

# Trakm8 Rental Terms and Conditions

Trakm8 Limited, is a limited company incorporated in England and Wales (registration number 04415597) having its registered office at 4 Roman Park, Roman Way, Coleshill, Birmingham, West Midlands, B46 1HG ("Trakm8", "us", "we"). Our office telephone number is 0330 311 5157.

Please read these Terms and Conditions carefully before you submit your order to us, as they set out our and your legal rights in relation to the rental of the Trakm8 Product (as defined below).

Your attention is specifically brought to the **limitations and exclusions of liability contained within clause 11** and **the requirements of clauses 4.1(d), 4.1(g), 7.5, 12 and 16**.

Trakm8 reserves the right to make changes to these Terms and Conditions in the future without giving notice. Any such changes will take effect immediately but will not affect Terms and Conditions applicable to Contracts already in force – any changes to the Terms and Conditions applicable to Contracts already in force must comply with clause 14.4 below. Therefore, you should read the Terms and Conditions each time you place an order with us.

## 1. Definitions and Interpretation

**Activation Fee** means the payment due to Trakm8 in relation to activation of the Hardware;

**Agreement** means these Trakm8 Rental terms and conditions which form part of the Contract;

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

**Contract** means each order for the rental and licence of the Trakm8 Product;

**Customer** means your business or you as an individual as applicable (and "you" and "your" shall be construed accordingly);

**Customer Hardware** means the hardware on which the Mobile App is installed;

**Customer Personal Data** means personal data contained in the Data or otherwise collected by the Trakm8 Product, and which is processed by Trakm8 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 and Battery Status Data collected by the Trakm8

Product or otherwise provided by the Customer to the Supplier in connection with the supply or use of the Trakm8 Product;

**Data Protection Laws** means (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data and (b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data;

**Data Subject Request** means any request by a data subject seeking to exercise their rights under the Data Protection Laws;

**Data Reports** are on line reports containing the Data accessed through the Web Portal or Mobile App;

**Deactivation Fee** means as defined in clause 4.1(d);

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

**Driver Profile Data** means the scoring output from the Trakm8 driver profiling algorithm;

**EU GDPR** means the General Data Protection Regulation ((EU) 2016/679);

**Firmware** means the software installed on the Hardware;

**FNOL** means first notification of loss which is an optional alert facility where a data packet and video file (where available) is captured of a suspected crash event;

**Hardware** means the Trakm8 Telematics Units and/or Trakm8 Cameras as set out in your Contract;

**Hardware Fee** means as defined in clause 4.1(d);

**Including** means including but not limited to (and "include" and "includes" shall be read accordingly);

**Initial Minimum Term** is the first period of time for which you rent the Trakm8 Product, which is the minimum period selected by you and set out in the order you place with Trakm8, such period commencing upon the date of our receipt of your order as set out in clause 3.2;

**Installation** means fitting the Hardware into your vehicle either by self-installation if your vehicle is compatible or by Trakm8 if it is necessary to have a hard-wired installation;

**Intellectual Property** means any patent, registered or unregistered design right, trade mark or other proprietary rights inherent in the Trakm8 Product or any part of it, 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 applications for and 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 combined price you have agreed to pay to use Trakm8 Software and rent the Hardware during the Initial Minimum Term and where applicable thereafter. For the avoidance of doubt the Licence Fee does not include any Installation fees, Deactivation Fees or Hardware Fees;

**Mobile App** means a mobile device application which enable access to Trakm8 Software and/or Data;

**On-board 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;

**OBD Port** means a specific vehicle's On Board Diagnostics port;

**Personal Data** means any data or information which directly or indirectly relates to a living individual and, to the extent that the Data Protection Laws apply to such data or information, any data or information which relates to an organisation including a corporate entity;

**Renewal Term** means each successive period of extension of the Contract, each such Renewal Term to be the same length as the Initial Minimum Term, unless agreed otherwise by the parties in accordance with this Agreement;

**Rental Period** means the Initial Minimum Term plus each Renewal Term;

**Self-Install** means installation of the Hardware by the Customer;

**SIM** means the Subscriber Identity Module card within the Hardware providing network airtime for the transmission of Data;

**Trakm8 Camera** means an optical instrument for recording or capturing and storing images;

**Trakm8 Software** means Trakm8's proprietary software that collects and processes Data from your vehicle;

**Trakm8 Product** means the Hardware which is rented by you together with Trakm8 Software;

**Trakm8 Telematics Unit** means a vehicle telematics unit which includes a SIM card necessary to provide network airtime;

**UK GDPR** has the meaning given to it in the Data Protection Act 2018;

**Web Portal** an internet gateway to access the content, functionality and report suite available from Trakm8 Software and/or the Data.

## **2. These Terms**

2.1 By ordering, paying for and using the Trakm8 Product you agree to be bound by this Agreement to the exclusion of all other terms and conditions.

## **3. Contract**

3.1 Your Contract will set out the Initial Minimum Term and the applicable Licence Fee. Your Contract is subject to this Agreement and for any Contract to come into force you must submit to us your billing details, card details, your order for the rental and licence of the Trakm8 Product in the form required by us.

3.2 Your Contract will commence upon the date of our receipt of your order that you submit in accordance with and pursuant to clause 3.1 above. Unless terminated earlier in accordance with clauses 7.5, 10 or this clause, your Contract shall continue until the end of the Initial Minimum Term and shall automatically extend for the Renewal Term at the end of the Initial Minimum Term and at the end of each Renewal Term. Either you or Trakm8 may give written notice to the other not later than 30 days before the end of the Initial Minimum Term or the relevant Extended Term, to terminate the Contract at the end of the Initial Minimum Term or the relevant Extended Term, as the case may be.

3.3 Any subsequent order(s) for the Trakm8 Product will be subject to the provisions of this Agreement and selection of an Initial Minimum Term. We will default to your previous selection for an Initial Minimum Term unless you instruct us to the contrary.

3.4 You may request a different Trakm8 package at the end of the relevant Initial Minimum Term or any Renewal Term provided you notify us at least 30 days prior to the end of expiry of the Initial Minimum Term or the Renewal Term, as appropriate, and subject to you paying the relevant Licence Fee for such package for the next Renewal Term (which may be different to those which applied during your Initial Minimum Term or any previous Renewal Term).

## **4. Delivery & Installation of the Hardware**

4.1 Unless otherwise agreed and without prejudice to clause 8;  
(a) we will deliver the Hardware to your requested address;

- (b) we will be responsible for arranging postage or carriage for the Hardware;
- (c) you will be responsible for Installation and removal of the Hardware (subject to further provisions below concerning hard wired installations) in accordance with the accompanying instructions. If your vehicle type requires a hardwired Installation, we can arrange this with you at an additional cost which will be advised to and agreed with you at the point of order (which is currently either £75 plus VAT or £90 plus VAT, depending upon the type of devices being installed);
- (d) you will be responsible for looking after the Hardware once it is delivered to you and you will be charged a hardware fee ("**Hardware Fee**") which is currently £35 plus VAT for each item of Hardware if it is lost or damaged during the Rental Period or lost, damaged or not returned to us at the end of the Rental Period. Where any item of fixed wire Installation Hardware is not returned at the end of the Contract, you shall pay a deactivation fee ("**Deactivation Fee**") (instead of the Hardware Fee) which is currently £75 plus VAT;
- (e) if you return Hardware to us on termination or expiry of a Rental Period, you must retain proof of postage which we may require to be provided to us in the event that we do not receive the Hardware, failing which you will be liable for the Hardware Fee or Deactivation Fee (as appropriate);
- (f) where you have agreed a hard wired Installation of the Hardware the Installation or removal may be performed by a third party engaged by Trakm8. Without prejudice to your statutory rights as a consumer, where you cancel an arranged hard wired Installation or removal with less than twenty four (24) hours' notice, or otherwise fail to present the vehicle at the agreed date, time or place we may charge you a cancellation charge (which is currently £75 plus VAT) per cancelled or failed visit (as appropriate).
- (g) where you have ordered Self-Install Hardware, the Hardware must be used only with vehicles that are compatible with Trakm8 Software. Compatibility must be checked using our compatibility checker (<https://obdchecker.trakm8.net/?location=0&compatibility=1>). If the vehicle to which the Hardware is fitted is not confirmed to be compatible by our compatibility checker then Trakm8 is not responsible for any damage that may be caused to the vehicle or the Hardware. Where damage to the Hardware is caused by incompatibility with the vehicle, the Customer will be charged for the Hardware in accordance with 4.1(d). 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.

4.2 Where Hardware is to be Installed by us, the fees set out in the Contract are an estimate based on the following assumptions:-

- (a) your vehicle(s) will be made available for Installation in accordance with the Installation timetable agreed by us;
- (b) your vehicle(s) will be made available at, or within 5 minutes' travel from, the location agreed by us; and
- (c) your vehicle(s) will be made available at a suitable location which is safe for our staff (in our 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 are not met, or if for any other reason an Installation is more complex than the agreed Installation, we reserve the right to charge additional fees or to charge our standard day-rate to reflect the additional resource required to complete the affected Installation.

4.3 Any date or dates we advise to you (including for the delivery, Installation and/or removal of the Hardware) will be an estimate and we will not be liable to you for any losses or costs if we do not meet the estimated date.

## **5. Ownership of the Hardware**

5.1 Title to (ownership of) the Hardware remains at all times with Trakm8.

5.2 You agree that you will: (i) retain the Hardware securely within the vehicle; (ii) not deface, destroy, alter or obscure any identifying mark on the Hardware; (iii) ensure that no charge, lien or other encumbrance is created over the Hardware; and (iv) return the Hardware to Trakm8 at the end of the Contract, retaining proof of delivery where appropriate.

5.3 For fixed wire Installation you may arrange for Trakm8 to remove the Hardware at a mutually agreed time which shall incur a removal fee (which is currently £75 plus VAT).

## **6. Technical Support and Assistance**

6.1 You agree to ensure that the Hardware is only used in accordance with this Agreement, and you will not attempt to dismantle the Hardware or use it in any other way except as contemplated by this Agreement.

6.2 Technical support for Self-Installation or use of the Web Portal or Mobile App will be available to you by telephone 0330 333 4124 and email support@trakm8.com during normal United Kingdom business hours (Monday to Friday inclusive, 9.00 am to 5.00 pm excluding English public holidays).

## **7. Prices, Payment and Premature Termination**

7.1 During the Rental Period we will issue an invoice either monthly (in relation to monthly payments) or annually (in relation to annual payments) for the Licence Fee and shall be due and payable immediately on presentation of the invoice. The first Licence Fee will be payable in advance and shall be for one (1) month if you are on monthly payments, or for twelve (12) months if you have chosen annual payments. Licence Fees will be collected monthly or annually (as appropriate) in advance thereafter from the credit, debit card or a direct debit instruction

7.2 We may invoice you each Activation Fee and, where applicable, the Installation fees at the start of each Contract. The Activation Fee and Installation fees may be invoiced in advance of delivery of the Hardware and shall be due and payable immediately on presentation of the invoice.

7.3 Any and all other charges and fees may be invoiced before they are incurred and shall be due and payable on presentation of the relevant invoice. Trakm8 shall not be obliged to provide or deliver any goods or services under a Contract until it has received the applicable payment in cleared funds.

7.4 All fees, charges and prices payable under a Contract are exclusive of VAT which may be charged in addition.

7.5 If you terminate the Contract before the expiry of the Initial Minimum Term or current Renewal Term, all remaining payments and any other fees or charges due in relation to the Rental Period shall become due immediately. To the fullest extent possible, they will be collected from the credit or debit card details you have supplied to us or otherwise paid by you on presentation of the relevant invoice.

7.6 We may change all charges and fees payable under the Contract at any time on 30 days' notice save that any increase in the Licence Fees during the Initial Minimum Term or any Renewal Term shall not take effect until expiry of such Initial Minimum Term or Renewal Term. They will, however, take effect in relation to the next Renewal Term(s).

7.7 Without prejudice to its other rights and remedies in the event of non-payment of any fees and charges payable under this Agreement, Trakm8 may set off and/or withhold all sums due and payable to it from any and all sums payable to the Customer.

## **8. Warranties & Licences**

8.1 Trakm8 warrants that:

- (a) the Hardware will be of satisfactory quality and Trakm8 Software will be free from defects that materially affect its performance; and
- (b) the Trakm8 Product will comply with all laws, rules and regulations applicable in the United Kingdom.

Other than the limited warranties under this clause 8, all other warranties whether express or implied are excluded to the maximum extent permitted by law.

8.2 Subject to you paying the Licence Fee(s), Trakm8 grants you a nonexclusive, limited Licence to use the Firmware within the Hardware for the Rental Period. Except for the limited rights granted to you Trakm8 retains all proprietary rights and title inherent in the Firmware.

8.3 Subject to you paying the Licence Fee(s), Trakm8 grants you a nonexclusive, limited, fixed term Licence to use Trakm8 Software, the Web Portal and Mobile App for the Rental Period. Except for the limited rights granted to you Trakm8 retains all proprietary rights and title inherent in Trakm8 Software.

8.4 All grants of Licence under this clause 8 are strictly conditional upon you not disassembling, decompiling, reverse engineering or otherwise attempting to change or modify the Trakm8 Product.

8.5 Trakm8 shall not be liable for any of the warranties under this Agreement in respect of Hardware where you or any of your employees or any other unauthorised third party attempts to dismantle, impede, de-install, tamper with or repair such Hardware or attempts to remove or replace the SIM card of the Hardware or you fail to comply with the requirements of clause 4.1(g).

8.6 Where Trakm8 is not liable for a breach of the warranties, whether under clause 8.5 or otherwise, then Trakm8 will charge you the reasonable costs incurred in respect of any repair, service call out, removal and/or replacement and/or installation fees and/or supply of replacement Hardware.

8.7 The Trakm8 Data Reports in respect of Data received from the Hardware in your vehicle or from the Customer Hardware will be available to you for not less than seventy (70) days from the date of collection of the Data.

8.8 Your attention is drawn to the fact that the availability of the Web Portal (or relevant parts thereof) and Mobile App and/or the Data Reports is dependent upon systems, technologies and other factors which are beyond Trakm8's control including; 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, 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 Web Portal, Mobile App and/or the Data Reports.

8.9 While Trakm8 endeavours to ensure that Trakm8 is available 24 hours a day and to mitigate where possible the adverse effects of the problems referred to in clause 8.8, Trakm8 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 Web Portal, Mobile App and/or Data Reports or any part thereof is unavailable to you at any time or for any period and access to the Web Portal, Mobile App and/or Data Reports may be suspended temporarily and without notice as a result of such problems or for any other reasons beyond our control.

8.10 Trakm8 shall have the right at any time to temporarily suspend access to the Web Portal, Mobile App and/or Data Reports for the purposes of maintenance and to make changes to the functionality, presentation, features, mode of access and material content of the Web Portal, Mobile App and/or Data Reports. Trakm8 will in the ordinary course of events give reasonable notice to you of any planned access interruption.

8.11 You will need to continue to pay the Licence Fee in order to continue to use the Trakm8 Product beyond the selected Initial Minimum Term.

## **9. Telematics Data and Data Protection**

9.1 The parties acknowledge that for the purposes of the Data Protection Laws, the Customer is a data controller, and Trakm8 is a data processor for some purposes and a data controller for other purposes. The scope of processing carried out by Trakm8 as data processor is a) the processing of contact details of the Customer's staff for the purposes of administration of the Contract and may also include b) the processing of data collected by the Trakm8 Product and/or Trakm8 Telematics Unit for the purposes of providing the Trakm8 Product and for the further development and refinement of Trakm8's products.

9.2 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 Trakm8 for the duration and purposes of the Contract, and will take all necessary measures to ensure compliance of the parties with the Data

Protection Laws. 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 Trakm8's processing of Customer Personal Data and b) ensuring that sufficient fair processing information is provided to the data subjects in respect of Trakm8's processing of Customer Personal Data, in each case as required by the Data Protection Laws, and in each case both at the outset and following any changes to the Customer's or Trakm8's processing of the Customer Personal Data (including on Trakm8's behalf where Trakm8 is a data controller).

9.3 Both parties will ensure that they comply with the provisions of the Data Protection Laws at all times during the term of the Contract.

9.4 Trakm8 will only process the Customer Personal Data as permitted by this Agreement and, where Trakm8 is a data processor, Trakm8 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 Trakm8 is subject; in such a case, Trakm8 shall inform the Customer of that legal requirement before processing, unless that law prohibits Trakm8 from doing so on important grounds of public interest.

9.5 The Customer agrees that Trakm8 may process the Customer Personal Data a) for the purpose of providing the Trakm8 Product and b) in a pseudonymised form to refine and optimise processing algorithms of Trakm8's products, associated R&D and other commercial activity.

9.6 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.

9.7 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 the Contract (including on Trakm8's behalf where Trakm8 is a data controller). The Customer shall notify Trakm8 of any Data Subject Requests it receives and the outcome thereof. Trakm8 shall provide such reasonable assistance as the Customer requests in order to respond to Data Subject Requests. Where Trakm8 receives a Data Subject Request directly in respect of Customer Personal Data, Trakm8 shall notify the Customer of such request and the Customer shall be responsible for responding to such request (including on Trakm8's behalf where Trakm8 is a data controller). Trakm8 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. Trakm8 shall inform the Customer of any request to disclose Customer Personal Data that has been directly responded to by Trakm8, and shall provide details of the response and the grounds on which it was provided, unless it would be unlawful to do so.

9.8 To the extent required by law, Trakm8 shall assist the Customer, and where Trakm8 acts as data controller the Customer shall assist Trakm8: a) by appropriate technical and organisational measures, to the extent reasonably practicable, for the fulfilment of the 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 Data Privacy Impact Assessments and consulting competent data protection authorities where required, taking into account the nature of the processing and the information available to the 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.

9.9 The Customer hereby generally authorises Trakm8 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.

9.10 Trakm8 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.

9.11 Where Trakm8 is a data processor in respect of Customer Personal Data and not a data controller in respect of the same, Trakm8 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 UK or European Union Member State law requires retention of the Customer Personal Data.

9.12 The Customer will indemnify Trakm8 from any losses, costs, damages incurred by Trakm8 as a result of the Customer failing to observe any of the provisions of this clause 9.

## **10. Termination of the Contract**

10.1 Either you or Trakm8 may give written notice (by email or letter) to terminate each Contract with a minimum of 30 days' notice prior to the expiry of the Initial Minimum Term or Renewal Term (as appropriate). Termination will occur on the later of (i) expiry of such notice or (ii) after the Trakm8 Product is received back by Trakm8. Proof of delivery in accordance with this Agreement will be accepted in instances where the Trakm8 Product is lost in transit. You shall continue to be responsible for the Licence Fees until termination.

10.2 Trakm8 shall have the right to terminate or suspend any Contract by notice with immediate effect if you commit any breach of the Contract which is material (including failing to pay the Activation Fee, Installation fee and/or Licence Fee) and not capable of remedy, or which is capable of remedy but which is not remedied within 7 days of written notice to do so. Termination of the Contract however caused shall be without prejudice to any rights or liabilities accrued as at the date of termination.

10.3 On suspension, termination or expiry of a Contract for any reason the Licence granted shall immediately cease and you will no longer be able to access Trakm8 Software.

10.4 You will return the Hardware to Trakm8 at the end of the Contract, maintaining proof of postage where required. In the case of fixed wire Installed Hardware where you would like Trakm8 to remove such Hardware, you agree to make the vehicle available for removal of the Hardware at a mutually agreed time which shall incur a de-Installation fee unless otherwise agreed with you (currently £75 plus VAT). If you do not arrange for Trakm8 to remove the Hardware, you shall be liable for any damage caused on removal (including to the Hardware) or where the Hardware is not returned, the Deactivation Fee set out in clause 4.1(d).

10.5 You acknowledge that if the Contract is terminated and/or suspended for any reason, any and all Data Trakm8 has collected during the term of the Contract may be irrevocably destroyed and/or deleted and/or may no longer be available to you (including any previous journey data which may be deleted and non-recoverable). This includes where an account or SIM has been deactivated as a result of non-payment of any charges and fees, notwithstanding that we may be able to subsequently reactivate such account and/or SIM.

## **11. Limitations and Exclusions of Liability**

11.1 Nothing in the Agreement or any Contract will:

(a) limit or exclude the liability of Trakm8 for death or personal injury resulting from its negligence;

- (b) limit or exclude the liability of Trakm8 for its fraud or fraudulent misrepresentation;
- (c) limit or exclude any liability of Trakm8 in any way that is not permitted under applicable law.

11.2 The limitations and exclusions of liability set out in this clause 11:

- (a) are subject to clause 11.1;
- (b) 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.

11.3 Trakm8 will not be liable to you 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.

11.4 Trakm8 will not be liable to you for any losses arising out of events that are beyond its reasonable control, including in the circumstances set out in clause 13.1.

11.5 To the maximum extent allowable under the prevailing law, Trakm8 will not accept any liability for any damage arising to a vehicle where you have not ensured compliance with the provisions of clause 4.1(g) or where you have allowed Self Installed Hardware to be fitted into a vehicle not advised to and agreed by Trakm8.

11.6 Trakm8's maximum aggregate liability to you under the Contract or otherwise will not exceed the total amount paid by you to Trakm8 under the applicable Contract.

## **12. Indemnification**

12.1 Under normal operating conditions, each Trakm8 Telematics Unit will incur a maximum network data usage of 5Mb per month. These data charges are included within the Licence Fee for the Software. Save for any costs incurred due to the actions, delay or negligence of Trakm8, you agree to indemnify Trakm8 against all excessive network charges that arise through the misuse, loss or theft of the Hardware's SIM (Subscriber Identity Module) card.

12.2 You agree to notify Trakm8 immediately as soon as you are aware of any misuse, loss or theft of the Hardware unit and/or its SIM card.

12.3 You agree to indemnify Trakm8 from any third party claim made against

Trakm8 resulting from you failing to comply with the requirements of clause 4.1(g) or where you have allowed Self Installed Hardware to be fitted into a vehicle not advised to and agreed by Trakm8.

### **13. Force Majeure**

13.1 The obligations of each Party under the Contract shall be suspended during the period and to the extent that an affected Party is prevented or hindered from complying with them by any cause beyond that Party's reasonable control including 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 the Contract.

13.2 In the event of either Party being so hindered or prevented 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, the Party not seeking to rely on Force Majeure for non-performance may terminate this Agreement by giving the Party seeking to rely on Force Majeure for non-performance 30 days' notice.

13.3 The Customer shall not be entitled to rely on Force Majeure to excuse it from non-payment of any charges and fees properly due and payable to Trakm8.

### **14. General**

14.1 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.

14.2 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.

14.3 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).

14.4 Contracts and this Agreement may not be varied except by a written document signed by or on behalf of each of the Parties.

14.5 Trakm8 may freely assign its rights and obligations under a Contract or this Agreement without the Customer's consent. The Customer may not assign its rights or obligations under a Contract or this Agreement without Trakm8's consent.

14.6 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.

14.7 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 or its/their subject matter or formation.

## **15. Customer Complaints**

15.1 We always endeavour to provide our Customers with exceptional products and services. 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 please contact in the first instance our technical support team at support@trakm8.com or by telephone on 0330 333 4124 during normal United Kingdom business hours (Monday to Friday inclusive, 9.00 am to 5.00 pm excluding English public holidays).

## **16. Consumer Customers**

16.1 Consumer Customers (individuals, sole traders and small partnerships) orders may come under the provisions of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (as updated or superseded from time to time). If you have purchased the Trakm8 Product as a consumer you have a statutory right to cancel your Contract

without incurring any liability for a period of up to 14 days from the day following the date you receive your Hardware, or from the point that you provide the vehicle for Installation of the Hardware (the "Cooling Off Period"). To cancel your Contract under these provisions you must have purchased Trakm8 over the telephone or by our website or by email. Cancellation must be notified to [info@trakm8.com](mailto:info@trakm8.com).

16.2 If you wish to exercise your rights under clause 16.1, you must return the Hardware at your own cost to Trakm8 maintaining proof of postage. Provided the Hardware is returned undamaged, we will refund you monies paid by you to us within 14 days of having received your returned Hardware but otherwise we may set off any and all sums due to us from any monies paid by you. Where you have requested commencement of the Trakm8 Service before the elapse of the Cooling Off Period we will charge you for the period of Service utilised only up to the point of cancellation and, where applicable, the Installation fee. We also have the right to reduce the amount of your refund to reflect any decrease in the Trakm8 Product's value that has resulted from the manner in which you have handled it.

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