

Transit Miner Terms of Use

Terms of Use. By accessing and using this Transit Miner software service (the “**Service**”), you (“**Client**”) agree to these terms of use (“**Agreement**”) with **Modaxo Inc., and its affiliates doing business as TripSpark Technologies (“Company”)**. If Client does not agree with any part of this Agreement, it is prohibited from using or accessing this site and must discontinue its use of the Service. Company may modify these terms or any additional terms that apply to the Service. Client should look at the terms regularly. Company shall post notice of modifications to these terms on this page. Changes to the Agreement shall not apply retroactively. This Agreement shall apply for as long as Client has access to and uses the Service (the “**Term**”).

Business Use of Our Services. If Client is using our Service on behalf of a business, it enters into this Agreement on behalf of that business, except as may be modified or superseded by another signed, written, in-place agreement between Company and the Client’s business, as and when applicable.

License to Use the Service. Company grants Client non-exclusive, non-sublicensable, non-transferable, limited, revocable, right and license to access via the internet and use the Service and all product documentation and instructions made available to Client relating to its use of the Service (the “**Documentation**”) during the Term.

License to Client Data. Client hereby grants Company a non-exclusive, non-transferable, royalty-free, worldwide right to use the electronic data of Client, its customers, and its users, that is submitted by or imported by Client into the Service in connection with Clients use of the Service (collectively, “**Client Data**”) solely and only as necessary for the limited purpose of the Service performing the services. Client shall own and retain all right, title and interest in and to the Client Data.

Passwords and User Access. The Service includes self-service user administration module that allows Clients to create user accounts for its employees and authorized individuals to access and use the Service on behalf of the Client. Client is responsible for all activities that occur under user accounts. Client is responsible for maintaining the security and confidentiality of all user usernames and passwords. Client agrees to notify Company immediately of any unauthorized use of any Service username or password or account or any other known or suspected breach of security.

Company’s Ownership. Company and its suppliers retain all rights in the Service and Company’s content. This Agreement grants no ownership rights to Client. No license is granted to Client except as to use of the Service as expressly stated herein. The Company name, the Company logo, and the product names associated with the Service are trademarks of Company or third parties, and they may not be used without Company’s prior written consent.

Proprietary Rights and Restrictions. The Service and Documentation is the sole property of Company and contains copyrighted, confidential and trade secret information which may not be disclosed to any third parties absent advance, written consent of Company. Client shall keep the Service and Documentation free and clear of all claims, liens and encumbrances of any nature whatsoever. Client shall take all reasonable measures necessary to protect and maintain the confidential and proprietary character of the confidential information, Service and Documentation.

Compliance with Law. Client shall comply with all applicable laws regarding Client Data, use of the Service and the Company content, including laws involving private data and any applicable export controls.

Restrictions on Use of the Service:

Client shall not:

- (1) Otherwise copy, change, disassemble, decompile, reverse engineer, sublicense, assign, timeshare, sell, give away, loan, rent, lease, transfer (electronically or otherwise), frame, mirror, display, disclose, or

- provide any third party with access to or use of, the Service or Documentation;
- (2) directly or indirectly create or attempt to create software that emulates or competes with the Service, prepare derivative works of the Service or Documentation, separate the components of the Service, or Documentation;
 - (3) copy or provide any third party with access to or use of any of the Service or Documentation without the prior written consent of Company and in no event without a binding written agreement between it and a third party no less protective of Company's rights herein this Agreement;
 - (4) remove any trademark notice, copyright, or other restrictive legend from any material contained in or on the Service or Documentation;
 - (5) publish or disclose to any third party any reports or the results of any benchmark tests run on the Service or its components; or
 - (6) use any trademarks, service marks, or logos of Company without advance, written permission;
 - (7) submit to the Service any material that is illegal, misleading, defamatory, indecent, obscene, threatening, infringing of any third-party proprietary rights, invasive of personal privacy, or otherwise objectionable as determined by Company in its sole discretion.

Privacy. Unless Client and Company are under a written, binding agreement respecting Client's use of the Service dated before Client's acceptance of this Agreement, Client's use of the Service is at all times subject to Company's Privacy Policy [HERE](#).

Third Party Links and Services.

The Service may at times include gateways, links or other functionalities that allows Client to access third party services, content and materials. COMPANY MAKES NO WARRANTY AS TO THIRD PARTY SERVICES OR MATERIALS AND CLIENT USE OF SUCH THIRD PARTY SERVICES AND MATERIALS IS COMPLETELY AT ITS OWN RISK.

DISCLAIMER OF WARRANTIES. THE SERVICE IS PROVIDED ON AN "AS IS" AND "WITH ALL FAULTS BASIS", AND COMPANY AND ITS THIRD-PARTY SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY, MERCHANTABILITY, OR SATISFACTORY QUALITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY. NO ORAL OR WRITTEN ADVICE OR INFORMATION PROVIDED BY COMPANY OR ANY OF ITS AGENTS, EMPLOYEES OR THIRD-PARTY PROVIDERS SHALL CREATE A WARRANTY, AND CLIENT IS NOT ENTITLED TO RELY ON ANY SUCH ADVICE OR INFORMATION. CLIENT MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW. COMPANY SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF COMPANY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER COMPANY NOR ANY OF ITS THIRD PARTY SUPPLIERS MAKES ANY REPRESENTATION, WARRANTY OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF ANY PRODUCTS OR ANY CONTENT THEREIN OR GENERATED THEREWITH, OR THAT: (A) THE USE OF ANY PRODUCTS WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE; (B) THE PRODUCTS WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, APPLICATIONS, UTILITIES, MEMORY RESIDENT PROGRAMS, OR DATA; (C) THE PRODUCTS AND ANY SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CLIENT WILL MEET CLIENT'S REQUIREMENTS OR EXPECTATIONS); (D) ANY STORED DATA WILL BE ACCURATE OR RELIABLE OR THAT ANY STORED DATA WILL NOT BE LOST OR CORRUPTED; (E) ERRORS OR DEFECTS WILL BE CORRECTED; OR (F) THE PRODUCTS (OR ANY SERVER(S) THAT MAKE A SERVICE AVAILABLE) ARE FREE OF VIRUSES OR OTHER

HARMFUL COMPONENTS. THIS DISCLAIMER OF WARRANTIES IS AN ESSENTIAL CONDITION OF THE AGREEMENT.

LIMITATION OF LIABILITY. THE AGGREGATE LIABILITY OF COMPANY TO CLIENT RELATING TO OR ARISING OUT OF THIS AGREEMENT, INCLUDING ANY CLAIMS OR CAUSES OF ACTION IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL LICENSE FEES PAID BY CLIENT TO COMPANY UNDER THIS AGREEMENT IN THE PRECEDING YEAR OF A CLAIM. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

DISCLAIMER OF DAMAGES. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, LOST OR INACCURATE DATA, INTERRUPTION OF BUSINESS, COSTS OF DELAY; OR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, EXEMPLARY, LIQUIDATED, OR CONSEQUENTIAL DAMAGES; OR ANY CLAIMS OR DEMANDS BROUGHT AGAINST CLIENT, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DEMANDS. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR NEGLIGENCE, CONSEQUENTIAL, INCIDENTAL OR OTHER DAMAGES, IN SUCH JURISDICTIONS COMPANY'S LIABILITY IS LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

Indemnity. Client agrees to indemnify, hold harmless and defend the Company and its directors, officers, agents and employees from and against any claims, liabilities, losses, damages, proceedings or actions (whether pending or threatened) including reasonable attorneys' fees, related to or arising out of: (i) its negligence or misconduct; (ii) breach of confidentiality; (iii) breach of this Agreement; or (iv) breach of applicable law. Either party shall give the other party reasonable notice of any such claim, loss, action, damage, expense, or other liability.

License to Resulting Data. Company may collect and store analytical and usage data arising out Client's use of the Service ("**Analytic Data**"). Client grants to Company a limited, non-exclusive, perpetual, worldwide, royalty-free license to use, copy, transmit, sub-license, index, model, aggregate (including with other Clients' data), publish, display and distribute any anonymous information derived from Analytic Data collected during the Term of the Agreement solely for (i) purposes of providing services to Client (including providing to third parties, as necessary), and (ii) benchmarking, analysis, improvement, reporting on, promotion of and further development of the Service. Company shall not use or disclose the Analytic Data in a manner which would identify Client without its advance written permission. Company shall store all collected data in compliance with all applicable laws.

Modification. The Service subject to modifications, enhancements, additions and subtractions of functionalities, features and display form and formats, from time to time ("**Modifications**") at Company's sole discretion. Such Modifications shall not materially diminish the functionality of the Service provided, and the Service shall continue to perform according to the description of the Service agreed to in a Request for Proposal in all material aspects.

Resolving Disputes. Client and Company agree that any judicial proceeding will be brought in the courts of the state of Delaware. The laws of the state of Delaware will apply to any disputes arising out of or relating to this Agreement or the Services. If any action is brought by either Party to this Agreement against the other Party regarding the subject matter hereof, the prevailing Party shall be entitled to recover, in addition to any other relief granted, reasonable attorneys' fees and expenses of litigation.

Severability. Should any one or more of the provisions of this Agreement be determined to be invalid, illegal

or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be adversely affected or impaired thereby. The Parties hereby agree that the invalid, illegal or unenforceable provisions shall automatically (and without further action by either Party) be replaced with valid provisions the effect of which comes as close as practicable to that of the unenforceable provisions.

Entire Agreement. Unless Client and Company are under a written, binding agreement respecting Client's use of the Service, this Agreement constitutes the entire agreement among the Parties relating to the subject matter hereof, and supersedes all prior or subsequent terms and conditions contained or referred to in any of the Client's purchase orders, correspondence or elsewhere or implied by trade, custom, practice, or course of dealing and any purported provisions to the contrary are hereby extinguished or excluded. Without limiting the generality of the foregoing, Company will not be bound by any standard or printed terms produced by Licensee, contemporaneous negotiations, writings, proposals, agreements, warranties, guarantees, whether written or oral, express or implied, relating to the subject matter of this Agreement. The Parties may modify or amend the terms of this Agreement only mutual, written agreement, physically signed by both parties. No other modification shall be binding upon this Agreement.

Injunctive Relief. Client acknowledges that, in the event of Client's breach of any of the provisions of this Agreement, Company shall not have an adequate remedy in money or damages. Company shall be entitled to obtain an injunction against such breach from any court of competent jurisdiction and Company's right to obtain injunctive relief shall not limit its right to seek any and all further remedies for any breaches under this Agreement.

Force Majeure. Each party will be excused from performance for any period during which, and to the extent that, it or its subcontractor(s) or third party services providers are prevented from performing any obligation or service, in whole or in part, as a result of caused by any force majeure event beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, severe weather, fire, earthquake, strikes or labor disturbances.

Non-Waiver. The failure or delay of any Party at any time or times to require the performance of any provision of this Agreement shall in no manner affect its right to enforce that provision. No single or partial waiver by any Party of any condition of this Agreement, or the breach of any term, agreement or covenant of, or the inaccuracy of any representation or warranty in, this Agreement, whether by conduct or otherwise, in any one or more instances, shall be construed or deemed to be a further or continuing waiver of any such condition, breach or inaccuracy or a waiver of any other condition, breach or inaccuracy.

Survival. Any provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement shall survive termination or expiration of this Agreement and continue in full force and effect.