

Terms of Service

TrackMate offers a vehicle immobilizer and tracking solution to Vehicle owners with stolen vehicle recovery, and includes the ability to dispatch security guards in case of a home invasion.

These Terms of Service (“**Terms**”) form a legally binding agreement between TrackMate Corporation, or its authorized distributors (“**TrackMate**”, “**we**”, “**us**”, “**our**”), and the purchaser or recipient of the Product (“**Customer**”, “**you**”, “**your**”). By ordering, making payment for, or installing the Product, having previously received or notified of these Terms, you are deemed to agree to these Terms. TrackMate and the Customer are each a “**Party**”.

1) DEFINITIONS

- a) “**App**” or “**Application**” means TrackMate’s software application that is used to access the Service.
- b) “**Approved Installer**” means a Dealer or service centre approved by TrackMate for installing the Devices.
- c) “**Dealer**” means TrackMate’s distributors that are authorized to sell the Product and install the Devices.
- d) “**Device**” means the Tracking Unit and/or Immobilizer Unit.
- e) “**Device Fee**” means one-time fee to purchase the Tracking Unit and/or Immobilizer Unit.
- f) “**False Incident**” means you reporting the Vehicle stolen, and subsequently advise us or we discover the Vehicle was not stolen.
- g) “**Home Invasion Alert**” means a signal initiated by a Customer in the App that is transmitted to TrackMate.
- h) “**Home Invasion Response**” means the dispatch of Recovery Services
- i) “**Immobilizer Unit**” means a Device provided by a manufacturer that prevents ignition start.
- j) “**Insurance Company**” means a company that provides insurance coverage.
- k) “**Product**” means the Service combined with Devices.
- l) “**Recovery Services**” means a third party deployed in Canada by TrackMate to recover the Vehicle or respond to a Home Invasion Alert, either through public authorities, private security guards or the Insurance Company.
- m) “**Registration Information**” means information about you, such as your name, home address, business address, phone number, e-mail address, your Vehicle make and model, Vehicle VIN, Vehicle colour, licence plate number, photos of your Vehicle, Insurance Company details, together with any other details requested through the App.
- n) “**Service**” means the provision of real-time tracking and/or remote immobilization, and includes Home Invasion Response.
- o) “**Subscription Fee**” means the monthly fee chargeable each month to access the Service during the Subscription Term.
- p) “**Subscription Term**” means the period of time you selected for the Service when providing Registration Information, starting on the date the Devices are installed by a Dealer.
- q) “**Support**” means the provision by TrackMate of technical assistance with the App and/or Service.
- r) “**Tracking Unit**” means a manufactured Device that provides the Vehicle’s location using telematics.
- s) “**Vehicle**” means the automobile in which the Devices are installed.

2) PURCHASE, INSTALLATION, PAYMENT & ACKNOWLEDGMENTS

- a) Upon purchasing the Devices either through the TrackMate website, via a Dealer or Approved Installer, the Devices must be installed at an Approved Installer.
- b) After installing the Devices, which are pre-activated at the Dealer or Approved Installer, download the Application to your smartphone to register the Devices to your Vehicle by providing the Registration Information.
- c) During registration, you will be required to enter your banking information for pre-authorized debit (“**PAD**”), which is processed by a third party payment provider. The initial payment for the Subscription Fee is pro rated for the current month and includes a month in advance. Prior to the Subscription Term expiring, you will be provided the option in the App to extend the Subscription Term.
- d) If your PAD is refused, you may be subject to a late payment charge of 2.0% per month (24% per annum) or the highest amount permitted by law, whichever is less. In addition, you will be charged a \$50.00 administrative fee for non-payment. All fees are exclusive of taxes.
- e) If you report a False Incident, you shall be responsible for paying TrackMate’s then-current fee for deploying the Recovery Services. If you report more than one False Incident within any 12-month period, TrackMate may, in its sole discretion, disable a Device or both Devices (with no abatement of the Subscription Fee), or suspend or terminate the Service.
- f) In addition to its legal rights, if payment of the Subscription Fee, plus interest and any administrative fees, is not made within 7 days of the due date, TrackMate may suspend or terminate your access to the Service without notice and will contact your

Insurance Company to confirm the suspension/termination. In the case of suspension, re-enablement of the Service will be subject to a charge of \$150.00.

- g) You acknowledge and agree that we may share the Registration Information to provide the Recovery Services.

3) RIGHTS / GRANT OF LICENCE / INTELLECTUAL PROPERTY RIGHTS

- a) TrackMate grants you all right, title and interest in the Device upon receipt of payment. Until payment is received, TrackMate and its Dealers reserve a security interest in the Device, and reserve the right to register a security interest therein.
- b) As long as you are not in default of your obligations of these Terms, TrackMate grants you a limited, non-transferable, non-exclusive, revocable, time-limited licence to use the Service during the Subscription Term.
- c) All rights and title in and to the Service, including patents, copyrights, trade-marks and trade secret rights, belong to TrackMate. TrackMate holds title to each copy of its Application, and any portion thereof. You acknowledge that the licence granted does not provide you with title to, or ownership of, the Application, but rather a right of limited use under these Terms. No other rights are granted to you with respect to the Application.
- d) Except where permitted by law, you shall not attempt to reverse assemble or reverse compile the Product. You may not assign, sublicense, encumber, rent, lease, loan, resell, distribute or attempt to transfer the Product. You may not use the Service, or any element of the Service, to create derivative works or other works that are similar to the Service. You may not remove any copyright or other proprietary notices from the Service or any portion thereof.
- e) The data, metrics, location and other information gathered from the Devices (“**Information**”) is owned by you. However, TrackMate reserves the right to use the Information for product improvement, or, when consolidated with other users’ Information, for general marketing. For specific marketing or disclosure of your Information, we will request your consent.

4) YOUR OBLIGATIONS

- a) You represent and warrant to TrackMate:
 - i) you have the necessary right and authority to agree to these Terms;
 - ii) you will use the Service only for legitimate purposes and in compliance with applicable law, and shall not use the Service for any fraudulent, illegal or illicit activity;
 - iii) you are the lawful owner of the Vehicle, or, if ordering the Service on behalf of a company or other entity, that you’re authorized to act on the entity’s behalf;
 - iv) you will enter and maintain at all times accurate Registration Details;
 - v) you are the cardholder, or an authorized user, of the credit card or debit card designated in the PAD to purchase the Service;
 - vi) any payment instruction issued by TrackMate shall be treated by your bank as if the instructions had been issued by you personally, and you authorize the bank to debit your account accordingly.
 - vii) you will only provide to TrackMate accurate, truthful, current and complete information when registering for the Service;
 - viii) take responsibility for all activities that occur under your account and accept all risks of unauthorized access with the Service; and
 - ix) you shall notify TrackMate of any changes to your Insurance Company details (including coverage cancellation/termination) within 3 days of the change.
- b) You must log your Vehicle’s theft in the App within 30 minutes of the theft. You must also notify local police within 1 hour of the theft and provide the theft occurrence number to us in the App. Failure to do so will significantly undermine the success of the Recovery Services. If you attempt to recover your stolen Vehicle yourself, you acknowledge and agree that your actions will void the Service, and further agree that TrackMate shall not be liable for any damages, injury, death or litigation as a result of your actions.

- c) If you change any details of your PAD, you shall notify TrackMate of the changes within 7 days of the change, and agree to authorize further PAD's as required to maintain the Service, and acknowledge that failure to do so may result in suspension or termination of the Service which will be communicated to your Insurance Company.
- d) You authorize TrackMate to track and/or immobilize the Vehicle, and to disclose your Registration Information as we deem necessary in the circumstances to third parties (including your Insurance Company, law enforcement, etc.) and government authorities.
- e) For proper functioning of the Devices, you understand and agree to confirm the Devices are operating correctly on a regular basis as indicated in the App or posted on our website ("**Maintenance**"). Failure to perform the Maintenance may result in the Service not working properly and may inhibit the deployment of Recovery Services, and you acknowledge that TrackMate shall not be liable for the Service not working properly due to your failure to perform the Maintenance.
- f) You agree to indemnify and hold harmless TrackMate, its officers, directors, shareholders, employees and agents, Dealers and their respective directors, employees and agents, harmless from and against any and all claims, damages, costs, demands, losses, liabilities, and expenses (including but not limited to legal fees) arising out of your use of the Product or breach or violation of these Terms.

5) TRACKMATE'S OBLIGATIONS/LIMITED LIABILITY

- a) TrackMate warrants that the Service will comply with applicable laws in Canada.
- b) TrackMate does not warrant that the functions contained in the Service will meet your specific requirements or that the operation of the Application or Service will be uninterrupted or error free, nor does it guarantee that the Vehicle will be located and/or recovered. The Service is provided "as is" without warranty or conditions of any kind, express or implied, including, without limitation, any implied warranties or conditions of merchantability, fitness for a particular purpose and non-infringement. You take the entire risk as to the quality and performance of the Service. Some jurisdictions do not allow the exclusion of implied warranties or conditions, so the above exclusions may not apply to you.
- c) TrackMate's sole obligation or liability under these Terms is to repair the Service. TrackMate will provide Support through the Application.
- d) If your Vehicle is located, the Recovery Services will endeavour to secure the Vehicle and make it available to law enforcement. The Vehicle will not be returned to you without the Insurance Company's authorization.
- e) TrackMate will dispatch Home Invasion Response promptly after receiving a Home Invasion Alert, but cannot guarantee the responsiveness of Recovery Services.
- f) Whilst the Devices and Service are designed to locate stolen Vehicles and potentially prevent the Vehicle from being driven away, other parties may employ measures to defeat the Device and Service. Accordingly, neither TrackMate, nor its Dealers, affiliates or licensors, shall be liable for indirect, consequential, special, punitive, incidental or similar damages, such as Vehicle theft resulting from the use or inability to use the Service, even if advised of the possibility of these damages. In addition, neither TrackMate nor any of its Dealers, affiliates or licensors, shall be liable for any claim by a third party arising out of your use of the Service, or the condition of a Vehicle whether or not Recovery Services are provided. TrackMate's liability for your use of the Product is limited to the \$100. Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

6) TERM AND TERMINATION

- a) TrackMate may terminate these Terms and the Service immediately by notifying you if you fail to pay any amounts due to TrackMate, or if TrackMate reasonably believes you are in breach of your obligations set out in these Terms.
- b) You may terminate these Terms and the Service on 90 days' notice to TrackMate, in which case you are responsible for, and authorize TrackMate to debit pursuant to the PAD, 50% of the Subscription Fee remaining for the Subscription Term, to a maximum of \$500.00.
- c) Upon termination or expiry of these Terms or the Service, you are required to visit an Approved Installer to have the Devices removed from your Vehicle, the charges for which will be your responsibility. If you fail to have the Devices removed on termination, TrackMate and its Dealers will not be responsible for any failure of your Vehicle that may arise from the Devices.
- d) Sections 1, 2(e), 3(c), 3(d), 3(e), 4(a), 4(f), 5, 6(b), 6(c) and section 7 shall survive termination of these Terms.

7) GENERAL TERMS

- a) These Terms set forth the entire agreement and understanding between you and TrackMate. The failure of TrackMate to require performance of any provision of these Terms shall not affect TrackMate's rights to enforce its rights at a later time. No waiver by TrackMate of any condition or of a breach of these Terms shall be deemed to be or construed as a further or continuing waiver of the condition or breach. If a provision of these Terms is inoperative or unenforceable, it shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions contained in these Terms invalid, inoperative, or unenforceable. The invalidity of a portion of these Terms shall not affect the remaining portions of these Terms.
- b) TrackMate shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, war, acts of terrorism, failure of suppliers, network failure or unavailability, pandemic, or any other reason where failure to perform is beyond its reasonable control.
- c) You shall not assign or otherwise transfer the Service, in whole or in part. Any attempt to do so is a breach of these Terms.
- d) Notices shall be given in writing at the e-mail address of each Party, and shall be deemed served on the next day after which the e-mail is sent.
- e) These Terms shall be governed by and construed in accordance with the laws of the Province of Ontario without giving effect to principles of conflicts of laws. The Parties agree that the exclusive venue for any action shall take place in the courts of the City of Toronto, Ontario. The United Nations Commission on International Trade Law Conventions on Contracts for the International Sales of Goods and Related Transactions is specifically excluded from this Terms. The Parties waive any right to a jury trial.
- f) Any improper use of the Product by you that is inconsistent with these Terms may cause irreparable damage to TrackMate for which remedies other than injunctive relief may be inadequate. You agree that in any request to a court of competent jurisdiction for injunctive or other equitable relief seeking to restrain such use or disclosure, you will not object to the remedy or require proof of actual damages or the provision of either a bond or other security.
- g) These Terms constitutes the entire understanding between the Parties with respect to its subject matter, and supersedes all prior agreements, arrangements and undertakings between the Parties. However, these Terms may be updated by TrackMate when there are updates available for the App, and your continued use of the Service indicates your agreement to the revised Terms.
- h) These Terms is written in the English language at the express request of both parties. La présente convention est rédigée en anglais à la demande expresse des parties.

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