

# License Terms and Terms of Use

of **TM3 Software GmbH**

Prüfeninger Strasse 20, 93049 Regensburg, Germany

(hereinafter “**TM3**”)

for the “**Keytrac Service**”

## I. Applicability

1. These License Terms and Terms of Use (hereinafter “**Terms and Conditions**”) govern the provision of a keyboard biometrics service of TM3 which provides online access to an algorithm for identifying users (hereinafter “**Users**”) based on keystroke dynamics (hereinafter “**Keytrac Service**”) and the use of the Keytrac Service by the customer (hereinafter “**Customer**”) in return for payment. The term “Keytrac Service” includes the Keytrac Recorder JavaScript as explained below.
2. These Terms and Conditions apply only to Customers who are a businessman or a company pursuant to sec. 14 German Civil Code (BGB) as well as to public-law legal entities or special assets under public law.
3. The Customer assures that he is no consumer in the meaning of sec. 13 German Civil Code (BGB). The Customer further assures that he has unlimited legal capacity and that a person who acts as an agent of the Customer has the relevant authority to bind the Customer.
4. Oral side agreements between the parties do not exist. These Terms and Conditions apply exclusively. Any terms and conditions of the Customer that conflict with, or deviate from, these Terms and Conditions do not apply, even if TM3 has not expressly objected to them.

## II. Conclusion of the Contract

The contract between TM3 and the Customer based on these Terms and Conditions and the usage plan subscribed for by the Customer or individually agreed between the parties (hereinafter “**Contract**”) will be concluded either online on the website of TM3 under the domain [www.keytrac.net](http://www.keytrac.net) or by means of an order and order confirmation in writing which refers to these Terms and Conditions.

### III. Subject Matter

1. Pursuant to these Terms and Conditions, TM3 provides the Customer the Keytrac Service during the term of the Contract in return for payment. No other products or services other than the Keytrac Service as defined in these Terms and Conditions will be governed by these Terms and Conditions or have to be provided by TM3.
2. The Keytrac Service is a keyboard biometrics service of TM3 which provides usage access to an algorithm that supports the identification of Users based on keystroke dynamics. The Keytrac Service first needs to learn how a User is using its keyboard by analyzing its keystroke dynamics (training). If a User types a password or text, based on this training the KeyTrac algorithm computes and provides a match-score expressing the similarity of the typing of the training text and typed text or password and a “true/false” recommendation whether or not the individual can be trusted to be the alleged User. As with any other biometric identification system, there is no assurance for the correctness of the match-score and/or the “true/false” recommendation provided by the Keytrac Service. The Keytrac Service computes these results based on the keystroke information received about a User (not the content of what the User types) and may come to wrong conclusions. Further, the conclusions of the Keytrac Service are dependent upon criteria on which TM3 has no influence such as a User using different keyboards or devices (e.g. a tablet or a smartphone instead of a PC keyboard) or a User typing differently for instance because of an injury.
3. The Keytrac Service is no system to identify or authenticate Users by its own. It is the Customer’s sole responsibility how to utilize the results of the Keytrac Service provided to him. The Keytrac Service shall only be used as an additional layer of security for user identification and is not intended to replace user credentials.
4. The specifications, available usage plans, operation modes, system requirements and instructions for integrating the Keytrac Service in the Customer’s applications are laid down on the Keytrac Service website of TM3 under the domain [www.keytrac.net/en](http://www.keytrac.net/en).
5. The use of the Keytrac Service requires the integration of the Keytrac Recorder JavaScript into the HTML code of the website of the Customer for which the Keytrac Service shall be used as well as changes in the Customer’s backend codebase so that the Customer’s application for which the Keytrac Service shall be used can communicate with the Keytrac API which is operated by TM3 on servers of TM3 and where the keystroke analysis will be conducted. Further, the Customer must register with TM3 for a Keytrac Service account in order to be able to use the Keytrac Service. It is the Customer’s sole responsibility to comply

with all these technical requirements as more detailed on the Keytrac Service website of TM3 under the domain [www.keytrac.net/en](http://www.keytrac.net/en) to be able to use the Keytrac Service. TM3 will not provide any installation, implementation or integration services or support with respect to the Keytrac Service under these Terms and Conditions.

6. In order for the Keytrac Service to work, an Internet connection between the application of the Customer which utilizes the Keytrac Service and the Keytrac API operated by TM3 on its server is required.
7. The documentation of the Keytrac Service can be retrieved from the website of TM3 under [https://www.keytrac.net/en/docs/keytrac\\_api](https://www.keytrac.net/en/docs/keytrac_api) and [https://www.keytrac.net/en/docs/keytrac\\_recorder](https://www.keytrac.net/en/docs/keytrac_recorder).
8. TM3 is entitled to use sub-contractors to provide the Keytrac Service without requiring the Customer's consent.

#### **IV. Use of the Keytrac Service**

1. The Customer must register with TM3 for a Keytrac Service account in order to be able to use the Keytrac Service and can then retrieve from his Keytrac Service account a unique token for the authentication of the communication between the Customer and the Keytrac API. The Keytrac Service can only be used with such unique token. The Customer can block and request a new unique token through his Keytrac Service account.
2. The Keytrac Service is not available permanently or uninterrupted but will be provided by TM3 only as far as technically and operationally feasible in accordance with these Terms and Conditions and the Service Levels of the Keytrac Service in section IX. below.

#### **V. Responsibilities and Obligations of the Customer**

1. During the term of the Contract, the Customer shall comply with all technical requirements of the Keytrac Service and shall immediately install and use any updates or upgrades of the Keytrac Recorder JavaScript and any necessary changes in the Customer's backend codebase.
2. The Customer is responsible for a secure and fast Internet access of the application of the Customer which utilizes the Keytrac Service. The Customer is aware of the Internet being unsecure and unreliable so that TM3 is not responsible for interruption or delays of the Internet connection between the application of the Customer and the Keytrac API outside the sphere of responsibility of TM3.

3. The Customer shall comply with all its obligations for using the Keytrac Service laid down in these Terms and Conditions and all additional specifications, requirements and instructions these Terms and Conditions refer to. In particular the Customer shall
  - a) use complete and correct data for registration with TM3 for setting up the Keytrac Service account and keep such data up-to-date at all times;
  - b) keep the token for the authentication of the communication between the Customer and the Keytrac API assigned to him confidential, protect it against unauthorized access, not disclose it to third parties and only use it in connection with the Keytrac Service;
  - c) use the Keytrac Service only in accordance with these Terms and Conditions and applicable law and not abuse the Keytrac Service;
  - d) use the Keytrac Service only for its own purpose and refrain from reselling, renting or leasing the Keytrac Service to third parties;
  - e) not interfere with or disrupt the integrity or performance of the Keytrac Service or attempt to gain unauthorized access to the Keytrac Service;
  - f) indemnify TM3 against any third-party claims brought against TM3 because of an abuse of the Keytrac Service or use of the Keytrac Service contrary to these Terms and Conditions by the Customer.

## **VI. Right of Use**

1. TM3 grants the Customer a non-exclusive, non-transferrable, non-sublicensable right to use the Keytrac Service during the term of the Contract in accordance with these Terms and Conditions for its own purpose for such amount of users and authentication requests as included in the usage plan subscribed for by the Customer.
2. During the term of the Contract the Customer is entitled to download, store and integrate the Keytrac Recorder JavaScript into the HTML code of the website of the Customer.
3. TM3 is the sole and exclusive holder of rights of use under copyright, industrial property rights and know-how relating to the Keytrac Service and the Keytrac Recorder JavaScript and retains all rights therein unless explicitly granted to the Customer under these Terms and Conditions. All rights in the source code of the

Keytrac Service are held by TM3 and TM3 is not obliged to provide or disclose the source code of the Keytrac Service to the Customer.

4. The Customer must not, in whole or in part, modify, adapt, translate, copy, distribute, sublicense, rent, lease, send, or communicate the Keytrac Service to the public by wire or wireless means, including the making available to the public in such a way that members of the public may access the Keytrac Service from a place and at a time individually chosen by them, or otherwise publicly communicate or decompile, disassemble or reverse-engineer the Keytrac Service, unless the Customer is authorized to do so under these Terms and Conditions or pertinent mandatory copyright law. The Customer must not remove, destroy or alter copyright notices of TM3 in or in connection with the Keytrac Service.

## **VII. Remuneration / Set-off / Right of Retention**

1. The Customer shall pay to TM3 for the Keytrac Service a monthly or annual remuneration as per the usage plan subscribed for by the Customer or as individually agreed between the parties.
2. In case of a free trial usage plan, during the term of such free trial usage plan the Keytrac Service will be provided for free.
3. All prices stated do not include VAT. If VAT applies such VAT shall be paid in addition at the current VAT rate.
4. Any remuneration becomes due and payable to TM3 in advance as follows:
  - In case of a monthly usage plan at the date of conclusion of the Contract and for the following months on the same day of each month (or the preceding day if the same day does not exist in a specific month);
  - In case of an annual usage plan at the date of conclusion of the Contract and on each anniversary of such date.
5. The Customer may only make a set-off if its counterclaim is undisputed or has become final and conclusive. The Customer may only assert a right of retention if its counterclaim is based on the same contractual relationship.
6. TM3 may assign claims for payment against the Customer under the Contract.

## **VIII. Support**

1. If support is included in the usage plan subscribed for by the Customer, TM3 will provide Customer support by means of e-mail or an online support ticket system.

Support times are Monday – Friday (except public holidays in Bavaria) from 8:30 a.m. to 5:30 p.m. CET.

2. During the support times, support requests can be addressed to TM3. TM3 makes reasonable efforts to respond to a support request by the end of the next working day (except Saturday and public holidays in Bavaria). The response will be provided by e-mail to the e-mail address stated in the support request.
3. The parties may agree on extended service times in return for additional support fees.
4. Support includes receiving and handling notifications of defects of the Keytrac Service and response to technical questions as far as they concern the Keytrac Service (including Keytrac API and Keytrac Recorder JavaScript) itself. For clarification, support does neither include any installation, implementation or integration with respect to the Keytrac Service nor programming or modification of the source code of the Customer's application for which the Keytrac Service shall be used.

## **IX. Service Levels**

1. The availability of the Keytrac API of the Keytrac Service shall be 98.5 % per month in case of a monthly usage plan or per year in case of an annual usage plan. However, in case of a free trial usage plan, TM3 does not provide for any availability of the Keytrac API of the Keytrac Service.
2. TM3 is entitled to carry out maintenance work of the Keytrac Service once a week on Sunday between 9:00 a.m. and 11:00 a.m. CET. Such maintenance work shall not be considered when determining the availability of the Keytrac API of the Keytrac Service stated above.
3. In case the availability of the Keytrac API of the Keytrac Service falls below the availability stated above, the Customer is entitled to claim compensation. The compensation shall be calculated as a percentage of the remuneration payable or paid by the Customer for the Keytrac Service during the period of time in which the availability stated above was not met by applying the formula: compensation = (remuneration paid or payable for the relevant period) x (98.5 – availability in percent) %. Example: In case of a monthly usage plan the availability in March was only 97 % and the monthly remuneration is EUR 980.00, then the compensation is  $\text{EUR } 980.00 \times (98.5 - 97)\% = \text{EUR } 980.00 \times 0,015 = \text{EUR } 14.70$ .
4. Any compensation paid or payable by TM3 because of not meeting the agreed availability of the Keytrac API of the Keytrac Service shall be deducted from any further-reaching claim for damages or claims for reduction of remuneration.

## **X. Warranty**

1. TM3 warrants that during the term of the Contract the Keytrac Service will be provided by TM3 as far as technically and operationally feasible materially in accordance with these Terms and Conditions and the Service Levels laid down in section IX. in a workmanlike manner and with ordinary care. However, in case of a free trial usage plan, TM3 only warrants that TM3 has not fraudulently concealed any defects of the Keytrac Service.
2. TM3 does not warrant that the Keytrac Service is available permanently or uninterrupted.
3. TM3 does not warrant that the Keytrac Service meets the expectation of the Customer. TM3 does not warrant for technical details of the Keytrac Service or the suitability of the Keytrac Service for a specific purpose, unless such technical details or a specific purpose, respectively, are stated explicitly in the Contract. Unless individual specifications of the Keytrac Service are expressly designated by TM3 as a “guarantee” (“Garantie”), TM3 does not give any guarantees (Garantien) under these Terms and Conditions.
4. The Customer must notify TM3 of any discernible defect of the Keytrac Service which occurs during the term of the Contract immediately after its detection.
5. TM3’s warranty is excluded if the Customer does not use the Keytrac Service as intended in these Terms and Conditions, or uses it improperly or abuses it, if the Customer uses the Keytrac Service in a system environment or in connection with other products or technologies than those which have been approved by TM3 in the system requirements, or if the Customer has modified or amended otherwise the Keytrac Service without prior written consent of TM3.
6. If the Keytrac Service does not conform to the warranty stated above, TM3 will remedy defects of the Keytrac Service within a reasonable period of time.
7. The Customer must not remedy any defects of the Keytrac Service by itself or by engaging a third party and may not claim from TM3 a reimbursement of any resultant expenses.
8. Any claims of the Customer for damages or compensation for futile expenses because of breach of warranty are subject to the limitation of liability under section XI. below.

## **XI. Limitation of Liability**

1. TM3 will under no circumstances be liable to the Customer for (i) any damage that was not reasonably foreseeable at the time of the execution of the Contract, (ii) any damage, delays, or impediments to performance outside TM3's sphere of responsibility, or (iii) any damage attributable to an unsuitable or improper use of the Keytrac Service, or a use not in accordance with these Terms and Conditions.
2. Regardless of the legal grounds, TM3 will only be liable for any damage caused with intent or gross negligence, damage relating to a violation of life, body or health caused as a result of negligence of TM3, or in the event of a failure to perform a guarantee, or if TM3 fraudulently concealed a defect of the Keytrac Service.
3. Other than a free trial usage plan, TM3 will also be liable in the event of a negligent violation of a material contractual obligation or cardinal duty; if such violation of a material contractual obligation or cardinal duty is attributable to simple negligence, TM3's liability will be limited, however, to the typically foreseeable damage. A "cardinal duty" for the purposes of this paragraph means a duty incumbent on TM3, the proper compliance with which is mandatory for the performance of the Contract, the violation of which will jeopardize the attainment of the subject matter of the Contract, and the performance of which is relied on by the Customer.
4. The parties may individually limit TM3's liability caused by simple negligence. Such limitation of liability individually agreed between the parties shall amend these Terms and Conditions by additionally limiting TM3's liability caused by simple negligence with the exception of the cases referred to in paragraph XI.2 above.
5. TM3 shall have no liability for defects of the Keytrac Service which have already been existent at the commencement of the Contract and for which TM3 is not accountable for.
6. Any additional liability of TM3 is excluded. The liability under the German Product Liability Act remains unaffected thereby.

## **XII. User Data and Data Protection**

1. It is neither intended nor necessary for the Keytrac Service to collect and process personal data of Users who shall be identified by the Keytrac Service. Instead, the keystrokes of each User will be collected and processed under a randomly assigned anonymous User-ID.

2. The Keytrac Service will be offered in two different operation modes and the Customer can chose which operation mode he wishes to apply for his application in which the Keytrac Service shall be integrated:
  - When using the “password hardening” operation mode the text typed by a User will not be transferred to TM3;
  - When using the “any text” operation mode the keycodes of the keystrokes typed by a User will be transferred to and stored by TM3 and TM3 is able to reconstruct the text typed by a User during the term of the Contract.
3. It is solely Customer’s responsibility to ensure with respect to the Users of his applications in which the Keytrac Service is integrated that he is entitled to utilize the Keytrac Service and the operation mode chosen by the Customer. The Customer shall be solely responsible for complying with all applicable data protection law and telecommunications law, in particular regarding informing the Users of the application of the Keytrac Service, requesting prior consent from the User if so required under applicable law, the transfer of personal data to TM3 and the processing of personal data of Users by the Keytrac Service.
4. If the Customer utilizes the Keytrac Service in a way that personal data of Users will be collected and processed by means of the Keytrac Service and transferred to TM3 as keycodes of the keystrokes typed by Users when applying the “any text” operation mode, such personal data shall only belong to the Customer and TM3 holds no rights in such personal data. TM3 will collect, process and use such personal data only on behalf and on instruction of the Customer. If required, the parties will enter into an additional agreement on commissioned data processing pursuant to section 11 Federal Data Protection Act (BDSG).

### **XIII. Term and Termination**

1. The Contract shall commence with its conclusion and has an initial term as per the usage plan subscribed for by the Customer or as individually agreed between the parties.
2. Termination in case of a monthly usage plan: Unless either party gives notice of termination to the end of the initial term or the extended monthly term, respectively, the Contract shall be automatically extended by periods of one (1) month at a time.
3. Termination in case of an annual usage plan: Unless either party gives notice of termination to the end of the initial term or the extended annual term, respectively, the Contract shall be automatically extended by periods of one (1) year at a time.
4. The right of termination for cause shall remain unaffected.

5. Each notice of termination shall be in textform or through the Keytrac service account.
6. As from the termination of the Contract, the Customer is no longer entitled to use the Keytrac Service.
7. TM3 will completely delete all keystroke data, text typed by Users and keystroke analysis conducted for the Customer 14 days after termination of the Contract.

#### **XIV. Modifications**

TM3 reserves the right to modify these Terms and Conditions, the specifications of the Keytrac Service, the Service Levels, as well as the usage plans and remuneration of the Keytrac Service at any time by a notification of any such modifications to the Customer in textform. The Customer may reject any such modifications in textform within one month from the receipt of the notification. If any such rejection is not submitted in good time, the modifications will take effect upon the expiry of the one-month time limit. TM3 shall expressly inform the Customer of that legal consequence in its notification of the modifications.

#### **XV. Final Provisions**

1. Without the prior written consent of TM3, the Customer may not assign or transfer any claims under this Contract, nor may he transfer the Contract as a whole to a third party.
2. Any amendments or supplements to the Contract, as well as the mutual cancellation of the Contract require written form. This applies also to any amendments to this written form requirement.
3. Should any of the provisions of these Terms and Conditions be or become ineffective, the validity of the remaining provisions hereof will not be affected thereby.
4. These Terms and Conditions, as well as all disputes arising out or in connection with the Contract between the parties, are governed by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods does not apply.
5. The exclusive place of jurisdiction for all disputes arising out or in connection with the Contract between the parties is Regensburg/Germany.

Regensburg 27 January 2017