

User Agreement

TERMS OF SERVICE

These Terms of Service (the "Agreement") is a contract in electronic format between you as an end-user and Rapidsoft Systems, Inc, a New Jersey C-Corp, governing the use of Our Work Force Tracker remote-accessible software service (the "Service"). By accessing and using our Service, you are agreeing that you will be bound by and comply with the terms and conditions of this Agreement. The terms "Work Force Tracker", "we", "us" or "our" refers collectively to the licensor Rapidsoft Systems, Inc and our website Workforcetracker.net (the "Site"). The term "you" or "your" refers to you as the user and licensee of our Service under this Agreement.

1. ACCEPTANCE OF TERMS.

Rapidsoft Systems makes the Service available through our Site as provided in this Agreement. We provide our Service to you under and subject to the most recent version of this Agreement. We may update this Agreement at any time, without prior notice to you, by posting a new version at <http://login.workforcetracker.net/user-agreement>. The latest Agreement will be posted on the Site for your review before using the Service. If you do not agree with all the terms and conditions of this Agreement, you must cease using the Service; your continued use of the Service will signify your acceptance of this Agreement.

2. DESCRIPTION OF SERVICE.

The Service is designed to provide you with the capability to manage your service business. The Service is based on our Work force Tracker Software (the "Service Management Software") that is hosted by us or on our behalf and accessible by you remotely through our Site. You are provided subscription based license to use the services for paid number of users during the period of paid subscription only.

3. LICENSE TO USE.

Subject to the terms and conditions of this Agreement, Rapidsoft Systems grants to you a limited, non-transferable, non-exclusive, non-sublicensable, revocable right and license to access and use our Service to support your business operations for the term of this Agreement unless sooner terminated. You may not use the Service in a resale capacity, or process third party data in a commercial service bureau environment, and Rapidsoft Systems retains all right, title and interest in and to all Service Management Software applications and any materials supplied to you by us.

Customers access to the Subscription Service shall be limited by the quantity and type of Usage Basis set forth in the Order Form.

4. CUSTOMERS USE OF THE SUBSCRIPTION SERVICES.

In order to access the Subscription Service Customer shall (i) be responsible for all activities that occur under Customer's user accounts; (ii) prevent unauthorized access to, or use of, the Subscription Service, and shall notify Rapidsoft Systems of any unauthorized use, (iii) will not allow anyone to use the system with an intent to cause harm, run any benchmark tests, or knowingly engage in any activity that may negatively impact the normal functioning of the system.

Customer agrees that you shall not:

- a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service in any way except as permitted under this Agreement in connection with developing your own service management programs;
- b) modify or make derivative works based upon the Service;
- c) create Internet "links" to the Service or "frame" or "mirror" any portion of the Service on any other server or wireless or Internet-based device; or
- d) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product or service using similar ideas, features, functions or graphics represented by or incorporated in the Service, or (e) copy any ideas, features, functions or graphics represented by or incorporated in the Service.
- e) disclose the Licensed Software of Documentation related thereto to any third party, nor allow any third party to access, observe, analyze or view the operation of the Licensed Software except as may be permitted per the Documentation;
- f) access or utilize or allow anyone else to access or utilize the Licensed Software remotely except as may be permitted per the any other written terms of agreement with us;
- g) translate, or create any derivative works of the Licensed Software;
- h) remove or alter any Rapidsoft Systems trademark, logo, copyright or other proprietary notice, legend, symbol from the Licensed Software, or
- i) use the Products in any way not expressly provided for in the Agreement or the applicable Order Form

5. RESERVATION OF RIGHTS; RESTRICTIONS FOR ALL PRODUCTS AND SERVICES

Except for the limited rights expressly granted to Customer hereunder, Rapidsoft Systems reserves all rights, title and interest in and to the Products, and all related intellectual property rights inherent therein ("Rapidsoft Systems IP").

Customer acknowledges and agrees that (i) Rapidsoft Systems is the exclusive owner (or authorized licensee) of all right, title and interest in and to the Rapidsoft Systems IP, including, but not limited to, US and international patent, copyright, trademark, trade secret, and trade dress rights and any other intellectual property rights, and (ii) Rapidsoft Systems owns and hereby retains all right, title, and interest in and to any and all improvements, modifications releases, updates, upgrades and derivative works of such Rapidsoft Systems IP.

Customer shall not copy, license, lease, rent, distribute, sell, make available, assign, sublicense or use the Rapidsoft Systems IP in a timesharing or service bureau arrangement, or otherwise commercially exploit the Rapidsoft Systems IP or make the Rapidsoft Systems IP available to a third party. Customer agrees that it will not, prepare a derivative or compilation work of the Rapidsoft Systems IP, or develop a competing product based on the Rapidsoft Systems IP.

No individual, organization, person or other entity that is a direct competitor of Rapidsoft Systems may access the Products, except with Rapidsoft Systems's prior written consent.

In addition, no individual, organization, person or other entity may access the Products for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes. Rapidsoft Systems shall have the unrestricted right to use or act upon any suggestions, ideas, enhancement requests, feedback or recommendations provided by Customer or any other party relating to the Rapidsoft Systems IP.

6. RESOURCES

As part of the Service, Rapidsoft Systems will provide and operate the servers, system software, and applications software, including our Service Management Software functionality available to you in connection with the Service as provided in this Agreement.

7. SUPPORT

The Service will include remedial maintenance for the Service Management Software our Service is based upon, including all updates, bug fixes, and upgrades to the Service Management Software that are implemented by us during the term of the Agreement.

8. AVAILABILITY OF SERVICE.

Subject to the terms and conditions of this Agreement, Rapidsoft Systems will use commercially reasonable efforts to provide the Service for twenty-four hours a day, seven (7) days a week through the term of this Agreement. You agree that from time to time the Service may be inaccessible or impossible to use for various reasons, including periodic maintenance procedures or upgrades, service malfunctions and causes beyond our control or that are not reasonably foreseeable by us, including the interruption or failure of telecommunications or digital transmission links, hostile network attacks or network congestion or other failures (collectively, "Downtime").

Rapidsoft Systems will use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the Service in connection with Downtime, whether scheduled or not. Rapidsoft Systems will not be responsible for any damages or costs incurred by you, including without limitation, lost profits, if any, that may arise in connection with Downtime.

9. PAYMENT AND CANCELATIONS.

The Service is offered with a free trial. Once that trial is up, you will only be able to continue using the Service by paying in advance for further usage and subscribing to the services.

You agree to pay Rapidsoft Systems the fees specified in the plan corresponding to the Service level and the subscription period ("Term of Service Subscription") to which you have subscribed.

Your Service will automatically renew at the end of the current Subscription period, and Rapidsoft Systems will charge the then-current renewal fees to the credit card associated with Your Account. If you cancel your Rapidsoft Systems Service before end of your subscription term, Rapidsoft Systems is not obligated to refund Service charges already paid. Cancellation will take effect at the end of the current Service contract period. There is no credit for partial month usage or, non-use of any paid service by any user as all users are billed for the entire month.

Except as otherwise specified herein or in any separate agreement:

- (a) fees are based on Services purchased and not actual usage of any Service,
- (b) payment obligations are non-cancelable and fees paid are non-refundable, upon expiration regardless of whether Customer has prepaid for any portion of the Services, and
- (c) the Usage Basis purchased cannot be decreased during the relevant Agreement term.

You are responsible for the payment of all taxes that may be associated with this Agreement or your use of the Service (other than taxes based on Rapidsoft Systems's net income). If Rapidsoft Systems is required to pay any taxes for which you are responsible under this Agreement, you will, upon receipt of our invoice, reimburse us in full.

10. YOUR REGISTRATION OBLIGATIONS.

You represent that you are of legal age to form a binding contract and are not a person barred from receiving services under the laws of the United States or any other applicable jurisdiction. You also agree to:

- (a) provide true, accurate, current, and complete information about yourself as prompted by the Rapidsoft Systems Service's registration form (the "Registration Data") and,
- (b) maintain and promptly update the Registration Data to keep it true, accurate, current, and complete.

If you provide any information that is untrue, inaccurate, not current, or incomplete, or Rapidsoft Systems has reasonable grounds to suspect that such information is untrue, inaccurate, not current, or incomplete, Rapidsoft Systems has the right to suspend or terminate your account and refuse any and all current or future use of the Service (or any portion thereof). You have the responsibility to safeguard your own login credentials, and are responsible for all activity occurring under your account.

12. WARRANTY

DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, RAPIDSOFT SYSTEMS, ITS LICENSORS AND SUPPLIERS MAKE NO WARRANTIES OF ANY KIND WHATSOEVER WHETHER EXPRESS, IMPLIED, ARISING BY LAW, CUSTOM, OR PRIOR ORAL OR WRITTEN STATEMENTS BY RAPIDSOFT SYSTEMS RELATING TO THE PRODUCTS. RAPIDSOFT SYSTEMS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS, (WHETHER OR NOT RAPIDSOFT SYSTEMS KNOWS OR HAS REASON TO KNOW OF SUCH PURPOSE). DUE TO THE COMPLEXITY OF THE INTERNET, THE VARIABILITY OF HARDWARE AND SOFTWARE CAPABILITIES AND THE PROVISION OF THE PRODUCTS TO CUSTOMER BY VARIOUS THIRD PARTY PROVIDERS, RAPIDSOFT SYSTEMS DOES NOT GUARANTEE THAT CUSTOMER'S ACCESS TO OR USE OF THE PRODUCTS WILL AT ALL TIMES BE UNINTERRUPTED OR ERROR FREE. BENCHMARK DATA AND BENCHMARK REPORTS ARE PROVIDED "AS IS" AND RAPIDSOFT SYSTEMS DISCLAIMS ANY WARRANTY OR LIABILITY WITH REGARD TO THE ACCURACY, CURRENTNESS OR COMPLETENESS OF SUCH DATA AND REPORTS. CUSTOMER ASSUMES ALL RISKS OF ITS OR ITS USERS PURCHASE AND SALES TRANSACTIONS WHEN USING THE SERVICE.

13. CUSTOMER WARRANTIES AND INDEMNITY.

Customer represents and warrants that (i) it has the legal power and authority to enter into this Agreement; (ii) it owns or otherwise has sufficient rights in the Customer Data and Customer Content to grant to Rapidsoft Systems the rights to use the Customer Data and Customer Content granted herein; (iii) it has not falsely identified itself nor provided any false information to gain access to or use of the Products; and (c) all billing and contact information provided by Customer is true and correct.

Customer shall indemnify, defend and hold harmless Rapidsoft Systems, its affiliates, and each of their officers, directors, employees, agents and shareholders from and against any and all claims, liabilities, penalties, fines, judgments, settlements, costs demands and expenses, including without limitation, attorneys' fees and legal expenses, incurred by, borne by or asserted against Customer (i) made by any third party arising out of or in any way relating to Rapidsoft Systems's use of Customer Data, or Customer's use of the Products, Third Party Products, Benchmark Data and Benchmark Reports in violation of this Agreement, or (ii) arising out of or relating to Customer's breach of any representation, warranty or provision of this Agreement.

14. LIMITATION OF LIABILITY.

IN NO EVENT SHALL RAPIDSOFT SYSTEMS, ITS AGENTS, LICENSORS, OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST SAVINGS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF CUSTOMER DATA, COSTS RELATED TO DELAYED, INTERRUPTIONS NON-DELIVERY, DEFECTS IN THE TRANSMISSION

OF DATA, COST OF PROCUREMENT OF SUBSTITUTE TECHNOLOGY OR SERVICES, OR OTHER DAMAGES OF ANY KIND, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY ARISING OUT OF THE USE, OPERATION, OR ACCESS TO THE PRODUCTSEVEN IF RAPIDSOFT SYSTEMS HAS BEEN ADVISED OF THE POSSIBILITY OR PRIOR OCCURRENCE OF SUCH DAMAGES. RAPIDSOFT SYSTEMS'S MAXIMUM CUMULATIVE LIABILITY FOR DIRECT, ACTUAL AND PROVABLE DAMAGES UNDER THE AGREEMENT (REGARDLESS OF THE FORM OF ACTION) SHALL NOT EXCEED THE AMOUNT OF FEES PAID UNDER THIS AGREEMENT DURING THE PRIOR THREE (3) MONTHS PRECEDING THE CLAIM.

15. TERM; TERMINATION

15.1 Termination.

Rapidsoft Systems may suspend the use of the Products and/or terminate the Agreement upon written notice if: (a) Customer becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; or (b) the Customer breaches any of its obligations under this Agreement or any other agreement to procure Products from Rapidsoft Systems, including its obligation to pay amounts due hereunder.

Upon any termination or expiration of this Agreement, Customer shall immediately pay all amounts due and payable to Rapidsoft Systems through the effective date of termination, and in the case of Customer's uncured breach, or in the event of Customer's early termination prior to the end of the Term without cause, Customer shall be liable for early termination fees as set forth in Section 15.2 below.

15.2 Early Termination Fee. As specified in the applicable Order Form, Work force Tracker Services are provided for a specified term. Customer understands and acknowledges that in the event of an early termination without cause by Customer prior to the end of the Term specified in the relevant Order form, early termination fees shall apply. Early termination fees are in addition to any other fees owed by Customer for any other Products.

Early termination fees shall be computed based on the monthly fees due multiplied by the number of months remaining in the Initial Term, or in the then current Renewal Term, as applicable. Said early termination fees will be invoiced to Customer in one lump sum within fifteen (15) days of Customer's termination notice, and will be due net thirty (30) days from the date of invoice. Early termination fees shall be deemed to be liquidated damages and not a penalty. Early termination fees shall not apply if a Customer's termination is due to Rapidsoft Systems's uncured breach of its obligations under this Agreement.

16. MISCELLANEOUS TERMS

16.1 Assignment. Customer may not assign this Agreement, by operation of law or otherwise, without the prior express written consent of Rapidsoft Systems. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Customer and Rapidsoft Systems.

16.2 Governing Law; Jurisdiction. The Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey, without regard to its conflict of laws principles. Customer and Rapidsoft Systems agree that the sole venue and jurisdiction for disputes arising from the Agreement shall be the appropriate state or federal court located in Mercer County, State of New Jersey. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement. The prevailing party in any action to enforce the Agreement shall be entitled to recover its reasonable attorney's fees and costs in connection with such action.

16.3 Waiver; Severability. Any waiver of the provisions of the Agreement or of a party's rights or remedies under the Agreement must be in writing to be effective. Failure to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.

16.4 Compliance with laws. Customer shall comply with all applicable laws and regulations including federal, state and local, laws, orders and regulations, as well as all export control laws and regulations that may be imposed by the U.S. Government in its use of the Products.

16.5 Force majeure. If Rapidsoft Systems is prevented or delayed in the performance of any of its obligations set forth in the Agreement by any event beyond its reasonable control (including, strikes, accidents, fires, explosions, earthquakes, the inability to procure materials from the usual sources of supply, or requisition or order of any governmental authority relating to the use or destination of the Products) Rapidsoft Systems shall be excused from the performance or punctual performance as the case may be for so long as such cause of prevention or delay continues.

16.6 Notices Specific to the Parties. All notices required to be sent hereunder shall be in writing and shall be deemed to have been given upon (i) the date sent by confirmed facsimile, (ii) on the date it was delivered by courier, or (iii) if by certified mail return receipt requested, on the date received, to the addresses set forth above and, if to Rapidsoft Systems, to the attention of the Vice President of Finance, and, if to Customer, to the attention of the signatory of this Agreement, or to such other address or individual as the parties may specify from time to time by written notice to the other party.

16.7 Notices to General Customer Base. For notices that are directed to Customer as part of Rapidsoft Systems's general customer base, Rapidsoft Systems may give notice by means of a general notice on the Subscription Service or other Product, by electronic mail to Customer's e-mail address on record in Rapidsoft Systems's account information, or by written communication sent by first class mail or pre-paid post to Customer's address listed the Order Form. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email).

16.8 Surviving Provisions. The following provisions shall survive any termination or expiration of this Agreement: Sections 4 and 10 through 14.

16.9 Entire Agreement. These General Terms and related Order Form (and any addenda or amendments hereto): (i) represents the entire agreement between the parties relating to the subject matter of the Agreement, (ii) supersedes all prior agreements, representations and warranties relating to the subject matter of the Agreement, and (iii) may be amended, canceled or rescinded by Rapidsoft Systems upon notice to Customer. In the event of any conflict between the terms of the Order Form, the General Terms and any signed Supplemental Attachments, the following order of precedence shall apply: Order Form, signed Supplemental Attachments, General Terms.

Confidential Rapidsoft Systems, Inc.