



# CUSTOMER SERVICES AGREEMENT

Account No.:   
(Official Use Only)

**THIS AGREEMENT is effective and services are to begin** as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. This Agreement is executed by and between Trackers, Inc. d/b/a Trak-1 Technology ("TRAK-1"), a Texas corporation, having its address of 6060 Richmond #170, Houston, Texas 77057, through its authorized agent, and the party identified below ("Customer").

## Customer Information

Customer Name:

Physical Address:

City:  State:  Zip:

Type of Business: (Check One)  Proprietorship  Partnership  For Profit Corp.  Non-Profit Corp.  LLC  Association

List All Business Activities:

Customer Contact Name:  Title:

Phone Number:  Fax Number:

Email:

Member or Affiliate of Other Trak-1 Customer:  YES  NO Name:

## Billing Information

Billing Contact:

Billing Address:

City:  State:  Zip:

Phone:  Fax:

Credit Card Type: MC VISA AMEX Credit Card #:

Name on Credit Card:

Credit Card Billing Address:

City:  State:  Zip:

## Service Details

Check all that apply and complete Customer Permissible Purpose Certification, attached as Exhibit "A":

Residential Screening  Pre- Employment Screening  Non-Profit Volunteer Screening

Other (please describe): \_\_\_\_\_

## **RECITALS**

TRAK-1 provides background screening services, including but not limited to pre-employment, volunteer and resident applicant screening, via the TRAK-1 Background Verification System. The TRAK-1 web-based automated background screening software system compiles a consortium of individual public records applicable to performing background screening on individuals into a summary report to serve as a verification and risk management tool for evaluating the credit worthiness and/or the criminal history of an individual.

The TRAK-1 software system provides the Customer with a combination of the following public records based on Customer's individual criteria and individual requests: Consumer Credit Reports; Criminal Records; Eviction Records; Negative Check Writing History; limited Rental Performance Data; and limited Employment Information. The TRAK-1 software system assimilates any combination of the aforementioned public records and provides information on an individual in a single reporting format.

Any references to a Multi-State or National Criminal Search shall not be construed as covering all jurisdictions located throughout the United States. TRAK-1 relies totally on various public information reporting agencies and TRAK-1 cannot and does not guarantee the accuracy or validity of such data provided by such third parties.

Customer desires to purchase from TRAK-1 the background screening services described above, and TRAK-1 desires to provide Customer with the same pursuant to the terms and conditions of this Agreement. Therefore, the parties agree as follows:

## **TERMS AND CONDITIONS OF SERVICE**

### **1. REPORTS AND COMPLIANCE RELATED REQUIREMENTS.**

- a. TRAK-1 PROVIDES REPORTS.** When Customer runs a background check using the Trak-1 Software, TRAK-1 provides to Customer a consumer report ("Report(s)"), as defined in the federal Fair Credit Reporting Act ("FCRA"), as it exists or is hereafter amended. Customer understands that in addition to the requirements found within this Agreement, the FCRA and certain state laws govern the use of Reports.
- b. CUSTOMER ACKNOWLEDGES FCRA OBLIGATIONS.** Customer acknowledges having received and read the "Notice to Users of Consumer Reports: Obligations of Users Under the FCRA," as provided in your Customer Compliance Package, as prescribed by the Federal Trade Commission. Customer agrees to abide by the laws and/or regulations set forth in this Notice and in all materials provided in the Customer Compliance Package.
- c. CUSTOMER REQUESTS REPORTS ONLY IF AUTHORIZED.** Customer agrees and certifies that Customer will only request a Consumer Report from TRAK-1 for Applicants who have authorized such Report to be provided, as further discussed in paragraph (1)(f) below. For the purposes of this Agreement the term "Applicant" shall include a consumer, tenant, prospective tenant, former tenant, credit applicant, employee, prospective employee, volunteer, or prospective volunteer.
- d. CUSTOMER AGREES TO USE REPORTS ONLY FOR PERMISSIBLE PURPOSES.** Every time Customer requests a Report from TRAK-1, Customer certifies that it is obtaining the Report for its exclusive one-time use for a "permissible purpose" as defined in Section 604 of the FCRA or this Agreement, which is defined to include an intent by Customer: (1)(a) to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or (2) to use the information for employment; or (3) to use the information for volunteer purposes. **Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under Title 18, United States Code, imprisoned for not more than 2 years, or both.**
- e. WRITTEN AUTHORIZATION OBTAINED IN ADVANCE BY CUSTOMER.** Customer shall abide at all times by applicable provisions of the FCRA. Customer shall obtain an Applicant's written authorization *prior to* requesting a Report, whether or not federal or state law requires such Applicant's written authorization, and will provide the Applicant with a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act," as prescribed by the Federal Trade Commission ("FCRA Summary of Rights"), a current sample of which is provided in the Customer Compliance Package. Written authorizations shall include language that permits Trak-1 to provide an applicant's information to various local, state and/or federal government agencies, including without limitation, various law enforcement agencies. Additionally, if Customer wishes to use Reports for collection purposes on a former tenant, written authorizations shall also include language that authorizes Customer to obtain Reports for that purpose. All Applicant authorizations required by law, or this Agreement, shall be retained by Customer for seven (7) years. Evidence of such written authorizations shall be made available for inspection by Trak-1 upon demand.
- f. WRITTEN DISCLOSURE PROVIDED IN ADVANCE BY CUSTOMER FOR INVESTIGATIVE REPORTS.** Customer certifies that if it requests Trak-1 to produce an investigative Report containing information as to the character, general reputation, personal characteristics, and/or mode of living of an Applicant, Customer will: A) disclose in writing to the Applicant that an investigative Report containing the above listed information may be obtained; B) include in the written disclosure that the Applicant has the right to request the nature and scope of the investigative Report; C) provide, in addition to the disclosure, a copy of the Applicant's rights in the format approved by the FTC, and D) within five (5) days of the Applicant's request for information as to the nature and scope of the investigative Report, provide such disclosure in the manner dictated by the FCRA.
- g. CUSTOMER'S WRITTEN CERTIFICATION REGARDING EMPLOYMENT RELATED REPORTS.** In the event Customer requests and/or obtains a Report for pre-employment and/or employment screening purposes, Customer shall abide by the terms set forth in the "Employer Certification" included in the Customer Compliance Package.
- h. SEX-OFFENDER REPORT CERTIFICATION BY CUSTOMER.** With regard to any Report containing **sex-offender information**, Customer shall certify prior to requesting such information that persons at risk are, at times, on or in the vicinity of the premises where, in the case of employment screening, the Applicant may work or is currently working, or, in the case of residential/tenant screening, where the Applicant may become a resident and/or tenant.

**i. RESIDENTIAL SCREENING REPORTS BY CUSTOMER.** With regard to any Report obtained in connection with housing, tenant, and/or resident screening, Customer shall not use or act upon any information in such Report in violation of the United States Fair Housing Act ("FHA"). The FHA prohibits discrimination in housing because of race or color, national origin, religion, sex, handicap, or familial status. Regarding the sale and rental of housing, no one can, on the basis of any of the protected classifications: refuse to rent or sell housing; refuse to negotiate for housing; set different terms or conditions for obtaining housing; provide different housing services or facilities; or falsely deny that housing is available for inspection, sale, or rental.

**j. REPORTS ON CANADIAN RESIDENTS.** For Reports requested by Customer concerning Applicants who are residents of Canada, or for dissemination and/or use of such Reports in Canada, Customer acknowledges having received and read the "Canadian Provincial Legislative Overview" included in the Customer Compliance Package and agrees to abide by the actual laws and/or regulations which are summarized therein.

**k. IMPROPER PURPOSES PROHIBITED.** Furthermore, Customer's employees shall be forbidden from attempting to obtain or from obtaining reports on themselves, associates, or any other person except in the exercise of their official duties.

**l. CUSTOMER PHYSICAL INSPECTION.** Federal law requires that Reports may only be provided to legitimate business entities. Unless Customer is a recognized or regional entity, TRAK-1, their representative, or an independent third party on behalf of TRAK-1, may conduct a physical inspection of Customer's premises, such inspection to be non-intrusive in nature, exclude any confidential information and secured areas, and whose purpose is solely to verify Customer is a business enterprise. TRAK-1 may also request Customer's business license or other form(s) of identification before service may commence. Customer is not obligated to permit inspection and/or provide identification; however, TRAK-1 reserves the right not to provide Reports to Customer in such circumstances.

## **2. CONFIDENTIALITY AND RELATED ACCESS TO DATA AND DATA STORAGE REQUIREMENTS OF CUSTOMER.**

**a. CONFIDENTIALITY REQUIRED.** All Reports shall be used in a strictly confidential manner. Except as required by law, no information from Reports will be revealed to any other person, save for those whose duty requires they review the information in relation to a Permissible Purpose for which the Report was ordered.

**b. ACCESS BY APPLICANT REQUIRED.** Notwithstanding the foregoing, this restriction shall not prohibit Customer in its own discretion from providing to an Applicant, who is the subject of an adverse action by the Customer, a copy of such Report and a FCRA Summary of Rights, samples of which are provided in the Customer Compliance Package.

**c. PROHIBITED ACTIVITIES.** Customer warrants that it will not, either directly or indirectly, itself or through any agent or third party: A) request, compile, store, maintain or use information obtained in Report to build its own database; B) resell any information obtained from Reports; and/or C) copy or otherwise reproduce the information in the Report.

**d. RESTRICTED ACCESS AND SECURITY MEASURES REQUIRED.** The ability to access Reports shall be restricted to only a few key personnel, and any terminal devices used to obtain Reports should be placed in a secure location within Customer's facility in such a manner as to make unauthorized access difficult. Customer must take precautions to secure any system or device used to access TRAK-1 services. Any devices/systems used to obtain Reports from TRAK-1 should be turned off and locked after normal business hours or when unattended by key personnel. Customer will require that each user of Customer's system access software will be assigned a unique logon password. Under no circumstances should unauthorized personnel have knowledge of any passwords used to access TRAK-1 services. Customer must protect account numbers and passwords in such a way as to be known only to key personnel. Customer shall not post in any manner passwords or account numbers within Customer's facility. Account numbers and passwords are not to be discussed by telephone to any unknown caller, even if the caller claims to be an employee of Customer. Any system access software Customer may use, whether developed by TRAK-1 or purchased from a third party vendor, must have account numbers and passwords "hidden" or embedded so that the passwords and account numbers are known only to supervisory personnel or other personnel authorized to use the services. Customer is responsible for the security of assigned codes, and is hereby notified of the possibility of theft or other form of compromise of Customer's assigned codes, which may or may not be detected, and of the possibility of use of a stolen or compromised assigned code to forge Customer's access to TRAK-1 services.

**e. SECURITY REQUIREMENTS FOR ELECTRONIC FILES.** All hard copies of electronic files of Reports are to be secured within Customer's facility and must be protected against release or disclosure to any unauthorized persons. Hard copy Reports are to be shredded, destroyed, or rendered unreadable, when no longer needed and when Customer is permitted to do so by applicable regulation(s) or this Agreement. Electronic files containing Report data and/or information will be completely erased or rendered unreadable when no longer needed and when destruction is permitted by applicable regulation(s) or this Agreement.

**3. TRAK-1 ACCESS TO CUSTOMER RECORDS.** Customer shall provide TRAK-1 with access to Customer's records for purposes of verifying compliance with applicable laws. Specifically, TRAK-1 may request copies of authorizations and disclosures required by this Agreement to ensure compliance with Customer's obligations under this Agreement.

**4. INDEMNIFICATION.** Customer shall indemnify, defend and hold TRAK-1 harmless from and against any and all causes, actions, claims, litigation, demands, liabilities, loss, damage or expense of whatsoever kind and nature, including but not limited to attorney's fees and any expenditures, which may be asserted against TRAK-1 or which TRAK-1 may at any time sustain or incur by reason or in consequence of Customer's request for Reports supplied by Trak-1, use of Report(s) supplied by Trak-1 or request by Customer for Trak-1 to contact the individual about whom a Report is requested for the purpose of obtaining information that Customer failed to supply to Trak-1, or by Customer's breach of any provision contained within this Agreement. TRAK-1 shall indemnify, defend and hold Customer harmless from and against any and all causes, actions, claims, litigation, demands, liabilities, loss, damage or expense of whatsoever kind and nature, which may be asserted against Customer by reason or in consequence of TRAK-1's intentional violation of any obligation of TRAK-1 under this Agreement.

**5. SOFTWARE** TRAK-1 is the owner of the computer software program commonly known as "Trak-1 Technology" and of all copyrights, trademarks, and other legal rights and interest in the program (the "Program"). The term Program also includes all written or printed documentation regarding the Program. TRAK-1 may grant to Customer a non-transferable, non-exclusive license to use the Program subject to the terms and restrictions set forth herein, but no such act shall be construed to convey any title or ownership rights in the Program to Customer. Any license is for

the use of the Program only by the Customer at the Customer's business address set forth herein. The Customer may not distribute usernames, passwords, or copies of the Program or documentation. The Customer may terminate any license only by destroying all originals and copies of the Program. Any license will also terminate upon termination of this Agreement, in which event the Customer agrees to destroy the Program and all copies in any form.

**6. FEES AND PAYMENT.**

**a. FEES.** The fees for Trak-1 Reports are set forth on the "Schedule of Pricing" attached hereto as Exhibit "A". TRAK-1 reserves the right to change prices upon thirty (30) days prior written notice and delivered by mail, facsimile, or electronic transmission to Customer. The prices and rates for the Reports do not include any governmental fees or upcharges, nor do they include applicable federal, state or local taxes. Customer will be solely responsible for all federal, state and local taxes levied or assessed in connection with TRAK-1's provision of services, other than income taxes assessed with respect to TRAK-1's net income.

**b. PAYMENT.** Trak-1 shall invoice Customer monthly for services rendered by Trak-1 in accordance with the following terms:

- i. Customer agrees to pay TRAK-1 upon receipt of an invoice for Reports rendered during the previous calendar month according to the current rate schedules in effect, including any taxes, surcharges or add-on fees imposed directly by any municipality, government, court or other such entity.
- ii. All payments shall be due no later than the last day of the month in which the invoice is received and shall be mailed to Trak-1 at the following **BILLING ADDRESS, unless otherwise notified in writing by Trak-1:**

**TRACKERS, INC. D/B/A TRAK-1 TECHNOLOGY  
PO BOX 52028  
TULSA, OKLAHOMA 74152**

- iii. Customer specifically agrees that it shall be financially responsible for all reports issued as a result of any use of Customer's assigned access codes, whether intended or not.
- iv. In no case may Customer dispute charges appearing upon an invoice, if Customer does not provide TRAK-1 with notice of such dispute prior to 90 days from the date of the invoice.
- v. All past due amounts shall accrue interest at a rate of 1.5% per month. Accounts suspended for late payment or returned checks are subject to a \$25.00 reconnection fee.
- vi. If collection efforts are required, Customer shall pay all costs of collection, including attorney's fees.

**7. REPRESENTATIONS.** TRAK-1 functions solely as a background screening and consumer reporting agency and TRAK-1 makes no representations regarding the background, responsibility, employment capabilities, credit-worthiness or suitability for residency by any individual. TRAK-1 shall use good faith in attempting to obtain Applicant information from third party sources deemed reliable, in TRAK-1's sole judgment, but cannot and does not guarantee the accuracy of the Applicant information furnished. Because information is secured by and through fallible human sources, and that for the fee charged TRAK-1 cannot be an insurer of the accuracy of the information, Customer releases TRAK-1 and other companies from which TRAK-1 may obtain reports, and their officers, agents, employees, and contractors, from any and all liability, including without limitation, liability or damages from any negligence in connection with preparation of such reports.

**8. WARRANTY.** TRAK-1 DOES NOT WARRANT THE ACCURACY, TIMELINESS, COMPLETENESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE SERVICES, REPORTS OR PROGRAMS, AND SHALL NOT BE LIABLE TO END-USER FOR ANY LOSS, INJURY OR DAMAGE, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, OR OTHER INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR NOT AND HOWEVER CAUSED, ARISING OUT OF END-USER'S USE (OR INABILITY TO USE) REPORTS OR SERVICES, OR IN WHOLE OR IN PART BY TRAK-1'S ACTS OR OMISSIONS IN PROCURING, COMPILING, REPORTING, COLLECTING, INTERPRETING, COMMUNICATING OR DELIVERING SERVICES, REPORTS OR PROGRAMS, OR INFORMATION THEREIN. SHOULD ANY PORTION OF THE FOREGOING DISCLAIMER OF WARRANTY BE DETERMINED TO BE INVALID OR UNENFORCEABLE, OR SHOULD TRAK-1 BECOME LIABLE FOR DAMAGES ARISING UNDER THIS AGREEMENT FOR ANY OF TRAK-1'S ACTS, OF WHATSOEVER KIND, OR OMISSIONS, THEN END-USER MAY RECOVER FROM TRAK-1 ITS DIRECT DAMAGES UP TO AN AMOUNT NOT TO EXCEED THE LESSER OF THE PRECEDING THIRTY (30) DAY'S CHARGES PAID BY END-USER FOR REPORTS AND SERVICES OR \$25,000.

**9. FORCE MAJEURE** TRAK-1 SHALL NOT BE LIABLE FOR ITS INABILITY TO PERFORM, OR FOR ANY DELAY IN PERFORMING, ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT IF THAT INABILITY OR DELAY IS CAUSED BY A FORCE MAJEURE EVENT, INCLUDING, BUT NOT LIMITED TO, EQUIPMENT FAILURES, GOVERNMENT ACTION, TRAK-1'S INABILITY TO ACQUIRE DATA, SERVICES OR OTHER PRODUCTS ON TERMS ANTICIPATED BY TRAK-1, OR FOR ANY OTHER CAUSE REASONABLY BEYOND TRAK-1'S CONTROL.

**10. STATUS.** TRAK-1 and Customer will perform their obligations hereunder as independent contractors. Nothing contained within this agreement shall be deemed to create any association, partnership, joint venture, or relationship of principle and agent or master and servant between the parties.

**11. TERM.** This Agreement does not obligate Customer to use the Reports or services of TRAK-1. Customer may at anytime elect to use the same or similar Reports or services of other consumer reporting agencies without restriction. Customer and TRAK-1 agree that either party, with or without cause, may terminate this agreement at any time upon notice to the other. Additionally, TRAK-1 may unilaterally terminate this Agreement immediately or take any lesser action it believes is appropriate, including but not limited to blocking Customer's access to all services, if TRAK-1 believes in its sole judgment that Customer has failed to comply with any provision of this Agreement. No termination or expiration will relieve either party of any liability for monetary sums owing to the other.

**12. BINDING ARBITRATION.** Any dispute arising out of or relating to this Agreement or its breach will be settled by arbitration under and in accordance with the Commercial Arbitration Rules of the American Arbitration Association and governed by the laws of the State of Texas. The arbitration will be held in Tulsa, Oklahoma. The award rendered by arbitration shall be final and binding upon the parties, and judgment upon the award may be entered in any court of competent jurisdiction in the United States. This agreement to arbitrate will not prevent either party from applying to a court of competent jurisdiction for a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo or prevent irreparable harm. Each party hereby consents to the jurisdiction of the state and federal courts of Oklahoma in connection with any application for such relief.

**13. FAILURE OF ARBITRATION PROVISION.** Should the arbitration provision hereinabove fail for any reason to bind the parties to such dispute resolution, the parties expressly agree that any legal action between the parties for a claim or dispute arising out of or relating to this Agreement or its breach shall commence in a court of competent jurisdiction in Tulsa County, Oklahoma.

**14. GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Texas. Additionally, the governing law for any arbitration, or legal action in the event of the failure of the arbitration provision of this Agreement, shall be the law of the State of Texas, without reference to its conflicts of laws provisions. The parties hereby waive any objection they may have to the law and forum set forth above.

**15. SEVERABILITY.** If any provision of this Agreement is held to be prohibited or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

**16. ENTIRE AGREEMENT.** This Agreement sets forth the entire understanding of the Customer and TRAK-1 with respect to the subject matter hereof and supersedes all prior agreements, negotiations or understandings, whether oral or written, save for any service agreement or addendum executed between the Customer and TRAK-1 for Reports or services obtained for other permissible purposes not covered by this Agreement. This Agreement may only be amended by a written instrument signed by both parties. This Agreement shall not be binding on either party until accepted and signed by an authorized individual on behalf of Trak-1 or a franchisee of Trak-1.

**17. CONSENT AND AUTHORITY.** No consent, approval, or authorization of any third party is required in connection with signing and delivering this Agreement by Customer and TRAK-1, or in the consummation of any of the transactions required by this Agreement. The undersigned, on behalf of Customer and TRAK-1, has full authority to sign this Agreement.

**18. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or electronic transmission of the signed Agreement shall be legal and binding on all Parties.

**IN WITNESS WHEREOF,** Customer and Trak-1 each caused this Agreement to be executed by its duly authorized representative as of the date first written below.

**PLEASE NOTE YOUR SIGNATURE BELOW IS YOUR ACKNOWLEDGEMENT THAT YOU HAVE RECEIVED AND REVIEWED THIS CUSTOMER SERVICES AGREEMENT TOGETHER WITH ALL EXHIBITS AND THE CUSTOMER COMPLIANCE PACKAGE. YOUR SIGNATURE FURTHER REPRESENTS YOUR AGREEMENT TO THE TERMS AND CONDITIONS OF THIS CUSTOMER SERVICES AGREEMENT AND TO ABIDE BY ALL OF THE COMPLIANCE-RELATED INFORMATION IN THE CUSTOMER COMPLIANCE PACKAGE PROVIDED TO YOU.**

**TRACKERS, INC., d/b/a TRAK-1 TECHNOLOGY**

**CUSTOMER**

By: George L. Varian  
(Authorized Agent's Signature)

By: \_\_\_\_\_  
(Authorized Signature)

Printed Name: George L Varian

Printed Name: \_\_\_\_\_

Address: 6060 Richmond Ave., Suite 170

Title: \_\_\_\_\_

Address: Houston, TX 77057

Phone: 800.600.8999

Fax: 888.743.7668

Email: gvarian@trak-1.com

**FOR YOUR CUSTOMER SERVICE NEEDS, PLEASE CONTACT TRAK-1 AT 1-800-600-8999.**