

## MASTER TERMS

These Master Terms shall apply to any agreements (each, an “Agreement”) between TrackX, Inc. or one of its Affiliates (“TrackX”) and you as the customer (referred to in these Master Terms as “you” or “Customer”) that incorporates these Master Terms by reference.

### 1. AGREEMENTS

**1.1. Purpose.** The purpose of these Master Terms is to provide the terms and conditions under which TrackX may provide you as Customer the Asset Tracking Services. You may enter into the following types of Agreements with TrackX for your subscription to the Asset Tracking Services (each being an Agreement as that term is used in these Master Terms):

(a) The Asset Tracking Services Subscription and Support Terms Agreement (the “Subscription Agreement”). The Subscription Agreement provides the primary terms upon which you may subscribe to the Asset Tracking Services.

(b) An order form, which is attached as Exhibit A to your Subscription Agreement. The order form may identify the specific fees, term, parameters, and Hardware included in your subscription to the Asset Tracking Services. Any Hardware purchased will be subject to these Master Terms, specifically including Section 7 – Hardware.

(c) Support Terms, which are attached as Exhibit B to your Subscription Agreement. The Support Terms set forth the service level and support services that TrackX may provide you in connection with your subscription to the Asset Tracking Services.

(d) An SOW which sets forth the Professional Services that TrackX may provide you in connection with your subscription to the Asset Tracking Services. TrackX’s standard SOW is used for set-up and configuration of the Asset Tracking Services. You may enter into an enhanced SOW for any additional Professional Services that you may request in excess of TrackX’s standard set-up and configuration. Any Professional Services provided by TrackX are subject to these Master Terms, specifically including Section 6 – Professional Services.

**1.2. Acknowledgment.** By entering into an Agreement with TrackX, you acknowledge that you have read and agreed to these Master Terms.

**1.3 Incorporation.** Each Agreement that incorporates by reference these Master Terms shall be a separate and independent agreement from any other Agreement that incorporates by reference these Master Terms.

**1.4 Inconsistency.** In the event of any inconsistency between these Master Terms and the terms and conditions of any Agreement, the terms and conditions of the Agreement shall govern to the extent of that inconsistency.

**1.5 Other Agreements.** If you enter into any Agreement with TrackX other than those Agreements described in Section 1.1 of these Master Terms, that Agreement, to the extent it incorporates these Master Terms, will be governed by these Master Terms.

### 2. DEFINITIONS

**2.1 “Affiliate”** of a party shall mean any entity that (a) is controlled, either directly or indirectly, by a party; (b) is under common voting control, either directly or indirectly, with the party; or (c) that controls the party; as the case may be. For the purposes of this definition “control” means the ability to vote greater than fifty percent (50%) of the outstanding voting securities in such corporation.

**2.2 “Asset Tracking Services”** means the asset tracking and tracing services delivered by TrackX to you and as made available by TrackX from time-to-time accessible through the Internet.

**2.3 “Confidential Information”** means any information disclosed by a party or its officers, directors, employees, independent contractors, Affiliates or agents hereunder to another party or its officers, directors, employees, independent contractors, Affiliates or agents hereunder relating to an Agreement or a proposed amendment to an Agreement which consists of information (including any copies, extracts, summaries or adaptations of such information), regardless of the form of its disclosure, that, by its nature or by the circumstances in which it is disclosed, ought reasonably be considered to be confidential. For greater certainty, the TrackX Software and Documentation as well as the service levels, specifications, performance restrictions and data configuration requirements of the Asset Tracking Services, the results of any tests run on the TrackX Software or Asset Tracking Services and any pricing for TrackX’s products and/or services shall be deemed to be Confidential Information of TrackX.

**2.4 “Customer Data”** means, other than Resultant Data, information, data and other content, in any form or medium, that is collected, uploaded or otherwise received, directly or indirectly from Customer or a Permitted User by or through the Asset Tracking Services.

**2.5 “Designated Devices”** means the devices or other Hardware on which the Software may be installed that are identified in the Agreement as “Designated Devices” or as are subsequently designated by written agreement of TrackX and you.

**2.6 “Designated Sites”** means the facility or facilities of Customer at which the Software may be installed that are identified in the Agreement as “Designated Sites” or as are subsequently designated in writing by written agreement of TrackX and Customer.

**2.7 “Documentation”** means any end-user instructional or supplementary materials related to the TrackX Software and or Asset Tracking Services, in human or machine readable form, that are provided by TrackX to you with the TrackX Software, but only to the extent that TrackX, in its sole discretion, makes such materials generally available for commercial distribution.

**2.8 “Effective Date”** means the date that the Agreement becomes effective, as identified in the Agreement and, in the absence of a specific effective date being so set out, the date of signature of the Agreement by TrackX.

**2.9 “Fees”** means the amounts to be paid by you to TrackX pursuant to the Agreement.

**2.10 “Hardware”** means any hardware purchased by you or rented by you, as may be applicable, pursuant to the Agreement that is identified in the Agreement as Hardware.

**2.11 “Insolvency Event”** means Customer (i) is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**2.12 “Intellectual Property Rights”** means patent and other patent rights (including patent disclosures and applications and patent divisions, continuations, continuations-in-part, reissues, reexaminations, and extensions thereof), copyrights, and other rights in works of authorship (including registered and unregistered copyrights and unpublished works of authorship), trade secrets, and all other forms of Intellectual Property in existence on the Effective Date.

**2.13 “Passcodes”** means login identifications and passwords that are required to input by Customer or a Permitted User to access the Software or Asset Tracking Services.

**2.14 “Permitted Use”** means Use for internal business in accordance with and subject to the Scope of Use and Documentation. Except as expressly provided the Agreement, “Permitted Use” does not include redistribution, remarketing, loaning, renting, sublicensing or otherwise making any Software or Asset Tracking

Services available or accessible to any third party.

**2.15 “Permitted User”** means those individuals or classes of individuals identified in an Agreement whom you may authorize to Use the Software or Asset Tracking Service.

**2.16 “Professional Services”** means those services that TrackX has expressly agreed in the Agreement to provide to you, which may include consulting services, training services or implementation services and Support Services, but which shall not include Asset Tracking Services.

**2.17 “Resultant Data”** means information or data that is anonymized, aggregated or de-identified and/or compiled on a generic basis and which does not name or identify a Customer, specific individual or natural person, whether derived from Customer Data, access or usage patterns, or another source.

**2.18 “Return Hardware Authorization”** means the requisition form provided by TrackX to you upon request.

**2.19 “Scope of Use”** means the scope for which the Software or Asset Tracking Services can be Used, including restrictions on such Use, as identified in the Agreement.

**2.20 “Software”** means both the TrackX Software and Third Party Software, including applicable Documentation.

**2.21 “SOW”** means a written statement of work executed by the parties.

**2.22 “Subscription Agreement”** means that certain Asset Tracking Services Subscription and Support Terms Agreement between you and TrackX for the provision of the Asset Tracking Services.

**2.23 “Support Terms”** means those Support and Service Level Terms as identified in the Agreement or any addenda thereto.

**2.24 “Term”** shall mean the period of time commencing on the Effective Date for which the Agreement is to be in force, as identified in the Agreement.

**2.25 “Third Party Software”** means the software and data of a party other than TrackX that is provided in object code form.

**2.26 “TrackX Software”** means software in object code form that is identified in the Agreement as licensed to you by TrackX (including but not limited to TrackX Mobile Software), but not including Third Party Software.

**2.27 “Use”** means to load, execute, employ, utilize, store or display.

### **3. TRACKX ASSET TRACKING SERVICES**

**3.1 Terms of TrackX Asset Tracking Services.** All Asset Tracking Services that TrackX agrees to provide and you agree to subscribe for in an Agreement shall, in addition to the terms and conditions of the Agreement (and any

exhibits thereto), be subject to the following terms and conditions:

(a) TrackX shall provide the Asset Tracking Services to you during the Term of the Agreement at the service levels described in the Support Terms attached to the Agreement.

(b) You are only authorized to use the Asset Tracking Services in accordance with the Permitted Use.

(c) No license is given to any of the underlying software used by TrackX to provide the Asset Tracking Services to you. You are solely authorized to access the Asset Tracking Services via an Internet browser or through such other connections that conform to TrackX's then applicable hardware, software and communication specifications for the Asset Tracking Services.

(d) You must adhere to all such specifications in configuring such connections to properly function with the Asset Tracking Services. You may request that TrackX assist in such configuration efforts as set forth in the Agreement, subject to payment by you for any such Professional Services provided by TrackX. TrackX is in no way responsible or liable for the provision or cost of such connections or any related hardware or software to facilitate the connections or for the ability or inability of such connections to properly function or perform.

(e) You understand that in the event of power outages, weather conditions, maintenance or upgrades, faulty or failed equipment, or other interruptions in Internet access or other connection systems the Asset Tracking Services may be unavailable.

(f) TrackX may, but shall be under no obligation to, modify the Asset Tracking Services, provided such modification does not have a material adverse effect on the scope and nature of the Asset Tracking Services as of the Effective Date.

#### **4. PERMITTED USERS, READ POINTS, AND ASSETS**

**4.1 Permitted Users of Software and Asset Tracking Services.** The Agreement shall identify those Permitted Users who are authorized to Use the Software or Asset Tracking Services. You agree that you are responsible for all Permitted Users who Use the Software or Asset Tracking Services. Accordingly, the terms, conditions, restrictions and obligations of the Agreement (excluding your payment obligation to TrackX) shall be construed to also apply to all Permitted Users, and you shall be liable for any breach of the Agreement by a Permitted User. Unless otherwise stated in the Agreement, the maximum number of simultaneous users permitted to Use the Software or Asset Tracking Services shall be 10 users.

**4.2 Read Points, Assets, Designated Devices, and Designated Sites.** The Agreement shall identify the number of site read points, assets under management, Designated Devices, and Designated Sites. You shall only use the Software and/or the Asset Tracking Services to support the number of read points, assets, and Designated Devices as may be identified in the Agreement. Unless otherwise stated in the Agreement, the maximum number of Designated Devices shall be one (1) Designated Device. You shall only Use the Software and/or Asset Tracking Services at the Designated Sites.

#### **5. YOUR DATA**

**5.1 Data Protection.** The Asset Tracking Services do not replace the need for you to maintain regular data backups or redundant data archives. TrackX will implement reasonable and appropriate measures to help secure Customer Data against accidental or unlawful loss, access or disclosure. TrackX has no obligation or liability for any loss, alteration, destruction, damage, corruption or recovery of Customer Data.

**5.2 Title to Customer Data.** As between you and TrackX, you are and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data.

**5.3 License to Customer Data.** You hereby irrevocably grant all such rights and permissions in or relating to Customer Data to TrackX: (i) as necessary to perform the Asset Tracking Services or Professional Services, which includes, but is not limited to TrackX providing Customer Data to third party hosting service providers and (ii) as necessary to enforce the Agreement and exercise its rights hereunder.

**5.4 Retrieval of Data in the Event of Termination.** During the thirty (30) days following termination of the Agreement: (i) TrackX will not erase any Customer Data, (ii) you may retrieve Customer Data only if you have paid any charges for any post-termination use of the Software or Asset Tracking Services and all other amounts due, and (iii) TrackX may provide post-termination data retrieval assistance as generally made available to all other customers. After the expiration of such thirty (30) day period, TrackX shall have no obligation to store Customer Data or make it available to you.

#### **6. PROFESSIONAL SERVICES**

**6.1 Professional Services.** TrackX shall perform all Professional Services that TrackX agrees to provide in an SOW for the fees specified therein and in a professional and workmanlike manner by personnel having a level of skill commensurate with their responsibilities.

**6.2 Your Obligations.** In addition to the obligations identified in the SOW, you agree to reasonably cooperate

with TrackX in the performance of the Professional Services, including, without limitation, providing TrackX with reasonable facilities when the Professional Services are to be performed at the your facilities and timely access to data, information and personnel without any unreasonable interruption or interference with your business operations, and you acknowledge and agree that TrackX's performance is dependent upon the timely and effective satisfaction of your obligations.

**6.3 Change Requests.** The parties may enter into a change request with respect to any Professional Services in accordance with the procedure set forth in the SOW, *provided, however*, neither party shall be bound by any change requested by the other party, until such change has been accepted in writing by the other party. Unless otherwise agreed by the parties in writing, additional services that TrackX provides as a result of any change request will be billed on a time and materials basis at TrackX's then effective standard rates.

## **7. HARDWARE**

**7.1 Delivery of Hardware.** TrackX shall deliver any Hardware purchased or rented by you pursuant to an Agreement at the location specified by you. Risk of loss or damage, but not title, in the Hardware passes to you when the Hardware is duly delivered to the carrier by TrackX or any third party manufacturer or supplier of the Hardware. Unless otherwise requested or arranged by you, TrackX may select the method of shipment and it will contract for shipment of the Hardware in transit as your agent. You agree to reimburse TrackX for all reasonable expenses (including without limitation those incurred for carriage and insurance) incurred by TrackX in such delivery. TrackX will make commercially reasonable efforts to ensure that delivery is completed by any estimated dates but will not be liable for any loss or damage for its failure to do so. Delivery may occur in one or more installments. TRACKX SHALL NOT HAVE ANY LIABILITY REGARDING DELIVERY OR FAILURE OF DELIVERY OF ANY PACKAGE OR FREIGHT, EITHER BY OR TO YOU, OR IN RESPECT OF DELIVERIES FACILITATED BY YOU, REGARDLESS OF THE CAUSE OF SUCH LOSS OR DAMAGE.

**7.2 Software Embedded in or Provided with Hardware.** To the extent that there is any Software embedded in or provided with the Hardware, the Software shall not be considered part of the Hardware and shall instead be subject to the software license terms of the Agreement or any third party software licenses, as applicable. If you breach this Agreement by Using the Software beyond the Permitted Use, then you shall pay to TrackX on demand any amounts required to bring your Use of the Software into compliance with the Permitted Use, as

determined with reference to TrackX's then current price list for the Software. This remedy shall be in addition to, and not in lieu of, any other right or remedy that TrackX may have pursuant to the Agreement with respect to such a breach of the Agreement by you.

**7.3 Third Party Software.** You acknowledge that Hardware purchased or rented under this Agreement may include Third Party Software which is separately licensed by a third party. All third party licensors retain all right, title and interest in and to such Third Party Software and call copies thereof, including all copyright and intellectual property rights. Your use of any Third Party Software shall be subject to, and you shall comply with, the applicable restrictions and terms and conditions set forth in any Third Party Software license, documentation or printed materials, including without limitation an end user license agreement. The third party license agreement may be described on the package in which Third Party Software is sold, described during the installation procedure, or produced in a separate document provided by the Third Party Software publisher. You agree not to modify, decompile, disassemble, or reverse engineer any portion of the Third Party Software. Except to the extent the Third Party Software includes a written warranty in its packaging, neither TrackX nor the third party makes any warranties or representations, either express or implied, with respect to the Third Party Software or any service to be provided to you. Without limiting the foregoing, in respect of the Third Party Software, TrackX and the third party expressly disclaim any warranties of quality, performance, merchantability or fitness for a particular purpose or non-infringement, and those arising by statute or otherwise in law or from a course of dealing, usage or trade.

**7.4 Title to Hardware.** Title to any Hardware purchased by you pursuant to an Agreement will pass to you when TrackX receives in full all sums due and payable to TrackX in respect of the Hardware; or where expressly indicated in the Agreement. Until title to such Hardware has passed to you, or where the Hardware is rented by you pursuant to an Agreement, you will hold the Hardware on a fiduciary basis as TrackX's bailee. Your right to possession of the Hardware will terminate immediately if there is an Insolvency Event and you will immediately return the Hardware to TrackX at your risk and cost.

**7.5 Security Interest.** TrackX reserves, until full payment has been received, a purchase money security interest in the Hardware. You agree to execute any document appropriate or necessary to perfect the security interest of TrackX, or in the alternative, TrackX may file this Agreement as a financing statement and/or chattel mortgage.

**7.6 Return Hardware.** TrackX will accept return of Hardware only if you have completed Return Hardware

Authorization such Return Hardware Authorization has been approved by TrackX. TrackX accepts no returns of any Hardware specifically manufactured for you. Hardware returned to TrackX without a Return Hardware Authorization will be returned to you at your expense.

**7.7 Third Party Hardware.** Hardware manufactured, published or provided by a third party, including the sensors, equipment, software, firmware, and data files embedded with in such Hardware and sold to the you by TrackX are provided on an "AS IS" basis without warranty by TrackX of any kind, either express or implied. Third party Hardware is not covered by any warranty provided by TrackX. TrackX agrees to pass through to you, to the extent available at no cost to TrackX, any manufacturers/publisher/supplier's written warranties associated with third party Hardware purchased by you, provided, however, if TrackX agrees to provide any services in connection with passing through such warranties such services will be billed to you on a time and materials basis at TrackX's then effective standard rate. You agree that, TrackX has no liability for any claims arising out of any act or omission, including negligence, by the third party.

## **8. FEES, PAYMENT, AND TAXES**

**8.1 Fees.** The following terms and conditions shall apply in respect of payment of Fees:

(a) You shall pay TrackX the Fees in the amounts and on such terms as set out in the Agreement.

(b) Unless otherwise expressly provided in the Agreement, all Fees are expressed in United States Dollars (\$USD).

(c) At TrackX's option, TrackX may assess a late payment fee equal to one and one half per cent (1.5%) of the unpaid amount for each succeeding thirty (30) day period or portion thereof in which TrackX has not received payment of Fees when due. You shall promptly and carefully review statements and invoices provided or made available by TrackX to you reflecting transaction activity. If you believe any adjustments are needed with respect to any amounts due to TrackX, or if you have any other questions or concerns regarding any statement or report provided by TrackX, you must notify TrackX in writing within ninety (90) days after such invoice or report is received. If you fail to notify TrackX within such time frame, TrackX will not be required to investigate the matter or effect any related adjustment, absent any willful misconduct by TrackX.

(d) At TrackX's option, TrackX may suspend provision of any Professional Services, Asset Tracking Services, or other services if TrackX has not received payment of Fees when due.

(e) A failure by you to pay Fees when due shall be deemed to be a material breach of the Agreement.

**8.2 Taxes.** All Fees payable to TrackX are exclusive of any taxes, assessments or duties that may be assessed upon the Software, Professional Services, Asset Tracking Services, Hardware or any licenses under the Agreement, including, without limitation, sales, use, excise, value added, personal property, electronic/internet commerce, export, import and withholding taxes, but not including taxes based upon TrackX's income. You shall directly pay any such taxes assessed against you in connection with the Agreement, including without limitation all taxes that arise out of transactions completed by you using the Software or Asset Tracking Services. You shall promptly reimburse TrackX for any such taxes payable or collectable by TrackX. If any tax in the nature of withholding tax is payable on any sums payable to TrackX under this Agreement, you shall pay TrackX such amount as is necessary to ensure that the net amount received by TrackX after such withholding shall be equal to the amount originally due.

**8.3 Collection Expenses.** You agree to reimburse TrackX for any and all collection related expenses (including attorneys' fees and costs) incurred by TrackX in the collection of any amounts owed to TrackX pursuant to the Agreement.

## **9. TERM AND TERMINATION**

**9.1 Term.** The Agreement shall be in force for the Term unless earlier terminated as provided by the Agreement.

**9.2 Termination by Either Party.** The Agreement may be terminated by a party if the other party is subject to an Insolvency Event, or by a non-breaching party in the following circumstances: (i) if the other party commits a material breach of the Agreement (including, without limitation, the failure to pay any Fees due to TrackX in accordance with the Agreement) and such breach remains uncured thirty (30) days after written notice of such breach is delivered to such other party; and (ii) immediately upon material breach by either party of any obligations set forth in Section 14 - Confidentiality.

**9.3 Termination by TrackX.** TrackX may terminate the Agreement immediately upon a material breach by you of either Section 7 - Hardware or Section 10 - Ownership of Intellectual Property. TrackX may terminate the Agreement on sixty (60) days' notice in the event that TrackX discontinues providing the Asset Tracking Services on a commercial basis.

**9.4 Consequences of Termination.** Except in the case of a perpetual license, upon and after expiration or termination of the Agreement, all licenses to Software granted by TrackX under the Agreement and your right to receive the Asset Tracking Services or Professional Services pursuant to the Agreement shall immediately

terminate and you shall immediately cease the Use of the Software and the Asset Tracking Services. If title in Hardware has not passed to you, your right to possession of such Hardware shall immediately terminate. You shall immediately return to TrackX or, if TrackX so requests in writing, destroy all TrackX property provided to you, including, but not limited to, all copies of the Software. After termination or expiration, at the request of TrackX, you shall promptly provide TrackX with a signed written statement certifying that you have returned to TrackX and/or destroyed all such items in accordance with TrackX's instructions.

**9.5 Survival.** Notwithstanding the foregoing and any expiration or termination of the Agreement, in addition to any provisions in the Agreement which are expressly stated to survive termination, the following provisions of the Master Terms shall survive such expiration or termination: Sections 8, 9.4, 10, 11, 12, 13, 14, and 15.

## **10. OWNERSHIP OF INTELLECTUAL PROPERTY**

**10.1 Ownership.** TrackX and its licensors shall have and retain all right, title and interest, including any copyrights, patents, trade secrets, moral rights and other Intellectual Property Rights in and to any Software licensed under an Agreement, and any software, documentation, processes or methodology produced or used by TrackX in the performance of the Asset Tracking Services pursuant to the Agreement, including, without limitation, any modifications, enhancements, changes or additions to the Software. To the extent you may have any interest in the foregoing Intellectual Property (including, to the extent that the Professional Services or other services performed by TrackX may constitute a "work made for hire"), you irrevocably and automatically assign at the time of creation to TrackX the ownership of such Intellectual Property Rights absolutely and without the necessity of any additional consideration.

**10.2 Further Assurance.** You agree to do and perform such other acts and things and to execute and file such other agreements, documents, certificates or instruments as may be considered necessary or advisable by TrackX in order to carry out the intent of this provision and should you be unable or unwilling to do so, you hereby irrevocably appoint TrackX and its duly authorized officers as your agent and attorney to do all such acts and things and to execute and file all such aforementioned documents.

**10.3 License to Created Works.** To the extent that any software, process, methodology or documentation is created or produced in connection with the performance of Professional Services relating to Software, then upon payment by you to TrackX of all amounts owing in respect of performance of those Professional Services, you shall be automatically granted a license under the Agreement to such

software, process, methodology or documentation subject to any restrictions on use of the Software that are set out in the Agreement under which the Software was originally licensed to you.

**10.4 No Sale.** Notwithstanding any use of the terms "sale" or "purchase" herein, in the Agreement or in any Documentation, you acknowledge and agree that TrackX solely licenses the Software to you and that there is no transfer of ownership to you of such Software or any underlying Intellectual Property Rights therein.

## **11. INDEMNIFICATION**

**11.1 TrackX Indemnification.** TrackX shall defend you, at TrackX's expense, from and against any claim brought by a third party alleging that any TrackX Software licensed to you or any Asset Tracking Services provided by TrackX to you under the Agreement infringes any (i) United States patent issued as of the Effective Date, (ii) United States trademark issued as of the Effective Date, (iii) copyright, or (iv) trade secret, and shall indemnify you against all damages and costs assessed against you that are payable as part of a final judgment or settlement. Should the TrackX Software licensed to you or the Asset Tracking Services provided by TrackX to you under the Agreement become, or in TrackX's opinion be likely to become, the subject of a claim of infringement, TrackX may, at its sole option and/or election (a) use reasonable commercial efforts to obtain for you the right to continue using the TrackX Software or Asset Tracking Services on substantially similar terms and conditions as set forth in the Agreement, (b) replace or modify the TrackX Software or Asset Tracking Services so that they become non-infringing but functionally equivalent or (c) where either (a) or (b) are not practicable, terminate the Agreement. The indemnification obligation shall not apply to any claim arising out of (i) the combination of the TrackX Software or Asset Tracking Services with other products not claimed to be owned, developed or deployed by or on behalf of TrackX, (ii) the modification of the TrackX Software or Asset Tracking Services, or any part thereof, unless such modification was made by or for TrackX, (iii) unauthorized use of the TrackX Software or Asset Tracking Services, or (iv) any infringement caused by any action of you or your agents. THIS INDEMNIFICATION PROVISION STATES THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF TRACKX, AND ITS LICENSORS TO YOU AND YOUR SOLE REMEDY WITH RESPECT TO THE INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

**11.2 Customer Indemnification.** You shall defend, indemnify and hold TrackX and TrackX's officers, directors, employees, agents, Affiliates, and shareholders harmless against any liability, damages, costs and expenses

(including, without limitation, reasonable attorneys' fees, disbursements, and costs of investigation) from any third party claims or government investigations brought against TrackX arising out of (i) your or a Permitted User's Use of the Software, Hardware or Asset Tracking Services, (ii) misuse of Passcodes or distribution of Passcodes by you to anyone other than Permitted Users, (iii) any contract concluded by you using the Software or Asset Tracking Services, or (iv) any Professional Services or Asset Tracking Services provided by TrackX to you; provided that this indemnification shall not apply in respect of those matters for which TrackX may have an indemnification obligation under the Agreement.

**11.3 Notice of Indemnification.** A party seeking indemnification (an "Indemnified Party") from or against the assertion of any claim by a third person (a "Third Person Assertion") shall give prompt notice (a "Notice of Claim") to the party from whom indemnification is sought (the "Indemnifying Party"); provided, however, that failure to give prompt notice shall not relieve the Indemnifying Party of any liability hereunder (except to the extent the Indemnifying Party has suffered actual material prejudice by such failure).

**11.4 Assumption of Defense.** Within twenty (20) business days of receipt of a Notice of Claim from the Indemnified Party, the Indemnifying Party shall have the right exercisable by written notice to the Indemnified Party, to assume the defense of a Third Person Assertion. If the Indemnifying Party assumes such defense, the Indemnifying Party may select counsel, which shall be reasonably acceptable to the Indemnified Party.

**11.5 Failure to Defend.** If the Indemnifying Party (a) does not, within the time limited, assume the defense of any Third Person Assertion after receipt of a Notice of Claim or (b) having so assumed such defense, unreasonably fails to defend against such Third Person Assertion, then, upon twenty (20) days' written notice to the Indemnifying Party, the Indemnified Party may assume the defense of such Third Person Assertion. In such event, the Indemnified Party shall be entitled as part of its damages to indemnification for the reasonable costs of such defense.

**11.6 Conflicts of Interest.** If the Indemnifying Party has been advised by the written opinion of counsel to the Indemnified Party that the use of the same counsel to represent both the Indemnified Party and the Indemnifying Party would present a conflict of interest, then the Indemnified Party may select its own counsel to represent the Indemnified Party in the defense of the matter and the costs of such defense shall be borne by the Indemnifying Party. The Indemnifying Party shall be entitled to continue to handle its own representation in such matter through its own counsel.

**11.7 Settlement.** The party controlling the defense of

a Third Person Assertion shall have the right to consent to the entry of judgment with respect to, or otherwise settle, such Third Person Assertion with the prior written consent of the other party, which consent shall not be unreasonably withheld.

**11.8 Participation.** Notwithstanding the assumption of the defense of a Third Person Assertion by either party in accordance with the Agreement, the other party shall agree to cooperate, as necessary, in the defense or prosecution of any Third Party Assertion and shall be entitled to participate, at its own expense, in the defense or settlement of any Third Person Assertion.

## **12. DISCLAIMER OF WARRANTIES**

**12.1 DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, TRACKX AND OUR LICENSORS (A) MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE HARDWARE, SOFTWARE, ASSET TRACKING SERVICES, PROFESSIONAL SERVICES OR THE THIRD-PARTY SOFTWARE, AND (B) DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES (I) OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, (II) ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, (III) THAT THE HARDWARE, SOFTWARE, ASSET TRACKING SERVICES, PROFESSIONAL SERVICES OR THIRD-PARTY SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, AND (IV) THAT ANY CUSTOMER DATA WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED.

## **13. LIMITATION OF LIABILITY**

**13.1 Consequential Damages and Limitation on Liability.** TRACKX AND OUR LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, REVENUES, CUSTOMERS, OPPORTUNITIES, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER TRACKX NOR ANY OF ITS LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SOFTWARE, ASSET TRACKING SERVICES, PROFESSIONAL SERVICES, OR HARDWARE, INCLUDING AS A RESULT OF ANY (I)

TERMINATION OR SUSPENSION OF THE AGREEMENT OR YOUR USE OF OR ACCESS TO THE ASSET TRACKING SERVICES, (II) TRACKX'S DISCONTINUATION OF THE SOFTWARE, ASSET TRACKING SERVICES, OR PROFESSIONAL SERVICES, OR, (III) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SUPPORT TERMS, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SOFTWARE, ASSET TRACKING SERVICES, HARDWARE, OR PROFESSIONAL SERVICES; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY CUSTOMER DATA OR OTHER CONTENT. EXCEPT IN THE EVENT OF LIABILITY FOR DAMAGES TO YOU FOR DEATH OR PERSONAL INJURY RESULTING FROM TRACKX'S WILLFUL ACTIONS OR GROSS NEGLIGENCE, IN ANY CASE, TRACKX AND ITS LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT YOU ACTUALLY PAID TRACKX UNDER THE AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE TWELVE (12) MONTHS BEFORE THE LIABILITY AROSE.

**13.2 TIME FOR COMMENCEMENT OF ACTION.** NO ACTION AGAINST TRACKX OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES OR SHAREHOLDERS, REGARDLESS OF FORM (INCLUDING NEGLIGENCE), ARISING OUT OF ANY CLAIMED BREACH OF THE AGREEMENT OR TRANSACTIONS UNDER THE AGREEMENT OR IN ANY OTHER WAY RELATED TO THE AGREEMENT MAY BE BROUGHT BY YOU MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS FIRST ARISEN.

## 14. CONFIDENTIALITY

**14.1 Discloser, Recipient.** In the performance of the Agreement, each party may disclose to the other party certain Confidential Information. For the purposes of the Agreement, (i) "Discloser" means the party that is providing Confidential Information to the other party to the Agreement; and (ii) "Recipient" means the party that is receiving Confidential Information from the other party to the Agreement.

**14.2 Non-Disclosure.** Recipient acknowledges and agrees that the Confidential Information provided by

Discloser shall remain the sole and exclusive property of Discloser or the third party providing such information to Discloser. Recipient shall not disclose, reproduce, use, distribute, or transfer, directly or indirectly, in any form, by any means, or for any purpose, the Confidential Information provided by Discloser, except as may reasonably be required pursuant to, or for performance of, the Agreement. The disclosure of such Confidential Information to Recipient does not confer upon Recipient any license, interest, or rights of any kind in or to the Confidential Information, except as expressly provided under the Agreement. Recipient shall require its employees, independent contractors, and agents who receive the Confidential Information provided by Discloser to abide by these confidentiality restrictions. Recipient shall protect the Confidential Information provided by Discloser with the same degree of protection and care Recipient uses to protect its own Confidential Information, but in no event less than reasonable protection in light of general industry practice.

**14.3 Exceptions to Non-Disclosure.** Nothing in the Agreement shall prohibit or limit Recipient's disclosure or use of information if Recipient can establish that (i) at the time of disclosure such information was generally available to the public; (ii) after disclosure by Discloser and prior to any disclosure by Recipient, such information becomes generally available to the public, except through breach of the Agreement by Recipient; (iii) such information was in Recipient's possession prior to the time of disclosure by Discloser and was not acquired directly or indirectly from Discloser; (iv) the information became available to Recipient from a third party who, to the knowledge of Recipient, does not owe a confidentiality obligation to Discloser; (v) the information was developed by or for Recipient independently of the disclosure of such information by Discloser; (vi) the Confidential Information is disclosed by Recipient pursuant to a requirement of a governmental agency or by operation of law, provided that, with respect to item (vi), Recipient shall first notify Discloser prior to disclosure in order to give Discloser an opportunity to seek an appropriate protective order and/or waive compliance with the terms of the Agreement and shall disclose only that part of the Confidential Information which Recipient is required to disclose or (vii) the information relates to the tax treatment or the tax structure of the transactions contemplated herein, where "the tax treatment or the tax structure" is limited to any facts relevant to the U.S. federal income tax treatment of the transaction and does not include information relating to the identity of the parties.

**14.4 Passcodes.** In the event that a Permitted User's access to Software or Asset Tracking Services requires the Permitted User to use Passcodes, then TrackX shall issue such Passcodes to a designated employee or agent of

Customer (an “Administrative User”) and/or authorize such Administrative User to issue or create Passcodes for Permitted Users. The Administrative User shall be responsible for managing and distributing the Passcodes to Permitted Users. The Administrative User shall only provide the Passcodes to Permitted Users. You acknowledge that TrackX relies solely on the ability of Permitted Users to enter the correct Passcodes to validate that such person has the authority to use the Software or Asset Tracking Services. You shall be solely responsible and liable for issuing, administering and ensuring that proper security methods are in effect with respect to protection of each of the Passcodes provided to Permitted Users and, therefore, You shall be responsible for all actions through the Software and/or Asset Tracking Services that occur through access to or Use of the Software and/or Asset Tracking Services using Passcodes issued through by your Administrative User.

## **15. MISCELLANEOUS**

**15.1 Audit.** You shall, upon reasonable advance written notice and during normal business hours, provide access and allow TrackX to inspect your books, records and computer systems and the Hardware in order to confirm your compliance with the Agreement.

**15.2 Successors and Assigns.** The Agreement shall be binding upon and inure to the benefit of the parties to the Agreement, and their respective successors and permitted assigns.

**15.3 Entire Agreement.** These Master Terms and each Agreement executed by the parties in accordance with these Master Terms constitute the entire agreement between the parties regarding its subject matter and supersedes all prior proposals, agreements and understandings between the parties, whether oral or written, with respect to the subject matter. Unless made in writing and executed by duly authorized representatives of all parties to the Agreement, no amendments or modifications to the Agreement shall be binding. The terms of any purchase order or other document submitted by you to TrackX from time to time shall be of no force or effect to the extent that they are inconsistent with the terms of the Agreement.

**15.4 Exhibits.** Any appendices, attachments, exhibits and schedules referred to in the Master Terms and the Agreement and attached hereto or thereto are incorporated herein or into the Agreement by reference to the same extent as if set forth in full in the Agreement. In the event of any inconsistency between any appendix, attachment, exhibit or schedule and the main body of the Agreement, the terms and conditions of the main body of the Agreement shall prevail unless otherwise expressly provided to the contrary in such appendix, attachment or schedule or in these Master Terms.

**15.5 Severability.** If any portion of the Agreement or

these Master Terms are held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement but the rest of the Agreement will remain in full force and effect.

**15.6 Waiver.** Neither party hereto shall, by mere lapse of time without giving notice or taking other action hereunder, be deemed to have waived any breach by the other party of any provision of the Agreement. Failure by either party to enforce any term of the Agreement shall not be deemed a waiver of future enforcement of that or any other term in the Agreement.

**15.7 Multiple Counterparts.** The Agreement may be executed in several counterparts, all of which taken together shall constitute one single Agreement between the parties.

**15.8 Execution by Facsimile and Transmissions in PDF & Electronic Signatures.** Execution and delivery of a facsimile transmission of the Agreement or execution and delivery of this Agreement in a PDF or other electronic format and such electronic format and any electronic signature shall constitute, for purposes of the Agreement, delivery of an executed original and shall be binding upon the party whose signature appears on the transmitted copy.

**15.9 Compliance With Law.** Each party agrees to comply with all applicable laws, regulations, and ordinances relating to its performance under the Agreement.

**15.10 Notice.** Any notice required or permitted hereunder shall be given in writing in the English language and shall be deemed effectively given upon personal delivery or delivery by electronic mail or express courier, or upon deposit in the mail, by registered or certified mail with postage and fees prepaid, addressed to the other party hereto at its address or electronic mail address set forth in the Agreement or at such other address as such party may designate by ten (10) days’ advance written notice to the other party hereto

**15.11 Dispute Resolution.** Except for the right of either party to apply to a court of competent jurisdiction for interim or interlocutory relief or other provisional remedy to prevent irreparable harm pending final determination or to pursue a claim for infringement of any intellectual property right, any dispute or controversy between the parties arising out of or relating to the Agreement (each, a “Dispute”) shall be resolved by good faith negotiations between the parties which negotiations shall not terminate until the Dispute has been considered by a senior officer of each party..

**15.12 Third Party Beneficiaries.** You acknowledge that the Software may contain software, computer programs and/or proprietary data of the Third Party licensors. In

addition to any other limitations or restrictions set out in the Agreement, the Third Party licensors shall not be liable for any damages, whether direct, indirect, incidental or consequential arising from the Use of the Software. You agree that prior to delivery of any of the Third Party Software, you shall enter into any further necessary agreements which may be required by a Third Party licensor and you specifically acknowledges that the Third Party licensors shall be third party beneficiaries of the Agreement and these Master Terms. Except for such Third Party licensors, no provision of the Agreement shall be construed to provide or create any third party beneficiary right or any other right of any kind in a third party.

**15.13 Export.** You agree to comply with all domestic, foreign and local export laws and regulations applicable to the Asset Tracking Services and Software should such export be permitted under the Agreement.

**15.14 Government Departments.** In the event that Customer is a governmental entity, only those departments or agencies listed in the Agreement shall have the right to use the Software and Documentation. Governmental departments or agencies not listed must have a separate license agreement and pay additional fees.

**15.15 Assignment.** You may not, without the prior written consent of TrackX, assign or transfer the Agreement or any obligation incurred hereunder, including without limitation by change of those holding the voting control of you, merger, reorganization, consolidation, or sale of all or substantially all of your assets and any attempt to do so in contravention of this section shall be void and of no force and effect.

**15.16 Acknowledgment.** In the event you make any publication in which the Hardware, TrackX Software or Asset Tracking Services are implicitly or explicitly mentioned you shall include an acknowledgment that the TrackX Software or TrackX Services “is a proprietary software product of TrackX, Inc. or its Affiliates”. In addition, you agree to provide TrackX with a copy of the proposed publication not less than ten (10) days prior to the publication thereof.

**15.17 Announcements.** Upon signing of the Agreement, you consent to being publicly identified by TrackX as a customer of the products and services provided by TrackX pursuant to the Agreement.

**15.18 Governing Law.** Unless expressly agreed to the contrary in an Agreement, the Agreement shall be governed by and construed under the laws of the jurisdiction State of Colorado, without reference to its conflicts of law principles and the parties hereby submit to the sole and exclusive jurisdiction of the courts of the federal and state courts of

the State of Colorado. The parties specifically disclaim the United Nations Convention on Contracts for the International Sale of Goods.

**15.19 Force Majeure.** TrackX will not be liable for any delay or failure to perform any obligation under the Agreement where the delay or failure results from any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, electrical or power outages, utilities or other telecommunications failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

**15.20 No Agency.** Nothing in the Agreement shall constitute or be deemed to constitute one party as agent of the other, for any purpose whatsoever, and neither party shall have the authority or power to bind the other, or to contract in the name of or create a liability against the other, in any way or for any purpose.

**15.21 Transactions Conducted through the Software or Asset Tracking Services.** In the event that you conduct any transactions through the Software or Asset Tracking Services or provide information obtained from Software or Asset Tracking Services to a third party, such transaction or arrangement shall be solely between you and such third party. TrackX shall not be a party to any transaction or contract concluded through Use of the Software or Asset Tracking Services and such third party shall not have any third party beneficiary right or any other right under the Agreement or these Master Terms.

**15.22 Right to Assurance.** TrackX reserves the right to review your creditworthiness through available and reliable verification procedures or sources and you hereby consent to TrackX obtaining such information. TrackX reserves the right, in its sole discretion, to require a deposit, letter of credit or similar surety, as a condition to the initial provision of the Services and/or the Software. Furthermore, TrackX may require a deposit, letter of credit or similar surety as a condition of continued provision of Services and/or the Software or decline to accept any requests to provide additional and/or new Services and/or the Software if: (a) you fail to comply with the payment terms of these Master Terms and/or any Agreement (b) you present an undue risk of non-payment; (c) you experience a material adverse change in its creditworthiness or financial position; (d) you are acquired by an entity who is insolvent; or (e) you are subject to bankruptcy or have filed for bankruptcy or insolvency proceedings.