

Subscription Services Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE. BY USING THE SERVICE OR CLICKING “AGREE” CUSTOMER IS AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF OR FOR THE BENEFIT OF YOUR EMPLOYER, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE NECESSARY AUTHORITY TO AGREE TO THIS AGREEMENT ON YOUR EMPLOYER’S BEHALF.

This agreement is between Technical Toolboxes Powertools, Inc., an Indiana corporation (**TT**), and the customer agreeing to these terms (**Customer**).

1. **SOFTWARE SERVICE.** This agreement provides Customer and its Affiliates (defined below) access to and usage of an Internet based software service including, without limitation, its features, functions, user interface, and underlying software, as specified on an order (**Service**).

2. **USE OF SERVICE.**

- a. **Customer Owned Data.** All data uploaded by Customer to the Service remains the property of Customer, as between TT and Customer (**Customer Data**). Customer represents and warrants to TT that Customer has provided all required notices and has obtained all required licenses, permissions, and consents regarding Customer Data for use within the Service under this agreement. Customer grants TT the right to use the Customer Data solely for purposes of performing under this agreement (which includes, without limitation, the right for TT to enhance its technology and offerings). During the term of this agreement, Customer Data can be exported for a fee, upon Customer’s request.
- b. **Affiliates and Contractors.** Customer, including its Affiliates, may enter into orders with TT and its Affiliates. An Affiliate entering into an order agrees to be bound by this agreement as if it were an original party hereto. Customer may allow its Affiliates and contractors to use the Service, provided that Customer is responsible for their compliance with the terms of this agreement, and use by its Affiliates must be for the sole benefit of Customer or its Affiliates. **Affiliate** means any company controlled by or under common control with the subject entity, directly or indirectly, with an ownership interest of at least 50%.
- c. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential and use industry-standard password management practices; (ii) is responsible for its access control policies and administration of access rights to its account within the Service, the acts and omissions of its users, and the legality and accuracy of Customer Data; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify TT promptly of any such unauthorized access; and (iv) may use the Service only in accordance with the Service’s user guide and applicable law.
- d. **TT Support.** TT must provide customer support for the Service under the terms of TT’s Customer Support Policy (**Support**) which is located at www.technicaltoolboxes.com/support.
- e. **Additional Services.** TT may provide additional services for a fee, including but not limited to onboarding and training services, as further set forth in an order.
- f. **Third Party Service.** The Service interoperates with third party services (**Third Party Service**), and it depends on continuing availability of and access to Third Party Service, including application programming interfaces, for full functionality of the Service.

3. **SERVICE LEVEL AGREEMENT & WARRANTY.**

- a. **Warranty.** TT warrants to Customer: (i) that commercially reasonable efforts will be made to maintain the online availability of the Service for a minimum of availability in any given month as provided in the chart below (*excluding* maintenance outages, outages beyond TT’s reasonable control, and outages that result from any Customer technology issues); (ii) the functionality or features of the Service may change but will not materially decrease during any paid term; and (iii) that the Support may change but will not materially degrade during any paid term.

Availability Warranty	Credit
98%	3% of monthly fee for each full hour of an outage (beyond the warranty)
Maximum amount of the credit is 100% of the fee for such month.	

- b. **LIMITED REMEDY.** Customer’s exclusive remedy and TT’s sole obligation for its failure to meet the warranty in a(i) above will be for TT to provide a credit for the applicable month, as provided in the chart above (if this agreement is not renewed, then a refund), for the month; provided that Customer notifies TT of such breach within 30 days of the end of that month.
- c. **DISCLAIMER.** TT DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. WHILE TT TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, TT DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS AND AGREES THAT: (I) THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED, AND (II) TT IS NOT RESPONSIBLE OR LIABLE FOR ANY THIRD-PARTY SERVICE ISSUES. TT DISCLAIMS ALL LIABILITY FOR CUSTOMER’S APPLICATION OF THE RESULTS DATA (INCLUDING DATA INPUT INTO THIRD-PARTY SERVICE) FROM THE

SERVICE. CUSTOMER AGREES TO USE ITS BEST JUDGEMENT IN (I) REVIEWING AND ASSESSING THE ACCURACY OF THE RESULTS DATA, (II) QUESTIONING AND REJECTING ANY RESULTS DATA THAT APPEARS SUSPECT, AND (III) NOTIFYING TT OF ANY SUCH SUSPECT RESULTS DATA.

4. **PAYMENT.** Customer must pay all fees as specified on the order; if not specified, then within 30 days of invoice date. The fees are exclusive of all sales, use, withholding, VAT and other similar taxes, and Customer is responsible for payment of such taxes at the rate and in the manner for the time being prescribed by law. TT may temporarily suspend the Service if Customer is more than 30 days late on any payment due pursuant to an order. TT reserves the right to charge Customer a per invoice fee of not more than 3% of the invoiced amount should: (a) Customer use a 3rd party payment processing service (e.g., SAP Ariba, Coupa), or (b) Customer chooses to pay their invoice with a credit card. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement.

5. **MUTUAL CONFIDENTIALITY.**

a. **Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). TT's Confidential Information includes without limitation the Service, its user interface design and layout, and pricing information, and the Software and Documentation (defined below). Customer's Confidential Information includes, without limitation, the Customer Data.

b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care): (i) not use any Confidential Information of the Discloser for any purpose outside the scope of this agreement, and (ii) limit access to Confidential Information of Discloser to those of its and its Affiliates' employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient with terms no less restrictive than the confidentiality terms of this agreement.

c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

d. **Data Security Measures.**

Security Measures. TT: (i) implements and maintains reasonable security measures appropriate to the nature of the Confidential Information including, without limitation, technical, physical, administrative, and organizational controls, designed to maintain the confidentiality, security, and integrity of Customer's Confidential Information; (ii) implements and maintains industry standard systems and procedures for detecting, preventing, and responding to attacks, intrusions, or other systems failures and regularly tests, or otherwise monitors the effectiveness of the safeguards' key controls, systems, and procedures; (iii) designates an employee or employees to coordinate implementation and maintenance of its Security Measures (as defined below); and (iv) identifies reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of Customer's Confidential Information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, and assesses the sufficiency of safeguards in place to control these risks (collectively, **Security Measures**).

Notice of Data Breach. If TT becomes aware that Customer Data was accessed or disclosed in breach of this agreement, TT will so notify Customer without undue delay, immediately act to eliminate the breach and preserve forensic evidence, and provide available information to Customer regarding the nature and scope of the breach.

6. **TT PROPERTY.**

a. **Reservation of Rights.** TT and its licensors are the sole owners of the Service and Software and Documentation, including all associated intellectual property rights, and they remain only with TT. Customer may not remove or modify any proprietary marking or restrictive legends in the Service or Software and Documentation. TT reserves all rights unless expressly granted in this agreement.

b. **Restrictions.** Customer *may not* (i) sell, resell, rent or lease the Service or use it in a service provider capacity; (ii) use the Service to store or transmit unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit infringing material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or its related systems or networks; (v) reverse engineer the Service or the Software and Documentation except as allowed by applicable law despite this limitation; or (vi) access the Service or use the Software and Documentation to build a competitive service or product, or copy any feature, function or graphic for competitive purposes. TT may suspend Service to Customer if TT believes in good faith that Customer's use of the Service poses an imminent threat to the security, availability or legality of the Service; in such event, TT will work with Customer to address the issue and restore Service as quickly as possible.

c. **Software and Documentation.** All software provided by TT as part of the Service, and the Service documentation, sample data, marketing materials, training material and other material provided through the Service or by TT (**Software and Documentation**) are licensed to Customer as follows: TT grants Customer a non-exclusive, non-transferable license during the term of this agreement, to use and copy such Software in accordance with the Documentation, solely in connection with the Service.

- d. **Statistical Information.** TT may compile statistical information related to the performance of the Service and may make such information publicly available, provided that such information does not identify Customer Data, and there is no means to re-identify Customer Data. TT retains all intellectual property rights in such information.
- e. **API.** TT may provide access to its application-programming interface (**API**) as part of the Service for no additional fee. Subject to the other terms of this agreement, TT grants Customer a non-exclusive, nontransferable, terminable license to interact only with the Service as allowed by the API.
- Customer may not use the API in a manner--as reasonably determined by TT--that exceeds reasonable request volume, constitutes excessive or abusive usage, or fails to comply with any part of the API. If any of these occur, TT can suspend or terminate Customer's access to the API on a temporary or permanent basis.
 - TT may change or remove existing endpoints or fields in API results upon at least 30 days notice to Customer, but TT will use commercially reasonable efforts to support the previous version of the API for at least 6 months. TT may add new endpoints or fields in API results without prior notice to Customer.
 - The API is provided on an AS IS basis. TT has no liability to Customer as a result of any change, temporary unavailability, suspension, or termination of access to the API.

7. **TERM AND TERMINATION.**

- a. **Term.** This agreement continues until all orders have expired or are terminated for material breach under Section 7(b).
- b. **Term of Orders.** Unless otherwise stated in an order, (i) orders and all subscriptions under them will automatically renew for additional one-year periods unless a party notifies the other of non-renewal 30 or more days before the renewal date, (ii) an automatically renewing order will remain unchanged from the prior term except for any pricing increase of which TT has notified Customer 60 or more days before the renewal date, and (iii) upon automatic renewal, the per-unit pricing for any Service will not increase by more than 7% over that in the prior term unless the prior pricing was clearly designated in the order as promotional or one-time.
- c. **Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured, except that TT may terminate immediately if it has reason to believe the Customer is in violation of Section 11(c), Section 11(d), or otherwise in violation of applicable law
- d. **Return of Customer Data.**
- *Within 60-days after termination*, upon request TT will make the Service available for Customer to export Customer Data as provided in Section 2(a).
 - *After such 60-day period*, TT has no obligation to maintain the Customer Data and may destroy it.
- e. **Effect of Termination.** If this agreement is terminated for TT's breach, TT will refund Customer fees prepaid for the remainder of the term of all orders after the termination effective date. If this agreement is terminated for Customer's breach, Customer will pay any unpaid fees for the term of all orders. Upon request, following any termination of this agreement, each party will destroy or return all of the other party's property that it holds, subject to the "Return of Customer Data" section above.

8. **LIABILITY LIMIT.**

- a. **EXCLUSION OF INDIRECT DAMAGES.** TT is not liable for any indirect, special, incidental or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of or unauthorized access to data or information; and lost profits, revenue or anticipated cost savings), even if it knows of the possibility of such damage or loss or if the damage or loss is foreseeable.
- b. **TOTAL LIMIT ON LIABILITY.** TT's total liability arising out of or related to this agreement (whether in contract, tort or otherwise) does not exceed the amount paid by Customer within the 12 month period prior to the event that gave rise to the liability.

9. **INDEMNIFICATION FOR THIRD PARTY CLAIMS.**

- a. TT will defend or settle any third-party claim against Customer to the extent that such claim alleges that TT technology used to provide the Service infringes a copyright, patent, trademark, or other intellectual property right, if Customer promptly notifies TT of the claim in writing, cooperates with TT in the defense, and allows TT to solely control the defense or settlement of the claim. **Costs.** TT will indemnify and hold harmless Customer from any infringement claim defense costs it incurs in defending Customer under this indemnity, TT-negotiated settlement amounts agreed to by TT, and court-awarded damages. **Process.** If such a claim appears likely, then TT may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If TT determines that none of these are reasonably available, then TT may terminate the Service and refund any prepaid and unused fees. **Exclusions.** TT has no obligation for any claim arising from: TT's compliance with Customer's specifications; a combination of the Service with other technology or aspects where the infringement would not occur but for the combination; Customer Data; or technology or aspects not provided by TT. **THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND TT'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT.**

- b. **If a third party claims against TT that any part of the Customer Data infringes or violates that party's patent, copyright, or other right, Customer will defend TT against that claim at Customer's expense and pay all costs, damages, and attorneys' fees that a court finally awards or that are included in a settlement approved by Customer, provided that TT promptly notifies Customer of the claim in writing, cooperates with Customer in the defense, and allows Customer to solely control the defense or settlement of the claim.**
10. **GOVERNING LAW AND FORUM.** This agreement is governed by the laws of the State of Texas (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Harris County, Texas, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.
11. **OTHER TERMS.**
- a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. This agreement may only be modified through an online process provided by TT. No waiver is effective unless the party waiving the right signs a waiver in writing.
- b. **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party, or at any time to an Affiliate.
- c. **Export and Sanctions Compliance.** The Service, Software and Documentation, and Confidential Information may be subject to export controls and sanctions laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied party list and that the Service will not be used on behalf of or for the benefit of any entity on a U.S. government denied party list. Neither party will permit its personnel or representatives to access any Service from or use the Service in support of any activity in a U.S.-embargoed country or in violation of any applicable export law or regulation.
- d. **End Use Verification.** At any time TT may request, and Customer shall provide within three (3) days, information and documentation regarding the end user and end use of the Service and Software, including but not limited to name, nature, and location of any project on which the Service or Software is used, end users/beneficiaries of the Service or Software, if other than the Customer, and geolocation data of individual users of the Service and Software.
- e. **Independent Contractors.** The parties are independent contractors with respect to each other.
- f. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Neither party is liable for its non-performance due to events beyond its reasonable control, including but not limited to natural weather events and disasters, labor disruptions, and disruptions in the supply of utilities.
- g. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- h. **No Additional Terms.** TT rejects additional or conflicting terms of any Customer form-purchasing document.
- i. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.
- j. **Survival of Terms.** All provisions of this agreement regarding payment, confidentiality, indemnification, limitations of liability, proprietary rights and such other provisions that by fair implication require performance beyond the term of this agreement must survive expiration or termination of this agreement until fully performed or otherwise are inapplicable. The UN Convention on Contracts for the International Sale of Goods does not apply.
- k. **Feedback.** If Customer provides feedback or suggestions about the Service, then TT (and those it allows to use its technology) may use such information without obligation to Customer.

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