

Service Schedule to TomTom Telematics General Terms and Conditions

– WEBFLEET Service Terms

Together with the TomTom Telematics General Terms and Conditions, the following terms apply to subscriptions to the WEBFLEET Service.

1 – Definitions

“Data Protection Laws”

means the General Data Protection Regulation (2016/679/EC, “GDPR”) and any successor legislation to the GDPR;

“Fleet”

means the vehicles, assets or persons to be tracked or traced via the WEBFLEET Service;

“Location Data”

means data on the geographical position of the Fleet and other messages or data sent to or by the Fleet;

“Mobile Communication Services”

means the mobile electronic communication services used for transmitting the Location Data;

“Onboard Unit”

means a device, as referred to on the Order Form item list, either purchased or rented by the Client, that can be used for obtaining Location Data via GPS satellite and for sending and receiving such data and other messages via Mobile Communication Services (either automatically according to a set procedure or by manual information retrieval).

2 – The WEBFLEET Service

2.1 Client is granted a non-exclusive and non-transferable right to use the WEBFLEET Service for tracking and tracing the Fleet and for reporting, planning and messaging purposes in the Territory.

2.2 Client may use the WEBFLEET Service in connection with the number of Onboard Units set out in the Order Form. If, at any time, the Client wishes to increase the then current number of Onboard Units it must notify TomTom thereof and sign a separate Contract.

2.3 Client is responsible for: (I) equipping the Fleet with properly working Onboard Units and ensuring the contactability of such Onboard Units, or allowing a third party to do so; (II) ensuring that Client has properly functioning browser software and internet access to the WEBFLEET Service of sufficient capacity; and (III) the correct configuration of the WEBFLEET Service.

2.4 TomTom does neither warrant that GPS or the Mobile Communication Services will continue to support the functionality offered by the WEBFLEET Service nor that the Client will be able to successfully use the WEBFLEET Service for the intended use, as referred to in clause 2.1 of these WEBFLEET Service Terms, due to the fact that such use depends partly on circumstances beyond TomTom’s reasonable control, including those circumstances for which the Client will be responsible pursuant to clauses 2.3 and 4 of these WEBFLEET Service Terms.

2.5 TomTom reserves the right to change the look and feel of the WEBFLEET Service and the way the Location Data are displayed.

2.6 The Client 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 WEBFLEET Service and Products, 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 use such data without any identification of individuals involved or shall anonymise such Personal Data (“Anonymised Data”) prior to using in accordance with clause 2.7 of these WEBFLEET Service Terms.

2.7 The Client grants TomTom and its Affiliates an irrevocable, perpetual worldwide non-exclusive license to use data and system usage information and Anonymised Data to enable TomTom and its Affiliates to develop, provide, distribute, display, and maintain current and future versions and evolutions of the WEBFLEET Service and new TomTom or its Affiliates’ products and marketing communications and to make the same available, directly or indirectly (including via its Affiliates), to customers, distributors, resellers and end users, whether for their own use or for further distribution.

3 – User Names and Passwords

3.1 TomTom shall provide the Client with the necessary access data, such as account names, User names and passwords. For security reasons, the Client must change the issued passwords immediately after having accessed the WEBFLEET Service for the first time and must keep the access data confidential.

3.2 The Client is responsible and liable for any use of the WEBFLEET Service if the User obtained access to such service via the Client’s access data, even if the Client did not consent to or was unaware of such use, unless such use takes place three (3) working days after TomTom has received a written request from the Client to invalidate the User’s access data.

4 – Transmission

TomTom will procure the Mobile Communication Services for the transmission of Location Data between the Onboard Units and the TomTom Platform. The Client acknowledges and agrees that TomTom is dependent on the performance of the third parties providing these services, and therefore cannot warrant: (I) that the Mobile Communication Services will be available on a continuous basis and at any place within the Territory (for instance due to gaps in network coverage, or changes related to infrastructure and/or technology of the relevant Mobile Communication Services) and due to the fact that these providers reserve the right to suspend their services for maintenance purposes, for security reasons, under instruction of competent authorities etc.); or (II) the speed at which the Location Data will be transmitted.

5 – SIM-cards

5.1 TomTom will provide the Client with SIM-cards for each Onboard Unit that the Client is licensed to use in connection with the WEBFLEET Service, which the Client shall use solely: (I) in combination with the Onboard Units; and (II) for transmitting Location Data between the Fleet and the TomTom Platform.

5.2 The ownership of SIM-cards provided by TomTom is retained by TomTom and the Client must return or destroy such SIM-cards upon expiry or termination of the Contract.

5.3 Client shall indemnify, defend and hold TomTom and its Affiliates harmless from and against any losses, damages, fines, costs or expenses (including legal fees) arising from or in connection with claims from third parties with respect to, in particular the underlying wireless service carrier, that the Client’s use of the SIM-cards provided by TomTom is not in conformity with the Contract.

6 – Fair Use Policy

6.1 By accepting these WEBFLEET Service Terms, the Client agrees to be bound by the Fair Use Policy described in this clause 6. TomTom’s Fair Use Policy is designed to make sure that the WEBFLEET Service is of great value, high quality and reliable.

6.2 TomTom has a Fair Use Policy because at peak times, many TomTom Clients use the shared network bandwidth of our WEBFLEET Service. The vast majority of TomTom’s Clients use the WEBFLEET Service considerably and their usage levels do not disproportionately affect the shared network capacity. Only a very small number of our Clients use the WEBFLEET Service inappropriately, for example units that are consuming a large amount of data due to automated systems that generate large messaging traffic via WEBFLEET.connect. As a result of this excessive use, the quality of the WEBFLEET Service for all Users may be affected. The Fair Use Policy manages inappropriate and/or excessive use and makes sure the WEBFLEET Service can be used by everyone.

6.3 If the Client regularly uses the WEBFLEET Service inappropriately and/or excessively and TomTom believes this is affecting the WEBFLEET Service, TomTom will notify the Client about this usage and TomTom will ask the Client to change or decrease this kind of usage. If the Client continues to use the WEBFLEET Service inappropriately, TomTom reserves the right to suspend (a part of) the WEBFLEET Service or unilaterally terminate the Contract by providing written notice thereof to the Client.

6.4 TomTom’s Fair Use Policy applies to all Clients but will only affect the Client if the Client is one of the very few Clients who make inappropriate or excessive use of the WEBFLEET Service.

7 – Data Protection

7.1 Each Party shall at all times comply with its respective obligations under the provisions of Data Protection Laws. This clause 7 is in addition to, and does not relieve, remove or replace, a Party’s obligations under the Data Protection Laws. References to “Data Processor”, “Data Controller” and “Personal Data” shall have the meanings defined in the Data Protection Laws.

7.2 Without prejudice to the generality of clause 7.1 of these WEBFLEET Service Terms, the Client will ensure that it has all necessary notices in place and has secured the appropriate legal basis to enable lawful transfer of Personal Data to TomTom for the duration and purposes of the Contract.

7.3 Where TomTom or any of its subcontractors, as part of the fulfilment of its obligations under the Contract, processes Personal Data as a Data Processor on behalf of the Client acting as a Data Controller, TomTom shall, and shall procure that its subcontractors shall during the term of the Contract:

7.3.1 comply with the obligations of a Data Processor under the latest applicable local Data Protection Laws and European Directive on Privacy and Electronic Communications, including their successors;

7.3.2 act only on the written instructions from the Client when processing Personal Data provided to it under the Contract, and keep records of all such processing; unless TomTom is required to do so by the laws of a Member State or by the laws of the European Union (“Applicable Law”). Where TomTom is relying on Applicable Law as the basis for processing Personal Data, TomTom shall inform the Client of that legal requirement before processing, unless those Applicable Laws prohibit such notification to the Client;

7.3.3 comply with the Client’s instructions in relation to the processing of Personal Data as such instructions are given and varied from time to time by the Client;

7.3.4 at all times take all appropriate technical and organizational measures, to protect against unauthorized or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data; appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures. A detailed description of the technical and organizational measures shall be available to the Client through the TomTom Platform;

7.3.5 ensure that only appropriately trained personnel have access to and/or process Personal Data and they are obliged to keep the Personal Data confidential;

7.3.6 not transfer any Personal Data outside the European Economic Area without the Client’s prior written consent.

7.3.7 immediately notify the Client if it receives any complaint, notice or communication that relates directly or indirectly to the processing of Personal Data under the Contract, provide full co-operation and assistance in relation to any such complaint, notice or communication;

7.3.8 notify the Client without undue delay and no later than within 5 days if it receives a request from a data subject for access to that person’s Personal Data and it shall provide the Client, at the Client’s cost, with full co-operation and assistance in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

TomTom Telematics
De Ruijterkade 154
1011 AC Amsterdam
The Netherlands

t: +61 (0) 2 8023 8554

e: sales.au@telematics.tomtom.com
www.tomtom.com/telematics

7.3.9. maintain complete and accurate records and information to demonstrate its compliance with this clause 7.3 and allow the Client and its authorized representatives to audit compliance by TomTom or by its subcontractors with TomTom's obligations to the Client under the Contract in connection with its processing of Personal Data as a Data Processor;

7.3.10. notify the Client without undue delay and no later than within 48 hours on becoming aware of a Personal Data breach. Such notification will include information about: the nature of the breach, where further information on the breach can be obtained, the recommended measures to mitigate the negative consequences of the breach, technical details on the data breach, the actual and expected consequences of the breach as well as the way in which the Data Controller has dealt with or intends to deal with these consequences; and

7.3.11. at the written direction of the Client, delete Personal Data and copies thereof to the Client on termination of the Contract unless required by Applicable Law to store the Personal Data; and

7.3.12. maintain an internal data breach register that contains a record of all breaches the Data Processor has experienced that have or may have serious adverse consequences for the protection of Personal Data.

7.4 TomTom shall not subcontract its obligations to a sub-processor without the prior written consent of the Client unless such sub-processor undertakes, by way of written agreement, substantively the same obligations as imposed on TomTom in the Contract. TomTom shall inform the Client of its intention to engage a sub-processor and the Client shall have the right to reasonably oppose the appointment of a new sub-processor if the Client has substantive and legitimate reasons for opposing the specific sub-processor and shall notify TomTom of such objections in writing as soon as possible after receipt of the notice relating to such sub-processor. The addition or removal of a sub-processor should not negatively affect the level of security within the Contract to less than that which existed at the time of signing the Contract.

7.5 The Client shall have the right to obtain information from TomTom, upon written request, on the substance of the contract and the implementation of the data protection obligations within the sub-contract relationship, where necessary by inspecting the relevant contract documents. Where the sub-processor fails to fulfil its data protection obligations under such written agreement TomTom shall remain fully liable to the Client for the performance of the sub-processor's obligations.

7.6 The Client may from time to time serve on TomTom an information notice requiring TomTom, within such time and in such form as is specified in the information notice, to give to the Client such information as the Client may reasonably require relating to:

7.6.1. compliance by TomTom or by its subcontractors with TomTom's obligations to the Client under the Contract in connection with its processing of Personal Data as a Data Processor; and

7.6.2. the rights of data subjects connected with such Personal Data, including subject access rights.

7.7 The Parties agree that on the request of the Client they shall complete all relevant details in, and enter into, the standard contractual clauses as adopted by the European Commission.

7.8 The Parties agree that they will co-operate to register the standard contractual clauses as defined by the General Data Protection Regulation with any supervisory authority in any member state of the European Economic Area or to procure approval from any such supervisory authority (as the case may be) where the same is required and, without limitation, that they will provide additional information about the transfer referred to in the standard contractual clauses where required or requested to do so by any such supervisory authority.

7.9 The Parties acknowledge that they have agreed that the Client will respond to enquiries from data subjects and supervisory authority concerning the processing of Personal Data by Supplier.

7.10 Notwithstanding any obligations TomTom has as a Data Processor, TomTom will immediately notify the Client upon any legal request from any governmental and/or judicial body, where this request relates to the Client's Personal Data. The Client may, at its sole discretion, decide to handle this request.

7.11 If TomTom has or should have any reason to doubt the qualification of any data set or individual piece of data or information as Personal Data or vice versa, it will take direction from the Client prior to making any decision on the processing of said data or information. This includes, but is not limited to, data that is derived from usage data or Client/User generated content.