

End User Licence Agreement - Software

The Software supplied under this End User Licence Agreement (EULA) shall be subject to the following terms and conditions:

1. Definitions

“Applicable Law” means any: (i) law including any statute, statutory instrument, bye-law, order, regulation, directive, treaty, decree, decision (as referred to in Article 288 of the Treaty on the Functioning of the European Union) (including any judgment, order or decision of any court, regulator or tribunal); (ii) rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or (iii) industry code of conduct or guideline in force from time to time which relates to this EULA and/or the Software.

“Commercial Terms” means any legally binding document relating to the supply of the Software to the Customer or dealing with the subject matter of this EULA, including under which payment is made for the Software by the Customer.

"Company" means ASSA ABLOY Ltd trading as Traka and shall include the Company's successors and assigns.

"Customer" means the person, firm or company with whom this EULA is made.

“Data Protection Laws” means all Applicable Laws relating to data protection, the processing of personal data and privacy, including: (i) the Data Protection Act 1998; (ii) (with effect from 25 May 2018) the General Data Protection Regulation (EU) 2016/679; and (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and references to “Data Processor”, “Data Subjects”, “Personal Data”, “Process”, “Processed”, “Processing” “Processor” and “Supervisory Authority” have the meanings set out in, and will be interpreted in accordance with, such Applicable Laws.

“Documentation” means materials such as manuals, user guides or similar materials associated with or related to the Software.

“Intellectual Property Rights” means all intellectual and industrial property rights of any kind whatsoever including, but not limited to, patents, supplementary protection certificates, registered trademarks, unregistered trademarks, rights in know-how, registered designs, models, unregistered design rights, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together

with all renewals, extensions, continuations, divisions reissues, re-examinations and substitutions.

"Software" means all Traka software products licensed under this EULA as specified in the Commercial Terms (excluding software/firmware embedded in Traka hardware products).

"Supplier" means the entity from which the Software was purchased by the Customer being the Company or one of its authorised partners.

"System" means the relevant system to which the Software relates as specified in the Commercial Terms which may include key cabinets or lockers made available by the Company. By way of example, one Traka Touch control unit incorporating the Traka Touch screen, or one control unit including the earlier user interface, plus the Traka Key Cabinet enclosures, locker compartments or other Traka hardware products controlled by that one control unit, constitutes one System.

"Traka32" means the software made available by the Company as described in the applicable Documentation, for managing Traka hardware products.

"Traka Web" means the software made available by the Company as described in the applicable Documentation for managing Traka hardware products. There are three licence versions made available by the Company each as more particularly specified in the Commercial Terms: (i) Traka Web Lite (one live deployment for one System on a perpetual basis); (ii) Traka Web Pro (one live deployment, for up to 49 Systems with other restrictions, licensed on a 1 year, 3 year, 5 year or perpetual basis); or (iii) Traka Web Pro Plus (a deployment across one or more servers, for a specified number of Systems licensed on a 1 year, 3 year, 5 year or perpetual basis).

"Warranty Period" means the period of 12 months beginning on the initial date of installation of the Software, unless specified otherwise in the Commercial Terms.

2. Licence

2.1 In consideration of the payment of the licence fees in respect of the Software to the Company or its authorised partner, the Company hereby grants:

- 2.1.1 if the Software being licensed is Traka32, a non-exclusive, non-transferable licence for the use of one live deployment of the Software for the number of concurrent users or Systems as specified in the Commercial Terms for the period of time specified in the Commercial Terms;

- 2.1.2 if the Software being licensed is Traka Web, the Company hereby grants the Customer a non-exclusive, non-transferable licence for the use of the Software for the number of Systems as specified in the Commercial Terms for the period of time specified in the Commercial Terms;
- 2.1.3 if the Software being licensed is any other Traka Software product, including but not limited to Traka's Packaged Integration products, or Traka Integration Engine (but excluding embedded software in Traka hardware products), for use in conjunction with Traka32 or Traka Web, the Company hereby grants a non-exclusive, non-transferable licence for the use of the relevant version of the Software, for an unlimited number of users, an unlimited number of Traka Systems, and for the period of time of the associated Traka32 or Traka Web software licence as set out in the Commercial Terms (including any licence renewals).
- 2.2 By purchasing such user licences or by using the Software, the Customer agrees to the terms of this EULA.
- 3. Patents, Designs and Copyright
 - 3.1 The Software is licensed, not sold, to the Customer by the Company for use only under the terms of this EULA. The Company and its licensors retain all proprietary interests and rights in and over the Software and reserve all rights not expressly granted to the Customer under this EULA including all Intellectual Property Rights which shall remain the exclusive property of the Company or its licensors.
- 4. Restrictions
 - 4.1 Except as expressly set out in this EULA or as permitted by law, the Customer agrees not to disclose the contents or code of the Software to any third party. The Customer may take such copies of the Software as is necessary for the purpose of back-up security and agrees that all copies shall be kept confidential and subject to the terms of this EULA.
 - 4.2 Except as expressly set out in this EULA or as permitted by law, the Customer agrees not to lease, rent, sub-license, loan, sell, or otherwise redistribute the whole or any part of the Software nor to permit the Software or any part of it to be modified or incorporated into any other programmes.
 - 4.3 The Customer agrees not to modify, disassemble, reverse engineer, derive the source code of, decrypt, create derivative works or decompile the whole or any part of the Software nor attempt to do so save to the extent expressly permitted by law.

- 4.4 The Customer will not remove or alter any copyright notices or similar proprietary devices, including any electronic watermarks or other identifiers that may be incorporated in the Software.
- 4.5 The Customer will not attempt to ascertain or list the source programs or source code relating to the Software.
- 4.6 The Customer will notify the Company as soon as it becomes aware of any unauthorised use of the Software by any person.
- 4.7 The Customer will keep a complete and accurate record of the copies of the Software made by the Customer under Clause 4.1.

5. Warranty

- 5.1 The Company believes that to the best of its knowledge the Software has been thoroughly tested for freedom from arithmetic or logical defects in the Software and that it will function and perform substantially in accordance with the functions described in the Documentation.
- 5.2 If at any time during the Warranty Period, the Customer becomes aware of a breach of the warranty at Clause 5.1, the Customer will:
 - 5.2.1 promptly notify the Supplier of any defect which it believes to exist, such notice to be given prior to the expiry of the Warranty Period, with all details and information which may assist in diagnosing and correcting the defect; and
 - 5.2.2 provide any facilities, information and assistance which the Supplier may reasonably request to aid the diagnosis of the alleged defect and co-operate with the Supplier in these activities.
- 5.3 If the Supplier is unable to ascertain or correct the defect with the Software as notified by the Customer in accordance with Clause 5.2, the Supplier (if not the Company) shall notify the Company.
- 5.4 The Company reserves the right to charge the Customer at its prevailing rates for any effort expended in tracing apparent defects which prove not to be defects covered under this Clause 5.
- 5.5 In the event of a proven breach of the warranty in Clause 5.1 during the Warranty Period, the Supplier (or Company (as the case may be)) will either:
 - 5.5.1 repair, or at its option replace, the Software (or the relevant part of it);
or

- 5.5.2 correct the Documentation to reflect the proper performance of the Software where it is determined by the Company (acting reasonably) that the Software is functioning correctly but is not properly described in the Documentation.
- 5.6 The repair or replacement of the Software under Clause 5.5 will not be available to the Customer if:
 - 5.6.1 the defect in the Software is attributable to failure or breakdown or interference of any third party, or software or hardware not supplied subject to this EULA;
 - 5.6.2 the Customer is in breach of this EULA;
 - 5.6.3 the Customer fails to operate the Software properly or fails to follow the instructions or recommendations of the Company as set out in the Documentation;
 - 5.6.4 the Customer interferes with, modifies, or fails to secure the Software otherwise than in accordance with the terms of this EULA; or
- 5.7 In addition to the warranty in Clause 5.1, during the Warranty Period the Customer is entitled to download and use newer versions of the Software that the Company may release from time to time to ensure its continued compatibility with new versions of server software, database software, and popular browser software, to make performance improvements to the Software, and to add additional software security defences against emerging digital security threats (“Software Warranty & Upgrade Support”).
- 5.8 If the Commercial Terms provide that the Software is licensed for a specific period and/or on a renewing periodic basis, the Software Warranty & Upgrade Support will apply for the entire duration of licence period for the Software as set out in the Commercial Terms, including any renewal periods. Unless otherwise specified in the Commercial Terms, the Software Warranty & Upgrade Support in respect of any Software licensed on a perpetual basis will only apply during the Warranty Period.
- 6. Training
 - 6.1 Other than the supply of the Documentation included with the Software, no training is provided by the Company unless otherwise agreed by the Customer and the Company.

7. Limit of Liability

7.1 Subject to Clause 7.2 and 7.3, the Company's maximum aggregate liability in connection with this EULA or the use of the Software will be limited to the lower of:

7.1.1 any applicable limitation of liability set out in the Commercial Terms;
or

7.1.2 £100,000 or 100% of any fees paid by the Customer in relation to the Software in the last twelve (12) months, whichever is lower.

7.2 Subject to Clause 7.3, the Company accepts no liability for any:

7.3

7.3.1 loss of business, loss of revenue, loss of profits, loss of goodwill, loss of use, loss of data or loss of any economic liability; or

7.3.2 indirect or consequential losses, however caused, arising in connection with this EULA or the use of the Software except where it would be unlawful to exclude such losses.

7.4 The Company makes no attempt to exclude liability relating to or arising from death or personal injury caused by the Company's negligence or the negligence of any employee, agent or contractor of the Company or liability for fraud or fraudulent misrepresentation, or for any other liability for which it would be unlawful to exclude or limit liability.

8. Disposal

8.1 The Customer undertakes that, upon the cessation of the use of the Software for whatever cause, or upon termination of this EULA, it will promptly destroy all known copies of the Software or other material in its possession on whatever media they are recorded and, if required by the Company, certify that this has been done

9. Force Majeure

9.1 Neither party shall be liable for failure to perform its obligations under this EULA if such failure results from circumstance beyond the party's control.

10. Termination

10.1 Either party shall have the right to terminate this EULA if the other party is in material or persistent breach of this EULA and fails to rectify such breach within 30 days of receipt of notification thereof in writing, from the injured party, or if

a right to terminate the relevant Commercial Terms has arisen. Termination shall not affect any other rights of the injured party.

11. Consequences of Termination

- 11.1 Upon termination of this EULA all rights and licences granted to the Customer under this EULA will cease immediately;

12. Communications and Notices

- 12.1 All communications or notices that the Customer is required to provide to the Company under this EULA shall be sent to the following address:

Traka – ASSA ABLOY
30 Stilebrook Road, Olney,
Milton Keynes, MK46 5EA, United Kingdom

or such other address of which the Company makes the Customer aware from time to time.

- 12.2 Any notice given in accordance with Clause 12.1 will be deemed to have been served:

12.2.1 if delivered to or left at the Company's address, at the time the notice is delivered to or left; or

12.2.2 if delivered by pre-paid first class post or mail delivery service providing proof of delivery, at 9:00am on the second Business Day after the date of posting.

13. Assignment

- 13.1 Except as expressly set out in this EULA or as permitted by law, the Customer will not be permitted to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under this EULA without the prior written consent of the Company.

14. Waiver

- 14.1 A delay in exercising or failure to exercise a right or remedy under or in connection with this EULA will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy.

15. Severance

- 15.1 If any term of this EULA is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from this EULA and this will not affect the remainder of this EULA which will continue in full force and effect.

16. Rights of Third Parties

- 16.1 The parties do not intend that any term of this EULA will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

17. Law

- 17.1 This EULA (and any non-contractual obligations arising out of or in connection with it) is governed by the laws of England and Wales and the parties submit to the jurisdiction of the Courts of England and Wales.

Data Protection Laws

- 17.2 The Customer acknowledges that for the purposes of the Data Protection Laws, to the extent any Personal Data is involved in its use of the Software, the Customer will be the Data Controller in respect of such Personal Data.
- 17.3 In limited circumstances, the Company may have access to data stored on the Software which may include user names or other Personal Data relating to the Customer's employees or authorized users ("Agreement Personal Data") where such access is required in order to provide Software Warranty & Upgrade Support. The Customer authorises the Company to Process Agreement Personal Data during the term of this EULA as a Data Processor for the purposes of performing its obligations under this EULA only.
- 17.4 The Customer authorises the Company to appoint sub-processors of Agreement Personal Data and agrees to the use of the Company's existing sub-processors of Agreement Personal Data (each an "Authorised Sub-Processor").
- 17.5 The Customer shall:
- 17.5.1 comply with the Data Protection Laws;
 - 17.5.2 ensure that only the Personal Data that the Company requires in order to perform its obligations under this EULA will be disclosed to, shared with and/or accessible by the Company; and
 - 17.5.3 obtain all necessary consents and/or provide all fair processing notices required under the Data Protection Laws to enable the Company to lawfully receive, store, disclose and/or use all Agreement Personal

Data (whether by itself or Authorised Sub-Processors) for the purpose of performing its obligations and exercising its rights under this EULA and as otherwise agreed by the parties from time to time.

17.6 The Company:

- 17.6.1 may appoint Authorised Sub-Processors in connection with the performance of its obligation under this EULA; and
- 17.6.2 shall provide notification of changes to Authorised Sub-Processors of Agreement Personal Data to the Customer at least 14 calendar days in advance to provide the Customer with the opportunity to object to the change. The Customer shall be deemed to accept the change if an objection is not received within 10 calendar days of notification. If an objection is received then the parties will work together in good faith to achieve an agreed outcome and any Authorised Sub-Processors appointed shall be appointed on terms the same as this EULA and the Company shall remain liable for the acts and omissions of such Authorised Sub-Processors.

17.7 The Company warrants that, if acting as a Data Processor, it shall:

- 17.7.1 Process the Agreement Personal Data only for the purpose of performing its obligations under this EULA and on such documented instructions received from the Customer from time to time as are reasonable, necessary and relevant to enable each party to perform its obligations under this EULA, save where required by Applicable Law and in such case the Company shall notify the Customer of the nature and extent of the Applicable Laws preventing such Processing (unless to do so would itself be a contravention of any Applicable Law); and
- 17.7.2 put in place appropriate technical and organisational security measures to the standard required under the Data Protection Law (“Security Measures”) and shall provide reasonable assistance with any privacy impact assessment(s) that may be required of the Company under the Data Protection Laws which relate to the Processing of Agreement Personal Data under this Agreement.

17.8 From the 25 May 2018, the Company warrants that, if acting as a Data Processor, it shall:

- 17.8.1 notify the Customer without undue delay after becoming aware of the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Agreement Personal Data transmitted, stored or otherwise Processed (“Data Security Breach”). Where, and in so far as, it is not possible to provide all the relevant information at

the same time, the information may be provided in phases without undue further delay;

- 17.8.2 except to Authorised Sub-Processors, not disclose the Agreement Personal Data to a third party save as required for the performance of its obligations under this EULA, as otherwise provided under this EULA, or as required by Applicable Law;
- 17.8.3 notify the Customer without undue delay of any notice or communication from the Supervisory Authority which relates directly to the Processing of Agreement Personal Data;
- 17.8.4 ensure that any individual authorised to Process Agreement Personal Data on behalf of the Customer is subject to appropriate statutory or contractual obligation of confidentiality;
- 17.8.5 will upon reasonable notice, no more than once in any one calendar year, subject to appropriate confidentiality agreements being entered into, make available to the Customer all reasonable information relating to the Processing of Agreement Personal Data necessary to demonstrate compliance with the obligations set out in this EULA to the extent such information is not already available to the Customer; and allow for and contribute to one audit in any one calendar year, including inspection, conducted by the Customer or another auditor mandated by the Customer to that same extent solely to the extent relevant to the Processing of Agreement Personal Data;
- 17.8.6 to the extent required by Data Protection Laws, notify and provide reasonable assistance to the Customer on receiving any:
 - 17.8.6.1 complaint by a Data Subject in respect of their Personal Data contained in the Agreement Personal Data or any request received from a Data Subject to have access to his Personal Data (or to exercise any other right(s) afforded to him under the Data Protection Laws) as contained in the Agreement Personal Data (including by appropriate technical and organisational measures, insofar as this is possible);
 - 17.8.6.2 notice or communication from the Supervisory Authority which relates to the processing of Agreement Personal Data;
- 17.8.7 to the extent required by Data Protection Laws, reasonably assist the Customer in:

- 17.8.7.1 taking measures to address any Data Security Breach;
and
 - 17.8.7.2 conducting privacy impact assessments of any
Processing operations and consulting with any applicable
Supervisory Authority;
- 17.8.8 only share Agreement Personal Data with the Authorised Sub-Processors to carry out the services provided that, to the extent the Authorised Sub-Processor is located outside the UK or the European Union, the Company will implement measures to ensure an adequate level of protection for the rights and freedoms of the relevant individuals in relation to the transfer of any Personal Data, except to the extent that the transfer is (i) to a country that the European Commission has recognised as providing adequate protection for such transfer from time to time and/or (ii) otherwise expressly permitted by Data Protection Laws.
- 17.9 At the option of the Customer, the Company shall securely delete or return to the Customer all Agreement Personal Data promptly following termination of this EULA and shall securely delete any remaining copies.
- 18. Entire Agreement
- 18.1 The parties agree that these terms and conditions (together with any Commercial Terms) represent the entire agreement between the parties relating to the licence of the Software, and that no statements or representations made by either party have been relied on by the other in agreeing to enter into the EULA and the parties shall have no remedy in respect of any such statement or representation which is not set out in this EULA.

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