



USER LICENSE AGREEMENT

Made on June 1 2021

BETWEEN **TRACKIT LLC,**

('Trackit')

AND **WHATCOM TRANSPORTATION AUTHORITY (WTA)**

('User')

BACKGROUND

- A. Trackit is the supplier of certain technology that may be used for training, evaluation, risk management of professional drivers, and asset management. Website is <https://trackitmanager.com/WTA>. Applications included Trackit Assessment, Trackit Accident.
- B. The User has not purchased or leased equipment from supplier but is inclusive of WTA owned equipment.
- C. Trackit agrees to license the Software forming part of the technology to the User in accordance with the attached terms and conditions of this Agreement.

SCHEDULE

1. Commencement Date: June 1, 2021
2. Initial Term or Term: One Year
3. Designated Equipment: None provided
4. Designated Area: Whatcom Transportation Authority issued devices
5. Warranty Period: Complete Support (see Trackit Support document)
6. License Fee \$ 15,000
7. License Renewal Fee \$ 15,000 + Annual Consumer Price Index for Urban Consumers (CPI-U); Seattle-Tacoma-Bremerton, WA, not seasonally adjusted, 1982-1984=100 reference base, All Items. Annual increase will not be adjusted more than 10% above or below the original contracted amount.
7. Designated Area of Use: United States

EXECUTED as an agreement on the above and attached Terms and Conditions

TRACKIT LLC, a , California Corporation
Mark Anderson, President

by

Les Reardanz 5/27/21
▲ Signature and date

▲ **WHATCOM TRANSPORTATION
AUTHORITY**

▲ Signature and date

▲ Name and Title

MA Anderson
Trackit LLC
President Trackit LLC
May 20, 2021

Les Reardanz, General Manager

▲

TERMS AND CONDITIONS

1. DEFINITIONS

In this Agreement except to the extent the context otherwise requires:

'Agreement' means this User License Agreement;

'Commencement Date' means the date so specified in the Schedule on the first page of this Agreement;

'Confidential Information' means all information relating to the subject matter of this Agreement, including, but not limited to:

- (a) the specifications for, or the design and content of, the Software and the Units;
- (b) the personnel, policies or business strategies of the parties;
- (c) the terms upon which the Software and Units have been supplied and installed pursuant to this Agreement and the Sale and Support Agreements;
- (d) but does not include information to the extent that:
- (e) at the date of this Agreement, is rightfully known to, or in the possession of the other party, or is, or becomes publicly available, otherwise than as a result of a breach of this Agreement;

'Designated Equipment' means the computer equipment, designated in the Schedule (b) on the first page of this Agreement, upon which the Software may be used;

'Designated Area' means the distinct area that is severed by the user at the time of purchase and designated in Schedule (7) on page one, and any other areas that have been mutually agreed to by the user and Trackit at the time of purchase or in writing in the future.

'Force Majeure' means a circumstance beyond the reasonable control of the parties and which results in a party being unable to observe or perform on time an obligation under this Agreement, including, but not limited to:

- (f) acts of God, lightning strikes, earthquakes, floods, droughts, storms, tempests, mud slides, explosions, fires and any natural disasters;
- (g) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; or
- (h) labour disputes, labour shortage, accidents and strikes, and any act of any government or agency, whether national, municipal or otherwise;

'Hosted Software' or 'Software as a Service' means software that is deployed whereby Trackit licenses an application to the customer for use on demand. Trackit may host the application on their web server or by agreement load the application on a customer server. In all cases the licensing of the application is limited to an on-demand license and requires a subscription fee be current.

'Initial Term' or 'Term' means the period specified in the Schedule

'Intellectual Property Rights' means all of the copyright, trademarks, trade names, patents, designs, any rights to have Confidential Information kept confidential, and any other intellectual property rights subsisting in or used in connection with the Units and Software and any application or right to apply for registration of any of the aforementioned rights;

'License Fee' means the fee specified in the Schedule on the first page of this Agreement, within the Designated Area.

'License Renewal Fee' means the fee specified in the Schedule on the first page of this Agreement;

'Manuals' means the user documentation relating to the Units and Software provided by Trackit;

'On-Demand' means software that delivered by Trackit for use as a hosted application and is limited to license that give the customer use of the software when the license fee is current;

'Sale and Support Agreements' means the agreement(s) Sales Agreement between the parties and the Trackit Support Program document in relation to the purchase of the Units by the User, and the support and maintenance of the Software by Trackit;

'Software' means the modules of the software developed by Trackit for use by the User with the Units within the Designated area including, without limitation, the object, source and executable codes and the Manuals;

'Support Services' means the services to be provided by Trackit to the User under the Sale and Support Agreements;

'Unit/s' means the sensor and logging units developed by Trackit as modified from time to time;

'Warranty Period' means the period so specified in the Schedule;

'Trackit' means Trackit LLC a California corporation;

2. GRANT OF LICENSE

- 2.1 Subject to the User paying the License Fee as reflected in Exhibit 1, Trackit hereby grants to the User a non-exclusive, non-transferable license to use the Software and the Manuals for the Initial Term or Term and within the Designated Area.
- 2.2 In respect of particular software components licensed to Trackit for use in the software, Trackit grants the user a sub-license to use such software components within the Designated Area.
- 2.3 At the end of the Initial Term, the agreement will automatically renew for subsequent twelve (12) month terms subject to the Parties right to terminate under the TERMINATION clause contained herein.
- 2.4 A License Renewal Fee shall be payable in the event the license is extended pursuant to this clause 2.
- 2.5 As part of this User Agreement, and a condition of software use, the Trackit Privacy Policy last updated January 8, 2021, is incorporated by reference.

3. SOFTWARE LICENSE CONDITIONS

- 3.1 The User may only use the Software in conjunction and in accordance with the normal operating procedures as notified by Trackit.
- 3.2 The Software may only be used pursuant to this Agreement:
 - (a) by the User; and
 - (b) in accordance with the Manuals.
 - (c) In the Designated Area
- 3.3 Unless specified to the contrary in writing by Trackit, the Software may not be used on equipment other than the Designated Equipment.
- 3.4 The User shall not copy, alter, modify or reproduce the Software except to the extent otherwise authorised by this Agreement.
- 3.5 The User must:
 - (a) not assign, license, sublicense, or otherwise transfer all or part of the Software or any of the benefits or obligations arising under this Agreement;
 - (b) not use the Equipment or Software outside the Designated Area
 - (c) not use any supplied mapping data in contravention of the licensing requirements of that data;
 - (d) not tamper with, disassemble, decompile, reverse engineer or attempt to reverse engineer the Software;
 - (e) if required, engage Trackit to provide the Support Services pursuant to the Sale and Support Agreements and not allow anyone other than Trackit to provide the Support Services.
- 3.6 The User acknowledges that there is no transfer of title or ownership to the User of the Software, the Intellectual Property Rights or the Manuals or any modifications, updates or new releases thereof.

4. COPYING

- 4.1 The User shall not copy or reproduce the Software or Manuals by any means or in any form without Trackit's prior written consent.
- 4.2 The User shall not modify or attempt to modify the Software or merge all or any part of the Software with any other software without Trackit's written permission.

5. TAX

- 5.1 The License Fees and any other fees payable under this Agreement are exclusive of taxes, duties and charges imposed or levied in connection with the supply and installation of the Software. Without limiting the foregoing, the User shall be liable for any taxes, duties or charges imposed on or subsequent to the Commencement Date in respect of the goods or services which are the subject of this Agreement.

6. **NEW RELEASES**

Trackit will provide updates to the software as required to maintain the operation of the overall website as stated in article 7 of this agreement. Trackit shall provide updates free of charge to customer on an ongoing basis to customers who remain a current maintenance agreement.

Trackit customers shall be notified of any critical updates and will be given the option to accept the updates. At a minimum, once a year Trackit shall consolidate all the incremental updates for a major (general) release. Customer will be given time to consider and test any updates prior to accepting them for use. The timing of this release may vary based on the nature of the release but will generally be around November of each year.

The incremental or major releases shall apply to the entire Trackit software suite. Updates shall include new features, incompatibility issues (bug fixes) for existing products, or when offer to the customer or purchased by the customer any new products.

7. **LIMITED WARRANTY**

7.1 For customers that maintain a current maintenance contract, Trackit the Software will operate in conformity with the Manuals in all material respects. Contractor shall warrant good title to all materials, supplies, equipment and items installed or incorporated in the Work. Neither the Contractor, subcontractors, nor any person, firm, or corporation furnishing any material or labor covered by this Contract shall record, assert, claim or place any lien against WTA or upon any real or personal property, improvement or accessory of WTA. Contractor warrants to WTA that it has the right and all necessary licenses to provide the services or goods and that such services or goods will be of the highest quality; free from liens, infringements and defects, be in conformance with the Contract Documents

7.2 EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN CLAUSE 7.1, TRACKIT MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED. **VERBAL** STATEMENTS REGARDING OR DESCRIPTIONS OF THE SOFTWARE, IF ANY, BY TRACKIT OR ANY OF TRACKIT'S REPRESENTATIVES ARE INFORMATIONAL ONLY AND ARE NOT MADE OR GIVEN AS A WARRANTY OF ANY KIND. NO EMPLOYEE, AGENT OR OTHER REPRESENTATIVE OF TRACKIT IS AUTHORIZED TO MAKE ANY EXPRESS WARRANTY, AND USER SHOULD NOT RELY ON ANY ATTEMPT BY SUCH PERSON(S) TO DO SO. THE DISCLAIMER OR WARRANTIES HEREUNDER SHALL SURVIVE THE TERM OF THIS AGREEMENT.

8. **INDEMNITY**

8.1 The User shall at all times indemnify and hold harmless Trackit and its officers, employees and agents ('those indemnified') from and against any loss, including reasonable legal costs and expenses, or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:

- (a) a breach by the User of its obligations under this Agreement;
- (b) the installation or use of the Software other than as specified in the Manuals; or
- (c) any willful, unlawful or negligent act or omission of the User.

8.2 Trackit shall at all times indemnify and hold harmless the User and its officers, employees, Board members, and agents from and against all claims, demands, suits, judgments, defense costs, injury to or death of any and all persons(s) and on account of all property damages of any kind, whether tangible or intangible, real and/or personal liability or damages of any kind, including legal costs and expenses, or liability reasonably incurred or suffered by the User and/or its officers, employees and agents arising from any proceeding against the User and/or its officers, employees and agents arising out of: (a) Contractor's goods or services provided to WTA; (b) actions or business operations of Contractor, its/his/her sub-Contractors, their property, employees or agents, or caused in whole or in part by the Contractor, its sub-Contractors, their property, employees, or agents; (c) Contractor's actions taken under the Contract, or for any breach of the Contract; (d) Contractor's alleged infringement of any intellectual property rights; or (e) Contractor's negligence, errors or omissions, misconduct, violation of any law, unpaid wages or services. Contractor will defend itself at its own expense in any lawsuit. Such duties shall apply to any claim covered by the above obligation and brought by an employee of Contractor, and in this limited context, Contractor waives any exclusivity protection under any industrial insurance or worker's compensation laws, including, but not limited to, the Washington State Industrial Insurance Act, RCW Title 51.

9. **CONFIDENTIAL INFORMATION**

9.1 The parties must:

- (a) keep confidential the Confidential Information of the other party; and

(b) not to disclose the Confidential Information of the other party (or any part of it) to any person (except employees or contractors who need to know) without the written consent of the other party or as otherwise required by law.

9.2 The parties must take all steps to ensure that each person to whom Confidential Information is disclosed complied with the obligations of confidentiality imposed under this Agreement.

9.3 A party who becomes aware of a suspected or actual breach of the obligations of confidentiality under this Agreement must:

(a) notify the other party immediately of the suspected or actual breach; and

(b) take all steps, at its own expense, required to prevent or stop the suspected or actual breach.

9.4 The obligations under this clause continue after the termination of this Agreement.

10. FORCE MAJEURE

10.1 If Trackit is wholly or partially precluded from complying with its obligations under this Agreement by Force Majeure and it immediately notifies User, then the obligations of Trackit under this Agreement are suspended for the duration of the Force Majeure.

10.2 This clause does not apply to any obligation to pay money.

11. TERMINATION

11.1 This Agreement continues until the expiry of the Initial Term subject to Clause 2.3 or until terminated by either party under clause 11.2.

11.2 Either party may terminate this Agreement

(a) immediately at any time with immediate effect by giving thirty (30) day written notice if:

(b) a Party has breached any provision of this Agreement and fails to remedy the breach within 15 days after receiving notice requiring it to do so;

(c) a Party ceases to be able to pay its debts as they become due;

(d) any step is taken to enter into any arrangement between the User and its creditors;

11.3 On termination of this Agreement the license and rights granted in clause 2 cease and the User must immediately:

(a) stop using the Software;

(b) return to Trackit the Software and any equipment in the User's possession or control;

(c) pay all amounts payable to Trackit under this Agreement; and

(d) stop using the Confidential Information.

11.4 Termination of this Agreement does not affect any accrued rights or remedies Trackit may have.

12. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

12.1 Subject to clauses 12.2 and 12.3, Trackit shall indemnify the User against liability under any final judgment in proceedings brought by a third party against the User which determine that the User's use of the technology (Software or Units) constitute an infringement of any Intellectual Property Rights in the Software or the Units.

12.2 Trackit shall not be required to indemnify the User as provided in clause 12.1 unless the User:

(a) notifies Trackit in writing as soon as practicable of any infringement, suspected infringement or alleged infringement;

(b) gives Trackit the option to conduct the defense of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings;

(c) provides Trackit with reasonable assistance in conducting the defense of such a claim

(d) permits Trackit to modify, alter or substitute the infringing part of the Software or the Units at its own expense in order to avoid continuing infringement, or authorizes Trackit to procure for the User the authority to continue the use and possession of the infringing Software or Units.

12.3 Trackit shall not indemnify the User to the extent that an infringement, suspected infringement or alleged infringement arises from:

(a) use of the Software or Units in combination by any means and in any form with other goods not specifically approved by Trackit;

(b) uses the Software or Equipment outside the Designated Area

(c) use of the Software or Units in a manner or for a purpose not reasonably contemplated or not authorized by Trackit;

- (d) modification or alteration of the Software or Units without the prior written consent of Trackit; or
- (e) any transaction entered into by the User relating to the Software or Units without Trackit's prior consent in writing.

13. ENTIRE AGREEMENT

The sales agreement and this Agreement constitutes the entire agreement of the parties as to its subject matter and supersedes and cancels all prior arrangements, understandings and negotiations in connection with it. Any statement made in negotiations for this Agreement which is not set out in this Agreement does not form part of the agreement between the parties.

14. GOVERNING LAW AND JURISDICTION

This Agreement shall be construed, interpreted and enforced in accordance with the laws of Washington.

15. NOTICE

15.1 Any notice, demand, consent or other communication to be given by a party to another party under this Agreement must:

- (a) be in writing;
- (b) give the address of the recipient as set out in the Schedule on the first page of this Agreement or as varied by notice from the relevant party;
- (c) be delivered by hand, or by prepaid certified or registered mail, return receipt requested to that address.
- (d) be delivered by email at m.anderson@trackittransit.com and procurement@ridewta.com

15.2 Notice will be deemed to given:

- (a) in the case of hand delivery, upon written acknowledgement of receipt by an officer or other duly authorised employee, agent or representative of the receiving party;
- (b) in the case of regular and electronic mailing, 3 days after despatch;

16. NO WAIVER

16.1 The failure of a party at any time to require full or partial performance of any provision of this Agreement does not affect in any way the full right of that party to require that performance subsequently.

16.2 The waiver by any party of a breach of a provision of this Agreement is not deemed a waiver of all or part of that provision or of any other provision or of the right of that party to avail itself of its rights subsequently.

16.3 Any waiver of a breach of this Agreement must be in writing signed by the party granting the waiver and is effective only to the extent specifically set out in that waiver.

17. AMENDMENTS IN WRITING

No amendment to this Agreement has any force unless it is in writing and signed by all of the parties to this Agreement.

18. NO MERGER

The covenants, conditions, provisions and warranties contained in this Agreement do not merge or terminate upon completion of the transactions contemplated in this Agreement, but to the extent that they have not been fulfilled and satisfied or are capable of having effect, remain in full force and effect.

19. FURTHER ASSURANCES

Each party must do all things and execute all further documents necessary to give full effect to this Agreement and refrain from doing anything that might hinder the performance of this Agreement.

20. BINDING EFFECT

The terms of this Agreement shall be binding upon and inure to the benefit of the representatives, successors and assigns of the parties hereto provided however that the rights and obligations hereunder shall not be assignable by User without the prior written consent of Trackit.

21. SEVERABILITY

21.1 If any provision of this Agreement shall prove to be invalid, void or illegal, it shall in no way affect, impair or invalidate any of the other provisions hereof.

22. COUNTERPARTS

This Agreement is validly executed if executed in one or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Copies (whether facsimile, photostatic or otherwise) of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.

23. PRIVACY.

Trackit values and understands the importance of keeping the Data gathered from the use of the Software and Units under this Agreement private and confidential. With that in mind, TrackIt does not store the Data except on the Hosted Software provider which Data is not made available to anyone but the User pursuant to the terms of this Agreement. This Data information is never sold or provided to any third parties unless otherwise required by applicable law. At the termination of the Agreement, a flat file copy of the Data is made available to the User or the User may download all that Data directly from the Hosted Software. Thirty (30) days after termination of the Agreement, all the Data is deleted from the Hosted Software provider.

25. ASSIGNMENT

This Contract may not be assigned to a third party without the prior written consent of the either party which shall be in its sole discretion. The Party may terminate the contract for convenience as outlined herein. A conveyance of more than fifty percent (50%) of the ownership interest in Contractor shall constitute an "assignment" which must be approved by WTA. In the event of an unauthorized assignment, the non-assigning Party may terminate the Contract for convenience as outlined herein. Involuntary assignment of the Contract due to bankruptcy or receiver appointment due to insolvency is considered breach of the Contract and subject to termination.

The grants, covenants, conditions and claims, rights, powers, privileges and liabilities obtained in the Contract Documents will transfer from the assigning party to their respective heirs, executors, administrators, successors and assigns.

26. ACCESS TO RECORDS AND SITES OF PROJECT PERFORMANCE:

All records prepared, generated or used by Contractor or its agents, employees and subcontractors relating to the Contract are subject to being a "Public Record" under RCW Chapter 42.56, and therefore disclosable subject to a properly submitted public records request under this statute. In addition, as a recipient of state and federal funds, WTA agrees to provide, and require its Contractor and sub-contractors at each tier to provide, sufficient access to inspect and audit all books, records, accounts, reports, and job sites relating to the Work to the:

- a. U.S. Secretary of Transportation or the Secretary's duly authorized representatives;
- b. Comptroller General of the United States, and the Comptroller General's duly authorized representatives;
- c. Washington State Auditor's Office and their duly authorized representatives; and
- d. WTA, member agencies, and its Contractors.

Contractor and sub-contractors at each tier will maintain all books, records, accounts and reports relating to the Project for no less than seven (7) years after the date of Contract termination, expiration, or completion. In the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain all books, records, accounts and reports relating to the project until conclusion of all such litigation, appeals, claims or exceptions related thereto.

END



EXHIBIT 1

Trackit Manager Budget Price List Prepared for Whatcom Transit (WTA)

April 26, 2021

The following items and pricing are proposed to WTA. The proposal is based on the software service being used within WTA.

Main cost saves and advantage to consider:

- Trackit Manager is hosted solution, so it will not require additional IT support or IT personal;
- This proposal includes unlimited support and complete use of the Trackit Manager platform. There are no hidden fees. It is easy to understand and budget, all updates are included;
- Trackit will save WTA countless of hours of administrative work and time, help reduce accidents and complaints.

Item	Description	Year One
1	Trackit Manager – This includes the full use to Trackit Manager Hosted. WTA will have access to one instance of Trackit Manager to include: <ul style="list-style-type: none">- WTA will be licensed to use Trackit Manager within the WTA service provided.- WTA will have full access to Trackit Manager modules included (Accident Tracking module, Learning Management System, and Observation and feedback reporting system, Compliance, and Incidence);- Trackit Manager is hosted and <u>includes</u> technical support on Trackit Manager and all software updates to the Trackit Manager modules. All the hosting fees, backup services are included (this does not include support on Non-Trackit Software and hardware)- Trackit Manager will be hosted within the USA on a premium service;- All the data shall remain the property of WTA ;- Annual Trackit Manager fee will be due each twelve months. A new fee may be negotiated each year; however, the fee shall not escalate more than five (5) percent each year.* WTA will be responsible for providing internet access to access Trackit Manager	\$15,000 ✓
2	Trackit Manager setup – This is a onetime setup fee to setup the database (import data) and create the form required	\$3000 ✓
3	Trackit Assessment license and support fee (Tablet App) – software will be licensed to WTA to be used within the WTA operation. WTA will <u>purchase</u> approved tablet units as required. * WTA will be responsible for providing internet access to access Trackit Manager	Included

Note: This is special pricing for WTA. This pricing was developed based on the size of the agency.

- WTA will purchase 'approved' Tablets directly to run Trackit Assessment. Trackit Assessment will be licensed to be used within WTA Bus as needed. Trackit Assessment will upload to WTA, Trackit Manager site.
- Trackit will support Trackit Assessment and Trackit Manager software. Other applications and hardware will be supported by other respective vendors. WTA will be responsible for providing internet access
- We ask that WTA keeps this proposal private to the extent possible.

This pricing sheet is the property of Trackit LLC and is intended for internal use by WTA. Any means outside WTA shall not distribute this sheet without the permission of Trackit LLC.