



MobileKraft

MobileKraft Limited

www.mobilekraft.co.uk

End-User Software License Agreement & Terms of Service

THESE TERMS OF SERVICE ("TERMS") CONSTITUTE A CONTRACT BETWEEN YOU AND MOBILEKRAFT LIMITED AND GOVERN THE USE OF AND ACCESS TO THE SOFTWARE BY YOU, AND USERS WHETHER IN CONNECTION WITH A PAID SUBSCRIPTION TO THE SOFTWARE OR A FREE TRIAL OF THE SOFTWARE.

By accepting these Terms, or by accessing or using the Software or related Services or Site or authorising or permitting a Subscriber or User to access or use the Software, You agree to be bound by these Terms.

If You are entering into these Terms on behalf of a company, organisation, or another legal entity (an "Entity"), You are agreeing to these Terms for that Entity and representing to MobileKraft that You have the authority to bind such Entity and its affiliates to these Terms, in which case the terms "Customer", "Licensee", "Subscriber," "You," "Your", or related capitalised terms herein shall refer to such Entity and its affiliates. If You do not have such authority, or if You do not agree with these Terms, You must not accept these Terms and may not use the Software.

1. DEFINITIONS:

The following terms have the following meanings:

You: are a person with the authority to enter into obligations for yourself or the Entity that will use the Software.

Account: means all accounts, or users created by or on behalf of You or Users within the Software.

API: means the application programming interfaces developed and enabled by MobileKraft ExpressConnect Software that permits Users to access certain functionality provided by the Software, including, without limitation, the ExpressAPI that enables the interaction with a TRIRIGA instance through HTTPS requests.

Confidential Information: means all information, that is disclosed by You to MobileKraft or by MobileKraft to You (disclosed by one Party "Discloser" to the other "Recipient") which is in tangible form (whether oral, written, or observed) and may or may not be labeled "confidential" (or with a similar legend) or relates to a Discloser's past, present, or future research, development, business activities, products, services, and technical knowledge, or which a reasonable person would understand to be confidential given the nature of the information and circumstances of disclosure. Notwithstanding the foregoing, Confidential Information shall not include information that (a) was already known to the receiving party at the time of disclosure by the disclosing party; (b) was or is obtained by the receiving party by a third party not known by the receiving party to be under an obligation of confidentiality with respect to such information; (c) is or becomes generally available to the public other than by violation of these Terms; or (d) was or is independently developed by the receiving party without use of the disclosing party's Confidential Information.

Documentation: means any written or electronic documentation, images, video, text, or sounds specifying the functionalities of the Software provided or made available by MobileKraft to You, API Consumers, or Users through the Site or otherwise.

User: means any person or entity other than API Consumers who interacts with the Software, including any person or entity being provided access to the Software or receiving reports or other information generated by the Software.

API Consumers: means any person or entity other than Users who interacts with the Software utilising the API and may be through a system which is internal to organisation or external.

Software: means all MobileKraft-developed software programs and applications specifically delivered to You either by download or access through the internet (including updates thereto and New Releases provided to Licensee as Maintenance). The Software would include individually and collectively, Software, the API, any Client Software, and any Documentation, The Software include executable object code form only and specifically exclude source code. As a result, the license granted under this Agreement shall apply to the Software in executable object code form only.

Other Software: means third party products, applications, services, software, products, networks, systems, directories, websites, databases, and information which the Software links to, or which You may connect to or enable in conjunction with the Software, including, without limitation, certain Other Software or Services which may be integrated directly into Your MobileKraft provided Software instance.

Service: means the on-demand MobileKraft solution and tools provided by MobileKraft, either included in the Software or charged on usage, including any Documentation. Service also includes any training or consulting offered by MobileKraft.

Site: means <http://www.mobilekraft.co.uk>, <http://www.mobilekraft.app>, <http://www.mobilekraft.io>, and all other websites owned or operated by MobileKraft or its subsidiaries.

Form: means any MobileKraft generated software or service order form executed or approved by You with respect to Your subscription to the Software and Services. The Form may detail, among other things, the products which You have access to, the number of Users authorised to use the Software under Your subscription to the Software and the Service and Support Plan applicable to Your subscription to the Software.

Your Data: means all electronic data, text, messages, or other materials submitted to the Service by You and Users, in connection with Your use of the Service. It explicitly excludes aggregations or analyses that are calculated on Your Data that contain no discernible private information.

MobileKraft: means MobileKraft Limited, a Company Registered in England and Wales, or any of its successors or assignees or subsidiaries. In these Terms, MobileKraft may also be referred to through the use of "We" or "Our."

Party: means You or MobileKraft referred collectively to through the use of "Party" or "Parties".

Production: means a system or computing environment where active business transactions are executed, is live for customers (internal to Your organisation or external) and/or is a warm server waiting for the transactions or requests. This definition will include environments/servers featuring a cold/warm disaster recovery/business continuity setup and the environments.

Non-production: or non-prod means a system or computing environment where development and testing activities are conducted, is not live for customers (internal to Your organisation or external).

2. GENERAL GRANT

2.1 Subject to Your continuing compliance with this Agreement, MobileKraft hereby grants to You a limited, non-exclusive, non-transferable, non-sublicensable, revocable right during the Term (as defined below) to run the Software solely as installed by MobileKraft in object code form for internal use only, in the country designated in the Ship To Address section in accordance with any instructions, specifications, and documentation provided by MobileKraft from time to time. You may not use the Software in any manner or for any purpose other than as expressly permitted by this Agreement.

2.2 Without limitation of the foregoing, You will not, (and will not permit, assist, or encourage others to): (a) copy, modify or create derivative works of the Software, (b) remove or modify any notice of any patent, copyright, trademark, or other proprietary rights that appear on or in the Software, (c) reverse engineer, decompile, translate, disassemble, or discover the source code of all or any portion of the Software, (d) publicly display all or any part of the Software, (e) distribute, disclose, market, lease, resell, assign, loan, sublicense, rent or transfer the Software to any third party, (f) use the Software for any remote access, interactive or other on-line or hosted service, or to provide a service bureau, time share or other services to third parties, (g) merge the Software into another product, (h) disclose the results of any Software performance benchmarks or test results to any third party without MobileKraft's prior written consent, (i) use any trademarks, logos, service marks, trade names of MobileKraft or any portion thereof, without MobileKraft's prior written consent, (j) use the Software, or any portion thereof, in a manner that does not comply with applicable law, regulations, or governmental orders, (k) use or store the Software on equipment not owned or controlled by You.

2.3 During and after the Term, You will not assert, nor authorise, assist, or encourage any third party to assert, against MobileKraft, any patent infringement or other intellectual property infringement claim regarding the Software. The rights granted under this Section 1 are expressly conditioned on Customer's continued compliance with this Agreement and will immediately and automatically terminate if You do not comply with any material term or condition of this Agreement.

3. PROFESSIONAL SERVICES

3.1 MobileKraft will use commercially reasonable efforts to perform the services identified here: (a) Install the MobileKraft ExpressConnect software core components, (b) Install ExpressAPI Packs as agreed, (c) Perform smoke tests, (d) Conduct an online session for a duration of 60 minutes for product walkthrough and Q & A.

3.1 You agree to provide admin access to allow MobileKraft to deploy the ExpressConnect software.

4. CONFIDENTIALITY

4.1 During the Term, each Party may be given access to the other Party's Confidential Information. Recipient will: (a) protect Discloser's Confidential Information in a reasonable and appropriate manner to the same extent it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event less than a reasonable manner; and (b) use and reproduce Discloser's Confidential Information only to perform its obligations and exercise its rights pursuant to this Agreement. Recipient will not disclose the Confidential Information to third parties, except that Recipient may share Discloser's Confidential Information with its employees who are subject to written non-disclosure obligations no less restrictive than those set forth herein.

4.2 Disclosure of Confidential Information pursuant to applicable law, a subpoena or other validly issued administrative or judicial process will not be a breach of Recipient's obligations, if, to the extent permitted by law, Recipient provides prior notice to Discloser of such disclosure.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 The Software and the Services (collectively, the “MobileKraft Technology”) and all other materials supplied by MobileKraft to You are and remain the exclusive property of MobileKraft. You may use the MobileKraft Technology only as expressly authorised in this Agreement.

5.2 Subject only to limited rights to access and use the Software as expressly permitted herein, all rights, title, and interest in and to the Software and all service, and other components of or used to provide the Software, including all related intellectual property rights, will remain with and belong exclusively to MobileKraft. MobileKraft shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to incorporate into the Software or otherwise use any suggestions, enhancement requests, recommendations, or other feedback We receive from You, API Consumers, or Users. MobileKraft and MobileKraft’s other product and service names, and logos used or displayed on the Software are trademarks or registered trademarks of MobileKraft (collectively, “Marks”), and You may only use such Marks to identify You as a User based on a prior written agreement. You shall not attempt to claim any rights in the Marks, degrade the distinctiveness of the Marks, or use the Marks to disparage or misrepresent MobileKraft, its services, or products.

6. CONFIGURATION AND DATA

6.1 Although MobileKraft shall validate the Software compatibility against the specified target platform and application versions of the core software, Your environment might differ in many ways from the standard out -of-the-box core software. A pre-deployment validation process shall apply to any deployment of MobileKraft technologies.

6.2 In the event of any mismatch or where the software may not operate fully, We will endeavour to make fit the Software on our own cost provided there are no changes made by You contributing to the mismatch of the Software. Any changes required to the Software arising out of the variation of the core software from the standard out-of-the-box will be made fit by MobileKraft on a case-to-case basis with the cost charged to You, provided there is a written pre-approval to execute the said work.

7. TERM AND TERMINATION

7.1 The “Term” of this Agreement will commence as of the Effective Date and continue for a period (a) as defined in the Agreement, (b) of ninety (90) days or less in case of a Trial, (c) until the Agreement is terminated by providing at least 30 days prior to the end of existing Term.

7.2 Unless Your subscriptions to the Software are so terminated, Your subscription to the Software will renew for a Term equivalent in length to the then-expiring Subscription Term. Unless otherwise provided for in any Form, the Subscription Charges applicable to Your subscription to the Software for any such subsequent Subscription Term shall be Our standard Subscription Charges for the Software usage to which You have subscribed as of the time such subsequent Term commences.

7.3 No refunds or credits for subscription charges or other fees or payments will be provided to You if You elect to terminate Your subscription to the Software or cancel Your Account prior to the end of Your

then-effective Term. Following the termination or cancellation of Your subscription to the Software and/or Account, We reserve the right to remove all MobileKraft provided software.

7.4 If You terminate Your subscription to the Software, cancel Your Account prior to the end of Your Term, or We effect such termination or cancellation pursuant to Sections 7.3, in addition to other amounts You may owe MobileKraft, You must immediately pay any unpaid Charges associated with the remainder of such Term. This amount will not be payable by You in the event You terminate Your subscription to the Software or cancel Your Account as a result of a material breach of these Terms by MobileKraft, provided You provide advance notice of such breach to MobileKraft and afford MobileKraft not less than thirty (30) days to reasonably cure such breach.

7.5 Upon the termination of the Term, MobileKraft will require immediate access to the systems where MobileKraft Technology resides for prompt removal of MobileKraft Technology, and in no event later than ten (10) days following expiration of the Term.

7.6 Under certain conditions, MobileKraft may require temporary access to the underlying computing layer, for example, operating system or the database to perform a full un-install of the MobileKraft Technology and any Software governed by the Agreement. You agree to provide such access within a reasonable timeframe, either directly or under supervision, as and when a request is raised. Unless MobileKraft can remove all the necessary Software governed by the Agreement, and the delay is caused by delay in providing the necessary access, there might be a subscription charge applied to the account which You agree to pay as per the terms of Section 7.4.

7.7 Upon the termination of the Term, any Software from MobileKraft, or its components or configuration must not be restored from any backup media for active use. Upon such restore, You must contact MobileKraft for a suitable action under Section 7.5

7.8 Upon the termination of the Term, for any requirements to restore any data or config to the original values will be handled by You. MobileKraft can endeavour to help with the data restore activities, however, those activities will be taken up on a case-to-case basis under chargeable Services.

8. DISCLAIMER AND LIMITATION OF LIABILITY

8.1 THE SOFTWARE AND SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. IN NO EVENT WILL MOBILEKRAFT BE LIABLE FOR ANY DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF OR INABILITY TO USE THE SOFTWARE.

8.2 IN NO EVENT WILL MOBILEKRAFT’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SOFTWARE OR SERVICES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE SOFTWARE SUBSCRIPTION CHARGES PAID BY YOU DURING THE TWELVE (12) MONTHS PRIOR TO THE FIRST EVENT OR OCCURANCE GIVING RISE TO SUCH LIABILITY. FOR ANY TRIAL SOFTWARE, THE EXTEND OF LIABILITY SHOULD NOT EXCEED USD 50 (FIFTY). YOU ACKNOWLEDGE AND AGREE THAT THE ESSENTIAL PURPOSE OF THIS SECTION 7.2 IS TO ALLOCATE THE RISKS UNDER THESE TERMS BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE CHARGES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF MOBILEKRAFT WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. MOBILEKRAFT HAS RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE YOU THE RIGHTS TO ACCESS AND USE THE SOFTWARE PROVIDED FOR IN THESE TERMS.

9. INDEMNIFICATION

9.1 MobileKraft will indemnify, hold harmless, and defend You from and against any claim against You by reason of Your use of the Software as permitted hereunder, brought by a third party alleging that the Software infringes or misappropriates a third party's valid patent (recognised by the UK), copyright, trademark, or trade secret (an "IP Claim"). MobileKraft shall, at its expense, defend such IP Claim and pay damages finally awarded against You in connection therewith, including the reasonable fees and expenses of the attorneys engaged by MobileKraft for such defence, provided that: (a) You promptly notify MobileKraft of the threat or notice of such IP Claim; (b) MobileKraft is provided the sole and exclusive control and authority to select defence attorneys, defend, and/or settle any such IP Claim; and (c) You fully cooperate with MobileKraft in connection therewith. If use of the Service by You, or Users has become, or in MobileKraft's opinion, is likely to become, the subject of any such IP Claim, MobileKraft may, at its option and expense, either: (x) procure for You the right to continue using the Software as set forth hereunder; (y) replace or modify the Software to make it non-infringing; or (z) if options (x) or (y) are not commercially and reasonably practicable as determined by MobileKraft, terminate Your subscription to the Software and repay You, on a pro-rated basis, any Subscription Charges previously paid to MobileKraft for the corresponding unused portion of Your Term. MobileKraft will have no liability or obligation under this Section 8.1 with respect to any IP Claim if such claim is caused in whole or in part by: (i) compliance with designs, data, instructions, or specifications provided by You; (ii) modification of the Software by anyone other than MobileKraft; or (iii) the combination, operation, or use of the Software with other hardware or software where the Software would not by itself be infringing.

The provisions of this Section 9.1 state the sole, exclusive, and entire liability of MobileKraft to You and constitute Your sole remedy with respect to an IP Claim brought by reason of access to or use of the Software by You or Users.

9.2 You will indemnify, hold harmless, and defend MobileKraft against any claim brought by a third party against MobileKraft arising from or related to use of the Software by You or Users in breach of these Terms, or matters which You have expressly agreed to be responsible pursuant to these Terms, provided that MobileKraft promptly notifies You of the threat or notice of such a claim.

10. GOVERNING LAW AND JURISDICTION

10.1 This Agreement will be governed by the laws of England (UK) and the Parties agree to submit disputes that cannot be settled amicably to the jurisdiction of the competent court in the city where MobileKraft's registered office is situated.

11. CONDITIONS FOR SOFTWARE TRIAL

11.1 For the license granted under Trial Term; the MobileKraft Technology can only be deployed on a non-production environment/system and the trial is restricted to one free trial per Customer.

11.2 Upon the execution of a Trial Agreement, a trial must start no more than 1 (one) month.

12. SEVERABILITY

12.1 If any provision in these Terms is held by a court of competent jurisdiction to be unenforceable, such provision shall be modified by the court and interpreted so as to best accomplish the original provision to the fullest extent permitted by law, and the remaining provisions of these Terms shall remain in effect.

13. MISCELLANEOUS

13.1 Amendments or changes to this Agreement are not effective unless they are in writing and signed by persons authorised to sign on behalf of You and MobileKraft.

13.2 You may not assign this Agreement or any right, interest, or benefit under this Agreement without prior written consent of MobileKraft. Any attempted assignment in violation of the foregoing will be void.

13.3 If any provision of this Agreement shall be held invalid, illegal, or unenforceable, such provision shall be enforced to the maximum extent permitted by law and in compliance with the parties' intent, and the remaining provisions shall not be affected or impaired.

13.4 The Agreement delivered through digital platform is deemed to be signed once the Parties sign the Agreement digitally or accept to Agreement through a confirmation on a web form or through other digital means.

13.5 Sections 4, 5, 7, 8, 9 and 10 shall survive termination or expiration of this Agreement.

14. SINGATURES

If this EULA & Terms of Service is not provided as a “click-through” agreement, then signatures are required for any enforcement of this contract to be appropriate.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

MobileKraft Limited

You

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

EULA MobileKraft v1.0