

# Trakm8 Limited UK Terms and Conditions of Supply (v20 June 2018)

Please read these Terms carefully, as they set out our and your legal rights and obligations in relation to the Products that we sell, rent or licence and the Professional Services that we provide. The Customer's attention is specifically brought to the limitations and exclusions of liability contained within Clause 14 and the requirements of Clauses 4.1(g), 14 and 18.

Where Trakm8 telematics or camera Products are to be used in a company vehicle, all employees or other individuals who are authorised to drive that vehicle should be notified that a tracking / camera unit is installed, in order to limit any potential risk of data protection, privacy and employment law issues. It is strongly recommended that evidential proof of this notification having been given should be sought and retained.

## 1. Definitions and Interpretation

### 1.1 In these Terms:

**API Data Feed** means an application protocol interface enabling Data transfer;

**Agreement** means this Trakm8 Limited UK Terms and Conditions of Supply and its Schedules.

**Battery Status** means the output from a battery health algorithm;

**Branded Software** means Software that has been customised with a Customer's marketing brand;

**Camera** means dashboard and/or in vehicle or asset camera(s);

**Camera Data** means data produced by a Camera;

**Confidential Information** means information of commercial, proprietary or other value disclosed by one Party to the other Party which is identified as confidential or might reasonably be considered to be confidential and that has not come into the public domain or been independently developed;

**Configuration Manager** means a Supplier software management utility that facilitates changes to the settings of the Firmware and/or its version upgrade;

**Contract** means a contract between the Parties for the sale, rent, licence and Installation (as applicable) relating to the supply of Products and/or the Professional Services entered into in accordance with Clause 3;

**Customer** means the entity purchasing, renting or licensing the Products (as applicable) and/or the purchase of Professional Services;

**Customer Hardware** means the hardware owned by the Customer on which the Mobile App is installed.

**Customer Personal Data** means personal data contained in the Data or otherwise collected from the Customer, and which is processed by the Supplier in the course of performing its obligations under this Agreement and for the other purposes set out herein.

**Data** means Telematics Data, Driver Profile Data, Diagnostic Data, On Board Diagnostic Data, FNOL, Battery Status Data and Camera Data;

**Data Protection Legislation** means (i) the Data Protection Act 1998, from 25 May 2018 the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK, and (ii) any successor legislation to the foregoing;

**Data Reports** visual and other representations of the Data accessible through the Website and in the case of Trakm8tacho Analytics, tachograph data;

**Data Subject Requests** means any requests by data subjects seeking to exercise their rights under the Data Protection Legislation

**Diagnostic Data** means refined data produced by the Hardware or the Customer Hardware which is derived from the Onboard Diagnostic Data;

**Distributor** means a Customer appointed by the Supplier to resell and/or sub-licence the Products to the Distributor's customers;

**Driver Feedback Module (Lightbar)** means an electronic device for capturing and transmitting driver behaviour events e.g. (overspeed, harsh acceleration and harsh braking events);

**Driver Profile Data** means the scoring output from the Supplier's driver profiling algorithm;

**Early Termination Fee** means the payment of the remainder of the Periodic Payments that are unpaid on termination but that would have been due to the Supplier in respect of the Services pursuant to this Agreement if it had not been termination before the end of the Minimum Contract Term;

**Fee** means any amount payable by the Customer under the Contract, including Licence Fees, Early Termination Fees, Renewal Fees and any amounts payable for Professional Services.

**FNOL** means first notification of loss whereby an alert is generated from an algorithm following a suspected crash event;

**Firmware** means the Supplier's proprietary tracking unit management and control software;

**Force Majeure Event** means an event, or a series of related events, that is outside the reasonable control of the Party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**Hardware** means vehicle telematics units and associated peripherals which may or may not include Firmware, SIM card and network airtime, Driver Lightbars, Cameras and requisite fuses and cables;

**Initial Term** means the initial term of this Agreement as stated on the Order, from i) in the case of purchases including Hardware, the date of delivery of the Hardware to the Customer, ii) in the case of Software-only purchases, the date the Supplier makes the Software available to the Customer; in each case unless otherwise stated on the Order. Please note that this is a **minimum** term;

**Installation** means fitting the Hardware into a Customer's vehicle or plant/ machinery. This may be a hard wired installation by the Supplier or a Self-Install depending on the Hardware type and vehicle combination;

**Intellectual Property** means any patent, registered or unregistered design right, trade mark or other proprietary rights inherent in the Products any copyrights and database rights, all other similar or equivalent intellectual or commercial rights or property subsisting under the laws of each and every jurisdiction throughout the world whether registered or not, and whether vested, contingent or future and all reversions, renewals, revivals and extensions of any of the foregoing, and all rights under licences, consents, orders, statutes or otherwise in relation to any of the foregoing;

**Licence Fee** means the price payable by the Customer for use of the Software and/or access to the Data in respect of the Initial Term and where applicable Renewal Period;

**Mobile App** means a mobile device application which enable access to the Software and/or Data;

**OnBoard Diagnostic Data** means all raw, unprocessed data specified under the European On-Board Diagnostic standards available at a Vehicle or plant's J1962 diagnostic socket or obtained from the Customer Hardware;

**Online Compatibility Checker** means a vehicle Self-Install suitability facility available on the Website;

**Order** means an order form or other documentation by which the Customer places an order for purchase of Products and/or Services under this Agreement;

**Order Date** means the date the Customer's order is accepted by the Supplier;

**Periodic Payment** means the monthly, quarterly or annual payment of Licence Fees and/or Renewal Fees as set out on the Order;

**personal data, process, data controller, data processor and data subject** have the meanings given in the Data Protection Legislation;

**Prices** means the prevailing prices for the Products in the Supplier's standard list prices for the Products and/or the price quoted for the Professional Services as sent by the Supplier to the Customer in the Supplier's sales order, or as agreed between the Customer and the Supplier, or as published on the Supplier's website from time to time;

**Products** means the Hardware which is purchased or rented by the Customer and where applicable the licensed Software;

**Professional Services** means the development, adaptation and or integration of Software to documented requirements agreed with the Customer specified in a SOW;

**Renewal Fee** means such fee as may be notified by the Supplier to the Customer relating to the renewal of the grant of Licence to use the Software after the Initial Term;

**Renewal Period** shall be the consecutive period following and equal in duration to the Initial Term unless agreed otherwise in writing. Please note that this is a **minimum** term;

**Self-Install Hardware** means Hardware model that is designed to be installed by the Customer through the vehicle's OBD port;

**Service** means the Trakm8 Software, utilities, data reports and associated support;

**Server Hosting** means the provision of computer servers and network connectivity to the internet;

**SIM** Subscriber Identity Module card providing network airtime;

**Significant Currency Fluctuation** means any change of ten (10) percent or more in the exchange rate between United Kingdom sterling and any combination of: United States Dollar, Euro and/or Czech Krona over a four week period.

**Software** means the Supplier's proprietary application software including without limitation Trakm8 SWIFT™, Trakm8 PRIME™, Trakm8 Secure™, Trakm8 eco™, Trakm8tacho Analytics, Trakm8tacho Download, Branded Software, Configuration Manager, Firmware and third party licensed software where applicable in existence or developed as a product of Professional Services;

**SOW** a documented set of development requirement called a statement of work;

**Specification** the documented performance, form and functionality of the Software as published by the Supplier or in the case of Professional Services as agreed between the Parties and contained within the SOW;

**Subject Access Request** means the right of individuals under the Data Protection Act to request a copy of all information held in relation to them;

**Supplier** means Trakm8 Limited, a limited company incorporated in England and Wales (registration number 04415597) having its registered office at 4 Roman Park, Roman Way, Coleshill, West Midlands, Birmingham, B46 1HG;

**Telematics Data** means any combination of raw unprocessed, GPS, CanBus and accelerometer data;

**Terms** means this Agreement along with its Schedule and the Supplier's sales order and invoice;

**Trakm8 eco™** means a Software utility that analyses fuel usage;

**Trakm8 PRIME™** means a Software variant of Trakm8 SWIFT™;

**Trakm8 Secure™** means a Software utility that protects asset security;

**Trakm8 SWIFT™** means Software that monitors assets (vehicles, trailers, plant etc);

**Trakm8tacho Analytics** means a Software utility that provides analysis tools for tachograph data;

**Trakm8tacho Download** means an optional Software feature to Trakm8tacho Analytics that allows remote tachograph data extraction;

**Web Portal** an internet gateway to access the Website and/or Software and/or Data and

**Website** means the content, functionality and report suite available from the Software and/or Data.

1.2 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms..

1.3 The singular shall include the plural and vice versa and words denoting persons shall include bodies corporate and unincorporated associations of persons.

1.4 A reference to a party includes its successors and permitted assigns.

1.4 A reference to writing or written includes emails.

1.5 The term "Schedule" means a schedule to these Terms, and the Schedules form part of the Contract.

## 2. These Terms

2.1 In the absence of any written contract duly executed by the Parties, these Terms contain the only conditions upon which the Supplier will deal with the Customer, and they govern all Contracts to the exclusion of all other terms and conditions.

## 3. Contracts

3.1 Where applicable, a written quotation for the supply of Products and/or Professional Services given by the Supplier to the Customer will be deemed to be an offer by the Supplier to supply Products and/or Professional Services to the Customer, subject to these Terms. In order for a Contract to come into force the Customer must send to the Supplier its written acceptance of that quotation, within ten (10) working days of the date of issue of the quotation or take delivery of the Products and in doing so the Customer will be deemed to have accepted these Terms and a Contract will come into force between the Parties confirmed by the Supplier sending the Customer an order confirmation in the form of a sales order.

3.2 Where Clause 3.1 does not apply, each Order for Products and/or Professional Services given by the Customer to the Supplier will be deemed to be an offer by the Customer to purchase or rent (and in the case of Software, license) Products from the Supplier and/or purchase the Professional Services subject to these Terms and in order for a Contract to come into force the Supplier may send to the Customer an order confirmation in the form of a sales order or acceptance will be confirmed by the Supplier delivering the Products and/or Professional Services.

3.3 All subsequent Orders for Products will be subject to the provisions of this Agreement including where applicable any specified Initial Term herein, unless agreed otherwise in writing.

3.4 The field "Deal Type" set out on the Order shall mean the following:-

"Sale – Upfront Payment" means that Hardware is supplied to the Customer under an outright contract of sale with payment due on placing of the Order (or as otherwise agreed in the Order)

"Sale – Mitigated Deal" means that Hardware is supplied to the Customer under an outright contract of sale with payment made on a monthly, quarterly or annual basis over the term set out in the Order.

"Rental" means that hardware is supplied on a rental basis with payment made on a monthly, quarterly or annual basis over the term set out in the Order.

## 4. Delivery & Installation (HARDWARE)

4.1 Unless stated in the Order all Hardware is delivered Ex Works (Incoterms 2010). Subject to the foregoing, unless stated in the Order or otherwise agreed in writing:

(a) all Hardware will be delivered by the Supplier to the Customer's premises or to such other address as may be agreed by the Parties;

(b) the Supplier will be responsible for arranging carriage for the Hardware;

(c) the Customer will be responsible for paying all costs relating to carriage of the Hardware;

(d) the Customer may elect to collect the Hardware from the Supplier's address in which case the Customer will be responsible for arranging and paying all costs relating to loading, carriage, transport, and insurance for the Hardware;

(e) risk in the Hardware will pass from the Supplier to the Customer when the Products are despatched to or where applicable, collected by the Customer.(f) where the Customer requires a fixed wire Installation of the Hardware by the Supplier an Installation date will be agreed with the Customer and the Installation may be performed by a third party engaged by the Supplier. Without prejudice to the provisions of the consumer Distance Selling Regulations (when applicable), where the Customer cancels an arranged Installation with less than twenty four (24) hours' notice, or otherwise fails to present the vehicle at the agreed date, time or place of Installation the Supplier may charge the Customer a late cancellation charge of (i) the greater of the installation charge set out on the Order or (ii) sixty pounds (£60) per vehicle as amended from time to time.

(g) where the Customer requires or agrees to Self-Install Installation, the Hardware will be configured for a specific vehicle (make, model and registration). **Under no circumstances must the Hardware be used with any vehicle without using our Online Compatibility Checker at the Website and/or reconfiguration by Trakm8 customer support** (Tel; 03303334124, Email; [support@trakm8.com](mailto:support@trakm8.com)). The Online Compatibility Checker is indicative only as further described in Clause 8.2.

(h) where the Customer is a Distributor the Customer warrants that all fixed wire Installations will be performed by a trained, competent engineer or by the Supplier and/or its appointed sub-contractors as detailed in Clause 6.4.

4.2 If the Parties agree that delivery of the Products and/or Professional Services under a Contract will be by instalments, each instalment will constitute part of a single Contract, and not separate Contracts.

4.3 Where Hardware is to be Installed by the Supplier, the Fees set out in the Contract are an estimate based on the following assumptions:-

(a) vehicles will be made available for Installation in accordance with the Installation timetable agreed by the Supplier;

(b) on any given day for which Installation is scheduled, at least 80% of the number of vehicles scheduled to be Installed on that day according to the installation timetable will be made available for Installation;

(c) vehicles will be made available at, or within 5 minutes' travel from, the location agreed by the Supplier; and

(d) vehicles will be made available at a suitable location which is safe for the Supplier's staff (in the Supplier's staff's sole opinion), and which is not on or at the side of a public highway.

If any of the assumptions set out in this Clause 4.3 are not met, or if for any other reason an Installation is more complex than the agreed Installation, the Supplier reserves the right to charge additional Fees or to charge its standard day-rate to reflect the additional resource required to complete the affected Installation.

4.4 Any date or dates for the delivery of the Products and/or Professional Services agreed by the Parties as part of a Contract will be an estimate and will not be of the essence of the Contract.

#### **5. Title (HARDWARE)**

5.1 Where Hardware is supplied to the Customer under an outright contract of sale, legal and equitable title to the Hardware (excluding where applicable, Firmware and SIM card) will pass from the Supplier to the Customer upon the earlier of:

- (a) despatch of the Hardware; or
- (b) receipt by the Supplier of all amounts due from the Customer to the Supplier under the Contract.

Where Hardware is supplied to the Customer under a rental to purchase contract, legal and equitable title to the Hardware (excluding where applicable, Firmware and SIM card) will pass from the Supplier to the Customer upon completion of the Initial Term or payment of all instalments due on the Initial Term, whichever is earlier.

5.2 Where the Hardware is supplied to the Customer in accordance with the provisions of Clause 5.1 and the Customer fails to pay the Price for the Hardware in accordance with the payment terms in Schedule 1, then upon written notification by the Supplier, title to the Hardware will revert to the Supplier. In which case, until and if, title to the Hardware (excluding where applicable Firmware and SIM card) has reverted back to the Customer:

- (a) the Customer will hold the Hardware as fiduciary agent and bailee of the Supplier;
- (b) the Customer will as applicable: (i) store the Hardware in a secure, safe, dry and clean environment separately from other products and goods; (ii) ensure that the Hardware is easily identifiable as belonging to the Supplier; (iii) not deface, destroy, alter or obscure any identifying mark on the Hardware or their packaging; (iv) ensure that no charge, lien or other encumbrance is created over the Hardware; and (v) deliver up the Hardware to the Supplier upon demand.

5.3 Where the Hardware is supplied to the Customer under a contract of sale and title has reverted to the Supplier in accordance with the provisions Clause 5.2, the Customer may resell Hardware prior to taking ownership of title provided such a sale shall be effected in the ordinary course of the Customer's business, at full market value and it shall be a sale of the Supplier's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

5.4 Where a Customer has not paid for the Hardware, the Customer's right to possession of the Hardware shall terminate immediately in the event that:

- (a) the Customer is the subject of a bankruptcy order or makes an arrangement or composition with its creditors, or enters into any form of liquidation or other form of insolvency as within the meaning of section 123 of the Insolvency Act 1986.
- (b) the Customer ceases to trade
- (c) the Customer encumbers or in any way charges the Hardware.

5.5 The Supplier shall be entitled without further notice to inspect or recover possession of any Hardware to which it has title; and the Customer grants to the Supplier and its employees and agents an irrevocable licence:

- (a) Where the Hardware is not Installed in a vehicle, to enter at any time any premises where the Hardware is or may be situated for the purpose of inspecting or removing any such Hardware
- (b) Where the Hardware is installed in a vehicle, to remove the Hardware from the vehicle and the Customer will cooperate without delay to make the vehicle available for such a process of de-installation.

5.6 The Supplier may bring an action for the Price of the Hardware, and any other amounts due under a Contract.

#### **6. Customers Obligations and Indemnities**

6.1 Where the Customer is a Distributor it will not without the Supplier's prior written consent make or give any promises, representations, warranties or guarantees:

- (a) on behalf of the Supplier; or
- (b) in relation to the Products (other than those set out in a Contract in relation to the Products or otherwise mandatory under applicable law).

6.2 Where applicable and without prejudice to the Supplier's obligations under this Agreement, the Distributor must comply with all applicable laws, rules and regulations relating to, and must obtain all licences, permits and approvals required in relation to:

- (a) the marketing, promotion and advertising of the Products; and
- (b) import, export, distribution, sale, sub-licence, supply and delivery of the Products.

6.3 The Distributor (and the Distributor's customer) agrees to ensure that the Hardware is only used in accordance with; the provisions of this Agreement (especially Clause 4.1(g)), all documented specifications and within the operating environmental parameters as published or provided by the Supplier from time to time.

6.4 The Distributor may request that the Supplier provides fixed wire Installation services to the Distributor's customer in which case the Supplier will be acting as the agent of the Distributor and all contractual relationship in respect of such installation will be between the Distributor and the Distributor's customer.

#### **7 Software Support (CUSTOMERS WHO ARE DISTRIBUTORS ONLY)**

7.1 The Supplier agrees to provide the Distributor Product maintenance and second level technical support (in depth specialist Product knowledge) and third level technical support (advanced Product and environmental skills) to named Distributor personnel. The Distributor is responsible for providing first level technical support (basic Product set up and operability skills and knowledge) to its customers.

7.2 Second and third level technical support will be provided by the Supplier by telephone and electronic mail during normal United Kingdom business hours (Monday to Friday inclusive, 9.00 am to 5.00 pm excluding English & Welsh public holidays).

7.3 The Distributor will provide the Supplier with such assistance and information as may be necessary for the purpose of recalling Hardware. In addition, the Distributor expressly consents to the Supplier obtaining, recording and retaining such data as is necessary to enable product recall and Software upgrade.

#### **7. Prices and Payment (PRODUCTS & PROFESSIONAL SERVICES)**

7.1 The Customer shall pay any charges for Products ordered on the date of the Order together with any Periodic Payments in advance as agreed on the Order. Thereafter the Periodic Payments shall be due for each period in advance by standing order or Direct Debit, unless agreed otherwise on the Order.

7.1 The Supplier may issue an invoice for the Prices of Products under a Contract to the Customer at any time before or after Hardware despatch and/or grant of Software access. In the case of provision of Professional Services, payment of the Price may be by instalment or otherwise as agreed between the Supplier and the Customer prior to the commencement of the Professional Services

7.2 The Customer will pay the Prices to the Supplier upon receipt of an invoice issued in accordance with Clause 7.1 and in accordance with the notified payment terms and method set out in the Order or otherwise agreed in writing.

7.3 All Prices payable under a Contract are exclusive of all value-added and other taxes and duties applicable to the sale, licencing and supply of the Products or provision of the Professional Services which will be payable by the Customer except for taxes payable on the Supplier's net income, which will be payable by the Supplier.

7.4 In the case of Professional Services, the Prices for Software or other development and onward licensing will be separate or integrated as agreed between the Parties at the formation of the Contract.

7.5 If the Customer does not pay any amount properly due to the Supplier under or in connection with a Contract on or before the due date, the Supplier may at its discretion either:

- (a) charge the Customer interest on the overdue amount at the rate of 4% per year above the UK base rate of the Bank of England from time to time (which interest will accrue daily until the date of actual payment, be compounded quarterly, and be payable on demand); or
- (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

7.6 Prices (including any ex-gratia, limited Licence to access the Configuration Manager) may be conditional upon a Product volume and/or revenue commitment for a specific time period as detailed in writing between the Parties. Any failure to meet such a commitment may result in amended Prices and/or a chargeable Licence Fee being applicable for continued access to the Configuration Manager.

7.7 Unless agreed otherwise in writing, after the Initial Term all Product Prices can be changed by the Supplier upon giving the Customer thirty (30) days written notice.

7.8 Notwithstanding the provisions of Clause 7.7 all Product Prices can also be amended by the Supplier by immediate notice in the event that:

- (a) there is a Significant Currency Fluctuation and/or
- (b) the Supplier's costs are subject to a demonstrable change of plus or minus ten(10) percent due to factors beyond the reasonable control of the Supplier.

- 7.9 The Customer shall make all payments properly due under a Contract 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 the Supplier to the Customer.
- 7.10 All remaining payments due to the Supplier under a Contract and/or an Initial Term or Renewal Period of a fixed term rental and/or Software Licence shall become due immediately on its early termination or default by the Customer.

## 8. Warranties

8.1 The Supplier warrants that:

- (a) the Supplier has the right to sell or rent and/or where applicable, grant a Licence of use to the Customer for the Products;
  - (b) the Products are free from any charge or encumbrance subject to Clause 5 and subject to any other charge or encumbrance disclosed or known to the Customer before the relevant Contract is made;
  - (c) the Customer shall enjoy quiet possession of the Products, subject to the rights referred to in Clause 8.1(b);
  - (d) the Products will in all material respects correspond to any description of the Products supplied by the Supplier to the Customer or in the case of Professional Services the Specification;
  - (e) the Hardware will be of satisfactory quality and Software will be free from defects that materially affect its' performance to the requirements of the Specification. Other than the limited warranty under this Clause 8.1 and that of Clause 13.1; all other warranties whether express or implied are excluded to the maximum extent permitted by law unless otherwise agreed in writing between the Parties;
  - (f) the Products will comply with all laws, rules, regulations applicable to the marketing, sale and licencing of the Products in the United Kingdom; and
  - (g) the Products will bear all mandatory marks and signs associated with the laws, rules, regulations and standards referred to in Clause 8.1(f).
- 8.2 Save as provided by law, all of the Parties' warranties, liabilities and obligations in respect of the subject matter of each Contract are expressly contained in these Terms or elsewhere in the relevant Contract. Due to the variation in vehicle models, although the Supplier reviews compatibility with as wide a range of vehicles as possible, the Supplier does not warrant that the Hardware will be compatible with any specific vehicle, and in this respect the Customer uses the Hardware at its own risk.
- 8.3 Where the Customer purchases as a consumer, any warranties set out in these Terms do not affect any statutory rights available to the Customer, and the Supplier is under a legal duty to supply products that are in conformity with these Terms.
- 8.3 In consideration for the Licence Fee, the Supplier shall no later than the Installation date supply the Customer with a unique, personalised user name and password to enable the Customer to access the Software and thereby use the Service. The Customer agrees that responsibility for the security of any user name or password issued pursuant to this Clause 8.3 rests with the Customer.
- 8.4 The Customer shall comply with any reasonable instructions or conditions relating to its use of the Software as may be posted on the Website/ Web Portal or Mobile App or otherwise communicated to the Customer from time to time by the Supplier.
- 8.5 From the date of Installation the Supplier shall make the 'Service', the Trakm8 Data Reports in respect of any Data received from the Customer's Hardware Unit or the Customer Hardware available via the Website or Mobile App. The Data Reports shall be available for no less than; 12 months (for Trakm8 eco<sup>N</sup>, Trakm8 Secure and Trakm8tacho Analytics), 70 days (for Trakm8 SWIFT) and 35 days (for Trakm8 PRIME) from the date of collection of the Data contained within the Data Reports.
- 8.6 The Customer acknowledges and agrees that the availability of the Website (or relevant parts thereof) and/or the Data Reports is dependent upon systems, technologies and other factors which are beyond the Supplier's control including but not limited to; the Customer Hardware, mobile communication networks, Global Positioning System technologies (GPS) and General Packet Radio Service technologies (GPRS) operated by third party providers, the Internet and interconnected systems. Due to the nature of such technologies, systems and other factors, problems including but not limited to, outages, link failures, power difficulties, network overloads, signal degradation and topographic, electromagnetic and other interferences and government intervention may have an adverse effect on the availability of the Software and/or the Data Reports.
- 8.7 While the Supplier endeavours to ensure that the Software underlying the Website or Mobile App is normally available 24 hours a day and to mitigate where possible the adverse effects of the problems referred to in Clause 8.6, the Supplier shall not be liable in any way for loss(es) suffered as a result of any such problems or if for any other reason the Software and/or Data Reports or any part thereof is unavailable to the Customer at any time or for any period and access to the Software may be suspended temporarily and without notice in order to address and rectify issues arising as a result of such problems or for any other reasons beyond the Supplier's control.
- 8.8 The Supplier shall have the right at any time to temporarily suspend access to the Software and/or Website and access via the Mobile App for the purposes of maintaining or repairing the Website or any part thereof; and to make changes to the functionality, presentation, features, modes of access and material content in relation to the Software, Website, Web Portal or Mobile App. Save for the circumstances detailed in Clause 8.7, the Supplier will in the ordinary course of events give notice to the Customer of any planned access restriction and will keep the duration as short as possible.

## 9. Licences

- 9.1 Where the Hardware is the Supplier's proprietary GPS tracking units and those GPS tracking units are supplied to the Customer with Firmware installed then;
- (a) the Supplier grants to the Customer a non-exclusive, perpetual (for a Hardware sale) or limited Licence to use the Firmware and where the Customer is a Distributor, to sub-licence the Firmware to its customers, strictly on the condition that it remains integral to the purchased GPS tracking unit and the Customer and in the case of a Distributor the Customer's customer, does not disassemble, decompile, reverse engineer or otherwise attempt to change or modify the Firmware.
  - (b) except as for the limited rights granted under the Licence of Clause 9.1.(a) the Supplier retains all proprietary rights and title inherent or otherwise inherent in the Firmware.
  - (c) the grant of this limited Licence in respect of the Firmware specifically excludes the Configuration Manager and any updates or new releases of the Firmware.
- 9.2 Where the Products are the Supplier's proprietary Software then;
- (a) conditional upon the Customer paying and (where applicable) continuing to pay the Supplier the applicable Licence Fee(s) which will in combination with a support fee, be invoiced as a Service fee; the Supplier grants to the Customer a non-exclusive, limited, fixed term Licence to use the proprietary Software and where the Customer is a Distributor to sub-licence the Software; provided that the Customer and in the case of a Distributor the Customers' customer, does not disassemble, decompile, reverse engineer or otherwise attempt to change or modify the supplied proprietary Software;
  - (b) where the Software is supplied with integral third party software, the Software will be licensed to the Customer in accordance with Clause 9.2.(a) with an applicable sub-licence of the third party software and subject to any terms or restrictions contained within the sub-licence agreement;
  - (c) except as for the limited rights granted under the licence of Clause 9.2.(a), the Supplier retains all proprietary rights and title inherent or otherwise inherent in the Supplier's proprietary Software;
  - (d) where applicable, except as for the limited rights granted under the sub- licence of Clause 9.2.(b), the relevant third party retains all proprietary rights and title inherent or otherwise inherent in the third party software;
  - (e) the grant of this limited Licence in respect of the Software specifically excludes any updates or new releases unless otherwise agreed in writing.
  - (f) Unless otherwise agreed between the Parties and where applicable, the Supplier will provide the Server Hosting for the Software.
- 9.3 Subject to and in accordance with the provisions of this Agreement, the Supplier hereby grants to the Customer for the duration of the Initial Term (and any Renewal Period thereafter) a personal, non-exclusive right to: access and browse the contents of the Website, Mobile App and/or Web Portal (as applicable) and download and print Data Reports or any part thereof on the following basis:
- (a) save for the Data Reports, the Customer shall not copy, modify, publish, transmit, transfer, sell, reproduce, create derivative works from, distribute, perform, display, or in any way exploit the whole or any part of the Website or any associated or underlying software in connection with the Website;
  - (b) no graphics on the Website shall be used separately from the corresponding text; and the Customer shall not utilise the Supplier's trademarks or trade names in any way without the express written consent of the Supplier save that the Customer shall ensure that the Supplier's copyright and trade mark notices appear in all copies. No part of the Website may be reproduced or stored in any other website or included in any public or private electronic retrieval system or service.
- 9.4 The Customer shall not and shall make best efforts to procure that any third parties shall not:
- (a) post or transmit to the Website any material that is threatening, defamatory, obscene, indecent, seditious, offensive, pornographic, abusive, liable to incite racial hatred, discriminatory, menacing, scandalous, inflammatory, blasphemous, in breach of confidence, in breach of privacy or which may cause annoyance

or inconvenience, or for which the Customer has not obtained all necessary licences and/or approvals or which constitutes or encourages conduct that would be considered a criminal offence, give rise to civil liability, or otherwise be contrary to the law of or infringe the rights of any third party, in any country in the world; or which is technically harmful (including, without limitation, computer viruses, logic bombs, Trojan horses, worms, spiders, harmful components, corrupted data or other malicious software or harmful data).

- (b) misuse or violate any aspect of the Website or any associated or underlying software including, without limitation by: hacking or attempting to probe, scan or test the vulnerability of a system or network or to deliberately breach security or authentication measures;
- (c) attempt to interfere with a service to any user, host or network including by means of 'overloading', 'flooding', 'mail bombing' or 'crashing'; or forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting. Save as permitted under this Licence and to the extent that such actions may be prohibited by law, attempt to modify, reverse engineer, compile or decompile, disassemble any associated or underlying software in connection with the Website nor shall it amalgamate, amend, incorporate, modify, reproduce, translate or otherwise alter the same into or with any other software or use the same in conjunction with other software.

- 9.5 In consideration for the grant of the Licence under Clause 9.2, the Customer shall pay to the Supplier the Licence Fee in accordance with the Supplier's notified payment instructions on or before the Order Date or as otherwise agreed. The Customer shall pay to the Supplier any Renewal Fee in order to continue Service provision beyond the Initial Term or each subsequent Renewal Period. Unless otherwise notified all sums payable under this Agreement are exclusive of any value added tax or other applicable sales tax.
- 9.6 This Licence shall commence on the Order Date and continue for the selected contractual period ("Initial Term") unless terminated earlier pursuant to this Agreement. Following the Initial Term the Licence may be renewed for successive periods (each of which shall be a "Renewal Period") provided that the Customer pays to the Supplier the relevant Renewal Fee in accordance with the Supplier's notified payment instructions. The Licence shall renew for the Renewal Period with effect from the date of expiry of the Initial Term (or as the case may be the previous Renewal Period).
- 9.7 Where the Supplier agrees that the Customer may sub-licence the Software to its customers then the Customer warrants that any such sub-licensing will not overreach or conflict with any of the Terms within this Agreement.

## **10. Data Protection**

- 10.1 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is a data controller, and the Supplier is a data processor for some purposes and a data controller for other purposes. The scope of processing carried out by the Supplier as data controller is a) the processing of contact details of the Customer's staff for the purposes of administration of the Agreement and may also include b) the processing of data collected by the Supplier's Software and/or Hardware for the purposes of providing the Service and c) for the further development and refinement of the Supplier's Software and/or Hardware, and the Supplier may also carry out the processing described in b) as data processor.
- 10.2 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to the Supplier for the duration and purposes of this Agreement, and will take all necessary measures to ensure compliance of the Parties with the Data Protection Legislation. Without prejudice to the generality of the foregoing, the Customer is responsible for a) ensuring that a lawful ground for processing is met in respect of the Supplier's processing of Customer Personal Data and b) ensuring that sufficient fair processing information is provided to the data subjects in respect of the Supplier's processing of Customer Personal Data, in each case as required by the Data Protection Legislation, and in each case both at the outset and following any changes to the Customer's or Supplier's processing of the Customer Personal Data (including on the Supplier's behalf where the Supplier is a data controller).
- 10.3 Both Parties will ensure that they comply with the provisions of the Data Protection Legislation at all times during the term of this Agreement.
- 10.4 The Supplier will only process the Customer Personal Data as permitted by this Agreement and, where the Supplier is a data processor, the Supplier will only process Customer Personal Data in accordance with the Customer's documented instructions, including with regard to transfers outside the European Economic Area, unless required to do so by European Union or Member State law to which the Supplier is subject; in such a case, the Supplier shall inform the Customer of that legal requirement before processing, unless that law prohibits the Supplier from doing so on important grounds of public interest.
- 10.5 The Customer agrees that the Supplier may process the Customer Personal Data a) for the purpose of providing the Service and b) in a pseudonymised form to refine and optimise processing algorithms of the Products, associated R&D and other commercial activity.
- 10.6 Both Parties will implement appropriate technical and organisational measures to prevent unauthorised or unlawful processing of Customer Personal Data and against accidental loss, destruction of, or damage to, Customer Personal Data.
- 10.7 The Customer shall be responsible for providing a means by which data subjects can make Data Subject Requests and for managing any such Data Subject Requests relating to this Agreement (including on the Supplier's behalf where the Supplier is a data controller). The Customer shall notify the Supplier of any Data Subject Requests it receives and the outcome thereof. The Supplier shall provide such reasonable assistance as the Customer requests in order to respond to Data Subject Requests. Where the Supplier receives a Data Subject Request directly in respect of Customer Personal Data, the Supplier shall notify the Customer of such request and the Customer shall be responsible for responding to such request (including on the Supplier's behalf where the Supplier is a data controller). The Supplier reserves the right to respond to any Data Subject Requests (or other legitimate requests to disclose data) directly where it is appropriate to do so or it reasonably believes that the Customer has not or will not adequately respond to such request, or where such disclosure is required by law, by UK enactment or by order from a court or tribunal in any jurisdiction. The Supplier shall inform the Customer of any request to disclose Customer Personal Data that has been directly responded to by the Supplier, and shall provide details of the response and the grounds on which it was provided, unless it would be unlawful to do so.
- 10.8 The Supplier shall assist the Customer, and where the Supplier acts as data controller the Customer shall assist the Supplier:-
- a) by appropriate technical and organisational measures, to the extent reasonably practicable, for the fulfilment of the data controller's obligation to respond to Data Subject Requests;
  - b) in ensuring compliance with the notification of personal data breaches, communication of personal data breaches to data subjects, carrying out DPIAs and consulting DP authorities where required, taking into account the nature of the processing and the information available to the data processor; and
  - c) by making available to the other Party all information necessary to demonstrate compliance with the data protection obligations set out in this Agreement and allow for and contribute to audits, including inspections, conducted by the other Party or another auditor mandated by the other Party.
- 10.9 The Customer hereby generally authorises the Supplier to engage third parties as sub-processors in respect of the Customer Personal Data, provided that the same or equivalent data protection obligations are imposed on such third parties as are set out in this Agreement.
- 10.10 The Supplier shall ensure that any persons authorised to process the Customer Personal Data on its behalf have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 10.11 Where the Supplier is a data processor in respect of Customer Personal Data and not a data controller in respect of the same, the Supplier shall, at the choice of the Customer, delete or return all Customer Personal Data to the Customer after the end of the provision of services relating to processing, and deletes existing copies unless European Union or Member State law requires retention of the Customer Personal Data.
- 10.12 The Customer will indemnify the Supplier from any losses, costs, damages incurred by the Supplier as a result of the Customer failing to observe any of the provisions of this Clause 10.

## **11. Customers Licensing Trakm8tacho Analytics & Trakm8tacho Download**

- 11.1 The Licence Fee for Trakm8tacho Analytics & Trakm8tacho Download "Tacho Products" is based on a Customer declaration of the number of drivers within the Customer fleet. The Supplier will reconcile periodically the driver data volume to the Customer declaration and in the event that there is a discrepancy the Supplier will:
- (a) adjust the respective Licence Fee for subsequent invoicing and
  - (b) retrospectively invoice or credit (as applicable) for the previous period.
- 11.2 The Tacho Products Data Report availability is dependent upon the Customer providing and maintaining the relevant computer infrastructure and associated internet connectivity. If this is not available for any reason including but not limited to the factors detailed within Clause 8.6 the Customer will need to have remedial processes and systems in order to fulfil its statutory obligations. In any event the exclusions of liability within these Terms will prevail.

## **12. Customers Licensing Trakm8 Secure™**

- 12.1 Trakm8 Secure™ has an optional remote vehicle/plant immobilisation feature. Where that feature is selected it is the Customer's duty to ensure that the feature is

deployed responsibly with due investigation and care to ensure that third parties are not exposed to any risk of injury or damage to their property. The immobilisation feature should only be deployed when the vehicle/plant is stationary, has not had any engine running for at least five minutes and is located in a non-hazardous location..

- 12.2 In the event of the Customer's employees or agents failing to follow the safety obligations of Clause 12.1, the Customer agrees to indemnify the Supplier from any and all resultant costs and damage claims (including defensive legal costs) sustained or awarded against the Supplier by any court of competent jurisdiction and arising as a result of the Customer's employees or agents failure to comply with Clause 12.1.

### 13. Quality, Complaints and Product Warranty

- 13.1 The Supplier will promptly and fully respond to all reasonable enquiries and complaints by the Customer relating to the quality, performance and durability of the Products. Where the Hardware is supplied to the Customer under a contract of sale, the Supplier will subject to Clauses 8.6 and 13.6 warrant the performance of the vehicle or plant telematics Hardware for twelve (12) months and the Camera Hardware for twenty four (24) months from the date of invoice on a 'return to Supplier warranty' basis unless otherwise agreed in writing. This Hardware warranty excludes any battery and is subject to all due invoices having been paid by the Customer.
- 13.2 Following technical investigation and repair (where applicable), if the Hardware does not comply with the warranty given by the Supplier under Clause 13.1, the Customer may with the prior agreement and utilising the returns process of the Supplier return the Hardware for either (at the option of the Supplier):
- replacement Hardware; or
  - a full credit of the price paid to the Supplier for such Hardware (excluding original delivery and related charges);
  - a credit note in respect of the Price of the Hardware (to be offset against future purchases from the Supplier).
- 13.3 Hardware returned under Clause 13.2 must be properly packed and returned to the Supplier within 14 Business Days of receipt of a Return Materials Authorisation "RMA" issued by the Supplier to the Customer. Any Hardware returned in contravention of this Clause will not be the subject of any credits or replacements and the Customer will continue to be liable for payment of the Price in respect of such Hardware.
- 13.4 Where an item of Hardware is replaced under warranty the replacement Hardware will benefit from the unexpired portion of the original twelve (12) month warranty period applicable to the original purchase.
- 13.5 Service visits by the Supplier to Customer Hardware that is either outside the warranty period or is a result of an invalidated warranty pursuant to Clause 13.6 or otherwise will be chargeable at the Supplier's prevailing rate.
- 13.6 The Supplier shall not be liable for any of the warranties under this Agreement in respect of Hardware where the Customer or in respect of Distributors the Customer's customer, any of their respective employees or any other unauthorised third party attempts to; dismantle, impede, de-install (for fixed wire installations), tamper with or repair such Hardware or attempts to remove or replace the SIM card of the Hardware. In addition, any failure of the Customer or in respect of Distributors the Customer's customer, to adhere to the provisions of Clause 4.1(g) will invalidate the Hardware warranty.
- 13.7 Where the Supplier is not liable for a breach of the warranties under this Agreement pursuant to Clauses 8.6, 13.6 or otherwise then the Supplier shall be entitled to invoice the Customer the reasonable costs incurred in respect of any repair, service call out and/or replacement Hardware.

### 14. Limitations and Exclusions of Liability

- 14.1 Nothing in the Agreement or any Contract will:
- limit or exclude the liability of a Party for death or personal injury resulting from negligence;
  - limit or exclude the liability of a Party for fraud or fraudulent misrepresentation by that Party;
  - limit any liability of a Party in any way that is not permitted under applicable law; or
  - exclude any liability of a Party that may not be excluded under applicable law.
- 14.2 The limitations and exclusions of liability set out in this Clause 14 and elsewhere in the Agreement:
- are subject to Clause 14.1;
  - govern all liabilities arising under the Agreement or in relation to the subject matter of any Contract, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and
  - will limit and exclude the liability of the Parties under the express indemnities set out in the Agreement or Contract.
- 14.3 The Supplier will not be liable in respect of; any loss of profits, income, revenue, use, production or anticipated savings, loss of business, contracts or commercial opportunities, loss of or damage to goodwill or reputation, any loss or corruption of any data, database or software or in respect of any special, indirect or consequential loss or damage whatsoever.
- 14.4 To the maximum extent allowable under prevailing law, the Supplier will not accept any liability for any damage arising to a vehicle where the provisions of Clause 4.1(g) have not been adhered to by the Customer or the Customer's customer.
- 14.5 The Supplier will not be liable for any losses arising out of a Force Majeure Event.
- 14.6 The Supplier's maximum aggregate liability under the Contract or otherwise will not exceed the total amount paid or (if greater) payable by the Customer to the Supplier under the applicable Contract.
- 14.7 Whilst the Supplier endeavours to ensure that Software is free from technical or other errors, other than the limited warranty given under Clause 13.1 in respect of Firmware, the Supplier provides the Software 'as is' without any other additional warranties and to the maximum extent permitted by law, all representations, warranties, conditions and other terms including without limitation; any condition implied by statute of satisfactory quality, fitness for purpose and the use of reasonable care and skill which but for this Agreement would have effect are excluded.

### 15. Intellectual Property

- 15.1 The Supplier owns and/or retains all Intellectual Property rights in; Hardware design, Firmware, Software, Mobile App, Website, Web Portal, , Data (to the extent it doesn't constitute Personal Data), algorithms and logic behind the refined Data, and API construction and any outcome from Professional Services.
- 15.2 The Supplier has not knowingly infringed any third party Intellectuals Property Rights but does not warrant or give any indemnification or other assurance whatsoever that the Products do not constitute such an infringement. Where a third party claims that the provision of the Products infringe any other party's Intellectual Property or other enforceable proprietary right, or has caused harm to a third party the Customer agrees to promptly:
- provide the Supplier of the detail and origin of the claim, and
  - give the Supplier complete control of the defence or settlement of any claim, and
  - provide the Supplier with all reasonable information and assistance in defending or settling any such claim.
- 15.3 The Customer agrees that the Supplier may use the Customer's name and logo in order to refer to the Customer as a Trakm8 customer in marketing materials, both during the term of this Agreement and for a period of 6 months afterwards. Such usage may include the following: brochures, flyers, newsletters and whitepapers, Trakm8 Group websites, social media posts, presentations, exhibition stands, print or online advertising, proposals and tenders, user guides, e-mails and e-mail banners. The Supplier will abide by all and any Customer brand guidelines or other reasonable instructions as the Customer may provide from time to time.

### 16. Agreement and Contract Term and Termination Provisions

- 16.1 This Agreement will come into force on the date of acceptance of an Order by Trakm8 or such other date as is set out on the Order, and shall continue until the expiry of the Minimum Contract Term and, unless agreed otherwise on the Order, shall automatically renew thereafter for further 12 month periods until terminated by either party on giving the other at least 3 months' written notice to expire on the expiry of the Minimum Contract Term or any anniversary thereof, subject always to the termination provisions herein.
- 16.2 Notwithstanding termination of this Agreement, all and any Initial Terms for rental, rental to purchase, Software and/or API Licences will continue post Agreement term for the time period necessary to complete the Initial Term or Renewal Period, unless the Agreement is terminated for material breach or by virtue of the insolvency of one of the Parties.
- 16.3 Each Contract will come into force in accordance with Clause 3, and will continue in force until:
- in the case of Hardware purchase, the later of completion of: (i) delivery of all Products; and (ii) the receipt by the Supplier of all amounts due to the Supplier under the Contract; and
  - in the case of a Contract for Software and/or API Data feed the expiry of the relevant Initial Term or Renewal Term.
  - in the case of a Contract for Hardware rental or rental to purchase at the expiry of the relevant of the relevant Initial Term or Renewal Term.

- 16.4 A Contract and/or this Agreement may be terminated in the following circumstances:
- (a) either Party may terminate a Contract and/or this Agreement immediately by giving written notice to the other Party if the other Party commits any material breach of any term of the Contract or this Agreement which is not remedied within thirty (30) days of notice of the breach;
  - (b) the Supplier may terminate or suspend any Contract and/or this Agreement immediately by giving written notice to the Customer if the Customer fails to pay to the Supplier any amount due under any Contract by the due date for payment.
- 16.5 Either Party may terminate any Contract and/or this Agreement immediately by giving written notice to the other Party if:
- (a) the other Party: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other Party; or an order is made for the winding up of the other Party, or the other Party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other Party under the Contract) or any other insolvency arrangement as detailed within the Insolvency Act 1986 or the Enterprise Act 2002.
- 16.6 Termination for convenience:
- (a) The Customer may give written notice to terminate a Software and or API Data feed Licence and/or a Hardware rental 30 days prior to the expiry of the Initial Term or as the case may be, each subsequent Renewal Period.
  - (b) The Supplier shall have the right to terminate this Licence by notice with immediate effect if the Customer commits any breach of the Licence which is material and not capable of remedy, or which is capable of remedy but which is not remedied within 7 days of notice from the Supplier to do so.
- Termination of a Licence however caused shall be without prejudice to any rights or liabilities of the Parties accrued as at the date of termination.
- 16.7 Upon termination or expiry of a Licence for any reason the Licence granted hereunder shall immediately cease. In the case of rental Hardware, the Customer will upon Supplier request, make the vehicles/plant available for de-installation of the Hardware unit and will pay the prevailing de-installation fee.
- 16.8 Upon termination of any Licence under this Agreement for Software, Branded Software or the Configuration Manager, the Customer agrees if applicable to promptly:
- (a) permanently erase all copies of the Software, Branded Software or Configuration Manager that are loaded onto Customer computer equipment;
  - (b) confirm in writing to the Supplier that all such copies have been permanently erased;
  - (c) in the case of Distributors, use all endeavours to ensure and enforce all equivalent erasure provisions in and agreed sub-licensing to the Customers' customers.

## 17. Effects of termination

- 17.1 Upon termination of a Contract and/or this Agreement, all the provisions of that Contract and/or this Agreement will cease to have effect, save that the following provisions of these Terms will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 5, 6, 7, 9.1, 14, 15, 16, 17 and 18.
- 17.2 Termination of a Contract and/or this Agreement will not affect either Party's accrued rights (including accrued rights to be paid and accrued rights to a remedy for breach of condition or warranty) as at the date of termination.

## 18. Indemnification

- 18.1 Both Parties agree to indemnify the other and keep it fully indemnified from and against any and all costs, damages, losses, liabilities and expenses (including without limitation any legal fees and expenses) which may be suffered or incurred by a Party arising out of or in connection with any breach by the other Party of any of its obligations under this Agreement or any Contract.
- 18.2 Where the Supplier provides the SIM, the Hardware telematics unit under normal operating conditions will incur an average network data usage of 2Mb – 3Mb per month for Software excluding Trakm8tacho Analytics which will use an additional average network data usage of 3Mb per month. As usage and data transmission of camera systems are determined by the user, camera generated data usage will be dependent on the data allowance selected by the Customer and is subject to a fair usage policy. These data charges are included within the relevant Licence Fee. If, in the reasonable opinion of Trakm8, the Customer's usage is excessive and exceeds its monthly aggregated data allowance of the Customer's combined fleet, the Supplier may ask the Customer to moderate its usage. If the Customer fails to do so, the Supplier reserves the right to invoice for overage costs of £0.30 per MB. Save for costs incurred due to the actions or negligence of the Supplier; the Customer agrees to indemnify the Supplier against all excessive network charges that arise through the misuse, loss or theft of the Hardware telematics Unit's SIM (Subscriber Identity Module) card.
- 18.3 Where the Supplier provides the SIM the Customer agrees to notify the Supplier immediately as soon as it becomes aware of any misuse, loss or theft of the Hardware telematics unit's SIM card.
- 18.4 The Customer agrees that use of camera data should be strictly controlled and further agree that it would not be appropriate to place any recorded footage on the internet without ensuring that doing so does not allow the identification of an individual. Should footage from cameras supplied by us be uploaded onto the internet, including any social media websites, which discloses information about identifiable individuals then the Customer is solely liable for any action, criminal or civil, or the involvement of and action taken by the Information Commissioner or any other regulator. The Customer is solely responsible for seeking and securing the express permission of any individual identified in any footage which the Customer seeks to use for any purpose.
- 18.5 The Customer agrees to indemnify the Supplier in respect of any loss, damages, costs and/or expenses (including reasonable fees) suffered or incurred by the Supplier from any third party claim made against the Supplier as a result of failure to comply with the provisions of Clause 4.1(g).

## 19. Confidential Information

- 19.1 Each Party agrees that for the duration of this Agreement and for a subsequent period of three (3) years they will at all times keep any Confidential Information of the other Party as confidential and shall not permit the same to be copied, used, disclosed or disposed of except in accordance with this Agreement. The provisions of this Clause 19 shall not apply to Confidential Information which is already in the public domain or becomes so at a future date other than by breach of this Agreement.

## 20. Force Majeure

- 20.1 The obligations of each Party under this Agreement shall be suspended during the period and to the extent that the affected Party is prevented or hindered from complying with them by any cause beyond that Party's reasonable control including (without prejudice to the generality of the foregoing expression); strikes, lock outs, labour disputes, 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, fire, flood, storm, difficulty or increased labour or materials costs in connection with the performance of obligations under this Agreement.
- A Party being so hindered or prevented shall not be liable for any failure or delay to perform its obligations provided that; the affected Party shall give notice of suspension and its cause. Any Party whose obligations have been suspended as aforesaid shall resume the performance of those obligations as soon as reasonably possible after the removal of the cause and shall so notify the other Party. In the event that the cause continues for more than three months, either Party may terminate this Agreement by giving the other Party 30 days' notice

## 21. General

- 21.1 No breach of any provision of a Contract or this Agreement will be waived except with the express written consent of the Party not in breach.
- 21.2 In the event of any dispute arising in relation to any of the terms of this Agreement, both Parties agree to attempt to negotiate in good faith a mutually satisfactory resolution prior to resorting to legal proceedings.
- 21.3 If any provision of a Contract or this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Contract or this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the Parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 21.4 Contracts or this Agreement may not be varied except by a written document signed by or on behalf of each of the Parties.
- 21.5 The Supplier may freely assign, subcontract, delegate or otherwise transfer all or any of its rights and obligations under a Contract or this Agreement without the Customer's consent. Save as expressly provided in a Contract, the Customer may not without the prior written consent of the Supplier assign, transfer, charge, license or otherwise dispose of or deal in a Contract or any rights or obligations under a Contract or this Agreement.

- 21.6 Each Contract is made for the benefit of the Parties, and is not intended to benefit any third party or be enforceable by any third party save for any third party software sub-licensing provisions. The right of the Parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to a Contract is not subject to the consent of any third party.
- 21.7 These Terms and the Supplier's sales order and invoice will constitute the entire agreement between the Parties in relation to the subject matter of any Contract, and supersede all previous agreements, arrangements and understandings between the Parties in respect of that subject matter;
- 21.8 Failure or delay by either Party in enforcing or partially enforcing any provision of this Agreement will not be construed as a waiver of any of its rights under this Agreement. Any waiver by one Party of any breach of, or any default under, any provision of the Agreement by the other Party will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Agreement.
- 21.9 All Contracts will be governed by this Agreement which will be construed in accordance with the laws of England and Wales; and the courts of England and Wales will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with a Contract or this Agreement.
- 22. Customer Complaints**
- 22.1 We always endeavour to provide our Customers with exceptional products and service. However if things go wrong we will make all reasonable efforts to quickly resolve the issue. In the event that you are still dissatisfied with any aspect of your experience with Trakm8 or our products and services please contact in the first instance our Customer Support department via the dedicated email: [feedback@trakm8.com](mailto:feedback@trakm8.com). or Tel: 033033 34120