

Trakstar Customer Agreement

Trakstar Customer Agreement

Organization: City of Franklin
Begin Date: 10/26/2015
End Date: ~~10/26/2016~~ 12/31/2016 *CA*

Presented to: Chris Clausi
Date: 10/19/2015
Prepared by: Charlie Anderson
Email: charlie@trakstar.com
Phone: 206-805-0230

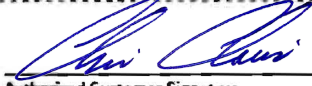
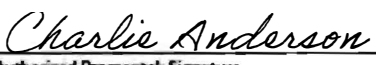


Trakstar Price Quotation

Trakstar License (Year 1)	Quantity	Price	Total
Trakstar License (per employee or flat rate) <input type="checkbox"/> Standard <input checked="" type="checkbox"/> Multi-Rater	700	\$ 33.00	\$ 23,100.00
Implementation/Customization (Classes with your CX Manager to customize Trakstar)	1	\$ 1,995.00	\$ 1,995.00
Manager Training Session (1) 60 min. training for Managers <input checked="" type="checkbox"/> Record the Training	3	\$ 300.00	\$ 900.00
Employee Training Session (1) 30-min. session <input checked="" type="checkbox"/> Record the Training	5	\$ 150.00	\$ 750.00
Recorded Training	2	\$ 50.00	\$ 100.00
HRIS Update Module			\$ 0.00
Single Sign On (SSO) -or- LDAP/Active Directory Integration			\$ 0.00
DISCOUNT:	1	(\$ 2,300.00)	(\$ 2,300.00)
Law Enforcement Competency Library	1	\$ 0.00	\$ 0.00
TOTAL (Year 1)			\$ 24,545.00

Year 2 Estimate	Quantity	Price	Total
Trakstar License (per employee or flat rate) <input type="checkbox"/> Standard <input checked="" type="checkbox"/> Multi-Rater	700	\$ 26.00	\$ 18,200.00
HRIS Update Module			\$ 0.00
Single Sign On (SSO) -or- LDAP/Active Directory Integration			\$ 0.00
			\$ 0.00
TOTAL Year 2 Estimate			\$ 18,200.00

Thank you for allowing us to share pricing for Trakstar with you. This pricing includes everything your organization will need to move forward with Trakstar, from licensing to implementation. We would welcome the opportunity to work with you. Disclaimer: This quote is valid for 60 days. Pricing is subject to change. Renewal year pricing is subject to current renewal rates.

 _____ Authorized Customer Signature Assistant HR Director Title 10-28-2015 Date	 _____ Authorized Promantek Signature Account Executive Title 10/28/2015 Date
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Terms and Conditions follow on pages 4-14.

APPROVED AS TO FORM

By: Kristen Lee
 Title: Assistant City Attorney





Organizational Information

Organization:	City of Franklin, HR Department
Address Line 1:	109 3rd Avenue South
Address Line 2:	
City, State, Zip:	Franklin, TN 37064
Phone Number:	615-791-3216
Support Contact:	Chris Clausi or Shirley Gower
Support Contact Email Address:	cclausi@franklintn.gov or shirley.harmon@franklintn.gov

Accounting Information

Contact for Accounts Payable:	Angelique Franzoni
Email for Accounts Payable:	angelique.franzoni@franklintn.gov

Promantek, Inc. Information

Address Line 1:	Promantek, Inc. % System Six Bookkeeping	<p>Please return a signed copy of this Customer Agreement back to Promantek, Inc. at your earliest convenience, and keep a copy for yourself.</p> <p>Promantek will return a signed copy of this Agreement to you. We will send an invoice to your organization that will be due at the Agreement begin date.</p> <p>Thank you for doing business with us!</p>
Address Line 2:	P.O. Box 70259	
City, State, Zip:	Seattle, WA 98127	
Phone Number:	877-489-5651	
Email:	bookkeeping@trakstar.com	



1. Customer Agreement

By using the licensed Trakstar software (“Trakstar” or “Trakstar software”) the Customer acknowledges receipt of this document (“Agreement”) and understands its contents. Use of Trakstar shall imply that the Customer and Promantek, Inc. (each a “Party” and collectively the “Parties”) agree on the deliverables, fees, Customer and Promantek, Inc. responsibilities and confidentiality of Customer Confidential Information, and that both parties consent to be legally bound by all terms and conditions contained in this Agreement.

The initial term of this Agreement shall commence on the below Begin Date and shall continue to the End Date.

Begin Date: 10/26/2015

End Date: 10/26/20106

Renewal is optional. Thereafter, this Agreement may renew for four additional successive one year terms if both parties agree in writing.

A Trakstar Customer Experience Manager will contact the customer upon contract Begin Date. Trakstar Implementation and all associated services, including all implementation meetings and all purchased employee/manager training, must be completed and scheduled by between the Customer and Promantek, Inc. within 120 calendar days following the Agreement Begin Date. The Agreement Begin Date will not be adjusted in the event of a customer delay.

Promantek, Inc. will provide a login to the Trakstar software to the Customer at the initial Implementation Kickoff meeting.

Trakstar license renewal dates commence one year from the Agreement Begin Date, regardless of implementation delays from the Customer side (e.g. internal Customer delays or extended internal discussions to decide upon customization options, etc.)

Payment to Promantek, Inc.

Payment Terms: Due at Contract Beginning Date,
US Dollars, Net 30 Days



Trakstar License

A Trakstar Software License must be purchased for every employee, manager, and contractor entered into the Trakstar database. Each individual shall be referred to as an “employee” and counted for pricing purposes regardless of whether or not they are appraised or complete a self-appraisal. If an employee or contractors leaves the Customer’s organization, the license may be re-assigned.

First Year License Payment

A license must be purchased at the Year 1 price as noted in this agreement per employee for every employee, manager, and contractor entered into the Trakstar database.

Renewal Year License Payment

A renewal license must be purchased at the current prevailing renewal year price for every employee, manager, and contractor currently in the Trakstar database. If the current number of employees and contractors at the beginning of the renewal year is greater than the first year or any previous year, the current prevailing Year 1 price shall apply for each added employee and contractor and the cost of the newly added employees and contractors will be included in the renewal invoice. Special provisions may apply for custom agreements, if a custom agreement exists.

License Exception for Addition of >25 Employees

Customer may add new employees and contractors to Trakstar at any time during the Term of this Agreement with the understanding that a Year 1 License fee for each new employee added will be applicable. Customer is required to inform Promantek, Inc. when the number added exceeds 25 additional employees over the contracted number. Promantek, Inc. reserves the right to issue an adjusted invoice at any time.

2. Promantek, Inc. Deliverables

License

Promantek, Inc. grants to Customer and its Contractors a non-exclusive, non-transferable, term-based, right-to-use license to access and execute Trakstar software on supported browsers which are listed on Exhibit A for internal business purposes and for testing, training and other non-production purposes.

Authorized Users

Customer shall use the Trakstar software for internal business operations including affiliated entities that control, or are controlled, by the Customer (“Affiliated Entities”). Customer shall not permit Trakstar to be used by or for the benefit of anyone other than the Authorized Users. Customer shall not have the right to re-license or sell rights to access and/or use Trakstar, or to transfer or assign rights to access or use Trakstar, except as provided in Section 11.

Intellectual Property

Customer may not modify, translate, reverse engineer, de-compile, or create derivative works based upon Trakstar software. The Customer agrees to use Trakstar in a manner that complies with all applicable laws including intellectual property and copyright laws.

Title

The proprietary rights embodied in the installed Trakstar software system operating on Promantek, Inc. or the Customer servers are the sole and exclusive property of Promantek, Inc.

Hold Harmless

Promantek, Inc. represents and warrants that Promantek, Inc. has the authority to license Trakstar. Promantek, Inc. and shall defend, indemnify, and hold the Authorized Users harmless from any and all claims, damages arising out of (1) the lack or right of authority to license Trakstar, or (2) infringement of any copyright, trade secret, or patent known to Promantek, Inc. as the result of a current, unmodified copy of Trakstar; provided Promantek, Inc. is promptly notified in writing of any such suit or claim.

Audit

Promantek, Inc. reserves the right to audit the Customer to ensure license use compliance once per year with fourteen (14) business days written notice, limited to Trakstar software.

Technical Support

Support is included with the Trakstar License. This includes but is not limited to interim and code correction releases within the release version and major upgrades. The Customer is entitled to telephone support for Trakstar-related questions during normal business hours and days, Monday-Friday 9:00 AM - 8:00 PM US EST. The Customer may also e-mail questions to support@trakstar.com, with response within 1 business day.



Trakstar Hosting Service

Promantek, Inc. represents that it identifies Amazon EC2, a web hosting service, as its provider. Amazon provides a reliable environment for Trakstar. Promantek, Inc. represents that Amazon provides a reliable environment for Trakstar. Promantek, Inc. represents that the Trakstar application and data is strives for 99.9% up time and Promantek, Inc. adheres to best practices when it comes to security and confidentiality.

Data Backup

Promantek, Inc. represents that it backs up all Trakstar data every day for disaster recovery purposes, and that it retains seven (7) days of full daily backups plus twelve (12) months of monthly backups. Backups are used for disaster recovery procedures, not recovery from user error.

Outages

Promantek, Inc. shall strive to provide maximum availability but will not be held accountable for outages beyond its reasonable control. Promantek, Inc. will use reasonable efforts to notify the Customer in advance regarding possible outages.

Promantek, Inc. represents that scheduled maintenance of the service is after 8:00 p.m. PST for minor upgrades and fixes. Promantek, Inc. will use reasonable and good faith efforts to schedule maintenance between the hours of 8:00 PM EST – 8:00 AM EST. Promantek, Inc. will give Customer as much notice as reasonably possibly of any emergency procedures outside of scheduled maintenance. Promantek, Inc. will give Customer 3 weeks notice for scheduling major upgrades.

3. Customer Responsibility

Internet and Browser

The Customer shall be responsible for providing, at its own expense and risk, all Internet devices, supported browsers, Internet connections, and Internet Service Providers.

Principal Administrator

The Customer shall designate one employee as the Principal Administrator to communicate with Promantek, Inc. regarding technical issues. The Customer may change the Principal Administrator from time to time by written notice to Promantek, Inc.'s contact person. All notices and communications from Promantek, Inc. shall be directed to the Customer.

Cooperation

Customer acknowledges that certain services and obligations of Promantek, Inc. may be dependent on Customer providing certain data, information, or assistance to Promantek, Inc. from time to time. Customer acknowledges that such cooperation may be essential to the performance of services by Promantek, Inc..

The Parties agree that any delay or failure by Promantek, Inc. to provide services hereunder which is caused by Customer's failure to provide timely Cooperation reasonably requested by Promantek, Inc. shall not be deemed to be a breach of Promantek, Inc.'s performance obligations under this Agreement.

4. Termination

Termination for Cause

If either Party materially fails to comply with any of the material terms and conditions of this Agreement, including without limitation the payment of any undisputed subscription license fee or reimbursement due and payable under this Agreement, the non-defaulting Party may terminate this Agreement upon thirty (30) days written notice to the defaulting party specifying such breach, unless within the period of such notice, all breaches specified therein have been remedied. Notwithstanding the foregoing, Promantek, Inc. shall have the right to terminate this Agreement immediately upon giving notice to Customer if Customer becomes insolvent, assigns or attempts to assign its business assets for the benefit of creditors, institutes or has instituted against it proceedings in bankruptcy, or dissolves or liquidates the business. In the event that Promantek, Inc. terminates this Agreement for cause, Promantek, Inc. will retain all subscription license fees already paid to Promantek, Inc.. These fees will not be refunded to Customer. In the event Customer terminates this Agreement for cause, the prorated license fee for the paid portion of the subscription will be refunded to Customer. Upon termination, Customer must immediately discontinue use of and destroy all copies of software and documentation in its possession.

Export Customer Data

If requested, by Customer at any time during the term of this Agreement or within [10] business days after the effective date of termination of this Agreement, Trakstar (on behalf of the customer) will export Customer data into a .csv format for Promantek, Inc.'s reasonable out-of-pocket costs.

Following Customer's successful receipt of Customer Data, Customer shall confirm the same to Promantek, Inc. in writing after which time Promantek, Inc. shall delete Customer Data, unless legally prohibited (in which case, Promantek, Inc. may save a copy of the Customer

Data, but may not access or use same), that is in its possession or under its control and Promantek, Inc. shall have no further obligation regarding same.

In the event that Customer does not request desired data prior to the disabling of Trakstar, Promantek, Inc. shall have the right to delete Customer's content and Promantek, Inc. shall have no further obligation.

Continuing Obligations

The following obligations shall survive the expiration or termination hereof: (1) any and all warranty disclaimers, limitations of liability and indemnities granted by either Party herein, (2) any covenant granted herein for the purpose of determining ownership of, or protecting, the proprietary rights, including without limitation, the confidential information of either Party, or any remedy for breach thereof, and (3) the payment of any undisputed taxes, duties, or any monies due.

5. Ownership and Confidentiality

Ownership

Title to the proprietary rights embodied in the Trakstar software system shall remain in and be the sole and exclusive property of Promantek, Inc. Customer shall not alter, change, or remove any proprietary notices or confidentiality legends placed in the Trakstar software system.

Confidentiality of Agreement

Customer acknowledges that the terms and conditions of this Agreement are considered confidential but Customer shall have the right to disclose the terms of this agreement to Customer's insurance companies as well as to Customer's legal, financial, and accounting advisors. Customer shall also be able to disclose this Agreement if such disclosure: (1) is in response to a valid order of a court or other government body; (2) is otherwise required by law, order, subpoena, or other document request of a court, administrative agency or other governmental body; or (3) is otherwise necessary to establish rights and enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary.

Promantek understand that Customer is a government entity, and as such, must comply with the Tennessee Public Records Act. Nothing in this agreement shall be construed to interfere with these requirements.

Confidentiality of Trakstar Software

Customer acknowledges that the Trakstar software embodies logic, design, and coding methodology, which constitute valuable confidential information that is proprietary to Promantek, Inc. and its licensors. Customer shall safeguard the right to access the Trakstar software system using the same standard of care that Customer uses for its Customer Confidential Information (as defined below), but in no event less than reasonable care.

Confidentiality of Customer Information

All confidential and proprietary information of Customer and its Authorized Users and associated appraisals disclosed to Promantek, Inc. in connection with the performance of this Agreement shall be held as confidential by Promantek, Inc. and shall not, without prior written consent of Customer, be disclosed other than for the performance of this Agreement. Promantek, Inc. shall safeguard the confidentiality of employee names and associated appraisals using the same standard of care that Promantek, Inc. uses for its own confidential information, but in no event less than reasonable care. The foregoing obligation shall not apply to any Customer Confidential Information which: (1) is known, or hereafter becomes, through no act of failure to act on the part of Promantek, Inc., generally known or available; (2) is known by Promantek, Inc. at the time of receiving such information as evidenced by its written records; (3) is hereafter furnished to Promantek, Inc. by a third party, as a matter of right and without restriction on disclosure; (4) is independently developed by Promantek, Inc. as evidenced by its written and dated records and without any breach of this Agreement; or (5) is the subject of a prior written permission to disclose provided by Customer. Further notwithstanding the foregoing, disclosure of Customer Confidential Information shall not be precluded if such disclosure: (1) is in response to a valid order of a court or other government body of the United States; (2) is otherwise required by law; However, if Promantek, Inc. is compelled by the circumstances set forth in the preceding sentence to disclose Customer Confidential Information, it shall provide Customer with prior notice of such compelled disclosure to the extent legally permitted.

6. Warranties

Operational Warranty

During the term thereof, Promantek, Inc., warrants that the Trakstar software system will conform to, operate, and be accessible through the Internet (“Operational Warranty”).

Suitability and Liability

Except as otherwise set forth in this Agreement, Promantek, Inc., does not warrant that the Trakstar software or the hosted service will be uninterrupted or error-free or meet any



particular criteria, performance, quality, accuracy, purpose, or need assumed by the Customer. In no event shall Promantek, Inc., or the Customer be liable to the other for any indirect or consequential damages.

Remedy

This section applies only to the extent permissible by Tennessee law.

Warranty Disclaimers

Except for the Operational Warranty and any other representations and warranties provided in this Agreement, Promantek, Inc., does not make any warranty of any kind, express or implied, and Promantek, Inc., specifically disclaims the implied warranties of title, non-infringement, merchantability, fitness for a particular purpose, systems integration, and data accuracy. Some states do not allow disclaimers so the above limitation may not apply. Customer acknowledges that no representations other than those contained in this agreement have been made respecting the Trakstar software system or services to be provided in this Agreement, and that the Customer has not relied on any representation not expressly set out in this Agreement. Further, Customer acknowledges and agrees that the Internet is not established or maintained by Promantek, Inc., that Promantek, Inc. has no control over the Internet, that Promantek, Inc., is not liable for the content or loss of any data transferred either to or from Customer via the internet or stored by the Customer and that Promantek, Inc., is not liable for the discontinuance of the operation of any portion of the Internet or possible regulation of the Internet which might restrict or prohibit the operation of the Trakstar software system.

7. Damages

Limitation of Damages

This section applies only to the extent permissible by Tennessee law.

Disclaimer of Incidental and Consequential Damages

This section applies only to the extent permissible by Tennessee law.

8. Arbitration

Process

This section applies only to the extent permissible by Tennessee law.

9. Notice

Contact

All notices and communications to Promantek, Inc. shall be directed to:
Promantek, Inc. c/o System Six Bookkeeping
P.O. Box 70259
Seattle, WA 98127

Notices by Personal Delivery and Postal Mail

All notices given in writing shall be effective when either served by personal delivery or by certified or registered mail. To be effective, all such notices shall be addressed to the contact persons of the parties at their respective addresses as set forth above, or to such other addresses as either part may later specify by written notice.

Notices by E-mail

Notwithstanding the above provisions regarding notices by personal delivery, postal delivery, and electronic transmission, an electronic mail message sent by one party to the other shall be deemed to constitute an effective notice hereunder only if (1) the electronic mail message notice prominently states that it is being given under this Agreement and requests an e-mail response acknowledging receipt; and (2) the responding electronic e-mail message (a) clearly refers to the specific e-mail message to which it is responding, and (b) includes a copy of such text of such message. Further, to be effective, all such notices shall be addressed to the contact persons of the parties at their respective e-mail addresses as set forth above, or to such other e-mail address as either party may later specify by written notice.

10. Governing Law

State

This Agreement shall be construed under the laws of the State of Tennessee without regard to its principles of conflicts of law.

11. Assignment

Either party shall not assign this Agreement or any right of interest under this neither Agreement, nor delegate any work or obligation to be performed under this Agreement, without the other party's prior written consent. Any attempted assignment or delegation in contravention of this Section shall be void and ineffective.

12. Enforcement

The failure of either party to enforce at any time any of the provisions hereof shall not be a waiver of such provision, or any other provision, or of the right of such party hereafter to enforce any provision hereof.

13. Entire Agreement

Understanding

This Agreement constitutes the entire understanding of the parties with Respect to the subject matter of this Agreement and merge all prior communications understandings, and agreements. This Agreement may be modified only by written agreement signed by the Parties.

14. Force Majeure

Web Services

Neither Party shall be liable for any delays or failure to perform any obligation under this Agreement caused by war, fire, flood, accident, act of God, strikes, or other differences beyond the reasonable control of the Parties. In the event that either Party is unable, due to any of the foregoing contingencies, to fulfill its obligations under this Agreement, such party shall be excused for 30 days from performance same to the extent such contingency exists and will use commercially reasonable efforts to remedy any such contingency.

15. Additional Provisions (continued)

Customer Information:

Date: 10-26-15

Organization: City of Franklin

Contact Name: Chris Clausi

Title: Assistant Human Resources Director.

Authorized Name (please print) Eric S. Stuckey - City Administrator

Authorized Signature: Eric S. Stuckey

Address Line 1:

Address Line 2:

City, State, Zip:

Phone Number:

Email Address:

Contact for Accounts Payable (name)

Contact for Accounts Payable (email)

Promantek, Inc.

Authorized Name: Charlie Anderson

Authorized Signature: Charlie Anderson

Promantek, Inc.

c/o System Six Bookeeping

P.O. Box 70259

Seattle, WA 98127

877-489-5651

bookkeeping@trakstar.com

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