

Jet Interactive Pty Ltd

Jet Call Tracker terms & conditions



The following are the terms and conditions for use of Jet Call Tracker service described herein (the "Call Tracker") between Jet Interactive Pty Ltd ("Jet") and you (either an individual or a legal entity that you represent as an authorized employee or agent) ("You"). Please read them carefully. Call Tracker is offered to you conditioned on your acceptance without modification of the terms, conditions, and notices contained herein.

1. DEFINITIONS

"Account" refers to the billing account for your Jet Telecommunications and Call Tracker services.

"Customer Data" means: (a) the data concerning the characteristics and activities of visitors to your website that is collected through use of the JST and then forwarded to the Servers and analyzed by the Processing Software. (b) Customer call information gained via Jet's telecommunications network.

"Documentation" means any accompanying proprietary documentation made available to you by Jet for use with the Processing Software, including any documentation available online or otherwise.

"Processing Software" means the proprietary Jet Call Tracker Software and any upgrades to such, which analyzes the Customer Data and generates the Reports.

"Report" means the resulting analysis shown at www.calltracker.jetinteractive.com.au (or such other URL Jet may provide from time to time) for an individual Account. The number of charts, graphs, and statistics contained in a Report varies with the edition of the Service.

"JST" means the proprietary Jet Source Tracker, which is installed on a web page for the purpose of collecting Customer Data, together with any fixes, updates and upgrades provided to you (collectively, the "JST").

"Servers" means the servers controlled by Jet (or its wholly owned subsidiaries) upon which the Processing Software and Customer Data are stored.

"Software" means the JST and the Processing Software.

2. MEMBER ACCOUNT, PASSWORD, AND SECURITY. To register for the Service, You must complete the registration process by providing Jet with current, complete and accurate information as prompted by the registration form, including your e-mail address (username) and password. You shall protect your passwords and take full responsibility for your own, and third party, use of your accounts. You are solely responsible for any and all activities that occur under your account. You agree to notify Jet immediately upon learning of any unauthorized use of your account or any other breach of security. From time to time, Jet's (or its wholly-owned subsidiaries') support staff may log in to the Service under your customer password in order to maintain or improve service, including to provide you assistance with technical or billing issues. You hereby acknowledge and consent to such access.

3. NONEXCLUSIVE LICENSE. Jet hereby grants you a limited, revocable, non-exclusive, non-sub licensable license to install, copy and use the JST solely as necessary to use the Service for one or more web pages that You own and control (collectively, the "Website"). Subject to the terms and conditions of this Agreement, You may remotely access, view and download your Reports stored at www.calltracker.jetinteractive.com.au (or such other URL Jet may provide from time to time). Your license of, use of and access to the Software and the Service (which may include, without limitation, the Software, Documentation and the Reports) is conditioned upon your compliance with the terms and conditions of the Agreement, including the following:

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You will not nor will you allow any third party to (i) copy, modify, adapt, translate or otherwise create derivative works of the Software or the Documentation; (ii) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code of the Software, except as expressly permitted by the law in effect in the jurisdiction in which you are located; (iii) rent, lease, sell, assign or otherwise transfer rights in or to the JST, the Processing Software, the Documentation or the Service; (iv) remove any proprietary notices or labels on the Software or placed by the Service; or (v) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Service or the Software. You will use the Software, Service and Reports solely for your own internal use, and will not make the Software or Service available for timesharing, application service provider or service bureau use. You will comply with all applicable laws and regulations in your use of and access to the Documentation, Software, Service and Reports.

This license will terminate immediately if You fail to comply with the terms of this Agreement. Upon such termination, you must destroy all originals and copies of the JST in Your possession and so certify in writing to Jet within three (3) business days of termination and cease any further use of the Service without the express written consent of Jet.

4. CONFIDENTIALITY. "Confidential Information" includes any proprietary data and any other information disclosed by one party to the other in writing and marked "confidential" or disclosed orally and, within five business days, reduced to writing and marked "confidential". Notwithstanding the foregoing, Confidential Information will not include any information that is or becomes known to the general public, which is already in the receiving party's possession prior to disclosure by a party or which is independently developed by the receiving party without the use of Confidential Information. Neither party will use or disclose the other party's Confidential Information without the other's prior written consent except for the purpose of performing its obligations under this Agreement or if required by law, regulation or court order. In which case, the party being compelled to disclose Confidential Information will give the other party as much notice as is reasonably practicable prior to disclosing such information. Upon termination of this Agreement, the parties will promptly either return or destroy all Confidential Information and, upon request, provide written certification of such. You are responsible for safeguarding the confidentiality of your password(s) and user name(s) issued to you by Jet, and for any use or misuse of your account resulting from any third party using a password or user name issued to you. You agree to immediately notify Jet of any unauthorized use of your account or any other breach of security known to you.

5. INFORMATION RIGHTS AND PUBLICITY. Jet and its wholly owned subsidiaries may retain and use, subject to the terms of its Privacy Policy (located at <http://www.jetinteractive.com.au/privacy-policy.html>), or such other URL as Jet may provide from time to time), information collected in your use of the Service. Jet will not share information associated with You or your Site with any third parties unless Jet (i) has your consent; (ii) concludes that it is required by law or has a good faith belief that access, preservation or disclosure of such information is reasonably necessary to protect the rights, property or safety of Jet, its users or the public; or (iii) provides such information in certain limited circumstances to third parties to carry out tasks on Jet's behalf (e.g., billing or data storage) with strict restrictions that prevent the data from being used or shared except as directed by Jet. When this is done, it is subject to agreements that oblige those parties to process such information only on Jet's instructions and in compliance with this Agreement and appropriate confidentiality and security measures.

6. PRIVACY. You will have and abide by an appropriate privacy policy and will comply with all applicable laws relating to the collection of information from visitors to your websites. You must post a privacy policy and that policy must provide notice of your use of a cookie that collects anonymous traffic data.

7. INDEMNIFICATION. You agree to indemnify, hold harmless and defend Jet and its wholly owned subsidiaries, at your expense, any and all third-party claims, actions, proceedings, and suits brought against Jet or any of its officers, directors, employees, agents or affiliates, and all related liabilities,

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damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses) incurred by Jet or any of its officers, directors, employees, agents or affiliates, arising out of or relating to (i) Your breach of any term or condition of this Agreement, (ii) Your use of the Service, (iii) Your violations of applicable laws, rules or regulations in connection with the Service, or (iv) Your Brand Features. In such a case, Jet will provide you with written notice of such claim, suit or action. You shall cooperate as fully as reasonably required in the defense of any claim. Jet reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by you.

8. **THIRD PARTIES.** If You provide access to Your Account or any portion thereof to any third party or use the Service to collect information on behalf of any third party ("Third Party"), whether or not you are authorized to do so by Jet or its wholly owned subsidiaries, the terms of this Section 9 shall apply to you.

If you use the Service on behalf of any Third Party, you represent and warrant that (a) You are authorized to act on behalf of, and bind to this Agreement, that Third Party, (b) as between the Third Party and you, the Third Party owns any rights to Customer Data in the applicable account, and (c) You shall not disclose Third Party's Customer Data to any other party without the Third Party's consent.

You shall ensure that each Third Party is bound by and abides by the terms of this Agreement. Jet and its wholly owned subsidiaries make no representations or warranties for the direct or indirect benefit of any Third Party. With respect to Third Parties, you shall take all measures necessary to disclaim any and all representations or warranties that may pertain to Jet and its wholly owned subsidiaries, the Service, the Software or the Reports, or use thereof. You agree to indemnify, hold harmless and defend Jet and its wholly owned subsidiaries, at your expense, against any and all third-party claims, actions, proceedings, and suits brought against Jet or any of its officers, directors, employees, agents or affiliates, and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses) incurred by Jet, or any of its officers, directors, employees, agents or affiliates, arising out of or relating to (a) any representations and warranties made by you concerning any aspect of the Service, the Software or Reports to Third Parties; (b) any claims made by or on behalf of any Third Party pertaining directly or indirectly to your use of the Service, the Software or Reports; (c) violations of Your obligations of privacy to any Third Party; and (d) any claims with respect to acts or omissions of Third Parties in connection with the Services, the Software or Reports.

9. **DISCLAIMER OF WARRANTIES.** The information and services included in or available through the Service, including the Reports, may include inaccuracies or typographical errors. Changes are periodically added to the information herein. Jet and/or its respective suppliers may make improvements and/or changes in the Service or Software at any time, with or without notice. Jet does not represent or warrant that the Service will be uninterrupted or error-free, that defects will be corrected, or that the Service, the Software or any other software on the Server are free of viruses or other harmful components. Jet does not warrant or represent that the use of the Service or the Reports will be correct, accurate, timely or otherwise reliable. You specifically agree that Jet and its wholly owned subsidiaries shall not be responsible for unauthorized access to or alteration of the Customer Data or data from your website.

THE SERVICE, THE SOFTWARE AND REPORTS ARE PROVIDED "AS IS" AND THERE ARE NO WARRANTIES, CLAIMS OR REPRESENTATIONS MADE BY JET AND/OR ITS SUBSIDIARIES AND AFFILIATES, EITHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SERVICE, THE SOFTWARE, THE DOCUMENTATION AND REPORTS, INCLUDING WARRANTIES OF QUALITY, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE. JET DOES NOT WARRANT THAT THE SERVICE, THE SOFTWARE OR REPORTS WILL MEET YOUR NEEDS OR BE FREE FROM ERRORS, OR THAT THE

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OPERATION OF THE SERVICE WILL BE UNINTERRUPTED. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE SERVICE. SOME STATES DO NOT ALLOW EXCLUSION OF AN IMPLIED WARRANTY, SO THIS DISCLAIMER MAY NOT APPLY TO YOU.

10. LIMITATION OF LIABILITY. JET AND ITS WHOLLY OWNED SUBSIDIARIES WILL NOT BE LIABLE TO USER OR ANY THIRD-PARTY CLAIMANT FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST DATA COLLECTED THROUGH THE SERVICE), OR INCIDENTAL DAMAGES, WHETHER BASED ON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION, OR OTHERWISE, EVEN IF JET AND/OR ITS SUBSIDIARIES AND AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE EXCLUSION CONTAINED IN THIS PARAGRAPH SHALL APPLY REGARDLESS OF THE FAILURE OF THE EXCLUSIVE REMEDY PROVIDED IN THE FOLLOWING PARAGRAPH. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE LIMITATIONS OR EXCLUSIONS IN THIS AND THE FOREGOING PARAGRAPH MAY NOT APPLY TO YOU.

Jet's (and its wholly owned subsidiaries') total cumulative liability to you or any other party for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement shall not exceed AUD \$500.

11. SERVICE LEVELS. Jet does not guarantee the Service will be operable at all times or during any down time (1) caused by outages to any public Internet backbones, networks or servers, (2) caused by any failures of your equipment, systems or local access services, (3) for previously scheduled maintenance or (4) relating to events beyond Jet's (or its wholly owned subsidiaries') control such as strikes, riots, insurrection, fires, floods, explosions, war, governmental action, labor conditions, earthquakes, natural disasters, or interruptions in Internet services to an area where Jet (or its wholly owned subsidiaries) or your servers are located or co-located. Complete accuracy in all aspects of your statistics at all times also is not guaranteed.

12. PROPRIETARY RIGHTS NOTICE. The Service, which includes but is not limited to the JST and the Jet Call Tracker Software and all intellectual property rights in the Service are, and shall remain, the property of Jet (and its wholly owned subsidiaries). All rights in and to the Processing Software not expressly granted to you in this Agreement are hereby expressly reserved and retained by Jet and its licensors without restriction, including, without limitation, Jet's (and its wholly owned subsidiaries') right to sole ownership of the Jet Call Tracker Software and Documentation. Without limiting the generality of the foregoing, you agree not to (and to not allow any third party to): (a) sublicense, distribute, or use the Service outside of the scope of the License granted herein; (b) copy, modify, adapt, translate, prepare derivative works from, reverse engineer, disassemble, or decompile the Processing Software or otherwise attempt to discover any source code or trade secrets related to the Service; (c) use the trademarks, trade names, service marks, logos, domain names and other distinctive brand features or any copyright or other proprietary rights associated with the Service for any purpose without the express written consent of Jet; (d) register, attempt to register, or assist anyone else to register any trademark, trade name, service marks, logos, domain names and other distinctive brand features, copyright or other proprietary rights associated with Jet (or its wholly owned subsidiaries) other than in the name of Jet (or its wholly owned subsidiaries, as the case may be); or (e) remove, obscure, or alter any notice of copyright, trademark, or other proprietary right appearing in or on any item included with the Service.

13. TERM and TERMINATION. Either party to the Agreement may terminate it at any time and for any reason.

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Upon any termination or expiration of this Agreement, Jet will cease providing the Service, and you will delete all copies of Jet Call Tracker's JST code from all Pages and certify thereto in writing to Jet within three (3) business days of such termination. In the event of any termination (a) You will not be entitled to any refunds of any usage fees or any other fees, and (b) any (i) outstanding balance for Service rendered through the date of termination, and (ii) other unpaid payment obligations during the remainder of the Initial Term will be immediately due and payable in full and (c) all of your historical report data will no longer be available to you unless a purchase or professional services agreement for the exchange and transfer of such data is entered into as a component of termination.

14. MODIFICATIONS TO TERMS OF SERVICE AND OTHER POLICIES. Jet reserves the right to change or modify any of the terms and conditions contained in this Agreement or any policy governing the Service, at any time, by posting the new agreement to the site located at <http://www.jetinteractive.com.au/privacy-policy.html> (or such other URL as Jet may provide). You are responsible for regularly reviewing the policy. No amendment to or modification of this Agreement will be binding unless (i) in writing and signed by a duly authorized representative of Jet, (ii) You accept updated terms online, or (iii) You continue to use the Service after Jet has posted updates to the Agreement or to any policy governing the Service.