



TOPTRACER RANGE CUSTOMER AGREEMENT

PART 1: ORDER FORM

Toptracer	TOPGOLF USA, INC of 8750 North Central Expressway, Suite 1200, Dallas, TX 75231
Customer	Frankfort Square Park District (corporate identity number 36-2852741), a company registered in Illinois, having its address at 7540 W. Braemar Lane, Frankfort, IL 60423
Facility	Square Links located at 7861 W. St Francis Road Frankfort, IL 60423
Product	The Toptracer Range golf-ball tracking and entertainment system, consisting of the Hardware and the Software
Bays	The 30 driving range bays at the Facility at which the Product is to be installed.
Fees	\$1,250.00 per 100 feet per calendar month <ul style="list-style-type: none"> • first payment of \$3,750.00 due on 8/1/2020 • \$3,750.00 payable on the 1st of each month thereafter for the 8 months per year of operation (March-October inclusive)
Hardware	<ul style="list-style-type: none"> • Sensors <ul style="list-style-type: none"> ○ 1 TTRS-T4 Sensor (+Mounts) • System <ul style="list-style-type: none"> ○ 1 Cradlepoint AER-1650 Router ○ 1 Cradlepoint MC400 4G Modem ○ 1 Ubiquiti ES-48-LITE Switch ○ 1 DELL T640 Server (+Cabinet/Mount) ○ Related patch cables (Cat 6)
Software	<ul style="list-style-type: none"> • Toptracer Range Ball-Tracking Software • Toptracer Range Games Package: • To access the mobile solution, golfers must download the TTR Mobile App (“App”). Functionality/Games are contained in the App, and these differ from game modes for fixed bays. Toptracer shall ensure that the App (or any future updated version thereof) shall be available throughout the Term. • Public Leaderboard Generator
Term	From signature hereof until 5/15/2025.
Installation (see further details in Part II, Clause 3)	Toptracer shall complete installation of the Product at the Facility by 5/15/2020. <u>POWER & DATA: Prior to Toptracer commencing installation, Customer must prepare the Facility by pre-installing power and data connections in line with Toptracer’s requirements. Customer is advised that this is a substantial process which can take several weeks to complete.</u>
Other Terms	
Contacts	Customer: Jim Randall - jrandall@fspd.org Toptracer: Shaun Hansen – shaun.hansen@topgolf.com

[signature page follows]



The parties each agree that this Part I – Order Form, together with Part II - Terms and Conditions which follow, constitute a legally binding agreement between them, entered into on the date set out below:

For and on behalf of
TOPGOLF USA, INC

For and on behalf of
Frankfort Square Park District

Print Name: _____

Print Name: _____

Position: _____

Position: _____

Date: _____

Date: _____



PART 2: TERMS AND CONDITIONS

1 PROVISION & USE OF THE PRODUCT

- 1.1 Toptracer shall provide the Product to the Customer for use in the defined number of Bays at the Facility for the Permitted Purpose (as defined below) during the Term in accordance with this Agreement.
- 1.2 **“Permitted Purpose”** means use for the tracking of golf balls at the Facility within the normal scope of the Customer’s range business. Permitted Purpose does not include (i) use or integration with any other software, hardware or golf ball tracking products or systems; (ii) research or product development purposes; (iii) use by any third parties; (iv) any other usage not expressly set out herein.

2 HARDWARE

Customer shall obtain no rights, title or interest in the Hardware. Customer shall not open, modify or tamper with any Hardware, or install any software thereon. Toptracer shall have the right to access the Facility and inspect and/or remove the Hardware upon reasonable notice. The risk of loss, theft, damage or destruction of the Hardware shall pass to the Customer as soon as it arrives at the Facility and shall continue until it is returned to Toptracer’s possession (**“Risk Period”**).

3 INSTALLATION

- 3.1 **Power & Data:** Prior to installation, Customer must ensure (at its own cost) that the Facility is fully wired for power and data connections to all Sensors and Screens, leaderboard screens, the server room and other locations in line with specifications provided by Toptracer. Customer shall provide no less than weekly progress updates and shall inform Toptracer if there is any risk that Power & Data installation may not be completed in time. If Power & Data is not completed prior to when Product installation is due to commence then Toptracer shall be entitled to (i) adjust the Installation Date at its sole discretion; or (ii) terminate this Agreement. Where Toptracer discovers that Power & Data installation is incomplete when it arrives on site to commence installation, Toptracer shall have the right to charge the Customer the costs of flights/expenses and man-hours for the unnecessary trip.
- 3.2 **Installation:** The Product will be installed at the Facility by Toptracer by the date set out in Part I unless delayed by (i) any breach hereof or other act or omission of the Customer; or (ii) any reason out with Toptracer’s reasonable control (including, without limitation, inclement weather). Customer agrees that there may be disruption at the Facility during installation and consents to Toptracer making alterations to the Facility to accommodate the Product which Toptracer shall have no obligation to remedy. Customer shall provide all assistance as Toptracer may require during installation

(including providing a crane or mechanical hoist and scaffolding at its own cost) and shall further have overall responsibility for all health and safety at its Facility.

4 FEES

- 4.1 Customer shall pay the Fees stipulated in the Order Form to Toptracer, free of deductions or withholdings. Fees are stated exclusive of any applicable taxes or import duties, which are payable by the Customer. Payment details are set out in the Schedule.
- 4.2 Toptracer shall have the right to increase the Fees after the third year of the Term, and every third year thereafter, by an amount equal to 3% above the then applicable annual percentage increase in the US Consumer Prices Index.

5 CUSTOMER OBLIGATIONS

- 5.1 Customer shall:
- 5.1.1 provide a wired internet connection with superior speed, bandwidth and stability (with at least 99% monthly uptime and 95% bandwidth availability of at least 4mbit/s upstream and 2mbit/s downstream
- 5.1.2 adhere to all other requirements as may be specified in the Toptracer Support Manual (**“Manual”**) or otherwise detailed by Toptracer, as necessary for the proper installation and functioning of the Product; and
- 5.1.3 be solely responsible for obtaining and maintaining any licenses, permits or permissions necessary to operate the Product and the Facility.

6 TERM EXTENSION

The Term shall be renewed or extended only upon the written agreement of the parties.

7 MAINTENANCE AND SUPPORT

- 7.1 Throughout the Term, the Customer shall, provided it is not in breach of this Agreement, be entitled to standard support and maintenance services for the Product, the terms of which are detailed in the Manual (the **“Maintenance Services”**). The Maintenance Services may be amended from time to time. In order to benefit from Maintenance Services the Product must be connected to the internet and accessible to Toptracer at all times.
- 7.2 CUSTOMER ACKNOWLEDGES AND AGREES THAT THE MAINTENANCE SERVICES ARE PROVIDED UPON A REASONABLE COMMERCIAL EFFORTS BASIS. TOPTRACER DOES NOT WARRANT THAT IT CAN SOLVE ALL ISSUES WITHIN ANY TIMESCALE OR AT ALL.
- 7.3 THE REMEDIES DETAILED IN THE MAINTENANCE SERVICES ARE CUSTOMER’S SOLE AND EXCLUSIVE REMEDY IN RESPECT OF (I) ANY BREACH, FAILURE OR DEFAULT BY TOPTRACER THEREUNDER; (II) ANY FAILURE OF THE

- PRODUCT TO PERFORM TO SPECIFICATION; AND (III) ANY FAILURE BY TOPTRACER TO RESOLVE ANY ISSUE.
- 7.4 NO WARRANTIES ARE GRANTED BY TOPTRACER IN RESPECT OF THE PRODUCT. ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SATISFACTORY QUALITY, ARE EXPRESSLY DISCLAIMED.
- 8 INTELLECTUAL PROPERTY**
- 8.1 Toptracer reserves all right, title, and interest in and to the Product, including without limitation all copyrights, patents, trade marks and other proprietary rights.
- 8.2 Customer shall not:
- 8.2.1 seek, apply for, or obtain any patent, design right, copyright or other protection or registration in respect of (i) the Product (or any element thereof); (ii) any of its own products or services which use or rely upon the Product; or (iii) any system or method relating to the tracking of golf balls or other objects;
- 8.2.2 copy, amend, modify, decompile, reverse engineer, disassemble, or otherwise discover, rent, lease, or loan the Product, in whole or part;
- 8.2.3 use (or attempt to use) the Product other than for the Permitted Purpose.
- 8.3 Toptracer grants to Customer a non-exclusive, non-transferable, royalty-free, limited license to use the Toptracer name and logo for marketing purposes provided all usage is accordance with Toptracer's brand guidelines and approved by Toptracer in advance. Toptracer are free to promote its association with the Facility, in social media and other channels, without the need to obtain Customer's prior approval.
- 8.4 No rights are granted to Customer hereunder in respect of the TOPGOLF mark or concept.
- 9 INSURANCE**
- 9.1 Customer will procure and maintain during the Term, with a reputable international insurer:
- 9.1.1 a policy of Commercial General Liability Insurance providing an indemnity against claims for personal and bodily injury, death and property damage with minimum limits of USD\$2,000,000 for any one claim.
- 9.1.2 a policy of insurance covering the Hardware throughout the Risk Period for its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft, accident or other occurrences.
- 9.2 All insurance required to be provided by Customer under this Clause shall name Toptracer as an insured party thereunder and certificates of insurance shall be provided to Toptracer on request.
- 10 CONFIDENTIALITY & DATA**
- 10.1 Each party undertakes that it shall not at any time during this agreement, and for a period of three (3) years after termination of this agreement, disclose to any person this Agreement or any confidential information concerning the business, affairs, customers, clients, technology, products or suppliers of the other party or of any member of the group of companies to which the other party belongs. Such confidential information may only be used for the purpose of performing obligations under this Agreement. Notwithstanding the foregoing, the Parties understand and acknowledge that this Agreement is a "public record" as that term is defined in the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq. As such, Customer shall be entitled to disclose this Agreement as required by such Act, subject to redacting Toptracer commercial information insofar may be permitted by the Act.
- 10.2 Any and all data collected, tracked or captured by the Product shall be exclusively owned by Toptracer.
- 11 TERMINATION**
- 11.1 Each party is entitled to terminate this Agreement at any time by giving the other party notice in writing if the other party;
- 11.1.1 commits a material breach of this Agreement (which shall include any failure to pay the Fees on time) and (in case of a breach capable of being remedied) shall have failed to remedy such breach within 14 days after receipt of a request in writing to do so from the non-breaching party; or
- 11.1.2 becomes insolvent or starts negotiations about composition with its creditors or a petition in bankruptcy is or should be filed by it or it makes or should make an assignment for the benefit of its creditors.
- 11.2 Toptracer shall further be entitled to terminate the Agreement forthwith by giving written notice to Customer, if:
- 11.2.1 Customer commits any breach of Clauses 2, 5.1.3 or 8;
- 11.2.2 Customer undergoes a change of ownership or control; or
- 11.2.3 the Facility is not owned and/or operated by the Company.
- 11.3 Upon termination of this Agreement (for any reason), Customer's right to use the Product and any Toptracer Marks will terminate immediately. Toptracer shall have unrestricted access to the Facility to remove the Product. If any Software or other data has been stored on Customer systems, Customer agrees to return this to Toptracer and, following confirmation from Toptracer, to permanently delete it.
- 11.4 Any termination of this Agreement shall not affect any accrued rights or liabilities of either party, nor shall it affect the continuance in force of any provision hereof, which is

- expressly or by implication intended to continue in force on or after such termination.
- 11.5 Without prejudice to its rights to terminate under this Clause 11, Toptracer shall be entitled to suspend Customer use of the Product for any period Customer is in breach of this Agreement which would entitle Toptracer to terminate.
- 12 LIABILITY AND INDEMNITY**
- 12.1 TOPTRACER SHALL AT ITS OWN EXPENSE, INDEMNIFY, DEFEND OR SETTLE ANY CLAIM THAT IS INSTITUTED AGAINST CUSTOMER TO THE EXTENT SUCH CLAIM ALLEGES THAT THE PRODUCT INFRINGES ANY PATENT RIGHT OR COPYRIGHT OF A THIRD PARTY. CUSTOMER SHALL HAVE THE OBLIGATION TO (I) GIVE TOPTRACER IMMEDIATE NOTICE OF ANY SUCH CLAIM OR THREAT THEREOF; (II) PERMIT TOPTRACER SOLE CONTROL, THROUGH COUNSEL OF THEIR CHOICE, TO ANSWER THE CHARGE OF INFRINGEMENT AND DEFEND AND/OR SETTLE SUCH CLAIM; AND (III) GIVE TOPTRACER ALL INFORMATION, ASSISTANCE AND AUTHORITY TO DEFEND OR SETTLE SUCH CLAIM.
- 12.2 IN NO EVENT SHALL TOPTRACER BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR EXEMPLARY DAMAGES OF ANY KIND WHATSOEVER OR FOR LOSS OF PROFITS, INCOME OR ANTICIPATED REVENUE, OR LOSS OF DATA. TOPTRACER'S TOTAL AGGREGATE LIABILITY TO CUSTOMER UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES ACTUALLY PAID BY CUSTOMER FOR THE PRODUCT. NOTHING IN THIS CLAUSE 12 SHALL LIMIT OR EXCLUDE ANY LIABILITIES WHICH MAY NOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.
- 12.3 Customer agrees to indemnify, defend and hold harmless Toptracer (and its affiliates) from and against any and all claims, suits, actions, losses, damages or costs (including legal fees), arising out of, or in connection with (i) any breach by Customer of Clauses 2, 5.1.3 or 8; and (ii) any third-party claims relating to use of the Facility.
- 13 GOVERNING LAW AND ARBITRATION**
- 13.1 This Agreement shall be governed by the laws of the State of Illinois, without regard to its principles of conflicts of law provisions. The parties irrevocably consent to the jurisdiction and venue of the courts located in Will County, Illinois over any disputes between them arising out of this Agreement.
- 13.2 Notwithstanding the foregoing, it is agreed that Toptracer shall have the right at any court of competent jurisdiction to seek injunctive or interim relief to protect any of its rights or interests in this Agreement or in respect of the Product.
- 14 **MISCELLANEOUS**
- 14.1 To complement the Product, Toptracer may offer promotions or subscription services via the Toptracer Range app or otherwise.
- 14.2 Customer shall not be entitled to assign or transfer this Agreement, or the right to use the Product, without Toptracer's prior written consent. Toptracer shall be freely entitled to assign, novate or otherwise transfer this Agreement to any third party without requiring Customer's consent.
- 14.3 This Agreement constitutes the entire agreement between the parties in relation to the subject matters provided for herein.
- 14.4 If any clause or term of this Agreement shall be deemed to be invalid or unenforceable, this shall not affect the legal enforceability of this Agreement as a whole and the parties agree to replace such invalid clause with a mutually agreed enforceable replacement clause.
- 14.5 The failure of either party to insist upon the strict adherence to any term of this Agreement shall not be considered as a waiver of any right hereunder nor shall it deprive that party of the right to insist upon the strict adherence to that term or any other term of this Agreement at some other time.
- 14.6 All notices given by either party to the other under this Agreement shall be made in English and shall be sent by email, registered mail or hand delivery to the contact named in Part I (as may be updated in writing). Notices to Toptracer shall be cc'd to legal@topgolf.com.



Schedule

Part I – Toptracer Bank Details

We appreciate your partnership and are thankful for your business. We offer the following payment options:

1. ACH

Bank:	Bank of America Merrill Lynch
Account Number:	488038493845
Account Name:	Top Golf USA Inc. Concentration Account
Routing Number ACH / EFT:	111000025
Bank Address:	100 West 33 rd Street, New York, NY 10001
Beneficiary Address:	8750 N. Central Expressway, Suite 1200, Dallas, TX 75231-6430

2. Wire

Bank:	Bank of America Merrill Lynch
Account Number:	488038493845
Account Name:	Top Golf USA Inc. Concentration Account
Routing Number Domestic Wires:	026009593
SWIFT Code International Wires:	BOFAUS3N
Bank Address:	100 West 33 rd Street, New York, NY 10001
Beneficiary Address:	8750 N. Central Expressway, Suite 1200, Dallas, TX 75231-6430

3. Check

Mail to the following address (checks must be payable to Top Golf USA Inc.):
 Topgolf
 P.O. Box 844318
 Dallas, TX 75284-4318

If you have questions regarding any of the above payment options, please e-mail Treasury@topgolf.com

Part II - Additional Customer Details

<u>Company Details</u>
Registered Company Name:
Registered Company Address:
Trading Name (if different from Registered Name):
Company Billing Address:
Company Registration Number:
Tax/GST/VAT Registration Number:
Telephone Number:
Email address:
Company Website:

<u>Accounts Payable Details</u>
Accounts Payable Contact Name:
Accounts Payable Contact Number:
Accounts Payable email address: