

Terms and Conditions for the Hire of Equipment and Supply of Services

1. INTERPRETATION

1.1 **Definitions.** In these conditions, the following definitions apply:

Agreement: the Ctrack agreement, which includes the Information Schedule and these conditions.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Commencement Date: the date the Agreement is signed.

Contract: the contract between Ctrack and the Customer for the hire of Equipment and the supply of Services in accordance with these conditions.

Ctrack: Ctrack UK Limited registered in England and Wales with company number 07239604 whose registered office is at Park House, Headingley Office Park, 8 Victoria Road, Leeds LS6 1PF.

Ctrack Materials: means all materials, equipment, documents and other property belonging to Ctrack but not the Equipment.

Customer: means the person or firm detailed in the Agreement.

Data Protection Legislation: means the Data Protection Act 1998 as amended, extended or consolidated from time to time (including without limitation the implementation of the General Data Protection Regulation (EU) 2016/697 and any national laws which relate to the processing of Personal Data).

Data Controller: the person or organisation that determines when, why and how to process Personal Data. It is responsible for establishing practices and policies in line with Data Protection Legislation.

Delivery: the transfer of physical possession of the Equipment to the Customer which will take place as described in clause 6.5.

Delivery Option: the option for delivery and/installation set out in the Information Schedule.

Equipment: the items of equipment listed in the Information Schedule, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

Force Majeure Event: an event beyond the reasonable control of the parties including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, telecommunications failures (including problems with internet transmission) fire, flood, storm or default of suppliers or subcontractors.

Information Schedule: the information schedule at the front of the Agreement, which is signed by the parties.

Initial Payment: the initial amount set out in the Information Schedule.

Initial Term: the minimum amount of time that the Equipment will be hired for and the Services will be provided for, as set out in the Information Schedule.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Monthly Payments: the payments made by or on behalf of the Customer for hire of the Equipment and supply of Services as set out in the Information Schedule.

Payment Schedule: the Schedule for paying the Monthly Payments as set out in the Information Schedule.

Personal Data: any information that can identify an individual (directly or indirectly) from that data alone or in combination with other identifiers. Identifiers can include an identification name, location data or online identification of one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual. Personal Data excludes anonymous data or data that has had the identity of an individual permanently removed.

Rental Period: the period of hire as set out in condition 16.1.

Review Date: the date of expiry of the Initial Term and each anniversary thereafter.

RPIX: means the value of the underlying average of the annual rate of the Retail Price Index published monthly by the Office for National Statistics (excluding mortgages).

Services: the services supplied by Ctrack to the Customer as set out in the Information Schedule and/or Specification.

Specification: any description or specification for the Equipment and/or Services, including any related plans and drawings, that is agreed in writing by the Customer and Ctrack.

Total Loss: the Equipment is, in Ctrack's reasonable opinion damaged beyond repair, lost, stolen, seized or confiscated.

Warranty Period: the period of time that the Equipment will be under warranty as set out in the Information Schedule.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to a party includes its personal representatives, successors or permitted assigns.

1.4 A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

2. BASIS OF CONTRACT

2.1 By completing and signing the Agreement, the Customer is offering to hire the Equipment and purchase Services in accordance with these conditions.

2.2 When Ctrack signs the Agreement Ctrack shall be deemed to have accepted the Customer's offer and the Contract shall start on such date.

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that they have not relied on any statement, promise or representation made or given by or on behalf of Ctrack which is not set out in the Contract.

2.4 Any samples, descriptive matter or advertising issued by Ctrack, and any descriptions or illustrations contained in Ctrack's catalogues or brochures, are issued for the sole purpose of giving an approximate idea of the Equipment and Services described in them. They shall not form part of the Contract or have any contractual force.

2.5 The Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document or which are implied by trade, custom, practice or course of dealing).

3. EQUIPMENT HIRE

- 3.1 Ctrack shall hire the Equipment to the Customer subject to the terms and conditions of this Agreement.
- 3.2 Ctrack shall not, other than in the exercise of its rights under this Agreement or applicable law, interfere with the Customer's quiet possession of the Equipment.
- 3.3 In the case of an OBD self-install device it is the Customer's responsibility to ensure that the OBD device can be satisfactorily installed into a suitable OBD connection within their vehicle. Ctrack provides a specification of the device on its Web Portal. Should the Customer be unable to connect the OBD device to their vehicle then Ctrack will supply a hard-wired telematics device as a replacement and the Customer will be invoiced for the additional cost of the hard-wired device plus the cost of installation.

4. SUPPLY OF SERVICES

- 4.1 Ctrack shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 4.2 Ctrack shall (where applicable) use reasonable endeavours to meet any performance dates but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.3 Ctrack shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Ctrack shall notify the Customer in any such event.
- 4.4 If Ctrack supplies the Customer with a SIM card for use with the Equipment, the Customer shall only use it in conjunction with the Equipment and at normal usage levels. Ctrack reserves the right to reclaim any costs (and to charge an administration fee) for any excessive or unauthorised use of the SIM card (including any use outside of the UK unless specified in the Agreement).
- 4.5 In the case of an OBD device Ctrack will relay and present all vehicle diagnostic data that is retrieved by the OBD device from the Customer's vehicle.

5. MONTHLY PAYMENTS

- 5.1 The Customer shall pay the Initial Payment and Monthly Payments to Ctrack in accordance with the Payment Schedule. The Monthly Payments shall be made by direct debit or BACS. Payment for the Services is due on the terms specified in the Information Schedule. An invoice will be issued following performance. Time for payment shall be of the essence. No payment shall be deemed to have been received until Ctrack has received cash or cleared funds. Payment should be made wherever possible by direct debit.
- 5.2 If the Customer is paying in instalments, the Customer is required to enter into a direct debit agreement for payment of the Monthly Payments. Failure to do so will result in an additional administration charge of £20 per month.
- 5.3 Ctrack may charge the Customer £30 for every direct debit failure or rejected cheque.
- 5.4 Unless agreed otherwise by Ctrack, the Customer shall pay each invoice submitted by Ctrack, in full and in cleared funds, within 30 days of the date of the invoice.
- 5.5 The Monthly Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law.
- 5.6 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by Ctrack to the Customer.
- 5.7 All payments payable to Ctrack under the Contract shall become due immediately on its termination despite any other provision.
- 5.8 Ctrack has the right to automatically increase the Monthly Payments with effect from any Review Date, by a percentage equivalent to the percentage increase in RPIX All Items between the relevant Review Date and the preceding Review Date, unless the Review Date is the first Review Date in which case the measure shall be the increase between the Commencement Date and the first Review Date.
- 5.9 In addition to clause 4.4, Ctrack may increase the Monthly Payments for the Equipment Rental and Supply of Services, by giving notice to the Customer at any time before Delivery of the Equipment or the performance of the Services, to reflect any increase in the cost to Ctrack that is due to:
 - 5.9.1 any request by the Customer to change the Specification; or
 - 5.9.2 any delay caused by any instructions of the Customer in respect of the supply of the Equipment and/or Services or failure of the Customer to give Ctrack adequate or accurate information or instructions in respect of the supply of the Equipment and/or Services.
- 5.10 Ctrack may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Ctrack to the Customer.

6. DELIVERY AND INSTALLATION OF THE EQUIPMENT

- 6.1 Delivery of the Equipment shall be made by Ctrack in accordance with the Delivery Option chosen by the Customer. Ctrack shall use reasonable endeavours to effect delivery/installation by the date and time agreed between the parties. Title and risk shall transfer in accordance with condition 7.
- 6.2 There may be additional installation costs which will be agreed with the Customer in advance,
- 6.3 The Customer shall procure that a duly authorised representative of the Customer shall be present at the delivery/installation of the Equipment. Acceptance of delivery/installation by such representative shall constitute conclusive evidence that the Customer 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 (save as regards any latent defects not reasonably apparent on inspection). If required by Ctrack, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.
- 6.4 To facilitate delivery and installation, the Customer shall at its expense provide all requisite materials, facilities, access and suitable working conditions to enable delivery and installation to be carried out safely and expeditiously.
- 6.5 Delivery of the Equipment shall be completed on the Equipment's arrival or on completion of installation (as applicable) ("**Delivery**").
- 6.6 Any dates quoted for delivery/installation are approximate only and the time of delivery is not of the essence. Ctrack shall not be liable for any delay in delivery/installation of the Equipment that is caused by a Force Majeure Event or the Customer's failure to provide Ctrack with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.
- 6.7 If Ctrack fails to deliver/install the Equipment, its liability shall be limited to refunding the amount of fees paid by the Customer.
- 6.8 If a vehicle is not at the agreed location at the agreed time to enable Ctrack to install the Equipment, Ctrack may charge the Customer additional fees for a different installation date.
- 6.9 If the parties agree an installation schedule which is later changed by the Customer, Ctrack reserves the right to deliver the Equipment on the original agreed date and to start charging the Customer for the Rental Payments, notwithstanding that the Equipment may not be installed.
- 6.10 If the Customer wishes to change the vehicle into which the Equipment is installed then Ctrack may charge a defit/refit charge which will be agreed with the Customer in advance.

7. TITLE, RISK AND INSURANCE

- 7.1 The Equipment shall at all times remain the property of Ctrack, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this Agreement).
- 7.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Delivery. The Equipment shall remain at the sole risk of the Customer during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Customer ("**Risk Period**") until such time as the Equipment is redelivered to Ctrack. During the Rental Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:
- 7.2.1 insurance of the Equipment 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 Ctrack may from time to time nominate in writing;
- 7.2.2 insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as Ctrack 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 Equipment; and
- 7.2.3 insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as Ctrack may from time to time consider reasonably necessary as advised to the Customer.
- 7.3 All insurance policies procured by the Customer shall be endorsed to provide Ctrack 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 Ctrack's request name Ctrack on the policies as a loss payee in relation to any claim relating to the Equipment. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 7.4 The Customer shall give immediate written notice to Ctrack in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment.
- 7.5 If the Customer fails to effect or maintain any of the insurances required under this agreement, Ctrack 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 the Customer.
- 7.6 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to Ctrack and proof of premium payment to Ctrack to confirm the insurance arrangements.

8. CUSTOMER'S RESPONSIBILITIES FOR THE EQUIPMENT

- 8.1 The Customer shall during the term of this Agreement:
- 8.1.1 ensure that the Equipment is kept in a suitable environment, used only for the purposes for which it is designed in accordance with any instructions provided by Ctrack;
- 8.1.2 take such steps (including compliance with all safety and usage instructions provided by Ctrack) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- 8.1.3 make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment except if removed in the ordinary course of repair and maintenance and replaced as soon as practicable;
- 8.1.4 keep Ctrack fully informed of all material matters relating to the Equipment;
- 8.1.5 permit Ctrack or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- 8.1.6 not, without the prior written consent of Ctrack, part with control of (but excluding for the purposes of repair or maintenance of the vehicle), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 8.1.7 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of Ctrack in the Equipment and the Customer must take all necessary steps to ensure that Ctrack may have access to the vehicle to recover the Equipment both during the term of this Agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such vehicle, a waiver in writing and in favour of Ctrack of any rights such person may have or acquire in the Equipment and a right for Ctrack to enter onto such land where the vehicle is located to remove the Equipment;
- 8.1.8 not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify Ctrack and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify Ctrack on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 8.1.9 not use the Equipment for any unlawful purpose;
- 8.1.10 deliver up the Equipment at the end of the Rental Period or on earlier termination of this Agreement at such address as Ctrack requires, or if necessary allow Ctrack or its representatives access to any premises where the Equipment is located for the purpose of removing the Equipment; and
- 8.1.11 not do or permit to be done anything which could invalidate the insurances referred to in condition 7.
- 8.2 The Customer acknowledges that Ctrack shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify Ctrack 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 the Customer to comply with the terms of this Agreement.

9. CUSTOMER'S OBLIGATIONS IN RESPECT OF THE SERVICES

- 9.1 The Customer shall:
- 9.1.1 co-operate with Ctrack in all matters relating to the Services;
- 9.1.2 provide Ctrack, its employees, agents, consultants and subcontractors, with access to the Customer's vehicles, premises, office accommodation and other facilities as reasonably required by Ctrack;
- 9.1.3 provide Ctrack with such information and materials as Ctrack may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- 9.1.4 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
- 9.1.5 keep and maintain all Ctrack Materials at the Customer's premises in safe custody at its own risk, maintain Ctrack Materials in good condition until returned to Ctrack, and not dispose of or use Ctrack Materials other than in accordance with Ctrack's written instructions or authorisation.
- 9.2 If Ctrack's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- 9.2.1 Ctrack shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Ctrack's performance of any of its obligations;
- 9.2.2 Ctrack shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Ctrack's failure or delay to perform any of its obligations as set out in this condition 9.2; and
- 9.2.3 the Customer shall reimburse Ctrack on written demand for any costs or losses sustained or incurred by Ctrack arising directly or indirectly from the Customer Default.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 Subject to clause 10.3, all Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Ctrack.
- 10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on Ctrack obtaining a written licence from the relevant licensor on such terms as will entitle Ctrack to license such rights to the Customer.
- 10.3 Subject to clause 10.4, ownership in any Intellectual Property Rights comprised in or arising out of the data collected from the Equipment in the course of providing the Services ("**Customer Data**"), shall vest in the Customer and Ctrack hereby assigns any right, title and interest in the Customer Data to the Customer.
- 10.4 Ctrack may retain and sell the Customer Data in an anonymised format to third parties.
- 10.5 All Ctrack Materials are the exclusive property of Ctrack.

11. DATA PROTECTION

- 11.1 Both parties shall act in their capacity as Data Controllers in relation to Personal Data shared between the parties and arising out of the data collected from the Equipment in the course of the provision of the Services;
- 11.2 The Customer will ensure that:
 - 11.2.1 adequate privacy notices have been provided to personnel or any other individuals whose telematics data will be collected through use of the Services so they understand the circumstances their Personal Data will be shared with Ctrack and the purpose of the sharing; and
 - 11.2.2 it has a lawful basis for processing the Personal Data which allows the Customer to share the Personal Data with Ctrack and for Ctrack to use any Personal Data in the course of providing Services.
- 11.3 Further information on how Ctrack uses Personal Data can be found within its privacy policy available on the Ctrack website or by contacting your Account Manager if a hard copy is required.

12. 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 the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this condition as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

13. EQUIPMENT WARRANTY

- 13.1 Ctrack warrants that on delivery, and during the Warranty Period, the Equipment shall:
 - 13.1.1 conform in all material respects with its description and any applicable Specification; and
 - 13.1.2 be free from material defects in design, material and workmanship.
- 13.2 Subject to condition 13.1, if:
 - 13.2.1 the Customer gives notice in writing to Ctrack during the Warranty Period within a reasonable time of discovery that some or all of the Equipment does not comply with the warranty set out in condition 13.1;
 - 13.2.2 Ctrack is given a reasonable opportunity of examining such Equipment; and
 - 13.2.3 Ctrack confirms that the issue is covered under warranty then,
 Ctrack shall, at its option, repair or replace the defective Equipment.
- 13.3 Ctrack shall not be liable for Equipment's failure to comply with the warranty set out in condition 13.1 in any of the following events and Ctrack may charge the Customer the costs of parts and labour in any such event;
 - 13.3.1 the Customer makes any further use of such Equipment after giving notice in accordance with condition 13.2;
 - 13.3.2 the defect arises because the Customer failed to follow Ctrack's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same;
 - 13.3.3 the defect arises as a result of Ctrack following any drawing, design or Specification supplied by the Customer;
 - 13.3.4 the Customer alters or repairs such Equipment without the written consent of Ctrack;
 - 13.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 13.3.6 the Equipment differs from its description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 13.4 Except as provided in this condition 13, Ctrack shall have no liability to the Customer in respect of the Equipment' failure to comply with the warranty set out in condition 13.1.
- 13.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.6 These conditions shall apply to any repaired or replacement Equipment supplied by Ctrack.

14. GENERAL WARRANTIES

- 14.1 Ctrack warrants that the Services will be performed with reasonable care and skill.
- 14.2 All other warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 14.3 If any of the Services do not conform with the warranty in Condition 14.1 Ctrack shall, re-perform the Services to the extent necessary to make good any defect free of charge and where it does so, Ctrack shall have no further liability to the Customer under the warranty in Condition 14.1 in respect of the relevant Services.

- 14.4 Any advice, instruction and/or recommendation relating to the Services and/or their use whether written or oral given by Ctrack's employees ("**Advice**") is given in good faith, but Ctrack only warrants that written Advice is given with reasonable skill and care. No further duty or responsibility is accepted by Ctrack.
- 14.5 The Customer warrants that:
- 14.5.1 it is entering into the Contract in the normal course of its business;
- 14.5.2 it has full power and authority to enter into the Contract and has any necessary consents, licences and authorisations to enable the Customer and Ctrack to perform their respective obligations under the Contract; and
- 14.5.3 it has not been induced to enter into the Contract by any prior representations or warranties, whether oral or in writing, except as specifically contained in the Contract and the Customer irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation not contained in the Contract or for breach of any warranty not contained in the Contract (unless such misrepresentation or warranty was made fraudulently) and/or to rescind the Contract.
- 14.6 Given the inherent nature of the internet, Ctrack does not warrant that the Services will be completely error-free, or will be performed totally without interruption.

15. LIABILITY

- 15.1 Nothing in these conditions shall limit or exclude Ctrack's liability for:
- 15.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 15.1.2 fraud or fraudulent misrepresentation;
- 15.1.3 any matter in respect of which it would be unlawful for Ctrack to exclude or restrict liability.
- 15.2 Subject to condition 13.1:
- 15.2.1 Ctrack shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 15.2.2 Ctrack's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount (excluding VAT) payable by the Customer for the Monthly Payments in the year in which the event occurred that gives rise to the claim.
- 15.3 There are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on Ctrack except as specifically stated in this Agreement. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within this Agreement, whether by statute, common law or otherwise, is expressly excluded.

16. TERMINATION

- 16.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party not less than 90 days' written notice, such notice not to expire before the end of the Initial Term ("**Rental Period**").
- 16.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 16.2.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- 16.2.2 the other party 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 16.2.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 16.2.4 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 that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 16.2.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
- 16.2.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 16.2.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- 16.2.8 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 16.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 16.2.10 any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 16.2.2 to condition 16.2.9 (inclusive);
- 16.2.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- 16.2.12 the other party's financial position deteriorates to such an extent that in Ctrack's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 16.2.13 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 16.3 Without limiting its other rights or remedies, Ctrack may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 14 days after being notified in writing to do so.
- 16.4 This Agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.

17. CONSEQUENCES OF TERMINATION

- 17.1 Upon termination of this Agreement, however caused:

- 17.1.1 if Ctrack requests, the Customer shall deliver up all Equipment in its possession or if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored in order to recover the Equipment by de-installing it from the relevant vehicle.
- 17.1.2 the Customer shall return all of Ctrack Materials and any deliverables which have not been fully paid for. If the Customer fails to do so, then Ctrack may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 17.1.3 without prejudice to any other rights or remedies of the Customer, the Customer shall pay to Ctrack on demand:
- 17.1.3.1 all Monthly Payments and other sums due but unpaid at the date of such demand together with any interest accrued;
- 17.1.3.2 any costs and expenses incurred by Ctrack in recovering the Equipment and/or in collecting any sums due under this Agreement (including any storage, insurance, repair, transport, legal and remarketing costs).
- 17.2 If the Contract is terminated other than due to the fault of Ctrack during the Initial Term the full amount of the Monthly Payment payable in accordance with the Contract for the unexpired period of the initial Term shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 17.3 The sums payable pursuant to condition 17.2 shall be agreed compensation for Ctrack's loss and shall be payable in addition to the sums payable pursuant to condition 17.1.3.
- 17.4 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 17.5 Any conditions which expressly or by implication survive termination shall continue in full force and effect, including but not limited to conditions 1, 10, 11, 15, 16 and 18 .
- 18. GENERAL**
- 18.1 Ctrack reserves the right to defer the date of performance or to cancel the Contract (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to a Force Majeure Event.
- 18.2 Ctrack may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract. The Customer shall not, without the prior written consent of Ctrack, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- 18.3 Notices under these conditions shall be given in writing and may be given by delivery or first class post to the Customer at the address stated in the Agreement or as otherwise notified and to Ctrack at the address stated in these conditions or as other address notified. Notices sent by first class post shall be deemed to have been received within forty-eight hours of posting. Notices delivered by hand shall be deemed to have been received at the time of delivery.
- 18.4 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of the Contract.
- 18.5 A waiver of any right under the Contract or law 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 provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.6 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 18.7 A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 18.8 Except as set out in these conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Ctrack.
- 18.9 This 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 the law of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

This Agreement has been entered into on the date stated at the beginning of it.