy policy and Data Processing Agreement**

11.1. This Agreement is inextricably linked to the Terms of Use, the Privacy Policy and the Data Processing Agreement and therefore forms an inseparable whole. The Terms of Use are attached to this Agreement as Annex I and, the Privacy Policy as Annex II and the Data Processing Agreement as Annex III.

11.2. Contractor hereby confirms that the aforementioned Terms of Use, Privacy Policy and Data Processing Agreement have been made available to it, that it has taken cognisance thereof and has accepted their content and validity on this Agreement and all further agreements.

11.3. Any general terms and conditions of Contractor shall not apply to this Agreement and any further agreements and are therefore expressly rejected by Trackbee.

**Article 13. Miscellaneous**

12.1. Parties declare that, upon signing this Agreement, there are no known facts and/or circumstances that could prevent the proper execution of this Agreement.
12.2. Provisions that by their nature and purport are intended to continue after the termination of this Agreement will continue to apply and be applicable after the termination of this Agreement.
12.3. If one or more of the provisions in this Agreement is invalid, contrary to the law or unenforceable, this will not affect the validity of the remaining provisions. Parties will negotiate in good faith to find a new provision to replace the invalid or unenforceable provision that follows the purport of the invalid or unenforceable provision as closely as possible.
12.4. The headings used in this Agreement with the various articles are for convenience and reference purposes only and shall have no effect and meaning on the interpretation of this Agreement and cannot be taken into account in the interpretation thereof.
12.5. Amendments and/or additions to this Agreement shall only have legal force if they are recorded In Writing and accepted In Writing by Contractor.

**Article 14. Applicable law and dispute resolution**

13.1. This Agreement is exclusively governed by Dutch law.
13.2. If Contractor is established within the European Economic Area (hereinafter: "EEA"), all disputes arising from or relating to this Agreement and all agreements between Parties arising therefrom shall be settled exclusively by the District Court of Overijssel, location Enschede (the Netherlands).
13.3. If Contractor is not established within the EEA, all disputes arising from or related to this Agreement and all resulting agreements between Parties shall be settled exclusively in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (NAI). The arbitral tribunal will consist of one arbitrator, who will be appointed in accordance with the list procedure. The place of arbitration will be Amsterdam. The proceedings will be conducted in English and the arbitral tribunal will decide according to the rules of Dutch law.

**Article 15. Annexes**

14.1. The following Annexes are attached to this Agreement:
Annex I: Terms of Use.
Annex II: Privacy Policy.
Annex III: Data Processing Agreement.
14.2. Between this Agreement and the Annexes, the following order of precedence shall apply In case of conflict: (i) Agreement, thereafter (ii) Terms of Use, thereafter (iii) Data Processing Agreement and thereafter (iv) Privacy Policy.