



MASTER SERVICES AGREEMENT

Introduction

E Track Ltd (e-Track), would like to take this opportunity to thank you for your interest in our Products and/or Services. This Master Services Agreement together with any Order Forms and Schedules operates as a framework agreement between us and defines the contractual terms and conditions under which e-Track will supply Services to you. Whilst this Agreement remains in force, we will agree the provision of Services as set out in an Order Form which shall be governed by, and be subject to, the terms and conditions of this Agreement. **We draw your attention, in particular to the clauses below within our Master Services Agreement relating to our provision of Services to you:**

Clause 10.1. Fees Payable and Deposit

Fees are payable in accordance with clause 10, or as otherwise detailed in an Order Form. Services will not start until we have received your Deposit in cleared funds. The required Deposit is 30% of the total Fees and payable within 7 calendar days. The remaining balance is invoiced on the Installation Date (or False Delivery Date in the event of refusal of delivery as outlined in this Agreement) and payable within 14 calendar days.

Clause 10.3. Installation Date Range

We will agree the Installation Date range with you in the Order Form. e-Track will contact you no less than 7 days prior to the Shipment Ready Date to agree the exact Installation Date in writing. In the event that you are unable to take full delivery of the Order by the last date within the Installation Date range, we reserve the right to invoice you as if installation had taken place and Fees will therefore be payable within 14 calendar days. We also reserve the right to charge storage and insurance costs at the rate of 1% of total Fees payable per week, for any days following the last date in the Installation Date range until you are able to take full delivery of your Order. Whilst e-Track will use reasonable endeavours to meet any agreed Installation Date range, unless otherwise agreed in writing, any such dates shall be estimates only and e-Track is not liable for any delay in delivery, however caused.

Clause 10.5. Late Payment

If we have not received payment within 7 days after the due date for any Fees, then we may, without liability to you, on 5 days advance notice, disable your account and suspend access to all or part of the Services. We will be under no obligation to provide any or all of the Services while any overdue payment and any further sums payable, remain unpaid. Interest shall accrue on such due amounts on a daily basis in accordance with the Late Payments of Commercial Debts (Interest) Act 1998 as amended, following the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment. Late payment fees are payable on demand.

Clause 15.1. Term and your Termination Rights

This Agreement will commence on the Start Date (detailed in the Order Form) and shall continue through the Initial Term (detailed in the Order Form) after which it will be automatically renewed for successive rolling periods of the Initial Term (each a Renewal Term), unless: (a) either Party notifies the other Party of termination, in writing, at least 60 days before the end of the Initial Term or 60 days before the end of any Renewal Term, in which case this Agreement shall terminate upon the expiry of the applicable Initial or Renewal Term; or (b) any other termination provisions in this Agreement apply.

Schedule 1

Paragraph 1.3. Quotes

Unless otherwise detailed in an Order Form, any quotation or other proposal given by e-Track to you for any reason is valid for a period of 30 calendar days only from its date, provided e-Track has not previously withdrawn it.

Paragraph 1.6. No Cancellations.

No order which has been accepted by e-Track may be cancelled, except with our written agreement and provided e-Track is indemnified in full against all loss, costs, damages, charges, and expenses incurred by e-Track as a result of that cancellation.

Hire/Hire Purchase Terms and Conditions (if applicable).

If you are hiring the Equipment from e-Track and/or entering into a hire purchase agreement with e-Track, the additional terms set out in Schedule 1 shall apply.

This page is produced to highlight some of the key clauses in our agreement with you, it is not exhaustive, and is intended for information purposes only. In the event of any conflict between the description or interpretation of the clauses described above and those in the main body of our Master Services Agreement, the clauses, paragraphs and schedules as they appear below are binding and shall take precedence.

The parties agree as follows:

Definitions

Acceptance Tests: as defined in clause 1.16.

Add-On Services: additional services (including but not limited to development and configuration services) or additional functionality that may be added to the Order.

Agreement: this Master Services Agreement and any Order.

API/Integration Services: as defined in clause 5.3.

Confidential Information: all confidential information disclosed by one party to the other party, that would be regarded as confidential by a reasonable business person, including but not limited to, information relating to:

- (i) the business, affairs, customers, clients, suppliers, plans, intentions and marketing opportunities of the disclosing party; and
- (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party.

Data: the data inputted by the Customer, or by e-Track on the Customer's behalf, or otherwise generated in respect to the Customer's use of the Services.

Deposit: the deposit detailed on the Order Form, payable prior to the Services commencing.

Documentation: any documentation, operations, maintenance and hardware manuals made available to the Customer by e-Track from time to time whether in electronic form or otherwise, which sets out a description and instructions for the Services.

e-Track: e Track Ltd (Company number 12074347) and whose registered office address is at Corner Oak, 1 Homer Road, Solihull, West Midlands, England, B91 3QG.

False Delivery Date: 7 calendar days after the last day of the Installation Date range provided to the Customer in writing by e-Track for the delivery of the Order (or the Shipment Ready Date if this falls after the agreed Installation Date range) in the case of the Customer not being ready to accept the Order.

Fees: the fees payable by the Customer to e-Track for the Order as detailed in the Order Form, quotation or in another form of communication from e-Track.

Force Majeure Event: means any circumstance beyond e Track's reasonable control.

Hardware/Equipment: any hardware and other equipment detailed in the Order Form and/or supplied by e-Track to the Customer on the terms set out in Schedule 1 including (without limitation) cabinets, e-Drops, lockers, checkpoints, embedded dock door systems, auto locks and stops and accessories.

Initial Term: the initial term of this Agreement as detailed in the Order Form, which shall commence on the Start Date.

Installation Date: the date the Order is delivered to the Customer.

Intellectual Property Rights: all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights, domain names, and any other rights in any invention, discovery or process, in each case in the United Kingdom and together with all renewals and extensions.

Minimum Specification: the specification which the Customer's hardware/software is required to meet in order to use the Services, as revised from time to time.

Order: the Customer's order for Services or anything else supplied by e-Track, detailing the applicable Fees and incorporating the terms of this Agreement as detailed in an order form ("**Order Form**") and including any details of User Subscriptions.

Partners: as defined in clause 3.6.

Project Delivery Plan: the plan, time schedule and sequence of events for the provision of the Services (including any training detailed in an Order Form) and any Acceptance Tests to enable the Customer to go-live with the Services, as amended by agreement between the parties from time to time.

Renewal Term: any subsequent terms after the Initial Term as described in clause 15.1.

Services: the supply of Software, Hardware, and other services made available to the Customer by e-Track under this Agreement, as more particularly described in the Documentation relating to the Order and including any Support Services, all as further detailed in the Order Form.

Set-up Requirements: as defined in clause 2.4 and includes Minimum Specification and/or physical site requirements that are necessary for e-Track to effectively deliver the Order.

Software: the e-Track proprietary software and the Third Party Software as identified in the Order Form.

Start Date: the date e-Track and the Customer enter into this Agreement, characterised by a dated signature or written agreement from both parties.

Term: the Initial Term and any Renewal Term.

The Customer: the business detailed in the Order Form.

Third-Party Software: any third party software identified in the Order Form and provided in accordance with Schedule 1.

Users: the individuals who are authorised by the Customer in accordance with the Order Form to access and use the Services in accordance with this Agreement.

User Subscriptions: the user subscriptions purchased by the Customer under this Agreement which entitle Users to access and use the Services in accordance with this agreement as detailed in the Order Form.

Shipment Ready Date: The date that e-Track is ready to dispatch Services to the Customer.

Support Services: as defined in clause 1.4.

A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking into account any amendment, extension, or re-enactment and includes any subordinate, interim or provisional legislation for the time being in force made under it. Any words following the terms including, include, in particular, for example or any other similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms. References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement. The details of the Order form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. In the event of a conflict between the terms and conditions of this Master Services Agreement, an Order Form, or any of the Schedules, the following order of preference shall prevail: 1) Order Form, 2) this Master Services Agreement, 3) Schedules (unless otherwise stated in a Schedule).

1. SERVICES

- 1.1 This **Agreement** together with any Order Forms and Schedules will operate as a framework agreement which defines the contractual terms and conditions under which e-Track will supply Services to the Customer. Whilst this Agreement remains in force, the parties shall agree the provision of Services as set out in an Order Form which shall be governed by, and be subject to, the terms and conditions of this Agreement.
- 1.2 **Terms of this Agreement.** This Agreement shall commence on the Start Date and shall continue throughout any **Initial Term** unless earlier terminated in accordance with the terms of this Agreement.
- 1.3 **Provision of Services.** e-Track shall, during the Term, use commercially reasonable endeavours to make the Services available 24 hours a day seven days a week, except for: (a) planned maintenance carried out during the maintenance window of 05:00 to 08:00 UK time and 18:00 to 21:00; and (b) unscheduled maintenance performed outside of normal business hours, provided that e-Track has used reasonable endeavours to give the Customer at least 6 normal business hours' notice in advance of any unscheduled maintenance which will have a material effect on the Customer's use of the Services.
- 1.4 **Support Services.** e-Track will, as part of the Services, provide the Customer with either e-Track's standard, enhanced or enterprise customer support package as requested by the Customer in the Order Form and Schedule 2 ("**Support Services**"). e-Track may amend its Support Services at its discretion from time to time.
- 1.5 **Hardware Services.** Where detailed in an Order Form, e-Track will provide Third-Party Software and Hardware in accordance with Schedule 1.
- 1.6 **Updating Service.** As part of its updating service e-Track shall provide error correction, patches, fixes, and updates to the Services as generally made available to its customers. Where requested, the Customer may be required to update the Customer's IT hardware or software in order to continue to comply with any required Minimum Specification for the Services. For the avoidance of doubt the cost of the updating service described in this clause is included in the Fees but excludes any sum payable by the Customer to ensure compatibility with the Services. e-Track shall have no liability whatsoever for any failure of Customer hardware or software to comply with the Minimum Specification.
- 1.7 **Service Improvements.** The Customer acknowledges that e-Track may change or modify the Services from time to time. e-Track shall only be required to provide the Customer with reasonable notice of a change or modification to the Services in advance if the change or modification is material (and does not extend or enhance the functionality or architecture of the Services) or may substantially adversely affect the Customer's use of the Services.
- 1.8 Any dates quoted for delivery of Services are approximate only. Any services which are not detailed in the Customer Order Form are out of scope and subject to additional charges.
- 1.9 **Variation to this Agreement.** e-Track may make changes to this Agreement from time to time on reasonable advance notice to the Customer of no less than 30 days. In the event that the Customer objects to such changes on the grounds that such change has a material adverse effect on the Customer's use of the Services, the Customer's sole remedy shall be the termination of this Agreement. In the event of the Customer's termination of this Agreement in accordance with this clause, e-Track shall promptly refund to the Customer any Fees already paid for Services which have not been provided up to the date of termination, on a pro-rata basis. In all cases any revised version of this Agreement shall automatically apply to any Renewal Term or any Add-On Services when purchased. Where a change is made to this Agreement by e-Track, the Customer will be required to accept those revised terms prior to making any further use of the Services.
- 1.10 **Migration Services.** Where specified in a Order Form, e-Track shall use reasonable efforts to ensure the accurate migration of any data but gives no warranties as to the completeness or accuracy of such migration. The Customer shall be entirely responsible for checking the accuracy and completeness of the data provided to e-Track and any migrated data and shall promptly give sufficient details to e-Track of any inaccuracies or omissions in order to permit e-Track to correct them. Any corrections or modifications to migrated data shall be chargeable activities at e-Track's rates then in force for such services.
- 1.11 The Customer acknowledges that e-Track's ability to provide the Services is dependent upon the Customer's full and timely co-operation, provision of access as reasonably required by e-Track, as well as the accuracy and completeness of materials and any information and data the Customer provides. e-Track is not responsible for any loss suffered by the Customer if the Customer does not provide it with this access, cooperation, and information.

- 1.12 **Project Delivery Plans.** e-Track shall use reasonable endeavours to meet the performance dates specified in any Project Delivery Plan, but unless otherwise agreed in writing, any such dates shall be estimates only and time shall not be of the essence (provided always that e-Track shall use all reasonable endeavours to complete delivery as soon as reasonably possible).
- 1.13 **Extensions of Time to Any Delivery Dates for the Provision of Services.** e-Track shall be given an extension of the timetable of any one or more of the stages in any Project Delivery Plan or delivery date under this Agreement or for any other Services if one of more of the following events occurs: (a) a variation to Services is made at the Customer's request or a request is made for something out of scope; (b) a Force Majeure Event occurs ; (c) a delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or any third-party.
- 1.14 If e-Track is entitled to an extension of time under clause 1.13, it shall give written notice to the Customer not later than thirty days after having become aware of the event. Such notice shall specify the event relied on and, in the case of a Force Majeure Event, shall estimate the probable extent of the delay. The parties shall use best endeavours to agree in writing, signed by both parties, what extension of time and variation to the Agreement is reasonable in the circumstances. Any Project Delivery Plan or any applicable timetable or Fees payable shall be deemed amended accordingly.
- 1.15 **Delays Caused by Customer.** If e-Track's performance of its obligations under this Agreement is hindered, prevented, or delayed by any act or omission of the Customer, the Customer's agents, sub-contractors, or employees, the Customer will be liable to pay to e-Track, on demand all reasonable costs, charges, or losses sustained or incurred by it (including loss of opportunity to use e-Track resources elsewhere), subject to e-Track confirming such costs, charges, and losses to the Customer in writing. If e-Track can demonstrate that the delay has resulted in an increase in cost to e-Track of carrying out its obligations under this Agreement, e-Track may increase any applicable Fees by an amount not exceeding any such demonstrable cost.
- 1.16 **Acceptance Tests.** Where applicable the parties shall agree acceptance tests for the Services as detailed in a Project Delivery Plan. These criteria and data ("**Acceptance Tests**") shall be such as are reasonably required to show that the Services in whole or part comply with any specification agreed between the parties in writing. Acceptance Tests shall be carried out by the Customer with the assistance, as required, of e-Track. Where the provision of Services is detailed in a Project Delivery Plan as subject to the successful completion of Acceptance Tests by the Customer, the provision of further Services will not proceed until such time as the Customer has successfully completed all Acceptance Tests, as detailed by e-Track.
- 1.17 Unless otherwise agreed in writing, the Customer acknowledges that the Services have not been developed to meet the Customer's individual requirements and that it is therefore the Customer's responsibility to ensure that the facilities and functions of the Services as described in the Order and the Documentation meet the Customer's requirements.

2. SUPPORT IN ACCESSING AND USING E-TRACK SERVICES

- 2.1 Following acceptance of an Order Form by e-Track, and payment being made, e-Track will contact the Customer to provide the Customer with the information the Customer needs to access and use the Services.
- 2.2 Please refer to the Customer Order Form and Documentation for information and assistance around using and accessing e-Track Services. The Support Services to be provided are detailed in the Order Form and Documentation. Any support requests or other assistance requested which is outside the scope of the Order and the chosen Support Services will be chargeable as additional services.
- 2.3 **The Customer's Responsibility to Understand e-Track Services.** The Customer acknowledges and agrees that whilst the Services are designed for ease of use, it is the Customer's responsibility to ensure that any individuals involved in accessing and using the Services are appropriately trained in the use of any applicable technology and understand and are familiar with the Services and any training materials or Documentation made available to the Customer relating to them. In the event that e-Track identify that any repeated requests for assistance are as a result of inadequate training either in respect to the Customer own systems or the Services, this assistance will be provided as additional services, at e-Track's discretion. The Customer is solely responsible for ensuring that all users of the Services are appropriately trained in its use. e-Track shall have no responsibility to provide support if support issues are deemed by e-Track to be the result of misuse or lack of appropriate training by the Customer in the use of Services.
- 2.4 The Customer acknowledges that the provision of Services to the Customer is based on the Customer meeting applicable service requirements ("**Set Up Requirements**") as detailed in the Order Form and Documentation provided to the Customer.
- 2.5 In the event that the Customer does not provide e-Track with the information e-Track requires from the Customer at each stage of the onboarding and set up process, or that the information provided by the Customer is not accurate or complete in all respects, or otherwise does not comply with the Set Up Requirements, e-Track will not be liable for the Customer's inability to make use of the Services in whole or part, and any additional work required by e-Track to support the Customer's onboarding, access to the Services, or to otherwise assist in set up of the Services shall be chargeable (and provided at e-Track's discretion) as additional services at e-Track's standard rates then in force. e-Track is not liable for any delay or inability to use or access the Services in whole or part, directly or indirectly caused by a delay by the Customer or any Third-Party or any failure to comply with the Customer's obligations under this Agreement.

3. LICENSE

- 3.1 Subject to the Customer purchasing the User Subscriptions in accordance with this Agreement, the restrictions set out in this clause 3 and the other terms and conditions of this Agreement, e-Track hereby grants to the Customer a non-exclusive, non-transferable, non-sub-licensable, revocable right: (a) to permit Users to use the Services and the Documentation during the Term; and, (b) to access and use the Services and the Documentation within the limits described in the Order Form.

- 3.2 **Limitations on Use.** The rights provided under this Agreement are granted to the Customer only and shall not be considered granted to any subsidiary or holding company unless otherwise agreed in writing.
- 3.3 **Maximum Number of Users.** In relation to Users, the Customer undertakes that: (a) the maximum number of Users that it authorises to access and use the Services and the Documentation shall not exceed the User Subscriptions it has purchased from time to time; (b) it will not allow any User Subscription to be used by more than one individual User and is non-transferable; (c) each User shall comply with all guidance provided by e-Track with regards to the security of their login credentials and keep this information confidential.
- 3.4 **Exceeding the Limits of the Order Form.** If the Customer's use of the Services exceeds any limits detailed in any Order Form, e-Track shall be entitled to increase its Fees to account for such additional use of the Services and automatically apply those increased Fees to the Order. In the event that e-Track are unable to debit such Fee increase automatically from the Customer, e-Track shall issue an invoice reflecting the increase in Fees and the Customer shall pay such invoice within 10 days of receipt. If at any time it becomes apparent to e-Track that the Customer has underpaid Fees, all Fees applicable to the Customer's actual historical use will be immediately payable to account for any shortfall. e-Track may audit the Customer's use of the Services at any time to ensure compliance with this Agreement.
- 3.5 Where the Customer wishes to amend the Order part way through any Term including by the addition of Add-On Services or additional Users, such additional Fees as may be payable shall be pro-rated from the date of activation by e-Track for the remainder of the then current Term.
- 3.6 The Customer may from time to time provide access to the Services to its third-party partners ("**Partners**"). The Customer undertakes that it is liable for the actions or inactions of its Partners under this Agreement and in respect to the use of the Services as if they were its own. Prior to permitting access to the Services, the Customer shall ensure that any Partners have been made aware of, agreed to, and signed the e-Track EULA, in its then current form.

4. E TRACK'S OBLIGATIONS

- 4.1 **Warranty.** e-Track warrants that it will perform the Services substantially in accordance with the material terms of the Documentation and with reasonable skill and care.
- 4.2 The undertaking at clause 4.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to e-Track's instructions, or modification or alteration of the Services by any Party other than e-Track. If the Services do not conform with the foregoing warranty, e-Track will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or if reasonably practicable, 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 this clause. Notwithstanding the foregoing, e-Track **(a)** does not warrant that the Customer's use of the Services will be uninterrupted or error-free; nor that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and **(b)** is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays, and other problems inherent in the use of such communications facilities.
- 4.3 e-Track shall have no obligation to provide any services under this clause (and shall be entitled to charge the Customer additional charges at its then current rates) where faults or support requests arise from: **(a)** misuse, incorrect, or unauthorised use of the Services; **(b)** failure of the Customer hardware or software or any part of it; **(c)** use of the Services not in accordance with guidance provided by, or in combination with, any hardware or software not approved by e-Track; **(d)** any breach of the Customer's obligations under this Agreement.
- 4.4 The warranties and representations set out in this clause are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose in relation to this Agreement. Without limitation, e-Track specifically denies any implied or express representation that the Services will be fit for any purpose or use other than that specifically stated by e-Track in writing in the Documentation.

5. INTEGRATION WITH THIRD-PARTIES

- 5.1 The Customer acknowledges that the Services enable or assist access to the Services by third-parties. The use of this functionality is solely at the Customer's own risk. e-Track shall have no liability or obligation whatsoever in relation to the unavailability of, or use or misuse of, the Services by any third-party. The Customer accepts all responsibility for and agrees to release e-Track entirely from any claims, liabilities, disputes, actions, or proceedings arising from or connected to the Customer's interaction with any third-party through, or as a result of the provision of Services or in respect to any transfer or transaction.
- 5.2 **Third-Party Software.** e-Track shall provide any Third-Party Software to the Customer under the standard licence terms provided by the relevant third-party. e-Track is not responsible in any way for any Third-Party Software's performance, features or failures and makes no warranty in respect to the Third Party Software being fit for the Customer's purposes.
- 5.3 **Third-Party Services / Integration.** e-Track offer services and functionality using third-party developer tools such as application programming interfaces ("**APIs**") ("**Integration Services**") These third-party API terms and conditions contain restrictions on access, storage, and use of information. e-Track have no control over the content of third-party sites or resources which e-Track link to through its use of APIs or the Customer's use of the e-Track API and accepts no liability or responsibility for them, use or inability to use Integration Services, the web sites they link to or their contents, their accuracy or reliability or for any loss or damage (direct,

indirect, special, consequential or otherwise) whatsoever that may arise from the use of any of them or the results obtained. The Customer's use of Integration Services is on an "as is" basis and without any warranty of any kind (subject to any additional e-Track terms that may apply).

- 5.4 The Customer may integrate e-Track APIs and/or e-Track SDKs with its own systems subject to the applicable license terms made available to the Customer by e-Track from time to time.
- 5.5 It is the Customer's sole responsibility to ensure that the e-Track APIs and/or SDKs are properly integrated. Unless otherwise agreed in writing, beyond providing Documentation, e-Track does not commit to providing further support or assistance with the integration of the Services with the Customer's systems.
- 5.6 The Customer acknowledges and agrees that: **(i)** the use and availability of certain parts of the Services may be dependent on third-party product vendors and service providers, **(ii)** these third-party products and services may not operate in a reliable manner all of the time and they may impact on the way that the Services operate, and **(iii)** e-Track are not responsible for damages and losses due to the operation of these third-party products and services.
- 5.7 **Third-Party Charges.** Unless otherwise detailed in this agreement, if a Hardware manufacturer's or Third-Party Software vendor's delivery list price for any item of software or equipment is higher than as detailed in the Order Form, the part of the Fees relating to that item shall be reduced or increased, as the case may be, to reflect that decrease or increase in the manufacturer's or vendor's list price.
- 5.8 The Customer should contact the relevant third-party with any questions about third-party products and services or any issues with them including integration with the Customer's own systems.

6. RESTRICTIONS OF USE AND ACCEPTABLE USE POLICY

- 6.1 The Customer shall not upload, access, store, distribute, or transmit any viruses, or any material during the course of its use of the Services that: **(a)** is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing, or racially or ethnically offensive; **(b)** facilitates illegal activity; **(c)** depicts sexually explicit images; **(d)** promotes violence; **(e)** is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; **(f)** causes damage or injury to any person or property; or **(g)** there has been unauthorised or suspected fraudulent or otherwise suspicious activity related to the Customer's use of the Services; and e-Track reserves the right, without liability to the Customer, to disable the Customer's access to Services as a result of a breach of the provisions of this clause.
- 6.2 Except to the extent expressly permitted under this Agreement and to the maximum extent permitted by law, the Customer shall not: **(a)** **(i)** attempt to copy, reproduce, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services and/or Documentation (as applicable) in any form or media or by any means; or **(ii)** attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services; or **(b)** access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or **(c)** use the Services and/or Documentation to provide services to third-parties or offer any part of the Services for sale or distribution over any other medium; or **(d)** license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to anyone except the Users; or **(e)** attempt to obtain, or assist third-parties in obtaining, access to the Services and/or Documentation; or **(f)** permit any third-party to benefit from the use or functionality of the Services.

7. THE CUSTOMER'S OBLIGATIONS

- 7.1 The Customer shall: **(a)** provide e-Track with all necessary and timely co-operation in relation to this Agreement and all its obligations in any Project Delivery Plan; including all necessary access to such information as may be required by e-Track in order to render the Services, including, but not limited to, Data and documentation requested for the provision of the Services (and ensure that such information and Data is accurate in all material respects). e-Track is not liable for any inability to use the Services in whole or part directly or indirectly caused by the Customer or any third-party; **(b)** appoint an individual who shall have the authority to contractually bind the Customer on matters relating to the Services and shall not replace such individual without advance notice to e-Track; **(c)** be responsible (at the Customer's own cost) for ensuring that the Customer's hardware and software complies with the relevant specifications to use the Services provided by e-Track, including the Minimum Specification, as amended from time to time; **(d)** comply with all applicable laws and regulations with respect to the Customer's activities under this Agreement and in the Customer's use of the Services;
- 7.2 **Mobile Use.** The Customer is responsible for ensuring that any handheld device used to access or use the Services complies with the Minimum Specification provided by e-Track from time to time. e-Track do not guarantee that the Services will work (or be fully functional) on devices not approved by e-Track. The Customer shall ensure: **(a)** that there is full internet access through GPRS, 4/5G (or similar), or Wi-Fi; **(b)** there is full connectivity via a mobile GSM connection; **(c)** there is full connectivity via a wireless or fixed line internet connection, in order for handheld devices to accurately send Data to the Services and for synchronisation purposes. e-Track is not responsible for the operation, or failure of operation, or availability of, or access to any mobile or internet services resulting in the Customer being unable to use the Services. In the event that any devices used to access the Services are unable to connect to the Services, unless caused directly by e-Track, all Fees payable by the Customer shall remain payable.
- 7.3 The Customer is responsible for ensuring that the User's use of the Services and Documentation is in accordance with the terms and conditions of this Agreement and shall be responsible for any User's breach of this Agreement. The Customer undertakes that each User shall keep their credentials secure for their use of the Services and Documentation. To the extent permissible by law, e-

Track will not be liable for any loss that the Customer, a User, or any Third-Party may incur as a result of any use or misuse of any part of the Services, whether with or without the Customer's knowledge.

7.4 The Customer shall be responsible for:

- (a) **Safeguarding and Security.** The Customer is solely responsible for procuring and maintaining the Customer's network connections and telecommunications links from its systems to the Services, 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;
- (b) Operating at best practice and ensuring appropriate security precautions are taken in connection with its use of the Services, including but not limited to any e-Track policies in respect to information security. The Customer is responsible for taking all reasonable steps to mitigate the risks inherent in the provision and receipt of the Services, including data loss and taking all reasonable and usual precautions to safeguard the Customer's IT infrastructure, including taking regular data backups, operating firewalls, virus checks, and implementing effective and appropriate data security in respect to the provision and receipt of Services.
- (c) **Compliance with Legal Requirements.** The Customer is solely responsible for ensuring that the Customer's use of the Services complies with any legal or regulatory requirements and is not fraudulent.

8. DATA AND DATA PROTECTION

- 8.1 **Customer Data.** The Customer shall own all rights, title, and interest in and to all of the Data and shall have sole responsibility for the legality, reliability, integrity, accuracy, and quality of the Data.
- 8.2 e-Track shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Data as amended from time to time by e-Track in its sole discretion.
- 8.3 The Customer grants to e-Track a non-exclusive, perpetual, irrevocable, royalty free license to use any Data (provided that such Data is anonymised) for the purpose of: (a) statistical analysis and monitoring, querying and analysing such data for the purpose of providing the Services and improving the quality of services e-Track provides to its customers; (b) exercising its rights and fulfilling its other obligations under this Agreement; (c) complying with any applicable governmental or regulatory requirements; and/or (d) any other commercial purposes of e-Track.
- 8.4 The parties acknowledge that if e-Track processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the controller and e-Track is the processor for the purposes of the **Data Protection Legislation**. Schedule 3 sets out the obligations of the parties in respect to the processing of personal data.

9. SUSPENSION OF SERVICES

- 9.1 e-Track may suspend Services without liability if: (a) e-Track reasonably believes that the Services are being used in breach of this Agreement and the Customer does not remedy the failure within fourteen days of e-Track's written notice to the Customer describing the breach; (b) the Customer doesn't co-operate with e-Track's reasonable investigation of any suspected violation of this Agreement; (c) there is an attack on the Services or the Services are accessed by or manipulated by a third-party without e-Track's consent; (d) e-Track is required by law to suspend the Services or the Customer's access to the Services; (e) there has been unauthorised or suspected fraudulent or suspicious activity relates to the Customer's use of the Services; or (f) there is another event for which e-Track reasonably believe that suspension of the Services is necessary to protect its or any other party's network, system, the Services or other customers.
- 9.2 e-Track will use reasonable endeavours to give the Customer advance notice of a suspension under this Clause 9, unless e-Track determines in its reasonable commercial judgement that an immediate suspension is necessary to protect e-Track or its customers from imminent and significant operational or security risk, or if to do so would be unlawful or e-Track have grounds to suspect fraudulent or any other form of criminal use of the Services.
- 9.3 For the avoidance of doubt, any suspension of Services, unless caused directly by e-Track, shall not suspend the Customer's obligation to pay any Fees.

10. CHARGES AND PAYMENT

- 10.1 The Customer shall pay the Fees to e-Track in accordance with this clause 10, or as otherwise agreed between the parties. Services shall not commence until e-Track have received the Deposit in cleared funds. The required Deposit is 30% of the total fees and is payable within 7 calendar days, unless otherwise agreed. The remaining balance is invoiced on the Installation Date (or False Delivery Date in the event of refusal of delivery as outlined in this Agreement) and payable within 14 calendar days.
- 10.2 The Customer shall provide to e-Track relevant valid, up-to-date, and complete contact and billing details and payment method to process any payments and e-Track shall invoice the Customer following the Installation Date (or False Delivery Date if applicable) for the remaining Fees payable in accordance with the Order Form and the applicable Initial Term. By submitting such payment information, the Customer automatically authorises e-Track (without any further reference to the Customer) to charge to such payment instrument all Fees incurred through the Customer's use of the Services. All Fees for a Renewal Term are invoiced 14 calendar days prior to start of the Renewal Term and payable within 14 calendar days.
- 10.3 **Installation Date Range.** The parties shall agree the Installation Date range in the Order Form. e-Track shall contact the Customer no less than 7 days prior to the Shipment Ready Date and shall agree the exact Installation Date with the Customer in writing. In the event that the Customer is unable to take full delivery of the Order by the last date within the Installation Date range, e-Track reserves the right to deem the Order delivered on the False Delivery Date and to invoice the Order accordingly which shall be payable within 14 calendar days. e-Track also reserves the right to charge storage and insurance costs at the rate of 1% of total Fees

payable, per week, after the False Delivery Date. Whilst e-Track will use reasonable endeavours to meet any agreed Installation Date range, unless otherwise agreed in writing, any such dates shall be estimates only and e-Track is not liable for any delay in delivery, however caused.

- 10.4 If a Customer has an open payment channel such as a direct debit or automatic card payment set up with e-Track and this is cancelled or payment fails through the agreed channel, the Customer undertakes to make payment for any outstanding balance of any Fees due or payable to e-Track under this Agreement, in full, within 10 days. Failure to make this payment will result in legal action to recover the monies due.
- 10.5 If e-Track has not received payment within 7 days after the due date for any Fees, then without prejudice to any other rights and remedies of e-Track: **(a)** e-Track may, without liability to the Customer, on 2 days advance notice, disable the Customer's account and suspend access to all or part of the Services and e-Track shall be under no obligation to provide any or all of the Services while the invoice(s) concerned, any interest, administrative and legal costs of collecting payment and any further sums payable, remain unpaid; and **(b)** interest shall accrue on such due amounts on a daily basis in accordance with the Late Payments of Commercial Debts (Interest) Act 1998 as amended, following the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment. Payable on demand.
- 10.6 All amounts and fees stated or referred to in this Agreement: **(a)** are non-cancellable and non-refundable; **(b)** are exclusive of applicable tax, which shall be added to e-Track's invoice(s) at the appropriate rate.
- 10.7 e-Track shall be entitled to increase the Fees payable for Services at the start of each Renewal Term, on 60 days' prior written notice to the Customer. In the event that the Customer does not agree to such increase, the Customer may terminate this Agreement at the end of the Initial or then-current Renewal Term. In the event that the Customer does not notify e-Track that the Customer objects to any increase, the Renewal Term shall be extended and include the increase in Fees accordingly.

11. PROPRIETARY RIGHTS

- 11.1 The Customer acknowledges and agrees that e-Track and/or its licensors are the sole and exclusive owners of all intellectual property and other proprietary rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the Services or the Documentation.

12. CONFIDENTIALITY

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that: **(a)** is or becomes publicly known other than through any act or omission of the receiving party; **(b)** was in the other party's lawful possession before the disclosure; **(c)** is lawfully disclosed to the receiving party by a third-party without restriction on disclosure; **(d)** is independently developed by the receiving party, which independent development can be shown by written evidence; or **(e)** is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body, provided that to the extent practicable and permitted by law, the receiving party shall promptly notify the disclosing party in advance of such requested disclosure and provide the disclosing party with an opportunity to object to such request.
- 12.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third-party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 12.3 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 violation of the terms of this Agreement.
- 12.4 Neither party shall be responsible for any loss, destruction, alteration, or disclosure of Confidential Information caused by any third-party, provided that such party has taken reasonable steps to protect and avoid the loss, destruction, alteration, or disclosure of such Confidential Information.
- 12.5 The Customer acknowledges that details of the Services, and the results of any performance, security, penetration, vulnerability or other logical, analytical, data or information gathering tests carried out on the Services, constitute e-Track's Confidential Information.
- 12.6 e-Track acknowledges that the Data is the Customer's Confidential Information.
- 12.7 This clause 12 shall survive termination of this Agreement, however arising.

13. INDEMNITY

- 13.1 The Customer shall defend, indemnify and hold harmless e-Track against claims, actions, liabilities, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with: **(i)** the Customer's, Partner's or any User's use of the Services and/or Documentation; or **(ii)** the Customer's collection, use, processing and/or transfer of any Data or other personal data; or **(iii)** any claim of any kind including legal fees arising from any claim, demand or action alleging that any use the Customer makes of the Services is contrary to any law, code or regulation in any country.
- 13.2 **e-Track's Indemnity if Services Infringe Any Third-Party IP / if e-Track Breaches DPA 2018.** e-Track shall, subject to clause 14.4 and the limits of its professional indemnity insurance, defend the Customer against any claim that: **(a)** the Services infringe any United Kingdom patent effective as of the Start Date, UK copyright, trade mark, or right of confidentiality; **(b)** e-Track have breached the Data Protection Act 2018, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that: **(i)** e-Track is given prompt notice of any such claim; **(ii)** the Customer provides reasonable

co-operation to e-Track in the defence and settlement of such claim, at e-Track's expense; and (iii) e-Track is given sole authority to defend or settle the claim. In the defence or settlement of any claim, e-Track may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, and e-Track are unable, after best efforts, to procure for the Customer the right to continue using the Services or to provide functionally equivalent Services, terminate this agreement on 14 business days' notice without further liability to the Customer.

- 13.3 **Exclusions to e-Track's IP and Data Protection Indemnity.** In no event shall e-Track, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on: **(a)** a modification of the Services by anyone party other than e-Track; or **(b)** the Customer's use of the Services in a manner contrary to the instructions given to the Customer by e-Track; or **(c)** the Customer's use of the Services after notice of the alleged or actual infringement from e-Track or any appropriate authority.
- 13.4 The foregoing states each party's sole and exclusive rights and remedies, and each party's (including that party's employees, agents, and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trademark, database right, or right of confidentiality.

14. LIMITATION OF LIABILITY

- 14.1 This clause 14 sets out the entire financial liability of e-Track (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of: **(a)** any breach of this Agreement and any Support Services; **(b)** any use made by the Customer of the Services and Documentation or any part of them; and **(c)** any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 14.2 Except as expressly and specifically provided in this Agreement: **(a)** e-Track shall have no liability for any damage caused by errors or omissions in any information, instructions, or scripts provided to e-Track by the Customer in connection with the Services, or any actions taken by e-Track at the Customer's direction; **(b)** 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, disclaimed and excluded from this agreement including, without limitation, any warranties of title, merchantability, or fitness for a particular use or purpose; and **(c)** the Services and the Documentation are provided to the Customer on an "as is" basis.
- 14.3 Nothing in this Agreement excludes the liability of either party: **(a)** for death or personal injury caused by a party's negligence; or **(b)** for fraud or fraudulent misrepresentation.
- 14.4 Subject to clause 14.1 and clause 14.3: **(a)** to the maximum extent permitted by law, e-Track shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect, punitive, exemplary or consequential loss, costs, damages, charges or expenses however arising under or relating to this Agreement, even if e-Track has been advised of the possibility thereof, and regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based.; and **(b)** e-Track'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 this Agreement shall be limited to the total amount of Fees paid by the Customer to e-Track during the 6 months immediately preceding the date on which the claim arose. As the Fees for the Services properly reflect the delineation of risk between the parties, each party agrees to ensure that it will be responsible for making its own arrangements for the insurance of any loss in excess of its accepted legal liability as necessary.
- 14.5 Under no circumstances shall e-Track be responsible or liable for any harm caused by the transmission, through the Services, of a computer virus, or other computer code or programming device that might be used to access, modify, delete, damage, corrupt, deactivate, disable, disrupt, or otherwise impede in any manner the operation of any of the Customer's software, hardware, data or property.
- 14.6 Under no circumstances shall e-Track be responsible or liable for: **(a)** any inaccuracy, error or delay in, or omission of any Data or information entered into the Services by the Customer or any third-party; **(b)** any error or delay in the transmission of such data or information; or **(c)** any interruption in any such Data or information.

15. TERM AND TERMINATION

- 15.1 This Agreement shall, unless otherwise terminated as provided in this clause 15, commence on the **Start Date** and shall continue through the **Initial Term** and thereafter, this Agreement shall be automatically renewed for successive rolling periods of the Initial Term (each a **Renewal Term**), unless: **(a)** either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Term or 60 days before the end of any Renewal Term, in which case this Agreement shall terminate upon the expiry of the applicable Initial or Renewal Term; or **(b)** otherwise terminated in accordance with the provisions of this Agreement.
- 15.2 Without affecting any other rights that it may be entitled to, either party may terminate this Agreement without liability to the other if: **(a)** the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or **(b)** the other party has a receiver or administrative receiver appointed over it or over any part of its business or assets or passes a resolution for winding up (except for the purposes of a genuine scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or becomes subject to an administration order or enters into any voluntary arrangement with its creditors, or it ceases or threatens to cease or carry on business.

- 15.3 Without affecting any other rights that it may be entitled to, e-Track may terminate the Agreement for breach if: **(a)** payment of any invoiced amount (except to the extent such invoice is disputed in good faith) or Fee payable is overdue and following notification to the Customer, the Customer does not pay the overdue amount within seven business days of a written notice from e-Track; **(b)** the Customer breaches the acceptable use policy in clause 6.
- 15.4 On termination of this Agreement for any reason: **(a)** all licences and access to the Services granted under this Agreement shall immediately terminate and the method of access supplied to the Customer will automatically expire and the Services will cease to operate immediately; and **(b)** e-Track may destroy or otherwise dispose of any of the Data in its possession unless e-Track receives, no later than 10 business days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Data. This will be delivered to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by e-Track in returning or disposing of the Data; and **(c)** the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.
- 15.5 **Transition Support.** Following the service of a termination notice for any reason, e-Track may on agreement between the parties for a maximum period of three months, continue to provide the Services in accordance with this Agreement, (subject to Customer's full compliance with the Agreement and provided that all undisputed Fees are paid in full) and shall, if requested by the Customer, provide reasonable assistance to the Customer and/or any replacement supplier (subject to appropriate confidentiality undertakings being entered into) to the extent reasonably required to facilitate the smooth migration of the Services to Customer, or a replacement supplier.
- 15.6 e-Track shall use all reasonable endeavours, at the Customer's request, to assign or novate, whether in favour of the Customer or any alternative supplier, any contract for Services between e-Track and any third-party performing any part of the Services.
- 15.7 If termination is by the Customer as a result of e-Track's material breach, such reasonable co-operation and assistance shall be provided at no cost to the Customer. In all other cases where e-Track may not be considered at fault, e-Track may charge a reasonable sum at its then day rates in force (for the appropriate personnel) or for such other resource, to cover the cost of providing such co-operation and assistance (plus any expenses to be recovered at cost).
- 15.8 If this Agreement is terminated prior to the end of the Initial Term or any Renewal Term, other than for material breach by e-Track under clause 15.2, all Fees payable up to the end of the Initial Term or any Renewal Term and all other fees due and payable to e-Track under this Agreement shall be immediately due and payable to e-Track.

16. FORCE MAJEURE

e-Track shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of e-Track or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of e-Track's sub-contractors, for so long as said cause persists, provided that the Customer is notified of such an event and its expected duration.

17. GENERAL

- 17.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.2 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 17.3 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable, or illegal, the other provisions shall remain in force. If any invalid, unenforceable, or illegal provision would be valid, enforceable, or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 17.4 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.
- 17.5 The Customer shall not, without the prior written consent of e-Track, assign, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights or obligations under this Agreement. e-Track may at any time assign, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 17.6 Nothing in this Agreement is intended to or shall operate to create a partnership, joint venture, agency, franchise or employment relationship between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

- 17.7 This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns).
- 17.8 Each of the provisions of clauses 7 through 19 shall survive any termination or expiration of this Agreement in accordance with their terms.

18. NOTICES

- 18.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its registered address or such other address as may have been notified by that party for such purposes as set out in this Agreement. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by e-mail shall be deemed to have been received at 9am on the first business day following delivery. Where e-Track is required under this Agreement to give the Customer any notice in writing, e-Track may give this notice by letter or by email.

19. GOVERNING LAW AND JURISDICTION

- 19.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.
- 19.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 – SUPPLY OF EQUIPMENT AND SOFTWARE

1 Equipment, Software, and Warranties

- 1.1 **Supply of Equipment.** e-Track shall supply all items of Equipment as detailed in an Order Form in accordance with this Schedule. The Customer shall provide all equipment needed for the installation and integration of Equipment at the location detailed on the Order Form (“**Delivery Address**”).
- 1.2 **Supply of Third-Party Software.** The Customer's use of any Third-Party Software is governed by the terms of the agreement with the provider of that Third-Party Software, and its warranties. Use of Third-Party Software is at the Customer's sole risk. Third-Party Software is provided “as is” and e-Track is not responsible in any way for any Third-Party Software's performance, features, or failures and makes no warranty in respect to the Third-Party Software being fit for the Customer's specific purposes. e-Track shall provide any Third-Party Software to the Customer under the standard licence terms provided by the relevant Third-Parties, copies of which shall be provided to the Customer, and the Customer agrees to be bound to the relevant Third Parties by such licence terms and to ensure that its Affiliates are bound under similar obligations owed to the relevant Third-Parties.

Quotations

- 1.3 Unless otherwise detailed in an Order Form or otherwise approved by e-Track, any quotation or other proposal given by e-Track to the Customer for any reason is valid for a period of 30 calendar days only from its date, provided e-Track has not previously withdrawn it.
- 1.4 **Price Lists and Quotations.** Any typographical, clerical, or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by e-Track shall be subject to correction without any liability on the part of e-Track. Prices are subject to change prior to delivery and e-Track reserves the right, prior to delivery, to increase the price for any Equipment due to any factors beyond the control of e-Track.
- 1.5 Each Order or acceptance of a quotation for Equipment or Software will be deemed to be an offer by the Customer to purchase and/or hire (as applicable) the Equipment or Software on the terms of this Schedule and the Master Services Agreement. A contract is formed when an Order is accepted by e-Track, by way of a written Order Form at which point a contract will come into existence between the parties.
- 1.6 **No Cancellations.** No Order which has been accepted by e-Track may be cancelled, except with the agreement in writing of e-Track and provided e-Track is indemnified in full against all loss, costs, damages, charges, and expenses incurred by e-Track as a result of such cancellation.
- 1.7 **No Returns.** Due to the bespoke nature of the Services being provided, the Customer accepts that it has no right to returns.
- 1.8 Acceptance of delivery of the Equipment and/or Software will be deemed conclusive evidence of the Customer's acceptance of the terms of this Schedule and any Order.
- 1.9 e-Track undertakes (subject to the remainder of this clause) and the provisions of Schedule 2, at its option, to repair or replace Equipment (other than consumable items) which is found to be defective as a result of faulty materials or workmanship within the warranty period detailed in the Order Form. E Track shall not in any circumstances be liable for a breach of the warranty contained in this clause unless **(a)** the Customer gives written notice of the defect to e-Track within seven days of the time when the Customer discovers the defect; and **(b)** after receiving the notice, e-Track is given a reasonable opportunity of examining such Equipment (where possible, including remote access).
- 1.10 e-Track shall not in any circumstances be liable for a breach of the warranty if: **(a)** the Customer makes any use of Equipment in respect of which it has given written notice under sub-clause 1.9(a) above; or **(b)** the defect arises because the Customer failed to follow e-Track's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice; or **(c)** the Customer alters or repairs the relevant Equipment without the written consent of e-Track. Any repaired or replacement Equipment shall be under warranty for the unexpired portion of the applicable warranty period detailed in the Order Form. e-Track shall not in any circumstances be liable for any damage or defect to the Equipment caused by improper use of the Equipment or use outside its normal application. If the Customer's claim is subsequently found by e-Track to be outside the scope or duration of the applicable warranty, the Customer shall bear any costs of transportation of the Equipment, investigation, and repair.

2. Delivery of Equipment and Software

- 2.1 e-Track shall use its reasonable endeavours to deliver the Equipment by the date, dates specified in the Order Form, or otherwise stated by e-Track, but any such date is approximate only. If no dates are specified, delivery shall be within a reasonable time of acceptance of the Order by e-Track. Unless otherwise detailed, time is not of the essence as to the delivery of Equipment and e-Track is not liable for any delay in delivery, however caused.
- 2.2 e-Track may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the applicable Order. Each instalment may be classified as a separate order at e-Track's discretion and no cancellation or termination by either Party of any one instalment shall entitle the Customer to repudiate or cancel any other Order or instalment.

- 2.3 Delivery shall be made during normal business hours (excluding bank or public holidays). e-Track may levy additional charges for any deliveries made outside such hours at the Customer's request.
- 2.4 Unless otherwise detailed in writing, the Customer shall be responsible (at the Customer's cost) for preparing the Delivery Address for the delivery of the Equipment and/or Software and for the provision of all necessary access and facilities reasonably required to deliver and install the Equipment or Software.
- 2.5 If e-Track is prevented from carrying out delivery or installation on the Installation Date or within the Installation Date range agreed on the Order Form because no such preparation has been carried out or for any other reason (except e-Track's default) the Customer fails to take delivery of any of the Equipment and/or Software, the Equipment and/or Software will be deemed to be delivered 7 calendar days after the Shipment Ready Date or last day of the Installation Date range agreed on the Order Form, whichever comes last; and (without prejudice to its other rights) e-Track has the right to levy additional charges to recover its loss arising from this event (including storage and insurance), such as a re-visit from an e-Track technician which is charged to the Customer at e-Track's standard call out rates.
- 2.6 e-Track shall not be liable for any non-delivery of Equipment or Software unless the Customer notifies e-Track in writing of the failure to deliver within fourteen days after the scheduled delivery date. Any liability of e-Track for non-delivery of the Equipment shall in all circumstances be limited to replacing the Equipment within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Equipment.
- 2.7 Unless otherwise set out in an Order Form, e-Track is not responsible for unpacking, installing, or checking the Equipment or Software, which will be the responsibility of the Customer.
- 2.8 The Customer shall be deemed to have accepted the Equipment when the Customer has had 3 working days to inspect it after delivery and has not exercised in writing its right of rejection in accordance with this Schedule.
- 2.9 e-Track shall be responsible for any damage, shortage, or loss in transit, provided that the Customer notifies it to e-Track (or its carrier, if applicable) within 3 working days of delivery or the proposed delivery date of the Equipment and that the Equipment has been handled in accordance with e-Track's stipulations. Any remedy under this clause shall be limited, at the option of e-Track, to the replacement or repair of any Equipment which is proven to e-Track's satisfaction to have been lost or damaged in transit.
- 2.10 All samples, drawings, descriptive matter, specifications, and advertising issued by e-Track, and any descriptions or illustrations contained in e-Track's catalogues or brochures are issued or published for illustrative purposes only and they do not form part of this Agreement. Any typographical, clerical, or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by e-Track shall be subject to correction without any liability on the part of e-Track. e-Track reserves the right (but does not assume the obligation) to make any changes in the specification of the Equipment which are required to conform with any applicable legislation or, where the Equipment is to be supplied to the Customer's specification, which do not materially affect their quality or performance.

3. Risk and Property in Equipment

- 3.1 Risk of damage to or loss of the Equipment will pass to the Customer on delivery (or deemed delivery). Ownership of the Equipment will not pass to the Customer until e-Track has received in full (in cash or cleared funds) all sums due to it in respect of: **(a)** the Equipment; and **(b)** all other sums which are, or which become due, to e-Track from the Customer under any Order Form. e-Track will be entitled to recover payment for the Equipment notwithstanding that title in any of the Equipment has not passed from e-Track.
- 3.2 Until ownership of the Equipment has passed to the Customer, the Customer must: **(a)** hold the Equipment on a fiduciary basis as e-Track's bailee; **(b)** store the Equipment (at no cost to e-Track) separately from all other Equipment of the Customer or any Third-Party in such a way that they remain readily identifiable as e-Track's property; **(c)** not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and **(d)** maintain the Equipment in satisfactory condition and insured for their full price against all risks. The Customer has a period of 14 days from receipt of the Equipment to notify e-Track of any defects or in transit damage.
- 3.3 Until ownership of the Equipment is transferred to the Customer in accordance with 3.1 above, the Customer grants e-Track, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by e-Track in repossessing the Equipment shall be borne by the Customer.
- 3.4 The Customer shall be responsible for identifying a suitable site on its premises for the installation of the Equipment, e-Track and its sub-contractors are not responsible for and will not carry out any structural integrity tests in respect to the customer premises where installation takes place. It is the Customer's sole responsibility to ensure that the location where the Customer requests the Equipment to be installed is safe and both environmentally and physically secure and can bear the weight of the Equipment as set out in the data sheets provided by e-Track. . The integrity of the Equipment to the Customer's wall/structure and of the wall/structure itself, is the responsibility of the Customer. e-Track shall have no liability for the physical fixings attaching the Equipment to the Customer's wall/structure and the integrity of the Equipment on the Customer's wall/structure in the event the Equipment should fall or become un-attached in any way.

4. Charges

- 4.1 The Customer will pay the Fees for the Services in accordance with the Order Form and the Master Services Agreement and/or the quotation agreed.
- 4.2 Subject always to e-Track mitigating against the risk of the same, e-Track reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of undelivered Equipment or Software to reflect any increase in the cost to e-Track which is due to any factor beyond the control of e-Track (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Equipment which is requested by the Customer, any changes to Third-Party charges, or any delay caused by any instructions of the Customer or failure of the Customer to give e-Track adequate information or instructions.
- 4.3 e-Track shall invoice the Customer for the price of the Equipment once the Equipment is ready to be delivered to the Customer and following an attempt having been made by e-Track to deliver such Equipment. If e-Track are prevented from carrying out delivery or installation of the Equipment at the date it has been provisioned and is ready for delivery by e-Track, for any reason, including a failure of the Customer to meet its obligations under this Agreement, whether in respect to readiness to receive the Equipment or otherwise, the Equipment will be deemed to have been delivered on the due date and (without prejudice to e-Track's other rights) e-Track may level additional charges to recover its loss arising from a failure to accept delivery (including storage costs and insurance), such charges to be payable on demand.
- 4.4 Failure to make payment shall, without prejudice to any other right or remedy available to e-Track (including the provisions of the MSA), entitle e-Track to terminate any Order in whole or part and suspend any further deliveries of Equipment to the Customer and at its discretion, any other manufacture, delivery, installation or any other Services until payment has been made in full.

**Additional Equipment Hire Terms and Conditions
(only applicable if the Customer shall hire the Equipment, including hire purchase)**

1. DEFINITIONS

1.1 The following definitions and rules of interpretation apply in this Schedule:

Completion Date: means as defined in clause 5.1 below;

Rental Payments: the monthly payment(s) made by the Customer for hire of the Equipment as set out on the Order Form;

Rental Period: the period of hire as set out on the applicable Order Form;

Risk Period: as defined in clause 3.2 below;

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

1.2 All other terms used, but not defined shall have the meanings set forth in this Agreement.

2. EQUIPMENT HIRE

2.1 e-Track shall hire the Equipment to the Customer for the Rental Period subject to the terms and conditions of this Agreement and applicable Order Form.

2.2 Delivery shall be made by the e-Track as set out above in this Schedule 1. Risk shall transfer in accordance with clause 3.2 below.

2.3 The Customer shall pay the Deposit and Rental Payments to e-Track in accordance with this Agreement and applicable Order Form.

2.4 The Deposit is a deposit against default by the Customer of payment of any Rental Payments or any loss of or damage caused to the Equipment. If the Customer fails to make any Rental Payments in accordance with the payment terms agreed with the e-Track, or causes any loss or damage to the Equipment (in whole or in part), the e-Track shall be entitled to apply the Deposit against such default, loss or damage.

2.5 The e-Track shall not, other than in the exercise of its rights under this Agreement or applicable law, interfere with the Customer's quiet possession of the Equipment.

3. TITLE, RISK AND INSURANCE

3.1 Until such time as the Customer purchases the Equipment in accordance with clause 5 below (if applicable), the Equipment shall at all times remain the property of the e-Track, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this Agreement).

3.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on delivery of the Equipment. The Equipment shall remain at the sole risk of the Customer during the Rental Period and any further term during which the

Equipment is in the possession, custody or control of the Customer ("**Risk Period**") until such time as the e-Track retakes possession of the Equipment.

3.3 During the Rental Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:

- (a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the e-Track may from time to time nominate in writing;
- (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the e-Track may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
- (c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the e-Track may from time to time consider reasonably necessary and advise to the Customer in writing.

3.4 The Customer shall give immediate written notice to the e-Track in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment.

4. CUSTOMER'S RESPONSIBILITIES

4.1 The Customer shall during the Rental Period:

- (a) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by the e-Track;
- (b) take such steps (including compliance with all safety and usage instructions provided by the e-Track) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set up, used, cleaned or maintained by a person at work;
- (c) maintain the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on delivery (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;
- (d) make no alteration to the Equipment and shall not remove any existing component (or components) from the Equipment without the prior written consent of the e-Track. Title in all substitutions, replacements, renewals made in or to the Equipment shall vest in the e-Track immediately on installation;
- (e) keep the e-Track fully informed of all material matters relating to the Equipment;
- (f) keep the Equipment at all times at the Customer's premises as notified to the e-Track and shall not move or attempt to move any part of the Equipment to any other location without the e-Track's prior written consent;
- (g) permit the e-Track or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter on the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- (h) not, without the prior written consent of the e-Track, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (i) not without the prior written consent of the e-Track, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the e-Track against all losses, costs or expenses incurred as a result of such affixation or removal;
- (j) not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of the e-Track in the Equipment and, where the Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that the e-Track may enter such land or building and recover the Equipment both during the term of this Agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the e-Track of any rights such person may have or acquire in the Equipment and a right for the e-Track to enter onto such land or building to remove the Equipment;

- (k) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify the e-Track and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the e-Track on demand against all losses, costs, charges, damages and expenses reasonably incurred as a result of such confiscation;
 - (l) not use the Equipment for any unlawful purpose; and
 - (m) ensure that at all times the Equipment remains identifiable as being the e-Track's property and shall ensure that the sign/stickers supplied by the e-Track to that effect remain visible and attached to the Equipment.
- 4.2 The Customer acknowledges that the e-Track shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors.
- 5. PURCHASE OF EQUIPMENT (IF APPLICABLE)**
- 5.1 If the parties have agreed on the applicable Order Form for the hire of the Equipment to be a hire purchase arrangement, the Customer shall, subject to compliance with clause 5.2, be deemed to have purchased the Equipment on the last business day of the Rental Period ("**Completion Date**").
- 5.2 Purchase by the Customer in accordance with clause 5.1 is strictly subject to:
- (a) all amounts due to e-Track under this Agreement and/or the applicable Order Form up to the Completion Date having been paid in full by the Customer; and
 - (b) the Rental Period having not ended by reason of e-Track terminating the Rental Period in accordance with clause 6.1 below or automatic termination pursuant to clause 6.2 below.
- 5.3 On completion of the purchase of the Equipment under this clause 5, such title to the Equipment shall transfer from e-Track to the Customer. The Equipment shall transfer to the Customer in the condition and at the location in which it is found on the Completion Date.
- 6. TERMINATION**
- 6.1 Without affecting any other right or remedy available to it, e-Track may terminate the Rental Period early in accordance with clause 15 of this Agreement.
- 6.2 In addition, this Agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.
- 7. CONSEQUENCES OF TERMINATION**
- 7.1 On early termination of the Rental Period, however caused:
- (a) e-Track's consent to the Customer's possession of the Equipment shall terminate;
 - (b) e-Track may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter any site or premises at which the Equipment is located;
 - (c) the Customer shall ensure the safe and proper storage of the Equipment until it has been collected by e-Track; and
 - (d) without prejudice to any other rights or remedies of the Customer, the Customer shall pay to e-Track on demand:
 - (i) all Rental Payments and other sums due but unpaid at the date of such demand; and
 - (ii) any costs and expenses incurred by e-Track in recovering the Equipment or in collecting any sums due from the Customer (including any storage, insurance, repair, transport and legal costs).

In the event of any conflict between a term within these **Additional Equipment Hire Terms and Conditions** and any other term of this Agreement, these Additional Equipment Hire Terms and Condition (if applicable to the Customer) shall take precedence.

SCHEDULE 2 – SUPPORT AND MAINTENANCE

Definitions

Additional Services: any Emergency Maintenance or Excluded Maintenance performed by e-Track under this agreement.

Additional Services Fees: the fees payable in consideration of the provision of any Additional Services, which shall be calculated at the Additional Services Rates.

Additional Services Rates: the rates set out in the Order Form, as those rates are amended from time to time in accordance with the terms of this agreement.

Charges: the Fees and the Additional Services Fees together.

Corrective Maintenance: in accordance with clause 1.3: **(a)** making any adjustments to the Maintained Equipment; and **(b)** replacing any parts or components of the Maintained Equipment, in each case, which are required to restore the Maintained Equipment to Good Working Order.

Excluded Causes: **(a)** a defect in the manufacturer's design of the Maintained Equipment; **(b)** faulty materials or workmanship in the manufacture of the Maintained Equipment; **(c)** use of the Maintained Equipment with computer equipment or materials not supplied or approved in writing by e-Track; **(d)** any maintenance, alteration, modification or adjustment performed by persons other than e-Track or its employees or agents; **(e)** the Customer or a Third-Party moving the Maintained Equipment; **(f)** the use of the Maintained Equipment in breach of any of the provisions of the agreement under which the Maintained Equipment was supplied; **(g)** a failure, interruption or surge in the electrical power or its related infrastructure connected to the Maintained Equipment; **(i)** the neglect or misuse of the Maintained Equipment; **(j)** use of Unsupported Software.

Excluded Maintenance: any maintenance services required to restore any malfunctioning or failed Maintained Equipment or Supported Software to Good Working Order where the malfunction or failure results from or is caused by any of the Excluded Causes.

Emergency Maintenance: **(a)** making any adjustments to the Maintained Equipment; and **(b)** replacing any parts or components of the Maintained Equipment, in each case, which are required to restore the Maintained Equipment to Good Working Order.

Fix Time: the applicable fix times as set out in 1.11 below.

Good Industry Practice: in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight, and judgement and the making of any expenditure that would reasonably be expected from a skilled person engaged in the same type of undertaking under the same or similar circumstances.

Good Working Order: the Maintained Equipment operates materially in accordance with the Operating Manuals.

Location: the location of the Maintained Equipment at the Customer's premises as specified in the Order Form, or any other location as may be agreed by the Parties in writing from time to time.

Maintained Equipment: the equipment specified in the Order Form.

Maintenance Services: Preventative Maintenance, Corrective Maintenance and Emergency Maintenance of the Maintained Equipment together with the Software Maintenance Services.

Operating Manuals: all operating manuals and specifications relating to the Maintained Equipment which are provided to the Customer by e-Track.

Preventative Maintenance: **(a)** testing that the Maintained Equipment is functional; and **(b)** making any adjustments as may be required to ensure the Maintained Equipment remains in Good Working Order, in accordance with clause 1.2.

Response Time: the applicable response times as set out in 1.11 below.

Service Levels: the levels to which e-Track must perform the Maintenance Services, as set out in 1.11 below.

Software: any software which is made available by e-Track to Customer, including the firmware installed on the Hardware, and any updates to such software provided from time to time.

Software Maintenance Services: the software maintenance services to be provided by e-Track in respect of the Supported Software as set out in this Schedule.

Standard Maintenance Fees: the fees set out in the Order Form, as these fees are varied from time to time in accordance with the terms of this agreement.

Supported Software: Software that is both: **(a)** specified in the Order Form as Supported Software and **(b)** currently supported by e-Track as detailed in the Order Form

Term: the duration of any warranty period for Equipment as detailed in the Order Form.

Unsupported Software: Software that is not Supported Software.

Virus: any program which contains malicious code or infiltrates or damages a computer system without the owner's informed consent or is designed to do so or which is hostile, intrusive, or annoying to the owner or user and has no legitimate purpose.

1. SUPPORT PACKAGES

1.1 e-Track’s support packages are as follows:

Benefit/Feature	Standard	Enhanced	Enterprise
Web & Touch Licence	✓	✓	✓
Support Hours (UK)	Weekdays 09:00 - 17:00	Weekdays 07:00 - 19:00 Weekends 09:00 - 17:00	24/7
Security Updates	✓	✓	✓
Annual Hardware Maintenance & On-Site Training	✓	✓	✓
Extended Hardware Warranty		✓	✓
Dedicated Account Manager		✓	✓
Pro-active Monitoring		✓	✓
Customisable Management Reporting & Bespoke SLA			✓

HELPDESK TECHNICAL SUPPORT SERVICES – SUPPORT HOURS

1.2 e-Track provides access to its helpdesk support services in accordance with the support hours associated with the Customer’s chosen support package as listed above.

1.3 We aim to respond to all support requests as soon as practicable and pride ourselves on working closely with our customers to remedy any issues quickly. A support ticket will be raised for all support requests and prioritised and actioned in accordance with the terms of this support and maintenance agreement.

1.4 Who can contact e-Track Support?

Only “Administrative Users” (as nominated by the Customer in the Customer information pack) are authorised to contact e-Track for Support Services. e-Track will provide technical support services only to that specified set of users, but additional Administrative Users can be added in cases of emergency events on written agreement.

1.5 Support Services – Details

e-Track's technical support team accept queries from Administrative Users during the applicable support hours for the Customer's chosen support package, via e-mail and tickets raised through our support centre. Please send emails to support@e-track.com or follow the process set out in the Customer information pack in order to create a support ticket. e-Track's support team will use reasonable endeavours to process support requests, issue support tickets, determine the source of the problem and respond to the relevant Administrative User. e-Track's technical support call centre will respond to all support requests within the time periods outlined in the table below, according to priority.

Out of Hours Support

1.6 In the unlikely event that a system outage occurs outside of the Customer's support hours detailed above, a Nominated Support User may e-mail, or raise a ticket through the e-Track support centre or leave a message with the e-Track support service.

1.7 Support queries out of the hours associated with the customer's support package (standard or enhanced) will only trigger our support service the following working day and therefore any response time or target resolution time will start from 0900 GMT the next working day.

1.8 Raising a support request

On raising a support request, the Nominated Support User shall supply a detailed description of the issue and, where relevant, the circumstances in which it arose, and shall submit sufficient material, information, and data to enable e-Track support staff to properly investigate the request and, where necessary, duplicate any problem.

1.9 e-Track will not generally accept support requests directly from anyone other than agreed Administrative Users. Administrative Users should be the point of contact with e-Track's technical support team who report support requests that the end user's IT department cannot resolve themselves after they have performed a reasonable level of diagnosis and reviewed our documentation, FAQ, and guidance notes.

1.10 Following discussion with the Nominated Support User, e-Track's technical support team will determine the priority of any support request, using one of following priorities:

1.11

Priority	Description	Resolution Time
Priority 1	The e-Track software or third-Party service is not operational, where hosted on e-Track cloud	Within 2 Working hours.
Priority 2	Certain non-essential features of the software are impaired while all other major components of the software remain functional.	Within 7 Working Days
Priority 3	Errors that are non-disabling or cosmetic and clearly have little or no impact on the normal operation of the software.	Non-committal

1.12 A 2 hour Response Time begins when a support request is logged on e-Track's support ticket system.

1.13 The Resolution Time begins when the record of a support request has been notified to the Nominated Support User.

1.14 No representation or warranty is given by e-Track that all faults or defects with factors outside of our direct control will be fixed within a specified period of time nor that any support request, defect, or fault which does not materially affect the Customer's operations using the Services will be corrected.

1.15 Maintenance Releases / Fixes or Updates

e-Track shall issue modifications of the Software as and when required by way of a fix or patch or temporary by-pass solution to support the resolution of faults (“**Maintenance Release**”). If the Customer fails to acquire and install any Maintenance Release or mandatory update made available to the Customer, following e-Track notifying the Customer that such Maintenance Release or mandatory update is available for installation, e-Track may, unless otherwise agreed in advance with the Customer, suspend its provision of Services to the Customer by giving one month's written notice to the Customer or, at its discretion, limit its provision of Support and Maintenance Services.

- 1.16 e-Track shall have no obligation to provide Support Services where faults arise from: **(a)** misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by e-Track), including failure or fluctuation of electrical power; **(b)** use of the Software in combination with any equipment or software not provided by e-Track or not designated by e-Track for use with the Software, or any fault in any equipment or other software; **(c)** relocation or installation of the Software or any fix by any person other than a person acting under the clear instructions of e-Track; **(d)** having the Software maintained by a Third-Party not authorised by e-Track; **(e)** any modification not authorised by e-Track; **(f)** operator error (including a failure to provide e-Track with adequate and accurate information in respect to any support request).
- 1.17 **Replacement Equipment and Spare Parts**
“**Maintained Equipment**” is the Equipment and Software covered by our support and warranty services (as applicable under the Customer’s chosen support package) and is limited to that Equipment and Software supplied by e-Track and detailed on the Order Form (within the Customer information pack).
- 1.18 On the Customer informing e-Track that the Maintained Equipment is malfunctioning or has failed or is otherwise not in Good Working Order, e-Track shall: **(a)** use all reasonable endeavours to perform corrective maintenance of the Maintained Equipment within the relevant Fix Time; and **(b)** where, in e-Track’s opinion, it cannot reasonably perform corrective maintenance remotely, use all reasonable endeavours to attend at the Location during Normal Business Hours.
- 1.19 In performing any Maintenance Services, e-Track shall use all reasonable endeavours to support the Customer in restoring any malfunctioning or failed Maintained Equipment to Good Working Order either remotely or while in attendance at the Location.
- 1.20 Following acceptance by e-Track of a Hardware support request from the Customer (in accordance with the procedures and requirements specified above), e-Track shall, using reasonable endeavours, perform such actions as e-Track deems necessary so as to return the Hardware to Good Working Order within the applicable Service Level provided that no spare or replacement parts are required to perform such action.
- 1.21 If e-Track determines that repair of the Hardware is not possible, then e-Track shall provide a swap out of the Hardware with a permanent replacement where a Manufacturer’s warranty is in place (“**Swap Out**”).
- 1.22 In the event that there is a failure of Maintained Equipment and e-Track are unable to fix the issue remotely, e-Track may require the Customer to return the Hardware to e-Track for repair. In such cases, e-Track will either provide the Customer with loan equipment, spare parts, or a Swap Out. Where e-Track provides loan equipment or a Swap Out, e-Track shall be under no obligation to provide identical equipment but shall use all reasonable endeavours to ensure that the loan or Swap Out equipment provided will be of not less than an identical or better level of functionality. Loan or Swap Out equipment shall not be supplied where the exclusions set out below apply. Where e-Track provides the Customer with Swap Out equipment, then unless otherwise agreed, upon receipt of the Swap Out equipment by the Customer, title to the Swap Out equipment shall pass to the Customer, and title to the Hardware e-Track removes from the Customer Location shall transfer to e-Track.
- 1.23 In the instance where e-Track is required to visit the site of the Maintained Equipment, the visit may be covered under the manufacturer’s warranty (which may be extended in the case of enhanced and enterprise support packages). In the instance that the visit falls outside of the Manufacturer’s Warranty, a Call Out Rate will be charged. Please see the Pricing Schedule for the current Call Out Rate.
- 1.24 For the avoidance of doubt, the Customer hereby agrees and acknowledges that maintenance events do not include: **(a)** repairs or replacement as required as a result of any accident, relocation to another site, installation, neglect, or misuse of the Hardware by any Party other than e-Track, including operation in a manner contrary to the Manufacturer’s operating instructions; or **(b)** works requested by the Customer; or **(c)** repairs or replacement as required as a result of any modification to the Hardware other than by e-Track; or **(d)** repairs, support, or maintenance of the Hardware by any Party other than e-Track without e-Track’s prior consent; or **(e)** repairs or replacement of Hardware which has suffered physical loss or damage whatsoever caused by any factor outside the control of e-Track including, but not limited to, fire, theft, vandalism, or accidental/deliberate damage or destruction; or **(f)** repairs required as a result of any failure or fluctuation of electricity supply, climate control, or other environmental conditions; or **(g)** repair of any external or cosmetic damage to the Hardware or any other goods affected by a defect in the Hardware, electrical work external to the Hardware, refurbishment, or repair of any casing; or **(h)** repairs to items of Hardware which have come to the end of their natural service life, or which are, in the reasonable opinion of e-Track, beyond repair, or for which spare parts are no longer readily available; or **(i)** any supply of parts or work which is required because of the failure of the Customer promptly to inform e-Track of any faults in the operation of the relevant items of Hardware or the adding or removal of any accessories, attachments or other devices; or **(j)** repairs to items of Hardware which are required as a result of a Manufacturers’ product recall whether in relation to a complete piece of Hardware or a component part thereof. Product recalls shall constitute an Additional Service which shall be charged at e-Track’s then current time and materials rates.

1.25 **The Customer shall:**

- (a) ensure that the Maintained Equipment is installed and kept at the Location under suitable conditions, as specified in the applicable Documentation provided by e-Track, and permit only trained and competent personnel to use it and follow any operating instructions as e-Track may give from time to time;
- (b) notify e-Track promptly if the Maintained Equipment is discovered to be operating incorrectly;
- (c) at all reasonable times permit full and free access to the Location and to the Maintained Equipment to e-Track, its employees, contractors, and agents, and provide them with adequate and safe working space, and any telecommunications facilities as are reasonably required to enable e-Track to perform the Maintenance Services and the Additional Services while at the Location;
- (d) not allow any person other than e-Track to maintain, alter, modify, or adjust the Maintained Equipment without the prior written approval of e-Track;
- (e) only use supplies or materials supplied or approved by e-Track (such approval not to be unreasonably withheld or delayed).

1.26 **SUPPORT ASSISTANCE FROM THIRD-PARTY VENDORS**

e-Track will liaise with Third-Party partners and suppliers to assist in the resolution of support and service requests in accordance with this Agreement. However, the provision of support or assistance by any Third-Party is contingent upon the terms of any agreement in place with that Third-Party. e-Track shall not be responsible for any acts or omissions of Third-Party vendors, disclaims all liability for, and makes no representation or warranty that any support or service request dependent on a response from a Third-Party will be fixed or that any support or service request will be responded to within a specified period of time by that Third-Party.

1.27 **MAINTENANCE SERVICES**

- (a) During the term of the Customer's chosen support package and in accordance with benefits offered by the chosen package, e-Track shall provide the Customer with the Maintenance Services.
- (b) e-Track shall, at a frequency as is reasonably determined by e-Track, perform Preventative Maintenance of the Maintained Equipment. Where e-Track wishes to attend the Location in order to perform Preventative Maintenance, it shall do so during Normal Business Hours.
- (c) On the Customer informing e-Track that the Maintained Equipment is malfunctioning or has failed or is otherwise not in Good Working Order, e-Track shall: **(i)** use all reasonable endeavours to perform Corrective Maintenance of the Maintained Equipment within the relevant Fix Time; and **(ii)** where, in e-Track's opinion, it cannot reasonably perform Corrective Maintenance remotely, use all reasonable endeavours to attend at the Location during Normal Business Hours within the relevant Response Time.
- (d) On the Customer informing e-Track outside of Normal Business Hours that the Maintained Equipment is malfunctioning, has failed or is not in Good Working Order, e-Track shall: **(i)** use all reasonable endeavours to perform Emergency Maintenance of the Maintained Equipment within the relevant Fix Time; and **(ii)** where, in e-Track's opinion, it cannot reasonably perform Emergency Maintenance remotely, use all reasonable endeavours to attend at the Location within the relevant Response Time.
- (e) Emergency Maintenance shall be charged at the Additional Services Rates for each of e-Track's personnel involved in the performance of Emergency Maintenance. Any additional charges shall be calculated, in the case of Emergency Maintenance that is performed remotely, from the time at which the relevant e-Track personnel commence performance of Emergency Maintenance, and in the case of Emergency Maintenance that is performed at the Location, from when the personnel arrive at the Location until they leave the Location.
- (f) In performing any Maintenance Services, e-Track shall use all reasonable endeavours to restore any malfunctioning or failed Maintained Equipment to Good Working Order either remotely or while in attendance at the Location. Where this is not reasonably practicable, or not reasonably practicable within Normal Business Hours (in the case of Preventative Maintenance and Corrective Maintenance), e-Track shall either arrange for a further visit to the Location within Normal Business Hours to complete the repair or remove the Maintained Equipment or part of the Maintained Equipment for repair off-site.
- (g) e-Track shall ensure that its personnel shall, while on site at the Location, comply with the Customer's reasonable health and safety and security policies, provided that these policies have been brought to the attention of its personnel in writing in advance.
- (h) e-Track shall not be required to perform any maintenance or support in relation to either: **(i)** Unsupported Software; **(ii)** Supported Software where Customer is in breach of this agreement or the relevant e-Track end user terms.

1.28 **Service Levels**

e-Track shall use reasonable endeavours to perform the Maintenance Services in accordance with the Service Levels (as applicable under the Customer's chosen support package).

1.29 **Replacements and spare parts**

- (a) In performing the Preventative Maintenance, Corrective Maintenance, and the Additional Services, e-Track shall use all reasonable endeavours to source spare parts required to restore the Maintained Equipment to Good Working Order. Where e-Track is unable to source individual spare parts for less than this amount, e-Track shall have the right to charge the Customer for the spare parts.
- (b) All spare parts and/or replacements provided by e-Track to the Customer shall become part of the Maintained Equipment. e-Track will assign to the Customer, with full title guarantee and free from all third-Party rights, all spare parts and/or replacements provided by e-Track. All parts and components removed from the Maintained Equipment by e-Track in the course of performing the Preventative Maintenance, Corrective Maintenance, and/or the Additional Services shall no longer constitute part of the Maintained Equipment and will be the property of e-Track. The Customer will assign to e-Track, with full title guarantee and free from all third-Party rights, all parts and components removed from the Maintained Equipment by e-Track in accordance with this clause .

1.30 Customer's obligations

The Customer shall: **(a)** ensure that the Maintained Equipment is installed and kept at the Location, under suitable conditions, as specified in the agreement under which the Maintained Equipment was supplied or the Operating Manuals, and permit only trained and competent personnel to use it, and follow any operating instructions as e-Track may give from time to time; **(b)** notify e-Track promptly if the Maintained Equipment is discovered to be operating incorrectly; **(c)** at all reasonable times permit full and free access to the Location and to the Maintained Equipment to e-Track, its employees, contractors, and agents, and provide them with adequate and safe working space, and any telecommunications facilities as are reasonably required to enable e-Track to perform the Maintenance Services and the Additional Services while at the Location; **(d)** provide e-Track with any information that is reasonably requested in the performance of the Maintenance Services and the Additional Services; **(e)** take any steps reasonably necessary to ensure the safety of e-Track's personnel when attending the Location; **(f)** not allow any person other than e-Track to maintain, alter, modify or adjust the Maintained Equipment without the prior written approval of e-Track; **(g)** not move the Maintained Equipment from the Location without the prior written approval of e-Track (such approval not to be unreasonably withheld or delayed); **(h)** store any reserve equipment only in conditions approved by e-Track, and make this equipment available for periodic maintenance, as with all other Maintained Equipment; **(i)** only use supplies or materials supplied or approved by e-Track (such approval not to be unreasonably withheld or delayed); and **(j)** only use the Software in accordance with the terms and conditions set out in the MSA.

1.31 e-Track warranties

- (a) e-Track represents and warrants to the Customer that:
 - (i) the Maintenance Services and the Additional Services shall be performed:
 - (A) by an appropriate number of suitably qualified and experienced personnel;
 - (B) using all reasonable skill and care and in accordance with Good Industry Practice; and
 - (C) in accordance with all laws and regulations in force which are applicable to e-Track;
 - (ii) all components and equipment supplied or used in the course of the provision of the Maintenance Services and the Additional Services shall operate materially in accordance with their technical specifications;
 - (iii) e-Track has the full capacity and authority and all necessary permissions, licences, and consents necessary to enter into, and perform its obligations, under this agreement;
 - (iv) e-Track shall take reasonable steps to not introduce any Viruses into the Maintained Equipment, or the Customer's network and information systems, by way of the Maintenance Services or the Additional Services or otherwise.
- (b) Except as expressly stated in this agreement, all warranties, conditions, and terms, whether express or implied by statute, common law, or otherwise (including satisfactory quality, fitness for purpose and suitability) are hereby excluded to the fullest extent permitted by law.