

Trakm8 Limited Optimisation Terms and Conditions
V2 July 2020

Please read these Terms carefully, as they set out our and your legal rights and obligations in relation to the Services, Software and related goods and services that we supply or licence. The Customer's attention is specifically brought to the limitations and exclusions of liability contained within clause 12.

There may need to be revisions to these Terms from time to time, without notice, and the latest version in force from time to time shall apply to each Contract. You should therefore refer back to our website from time to time to view the latest Terms and Conditions.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms the following definitions have the following meanings:

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.4.4.

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

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

Contract: a contract between the parties for the supply of the Services and/or Software entered into in accordance with, and subject to, these Terms.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: have the meanings given in Data Protection Legislation.

Customer: the entity taking a licence of the Services and/or Software (as applicable) as set out in the Sales Order or as otherwise agreed in writing by the parties.

Customer Data: the data inputted by the Customer, Authorised Users and/or the Supplier on the Customer's behalf for the purpose of using the Services and/or Software or facilitating the Customer's use of the Services and/or Software.

Data Protection Legislation: all applicable data protection and privacy laws, regulations and secondary legislation in force from time to time in the United Kingdom and any successor legislation to the foregoing, including the Data Protection Act 2018 and the General Data Protection Regulation ((EU) 2016/679) to the extent the same is in force and has effect in the United Kingdom from time to time.

Documentation: the documents made available to the Customer by the Supplier online or at such web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and/or Software and the user instructions for the same (if any).

Effective Date: the date on which a Contract comes into force in accordance with these Terms being the earlier of (i) the date that the relevant Services and/or Software are made available to the Customer, (ii) the date set out in the Sales Order relating to such Services and/or Software and (iii) such other date as is agreed by the parties in writing.

Essential Communications: communications issued by the Supplier to the Organisational Administrator and/or Authorised Users by email comprising information that is essential in order to use the Services, Software and/or Documentation, including (without limitation) reset emails, service notifications and configuration of systems.

Initial Term: the initial term of the Contract selected by the Customer and set out in the Sales Order relating to such Services and/or Software which shall commence on the relevant Effective Date (which shall be a **minimum contract term**).

Intellectual Property Rights: any patent, registered or unregistered design right, trade mark or other proprietary rights inherent in the Services and/or Software, any copyright 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.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Organisational Administrator: the individual employed by and nominated by the Customer as its system administrator.

Renewal Period: means each successive extension period of the Contract as described in clause 13.1, each such period to be the same length as the Initial Term, unless agreed otherwise by the parties in writing (and each such period shall be an additional **minimum contract term**).

Resources: the persons, means of transportation, vehicles or other moveable objects which the Customer is seeking to route/optimize using the Services and/or Software from time to time;

Resource Subscriptions: the resource subscriptions purchased by the Customer pursuant to these Terms which entitle Authorised Users to access and use the Services, Software and/or the Documentation (as appropriate) in accordance with these Terms for the purpose of optimising and/or routing Resources.

Sales Order: the Supplier's standard order confirmation/sales order paperwork (which may be in electronic form) or its equivalent in place from time to time.

Services: the subscription services provided by the Supplier to the Customer under these Terms via its website or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.

Software: the online software applications provided by the Supplier as part of the Services.

Specification: the documented performance, form and functionality of the Services and/or Software as published by the Supplier from time to time.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the Resource Subscriptions (including additional Resource Subscriptions) as set out in the Supplier's standard price list from time to time, on the Supplier's website from time to time or as otherwise set out in the Sales Order in each case as the same may be updated by the Supplier from time to time in accordance with these Terms.

Subscription Term: has the meaning given in clause 13.1 (being the Initial Term together with any subsequent Renewal Periods).

Supplier: Trakm8 Limited, a limited company incorporated in England and Wales (company registration number 04415597).

Support Services Policy: the Supplier's policy for providing support in relation to the Services as may be notified to the Customer from time to time.

Terms: these terms and conditions as amended/updated by the Supplier in its sole discretion from time to time.

Use Restrictions: the use parameters applicable to the Services and/or Software as determined by the Supplier in its sole discretion

from time to time and notified by the Supplier to the Customer from time to time (which may be via its website).

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

- 1.2 A reference to a statute or statutory provision is a reference to it as it is in force from time to time and shall include all subordinate legislation made under that statute or statutory provision from time to time.
- 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.
- 1.5 A reference to writing or written includes e-mail but not faxes.
- 1.6 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.
- 1.7 In the absence of a separate and specifically negotiated and agreed written contract duly executed by the parties, these Terms together with the Sales Order contain the only conditions upon which the Supplier will deal with the Customer in relation to the Services and/or Software, and govern all Contracts in relation to its subject matter to the exclusion of all other terms and conditions.

2. RESOURCE SUBSCRIPTIONS

- 2.1 Each order for Services and/or Software placed by the Customer to the Supplier will be deemed to be an offer by the Customer to take the applicable Resource Subscriptions on a licenced basis from the Supplier subject to these Terms and in order for a Contract to come into force, the Supplier may send the Customer an order confirmation in the form of a Sales Order or acceptance will be confirmed by the Supplier making the Services and/or Software available to the Customer.
- 2.2 Unless otherwise specifically agreed by the Supplier in writing, each accepted order from a Customer shall constitute a separate Contract with the Supplier for the relevant Resource Subscriptions.
- 2.3 Subject to the Customer purchasing the Resource Subscriptions in accordance with these Terms, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Authorised Users to use the Services, Software and/or the Documentation (as applicable) during the relevant Subscription Term solely for the Customer's internal business operations in the United Kingdom and such other jurisdictions as are expressly permitted by the Supplier in writing from time to time.
- 2.4 In relation to the Resource Subscriptions, the Customer undertakes that:
 - 2.4.1 it shall appoint an Organisational Administrator in order to administer, set-up and manage the Authorised Users' access to the Services, Software and/or Documentation (as applicable);
 - 2.4.2 the maximum number of Resources that it permits or allows to be routed and/or optimised through its use of the Services, Software and/or the Documentation (as applicable) shall not exceed the number of Resource Subscriptions it has purchased from time to time;
 - 2.4.3 it will not allow or suffer any Resource Subscription to be used by more than one individual Resource unless it has been reassigned in its entirety to another individual Resource, in which case the prior Resource shall no longer be routed and/or optimised through use of the Services and/or Documentation;
 - 2.4.4 it shall maintain a written, up to date list of current Authorised Users and Resources which it permits or allows to be routed and/or optimised through use of the Services and the Documentation and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
 - 2.4.5 each Authorised User shall keep their user name and password confidential;
 - 2.4.6 it shall procure that each of the Organisational Administrator and Authorised Users accept Essential Communications that are issued to them by the Supplier from time to time;
 - 2.4.7 it shall permit the Supplier or the Supplier's designated auditor to audit the Services in order to establish the details and number of each Resource using the Services and/or Software and to audit compliance with these Terms. Each such audit may be conducted no more than once per quarter, at the Supplier's expense (subject to clause 2.4.9), and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
 - 2.4.8 if any of the audits referred to in clause 2.4.7 reveal that any username and/or password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights and remedies, the Customer shall promptly disable such usernames and/or passwords and the Supplier shall not issue any new usernames and/or passwords to any such individual; and
 - 2.4.9 if any of the audits referred to in clause 2.4.7 reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment within 10 Business Days of the date of the relevant audit and the Customer shall also be responsible for the costs of the audit.
- 2.5 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services and/or Software, nor use the Services and/or Software in any way that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive or which facilitates illegal or discriminatory activity or which causes damage or injury to any person or property, and the Supplier reserves the right, without liability or prejudice to its other rights and remedies, to disable the Customer's access to the Services and/or Software if the Customer breaches the provisions of this clause.
- 2.6 The Customer shall not:
 - 2.6.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Terms:
 - (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services, Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services and/or Software; or
 - 2.6.2 access all or any part of the Services, Software and/or Documentation (as applicable) in order to build a product or service which competes with the Services, Software and/or the Documentation; or
 - 2.6.3 use the Services, Software and/or Documentation to provide services to third parties (whether by means of a sub-license or otherwise); or
 - 2.6.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Software and/or Documentation available to any third party except the Authorised Users, including in relation to any third parties and/or on a resale or similar/equivalent basis; or
 - 2.6.5 attempt to obtain, or assist third parties in obtaining, access to the Services, Software and/or Documentation, other than as provided

under this clause 2.

- 2.7 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, Software and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.8 The rights provided under this clause 2 are granted to the Customer only and shall not be considered to be granted to any subsidiary or holding company of the Customer.

3. ADDITIONAL RESOURCE SUBSCRIPTIONS

- 3.1 Subject to the remainder of this clause 3, the Customer may, from time to time during any Subscription Term, purchase additional Resource Subscriptions in addition to those set out in the relevant Contract at the applicable Subscription Fee rate and the Supplier shall grant access to the Services and the Documentation to Authorised Users in relation to such Resources in accordance with the provisions of these Terms.
- 3.2 If the Customer wishes to purchase additional Resource Subscriptions in relation to a particular Contract, the Customer shall notify the Supplier in writing. The Supplier shall respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where the Supplier approves the request, the Supplier shall activate the additional Resource Subscriptions as soon as reasonably practicable and in any event within 5 Business Days of its approval of the Customer's request.
- 3.3 If the Supplier approves the Customer's request to purchase additional Resource Subscriptions, the Customer shall pay to the Supplier the relevant Subscription Fees for such additional Resource Subscriptions for the remainder of the then current Initial Term or Renewal Period (as applicable) pro-rated from the date of activation by the Supplier until the next payment is due under the relevant Contract. All other Subscription Fees for such additional Resource Subscriptions shall be added to the subsequent payments payable by the Customer for the remainder of the Subscription Term.

4. SERVICES

- 4.1 The Supplier shall, during the Subscription Term, provide the Services and/or Software and make available the Documentation to the Customer on and subject to these Terms.
- 4.2 The Supplier shall use commercially reasonable efforts to ensure that the uptime percentage ("Uptime") of the Services is at least 99.0% during each calendar month of the Subscription Term. Uptime is measured as the time the Services are available for use as intended, versus the time it is not as shown at <http://status.trakm8.net>.
- 4.3 Notifications that affect the Services availability, which includes service affecting routine and emergency maintenance, are posted at <http://status.trakm8.net>.
- 4.4 Where applicable, the Supplier will provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time.
- 4.5 Any and all Services and/or Software provided in accordance with these Terms are subject to the Use Restrictions and the Customer shall comply with any and all Use Restrictions in force from time to time.
- 4.6 The Customer agrees that the Supplier may monitor use of the Services and/or Software from time to time to verify compliance with these terms and the Supplier may also put in place restrictions to limit the number of Authorised Users and/or requests that the Customer may make from time to time using the Services and/or Software.
- 4.7 The Supplier is not obliged to keep a copy of, and may delete/dispose of, any and all data which has been submitted into the Services and/or Software from its systems and servers at any time (including on termination) without liability. The Customer is therefore advised to keep a copy of all such data and not rely on the same being accessible via the Services and/or Software.

5. CUSTOMER DATA

- 5.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 5.2 The Supplier shall follow its archiving procedures for Customer Data as set out in its back-up policy as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its back-up policy.
- 5.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Data Protection Legislation.
- 5.4 The parties acknowledge that:
 - 5.4.1 if the Supplier processes any personal data on the Customer's behalf when performing its obligations under the Contract, the Customer is the controller and the Supplier is the processor for the purposes of Data Protection Legislation;
 - 5.4.2 the scope, nature and purpose of processing by the Supplier is: the provision of the Services and/or Software (as applicable) under the applicable Contract;
 - 5.4.3 the duration of the processing is: for the duration of the applicable Contract;
 - 5.4.4 the types of personal data and categories of data subject is: personal data applicable to routing and optimisation services to be provided under the applicable Contract (for example (and the following is not exhaustive) personal data relating to the Customer's customer (such as name, contact details, order details, signature, delivery status), delivery drivers (such as name, unique ID, contact details, location and journey information) and Customer representatives (e.g. employees) (such as name and contact details);
 - 5.4.5 the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to use the Services and for performance of the Supplier's obligations under the Contract.
- 5.5 Without prejudice to the generality of clause 5.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract so that the Supplier may lawfully use, process and transfer the personal data in accordance with the Contract.
- 5.6 Without prejudice to the generality of clause 5.3, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the applicable Contract:
 - 5.6.1 process that personal data only on the documented written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier and/or Data Protection Legislation) to process personal data (**Applicable Laws**). Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
 - 5.6.2 not transfer any personal data outside of the European Economic Area and/or the United Kingdom unless the following conditions are

fulfilled:

- (a) there are appropriate safeguards in relation to the transfer;
 - (b) the data subject has enforceable rights and effective legal remedies in that jurisdiction;
 - (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- 5.6.3 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 5.6.4 notify the Customer without undue delay on becoming aware of a personal data breach;
- 5.6.5 subject to these Terms, at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the applicable Contract unless required by Applicable Law to store the personal data; and
- 5.6.6 maintain sufficient records and information to demonstrate its compliance with this clause 5 and inform the Customer if, in the opinion of the Supplier, an instruction infringes Data Protection Legislation.
- 5.7 Each party shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures.
- 5.8 The Customer consents to the Supplier appointing third-party processors of personal data under each applicable Contract. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business or incorporating terms which are substantially similar to those set out in this clause 5. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 5.

6. THIRD PARTY SOFTWARE AND SERVICES

The Customer acknowledges that the Services and/or the Software may include or incorporate third party software or services. If and to the extent the Supplier is required by such third parties to incorporate terms applicable to the use of such third party software or services, the Customer shall comply with the same as notified by the Supplier from time to time.

7. SUPPLIER'S OBLIGATIONS

- 7.1 The Supplier warrants that:
- 7.1.1 the Supplier has the right to grant the Resource Subscriptions;
 - 7.1.2 the Services and/or the Software (as applicable) will be free from defects which materially affect its performance to the requirements of the Specification.
- 7.2 The warranty at clause 7.1.2 shall not apply to the extent any non-conformance is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform to the foregoing warranty, the Supplier will use reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranty set out in clause 7.1. Notwithstanding the foregoing:
- 7.2.1 the Supplier does not warrant that the Customer's use of the Services and/or the Software (as applicable) will be uninterrupted or error-free nor that the Services, Software, Documentation and/or the information obtained by the Customer through the use of the Services and/or Software will meet the Customer's requirements; and
 - 7.2.2 the Customer acknowledges and agrees that the availability of the Services and/or the Software (or relevant parts thereof) is dependent on systems, technologies and other factors which are beyond the Supplier's control, including Customer hardware, communication networks, the internet and interconnected systems. Due to the nature of such technologies, systems and other factors, problems, including outages, link failures, power difficulties, network overloads and other interventions and interferences may have an adverse effect on the availability of the Services and/or Software. Accordingly, while the Supplier endeavours to ensure that the Services and Software are normally available and to mitigate where possible the effects of the foregoing, the Supplier is not responsible for any delays, delivery failures, or any other loss or damage resulting from the same and the Customer acknowledges that the Services, Software and Documentation may be subject to limitations, delays and other problems inherent in the use of such facilities. Further, access to the Services and/or 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 and the Supplier shall have the right at any time to temporarily suspend access to the Services and/or the Software (including any website) for the purpose of maintaining or repairing the same and to make changes to the functionality, presentation, features, modes of access and content. The Supplier will use reasonable endeavours to keep the duration as short as possible.
- 7.3 Where the Customer purchases as a consumer, these Terms do not affect any statutory rights to the extent they remain available to the Customer.
- 7.4 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.
- 7.5 In consideration of the Subscription Fees, the Supplier shall supply the Customer and its Authorised Users with such user names/passwords as are necessary to enable the Customer to access the Services and/or Software. The Customer agrees that the responsibility for the security of any user name or password issued pursuant to these Terms rests with the Customer.
- 7.6 The Customer shall comply with any reasonable instructions or conditions (including the Use Restrictions) relating to use of the Services and/or Software as may be made available by the Supplier from time to time (including via its website) or as otherwise communicated to the Customer from time to time by the Supplier.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
- 8.1.1 comply with all applicable laws and regulations with respect to its activities under the Contract.
 - 8.1.2 ensure that the Authorised Users use the Services, Software and the Documentation in accordance with these Terms and shall be responsible for any Authorised User's breach of these Terms;
 - 8.1.3 be responsible at its own cost and expense for the installation and use of the Services and/or Software and for the management of any

- and all third parties who are required to support the Customer with the same at its own cost and expense;
- 8.1.4 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- 8.1.5 be, to the extent permitted by law and except as otherwise expressly provided in these Terms, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 8.2 The Customer undertakes and agrees with the Supplier that at all times during the Subscription Term it shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs arising out of or in connection with the Customer's use of the Services, Software and/or Documentation and/or any breach of the Customer's obligations under the Contract.

9. CHARGES AND PAYMENT

- 9.1 The Customer shall pay the Subscription Fees periodically in advance to the Supplier for the Resource Subscriptions on the due date in accordance with this clause 9 and these Terms.
- 9.2 Unless otherwise set out in a Sales Order, Trakm8 may invoice the Customer for the Subscription Fees on the periodic basis set out in the Contract or in default of such basis being set out in the Contract for the Initial Term or Renewal Period (as applicable). All such sums are due and payable on presentation of the relevant invoice.
- 9.3 The Customer shall pay each invoice submitted to it by the Supplier by direct debit to a bank account nominated in writing by the Supplier from time to time.
- 9.4 If the Supplier has not received payment in accordance with this clause 9, and without prejudice to any other rights and remedies of the Supplier:
- 9.4.1 the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and/or Software on giving to the Customer 7 days prior notice, and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid following expiry of such notice; and
- 9.4.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment, which interest will accrue daily, be compounded quarterly and be payable on demand.
- 9.5 All amounts and fees stated or referred to in these Terms:
- 9.5.1 shall be payable in pounds sterling;
- 9.5.2 are, subject to clause 10.4.4, non-cancellable and non-refundable;
- 9.5.3 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 9.6 Without prejudice to the Supplier's other rights and remedies, if at any time whilst using the Services and/or Software, the Customer exceeds the Resource Subscriptions and/or otherwise breaches any Use Restrictions, the Supplier may charge the Customer for such Resource Subscriptions and/or any costs otherwise incurred by the Supplier as a result of the breach of such Use Restrictions.
- 9.7 The Supplier shall be entitled to increase the Subscription Fees prior to the start of a Renewal Period upon 60 days' prior written notice to the Customer and such increases shall take effect on the next applicable Renewal Date.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors owns and/or retains all Intellectual Property Rights in the Services, Software and/or the Documentation, any related software and its/their construction and/or any and all algorithms and logic behind the same and the outcome from any professional services and related deliverables. Except as expressly stated herein, neither the Contract nor these Terms grant the Customer any rights to, under or in, any Intellectual Property Rights in respect of the Services, Software and/or the Documentation (as applicable).
- 10.2 All information relating to the Resources and all rights associated with such information are the exclusive property of the Customer.
- 10.3 The Supplier has not knowingly infringed any third party Intellectual Property Rights but does not warrant or give any indemnification or other assurance whatsoever that the Services, Software and/or the Documentation do not constitute such an infringement. Where a third party claims that the provision of the Services, Software and/or the Documentation infringe any other party's Intellectual Property Rights or other enforceable proprietary right, or has caused harm to a third party the Customer agrees to promptly:
- 10.3.1 provide the Supplier of the detail and origin of the claim;
- 10.3.2 not make any admission of liability, agreement or compromise in relation to the claim without the prior written consent of the Supplier;
- 10.3.3 give the Supplier, if requested, complete control of the defence or settlement of any claim; and
- 10.3.4 provide the Supplier and its professional advisors with all reasonable information and assistance in assessing and defending or settling any such claim.
- 10.4 If any claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:
- 10.4.1 procure for the Customer the right to continue to use the Services and/or the Documentation (or any part thereof) in accordance with these Terms;
- 10.4.2 modify the Services, Software and/or the Documentation so that it ceases to be infringing;
- 10.4.3 replace the Services and/or Software with non-infringing services or software; or
- 10.4.4 terminate the affected Contract(s) immediately by notice in writing to the Customer and refund any of the pre-paid Subscription Fees paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Services and/or Software to the date of termination).
- 10.5 This clause 10 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of Intellectual Property Rights claims and, for the avoidance of doubt, is subject to clause 12.

11. CONFIDENTIALITY

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under each Contract. A party's Confidential Information shall not be deemed to include information that:
- 11.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
- 11.1.2 was in the other party's lawful possession before the disclosure;
- 11.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- 11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 11.2 Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than in the course of providing

the Services pursuant to a Contract.

- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in breach of these Terms.
- 11.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.5 The Customer acknowledges that details of the Services and/or the Software constitute the Supplier's Confidential Information.
- 11.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.7 No party shall make, or permit any person to make, any public announcement concerning their relationship and/or any Contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.8 Notwithstanding the foregoing, the Customer agrees that the Supplier may use the Customer's name and logo in order to refer to the Customer as a Supplier customer in marketing materials, both during the term of a Contract 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.
- 11.9 The above provisions of this clause 11 shall survive termination of each Contract, however arising.

12. LIMITATION OF LIABILITY

- 12.1 Nothing in these Terms excludes or limits the liability of either party:
 - 12.1.1 for death or personal injury caused by its negligence; or
 - 12.1.2 for fraud or fraudulent misrepresentation; or
 - 12.1.3 for any other liability which may not be limited or excluded under any applicable law.
- 12.2 Except as expressly and specifically provided in these Terms:
 - 12.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services, Software and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services and/or Software, or any actions taken by the Supplier at the Customer's direction. Without prejudice to the foregoing and unless otherwise agreed in writing by the Supplier, the Services, Software and the Documentation shall not be used by the Customer
 - (a) for public transport or emergency / blue-light requirements in any circumstances; or
 - (b) for HGVs (unless used in conjunction with a suitable HGV Satellite Navigation system for planning individual routes);
 - 12.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms and each Contract; and
 - 12.2.3 the Services, Software and the Documentation are provided to the Customer on an "as is" basis.
- 12.3 The limitations and exclusions of liability set out in this clause 12 and elsewhere in these Terms:
 - 12.3.1 are subject to clause 12.1;
 - 12.3.2 govern all liabilities arising under these Terms and/or any Contract 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
 - 12.3.3 limit and exclude the liability of the parties under the express indemnities set out in these Terms.
- 12.4 Subject to clauses 12.1 to 12.3 (inclusive):
 - 12.4.1 the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any:
 - (a) special damage even if the Supplier was aware of the circumstances in which such special damage could arise;
 - (b) loss of profits;
 - (c) loss of income or revenue;
 - (d) loss of anticipated savings or wasted expenditure;
 - (e) loss of business opportunity;
 - (f) loss of agreements or contracts;
 - (g) loss of or damage to goodwill or reputation;
 - (h) loss of or corruption of software, data or information; or
 - (i) indirect or consequential loss.
 - 12.4.2 the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of each Contract shall be limited to the total Subscription Fees paid during the 12 months immediately preceding the date on which the claim arose (after deducting any sums paid or payable in relation to any other claims relating to that period).

13. TERM AND TERMINATION

- 13.1 Each Contract shall, unless otherwise terminated as provided in this clause 13, commence on the relevant Effective Date and shall continue for the Initial Term and, thereafter, each Contract shall be automatically renewed for successive periods of the same duration as the Initial Term (each a "Renewal Period"), unless:
 - 13.1.1 either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Term or any Renewal Period, in which case such Contract shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or
 - 13.1.2 otherwise terminated in accordance with the provisions of these Terms;and the Initial Term together with any subsequent Renewal Periods shall constitute the "Subscription Term".
- 13.2 Without affecting any other right or remedy available to it, either party may terminate such Contract and any other Contracts in force with immediate effect by giving written notice to the other party if:
 - 13.2.1 the other party fails to pay any amount due under that Contract on the due date for payment and remains in default not less than seven (7) days after being notified in writing to make such payment;
 - 13.2.2 the other party commits a material breach of any other term of that Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;

- 13.2.3 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- 13.2.4 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 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;
- 13.2.5 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 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;
- 13.2.6 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;
- 13.2.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 13.2.8 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;
- 13.2.9 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 the other party's assets and such attachment or process is not discharged within 14 days;
- 13.2.10 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 clause 13.2.3 to 13.2.9 (inclusive); or
- 13.2.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 13.3 On termination of a Contract for any reason:
 - 13.3.1 all licences granted under that Contract shall immediately terminate and the Customer shall immediately cease all use of the Services, Software and/or the Documentation (as applicable) and ensure they are permanently deleted or removed from all computer equipment and documentation in the Customer's possession or control;
 - 13.3.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
 - 13.3.3 the Supplier may (automatically or otherwise) disable the Customer's and each Authorised User's login details/access and destroy, delete or otherwise dispose of any of the Customer Data in its possession (including from its server); and
 - 13.3.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of Contract which existed at or before the date of termination shall not be affected or prejudiced.
- 13.4 All remaining payments payable to the Supplier under a Contract and/or an Initial Term or Renewal Period shall become due and payable immediately upon its early termination or default by the Customer.

14. FORCE MAJEURE

Neither party shall be in breach of any Contract nor liable for delay in performing, or failure to perform, any of its obligations under any Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control including strikes, lock outs, labour disputes, act of God, war, riot, civil commotion, malicious damage, fire, floods, epidemics/pandemics, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, power failures, fire, flood, storm, difficulty or increased labour or materials costs in connection with the performance of obligations under the relevant Contract. The affected party shall give notice of suspension and its cause as soon as practicable and in such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. 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. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the relevant Contract(s) so affected by giving 30 days written notice to the affected party.

15. ANTI-BRIBERY

- 15.1 Each party shall:
 - 15.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");
 - 15.1.2 have and shall maintain in place through the Subscription Term its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements;
 - 15.1.3 immediately notify the other if a foreign public official becomes an officer or employee of that party or acquires a direct or indirect interest in that party (and each party warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of the Contract); and
 - 15.1.4 ensure that all persons associated with that party or other persons who are performing services in connection with the Contract comply with this clause 15.
- 15.2 Any breach of this clause 15 shall be deemed a material breach of each Contract that is not remediable and entitle the other party to immediately terminate each Contract by notice under clause 13.

16. NOTICES

- 16.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 16.2 Any notice shall be deemed to have been received: (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 16.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

17. GENERAL

- 17.1 No breach of any provision of a Contract or these Terms will be waived except with the express written consent of the party not in breach and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under a Contract or these Terms or by law shall not constitute a waiver of that or any other right or remedy, nor shall

- it prevent or restrict any further exercise of that or any other right or remedy.
- 17.2 In the event of any dispute arising in relation to any of the terms of a Contract or these Terms, both parties agree to attempt to negotiate in good faith a mutually satisfactory resolution prior to resorting to legal proceedings.
- 17.3 If any provision or part-provision of a Contract or these Terms 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 clause 17.3 shall not affect the validity and enforceability of the rest of the Contract and/or these Terms.
- 17.4 Neither a Contract nor these Terms may be varied except by a written document signed by or on behalf of each of the parties.
- 17.5 The Supplier may at any time freely assign, subcontract, charge, license, delegate or otherwise transfer or dispose of or deal in all or any of its rights and obligations under the Contract and/or these Terms. Save as expressly provided in a Contract or these Terms, the Customer may not assign, subcontract, charge, license, delegate or otherwise transfer or dispose of or deal in a Contract or these Terms or any rights or obligations under a Contract or these Terms without the prior written consent of the Supplier.
- 17.6 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. 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.
- 17.7 Each Contract (including these Terms) and the 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.
- 17.8 Each party acknowledges that in entering into a Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.
- 17.9 All Contracts will be governed by these Terms which will be construed in accordance with English law and the English courts will have exclusive jurisdiction to adjudicate or determine any dispute arising under or in connection with a Contract or these Terms.
- 18. Consumer Customers**
- 18.1 Consumer Customers may come under the provisions of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. If the Customer has purchased the Services and/or Software as a consumer it may have a statutory right to cancel the Contract without incurring any liability for a period of up to 14 days from the day following the date the Customer receives the Services (the "Cooling Off Period"). To cancel the Contract under these provisions the Customer must have purchased over the telephone or by the Supplier's website or by email. Cancellation should be notified using the contact details on the website.
- 18.2 If the Customer wishes to exercise their rights under clause 18.1, it must cease using the Services. The Supplier will refund the Customer any monies paid by the Customer to the Supplier within 14 days of telling the Supplier it had changed its mind, but the Supplier may deduct from any refund an amount for the supply of the Services for the period for which it was supplied, ending with the time when the Customer told the Supplier it had changed its mind. The amount will be in proportion to what has been supplied, in comparison with the full coverage of the Contract.