

This license agreement (“**Agreement**”) is between you (“**you**” or “**Customer**”) and TomTom and governs your use of the Junction Analytics purchased through either Microsoft AppSource or Azure Marketplace (collectively, “Marketplace”).

If you are located in Canada, Mexico or the United States, this Agreement is entered into with TomTom North America Inc. If you are located outside of these areas, then this Agreement is entered into with TomTom Global Content B.V. (hereinafter each TomTom entity referred to as “**TomTom**”).

By agreeing to these terms, you represent and warrant that you have the authority to accept this Agreement, and you also agree to be bound by its terms. This Agreement applies to all Orders entered into under this Agreement.

TomTom reserves the right to change this Agreement at any time. TomTom will provide the changed terms on the site, in your user account or inform you by email. In order to continue using the Junction Analytics, you must accept the changes. If you do not agree to the changes, access to the Junction Analytics may be suspended or terminated by TomTom and you must immediately cease using the Junction Analytics. Your continued use of the Junction Analytics is deemed your acceptance of the changed terms. If a change is unacceptable to you, you may as your sole and exclusive remedy terminate your subscription by ceasing the use of the Junction Analytics and providing a notice of termination to TomTom.

This Agreement consists of two parts, the General Terms and Conditions and Schedules attached thereto. In the case of conflict or ambiguity between any provision contained in the General Terms and Conditions and any provision contained in the Schedules and/or the Orders, they shall prevail in the following order: (i) the Order; (ii) provision in the General Terms and Conditions; and (iii) the Schedules.

## GENERAL TERMS AND CONDITIONS APPLICABLE TO THE JUNCTION ANALYTICS

### 1. INTERPRETATION

1.1. The definitions and rules of interpretation in this Clause apply in this Agreement.

**Affiliate** means with respect to a Party to this Agreement, any corporation, limited liability company, partnership or other business enterprise: (a) which owns or controls, directly or indirectly, more than fifty percent (50%) of the voting rights with respect to the election of directors or managers, or which has practical control directly or indirectly, of the Party; (b) of which more than fifty percent (50%) of the voting rights with respect to the election of directors or managers is owned or controlled, directly or indirectly, by or which is under the practical control directly or indirectly of, the Party; or (c) of which more than fifty percent (50%) of the total voting rights with respect to the election of directors or managers is owned or controlled, directly or indirectly, by, or which is under the practical control directly or indirectly of, any corporation, limited liability company, partnership or other business enterprise described by subsections (a) or (b) above. Any corporation, limited liability company, partnership or other business enterprise which would at any time be an Affiliate of a Party by reason of the foregoing, shall be considered an Affiliate for purposes hereof only for so long as the foregoing conditions are met. For purposes hereof, no Party shall be considered an Affiliate of the other Party.

**Agreement** means this license agreement, including the General Terms and Conditions and, to the extent applicable, the Schedules attached thereto.

**Asset** means (i) any commercial or non-commercial vehicle of any type including, but without limitation, vehicles used in connection with goods and materials delivery services, commercial and consumer lease or consumer owned vehicles, taxis, trailers and any other means of transportation used for moving around goods, materials and people and (ii) any storage or transport container (such as shipping or trucking containers).

**Change of Control** means (a) any transaction, series of transactions, operation of law or other means pursuant to which a third party (or multiple third parties) would acquire (i) all or substantially all of the assets or outstanding voting securities or other voting interests of a Party, or a Party’s Affiliate, or (ii) all or substantially all of the assets such Party, or (b) any transaction, series of transactions, operation of law or other means pursuant to which a third party would merge or be consolidated with a Party or a Party’s Affiliate, where as a result of such merger or consolidation less than fifty percent (50%) of the assets or voting securities or interests of the surviving entity or party would be owned or controlled by the former holders who owned the assets, voting securities

or interests of such Party (or such Party's Affiliate as applicable) immediately prior to such merger or consolidation.

**Competitor** means any person or entity engaged in the business of developing, marketing or supporting products the same or similar to the Junction Analytics including without limitation Apple, Google, HERE, Mapbox, Inrix and any Affiliates, successors and assigns of the foregoing.

**Confidential Information** means all information disclosed by or on behalf of a Party (in whatever medium including in written, oral, visual or electronic form and whether before or after the date of this Agreement) including all business, financial, commercial, technical, operational, organisational, legal, management and marketing information which is either marked as being confidential or which would reasonably be deemed to be confidential in the ordinary course of business.

**Contract Year** means each consecutive period of twelve (12) months following the Effective Date.

**Copyleft License** means a license that requires, as a condition of use, modification and/or distribution of software or materials, that such software or materials, or other software or materials incorporated into, derived from, used, or distributed with such software or materials: (i) in the case of software, be made available or distributed in a form other than binary (e.g., source code form), (ii) be licensed for the purpose of preparing derivative works, (iii) be licensed under terms that require the licensor to allow the other materials or interfaces therefor to be reverse engineered, reverse assembled, or disassembled, or (iv) be redistributable at no license fee.

**Customer Inspection** means the inspection as set out in Clause 12.3.

**Display** means the visual display of a map, which may include any of the following attributes: street network, road conditions, topography, land use, real-world imagery, 2D and 3D imagery, traffic, speed camera, and elevation information.

**Effective Date** means the date of acceptance by TomTom of the first Order.

**End User** means any entity or person who uses the Permitted Solutions for its own internal use.

**Force Majeure Event** means any act, event, omission or cause or circumstance whatsoever beyond the reasonable control of a Party, including without limitation, the following (i) events outside human control, including earthquakes, flood, windstorm, fog and other adverse weather; (ii) outbreak of hostilities, riot, civil disturbance, acts of terrorism; (iii) an act of any government or authority (including refusal or revocation of any licence or consent); (iv) fire or explosion; (v) collapse of buildings, power failure, failure of telecommunication lines, failure or breakdown of plant, machinery or vehicles; (vi) default of suppliers or sub-contractors; (vii) epidemic or pandemic; and (viii) theft, malicious damage, strike, lock-out or industrial action of any kind.

**GDPR** means the European Regulation 2016/679 on the protection of individuals with regard to the processing of Personal Data and on the free movement of such data as may be updated or amended.

**Geocoding** means the assigning of a longitude/latitude coordinate to an address or location.

**Intellectual Property Rights** means all inventions, patents, utility models, designs (both registered or unregistered and including rights relating to semi-conductor topographies), database rights, copyright and trade marks (both registered and unregistered), together with all rights to the grant of and applications for the same and including all similar or analogous rights and all other rights in the nature of intellectual and industrial property throughout the world and all future rights of such nature.

**IPR Claim** means a claim as set out under Clause 15.1.

**Junction Analytics** means the products identified in an Order. The provisions of Schedule 1 shall apply to the use of Junction Analytics.

**Navigation** means the ability to follow and be guided through a calculated Route based on the real-time geographic location of an Asset, including the ability to re-Route when the Asset deviates from the calculated Route.

**Order** means an ordering document used to transact the Junction Analytics via the Marketplace.

**Parties** means TomTom and Customer and each of them are individually referred to as "**Party**".

**Permitted Solutions** means the Real Time Traffic Monitoring Solution created by using the Junction Analytics.

**Personal Data** means as defined under the GDPR.

**Real Time Traffic Monitoring Solution** means a system designed for monitoring the real time traffic situation for designated areas or specific routes and which includes the right to publish such traffic status to road users via road signs, websites, mobile applications or other public news broadcast methods along with advice and other travel options designed to avoid congestion. The Junction Analytics: (i) can only be used in conjunction with the Real Time Traffic Monitoring Solution for Display, Routing and Route Optimization purposes; (ii) cannot be used in conjunction with the Real Time Traffic Monitoring Solution for any other purposes such as Geocoding/Reverse Geocoding, Tracking or Navigation purposes.

**Reverse Geocoding** means the assigning of an address or location to a longitude/latitude coordinate.

**Route/Routing** means the calculation of a path between two (2) or more points including the generation of that path (a highlighted polyline that can be shown on a map). This calculation can use the real-time geographic position of an Asset as a starting point for a route but cannot allow for Navigation functionality.

**Route Optimization** means the planning of Routes for multiple Assets to multiple locations with the aim of maximizing the efficiency of such Assets.

**Subcontractor** means an independent contractor or consultant performing work on behalf of Customer relating to Customer's permitted uses set forth in this Agreement.

**Term** means the term as set out under Clause 18.

**Tracking** means determining the location and or status of an Asset.

- 1.2. The headings in this Agreement do not affect its interpretation. Except where the context otherwise requires, references to Clauses and Schedules are to Clauses and Schedules of this Agreement.
- 1.3. Unless the context otherwise requires:
  - 1.3.1. References to Customer and TomTom include their permitted successors and assigns;
  - 1.3.2. References to statutory provisions include those statutory provisions as amended or re-enacted;
  - 1.3.3. A reference to one gender includes a reference to the other genders; and
  - 1.3.4. References to "including" or "includes" shall be deemed to have the words "without limitation" inserted after them.
- 1.4. Words in the singular include the plural and those in the plural include the singular.
- 1.5. A "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## 2. GRANT OF LICENSE

- 2.1. Upon acceptance of an Order, TomTom hereby grants to Customer, from the Effective Date, a non-exclusive, revocable, license, to:
  - 2.1.1. Use the ordered Junction Analytics to develop, manufacture and produce the Permitted Solutions; and
  - 2.1.2. Use such Permitted Solutions for its own internal use; or
  - 2.1.3. Distribute, promote and advertise such Permitted Solutions to End Users, in accordance with the provisions of this Agreement.
- 2.2. Licenses granted on a subscription basis expire at the end of the applicable subscription period set forth in the Order, unless renewed.

- 2.3. Nothing under this Agreement shall be deemed to limit Customer's right to set the price it charges to End Users for the Permitted Solutions or access to any services made available therein.
- 2.4. This Agreement contains the full and complete grant of rights by TomTom to Customer in respect of the Junction Analytics and any other use of the same other than expressly permitted in this Agreement is strictly prohibited.

### **3. SUBCONTRACTORS**

- 3.1. Customer shall be permitted to make the Junction Analytics available to Subcontractors for the purposes of exercising its rights under this Agreement but subject to the following:
  - 3.1.1. Customer and such Subcontractor entering into a legally-binding agreement including non-use and non-disclosure provisions at least as restrictive as those set forth in this Agreement;
  - 3.1.2. Such Subcontractor agreeing in writing to return all of the Junction Analytics to Customer no later than at the termination of this Agreement and certifies to Customer that all of the Junction Analytics have been removed from such contractor/consultant's systems;
  - 3.1.3. Such Subcontractor not being a Competitor; and
  - 3.1.4. Customer remaining fully liable for all acts and or omissions of Subcontractors as if they were acts and or omissions of Customer under this Agreement.

### **4. SECURITY TERMS**

- 4.1. Customer shall:
  - 4.1.1. Utilize industry security standard practices to safeguard, secure and prevent piracy and unauthorized access of the Junction Analytics and the Permitted Solution;
  - 4.1.2. Ensure that Customer's environments used for storing and accessing the Junction Analytics and the Permitted Solution are monitored in such a manner designed to identify security incidents. Customer shall inform TomTom as soon as reasonably possible of any potential security incidents relating to the Junction Analytics and the Permitted Solutions of which it becomes aware;
  - 4.1.3. Notify TomTom of any vulnerabilities relating to the Junction Analytics of which Customer becomes aware;
  - 4.1.4. Use suitable encryption techniques for protection of the information of TomTom. Where encryption cannot be implemented, appropriate compensating controls must be implemented to reduce the risk of unauthorized disclosure.

### **5. DATA PROCESSING**

- 5.1. TomTom shall collect, via the Junction Analytics, the Personal Data specified under [https://www.tomtom.com/en\\_gb/thirdpartyproductterms/dataprocessingschedule/](https://www.tomtom.com/en_gb/thirdpartyproductterms/dataprocessingschedule/) and shall process such Personal Data in accordance with the terms set out under [https://www.tomtom.com/en\\_gb/thirdpartyproductterms/dataprocessingschedule/](https://www.tomtom.com/en_gb/thirdpartyproductterms/dataprocessingschedule/). In addition, Customer acknowledges that TomTom collects, compiles, stores and uses, and generally processes aggregated and non-aggregated data and system usage information to maintain and improve the Junction Analytics, including for technical diagnostics, to detect fraud and abuse, to create usage reports and for the creation of new products. To the extent this data includes Personal Data, TomTom shall process such data in accordance with the foregoing or shall use such data without any identification of individuals involved or shall anonymize such Personal Data.
- 5.2. To the extent Customer uses the Junction Analytics in a manner that would result in the Junction Analytics constituting Personal Data, Customer shall be fully and independently responsible for compliance with all obligations arising under the GDPR.

## 6. GENERAL FURTHER OBLIGATIONS OF CUSTOMER

- 6.1. Any use, manufacturing, sale, license, distribution and promotion by Customer of the Permitted Solution and Junction Analytics shall be in accordance with all applicable laws and regulations (including on data protection).
- 6.2. The Junction Analytics must be integrated in the Permitted Solution in a manner that technically prevents their extraction or use other than as embedded in such Permitted Solution.
- 6.3. Customer may not, without the express prior written consent of TomTom, use the Junction Analytics or part thereof (including any content delivered via the Junction Analytics) to create any derivative work, product or service other than the Permitted Solutions. This prohibition includes, without limitation, compiling a competing database or service to the Junction Analytics by using, extracting or reutilizing the data contained within the Junction Analytics or a substantial part thereof or use the Junction Analytics for the creation of any secondary or derived database populated wholly or partially with Customer's data and/or data supplied or created by any third party. Customer may not copy or use the structure and arrangement of the Junction Analytics or the content or data delivered therein for the creation of the same.
- 6.4. Customer shall not apply any AI algorithm or other software related process to the Junction Analytics, the output of which would render Customer's use of the Junction Analytics (or any products similar to the Junction Analytics) redundant.
- 6.5. Customer may layer third party data on top of the Junction Analytics, provided that:
  - 6.5.1. The third party data always remains identifiable and separable from the Junction Analytics;
  - 6.5.2. Without prejudice to Clause 16.2, Customer shall not use any third party data in a manner that would result in the Junction Analytics becoming subject to the terms of a third party license or Copyleft License.
- 6.6. In no event shall Customer make any additions, modifications, adaptations, or other alterations that in any manner materially reduces, impairs, or otherwise negatively impacts upon the accuracy, completeness, integrity, or safety of the Junction Analytics or undertake any action which would reasonably be expected to damage the reputation or goodwill of TomTom.
- 6.7. Customer shall not reverse engineer or disassemble the Junction Analytics or otherwise attempt to gain access to the source code of any of the Junction Analytics. In addition, Customer shall not attempt to decompile any object code into source code in respect of the Junction Analytics.
- 6.8. Customer shall not defeat, avoid, by-pass, remove, deactivate or otherwise circumvent any software protection mechanisms in any of the Junction Analytics (or part thereof).
- 6.9. Customer shall not upload or knowingly introduce in connection with the Junction Analytics any files that contain viruses, Trojan horses, worms, time bombs, cancelbots, or any other similar software or programs that may damage the operation of another's computer or property.
- 6.10. Customer shall not use the Junction Analytics or any derivatives thereof for the purpose of enforcement of traffic laws including but not limited to the selection of potential locations for the installation of speed cameras, speed traps or other speed tracking devices.
- 6.11. Customer shall not use the Junction Analytics for in-flight or drone navigation or in connection with any high-risk systems, devices, products or services that are critical to the health and safety or security of people and property.
- 6.12. Customer shall not use the Junction Analytics in any way that is unlawful, fraudulent, dishonest, unethical, offensive, obscene, pornographic, harassing or libelous.
- 6.13. Customer shall not, other than as expressly permitted under this Agreement, rent, lease, sell, transfer, assign, sublicense, disassemble, modify or alter any part of the Junction Analytics.

## 7. COPYRIGHT AND ATTRIBUTION

- 7.1. Customer will not remove, obscure, mask or change any logo and/or copyright notice placed on or in the Junction Analytics by TomTom. In addition, Customer shall display the following copyright notices in the Permitted Solutions:



- 7.1.1. On any hard copy or electronic map images generated include the following notice: “©TomTom”.
- 7.1.2. In the “about box” or equivalent section for legal notices of the Permitted Solutions, state: This application uses data, products and services that have been supplied by TomTom subject to the following: “©TomTom. All rights reserved. This material is proprietary and the subject of copyright protection, database right protection and other intellectual property rights owned by TomTom or its suppliers. Any unauthorized copying or disclosure of this material will lead to criminal and civil liabilities.” Additional specific copyright notices and terms apply to third party content included in the TomTom data, products and services as set out under <https://tomtom.com/product-attributions/>.”

## 8. END USERS

- 8.1. Before allowing use of the Permitted Solution by an End User, Customer shall require the End User to accept the terms of a legally binding end user license agreement (“**End User License Agreement**”). Such End User License Agreement shall not permit the End User to take any actions with respect to the Junction Analytics which, if made by Customer, would constitute a breach of the terms of this Agreement and in particular the restrictions set out under Clause 6 and Schedule 1. In addition, the End User License Agreement will contain an exclusion of TomTom’s liability materially similar to the below. To the extent an End User License Agreement incorporates terms materially similar to the below but covering all suppliers whose products or services are utilized in the Permitted Solution, it shall not be required to specifically name TomTom:
- 8.2. THIS APPLICATION USES DATA AND OR SERVICES SUPPLIED BY TOMTOM. NEITHER TOMTOM NOR ITS SUPPLIERS SHALL BE LIABLE TO THE UNDERSIGNED FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT OR EXEMPLARY DAMAGES ARISING OUT OF THIS AGREEMENT, INCLUDING LOST PROFITS OR COSTS OF COVER, LOSS OF USE OR BUSINESS INTERRUPTION OR THE LIKE, REGARDLESS OF WHETHER THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NEITHER TOMTOM NOR ITS SUPPLIERS SHALL HAVE ANY MONETARY LIABILITY TO THE UNDERSIGNED FOR ANY CAUSE (REGARDLESS OF THE FORM OF ACTION).
- 8.3. THE TOMTOM DATA AND SERVICES PROVIDED ON AN “AS IS” AND “WITH ALL FAULTS BASIS” AND TOMTOM AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, SATISFACTORY QUALITY, ACCURACY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE.

## 9. REGULATION AND SUSPENSION OF SERVICES

- 9.1. Customer acknowledges that TomTom shall be entitled to place restrictions on the number of queries or requests which Customer makes to Junction Analytics delivered to Customer by servers for the purposes of managing the load placed on TomTom’s server infrastructure (the “**Query Volume Restrictions**”). Customer therefore understands and agrees that any request made to the TomTom servers beyond the Query Volume Restrictions shall be rejected by the TomTom servers and TomTom shall have no liability for such rejection. Upon request, TomTom shall inform Customer of any Query Volume Restrictions and shall increase such Query Volume Restrictions upon the reasonable request of Customer to a level reasonably necessary to meet the needs of Customer’s demands.
- 9.2. TomTom reserves the right to suspend Customer’s access to the Junction Analytics in the event Customer’s use of the Junction Analytics adversely affects, limits or impairs other customers’ use of the Junction Analytics or TomTom, acting reasonably, believes the same may occur.

## 10. SUPPORT

- 10.1. Customer agrees that TomTom is not obliged to provide any type of support to Customer or any of its End Users.

- 10.2. Customer's representatives interfacing with TomTom are expected to be fluent in English and have a reasonable knowledge of the Junction Analytics used by Customer. In addition, all communication between the Customer and TomTom should be in English.
- 10.3. Support will be provided to Customer only and TomTom shall not, without limitation, be responsible for providing any direct support to any customer or End User.

## 11. FEES AND PAYMENT

Microsoft will invoice and charge Customer under the terms of the [Microsoft Commercial Marketplace Terms of Use](#) and applicable Order.

## 12. ACCOUNTING AND INSPECTION

- 12.1. Customer shall keep, maintain and preserve during the Term and for at least three (3) years following the expiration or termination of this Agreement, complete and accurate records and accounts covering all transactions relating to this Agreement, including but not limited to, invoices, inventory records, shipment records, correspondence and all other pertinent records and accounts.
- 12.2. Such records and accounts shall be maintained in accordance with generally accepted accounting procedures and principles and shall be available for TomTom's inspection. Upon written request, Customer shall make copies of such records available to TomTom for the purpose of ascertaining the accuracy and correctness of such statements.
- 12.3. Without prejudice to TomTom's right under Clause 12.2, TomTom shall be at liberty, upon giving at least thirty (30) days prior written notice to Customer, to examine, via an independent third party, the said records and accounts and compliance by Customer of the terms and conditions of this Agreement at any time or times during the Term and for three (3) years thereafter, during normal business hours (a "Customer Inspection").
- 12.4. Customer must give all assistance necessary in connection with Customer Inspection and permit TomTom's appointed third party inspectors to take copies of any of those records to the extent necessary to comply with applicable professional standards to keep a record of work performed such as for defense and archiving purposes. Where requested by any third party inspector, Customer shall permit access to its premises by such third party inspectors.
- 12.5. Fees and expenses incurred in connection with a Customer Inspection shall be borne by TomTom, unless one of the below occurs, in which case, Customer must reimburse TomTom for the adjusted Fees as well as the fees and expenses in connection with the Customer Inspection during which such error was discovered:
  - 12.5.1. Such Customer Inspection reveals that an error of five percent (5%) or more in any Fees payable was made; or
  - 12.5.2. TomTom's appointed third party is unable to form a conclusion on the Fees payable due to deficiencies in Customer's documentation, records or reporting systems and infrastructure.

## 13. INTELLECTUAL PROPERTY RIGHTS

- 13.1. All Intellectual Property Rights in the Junction Analytics shall belong to TomTom and its licensors.
- 13.2. Without limiting the foregoing, Customer acknowledges that the Junction Analytics are the result of substantial investments and protected by database rights as meant in the European Union Database Directive 96/9/EC, and Customer acknowledges that the Junction Analytics may be protected by similar rights in other jurisdictions outside the European Union and that, without limiting the foregoing, TomTom shall have the right to enforce such rights as contractual rights arising under this Agreement.
- 13.3. All Intellectual Property Rights in the Permitted Solutions, excluding the Intellectual Property Rights of TomTom as set out in Clauses 13.1 to 13.2, shall belong to Customer and its licensors.
- 13.4. Any use by Customer of any trade names, logos, trademarks, service marks and other marks of TomTom is subject to TomTom's prior written approval. Any goodwill arising out of the use thereof shall inure to the benefit of TomTom.

- 13.5. If Customer is a US state, US federal or other US public entity (“**US Government**”), Customer agrees to protect TomTom’s Intellectual Property Rights (“**TomTom IPR**”) from public disclosure. In the event that Customer is required to disclose the TomTom IPR under any law or regulation that permits public access and/or reproduction or use of the TomTom IPR, Customer shall notify TomTom in writing prior to such disclosure and if TomTom is unable to comply with such disclosure, this Agreement shall be automatically terminated. Under such circumstances, TomTom shall immediately be entitled to revoke any access code. Any data, software, and/or documentation delivered hereunder is subject to the terms of this Agreement. Any computer software, data, database, documentation and/or technical data delivered hereunder to the US Government, either directly under a prime contract, or indirectly through subcontract, is subject to the terms of this Agreement. In no event shall the US Government acquire rights greater than LIMITED or RESTRICTED rights as described in any applicable DFAR or FAR. In case of conflict between any of the FAR and/or DFARS that may apply to the TomTom IPR, the construction that provides greater limitations on the US Government’s rights shall control.

**14. PROTECTION AGAINST UNAUTHORIZED USE**

- 14.1. The Parties acknowledge that it is in their mutual interest to prevent counterfeit and other unauthorized use of the Junction Analytics. Customer shall inform TomTom as soon as reasonably possible of any counterfeit of the Junction Analytics of which Customer becomes aware.
- 14.2. At TomTom’s expense, Customer agrees to assist TomTom with protecting TomTom’s Intellectual Property Rights. TomTom may commence or prosecute any claims or suits in their own name or join Customer as a party thereto at TomTom’s expense. Customer shall not institute any suit or take any actions on account of any infringements or imitations without first obtaining the written consent of TomTom.

**15. INDEMNITY**

- 15.1. TomTom undertakes to defend Customer from and against any action or claim that the Junction Analytics (or any part thereof) infringes the copyright or trademarks of a third party (an “**IPR Claim**”) and shall indemnify Customer from and against any final award of damages of a competent court incurred by Customer as a result of any such IPR Claim provided that Customer:
- 15.1.1. Immediately following Customer becoming aware of an IPR Claim providing written notice to TomTom of the IPR Claim;
  - 15.1.2. Does not make any admission of liability, agreement or compromise in relation to the IPR Claim without the prior written consent of TomTom;
  - 15.1.3. Grants to TomTom the sole right to control the defence and/or settlement thereof;
  - 15.1.4. Provides TomTom and its professional advisers at reasonable times and upon reasonable notice access to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of Customer, so as to enable TomTom and its professional advisers to examine them and to take copies for the purpose of assessing the IPR Claim.
- 15.2. TomTom shall not have any liability under Clause 15.1 to the extent that any IPR Claim is based upon:
- 15.2.1. The use of the Junction Analytics in violation of the terms of this Agreement, including without limitation outside of the scope of the license;
  - 15.2.2. The modification of the Junction Analytics or any portion thereof by anyone other than TomTom, provided that the Junction Analytics in unmodified form is not the cause of such IPR Claim;
  - 15.2.3. The use of the Junction Analytics in combination with other software or data, provided that the Junction Analytics are not the cause of the IPR Claim;
  - 15.2.4. Continued sale, manufacturing, distribution, or licensing of the Junction Analytics by Customer after being notified of any allegedly infringing activity or after being informed of or provided with modifications, new versions or upgrades of the Junction Analytics that would have avoided the alleged infringement;



- 15.2.5. A counter claim brought by a third party against TomTom, where such claim has been made by such third party in response to an initial claim by Customer that such third party infringes any Intellectual Property Rights owned or controlled by Customer;
- 15.2.6. Use of any version of the Junction Analytics other than the most current version of the Junction Analytics as has been delivered by TomTom to Customer.
- 15.3. If TomTom reasonably believes the Junction Analytics may infringe any third party Intellectual Property Rights, TomTom may in its sole discretion:
  - 15.3.1. Procure the right for Customer to continue use of the Junction Analytics;
  - 15.3.2. Replace or modify the Junction Analytics so as to make it non-infringing provided that replacement or modification shall not result in any material degradation or functionality of the Junction Analytics;
  - 15.3.3. Terminate this Agreement.
- 15.4. The provisions of Clauses 15.1, 15.2 and 15.3 contain the sole obligations of TomTom and the exclusive remedies of Customer with regards to an IPR Claim.
- 15.5. Customer shall indemnify and hold TomTom and its Affiliates harmless from any claims relating to the Permitted Solution to the extent that such a claim arises as a result of any matter except those set out under Clause 15.1.

## **16. WARRANTIES**

- 16.1. Each Party warrants that it has full capacity and authority and all necessary licenses, permits and consents to enter into and to perform this Agreement. If there is a breach of this warranty by TomTom, Clauses 15.1 to 15.4 shall apply and which shall be TomTom's sole obligation and Customer's exclusive remedy.
- 16.2. Customer warrants that it will not combine the Junction Analytics with any open source software or other data in any manner which may result in the Junction Analytics becoming subject to the terms of a Copyleft License.
- 16.3. EXCEPT AS EXPRESSLY PROVIDED IN CLAUSE 16.1 ABOVE, THE JUNCTION ANALYTICS ARE PROVIDED ON AN "AS IS" AND WITH ALL FAULTS BASIS" AND TOMTOM EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, SATISFACTORY QUALITY, ACCURACY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN ADVICE OR INFORMATION PROVIDED BY TOMTOM OR ANY OF ITS AGENTS, EMPLOYEES OR THIRD PARTY PROVIDERS SHALL CREATE A WARRANTY, AND CUSTOMER IS NOT ENTITLED TO RELY ON ANY SUCH ADVICE OR INFORMATION.

## **17. LIMITATION OF LIABILITY**

- 17.1. NOTHING IN THIS AGREEMENT SHALL LIMIT THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE, GROSS OR WILFUL MISCONDUCT OF ITS DIRECTORS OR OFFICERS, ANY FRAUD OR FRAUDULENT MISREPRESENTATION, ANY AMOUNTS DUE OR OTHERWISE PAYABLE UNDER THIS AGREEMENT OR ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED BY LAW.
- 17.2. EXCEPT AS SET OUT UNDER CLAUSE 17.1 ABOVE, TOMTOM'S TOTAL AGGREGATE LIABILITY IN RESPECT OF ALL CLAIMS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT IN ANY CONTRACT YEAR SHALL NOT EXCEED 100% OF THE AMOUNTS PAID BY CUSTOMER TO TOMTOM IN RESPECT OF SUCH CONTRACT YEAR AND IN RESPECT OF THE AFFECTED JUNCTION ANALYTICS.
- 17.3. EXCEPT IN RESPECT OF A CLAIM RELATED TO THOSE LIABILITIES SET OUT UNDER CLAUSE 17.1, IN NO EVENT SHALL TOMTOM BE LIABLE FOR ANY NEGLIGENCE OR OTHER TORTIOUS LOSS OR FOR ANY OF THE FOLLOWING LOSSES OR DAMAGE (WHETHER SUCH LOSSES OR DAMAGE WERE FORESEEN, FORESEEABLE, KNOWN OR OTHERWISE AND WHETHER OR NOT TOMTOM IS ADVISED OF THE POSSIBILITY OF LOSS, LIABILITY, DAMAGE OR EXPENSE):

- 17.3.1. PUNITIVE DAMAGES, LOSS OF REVENUE, LOSS OF ACTUAL OR ANTICIPATED PROFITS (BUT WHICH EXPLICITLY EXCLUDES ANY SUMS PAYABLE UNDER THIS AGREEMENT), LOSS OF THE USE OF MONEY, LOSS OF ANTICIPATED SAVINGS, LOSS OF BUSINESS, LOSS OF OPERATING TIME OR LOSS OR USE OR LOSS OF OPPORTUNITY; OR
- 17.3.2. ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER CAUSED.
- 17.4. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NEITHER TOMTOM'S SUPPLIERS NOR ANY OF THEIR AFFILIATES WILL HAVE ANY LIABILITY TO CUSTOMER (INCLUDING MONETARY LIABILITY) (REGARDLESS OF THE FORM OF ACTION) UNDER OR RELATING TO THIS AGREEMENT.
- 17.5. TOMTOM SHALL NOT IN ANY WAY BE LIABLE FOR ANY USE, MANUFACTURING, PRODUCTION, SALE, DISTRIBUTION, ADVERTISING AND PROMOTION BY CUSTOMER, INCLUDING ANY USE, MANUFACTURING, PRODUCTION, SALE, DISTRIBUTION, ADVERTISING AND PROMOTION OF THE PERMITTED SOLUTIONS.

## 18. TERM

This Agreement will come into effect on the Effective Date and will continue in force until terminated by a Party, as described below. The term for each Order will be set forth therein.

## 19. TERMINATION RIGHTS

- 19.1. Unless otherwise set forth in an Order, either Party may terminate this Agreement or any Order without cause on sixty (60) days' notice. Termination without cause will not affect Customer's licenses granted on a subscription basis will continue for the duration of the subscription period(s), subject to the terms of this Agreement. TomTom will not provide refunds or credits for any partial subscription period(s) if the Agreement or an Order is terminated without cause.
- 19.2. Either Party shall be entitled to terminate this Agreement or any Order by written notice to the other Party immediately in the event the other Party is in material breach of this Agreement or an Order and either that breach is incapable of remedy or such Party shall have failed to remedy that breach within thirty (30) days from the date of a written notice requiring it to remedy that breach. Termination of this Agreement or an Order due to breach shall not prejudice the right of either Party to claim damages from the other Party.
- 19.3. Without prejudice to any other rights and obligations, either Party may terminate this Agreement with immediate effect, by notifying the other Party in writing, if in the country in which the other Party is established or in any country in which any property or debtor of the other Party is located one of the following events occurs:
  - 19.3.1. The other Party's business has been discontinued;
  - 19.3.2. The other Party has ceased to exist or has been dissolved or liquidated other than for the sole purpose of a scheme for a solvent amalgamation of a Party with one or more other companies or the solvent reconstruction of such other Party; or
  - 19.3.3. The other Party ceases to do business in the ordinary course, makes a general assignment for the benefit of creditors or commences or has commenced against it any insolvency, bankruptcy or receivership proceedings.
- 19.4. TomTom shall have the right to immediately terminate this Agreement:
  - 19.4.1. In the event Customer is subject to a Change of Control;
  - 19.4.2. In the event that Customer is directly or indirectly involved in any claim or proceedings concerning infringement of Intellectual Property Rights by TomTom or its Affiliates or contesting the validity or enforceability of one or more of the Intellectual Property Rights of TomTom or its Affiliates.

## 20. EFFECT OF TERMINATION

- 20.1. After expiration or termination of this Agreement, all rights granted under this Agreement shall cease and Customer shall:
  - 20.1.1. Immediately discontinue all use of the Junction Analytics;
  - 20.1.2. Destroy within thirty (30) days of such expiration or termination all copies in its possession of the Junction Analytics;
  - 20.1.3. Pay to TomTom all Fees and amounts accrued under this Agreement prior to the expiration or termination hereof; and
  - 20.1.4. To the extent requested, certify in writing compliance with Clauses 20.1.1, 20.1.2 and 20.1.3 above.

## 21. CONFIDENTIALITY AND PUBLICITY

- 21.1. Each Party shall use the Confidential Information of the other Party disclosed to it (by whoever disclosed) only for the proper performance of its duties under this Agreement and shall not without the disclosing Party's written consent disclose or permit the disclosure of the Confidential Information except in confidence for the proper performance of its duties under this Agreement to those of its employees, officers and professional advisers who need to have access to it.
- 21.2. The provisions of Clause 21.1 shall not apply to Confidential Information that:
  - 21.2.1. The receiving Party can prove, using written records, was known to the receiving Party or in its possession before that information was acquired from, or from some person on behalf of, the disclosing Party;
  - 21.2.2. Is in or enters the public domain through no wrongful default of the receiving Party or any person on its behalf;
  - 21.2.3. The receiving Party receives from a third party without similar obligations of confidence in circumstances where the third party did not obtain that information as a result of a breach of an obligation of confidence;
  - 21.2.4. Is required to be disclosed by any applicable law or by order of any court of competent jurisdiction or any government body, agency or regulatory body, to the extent of the required disclosure.
- 21.3. Within fourteen (14) days of receipt of a request to do so made at any time and in any event if this Agreement is terminated, the receiving Party shall promptly return or destroy (at the option of the disclosing Party) all Confidential Information of the disclosing Party.
- 21.4. If either Party wishes to issue a press release or engage in marketing activities in connection with the activities contemplated in this Agreement, such releases or activities shall be subject to prior written approval of the other Party, which approval shall not be unreasonably withheld or delayed. Customer agrees that TomTom may publicly announce and list Customer as a customer of TomTom. TomTom agrees that Customer may publicly announce and list TomTom as a vendor of Customer.
- 21.5. The provisions of Clause 21.4 shall not affect any announcement required by law, a binding decision by a court or government authority or the rules of any recognized stock exchange on which the shares of either Party are listed, provided that the Party making the announcement shall consult with the other Party insofar as is reasonably practicable before complying with such an obligation. In no event shall Customer make false or misleading representations with regard to TomTom or the Junction Analytics or engage in deceptive business practices.

## 22. ASSIGNMENT

Neither Party shall without the prior written consent of the other Party assign or transfer this Agreement or the benefit or burden of or the rights under this Agreement save that TomTom shall be entitled to assign or transfer this Agreement (whether in whole or in part) without the prior consent of Customer: (i) to an Affiliate; or (ii) to an acquirer of all or substantially all of its assets, business or equity securities.

**23. WAIVER**

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**24. SURVIVAL**

Notwithstanding any provision of this Agreement to the contrary, the provisions of Clause 11 ("Fees and payment"), Clause 12 ("Accounting and inspection"), Clause 13 ("Intellectual property rights"), Clause 16 ("Warranties"), Clause 17 ("Limitation of liability"), Clause 20 ("Effect of termination"), Clause 21 ("Confidentiality and publicity"), Clause 22 ("Assignment"), Clause 23 ("Waiver"), this Clause 24, Clause 25 ("Variation"), Clause 26 ("Severance"), Clause 27 ("No partnership or agency"), Clause 28 ("Third party rights"), Clause 29 ("Force Majeure"), Clause 30 ("No other terms"), Clause 31 ("Entire agreement"), Clause 32 ("Exclusion of the UCC and CISG"), Clause 34 ("Governing law and dispute resolution"), the Schedules, the Orders and any other Clauses which expressly or impliedly survive expiry or termination of this Agreement for any reason whatsoever shall continue in full force and effect after expiry or termination. Without prejudice to the foregoing, any fees and other payment obligations incurred by a Party prior to expiration or termination of this Agreement shall survive and shall be paid by the responsible Party immediately after such expiration or termination.

**25. VARIATION**

No variation of this Agreement shall be effective unless it is in writing and signed by the Parties.

**26. SEVERANCE**

- 26.1. If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 26.2. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

**27. NO PARTNERSHIP OR AGENCY**

Each Party to this Agreement is acting as an independent contractor and nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

**28. THIRD PARTY RIGHTS**

This Agreement is personal to the Parties and a person who is not a party to it shall have no right to enforce, or to enjoy the benefit of any provision of this Agreement.

**29. FORCE MAJEURE**

- 29.1. Neither Party shall be liable to the other Party for any delay or non-performance of its obligations under this Agreement to the extent that its performance is interrupted or prevented by a Force Majeure Event.
- 29.2. Such delay or non-performance shall not constitute a breach of this Agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented.

### **30. NO OTHER TERMS**

The terms and conditions of this Agreement govern all transactions contemplated by this Agreement including all orders by Customer. Any proposed variation from or addition to these terms and conditions appearing on any purchase order or other similar document submitted by Customer are null and void and shall not be considered an amendment to this Agreement even if signed by the Parties.

### **31. ENTIRE AGREEMENT**

- 31.1. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises or conditions, whether oral or written, express or implied between the Parties relating to such subject matter.
- 31.2. Each Party acknowledges to the other that it has not been induced to enter into this Agreement by nor has it relied upon any representation, promise, assurance, warranty or undertaking (whether in writing or not) by or on behalf of the other Party or any other person save for those contained in this Agreement. Accordingly, each of the Parties acknowledges and agrees that the only remedy available to it in respect of the subject matter of this Agreement shall be for breach of contract under the terms of this Agreement and it shall have no right of action against any other Party in respect of any such representation, promise, assurance, warranty or undertaking.
- 31.3. This Clause shall not exclude any liability which either Party would otherwise have to the other or any right which either of them may have to rescind this Agreement in respect of any statements made fraudulently by the other prior to the execution of this Agreement or any rights which either of them may have in respect of fraudulent concealment by the other.

### **32. EXCLUSION OF THE UCC AND CISG**

The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not govern nor apply to this Agreement. To the extent this Agreement is governed by the laws of any state of the United States, the Parties agree that the Uniform Commercial Code and any equivalent thereof adopted by such state shall not govern nor apply to this Agreement.

### **33. NOTICES**

Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier or email. Notices to TomTom must be sent to the following address: *Attn. Legal Department, TomTom Global Content B.V., e Ruijterkade 154, 1011 AC Amsterdam, The Netherlands*. Notices to Customer will be sent to the individual at the address Customer identifies on its account as its contact for notices. A notice shall be considered delivered and effective upon actual receipt and in any case no later than seven (7) days after the notice was sent.

### **34. GOVERNING LAW AND DISPUTE RESOLUTION**

- 34.1. If you are incorporated in the United States, then this Agreement and any dispute arising under or in connection with it, including any non-contractual claims and disputes, shall be governed by and construed in accordance with the laws of the State of New York. The applicability of the United Nations Convention on Contracts for the International Sale of Goods is explicitly excluded. The Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of New York in New York, New York in respect of any dispute arising under or in connection with this Agreement, including any non-contractual claims or disputes.
- 34.2. If you are incorporated in the European Union, then this Agreement and any dispute arising under or in connection with it, including any non-contractual claims and disputes, shall be governed by and construed in accordance with the laws of the Netherlands. The applicability of the United Nations Convention on Contracts for the International Sale of Goods is explicitly excluded. The Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of Amsterdam, the Netherlands in respect of any dispute arising under or in connection with this Agreement, including any non-contractual claims or disputes.



- 34.3. If you are incorporated outside of the United States or European Union, then this Agreement and any dispute arising under or in connection with it, including any non-contractual claims and disputes, shall be governed by and construed in accordance with the laws of the Netherlands. All disputes arising in connection with the Agreement, including any non-contractual claims or disputes, shall be settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. The arbitral tribunal shall be composed of three arbitrators. The place of arbitration shall be Amsterdam and the language of the arbitration shall be English. Consolidation of the arbitral proceedings with other arbitral proceedings, as provided for in Article 1046 of the Dutch Code of Civil Procedure and Article 39 of the Arbitration Rules of the Netherlands Arbitration Institute, is excluded.

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## Schedule 1. Junction Analytics specific provisions

### 1. ADDITIONAL RESTRICTIONS AND OBLIGATIONS

1.1. Customer shall not and shall prohibit any third party (including an End User) from:

- 1.1.1. Modifying, altering, editing, merging or otherwise changing the Junction Analytics from the format in which they are delivered by TomTom;
- 1.1.2. Create any form of database or substitute service by collating, aggregating, storing, recording, indexing or undertaking any other such similar action with the Junction Analytics or any other such data derived from the Junction Analytics including once which competes, directly or indirectly, with the Junction Analytics;
- 1.1.3. Permit the Junction Analytics to be made available, either directly or indirectly, through any medium or service other than the Permitted Solutions including, without limitation, any software program, product, application or website;
- 1.1.4. Configure its systems in a manner that downloads, or attempts to download, the same information file from the Junction Analytics system infrastructure more than three times before an update is made available from such system infrastructure. It is acknowledged that the foregoing is required in order to reduce the resource burden placed in the system infrastructure.

### 2. RIGHT TO DISCONTINUE JUNCTION ANALYTICS

TomTom may discontinue any of the Junction Analytics on providing Customer with twelve (12) months prior written notice.

### 3. SERVICE LEVEL AGREEMENT

With respect to Junction Analytics, TomTom shall use its reasonable endeavors to ensure that the Junction Analytics are available in accordance with the Service Level Agreement as set out under Schedule 2.

## Schedule 2. Service Level Agreement

### 1. JUNCTION ANALYTICS SERVICE LEVEL

- 1.1. In respect of the Junction Analytics hosted by TomTom or its suppliers, TomTom will use reasonable efforts to ensure a monthly service availability of 99.9%.
- 1.2. "Availability" for the purposes of paragraph 1.1 above shall be calculated in accordance with the following formula:

$$A = (Tt - Ut) / Tt * 100\%$$

Where:

A = Availability [%]

Tt = Total time [minutes] in the measurement period

Ut = Unavailable time [minutes] in the measurement period

The measurement period is one month.

Unavailable time caused by components outside TomTom or its suppliers' datacenters is excluded from the service availability calculation.

Unavailable time is measured from the moment a Critical Incident (as defined below) is reported to TomTom or from the moment the Critical Incident is detected by the TomTom monitoring system, whichever comes first.

### 2. EXCLUSION OF TOMTOM'S LIABILITY

- 2.1. TomTom shall not be liable for any failure to meet the Service Level Agreement where such failure results from any act or omission of Customer, Subcontractor or End User including, without limitation:
  - 2.1.1. Any breach by Customer of the terms and conditions of this Agreement or a failure to maintain in place the minimum technical requirements as may be detailed in TomTom's standard documentation as published from time to time;
  - 2.1.2. Any failure of Customer or End User to maintain an adequate connection to the internet or other such form of connectivity which the Permitted Solution requires in order to access the Junction Analytics; or
  - 2.1.3. Any failure or malfunction of the Permitted Solution which is not attributable to the Junction Analytics hosted by TomTom or its suppliers.

### 3. SUPPORT SERVICES

- 3.1. The Support Services shall include the following:
  - 3.1.1. TomTom will monitor the hosted services and take corrective action when needed;
  - 3.1.2. Customer will have access to the Support and Escalation Contacts at TomTom as specified below;
  - 3.1.3. Customer can report (Critical) Incidents to TomTom in respect of the hosted services. TomTom will coordinate the resolution of (Critical) Incidents and will seek to resolve (Critical) Incidents as quickly as possible.
  - 3.1.4. Customer can report content quality issues (e.g. missing content or incorrect content) to the TomTom. TomTom will use this feedback for service improvement but specific actions are at the sole discretion of TomTom;
  - 3.1.5. Unless otherwise agreed, all communication will be in English.

#### 4. INCIDENT MANAGEMENT

- 4.1. The primary objective of Incident Management is to return the hosted services by TomTom or its suppliers to the End Users as quickly as possible.
- 4.2. A “Critical Incident” is defined as the unavailability of a hosted service by TomTom or its suppliers. Any other issue with a hosted service is defined as “Incident”.
- 4.3. A (Critical) Incident is considered resolved when the hosted service has been restored, regardless of how they have been restored.

#### 5. MONITORING AND REPORTING

TomTom provides 24x7 monitoring of its hosted services. Service availability reports and post incident reports are available on request.

#### 6. SUPPORT AND ESCALATION CONTACTS

Type of Incident	TomTom
Critical Incidents	24/7 Network Operation Centre 0031 (0) 20 757 5716
Other Incidents	During the normal daytime business hours: (9:00AM – 5:00PM CET; excluding holidays and weekends) licensing support@tomtom.com