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4. **Fees.** The effectiveness of these Terms or any Order Form is subject to the payment of all applicable fees. Unless otherwise agreed, Customer shall pay any fees and related charges set forth in an Order Form or which otherwise come due, net thirty (30) days from Licensor's invoice. A service charge of one and one-half percent per month (or such lower amount as permitted by applicable law) will be applied to all fees and charges that are not paid on time. Customer agrees to pay all sales, use, value-added, goods and services, consumption, withholding, excise and any other similar taxes or government charges, exclusive of Licensor's income taxes. Except as set forth in the "Termination" or "Remedies" section, all fees and charges paid under or in connection with these Terms are non-refundable and no right of set off exists. Licensor does not permit aggregation of products, services, purchase or license models or cumulative fees paid across separate Product Lines to trigger preferred pricing or discounts.
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7. Data Protection and Security Plan. To the extent Licensor is exposed to an individual's Protected Data, Licensor agrees to maintain a data protection and security plan.
8. Warranties. Licensor hereby warrants that (a) for ninety (90) days following initial delivery to Customer of the Licensor Software set forth in an Order Form, the Licensor Software as delivered, under normal use on the Platform for which it is intended, will perform all material functions described in its Documentation; (b) to the best of Licensor's knowledge, the Licensor Software and Software Services, when delivered or made available by Licensor, does not contain any virus, computer code, routines or devices (other than as set forth in the Documentation) designed to disable, damage, impair, or erase the Licensor Software, Software Services or other software or data; (c) Licensor has the right to grant the licenses and other rights set forth herein; (d) it shall use reasonable commercial efforts consistent with generally accepted industry standards to maintain its Software Services in a manner which minimizes errors and interruptions; and (e) Consulting Services will be provided in accordance with generally accepted industry standards.
9. Indemnity. Licensor hereby agrees at its own expense to defend or, at its option, settle, any claim or action brought against Customer to the extent it is based on a claim that the initially delivered Licensor Software or Materials, used in accordance with an Order Form, infringes any patent, copyright, or any trade secret of a third party. Furthermore, Licensor will indemnify and hold Customer harmless from and against any damages, costs and fees reasonably incurred (including reasonable attorneys' fees) that are attributable to such claim or action and which are assessed against Customer in a final judgment ("Indemnity"). Licensor's obligations to defend, settle or indemnify Customer are subject to Customer promptly notifying Licensor in writing of such claim; Licensor having the exclusive right to control such defense and/or settlement; and Customer providing reasonable assistance (at Licensor's expense) in the defense thereof. In no event shall Customer settle any claim, action or proceeding without Licensor's prior written approval.
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16. **Termination.** Either party may terminate: (a) these Terms and/or any or all applicable Order Forms upon thirty (30) days prior written notice if the other party breaches a material provision of these Terms or an Order Form and fails to cure such breach within the thirty (30) day notice period; (b) Maintenance, upon prior written notice at least sixty (60) days prior to the end of any annual Maintenance period; (c) an Order Form for Consulting Services, upon fifteen (15) days prior written notice by Customer or thirty (30) days prior written notice by Licensor; (d) Subscription, upon written notice at least thirty (30) days prior to the end of the Subscription Term. These Terms and all Order Forms shall automatically terminate if either party files for bankruptcy, goes into receivership, becomes insolvent or makes an assignment for the benefit of creditors. Upon termination or expiration Customer must cease using, de-install and permanently delete all of the Licensor Software; whether or not modified or merged into other materials. Termination of these Terms, any Licensor Software license, any Software Services, Subscription or any Order Form shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Customer of its obligation to pay all fees that have accrued or are otherwise owed by Customer under these Terms.
17. **General Provisions.**

Additional license requirements and other license notices, if any, shall be contained in the Documentation that is delivered with the applicable Licensor Software. Unless expressly authorized by such terms, Customer agrees not to use or access any third-party software as a stand-alone product or in any other manner other than in connection with the Licensor Software.

All notices related to these Terms shall be in writing. Notices will be effective if dispatched by facsimile; or electronic mail; by hand; reliable overnight delivery service or first-class, pre-paid mail if sent to the contract address for the intended recipient set forth in an Order Form. A copy of any notice of default, breach or termination shall also be sent to that party's General Counsel.

The losing party shall pay all reasonable costs, including, without limitation attorneys' fees, incurred by the prevailing party in any action brought to enforce the prevailing party's rights under these Terms.

The Terms shall not be interpreted to create an agency or consignment relationship, and neither party is a partner, employee, agent or joint venture partner of, or with, the other. During the term of any Order Form and for a period of one (1) year following expiration or termination of an Order Form, neither party shall actively solicit for employment any employee, contractor, or consultant, or other representative of the other party who performed services in connection with the applicable Order Form, without the prior written consent of the other party.

Customer hereby grants Licensor and its independent auditors, at Licensor's expense, the right to audit Customer's compliance with these Terms upon reasonable notice and at reasonable times and to report any results to Licensor's licensors. Customer agrees to provide assistance to ensure a complete and accurate audit by Licensor and its independent auditors. Customer's failure to comply with the provisions of this section will constitute a material breach of these Terms.

No waiver by either party of any breach of any provision of these Terms shall be construed as a waiver of that or any other provision on any other occasion.

Dates or times by which one party is required to perform under these Terms shall be postponed automatically for so long as that party is prevented from performing by any act of or failure to act by, the other party. No delay or default in performance of any obligation by either party (except payment obligations), shall constitute a breach of these Terms to the extent caused by force majeure or any other cause which is beyond its reasonable control, including, but not limited to, fires, strikes, accidents, or acts of God.

Except for an assignment, in whole or part, by Licensor to a wholly owned subsidiary, neither party may assign these Terms and/or any of its rights and/or obligations without the prior written consent of the other party (which shall not be unreasonably withheld). Any such attempted assignment shall be void. For the purposes of the foregoing, a change in control of Customer is deemed to cause or attempt to cause an assignment of these Terms and shall require Licensor's prior written consent.



To the extent Customer or its successors or assigns enters into an Extraordinary Corporate Event after an Order Form Effective Date, these Terms, as amended, shall not apply to those additional users, divisions or entities, which were added to or divested from Customer's organization as a result of the Extraordinary Corporate Event until those additional users, divisions or entities are added to these Terms by way of a written amendment signed by duly authorized officers of the Licensor and Customer.

The parties' rights and obligations under this section and sections entitled "Fees", "Warranties", "Indemnity", "Remedies", "Disclaimers", "Exclusions", "Limitation of Liability", "Proprietary Notices", "Confidentiality", "General" shall survive the expiration or termination of these Terms.

If Customer is entering into these Terms from a European Union member country, Norway, Switzerland, Japan, India or Australia, then these Terms are governed by the laws of England and subject to the exclusive jurisdiction of the courts of England and Wales. Otherwise, these Terms are governed by the laws of the State of California and subject to the exclusive jurisdiction of Federal Court for the Northern District Court of California, without giving effect to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to these Terms.

These Terms, which hereby incorporate by reference any terms or information contained in a URL or referenced policy, together with any Order Form, constitute the complete and exclusive statement of the parties' agreement and supersedes all prior and contemporaneous proposals, representations, statements, negotiations and undertakings relating to the same. If any sentence, clause or other provision of these Terms is held to be invalid, illegal or unenforceable under applicable law, including, but not limited to, any limitation of liability, the validity, legality and enforceability of the remaining clauses and provisions shall in no way be affected or impaired thereby. The affected provision shall be interpreted in such a manner as to render it enforceable while attempting to closely approximate the intent and the economic effect of the affected provision.

#### **Addenda:**

#### **SUPPLEMENTAL LICENSE TERMS**

TIBCO® GeoAnalytics  
TIBCO® GeoAnalytics Builder TIBCO® GeoAnalytics  
Finder

For purposes of these terms, "GeoAnalytics Product" means TIBCO® GeoAnalytics, TIBCO® GeoAnalytics Builder and TIBCO® GeoAnalytics Finder.

The GeoAnalytics Product contains map data from TomTom Global Content B.V. ("TomTom") and HERE Europe B.V. ("HERE") (collectively, "TIBCO LICENSOR") and are subject to the additional license terms set forth below. Your use of the GeoAnalytics Product is restricted to your internal business use.

You shall not use the GeoAnalytics Product to provide competitive information about TomTom or its products to third parties. You shall not provide display or allow access to the actual numerical latitude and longitude coordinates in using the GeoAnalytics Product. You shall not use the GeoAnalytics Product for in-flight navigation.

You shall not use the GeoAnalytics Product to create (or assist in the creation of) a digital map database. A "digital map database" means a database of geospatial data containing the following information and attributes: (x) road geometry and street names; or (y) routing attributes that enable turn-by-turn navigation on such road geometry; or (z) latitude and longitude of individual addresses and house number ranges.

You shall keep a complete and accurate audit trail of all financial and non-financial transactions relating to this Agreement. You shall grant TIBCO and/or its applicable licensors and/or their agents reasonable accompanied access upon reasonable prior notice, during working hours, to its premises, accounts and records relevant to this Agreement for the purposes of verifying and monitoring your compliance with your obligations under this Agreement (the "Audit") and shall provide all reasonable cooperation and assistance in relation to the Audit. Any sums payable as a result of the Audit shall be subject to interest at two percent (2%) over the base rate from the date the sum was originally due up to the date of payment (whether before or after judgment).

NEITHER TIBCO LICENSOR NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY CLAIM, DEMAND OR ACTION, IRRESPECTIVE OF THE NATURE OF THE CAUSE OF THE CLAIM, DEMAND OR ACTION ARISING OUT OF THE USE OR POSSESSION OF THE GEOANALYTICS PRODUCT OR FOR ANY LOSS OF PROFIT, REVENUE, CONTRACTS OR SAVINGS, OR ANY OTHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF, OR INABILITY TO USE THE GEOANALYTICS PRODUCT, ANY DEFECT OR INACCURACY IN THE GEOANALYTICS PRODUCT, OR THE





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Your use of the GeoAnalytics Product is subject to the third party supplier restrictions and obligations set forth at [http://corporate.navteq.com/supplier\\_terms.html](http://corporate.navteq.com/supplier_terms.html). In addition, you must comply with the following terms to the extent that you are using the data listed below:

*Additional Provisions with respect to the data of Norway only.* You are prohibited from using the data of Norway to create general purpose printed or digital maps, which are similar to the basic national products of the Norwegian Mapping Authority. (Any Authorized Application of the data of Norway shall be regarded as similar to the basic national products of the Norwegian Mapping Authority if such Authorized Application has a regional or national coverage, and at the same time has a content, scale and format that are similar to the basic national products of the Norwegian Mapping Authority.)

*Additional provisions with respect to the Municipal Boundary layer of the Administrative Areas Licensed Product:* You shall not use the Municipal Boundary layer of the Administrative Areas product to create or derive applications which are used by third parties for the purpose of tariff, tax jurisdiction, or tax rate determination for a particular address or range of addresses.

*Additional Provisions with respect to 3D Landmarks Map Data (the "3D Landmarks"):* You agree to include as soon as practically possible, but no later than the first new release of the Authorized Application following Licensee's receipt of any 3D Landmarks, any copyright notices related to the display of such landmarks on every Authorized Application and in the "about box" of the Authorized Application.

Notwithstanding the aforementioned, TomTom has the right to decide, at its sole discretion, to remove specific 3D Landmarks in subsequent releases of its data.

*Additional Provisions with respect to the GDF Viewer (the "GDF Viewer"):* You shall use the data for the sole and limited purpose of assisting you in viewing, analyzing and sectioning the data. In no event shall you use the data to view, analyze, section or in any way manipulate spatial map data that is not provided by TomTom. You shall not derive or attempt to derive the source code of all or any portion of the data by reverse engineering, disassembly, decompilation, translation or any other means. You shall affix the following copyright notice on any copy of the GDF Viewer, or any portion of the TomTom map data: "Software ©2011 TomTom North America, Inc. All rights reserved."

*Additional Provisions with respect to the data for China:* You agree that your use of data for China may be subject to additional terms and conditions which shall be provided to you when available to TomTom. China data may not be exported from China.

*Additional Provisions with respect to the data for India:* You agree that your use of the data for India may be subject to additional terms and conditions which shall be provided to you when available to TomTom. India data shall not be altered or changed during Licensee's product creation / publication process.

*Additional Provisions with respect to the data for Korea:* You agree that your use of the data for Korea may be subject to additional terms and conditions which shall be provided to you when available to TomTom. Korea data may not be exported from Korea. Data cannot be shipped to End Users in an open format (such as ESRI shapefile).

*As of the Effective Date, the following restriction applies to the Licensed Products:* The 6-digit alpha/numeric Canadian Postal Codes contained in the GeoAnalytics Product cannot be used for bulk mailing of items through the Canadian postal system. Furthermore, the 6-digit alpha/numeric Canadian Postal Codes must be wholly contained in the Authorized Application and shall not be extractable. Canadian Postal Codes cannot be displayed or used for postal code look-up on the Internet, nor can they be extracted or exported from any application to be utilized in the creation of any other data set or application. Notwithstanding the above, you may optionally correct or derive Canadian Postal Codes using the Authorized Application, but only as part of the address information for locations (e.g.: of delivery points and depots) that have been set up in the Authorized Application, and optionally extract data for fleet management purposes.



**Additional Provisions with respect to TomTom Traffic.** You specifically agree that you shall not: (i) store the data for more than twenty-four (24) hours on your servers; (ii) broadcast or make TomTom Traffic available except to authorized users; and (iii) use the feed or information received via the feed for historical data purposes (including but not limited to collection or analysis).

**Additional provisions with respect to the Premium Points of Interest North America Licensed Product:** It is expressly prohibited to use the Premium Points of Interest North America for (a) telephone call routing related applications; (b) screen pop applications, (c) CD-ROM director of other derivative directory product; (d) verification services; (e) caller name services; and (f) online marketing lead verification services. The Premium Points of Interest North America cannot be licensed to the following companies, their commonly owned companies or aliases: Acxiom, Accudata, Allant, Alliance Data, eBeureau, Equifax, Experian, Knowledgebase Marketing, ChoicePoint, Harte-Hanks, Infutor, Donnelley Marketing, infoGroup, Trans Union, Transaction Network Services, and LexisNexis.

**Following restrictions will apply to usage of the Brand Icon component:**

You agree that the use of the Brand Icon component is subject to the terms and conditions set forth in this Agreement and that there may be additional third party terms, conditions and restrictions to which the use of the Brand Icon component will be subject and which will be provided to you from time to time in the future.

**Additional provisions with respect to the Speed Profiles, TomTom Traffic, and any other traffic related Licensed Product:** No data, including Speed Profiles or TomTom Traffic or any derivatives, thereof shall be used for the purpose of enforcement of traffic laws, including but not limited to the selection of potential locations for the installation of speed cameras, speed traps or other speed tracking devices.

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