

## **TOMTOM ONLINE EVALUATION AGREEMENT FOR TRAFFIC ANALYTICS PRODUCTS & ROUTE MONITORING**

By completing the Online Registration Form and clicking the "I AGREE" button, you hereby agree on behalf of your employer or other entity as indicated in the Online Registration Form (hereinafter "**you**") that any access which TomTom grants you to the Licensed Products shall be subject to and in accordance with this Agreement. Notwithstanding the foregoing, you acknowledge and agree that your submission of the Online Registration Form and acceptance of these terms is deemed to be an offer by you and shall not be binding upon TomTom until your Online Registration Form is accepted. For these purposes, TomTom's delivery of an access code to the Licensed Products shall constitute acceptance by TomTom. TomTom may reject any Online Registration Form at its sole and absolute discretion.

In the event you do not agree to the below terms, you are not entitled to use the Licensed Products.

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**").

You may not use the Licensed Products and may not accept the Agreement, if you are barred from receiving the Licensed Products under the laws of the United States or other countries, including the country in which you are resident or from which you use the Licensed Products.

If you have signed a separate written agreement with TomTom regarding the use of the Licensed Products and you are accepting these terms purely to access the Licensed Products, the terms of such separate written agreement shall apply to your use of the Licensed Products.

### **TERMS APPLICABLE TO THE LICENSED PRODUCTS**

#### **1. DEFINITIONS**

1.1. The following definitions apply to this Agreement:

"**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.

"**Licensed Products**" means the Traffic Analytics Products and/or Route Monitoring made available by TomTom at <https://move.tomtom.com> and which you have requested access to in the Online Registration Form.

"**Online Registration Form**" means the online registration form available at <https://move.tomtom.com> which has been completed and submitted by you and which includes, without limitation, your requested Trial Plan and requested Licensed Products.

"**Route Monitoring**" means TomTom's real-time travel time information for predefined routes.

"**Trial Plan**" means the trial plan, including usage limits, which you have selected via the Online Registration Form.

"**Term**" means as defined under Clause 12.

"**Traffic Analytics Products**" means TomTom's historical traffic-based products.

#### **2. GRANT OF LICENSE**

- 2.1. Subject to your compliance at all times with this Agreement, TomTom hereby grants to you a limited, non-exclusive, non-transferable, non-sublicensable, revocable, royalty-free license through the Term to access and use the Licensed Products in accordance with your Trial Plan for the limited purpose of internal evaluation and testing by you.
- 2.2. The Licensed Products will in no event be used for (i) commercial or revenue generating purposes or (ii) shared with any third party.

- 2.3. This Agreement contains the full and complete grant of rights by TomTom to you in respect of the Licensed Products and any other use of the Licensed Products other than expressly permitted in this Agreement is strictly prohibited.

### **3. YOUR FURTHER OBLIGATIONS**

- 3.1. You agree to use the Licensed Products only for purposes that are permitted by this Agreement and in accordance with all applicable laws.
- 3.2. You are prohibited from decompiling, reverse engineering, disassembling, or creating derivative works of the Licensed Products or any part thereof.
- 3.3. You acknowledge and agree that TomTom shall be entitled to place restrictions on your use of the Licensed Products including but not limited to the number of queries which you make over a period to be determined by TomTom for the purposes of managing the load placed on TomTom's server infrastructure. You therefore understand and agree that any request made to the TomTom servers beyond these restrictions shall be rejected by the TomTom servers and TomTom shall have no liability for such rejection.
- 3.4. You may not benchmark the Licensed Products against those provided by third parties, unless explicitly approved by TomTom in writing.

### **4. ACCOUNT AND ACCESS CREDENTIALS AND SECURITY TERMS**

Any use of the Licensed Products through access credentials issued to you will be considered your use and you are responsible for such use. You agree to take due care protecting such access credentials against misuse by others and disclosure to others and promptly notify TomTom about any misuse or loss of access credentials.

### **5. DATA PROCESSING AND PRIVACY**

- 5.1. TomTom shall collect, via the Licensed Products, the Personal Data specified under [http://tomtom.com/en\\_gb/thirdpartyproductterms/](http://tomtom.com/en_gb/thirdpartyproductterms/) and shall process such Personal Data in accordance with the terms set out under the same link. The terms under both such links may be updated from time to time by TomTom and shall apply from the date of such update unless otherwise stated.
- 5.2. In order to improve the TomTom Move portal and the Licensed Products, TomTom may collect certain usage related information from your use of the Licensed Products including but not limited to your unique identifier, associated IP addresses, version number of the Licensed Products used, and how they are being used by you. In the event that you do not agree to the collection of this information you need to discontinue filling in the Registration Form and stop using the Licensed Products. The information collected is examined on an aggregated basis to improve the Licensed Products and is maintained in accordance with all applicable data protection laws.
- 5.3. To submit the Online Registration Form, at a minimum, you must supply your work email address, the company name of your employer and create a password. TomTom advises you to keep your TomTom Move portal registration details confidential and use different passwords elsewhere. Optional information, as indicated in the Online Registration Form or as later requested, can be provided to us. We use the information you share to be able to better serve you. We will use your email address to inform you about your transaction history and product use. We will also use your email address and phone number (if provided) to occasionally send information related to the products and services you are using on the TomTom Move portal unless you have opted out. You can opt out of further commercial email or phone calls at any time by following the steps described in each email or call. We will not sell your data to anyone. For more information see our privacy policy: [https://www.tomtom.com/en\\_gb/privacy/](https://www.tomtom.com/en_gb/privacy/).

### **6. SUSPENSION OF SERVICES**

- 6.1. TomTom shall be entitled to suspend your access to the Licensed Products in the event:
  - 6.1.1. TomTom reasonably believes that you are in breach of the terms of this Agreement.
  - 6.1.2. You exceed any usage limits set out under your Trial Plan.
  - 6.1.3. You create additional accounts for the purpose of obtaining additional non-chargeable transactions.
  - 6.1.4. You breach any security measure or requirements set out by TomTom.

6.1.5. TomTom reasonably believes that such suspension is necessary in order to protect the general integrity of the services offered via the Licensed Products.

6.2. TomTom shall not be liable to you where it suspends your access to the Licensed Products in accordance with the above.

## **7. INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHT NOTICES**

7.1. The Licensed Products are licensed and not sold. All Intellectual Property Rights in the Licensed Products and content delivered thereby are owned by TomTom and/or its licensors and suppliers.

7.2. Without limiting the foregoing, you acknowledge that the Licensed Products are the result of substantial investments and protected by database rights as meant in the European Union Database Directive 95/46/EC, and you acknowledge that the Licensed Products 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.

7.3. If you are a US state, US federal or other US public entity ("**US Government**"), you agree to protect the TomTom Intellectual Property Rights from public disclosure. In the event that you are required to disclose the TomTom Intellectual Property Rights under any law or regulation that permits public access and/or reproduction or use of the TomTom Intellectual Property Rights, you will notify TomTom in writing prior to such disclosure and if TomTom is unable to comply with such disclosure, this Agreement shall be automatically terminated and considered immediately null and void. 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 Government, either directly under a prime contract, or indirectly through subcontract, is subject to the terms of this Agreement. In no event shall the 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 Licensed Products, the construction that provides greater limitations on the Government's rights shall control.

## **8. CONFIDENTIAL INFORMATION**

You shall use TomTom's Confidential Information only for the proper performance of its duties under the Agreement and shall not, without TomTom's written consent, disclose or permit the disclosure of the Confidential Information, except in confidence for the proper performance of its duties under the Agreement to those of its employees, officers and professional advisers who need to have access to it. "**Confidential Information**" for these purposes means all information disclosed by or on behalf of TomTom (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, organizational, 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 and any keys and access codes provided.

## **9. WARRANTIES**

9.1. THE LICENSED PRODUCTS ARE PROVIDED ON AN "AS IS" AND "WITH ALL FAULTS BASIS" AND TOMTOM EXPRESSLY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, 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. FURTHERMORE, YOU ACKNOWLEDGE AND AGREE THAT THE LICENSED PRODUCTS HAVE NOT BEEN DEVELOPED TO MEET YOUR INDIVIDUAL REQUIREMENTS AND THAT TOMTOM DOES NOT WARRANT THAT THEY WILL OPERATE UNINTERRUPTED OR ERROR-FREE. YOU ACKNOWLEDGE THAT YOU MAY BE RECEIVING A SAMPLE VERSION OF THE LICENSED PRODUCTS THAT IS PRELIMINARY IN BOTH FORMAT AND CONTENT, AND THAT SUCH LICENSED PRODUCTS MAY NOT BE USED AS A BASIS FOR A FINAL OR RELEASED PRODUCT, AND THAT TOMTOM IS IN NO WAY OBLIGATED TO PRODUCE A FINAL OR RELEASED PRODUCT BASED ON SUCH SAMPLE.

9.2. YOU WARRANT, REPRESENT AND UNDERTAKE TO TOMTOM THE FOLLOWING:

9.2.1. THAT ALL INFORMATION YOU SUBMITTED VIA THE ONLINE REGISTRATION FORM IS TRUTHFUL, COMPLETE AND ACCURATE AND THAT IT WILL BE UPDATED BY YOU, IF NEED BE; AND

9.2.2. THAT IF YOU ARE ENTERING THIS AGREEMENT ON BEHALF OF YOUR EMPLOYER OR OTHER ENTITY, THAT YOU HAVE FULL LEGAL AUTHORITY TO BIND YOUR EMPLOYER OR SUCH ENTITY TO THE AGREEMENT. IF YOU DO NOT HAVE THE REQUISITE AUTHORITY, YOU MAY NOT ACCEPT THE AGREEMENT OR USE THE LICENSED PRODUCTS ON BEHALF OF YOUR EMPLOYER OR OTHER ENTITY.

## **10. LIMITATION OF LIABILITY**

- 10.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER TOMTOM NOR ITS LICENSORS, SUPPLIERS, OFFICERS, DIRECTORS OR EMPLOYEES SHALL BE LIABLE TO YOU FOR ANY DAMAGES, WHETHER DIRECT, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL PUNITIVE OR OTHERWISE ARISING OUT OF OR RELATED TO:
  - 10.1.1. YOUR USE OF, OR INABILITY TO USE OR ACCESS, THE LICENSED PRODUCTS; AND
  - 10.1.2. YOUR RELIANCE ON ANY CONTENT DELIVERED BY THE LICENSED PRODUCTS (INCLUDING YOUR RELIANCE ON THE COMPLETENESS OR ACCURACY OF THE SAME).
- 10.2. THE FOREGOING UNDER CLAUSE 10.1 APPLIES AND UNDER ANY THEORY OF LIABILITY (INCLUDING CONTRACT, TORT, COMMON LAW, OR STATUTORY DAMAGES) AND SHALL APPLY EVEN IF TOMTOM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 10.3. TO THE EXTENT TOMTOM IS NOT PERMITTED UNDER APPLICABLE LAW TO EXCLUDE ITS LIABILITY PURSUANT TO CLAUSES 10.1 AND 10.2 ABOVE, TOMTOM'S TOTAL AGGREGATE LIABILITY TO YOU SHALL BE LIMITED TO THE AMOUNT OF USD 100.00.
- 10.4. THE ABOVE LIMITATIONS AND EXCLUSIONS OF LIABILITY UNDER THIS CLAUSE 10 DO NOT EXCLUDE OR LIMIT ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

## **11. INDEMNITY**

You agree to defend, indemnify and hold TomTom and its respective directors, officers, employees, affiliates, agents and suppliers harmless from and against any and all claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys fees) arising out of or accruing from any non-compliance by you with this Agreement.

## **12. TERM AND TERMINATION**

- 12.1. This Agreement begins on the date when TomTom accepts your Online Registration Form and shall continue until the expiry of your Trial Plan (the "**Term**").
- 12.2. TomTom may terminate this Agreement in the event:
  - 12.3. You breach any of the terms and conditions of this Agreement;
  - 12.4. You have not signed into your account or made use of the Licensed Products using you access credentials for a continuous period of ninety (90) days.
- 12.5. Upon termination or expiry of this Agreement, all access rights you have to access and receive the Licensed Products will be terminated and you will no longer be able to access the Licensed Products.
- 12.6. The provisions of this Agreement, which by their nature are intended to survive termination, will remain in effect after termination of this Agreement.

## **13. AMENDMENTS TO THE TERMS OF THIS AGREEMENT**

TomTom may at any time modify the terms of this Agreement. Any such modified terms shall be posted at <https://move.tomtom.com>. You will not be notified individually of any such changes. It is your responsibility to monitor and review any such changes. In the event you do not agree with any such modified terms, you must immediately cease all use of the Licensed Products.

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

- 14.1. 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. You and TomTom hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of New York, New York in respect of any dispute arising under or in connection with this Agreement, including any non-contractual claims or disputes.

- 14.2. 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. You and TomTom 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.
- 14.3. 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 (3) 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.
- 14.4. Notwithstanding this, TomTom shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

## **15. OTHER LEGAL TERMS**

- 15.1. No failure or delay by TomTom 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.
- 15.2. Should for any reason, or to any extent, any provision of this Agreement be held invalid or unenforceable, such invalidity or enforceability shall not affect or render invalid or unenforceable the remaining provisions of this Agreement and the application of that provision shall be enforced to the extent permitted by law.
- 15.3. The rights granted to you in this Agreement may not be assigned or transferred by you without TomTom's prior written approval. TomTom shall be entitled to assign or transfer this Agreement (whether in whole or in part) without your prior consent.
- 15.4. This Agreement and the Online Registration Form 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. This Agreement may only be amended in a written document signed and executed by the parties.