

**About this Agreement**

These terms and conditions ("the Agreement") set out the basis on which TRAFx Research Ltd. ("we" "us" "our") will provide to you our online software solution known as "DataNet", described in full on our website ([www.trafx.net](http://www.trafx.net)). Please read this Agreement carefully.

BY CLICKING THE "I ACCEPT" BUTTON YOU AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MUST SELECT THE "I DECLINE" BUTTON AND MAY NOT USE DATANET.

If you are entering this Agreement on behalf of an organization, company or other legal entity, you represent that you have the authority to bind such entity to this agreement, in which case the terms "you" or "your" shall refer to such entity.

If you are entering into this Agreement on your own behalf, or if you are not authorized to enter into this Agreement on behalf of the organization, company or other legal entity responsible for purchasing DataNet, you agree that you are personally bound by this Agreement. In such cases, the terms "you" and "your" in this Agreement mean you.

For reference, a Definitions section is included at the end of this Agreement. All defined terms herein shall have the meaning ascribed to that term in the Definitions section.

**[1.0] ABOUT DATANET**

Once you have completed the DataNet Registration Form and accepted this Agreement and we have acknowledged and accepted your registration you will be able to use DataNet which will include us giving you access to a browser interface and providing you with data encryption, transmission, and access and storage services. You are responsible for providing all hardware and Internet service necessary to gain access to and use DataNet. Your registration for, or use of, DataNet shall be deemed to be your agreement to abide by this Agreement.

A Subscription Plan for DataNet specifies the number of User Licenses and the duration of the Subscription Plan. Each individual User is required to have a personal and valid User License to use DataNet. Multiple Users may be associated with the same Subscription Plan Account, but a license is required for each individual User. Users of DataNet may not share licenses or passwords.

**The individual who first enters the DataNet activation code will, by default, become an Administrator. An Administrator agrees to serve as a point of contact regarding the use and administration of DataNet. An Administrator can add (and remove) other Users. It is the responsibility of Administrators, not TRAFx, to manage a Subscription Plan Account and the Users and User Licenses within it. Only an Administrator can execute features or functions of DataNet that have potential to permanently affect Customer Data. An Administrator should be a permanent, long-term employee appointed by the Buyer of a Subscription Plan.**

TRAFx's Privacy Policy may be viewed on our website. We reserve the right to modify our Privacy Policy at our reasonable discretion from time to time. We may occasionally need to notify all Users of important announcements regarding the operation of DataNet. Users agree to have their name, work email and work phone number made available to other Users who are under the same Subscription Plan.

**[2.0] LICENSE GRANT AND RESTRICTIONS**

TRAFx hereby grants to you an individual, personal, non-exclusive, non-transferable, revocable license and right to access and use DataNet solely for your own internal business purposes. Your license to use DataNet is subject to this Agreement, and is for the duration of the License Term. All rights not expressly granted to you are reserved by TRAFx and its licensors.

Your User License commences on the Effective Date and terminates at the end of the License Term, unless this Agreement and your User License are extended, then your User License terminates at the end of your final extension term. TRAFx, in its sole discretion, may suspend or terminate your User License if you materially breach or otherwise fail to comply with this Agreement. User Licenses cannot be shared or used by more than one User but may be reassigned in accordance with this Agreement by an Administrator to new Users who are replacing former Users who have changed job status or function and no longer use DataNet.

Users shall not share their passwords and are responsible for maintaining the confidentiality of their password. TRAFx, in its sole discretion, may suspend or terminate your User License and inactivate a User's password. An Administrator may also, in his/her sole discretion, suspend or terminate your User License and inactivate a User's password.

Subject to Section 6.1 of this Agreement, you shall not license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party DataNet in any way. In addition, you shall not (i) modify or make derivative works based upon DataNet or the Content; (ii) create Internet "links" to DataNet or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iii) reverse engineer or access DataNet in order to (a) build a competitive product of DataNet, (b) build a product using similar ideas, features, functions or graphics of DataNet, or (c) copy any ideas, features, functions or graphics of DataNet.

You may not access DataNet if you are a direct competitor of TRAFx, except with TRAFx's prior written consent which consent may be withheld at the sole discretion of TRAFx. In addition, you may not access DataNet for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

You may use DataNet only for your internal business purposes and shall not: (i) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (ii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iii) interfere with or disrupt the integrity or performance of DataNet or the data contained therein; or (iv) attempt to gain unauthorized access to DataNet or its related systems or networks; (v) setup and exceed the number of authorized User Licenses.

### **[3.0] YOUR RESPONSIBILITIES**

You are responsible for all your activities and shall abide by all applicable local, state, provincial, national and foreign laws, treaties and regulations in connection with your use of DataNet, including those related to data protection and privacy, international communications and the transmission of technical or personal data.

You shall: (i) notify TRAFx immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to TRAFx immediately and use reasonable efforts to stop immediately any unauthorized copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another User or provide false identity information to gain access to or use DataNet.

You are solely responsible to ensure that all individual Users (including but not limited to employees, researchers, agents, contractors and sub-contractors) accessing and using DataNet under your Subscription Plan, strictly comply with and abide by the terms of this Agreement. A breach of this Agreement by an individual User under your Subscription Plan shall constitute a breach by you.

You are solely responsible for the use of the Customer Data. You are responsible to notify TRAFx immediately when you become aware of a claim alleging that use of any Customer Data infringes the rights of, or has caused harm to, a third party.

### **[4.0] ACCOUNT INFORMATION AND UPLOADED DATA**

TRAFx does not own any Customer Data that you upload to DataNet in the course of using DataNet.

Time series data generated by TRAFx-manufactured devices (i.e., data collected by TRAFx counters) are the only type of time series data that may be uploaded to DataNet. You must obtain written permission from TRAFx prior to uploading any time series data collected by any other type or make of counting or data logging device.

TRAFx may at any time view and access Customer Data and the Subscription Plan Account for the purpose of resolving a problem, providing customer support, improving DataNet, or investigating a suspected violation of this Agreement, or as may be required by law.

You, not TRAFx, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and TRAFx shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data.

You agree to retain a copy of your Customer Data uploaded to DataNet for backup purposes.

### **[5.0] INTELLECTUAL PROPERTY**

TRAFx alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the DataNet Technology, the Content and DataNet and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to them. This Agreement is not a sale and does not convey to you any rights of ownership, title or interest in or related to the DataNet Technology, the Content and DataNet or any other Intellectual Property Rights owned by TRAFx. The TRAFx name, the TRAFx logo, and the product names associated with DataNet are trademarks of TRAFx or third parties, and no right or license is granted to use them.

You agree that we shall, in addition to all other remedies available at law, be entitled to an injunction or any other like remedy in order to prevent or to restrain any such breach or threatened breach by you in order to protect our intellectual property rights. This clause shall survive termination of this Agreement.

### **[6.0] SUBSCRIPTION PLAN AND SUBSCRIPTION PLAN ACCOUNT**

#### **[6.1] General**

A Subscription Plan specifies the number of User Licenses, the Subscription Plan Term, and the applicable fees.

The cost for a Subscription Plan, its extension or renewal, additional User Licenses, and other Items are specified in the TRAFx Quote and Order Form. The cost will be based upon the then-current pricing. By placing an Order you are bound by TRAFx's Terms and Conditions of Sale (see [www.trafx.net/legal](http://www.trafx.net/legal)).

Added User Licenses will be subject to the following additional terms: (i) added User Licenses will be coterminous with the Subscription Plan Term, or will terminate at the time an Administrator or TRAFx terminates an individual User License, whichever event happens first; (ii) the cost of additional User Licenses added during the term of the Subscription Plan Term will be prorated in accordance with time remaining in that Subscription Plan Term (iii) all payment obligations are non-cancellable and all amounts paid are non-refundable, regardless of the amount of actual use made of the User Licenses under the Subscription Plan.

You agree that TRAFx is permitted to display the name of your organization and/or your organization's logo on TRAFx's public website, until such time you request its removal.

#### **[6.2] Termination**

This Subscription Plan commences on the Subscription Plan Start Date and terminates at the end of the Subscription Plan Term unless the Subscription Plan is extended, then the Subscription Plan ends at the end of the final extension term.

#### **Termination upon Expiration**

Upon expiration you agree and acknowledge that TRAFx has no obligation to retain any Customer Data and TRAFx may delete or otherwise destroy such Customer Data 30 days after expiration of the Subscription Plan. However, if within 30 days of such expiration an Administrator sends an email to TRAFx (info@trafx.net) requesting the data files you have uploaded to DataNet, TRAFx will, upon confirmation of such email, make available to you a ZIP file containing such files.

#### **Suspension or Termination for Cause**

TRAFx, in its sole discretion, may suspend or terminate a Subscription Plan if you or any User under the Subscription Plan materially breaches or otherwise fails to comply with this Agreement. In the case of termination for cause you agree and acknowledge that TRAFx has no obligation to retain any Customer Data, and TRAFx may delete such Customer Data within 30 days following termination.

#### **[7.0] REPRESENTATIONS AND WARRANTIES**

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. TRAFx represents and warrants that it will provide DataNet in a manner consistent with general industry standards reasonably applicable to the provision thereof and that DataNet will perform substantially in accordance with the online TRAFx help documentation under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to DataNet.

#### **[8.0] DISCLAIMER OF WARRANTIES**

EXCEPT AS PROVIDED ABOVE TRAFX AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF DATANET OR ANY CONTENT. TRAFX AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF DATANET WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) DATANET WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH DATANET WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) DATANET OR THE SERVER(S) THAT MAKE DATANET AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. DATANET AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY TRAFX AND ITS LICENSORS.

#### **[9.0] INDEMNIFICATION**

You shall indemnify and hold TRAFx, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, legal counsel, agents and insurers harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including any legal fees and costs) arising out of or in connection with: (i) any breach of this Agreement by you or by an individual User under your Subscription Plan (ii) a claim alleging that use of any Customer Data infringes the rights of, or has caused harm to, a third party; (iii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iv) a claim by a third party arising from the breach by you or your Users.

#### **[10.0] INTERNET DELAYS, SERVICE DELAYS AND SYSTEM ERRORS**

DATANET MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS AND ONLINE, HOSTED "SOFTWARE AS A SERVICE" APPLICATIONS. TRAFX IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

#### **[11.0] LIMITATION OF LIABILITY**

IN NO EVENT SHALL TRAFX BE LIABLE TO ANYONE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING BUT NOT LIMITED TO ANY CLAIM

FOR DAMAGES ARISING FROM LOST PROFITS, LOST REVENUE, LOST DATA, LOST OPPORTUNITY OR GOODWILL, LOSS OF USE OR OTHER ECONOMIC ADVANTAGES) OR FOR OTHER INCIDENTAL OR CONSEQUENTIAL OR PUNITIVE DAMAGES WHETHER BASED IN CONTRACT OR TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE, PERSONAL INJURY) OR ANY OTHER LEGAL THEORY. THIS SECTION APPLIES TO ANY CLAIM OR DISPUTE ARISING OUT OF OR IN ANY WAY CONNECTED WITH DATANET, DATANET TECHNOLOGY OR CONTENT, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE DATANET, DATANET TECHNOLOGY OR CONTENT, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH DATANET OR DATANET TECHNOLOGY, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF THE CAUSE WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR WHETHER SUCH DAMAGES ARE FORESEESABLE. IN ANY EVENT THE TOTAL AGGREGATE LIABILITY OF TRAFX FOR DIRECT DAMAGES SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID TO TRAFX IN RELATION TO THE THEN EXISTING SUBSCRIPTION PLAN.

#### **[12.0] ADDITIONAL RIGHTS**

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

#### **[13.0] LOCAL LAWS AND EXPORT CONTROL**

You acknowledge that DataNet and DataNet Technology provided by TRAFX are subject to applicable export control laws and regulations and you agree to comply with such laws and regulations.

#### **[14.0] MODIFICATION TO TERMS**

TRAFX reserves the right to modify the terms and conditions of this Agreement or its policies relating to DataNet at any time, effective upon posting of an updated version of this Agreement on DataNet. You are responsible for regularly reviewing this Agreement. Continued use of DataNet after any such changes shall constitute your consent to such changes.

#### **[15.0] NOTICE**

Unless otherwise expressly stated in this Agreement all notices pertaining to this Agreement shall be faxed and deemed effective seven (7) days later.

#### **[16.0] SEVERABILITY**

If any of the terms of this Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

#### **[17.0] GOVERNING LAW AND FORUM**

This Agreement, its subject matter and all other aspects of the relationship between TRAFX and you shall be governed by and construed in accordance with the laws of the Province of Alberta and the applicable laws of Canada without giving effect to any choice of law rules that could result in the application of the laws of any other jurisdiction. Subject to Section 15 of this Agreement TRAFX and you hereby agree to attorn to the exclusive jurisdiction of the courts in the Province of Alberta (Canada).

#### **[18.0] SURVIVAL**

Each term and condition under this Agreement will remain effective for so long as may be necessary to give effect to its purpose as set forth herein.

#### **[19.0] DEFINITIONS**

For purposes of this Agreement, the following definitions shall apply.

**“Administrator(s)”** means a type of User who administers a Subscription Plan Account. An Administrator can add other Users, including other Administrators, and order additional User Licenses under an existing Subscription Plan. Only an Administrator can execute features or functions of DataNet that have potential to permanently affect Customer Data.

**“Agreement”** means the terms and conditions of use specified in this agreement.

**“Buyer”** means the person, organization or other legal entity that places an Order.

**“Content”** means the audio and visual information, documents, software, products and services contained or made available to you in the course of using DataNet.

**“Customer Data”** means any data, information or material uploaded to DataNet in the course of using DataNet.

**“DataNet”** means the proprietary, hosted, online software solution called DataNet, which is developed, owned and operated by TRAFX and accessible via [www.trafx.net](http://www.trafx.net) or another designated Web site or IP address, and includes the ancillary online or offline products and services provided to you by TRAFX under this Agreement.

**“DataNet Technology”** means all of TRAFX’s proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible materials, documents, or information) made available to you by TRAFX in providing DataNet.

**"Effective Date"** means the date this Agreement is accepted by you selecting the "I Accept" option presented on the screen as part of DataNet's online registration process.

**"Intellectual Property Rights"** means all patent rights, design rights, copyrights, trademarks, DataNet marks, trade names, domain name rights, mask work rights, trade secrets, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

**"License Term"** means the period(s) during which a User is licensed to use DataNet. The License Term commences on the Effective date and is either coterminous (i.e., ends at the same time) with the Subscription Plan or it terminates at the time an Administrator or TRAFx terminates your User License, whichever event happens first.

**"Order"** means the placement of an Order, by Buyer to purchase Items by submitting a TRAFx Quote and Order Form or by submission or use of a purchase order or other procurement instrument or means, electronically or otherwise which Order constitutes the Buyers irrevocable agreement to abide by TRAFx's Terms and Conditions of Sale. (If TRAFx's Terms and Conditions of Sale respecting DataNet conflict with this Agreement, this Agreement takes precedence.)

**"Subscription Plan"** means the plan pertaining to this Agreement which specifies, among other things, the number of User Licenses, the Subscription Plan Term, and the applicable fees. Example: 5 Users/5 Years/\$500.

**"Subscription Plan Account"** means the account (i.e., record keeping system) that an Administrator uses to keep track of Users and User Licenses associated with a Subscription Plan.

**"Subscription Plan Start Date"** means the invoice date for the Subscription Plan, as indicated on the TRAFx's invoice.

**"Subscription Plan Term"** means the duration of the Subscription Plan, specified in the Order.

**"TRAFx"** means TRAFx Research Ltd., a corporation registered in Alberta, Canada.

**"User(s)"** means the natural person (i.e., individual) licensed by TRAFx to use DataNet.

**"User License(s)"** means a license granted to a User to use DataNet.