

## Terms and Conditions

(v1-July 2019) (F-1)

These terms and conditions (as amended under clause 17.11) ("Conditions") govern the provision of telemetry tracking, stolen vehicle tracking (including the provision of certain hardware and related services) by CanTrack Global Ltd (from Radius Telematics), registered in England and Wales with no. 06525451, with registered address at Eurocard Centre, Herald Park, Herald Drive, Crewe, CW1 6EG ("CanTrack") to the person/firm to who buys such goods/services ("Client"). These Conditions apply to the exclusion of any other terms that Client seeks to impose, or which are implied by trade, custom, practice or course of dealing. **Note particularly clauses 3, 14 and 14 (Hardware, Services, Indemnities/Limitation of Liability)**.

**Indemnities/Limitation of Liability**.

and Wales with no. 06525451, with

### 1 INTERPRETATION

In these Conditions: (i) person includes a natural person/corporate/unincorporated body; (ii) a reference to CanTrack or Client includes its personal representatives, successors and permitted assigns; (iii) a reference to a statute or statutory provision is a reference to such statute/statutory provision as amended or re-enacted and includes any subordinate legislation; (iv) any phrase introduced by the terms including/include shall be illustrative and shall not limit the sense of the preceding words; (v) a reference to writing/written includes emails but excludes faxes; (vi) the terms 'personal data', 'data subject', 'processor', 'controller', 'processing', 'personal data breach', 'pseudonymisation', 'special categories of data' and 'supervisory authority' have the meanings set out in Data Protection Law; and (vii) the following definitions apply:

"**Affiliates**": includes in relation to either party each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party.

"**Applicable Law**": the laws of England and Wales and any other mandatory laws, regulations, regulatory policies, guidelines and industry codes which apply to the supply of the Services and/or licensing of the Software.

"**Authorised Users**": those employees and independent contractors of Client who are entitled to use the Software through the Hosting Services under the Contract.

"**Availability**": the availability of an access point on CanTrack's hosting provider's backbone network, subject to clauses 10.4 and 10.5.

"**Business Day**": Monday to Friday, excluding any public holidays in England and Wales.

"**Client Default**": any act or omission of Client or a failure to perform a relevant obligation under a Contract.

"**Client Data**": the data (excluding any Client Processes) inputted into the information fields of the Software by Client, by Authorised Users, or by CanTrack on Client's behalf.

"**Confidential Information**": information that is proprietary or confidential and is either clearly labelled as such or could reasonably be identified as Confidential Information from its content or the context in which it was provided.

"**Contract**": each contract between CanTrack and Client for the supply of Services and/or licensing of Software pursuant to these Conditions.

"**Credit Terms**": payment within 30 days of the date of invoice (or as otherwise specified in the Key Terms) in full and in cleared funds to CanTrack's bank account.

"**Data Processing Particulars**": the data processing particulars set out in the Hosting and Software Specification.

"**Data Protection Law**": all applicable legislation protecting the fundamental rights and freedoms of individuals in relation to their personal data and right to privacy as applicable to CanTrack, Client, and/or the Services (including the Data Protection Act 2018).

"**Delivery**": the transfer of physical possession of the Hardware to Client at the Delivery Location (and "**Deliver**" shall be construed accordingly).

"**Delivery Location**": the delivery location for the Hardware set out in the Key Terms.

"**Deposit**": the deposit (IT any) referred to in the Key Terms in respect of the Hire Hardware.

"**Documentation**": documentation and other materials supplied from time to time to Client relating to the operation and use of the Hosting Services and the Software.

"**Download Apps**": the computer programmes referred to as the "Download Apps" in the Key Terms together with associated databases in machine-readable object code form only, including any error corrections, updates, upgrades, modifications and enhancements to it made available to download from the applicable Download Store.

"**Download App Terms**": the specific user terms set out in the Download App Terms Schedule (attached).

"**Download Store**": in respect of Download Apps made available for iOS based devices, the App Store (made available by Apple) and in respect of Android based devices, the Google Play Store (made available by Google).

"**Download Store Terms**": the standard terms and conditions of the applicable Download Store relating to the installation and use of apps made available for use on the relevant platform.

"**Due Date**": in respect of a payment under a Contract, the date on which such payment is due pursuant to these Conditions.

"**Effective Date**": the effective date set out in the Key Terms.

"**Estimated Date**": in respect of: (i) Hardware, the estimated date for Delivery set out in the Key Terms; (ii) Installation Services, the estimated date for performance of the Installation Services set out in the Key Terms; and (iii) Set-up Services, the estimated date for performance of the Set-up Services set out in the Key Terms.

"**Force Majeure Event**": an event beyond the reasonable control of CanTrack including strikes or other industrial disputes, failure of utility service/transport network, act of God, fire, flood, storm, war, riot, civil commotion, malicious damage, compliance with law, governmental rule, direction, accident, breakdown of machinery, or default of suppliers or subcontractors.

"**Hardware**": the Sale Hardware and/or the Rental Hardware (as applicable).

"**Hardware Conditions**": the conditions required/restrictions on use of the Hardware, as detailed in the Specification.

"**Hire Hardware**": the hardware referred to as such in the Key Terms (if any), which is to be rented by CanTrack to the Client, pursuant to clause 5.

"**Hire Period**": the period of hire of any Hire Hardware, as set out in the Key Terms.

"**Hosting and Software Specification**": the functionality and performance specifications for the Hosting Services and the Software, as set out your Key Terms.

"**Hosting Charges**": the charges set out in the Key Terms for provision of the Hosting Services, including use and access to the Software.

"**Hosting Services**": the services that CanTrack provides pursuant to the Contract to: (i) allow Authorised Users to access and use the Remote Apps and Client Data; and (ii) allow interaction of the Download Apps with the Remote Apps and Client Data.

"**Initial Term**": the initial term set out in the Key Terms.

"**Insolvency Event**": (a) Client suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts under section 123 of the Insolvency Act 1986 or is deemed either unable to pay its debts or as having no reasonable prospect of so doing within the meaning of section 268 of the Insolvency Act 1986 or (if a partnership) has any partner to whom any of the above applies; (b) Client starts negotiations with all/any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any arrangement with its creditors; (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of Client; (d) Client is the subject of a bankruptcy petition or order; (e) a creditor or encumbrancer of Client attaches or takes possession of, or a distress, execution, sequestration or other process is levied or enforced on or sued against, the whole or part of its assets which is not discharged within 14 days; (f) an application is made to court, or an order is made to appoint an administrator, or notice of intention to appoint an administrator is given or an administrator is appointed over Client; (g) a floating charge holder over the assets of Client becomes entitled to appoint/has appointed an administrative receiver; (h) a person becomes entitled to appoint a receiver over the assets of Client or a receiver is appointed over the assets of Client; (i) any event analogous to those mentioned in (a)-(h) above in another jurisdiction.

"**Installation Charges**": the charges for any Installation Services set out in the Key Terms.

"**Installation Location**": the installation location set out in the Key Terms.

"**Installation Services**": the installation services referred to in the Key Terms to be performed by CanTrack in respect of the Hardware (if any), as described in clause 7.

"**Intellectual Property Rights**": all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"**Key Terms**": the key terms set out in the proposal document detailing the Hardware, Services and/or Software being supplied/hired to Client.

"**Licence**": the licence of the Software on the licence terms detailed in clause 9.

"**Maintenance Event**": maintenance of the Hosting Services and/or Software that may require interruption of the Hosting Services.

"**Normal Business Hours**": 8.30am to 5.30pm UK time, each Business Day.

"**Permitted Maintenance Event**": a Maintenance Event: (i) for planned maintenance outside of Normal Business Hours, where CanTrack has given Client at least 3 days' advance notice of the same; (ii) for emergency maintenance during the daily window of 08.00pm to 4.00am UK time, where CanTrack has given Client as much notice as possible of the same; and (iii) which occurs during Normal Business Hours and which was caused by the Client or requested by Client to be undertaken during Normal Business Hours.

"**Professional Charges**": the charges for Professional Services as set out in the Key Terms.

"**Professional Services**": the professional services referred to in the Key Terms to be performed by CanTrack (IT any), as described in clause 8.

"**Professional Services Specification**": the specifications for the Professional Services, as set out in these Terms and Conditions or your Client Proposal document where appropriate.

"**Remote Apps**": the computer programmes referred to as the "Remote Apps" in the Key Terms together with associated databases in machine-readable object code form only, including any error corrections, updates, upgrades, modifications and enhancements to them made available to Client under the Contract.

"**Risk Period**": the Hire Period and any further term during which the Hire Hardware is in the possession, custody or control of Client.

"**Sale Hardware**": the hardware referred to as such in the Key Terms (IT any), which is to be sold by CanTrack to the Client, pursuant to clause 4.

"**Service Charges**": the Set-up Charges, Installation Charges, Hosting Charges, Subscription Charges, Support Charges and the Professional Charges (as applicable).

"**Service Credit**": an amount due in respect of a Service Delivery Failure, as detailed in the Key Terms.

"**Service Level Start Date**": the start of the month after the Installation Services (IT any) and Set-up Services (as applicable) have been satisfactorily completed.

"**Service Delivery Failure**": where, in a particular calendar month, the Uptime Service Level is not achieved.

"**Services**": the Installation Services, Set-up Services, Hosting Services, Support Services and/or Professional Services as applicable, given the context in which the term **Services** is used.

"**Set-up Services**": the set-up and related work referred to in the Key Terms to be performed by CanTrack to set-up the Hosting Services (if any), as described in clause 8.

"**Set-up Charges**": the charges for any Set-up Services to be supplied, as detailed in the Key Terms.

"**Software**": the Remote Apps and the Download Apps (IT any).

"**Sourcing Issue**": an inability of CanTrack to source particular materials or resources (including personnel) on terms similar or identical to those available at the date of signature (including exchange rate fluctuations and increases in taxes and/or duties).

"**Specification**": the specification detailed in the Key Terms or the Hardware or Services, as applicable.

"**Standard Rates**": the rates at which Services will be charged to Client by CanTrack where the Key Terms is silent with respect to the charging mechanism for the relevant Service.

"**Subscription Charges**": the service subscription charges set out in the Key Terms and any charges for additional data charged in accordance with your proposal document.

**Terms and Conditions**  
(v1-July 2019) (F- 1)

**"Support Service Level"**: the support service level set out on the Key Terms.

**"Support Services"**: any error corrections, updates and upgrades that CanTrack may provide or perform with respect to the Software and Hosting Services, as well as any other support or training services provided to Client under the Contract.

**"Support Charges"**: the charges set out in the Key Terms for the provision of Support Services.

**"Term"**: the Initial Term and all Term Extensions.

**"Term Extension"**: an extension to the Initial Term (or a subsequent Term Extension) made in accordance with the Term Extension provisions set out in the Key Terms.

**"Uptime Service Level"**: the uptime service level set out on the Key Terms, identifying a percentage level of Availability per calendar month.

**"Virus"**: anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

## 2 BASIS OF CONTRACT

- 2.1 The Key Terms constitutes an *offer* by CanTrack to provide Services and licence Software which shall be deemed accepted when Client signs such Key Terms (or CanTrack commences provision of Services or grants access to the Software, on which date a Contract shall come into existence ("**Start Date**"). Following such acceptance: (i) Client may not cancel the Contract other than under clause 15.1; and (ii) CanTrack may only cancel a Contract under clause 15.
- 2.2 Client accepts responsibility for the selection of the Hosting Services and the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of Client.
- 2.3 The Contract is entered into for the Initial Term and for each subsequent Term Extension.

## 3 HARDWARE

- 3.1 The provisions of: (i) clause 4 shall apply in respect of Sale Hardware; and (ii) clause 5 shall apply in respect of Hire Hardware.
- 3.2 Use of the Hardware by Client shall be subject to any Hardware Conditions.
- 3.3 The lifespan of battery powered Hardware is significantly affected by changes to connectivity configuration. If, as a result of a non-standard connectivity configuration, the Hardware ceases to operate during the Term, Client must purchase replacement Hardware from CanTrack together with optional Installation Services.
- 3.4 Save where CanTrack is undertaking Installation Services, Client shall procure that a duly authorised representative of Client shall be present at the Delivery of the Hardware. Acceptance of Delivery by such representative shall constitute conclusive evidence that Client has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by CanTrack, Client's duly authorised representative shall sign a receipt confirming such acceptance.
- 3.5 The parties acknowledge that CanTrack is not the manufacturer of the Hardware. As a reseller of such Hardware, CanTrack agrees to pass on to Client the benefit of any warranties that it obtains from the manufacturer of the Hardware ("**Manufacturer Warranties**") and shall provide details of the same within the applicable Specification, for the period that such Manufacturer Warranties are afforded to CanTrack ("**Warranty Period**").
  - 3.5.1 The CanTrack GPS Hardware benefit from a 1 year Manufacturer Warranty which CanTrack extends at its cost to 36 months from the date of sale.
  - 3.5.2 The CanTrack Asset & Protect Hardware benefits from up to a 2 year Manufacturers warranty. The Manufacturer Warranty guarantees the lessor of a certain amount of Hardware activations (wake-ups) or 2 years battery life. Hardware just over the minimum number of activations may be subject to discretionary goodwill pricing, but the warranted number of activations for each model is as below:
    - 3.5.2.1 T7+: 1200 activations minimum or up to 2 years, whichever is less.
    - 3.5.2.2 TG7 (T7.300) – 1300 activations minimum or up to 2 years, whichever is less.
    - 3.5.2.3 T7TLE (T7.400) – 1300 activations minimum or up to 2 years, whichever is less.
  - 3.5.3 CanTrack Asset & Protect Hardware on a Rental agreement will have a warranty for the duration of the term agreed up to 36 months. The Client will not be allowed to adjust software configuration on a Rental agreement which could cause the unit to not to last the term agreed.
- 3.6 Where Client claims under any of the Manufacturer Warranties (and such claim is justified), the terms of the Manufacturer Warranties shall determine Client's recourse. CanTrack shall use its reasonable endeavours to assist Client to obtain such recourse (subject to Client reimbursing CanTrack's reasonable expenses relating to the same), but shall not be responsible if the manufacturer refuses to comply with any such warranty or if the manufacturer is unable to comply where, for example, it has become insolvent.
- 3.7 The Estimated Date of Delivery is approximate only and time of Delivery is not of the essence. Delivery shall be completed on the Hardware's arrival at the Delivery Location. Client is responsible for unloading.
- 3.8 CanTrack shall Deliver the Hardware to the Delivery Location at any time after CanTrack notifies Client that the Hardware is ready for Delivery.
- 3.9 If Client fails to accept/take Delivery of the Hardware (including failing to provide appropriate Delivery instructions to CanTrack within 5 Business Days of CanTrack notifying Client that the Hardware is ready): (i) Delivery of the Hardware is deemed to be complete at 9.00am on the 7th Business Day following attempted Delivery/notification that the Hardware is ready; and (ii) CanTrack shall store the Hardware until Delivery takes place, and charge Client for all related costs and expenses (including insurance). If 40 Business Days after CanTrack notified Client that the Hardware was ready for Delivery Client has not accepted or taken Delivery of it, CanTrack may resell or otherwise dispose of all/part of the Hardware.
- 3.10 The strength and quality of the GSM and GPS signal can significantly affect battery powered Hardware life and therefore may last longer or shorter than advertised or estimated. Steps are taken within the software service to automatically detect and manage units whose battery is likely to be detrimentally affected by external factors, but guarantees cannot be afforded due to these signal factors that are outside of our control.
- 3.11 CanTrack may Deliver in instalments, each constituting a separate Contract, which shall be invoiced and paid for separately. Any delay in Delivery or defect in an instalment shall not entitle Client to cancel any other instalment.
- 3.12 Risk in the Goods shall pass to Client on completion of Delivery at the Delivery Location.
- 3.13 In respect of battery powered Hardware, at the end of the Term, Client agrees to dispose of the Hardware in a manner compliant with Applicable Law such as through a local recycling centre or through existing company disposals according to the good label on the Hardware. This must be performed under WEEE Regulations and CanTrack can also arrange disposal of the Hardware for the Client at the Client's expense. Hardware with depleted or suspected faulty must not return the Hardware in the post or via any means other than via a Dangerous Goods courier as this might contravene local laws and / or the terms and conditions of the postal service or courier.

## 4 SALE HARDWARE

*The following terms apply in respect of any Sale Hardware:*

- 4.1 CanTrack shall supply the Sale Hardware to Client pursuant to each Contract.
- 4.2 Title to the Goods shall not pass to Client until CanTrack has received payment in full (in cleared funds) for the Hardware and Services (and any other goods/services that CanTrack has supplied to Client/any part of its group for which payment is due). From Delivery until title has passed to Client, Client shall: (i) hold the Hardware on a fiduciary basis as CanTrack's bailee; (ii) store the Hardware separately from all other goods and ensure they are readily identifiable as CanTrack's property (provided that it is acknowledged that the Hardware can be installed into vehicles in the ordinary course of their use); (iii) not remove/deface/obscure any identifying mark or packaging on or relating to the Hardware; (iv) maintain the Hardware in satisfactory condition and keep them insured on CanTrack's behalf against all risks for their full price; (v) give CanTrack such information relating to the Hardware as CanTrack requires; and (vi) not sell the Hardware.
- 4.3 If an Information Event occurs (or CanTrack believes that the same is about to occur) before title to the Hardware passes to Client, (without limiting any other right or remedy CanTrack may have) CanTrack may demand Client deliver up the Hardware and, if Client fails to do so promptly, enter any premises of Client (or a third party) where the Hardware is located to recover it, or charge for replacement Hardware should the recovery cost be reasonably deemed to exceed value of recovery.

## 5 RENTAL HARDWARE

*The following terms apply in respect of any Hire Hardware:*

- 5.1 CanTrack shall hire the Hire Hardware to Client pursuant to the terms of the Contract.
- 5.2 The hire of the Hire Hardware shall commence on the date of Delivery and shall continue for the Hire Period, unless the Contract is terminated earlier in accordance with its terms.
- 5.3 CanTrack shall not, other than in the exercise of its rights under the Contract or applicable law, interfere with Client's quiet possession of the Hire Hardware.
- 5.4 The Hire Hardware shall at all times remain the property of CanTrack, and Client shall have no right, title or interest in or to the Hire Hardware (save the right to possession and use of the Hire Hardware subject to the terms and conditions of this agreement) (save as may be provided for in clause 5.12).
- 5.5 The Hire Hardware shall remain at the sole risk of Client during the Risk Period until such time as the Hire Hardware is redelivered to CanTrack. During the Risk Period, Client shall, at its own expense, obtain and maintain the following insurances:
  - 5.5.1 insurance of the Hire Hardware to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as CanTrack may from time to time nominate in writing;
  - 5.5.2 insurance for such amounts as a prudent owner or operator of the Hire Hardware would insure for, or such amount as CanTrack may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Hire Hardware; and
  - 5.5.3 insurance against such other or further risks relating to the Hire Hardware as may be required by law, together with such other insurance as CanTrack may from time to time consider reasonably necessary and advise to Client.
- 5.6 Client shall during the term of the Contract:
  - 5.6.1 comply with the Hardware Conditions (and shall ensure that the Hire Hardware is kept and operated in a suitable environment, which shall as a minimum meet the requirement set out in the Specification, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by CanTrack);
  - 5.6.2 take such steps (including compliance with all safety and usage instructions provided by CanTrack) as may be necessary to ensure, so far as is reasonably practicable,

## Terms and Conditions

(v1 -July 2019) (F- 1)

- that the Hire Hardware is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- 5.6.3 maintain at its own expense the Hire Hardware in good and substantial repair in order to keep it in as good an operating condition as it was at Delivery (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Hire Hardware;
- 5.6.4 make no alteration to the Hire Hardware and shall not remove any existing component(s) from the Hire Hardware unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Hire Hardware shall vest in CanTrack immediately upon installation;
- 5.6.5 keep CanTrack fully informed of all material matters relating to the Hire Hardware;
- 5.6.6 permit CanTrack or its duly authorised representative to inspect the Hire Hardware at all reasonable times and for such purpose to enter upon the Site or any premises at which the Hire Hardware may be located, and shall grant reasonable access and facilities for such inspection;
- 5.6.7 maintain operating and maintenance records of the Hire Hardware and make copies of such records readily available to CanTrack, together with such additional information as CanTrack may reasonably require;
- 5.6.8 not, without the prior written consent of CanTrack, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Hire Hardware or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 5.6.9 not suffer or permit the Hire Hardware to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Hire Hardware is so confiscated, seized or taken, Client shall notify CanTrack and Client shall at its sole expense use its best endeavours to procure an immediate release of the Hire Hardware and shall indemnify CanTrack on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 5.6.10 not use the Hire Hardware for any unlawful purpose;
- 5.6.11 ensure that at all times the Hire Hardware remains identifiable as being CanTrack's property and wherever possible shall ensure that a visible sign to that effect is attached to the Hire Hardware;
- 5.6.12 deliver up the Hire Hardware at the end of the Rental Period or on earlier termination of this agreement at such address as CanTrack requires, or if necessary, allow CanTrack or its representatives access to the Site or any premises where the Hire Hardware is located for the purpose of removing the Hire Hardware;
- 5.6.13 if the Hardware is installed or attached to a vehicle or asset, removal will take place at the Clients cost, or the Hardware charged (as set out in the Key Terms) if the cost of retrieving the Hardware is not reasonably deemed cost effective against its value; and
- 5.6.14 not do or permit to be done anything which could invalidate the insurances referred to below.
- 5.7 Client acknowledges that CanTrack shall not be responsible for any loss of or damage to the Hire Hardware arising out of or in connection with any negligence, misuse, mishandling of the Hire Hardware or otherwise caused by Client or its officers, employees, agents and contractors, and Client hereby indemnifies CanTrack on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by Client to comply with the terms of the Contract.
- 5.8 All insurance policies procured by Client shall be endorsed to provide CanTrack with at least 20 Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon CanTrack's request name CanTrack on the policies as a loss payee in relation to any claim relating to the Hire Hardware. Client shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 5.9 Client shall give immediate written notice to CanTrack in the event of any loss, accident or damage to the Hire Hardware arising out of or in connection with Client's possession or use of the Hire Hardware.
- 5.10 If Client fails to effect or maintain any of the insurances required under the Contract, CanTrack shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from Client.
- 5.11 Client shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to CanTrack and proof of premium payment to CanTrack to confirm the insurance arrangements.
- 5.12 If an Insolvency Event occurs (or CanTrack believes that the same is about to occur), (without limiting any other right or remedy CanTrack may have) CanTrack may demand Client deliver up the Hardware and, if Client fails to do so promptly, enter any premises of Client (or a third party) where the Hardware is located to recover it.
- 5.13 The Client will not have the ability to make changes to the software configuration of battery powered Hardware in such that it would affect the battery longevity of the Hardware, unless otherwise agreed in Key Terms and the Client Proposal; and
- 5.14 If the battery powered Hardware does not last for the duration of the contracted period, CanTrack reserves the right to offer replacement Hardware with a new term of contract, and either party is allowed to cancel the contract without penalty at the point of failure.

## 6 SERVICES

*The following terms apply in respect of all Services supplied by CanTrack:*

- 6.1 CanTrack shall perform the Services with reasonable skill and care and materially in accordance with the Specification.

## 7 INSTALLATION SERVICES

*The following terms apply in respect of any Installation Services supplied by CanTrack:*

- 7.1 CanTrack shall install the Hardware into the applicable vehicles at the Installation Location, as more particularly detailed in the Specification. Client shall procure that a duly authorised representative of Client shall be present at the installation of the Hardware. Acceptance by such representative of installation shall constitute conclusive evidence that Client has examined the Hardware and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by CanTrack, Client's duly authorised representative shall sign a receipt confirming such acceptance.
- 7.2 To facilitate performance of the Installation Services, Client shall:
- 7.2.1 ensure that the relevant vehicles are available at the Installation Location; and
- 7.2.2 at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable the Installation Services to be carried out safely and expeditiously including the materials, facilities, access and working conditions specified in the Specification.

## 8 SET-UP SERVICES

- 8.1 CanTrack shall use reasonable endeavours to perform the Set-up Services (as applicable) in accordance with the timetable set out in the Key Terms (if any), but any dates shall be estimates only, and time shall not be of the essence in the Contract.
- 8.2 Provided Client has supplied the Client Data to CanTrack in the timescale and manner referred to in the Specification, CanTrack shall incorporate such data in the manner specified in the Specification.

## 9 SOFTWARE LICENCE

- 9.1 CanTrack hereby grants to Client a non-exclusive licence for the Licence Term to use the Software as part of the receipt of the Hosting Services only.
- 9.2 Use of the Software shall be restricted to: (i) the Licence Type restrictions set out in the Key Terms for the same; (ii) the Quantity restrictions set out in the Key Terms for the same; (iii) the Use Extent set out in the Key Terms; (iv) object code form; (v) the purpose described in the Key Terms; (vi) the normal business purposes of Client (and, where "Group use" is permitted on the Key Terms, the normal business purposes of Client's Affiliates); (vii) employees of Client and, where "contractor use" is permitted on the Key Terms, third party contractors using the same solely for the benefit of the Client (and where "Group use" is permitted on the Key Terms, Client's Affiliates).
- 9.3 In respect of Remote Apps, "use" of the Software means accessing the Remote Apps from the remote location via the Hosting Services, solely in accordance with the Documentation.
- 9.4 In respect of Download Apps, "use" of the Software means downloading the same from the applicable Download Store and using the same solely in accordance with the Documentation. Use of Download Apps is also subject to compliance with the Download Store Terms and the Download App Terms.
- 9.5 Client may not use the Software other than as specified in this clause without the prior written consent of CanTrack, and Client acknowledges that additional fees may be payable on any change of use approved by CanTrack.
- 9.6 Client acknowledges that backup copies of the Software are not required, as the Remote Apps are not locally installed and the Download Apps can only be installed as a result of a download from the relevant Download Store.
- 9.7 Except as expressly licensed, Client has no right (and shall not permit any third party) to copy, adapt, reverse engineer, access all or any part of the Software or Hosting Services in order to build a product or service which competes with the same, decompile, disassemble, modify, adapt or make error corrections to the same in whole or in part.
- 9.8 Client shall not: (i) sub-license, assign or novate the benefit or burden of the Licence in whole or in part; (ii) allow the Software to become the subject of any charge, lien or encumbrance; or (iii) deal in any other manner with any or all of its rights and obligations under the Contract, without the prior written consent of CanTrack.
- 9.9 Client shall: (i) ensure that the number of persons using the Software does not exceed the number specified in the Key Terms (ii) keep a complete and accurate record of Authorised Users, and produce such record to CanTrack on request from time to time; (iii) notify CanTrack as soon as it becomes aware of any unauthorised use of the Software by any person; (iv) pay, for broadening the scope of the licences granted under this licence to cover the unauthorised use, an amount equal to the fees which CanTrack would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for under these Conditions, from such date to the date of payment.
- 9.10 Client's access to the Hosting Services shall be limited to the Authorised Users who are licensed to use the applicable Software.
- 9.11 Client shall ensure that each Authorised User keeps a secure password for his use of the Software, that such password is changed no less frequently than monthly and that each Authorised User keeps his password confidential.
- 9.12 Client shall not store, distribute or transmit any Virus, or any material through the Hosting Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, **harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities.**
- 9.13 Client shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and notify CanTrack promptly of any such unauthorised access or use.

## Terms and Conditions

(v1 -July 2019) (F-1)

- 9.14 Client shall permit CanTrack to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that Client is complying with the terms of this licence, provided that CanTrack provides reasonable advance notice to Client of such inspections, which shall take place at reasonable times. This right shall continue beyond termination/expiry to enable CanTrack to verify that use has ceased.

### 10 HOSTING SERVICES, PROFESSIONAL SERVICES AND SOFTWARE

- 10.1 CanTrack shall:
- 10.1.1 with effect from the Service Level Start Date, use its reasonable endeavours to comply with the Uptime Service Level; and
  - 10.1.2 endeavour to keep any interruptions to the Hosting Services to a minimum.
- 10.2 In the event of a failure to comply with its obligations relating to the Hosting Services and Software, CanTrack will use all reasonable commercial endeavours to correct the same promptly, or provide Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Client's sole and exclusive remedy for any breach of this clause. The obligations in this clause shall not apply to the extent any failure is caused by a Force Majeure Event or any Client Default.
- 10.3 CanTrack does not warrant that:
- 10.3.1 Client's use of the Hosting Services or the Software will be uninterrupted or error-free;
  - 10.3.2 Client's access to the Client Data will be uninterrupted or error-free;
  - 10.3.3 the Hosting Services will always be able to locate all the Hardware in accordance with the Specification; or
  - 10.3.4 any tracking and/or recovery services provided as Professional Services will result in the locating of and/or recovery of the applicable vehicle or asset.
- 10.4 The following shall not reduce Availability: (i) availability of the portion of the circuit that does not transit the hosting provider's backbone network, as Client is responsible for its own internet access; (ii) Permitted Maintenance Events (unless otherwise advised); (iii) Client-caused or third party-caused outages or disruptions (except to the extent that such outages or disruptions are caused by those duly authorised third parties sub-contracted by CanTrack to perform the Services); and (iv) outages or disruptions attributable in whole or in part to Force Majeure Events.
- 10.5 Availability measurements are performed at 5-minute intervals and measure the Availability of an availability test page within the Software within 30 seconds. Availability measurement begins on the first day of the first calendar month, beginning on the Service Level Start Date. Uptime Service Level calculation shall be carried out by CanTrack and is based on the monthly average percentage Availability, calculated at the end of each calendar month as the total actual minutes of Availability divided by total possible uptime minutes in the month. CanTrack shall keep and shall send to the Client on request, full records of its Availability measurement activities under the Contract.
- 10.6 CanTrack shall have the right to make any changes to the Hosting Services which: (i) are necessary to comply with any Applicable Law or safety requirement; (ii) result from a Sourcing Issue; or (iii) which do not materially affect the nature or quality of the same, and CanTrack shall notify Client in any such event.
- 10.7 CanTrack shall follow the archiving procedures for Client Data as described in the Hosting and Software Specification. However, it is the responsibility of Client to ensure Client Data is appropriately backed-up.
- 10.8 Subject to clause 10.3 (and subclauses) and terms in Section 14, the provision of services relating to the recovery of stolen vehicles and assets are subject to:
- 10.8.1 The Hardware being operational, and all fees, charges and overdue invoices paid and up to date;
  - 10.8.2 The Hardware must have awoken and provided a location prior to the deployment of our professional services;
  - 10.8.3 The Client or the person, agent or aggrieved acting on behalf of the Client providing a Crime Reference number from the appropriate regional Police force.
  - 10.8.4 Availability of the mobile network service or coverage in the area of theft.

### 11 SUPPORT SERVICES

- 11.1 CanTrack shall perform the Support Services during the Licence Term with reasonable skill and care and materially in accordance with the Support Specification and, with effect from the Service Level Start Date, CanTrack shall use its reasonable endeavours to comply with the Support Service Level.
- 11.2 CanTrack shall have the right to make any changes to the Support Services which: (i) are necessary to comply with any Applicable Law or safety requirement; (ii) result from a Sourcing Issue; or (iii) which do not materially affect the nature or quality of the same, and CanTrack shall notify Client in any such event.
- 11.3 CanTrack shall provide training as specified in the Key Terms. Unless stated to the contrary, training shall be undertaken at the premises of CanTrack in person or via screen sharing technology, or at the Client though any charges are exclusive of travel and expenses.
- 11.4 Maintenance includes all regularly scheduled error corrections, software updates and those upgrades limited to improvements to features described in the Software Specification.
- 11.5 CanTrack shall maintain and update the Software. Should the Client determine that the Software includes a defect, the Client may at any time file error reports. During maintenance periods, CanTrack may, at its discretion, upgrade versions, install error corrections and apply patches to the hosted systems. CanTrack shall use all reasonable endeavours to avoid unscheduled downtime for maintenance.
- 11.6 Client must ensure that the latest release of Download Apps is installed on the relevant devices. Where a device does not support the latest release (where, for example the device is not capable of running the current version of the applicable operating system), Client must replace the device immediately. Until this is undertaken, this shall constitute a Client Default.
- 11.7 Notwithstanding any Set-up Services which CanTrack may have provided, any and all ongoing integrations between the Software and any Client systems are the sole responsibility of Client. CanTrack's obligations with regard to such ongoing integrations shall be limited to maintaining such application protocol interfaces as are detailed in the Hosting and Software Specification.

### 12 CLIENT'S CO-OPERATION

- 12.1 Client shall:
- 12.1.1 provide CanTrack with: (i) all necessary co-operation in relation to the Contract; and (ii) all necessary access to such information as may be required by CanTrack in order to render the Services, including Client Data, security access information and software interfaces to Client's other business applications;
  - 12.1.2 provide such personnel assistance as may be reasonably requested by CanTrack from time to time;
  - 12.1.3 appoint a project manager, who shall have the authority to contractually bind Client on all matters relating to the Contract. Client shall use reasonable endeavours to ensure continuity of the same;
  - 12.1.4 carry out all other Client responsibilities set out in accordance with these Conditions or in any of the Schedules in a timely and efficient manner. In the event of any delays in Client's provision of such assistance as agreed by the parties, CanTrack may adjust any timetable or delivery Schedule set out in this Contract as reasonably necessary.
- 12.2 Where there is a Client Default, CanTrack (without limiting its other rights or remedies) may suspend performance (and is relieved from its performance obligations) until Client remedies the same.

### 13 CHARGES AND PAYMENT

- 13.1 Client shall pay to CanTrack:
- 13.1.1 Sale Hardware:  
the price for the Sale Hardware set out in the Key Terms in accordance with the Credit Terms;
  - 13.1.2 Hire Hardware:
    - 13.1.2.1 the Deposit or Set-Up charge on which provision of service and good will be conditional;
    - 13.1.2.2 the Monthly Hire Charge no later than the first day of the month to which the charge relates;
    - 13.1.2.3 Purchase Option  
*The following terms apply only where the Key Terms contain a Purchase Option:*
      - (a) Client shall have the option, exercisable by not less than 20 Business Days' written notice to CanTrack, to purchase the Hire Hardware on the last Business Day of the Hire Period at the Purchase Option price set out in the Key Terms.
      - (b) The Purchase Option may be exercised only in all amounts due to CanTrack under the Contract up to the date of exercise of the Purchase Option have been paid in full by Client.
      - (c) Upon completion of the purchase of the Hire Hardware under this clause 13.1.2.3, such title to the Hire Hardware as CanTrack had on the Effective Date shall transfer to Client. The Hire Hardware shall transfer to Client in the condition and at the location in which it is found on the date of transfer.
  - 13.1.3 Services:
    - 13.1.3.1 the amounts set out in the Key Terms for any Installation Services, Set-up Services or Professional Services. If no price is stated, such services shall be calculated on a time and materials basis as follows: (a) using the Standard Rates, set out in our Standard Pricing Document available upon request to [info@cantrack.com](mailto:info@cantrack.com) (b) daily rates are based on an 8 hour day from 9.00am to 6.00pm on Business Days; (c) overtime at 150% of the daily rate on a pro-rata basis for each part day/any time worked outside 9.00am to 5.00pm; and (d) expenses reasonably incurred including travelling expenses, hotel costs, subsistence and any associated expenses and services and materials provided by third parties. These shall be invoiced and become payable on the basis set out in the Key Terms (if no basis is stated, this shall be deemed to be monthly in arrears);
    - 13.1.3.2 the Hosting Charges on the basis set out in the Key Terms (if no basis is stated, this shall be deemed to be charged annually in advance);
    - 13.1.3.3 the Subscription Charges; and
    - 13.1.3.4 the Support Charges on the basis set out in the Key Terms (if no basis is stated, this shall be deemed to be charged annually in advance).
- 13.2 CanTrack reserves the right to:
- 13.2.1 increase the price of the Service Charges, giving notice to Client at any time to reflect any increase in the cost of the provision of the Services and/or licensing of the **Software** **io Can Track that is due to: (a) a Sourcing issue or a change in Applicable Law; (b) any request by Client to change the delivery/performance date(s) quantities or types of Services or Software licences ordered; (c) Client's use of the Hosting Services and/or Software materially differing from that reasonably anticipated by CanTrack at the Effective Date; or (d) any delay caused by any instructions of Client in respect of the Services and/or Licences or failure of Client to give CanTrack**

## Terms and Conditions

(v1 -July 2019) (F- I)

adequate or accurate information or instructions in respect of the Services and/or Software;

13.2.2 increase the price of the Service Charges on no less than 30 days' written notice to Client at the end of the Initial Term and each Term Extension; and

13.2.3 increase any of its Standard Rates, but no more than once in any 12 month period.

- 13.3 The Deposit is a deposit against default by Client of payment of any Monthly Hire Charges or any loss of or damage caused to the Hire Hardware. If Client fails to make any Monthly Hire Charges in accordance with the Contract, or causes any loss or damage to the Hire Hardware (in whole or in part), CanTrack shall be entitled to apply the Deposit against such default, loss or damage. Client shall pay to CanTrack any sums deducted from the Deposit within 10 days of a demand for the same. The Deposit (or balance thereof) shall be refundable within 10 days of the end of the Hire Period.
- 13.4 CanTrack will give Client written notice of any such increase 2 months before applying the increase. If the increase is: (i) in excess of the increase in the Retail Prices Index since the last date on which the prices were increased; and (ii) not acceptable to Client, it may terminate the Contract by giving 1 month's written notice to CanTrack.
- 13.5 CanTrack shall invoice Client when the applicable charges become due in pounds sterling. Prices are exclusive of value added tax (and any other applicable taxes and duties or similar charges) which shall be added to the applicable invoices. Client shall pay each invoice in full (without any deduction/withholding) under the Credit Terms and time for payment is of the essence. Should CanTrack believe that the credit worthiness of Client has reduced, CanTrack may vary the Credit Terms on written notice to Client. Without limiting any other right or remedy of CanTrack, if Client fails to make any payment due to CanTrack by the Due Date, CanTrack may charge interest on the overdue amount at 8% per annum above the then current Santander' base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 13.6 CanTrack may, without limiting its other rights or remedies, set off any amount owing to it by Client against any amount payable by CanTrack to Client.

## 14 WARRANTIES, INDEMNITIES AND LIMITATION OF LIABILITY

- 14.1 Save as expressly stated in these Conditions, all conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Contract whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 14.2 Client shall indemnify CanTrack from and against any and all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by CanTrack in connection with: (i) CanTrack's storage/handling of any Client Data and Client's use of the same through the Hosted Services; (ii) any failure of Client to obtain appropriate licences and/or consents under clause 17.3, or any subsequent revocation or non-renewal of any such licence and/or permit; (iii) any failure of Client to ensure compliance with Applicable Law under clause 17.3; (iv) any use of the Services or Software by Client other than as envisaged under the Contract; (v) any Client Default; (vi) a failure of an Authorised User to comply with the Download Store Terms or the Download App Terms; and (vii) any failure of Client to comply with its obligations under clause 3.13.
- 14.3 CanTrack shall defend Client, its officers, directors and employees against any claim that the Software, Services or Documentation infringes any United Kingdom patent effective as of the Start Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify Client for any amounts awarded against Client in judgment or settlement of such claims, provided that: (i) CanTrack is given prompt notice of any such claim; (ii) the claim does not result from Client's failure to install an update or new version of any Download Apps as soon as is practicable following its release by CanTrack; (iii) Client provides reasonable co-operation to CanTrack in the defence and settlement of such claim (at CanTrack's expense, provided such expenses are reasonable and can be evidenced to CanTrack's satisfaction); and (iv) CanTrack is given sole authority to defend or settle the claim. In the defence or settlement of any claim, CanTrack may procure the right for Client to continue using the Software, Services and/or Documentation, replace or modify the Software, Services and/or Documentation so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on 2 Business Days' notice to Client without any additional liability or obligation to pay liquidated damages or other additional costs to Client. In no event shall CanTrack, its employees, agents and sub-contractors be liable to Client to the extent that the alleged infringement is based on: (a) a modification of the Software, Services or Documentation by anyone other than CanTrack; (b) Client's use of the Software, Services or Documentation in a manner contrary to the instructions given to Client by CanTrack; or (c) Client's use of the Software, Services or Documentation after notice of the alleged or actual infringement from CanTrack or any appropriate authority. The foregoing and clause 14.5 state Client's sole and exclusive rights and remedies, and CanTrack's (including its employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 14.4 Nothing in these Conditions shall limit/exclude CanTrack's liability for: (i) death or personal injury caused by its negligence; (ii) fraud or fraudulent misrepresentation; or (iii) any other liability which cannot be excluded by law.
- 14.5 Subject to clauses 3.10, 14.3 and 10.8, CanTrack's liability (whether in contract or otherwise) is limited as follows:
- 14.5.1 CanTrack shall not be liable for any loss resulting from a failure of Client to comply with its obligations under the Contract, including compliance with any Hardware Conditions;
- 14.5.2 There will be no guarantee of the battery life for the battery powered Hardware or liability to CanTrack, beyond failures due to manufacturing defect.
- 14.5.3 CanTrack shall not be liable for any delay in performance of the Services or any failure to perform the Services that is caused or contributed to by a Force Majeure Event or any Client Default;
- 14.5.4 CanTrack shall not be responsible for any loss or damage resulting from the loss/theft of a vehicle;
- 14.5.5 in the event of any loss or damage to Client Data, Client's sole and exclusive remedy shall be for CanTrack to use reasonable commercial endeavours to restore the same from its latest back-up maintained by CanTrack in accordance with the archiving procedure described in the Hosting and Software Specification. CanTrack shall not be liable for any loss, destruction, alteration or disclosure of Client Data caused by any third party (except those third parties sub-contracted by CanTrack to perform services related to maintenance and back-up);
- 14.5.6 CanTrack shall not be liable to Client for any loss of profit, any anticipated savings, loss of business opportunity, loss of goodwill, loss of or corruption of data, or any indirect, consequential or special loss arising under or in connection with a Contract;
- 14.5.7 CanTrack shall not be liable for the client failing to notice or take action of Hardware not reporting into CanTrack's services, whether due to being removed, unplugged, out of mobile network coverage or battery failure, it shall remain the Client's responsibility at all times to monitor Hardware availability. CanTrack shall endeavour to provide the Client with tools and notifications that enable this monitoring to take place.
- 14.5.8 liability for Service Delivery Failures is limited to Service Credits (IT provided) in your Key Terms, and
- 14.5.9 CanTrack's total liability to Client in respect of all losses arising under or in connection with a Contract shall in no circumstances exceed the value of the Contract.
- 14.6 This clause 14 shall survive termination.

## 15 TERMINATION

- 15.1 Client may only terminate a Contract immediately on written notice to CanTrack if CanTrack commits a material breach of such Contract and (IT such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing of the breach from Client.
- 15.2 Without limiting its other rights or remedies, CanTrack may terminate one or more Contracts (or suspend the Services and/or Software licences):
- 15.2.1 by giving Client 1 month's written notice; or
- 15.2.2 with immediate effect giving written notice to Client where: (a) necessary as a result of Applicable Law; (b) a Sourcing Issue has occurred which affects such Services and/or Software licences; (c) a Force Majeure Event prevents CanTrack from providing Services and/or Software licences for more than 2 weeks; (d) Client commits a material breach of its obligations under a Contract and (IT such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach from CanTrack; (d) an Insolvency Event has occurred; or (e) Client fails to pay any amount due under this Contract on the Due Date. Client shall notify CanTrack immediately if it becomes (or believes it may in the future become) subject to an Insolvency Event.
- 15.3 On termination of the Contract for any reason, the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of any Contract which existed at or before the date of termination or expiry. Without limiting any other right:
- 15.3.1 Client shall immediately pay to CanTrack all of CanTrack's outstanding unpaid invoices and interest;
- 15.3.2 in respect of Services supplied or Software licences granted but for which no invoice has yet been submitted, CanTrack shall submit an invoice, which is payable by Client immediately on receipt;
- 15.3.3 Client shall cease use of any Software (and permanently delete all copies of the same).
- 15.4 Clauses that expressly/impliedly have effect after termination shall continue in full force and effect.

## 16 DATAPROTECTION

- 16.1 In order to provide the Services, CanTrack must process personal data on behalf of Client (including as detailed in the Data Processing Particulars) (the "Purpose"). The parties acknowledge and agree that the processing is necessary and proportionate to the Purpose.
- 16.2 CanTrack will only process personal data:
- 16.2.1 on Client's documented instructions ("Client Instructions") (except where it is required to do so otherwise by law, in which case CanTrack shall notify Client of such beforehand, unless such notice is prohibited by law); and
- 16.2.2 in full compliance with these Conditions and any obligations imposed on CanTrack by applicable Data Protection Law.
- 16.3 Taking into account the nature of the processing and the information available to it, CanTrack will provide Client with such information and assistance as Client reasonably requires and in accordance with the reasonable timescale indicated by Client in order to:
- 16.3.1 carry out any relevant privacy impact assessment;
- 16.3.2 consult with a supervisory authority prior to processing; and
- 16.3.3 exercise the rights granted to a data subject.
- 16.4 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as risks to the rights and freedoms of natural persons, CanTrack will implement and maintain technical and organisational measures to ensure a level of security appropriate to those risks. In assessing the appropriate level of security to be taken, CanTrack will in particular take account of the risks from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed by or on behalf of CanTrack.
- 16.5 To the extent that any Client Instructions:

## Terms and Conditions

(v1 -July 2019) (F- I)

- 16.5.1 require additional effort and/or expenditure on the part of CanTrack. Client shall reimburse CanTrack's reasonable costs and expenses incurred; and/or
- 16.5.2 serve to hinder or prevent CanTrack's performance of its obligations under a Contract, such Contract shall continue despite such reduced/non performance, and (i) CanTrack shall not be in breach of the Contract as a result of it following Client Instructions; and (ii) the charges which have been paid or which will become payable shall not be reduced (even if CanTrack is unable to perform its obligations in part or in full).
- 16.6 CanTrack will ensure that those of its personnel (including contractors) with access to personal data are made aware of their data protection and security obligations and do not process personal data except in accordance with Client's instructions or these Conditions.
- 16.7 CanTrack shall not engage another processor without Client's prior specific or general written authorisation. In the case of general written authorisation, CanTrack will inform Client of any intended changes concerning the addition or replacement of other processors and allow Client a reasonable opportunity to object to such changes. Where Client objects, CanTrack may either (i) elect not to use the processor to which Client has an objection; or (ii) permit Client to terminate this Contract upon 30 days' written notice.
- 16.8 If CanTrack engages another processor to carry out specific processing activities on behalf of Client, CanTrack will ensure that the other processor:
- 16.8.1 only does so on equivalent terms to those imposed under this Contract;
- 16.8.2 provides sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR (including the requirements relating to security, integrity and confidentiality), and CanTrack shall remain fully liable to Client for the performance of those obligations.
- 16.9 If CanTrack becomes aware of a personal data breach, it shall notify Client as soon as reasonably practicable upon becoming aware of the breach, describing the nature of the personal data breach in a sufficient level of detail so as to enable Client to conduct an analysis of the potential risks to its business, including details of what personal data was compromised, and the name of the appropriate contact at CanTrack from whom more information can be obtained.
- 16.10 Where a personal data breach occurs, CanTrack shall document it and any related action taken by CanTrack.
- 16.11 CanTrack will not transfer personal data to a country or international organisation unless Client has consented to the transfer and:
- 16.11.1 the EU Commission has decided that that country or organisation ensures adequate protection under Article 45;
- 16.11.2 appropriate safeguards are in place (as set out in Article 46); or
- 16.11.3 one or more of the derogations in Article 49 applies.
- 17 **GENERAL**
- 17.1 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 17.2 Intellectual Property Rights:
- 17.2.1 All Intellectual Property Rights in or arising out of or in connection with the Services and the Software (other than any Client Data) is owned by CanTrack (or its licensors). Except as expressly stated herein, the Contract does not grant Client any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Content, Services or any Documentation.
- 17.2.2 Client shall own all rights, title and interest in and to all of Client Data and Client Content, and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Client Data and Client Content.
- 17.3 Import Licences/Consents: Client is solely responsible for obtaining, at its own cost, such import licences and other consents in relation to the Services, Software and Client Data as are required from time to time and, if required by CanTrack, Client shall make those licences and consents available to CanTrack prior to delivery. Client is responsible for ensuring its use of the Services and the Software (including access it gives to Client Data) comply with Applicable Law and shall undertake any and all testing necessary to ensure such compliance at its own cost.
- 17.4 Export control: Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Contract (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations ("**Export Control Laws**"), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval. Each party undertakes:
- 17.4.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- 17.4.2 if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.
- 17.5 The Contract shall not prevent CanTrack from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under the Contract.
- 17.6 Confidentiality: A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning Disclosing Party's business or its products or its services which Receiving Party may obtain. Receiving Party shall restrict disclosure of such information to such of its employees, agents or subcontractors as need to know it to discharge Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind Receiving Party. This clause 17.6 shall survive termination.
- 17.7 Entire Agreement: Each Contract constitutes the entire agreement between the parties relating to the particular Contract, superseding all previous arrangements between the parties relating to its subject matter. Any samples, drawings, descriptive matter, illustrations and advertising issued by CanTrack or contained in CanTrack's websites, catalogues or brochures are issued and/or published for the sole purpose of giving an approximate idea of the Services and/or Software. They shall not form part of the Contract or have any contractual force. Client confirms it has not relied on any statement, promise or representation made or given by or on behalf of CanTrack which is not set out in the applicable Contract. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in the applicable Contract.
- 17.8 Force majeure: CanTrack shall not be liable to Client as a result of any delay or failure to perform its obligations under a Contract as a result of a Force Majeure Event.
- 17.9 Assignment and subcontracting: CanTrack may at any time assign, transfer, novate, charge, subcontract, sub-licence and/or deal in any other manner with all or any of its rights under the Contract. Client shall not, without the prior written consent of CanTrack, assign, transfer, novate, charge, subcontract, sub-licence or deal in any other manner with all or any of its rights or obligations under the Contract.
- 17.10 Notices: Any notice required to be given under or in connection with the Contract shall be in writing, addressed to the contact name/title detailed in the Key Terms and shall be delivered to the other party: (i) personally/sent by recorded delivery/commercial courier, to its registered office/principal place of business (if not a company); or (ii) emailed to the other party's email address set out in the Key Terms. Any notice is deemed received if: (i) delivered personally, when left at such address; (ii) if sent by recorded delivery, at the time delivery is recorded; (iii) if delivered by commercial courier, at the date/time that the courier's delivery receipt is signed; or (iv) if emailed, at the time of delivery, provided a valid delivery confirmation has been received. If actual delivery takes place outside of working hours on a Business Day, the date/time of deemed delivery shall be 9.00am on the next Business Day. This clause 17.10 shall not apply to the service of any proceedings or other documents in any legal action.
- 17.11 Variation/Waiver: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by CanTrack. A waiver of any right is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 17.12 Severance: If a court or any other competent authority finds that any provision (or part of a provision) of the Contract is invalid/illegal/unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 17.13 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership/joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.14 3rd parties: A person not a party to the Contract shall not have any rights under/in connection with it.
- 17.15 Compliance with law: Client shall at all times comply (and shall ensure that relevant third parties comply) with Applicable Law, including the Bribery Act 2010.
- 17.16 Governing law and jurisdiction: Each Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

DATA PROCESSING PARTICULARS SCHEDULE

**TELEMETRY TRACKING**

**STOLEN VEHICLE TRACKING**

Subject matter, nature and purpose:

Subject matter:  
Tracking of vehicles for asset security and fleet optimisation.  
The monitoring of driving behaviour to improve driver safety and reduce fuel costs.  
Communication with drivers to improve employee safety and working efficiency.  
Use of tachograph and driver hours data for working time compliance.  
Management reporting for business optimisation, including improvements to customer service or fleet efficiency.  
Integration with a third-party hardware or software solution.

Nature and Purpose:  
CanTrack or a client may have a legitimate interest to process the subject matter above for the purpose of ensuring our, or the third-parties business can be conducted to optimum levels of performance. CanTrack do not process data in such a way that it could affect an individual's personal rights - clients in turn need to ensure their usage is consistent with this or obtain consent to process data.  
It is necessary for the service to be performed for us to monitor the live data from vehicle movements, and present it to the end user paying for the service. Whilst we are providing tracking data on a vehicle, it is possible this could be linked to an individual by recording the name of the individual against the tracking unit (whether by you or the driver themselves). The data controller of the client must ensure that either this personal data is not recorded, or that they obtain consent from those affected. The data controller should ensure they have consent at least annually for the storing and processing of this data from operators of these vehicles or assets.  
There are times where CanTrack has a legal obligation or vital interest in processing personal data for the matter of complying with the law or where it might be necessary to protect someone's life, or carry out a task in the public interest.

The subject matter, nature and purpose of the processing is:

Subject matter:  
Tracking of vehicles for asset security and fleet optimisation.  
Management reporting for business optimisation, including improvements to customer service or fleet efficiency.  
Integration with a third-party hardware or software solution.  
None of the data recorded in this product type is live unless actively dealing with a stolen vehicle which is then deemed necessary to comply with legal compliance.  
We are not able to provide a route taken by a tracking device, unless activated in the event of theft - there is no on-going recording of location.  
We can and do record when an asset is utilized, but not where unless processing a stolen vehicle activation.

Nature and Purpose:  
CanTrack or a client may have a legitimate interest to process the subject matter above for the purpose of ensuring our, or the third-parties business can be conducted to optimum levels of performance. CanTrack do not process data in such a way that it could affect an individual's personal rights - clients in turn need to ensure their usage is consistent with this or obtain consent to process data.  
It is necessary for the service to be performed for us to monitor data from vehicle movements, and present it to the end user paying for the service. Whilst we are providing tracking data on a vehicle or asset, it is possible this could be linked to an individual by recording the name of the individual against the tracking unit (whether by you or the driver themselves). The data controller of the client must ensure that either this personal data is not recorded, or that they obtain consent from those affected. The data controller should ensure they have consent at least annually for the storing and processing of this data from operators of these vehicles or assets.  
There are times where CanTrack has a legal obligation or vital interest in processing personal data for the matter of complying with the law or where it might be necessary to protect someone's life, or carry out a task in the public interest.

Data Subjects: (delete as appropriate)

The personal data to be processed concerns the following categories of data subjects:  
• Personal name or other identifying name in the tracking software portal relating to a driver of a vehicle or operator of an asset.

The personal data to be processed concerns the following categories of data subjects:  
Personal name or other identifying name in the tracking software portal relating to a driver of a vehicle or operator of an asset.

Categories Of Personal Data:

The personal data to be processed concerns the following categories of data subjects:  
• Personal name or other identifying name in the tracking software portal relating to a driver of a vehicle or operator of an asset.

The personal data to be processed concerns the following categories of data subjects:  
Personal name or other identifying name in the tracking software portal relating to a driver of a vehicle or operator of an asset.

**Special Category Data:**  
(a) Offences actual or alleged;  
Being the subject of criminal proceedings (including the outcome of those proceedings and any sentence imposed).

**Special Category Data:**  
(b) Offences actual or alleged;  
Being the subject of criminal proceedings (including the outcome of those proceedings and any sentence imposed).

Duration:

The personal data may only be processed during the following period: We store all data to provide our services for up to 36 months and will be deleted secure within 62 days of the client ending their contract with us.

The personal data may only be processed during the following period: We store all data to provide our services for up to 36 months and will be deleted secure within 62 days of the client ending their contract with us.

Description of the technical and organisational security measures implemented by CanTrack:

Our information security management system includes:  
Detailed security policies that provides management direction and supports the information management system and all operational activities.  
Human Resource security protocols that include selecting the right employees and providing them continual customised training.  
Cryptography technologies that protect the confidentiality and integrity of our customers' data and our operational systems.  
Physical and environmental security that includes Tier 1 data centres, an active configuration that ensures disaster recovery and high availability capabilities that are tested regularly.  
Operational security underpinned by security baselines and supported by managed, strict and repeatable processes.  
Communications security through such measures as network segregation, VLAN separation, DMZ with multi-level Firewalls, Network Access Controls (NAC) and encryption per default using latest industry standards.

Our information security management system includes:  
Detailed security policies that provides management direction and supports the information management system and all operational activities.  
Human Resource security protocols that include selecting the right employees and providing them continual customised training.  
Cryptography technologies that protect the confidentiality and integrity of our customers' data and our operational systems.  
Physical and environmental security that includes Tier 1 data centres, an active configuration that ensures disaster recovery and high availability capabilities that are tested regularly.  
Operational security underpinned by security baselines and supported by managed, strict and repeatable processes.  
Communications security through such measures as network segregation, VLAN separation, DMZ with multi-level Firewalls, Network Access Controls (NAC) and encryption per default using latest industry standards.