

SDS TECHNOLOGY LTD TERMS AND CONDITIONS

1. INTERPRETATION

1.1 The definitions in these Conditions are as follows:

Application: the SDS Technology Ltd Vehicle and Asset tracking platform.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the designated Services, as further described in clause 3.8(e);

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK;

Conditions: these terms and conditions as amended from time to time in accordance with clause 18.3;

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions;

Confidential Information: information that is proprietary or confidential information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, clients, customers, products, affairs and finances of either party to the Contract for the time being confidential and trade secrets including, without limitation, technical data and know-how relating to the business either party to the Contract or any of their suppliers, clients, customers, agents, distributors, shareholders or management, including (but not limited to) information identified as Confidential Information in clause 11.5;

Licence Fee: as set out in the Purchase Order;

Configuration Services: the set-up and configuration reasonably required to create and host the Mobile Platform for the Customer's use of the applicable Services;

Contract Fee: the applicable Subscriptions Fees as set out in the Price List;

Customer: the company or business who purchases Services from the Supplier;

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

Documentation: the Purchase Order together with those documents and information which set out a description of the Services (including applicable user instructions) for the Services, which is made available to the Customer by the Supplier online via david.donnachie@sds technology.co.uk or such other web address notified by the Supplier to the Customer from time to time;

Enterprise Licence: those enterprise licences purchased by the Customer pursuant to these Conditions entitling the respective Authorised User to those Services set out in clause 3.7;

Go Live Date: the date issued in writing by the Supplier as the Go Live Date;

Hosting Services: the Services that the Company provides to allow access and use of the Mobile Platform and/or the Application;

Initial Term: the initial term of the Contract as set out in Purchase Order; 36 months unless otherwise stated.

Application Licence: those User Subscriptions purchased by the Customer pursuant to clause 2.1, the respective Authorised User to those Services as set out in clause 3.7;

Maintenance and Support: any error, corrections, and updates that the Supplier may provide or perform with respect to the Mobile Platform and/or the Application as described in the M&S Policy;

M&S Policy: the 'M&S Policy' available from time to time via the Website, detailing the Maintenance and Support provided by the Supplier to the Company pursuant to these Conditions;

Mobile Platform: the online software platform hosted by the Company at the Website;

Mobile Platform Services: means those services provided as described in the Documentation via the Mobile Platform;

Normal Business Hours: 09:00 to 17:00 local UK time, each Business Day;

Pay As You Go Charge: the on going charge for specific User Subscriptions being subject to the Pay As You Go Charges set out in the Price List;

Platform Licence: those platform licences purchased by the Customer pursuant to these Conditions entitling the respective Authorised User to access those Services set out at clause 3.7;

Price List: the list of fees payable by the Customer for the supplied Services as attached or otherwise set out in the Purchase Order;

Purchase Order: the Supplier's written quotation accepted by the Customer;

Renewal Period: the period described in clause 14.1;

Response Services: a vehicle/asset monitoring and escalation service utilising the Application, the communication network connection and operator monitoring as more particularly described in the Documentation;

Services: the applicable Hosting Services, Mobile Platform Services, Maintenance and Support, and Response Services provided by the Supplier to the Customer pursuant to these Conditions, as more particularly described in the Documentation;

Service Level Arrangements: the service level arrangements relating to the supply of Services to the Customer as detailed in the SLA Policy;

SLA Policy: the 'SLA Policy' available from time to time via the Website, detailing the Service Level Arrangements provided by the Supplier pursuant to these Conditions;

Subscription Term: the term of a User Subscription stated within in the Purchase Order or as otherwise requested pursuant to clause 4;

Supplier: SDS Technology Limited – company number: 05422075;

Software: the Supplier's proprietary software is a machine – readable object code (including any error corrections, updates, upgrades, modifications, and enhancements made to it) contained, embodied, or subsisting in the Application, Mobile Platform, and/or the Services;

Support Fee: (if applicable) as set out in the Purchase Order;

Term: has the meaning given in clause 14.1 (being the Initial Term together with any subsequent Renewal Periods);

User Subscriptions: those Platform Licences, Application Licences, and/or Enterprise Licences requested by the Customer and accepted by the Supplier pursuant to clauses 3.1 and 4 ("User Subscription" shall mean such of them as the context may provide);

Subscription Fee: either the Pay As You Go Charge or Contract Fee as applicable to each respective User Subscription as set out in the Price List payable by the Customer to the Supplier for the User Subscriptions;

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

Website: means the website hosted as part of the Services at the address which shall be notified to the Customer in writing from time to time; and

Year: the period of 36 months from the Go Live Date and each consecutive period of 24 months thereafter during the Term.

1.2 The following rules of interpretation apply to those Conditions:

- (a) clause, schedule and paragraph headings shall not affect the interpretation of these Conditions;
- (b) a person includes an individual, corporate or unincorporated body (whether or not having separate legal personality);
- (c) a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- (d) words in the singular shall include the plural and vice versa;
- (e) a reference to one gender shall include a reference to the other genders;
- (f) a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;
- (g) a reference to writing or written includes faxes but not e-mail; and
- (h) references to clauses and schedules are to the clauses and schedules of these Conditions; references to paragraphs are to paragraphs of the relevant schedule to these Conditions.

2. BASIS OF CONTRACT

- 2.1 The Purchase Order constitutes an offer by the Supplier to provide the Services in accordance with these Conditions.
- 2.2 The Purchase Order shall be deemed to be accepted when the Customer requests or is otherwise provided with a Go Live Date at which point and on which date the Contract shall come into existence.
- 2.3 The Contract constitutes the entire agreement between the parties and the Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any Purchase Order issued by the Supplier is only valid for a period of 20 Business Days from its date of issue.

3. USER SUBSCRIPTIONS

- 3.1 Following the Customer's acceptance of the Purchase Order pursuant to clause 2.2, the Customer shall provide such information as is required by the Supplier for that number of User Subscriptions as set out in the Purchase Order, including (but not limited to) the following:
- (a) Subscription Term for each User Subscription;
 - (b) as well as which User Subscriptions shall incur Pay As You Go Charges;
 - (c) shall be capable of automatic renewal on expiry; and
 - (d) the type of each User Subscription pursuant to clause 3.7,
- and once accepted by the Supplier, such User Subscriptions shall be deemed active.
- 3.2 The Subscription Term for each User Subscription shall run from the activation of the User Subscription by the Supplier and shall not be less than a minimum of one Year, unless a Pay As You Go Charge is applicable pursuant to clause 9.10.
- 3.3 A User Subscription shall expire automatically on the expiry of its Subscription Term unless:
- (a) the User Subscription was requested under these Conditions on a Pay As You Go Charge basis; or
 - (b) the Company confirms, at the time the User Subscription is requested, that such User Subscription shall be automatically renewed on expiry on a rolling monthly basis.
- 3.4 A User Subscription for which a Pay As You Go Charge is incurred shall continue until terminated either by the Customer giving 30 days written notice or as otherwise terminated under these Conditions.
- 3.5 User Subscriptions for which a Contract Fee is charged shall not be capable of termination prior to the expiry of their Subscription Term, unless terminated pursuant to these Conditions.
- 3.6 Subject to the Supplier approving each User Subscription, payment being made in accordance with clause 9, the restrictions set out in this clause 2.1 and the other terms of these Conditions, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services during the Term solely for the Customer's internal business operations.
- 3.7 A User Subscription can be requested either as an additional User Subscription in accordance with clause 4 or as provided in the Purchase Order, subject to which such User Subscriptions shall grant Authorised Users access to the following services:
- (a) Platform Licence – access to and use of the Mobile Platform and Mobile Platform and such Services as set out in the Purchase Order or otherwise approved in writing by the Supplier;
 - (b) Vehicle/Asset Alert and Response Licence – access to and use of the Application and such Services as set out in the Purchase Order or otherwise approved in writing by the Supplier;
 - (c) Enterprise Licence – access to and use of the Application, Mobile Platform and such Services as set out in the Purchase Order or otherwise approved in writing by the Supplier.

- 3.8 In relation to the Authorised Users, the Customer undertakes that:
- (a) all information provided to the Supplier by the Customer shall be accurate and correct, including but not limited to all User Subscriptions and Authorised User details;
 - (b) the maximum number of Authorised Users that it authorises to access and use the Services shall not exceed the number of User Subscriptions it has purchased from time to time;
 - (c) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services;
 - (d) each Authorised User shall keep a secure password for his use of the Services and that each Authorised User shall keep his password confidential;
 - (e) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
 - (f) it shall permit the Supplier to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
 - (g) if any of the audits referred to in clause 3.8(f) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
 - (h) if any of the audits referred to in clause 3.8(f) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the Price List within 10 Business Days of the date of the relevant audit.

3.9 The Customer shall not 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 unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property,

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

3.10 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under the Contract, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software 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 Software; 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
- (d) subject to clause 19.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.1.

3.11 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.

3.12 The rights provided under this clause 2.1 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

4. ADDITIONAL USER SUBSCRIPTIONS

4.1 Subject to clause 4.2 and clause 9.1, the Customer may, from time to time during the Term of the Contract, purchase additional User Subscriptions in excess of the number set out in the Purchase Order and the Supplier shall grant access to the Services to such additional Authorised Users in accordance with these Conditions.

4.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing with the following information:

- (a) the Subscription Term for each User Subscription;
- (b) which (if any) requested User Subscriptions shall incur Pay As You Go Charges and/or shall be capable of automatic renewal on expiry;
- (c) the type of each User Subscription pursuant to clause 3.7; and
- (d) such other information as requested by the Supplier.

4.3 The Supplier shall evaluate any written request for additional User Subscriptions and respond to the Customer with approval or rejection of the request and the additional Subscription Fees payable if approved.

5. SERVICES

5.1 The Supplier shall, during the Term, provide the applicable Services to the Customer on and subject to these Conditions.

- 5.2 Subject to clause 5.3, the Supplier shall 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 10.00 pm to 2.00 am UK time; and
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 5.3 The Supplier shall be entitled to suspend the Response Services for such period as may be reasonably required for maintenance, repairs or improvements and, without prior notice, for exceptional operational reasons.
- 5.4 The Response Services shall be provided to the Customers on and subject to the following additional terms:
- (a) the Supplier shall use reasonable endeavours to ensure that during the Term:
 - (i) the Response Services are accessible by Authorised Users within a range of base stations making up the mobile telecommunications network supporting the Response Services on a 24 hour, 7 day a week basis; and
 - (ii) the Authorised User's access to and use of the Response Services functions effectively, subject to routine and emergency maintenance, repairs configurations or upgrades of the same.

6. CUSTOMER DATA

- 6.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 6.2 The Supplier shall endeavour to backup its computer systems daily, but in the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier and the Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).
- 6.3 The Supplier shall, in providing the Services, comply with its Privacy and Security Policy relating to the privacy and security of the Customer Data available on the Website or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.
- 6.4 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under the Contract, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:
- (a) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under the Contract;

- (b) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with the Contract on the Customer's behalf;
- (c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- (d) the Supplier shall process the personal data only in accordance with these Conditions and any lawful instructions reasonably given by the Customer from time to time; and
- (e) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

6.5 The Customers shall indemnify the Supplier against all losses, damages, or liabilities of whatever nature (including professional costs, fines, or penalties) which may be suffered or incurred by the Supplier as a result of or in connection with any prosecution or civil or other action under the DPA relating to any breach of obligations imposed by the DPA or this clause 5.

7. SUPPLIER'S OBLIGATIONS

7.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation, these Conditions, and with reasonable skill and care.

7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, the Supplier:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, 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 may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3 These Conditions shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.

7.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.

8. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to the Services and these Conditions; and
 - (ii) all necessary access to such information as may be required by the Supplier, in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) procure that, prior to the submission of Authorised User details, such Authorised User(s) expressly acknowledge and agree that their use of any of the Services may enable the Supplier and its authorised sub-contractors to obtain and retain for a reasonable period of time the Authorised User's approximate geographical location;
- (c) comply with all applicable laws and regulations with respect to its activities under the Contract;
- (d) not to permit the use of the Services for any improper, immoral, fraudulent or unlawful purposes, for the sending of any communication which is of an offensive, abusive, indecent, obscene, or menacing nature, or to cause any nuisance, annoyance, or inconvenience;
- (e) not be involved in or knowingly or recklessly or negligently permit or allow any persons to be involved in fraudulent or other unauthorised use or attempted use of the Services whether by corrupt, dishonest, or illegal means and shall notify the Supplier immediately upon becoming aware or suspecting any such activity;
- (f) carry out all other Customer responsibilities set out in these Conditions in a timely and efficient manner and in the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (g) ensure that the Authorised Users use the Services in accordance with these Conditions and any other terms implied by the Supplier in relation to the Services, and shall be responsible for any Authorised User's breach of such terms and/or conditions;
- (h) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under these Conditions, including without limitation the Services;
- (i) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (j) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, 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.

9. CHARGES AND PAYMENT

- 9.1 The Customer shall, in consideration for the Mobile Platform Services, pay the Subscription Fees to the Supplier for the User Subscriptions monthly in arrears in accordance with this clause 9 and the Price List.

- 9.2 The Customer shall, in consideration for the Configuration Services pay the Configuration Fee within 30 days of the date of an invoice raised by the Supplier for such amounts.
- 9.3 If applicable, the Customer shall pay the Support Fee in consideration for the Hosting Services, and Maintenance and Support, to be applied where applicable pro-rata at a daily rate to the number of days in such calendar month as the Support Fee is incurred.
- 9.4 The Customer shall prior to the Go Live Date provide to the Supplier valid, up-to-date and complete Authorised User details or approved Purchase Order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact details and the Customer shall provide either:
- (a) its bank account details to the Supplier, and hereby authorises the Supplier to bill such account and set up a standing order or direct debit to be effective following the Go Live Date for the Subscription Fees payable in respect of amounts payable under the Contract up to a maximum of 30 days in advance; or
 - (b) its approved purchase order information to the Supplier and the Supplier shall invoice the Customer, subject to clause 14.1, at least 30 days prior to each calendar month for the amounts payable in respect of the immediately following calendar month and the Customer shall pay each invoice within 30 days after the date of such invoice.
- 9.5 If applicable, where such User Subscription is either:
- (a) effective from a date otherwise than on the first day of a calendar month; or
 - (b) expires (or is otherwise terminated), otherwise than on the last day of a calendar month,
- the applicable Subscription Fees shall be applied pro-rata at a daily rate to the number of days in such calendar month as the respective Subscription Fee is incurred.
- 9.6 Where a standing order or direct debit is set up by the Supplier in accordance with clause 9.4 the Customer shall not cancel or otherwise instruct its bankers to terminate or suspend payment under such bank instruction without first given the Supplier at least 30 days prior written notice.
- 9.7 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on such due amounts at an annual rate equal to 4% over the then current base lending rate of RBS Bank plc at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.8 All amounts and fees stated or referred to in these Conditions:
- (a) shall be payable in pounds sterling;
 - (b) are, subject to clause 13.4(b), non-cancellable and non-refundable;
 - (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

- 9.9 The Supplier shall be entitled to increase the Subscription Fees and the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 4 at the start of each Renewal Period upon 90 days' prior notice to the Customer and the Price List shall be deemed to have been amended accordingly.
- 9.10 A User Subscription shall incur either Pay As You Go Charges or Contract Fee as requested by the Customer at the time of respective User Subscription is requested and shall not be capable of incurring an alternative Subscription Fee.
- 9.11 If applicable, the Customer shall pay the Support Fee in consideration for the:
- (a) Maintenance and Support; and
 - (b) Hosting Services,
- to be applied pro-rata at a daily rate to the number of days in such calendar month as the Support Fee is incurred.

10. PROPRIETARY RIGHTS

- 10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, the Contract does not grant the Customer any rights to, or in, patents, copyrights, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 10.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, these Conditions.

11. CONFIDENTIALITY

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. 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.
- 11.2 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 these Conditions.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of these Conditions.

- 11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 11.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.7 This clause 11 shall survive termination of the Contract, however arising.

12. INDEMNITY

- 12.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, provided that:
- (a) the Customer is given prompt notice of any such claim;
 - (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 12.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Go Live Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) the Supplier is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - (c) the Supplier is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, the Supplier 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, terminate the Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.4 In no event shall the Supplier, 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 or Documentation by anyone other than the Supplier; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 12.5 The foregoing and clause 13.4(b) state the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-

contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. LIMITATION OF LIABILITY

13.1 This clause 13 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

- (a) arising under or in connection with the Contract;
- (b) in respect of any use made by the Customer of the Services and Documentation or any part of them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

13.2 Except as expressly and specifically provided in these Conditions:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use;
- (b) the Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- (c) the Supplier shall have no liability in respect of Authorised User's inability to access or errors in the functioning of the Services which are attributable to any of the following:
 - (i) operator error;
 - (ii) provision of incomplete and/or incorrect information provided by the Customer or Authorised User;
 - (iii) power failures;
 - (iv) malicious interference;
 - (v) any downtime or outages from any sub-contractor or other lack of coverage of the mobile telecommunications network used for the purposes of providing the Services;
- (d) where the escalation element of the Response Services involves reporting an incident to third parties ("**Emergency Services**"), including (but not limited to) emergency services, coast guard, or military and/or civilian forces, the Supplier cannot ensure that such parties shall respond or indeed warrant or guarantee any specific type of response;
- (e) an incident will only be reported as part of the Response Services if, in the Suppliers or its sub-contractors sole discretion, an Authorised User is being subjected to a physical assault or a physical assault is reasonably imminent and the location of such Authorised User can be established with reasonable certainty
- (f) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and
- (g) the Services are provided to the Customer on an "as is" basis.

13.3 Nothing in these Conditions excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or

- (b) for fraud or fraudulent misrepresentation.

13.4 Subject to clause 13.2 and clause 13.3:

- (a) the Supplier 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 or consequential loss, costs, damages, charges or expenses however arising under the Contract; and
- (b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

14. TERM AND TERMINATION

14.1 The Contract shall, unless otherwise terminated as provided in this clause 14, commence on the Go Live Date and shall continue for the Term and, thereafter, the Contract shall be automatically renewed for successive periods of 24 months (each a “**Renewal Period**”), unless:

- (a) either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Term or any Renewal Period, in which case the Contract shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or
- (b) otherwise terminated in accordance with these Conditions;

and the Initial Term together with any subsequent Renewal Periods shall constitute the “**Term**”.

14.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- (a) the other party commits a material breach of any of these Conditions 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) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

14.3 On termination of the Contract for any reason:

- (a) all User Subscriptions as well as any other licences granted under the Contract shall immediately terminate without liability to either party;
- (b) each party shall return and make no further use of any equipment, property, and other items (and all copies of them) belonging to the other party; as set out in the SDS Telematics Kit Terms and conditions.
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the Go Live Date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up 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 the Supplier in returning or disposing of Customer Data; and
- (d) 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. FORCE MAJEURE

The Supplier shall have no liability to the Customer under these Conditions if it is prevented from or delayed in performing its obligations under the Contract, 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 the Supplier 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 suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16. WAIVER

- 16.1 A waiver of any right under these Conditions is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 16.2 Unless specifically provided otherwise, rights arising under these Conditions are cumulative and do not exclude rights provided by law.

17. SEVERANCE

- 17.1 If any provision (or part of a provision) of these Conditions are found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 17.2 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.

18. ENTIRE AGREEMENT

- 18.1 These Conditions, the Purchase Order, and Documentation, and any other 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.
- 18.2 Each of the parties acknowledges and agrees that in entering into the Contract 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 the Contract or not) relating to the Services, other than as expressly set out in these Conditions.
- 18.3 Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.

19. ASSIGNMENT

- 19.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 19.2 The Supplier 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 the Contract.

20. NO PARTNERSHIP OR AGENCY

Nothing in these Conditions is intended to or shall operate to create a partnership 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).

21. THIRD PARTY RIGHTS

The Contract does not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. NOTICES

- 22.1 Any notice required to be given under these Conditions 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 address set out in the Contract, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in the Purchase Order.

- 22.2 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 fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

23. GOVERNING LAW AND JURISDICTION

- 23.1 The Contract 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.
- 23.2 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 the Contract or its subject matter or formation (including non-contractual disputes or claims).

Telematics Kit Terms and Conditions

These Terms and Conditions (together with the SDS Technology Ltd Terms and Conditions and any other documents referred to on it) sets out the basis of the Contract between SDS Technology Limited – (the “Supplier”) and the Customer.

Defined terms used in this policy shall be as defined in the SDS Technology Ltd Terms and Conditions (the “Conditions”).

1. INTERPRETATION

1.1 The definitions in these Conditions are as follows:

Equipment: the equipment used by the customer in connection with the Services including any Vehicle Tracking Hardware, cables, connectors and any other ancillary hardware installed;

Installation Charge: the installation charge for each item of Equipment, as set out in the Quotation

2. EQUIPMENT USAGE

2.1 It is the customer’s responsibility to ensure the equipment is used for legal purposes. SDS Technology cannot be held responsible for the use of the kit after despatch from our premises. Devices will be programmed by SDS Technology with default configuration settings. Devices will also be configured for use with Standard UK Mapping. Any additional costs incurred through altering these settings will result in the Customer being billed for the additional cost. The Customer will accept responsibility for these amounts.

2.2 If equipment is taken outside of the UK (with or without your permission) you will be liable for network roaming charges. The Customer does not have the authorisation to change the IP address programmed into the tracking device. Users will be liable for administration and service charges for time and labour incurred as a result of an unauthorised reprogramming.

2.3 The Customer undertakes that neither it nor any other person shall carry out repairs to, adapt, test, make additions or attachments or otherwise alter the Equipment whilst this Agreement is in force. Any alterations or extensions to the Equipment or Services, or requested by the Customer and authorised by SDS Technology shall be carried out only by or as directed by any duly authorised agent at the Customer’s expense.

3. SETUP AND DEPOSIT CHARGES

3.1 The customer shall pay the installation charge prior to the connection of Equipment to, and the provision of the Services. SDS Technology’ approved installers will do their best to install the equipment within 2 weeks of delivery. In the unlikely event of delay SDS Technology will accept no liability for consequences or costs of such delay.

3.2 Where Hardware Equipment is leased or rented the Customer is responsible for all costs of de-installation and return of the Hardware Equipment to SDS Technology, within 30 days of termination of this Agreement. Hardware Equipment either lost and or damaged will be charged at a fee of no less than £199 + VAT.

3.3 The Hardware Equipment shall at all times remain the property of SDS Technology on loan to the customer for use only in relation to the Services. SDS Technology will organise the Installation of the Hardware Equipment at a mutually convenient time for The Customer. Upon accepting and booking the Installation Timeslot, the Customer shall ensure the availability of the Vehicles, Assets and Personnel required for and at the time of Installation. Failure to provide access to asset, vehicles or personnel shall incur a penalty charge of £99 per Vehicle. Modifications to bookings can be made up to 24 hours before the Installation Timeslot. Any cancellations or modifications made within 24 hours of the Installation Timeslot shall incur a penalty charge of £99 per Vehicle.

4. EQUIPMENT AND REPAIR

5. The Hardware Equipment must be provided and supplied by SDS Technology; no other hardware may be used under this agreement for connection to the Services. The Hardware Equipment must be installed only by a qualified fitter approved by SDS Technology. The equipment must comprise the minimum components (including accessories, vehicle kits and antennae) recommended by SDS Technology prior to connection.

5.1 The Hardware Equipment is subject to the specific warranty offered by the manufacturer which is 12 months, subject to their terms and conditions. To be eligible for the right of repair under manufacturer warranty, whilst connected to the SDS Technology network customers must only use, from the point of original installation, hardware, components, cables, antennas and fitters recommended and approved by SDS Technology. This also applies to any deinstallations and reinstallations when the customer must again only use SDS Technology’ nominated components and fitters. If faults occur to the tracking system as a result of hardware, components, cables and antennas other than those supplied and approved by SDS Technology or unapproved installation then the right of repair under manufacturer warranty will be void. In such cases customers accept full liability and will be charged for replacement parts and equipment along with labour, including any IT support or diagnostic time, at an hourly rate set by us.

5.2 The right of repair does not apply if you or anyone else (with or without your knowledge) damages the equipment, or uses it for a purpose or in a context, other than in accordance with SDS Technology’ instructions and advice. Your acceptance of the equipment shall take place when you take delivery or possession of the equipment. Risk in the equipment passes to you upon delivery.

5.3 The Customer shall provide if required and maintain dedicated mains electricity or battery points and suitable earth connection in an agreed position for the satisfactory operation of the Services. The Customer shall not whilst this Agreement is in force remove the Hardware Equipment from any vehicles or premises in which it has been installed or transfer to any other vehicle or premises except where the Equipment is

transferred to another vehicle by a qualified installer and with the prior written approval of SDS Technology (who may act through its authorised agent).

6. SIM CARD

6.1 Where a SIM card is provided and fitted to the device for the Customer’s use, the SIM card shall remain the property of SDS Technology on loan to the customer for use only in relation to the Services. Any SIM card provided must be returned on the suspension or termination of the Services. Risk and responsibility for the SIM card rests with the Customer, who undertakes to keep the SIM card secure. Any loss, theft or damage to a SIM card must be reported to SDS Technology immediately or charges maybe made.

6.2 The use of the SIM card is restricted to the provision of the Services. The Customer shall be responsible for charges incurred by reason of the unauthorised use of the SIM card and SDS Technology shall not be liable for any loss or liability incurred by the Customer resulting from any such unauthorised use. The SIM card shall at all times remain our property.