

Terms & Conditions

These Terms & Conditions (these “**Terms**”) are attached to and incorporated into the Software and Services Agreement entered into by TraknProtect and the Customer identified on the Cover Page. These Terms govern TraknProtect’s provision and Customer’s receipt and use of the Products & Services (as defined below). Capitalized terms used in these Terms but not defined have the meanings given to them in the Cover Page.

1. Scope. Subject to Customer’s compliance with these Terms, TraknProtect will provide to Customer the software applications and related products and services described in the Proposals (together, “**Products & Services**”). “**Products & Services**” includes the Software Services, the Documentation, the Support Services, the Professional Services, and the Hardware (each as defined below).

2. Software Services.

A. Definition of Software Services and Documentation. “**Software Services**” means the software applications and any upgrades, updates, and other changes and modifications to those software applications. “**Software Services**” includes, for the avoidance of doubt, any related mobile applications and administrative websites made available by TraknProtect. TraknProtect reserves the right, in its sole discretion, to enhance, improve, update, and otherwise modify the Software Services at any time, provided those modifications do not materially reduce any functionality of the Software Services. “**Documentation**” means any training guides, reports, online dashboard contents, and other documentation related to the Products & Services that TraknProtect may make available to Customer.

B. License Grant. TraknProtect hereby grants to Customer a nonexclusive, revocable (but only upon termination or suspension as described in these Terms), nontransferable, nonassignable, nonsublicensable, limited license to, for the duration of the Subscription Term (as defined below), (i) access and use the Software Services solely for Customer’s internal business purposes and (ii) use and make a reasonable number of copies of the Documentation for Customer’s authorized employees and contractors solely for Customer’s internal business purposes. Customer will use the Software Services only in connection with the Customer premises identified on the Proposals.

C. Software Access. Customer will limit access to the Software Services and Documentation to its employees and contractors who both need to access the Software Services for purposes of their work for Customer and are bound by use restrictions and confidentiality obligations no less restrictive than those contained in these Terms. Customer will ensure that each such employee and contractor agrees to any end user terms contained in or on Software Services consisting of mobile applications prior to using the Software Services. If any provision of these Terms conflicts with any provision of any such end user terms, then these Terms will control. Customer is responsible for all access to and use of the Software Services and Documentation by its employees, contractors, and other users. Customer is responsible for maintaining the confidentiality of any usernames, passwords, and other log-in credentials used to access or use the Software Services, including those assigned by TraknProtect. Customer will promptly notify TraknProtect of any unauthorized access to or use of the Software Services or Documentation of which Customer becomes aware.

D. Software Use Restrictions. Customer may not, nor may it authorize any other person to, (i) obscure, remove, or alter any proprietary markings, designations, or notices in or on the Software Services or Documentation; (ii) reconfigure, reverse-engineer, disassemble, decompile, discover the source code of, prepare any derivative works of, update, combine with other computer code, or otherwise modify the Software Services or Documentation; (iii) develop, assist in developing, or have developed on its any other person’s behalf software or services that compete with or are substantially similar to the Software Services; (iv) commercially exploit the Software Services or Documentation; or (v) use the Software Services for unlawful purposes.

3. Support Services. TraknProtect will, at no additional cost to Customer, provide remote technical support for the Software Services via telephone and email during TraknProtect’s normal business hours (“**Support Services**”). Support Services includes updating the range of any beacon or hub Hardware installed under this Agreement upon Customer’s written request. If any Support Services require TraknProtect personnel to visit Customer’s premises after the applicable Hardware Warranty Period (as defined below) has ended, Customer will be responsible for paying fees for those support services at TraknProtect’s then-current hourly rates. Customer will cooperate with TraknProtect in TraknProtect’s performance of the Support Services, including by providing TraknProtect with data, equipment, information, personnel access, and other assistance and materials as TraknProtect may reasonably request. Customer will maintain back-up copies of all data used in

connection with the Software Services. TraknProtect is not responsible for providing Support Services if: (i) Customer uses the Software Services in combination with any hardware or software not authorized by TraknProtect in writing or by the Documentation; (ii) Customer uses the Software Services except in accordance with this Agreement; (iii) Customer uses any release or version of the Software Services other than the most current release or version; (iv) the request or need for Support Services results from Customer's or its employees' or contractors' misuse, abuse, negligence, willful misconduct, noncompliance with regulations, violations of law, or breach of this Agreement; or (v) the request or need for Support Services results from a force majeure event (as contemplated below). Additionally and notwithstanding anything to the contrary in this Agreement, Customer understands and agrees that TraknProtect is not responsible for providing any maintenance or support services for any of Customer's computers, other hardware, operating systems, databases, Internet, or wireless networks (including WiFi), nor for software not licensed by Customer directly from TraknProtect (together, "**Customer Systems**").

4. Professional Services. TraknProtect is responsible for providing all necessary personnel for the performance of all installation, configuration, setup, training, and other professional services as may be described in the Proposals (together, "**Professional Services**"). Notwithstanding anything to the contrary in any Proposal, Customer understands and agrees that TraknProtect is not obligated to provide any professional services with respect to Customer Systems. TraknProtect is responsible for selecting, hiring, managing, training, paying, and determining all other terms of engagement for individuals and entities assigned to perform the Professional Services. TraknProtect may engage third-party contractors to provide the Professional Services. If TraknProtect assigns contractors to perform the Professional Services, TraknProtect is responsible for any breach of these Terms by those contractors. To the extent TraknProtect's personnel perform Professional Services at premises owned, operated, or controlled by Customer, TraknProtect will comply with all reasonable security requirements in effect at those premises that have been provided to TraknProtect in advance and in writing.

5. Hardware. TraknProtect will deliver to Customer any hardware identified in the Proposals ("**Hardware**") in the manner described in the applicable Proposal. With regards to Hardware shipped to Customer, title and risk of loss to the Hardware pass to Customer upon delivery to a carrier selected by TraknProtect. With regards to Hardware installed by TraknProtect at Customer's premises, title and risk of loss to the Hardware pass to Customer upon delivery of the hardware at the applicable Customer premises. Customer may not, nor may it authorize any other person to, (i) obscure, remove, or alter any proprietary markings, designations, or notices in or on the Hardware; (ii) uninstall, disassemble, tamper with, abuse, neglect, reconfigure, modify, or reverse-engineer the Hardware; (iii) develop, assist in developing, or have developed on its any other person's behalf products that compete with or are substantially similar to the Hardware; or (iv) use the Hardware for any purpose other than as intended in connection with the Software Services and any applicable Documentation.

6. Customer Obligations. Solely Customer is responsible for setting up, maintaining, and operating its information technology infrastructure, including Customer Systems, as necessary to access and use the Software Services, whether that infrastructure is operated directly by Customer or through the use of third parties sourced by Customer. Customer's Internet access and WiFi must have sufficient bandwidth and speeds to access and use the Software Services. Customer will assign personnel with relevant training and experience to work in consultation with TraknProtect. Customer will provide all cooperation, resources, and premises access as TraknProtect may reasonably request to enable TraknProtect to perform its obligations and exercise its rights under these Terms and as may be required by the Proposals. TraknProtect is not liable for any delay or failure of performance to the extent caused by Customer's delay in performing or failure to perform any of its obligations under these Terms or any Proposal.

7. Fees; Expenses. Fees for Products & Services are as stated in the Proposals ("**Fees**"). Fees for the Software Services will be invoiced annually in advance unless otherwise stated in the Proposal. Fees for all other Products & Services will be invoiced as stated in the Proposal. Customer will pay Fees to TraknProtect within thirty (30) days of the date of the invoice. Fees are exclusive of any applicable sales taxes and similar charges. Customer is responsible for any taxes and similar charges imposed as a direct result of the Products & Services, excluding any taxes on TraknProtect's net income. Customer will reimburse TraknProtect the cost, without mark-up, of TraknProtect's reasonable out-of-pocket expenses incurred during and in furtherance of the performance of the Products & Services, including without limitation all travel and accommodation expenses. TraknProtect will provide receipts for those expenses to Customer upon Customer's reasonable written request. Any amounts not paid when due will bear late charges equal to the rate of 1.0% per month or the maximum rate permitted by applicable law, whichever is less. Except as may be expressly provided by Section 14.B., all Fees are nonrefundable.

8. Term; Termination.

A. Term. The Agreement commences on the Effective Date and continues until terminated in accordance with these Terms or until all Proposals have expired or terminated and the parties have not entered into any new Proposal for six (6) months.

B. Subscription Term. The “**Initial Subscription Term**” for Software Services is twelve (12) months commencing on the start date identified in the applicable Proposal or, if the Proposal states otherwise, the time period stated in the Proposal. Unless the Proposal states otherwise, the Initial Subscription Term will automatically renew for successive twelve (12)-month periods unless either party provides the other party with at least sixty (60) days’ prior written notice of nonrenewal (each, a “**Renewal Subscription Term**”). The Initial Subscription Term and all Renewal Subscription Terms are, together, the “**Subscription Term**.” TraknProtect may increase Fees for any Renewal Subscription Term by providing Customer with written notice at least ninety (90) days’ prior to the commencement of that Renewal Subscription Term. Upon any such Fee increase, the applicable Proposal will be deemed to be amended accordingly.

C. Termination for Cause. Either party may terminate the Agreement or any Proposal for the other party’s material breach of the Agreement or the Proposal, provided the terminating party provides the breaching party with at least thirty (30) days’ prior written notice. The breaching party will have thirty (30) days from the date of receipt of the termination notice to cure the breach. Upon any termination by TraknProtect under this subsection, Customer will promptly pay TraknProtect all outstanding Fees and other amounts due under the Agreement or the Proposal, as applicable.

D. Termination for Convenience. Customer may terminate this Agreement or any Proposal at any time with or without cause upon ninety (90) days’ prior written notice to TraknProtect, provided Customer promptly pays TraknProtect all outstanding Fees and other amounts payable under the applicable Proposal(s).

E. Termination Due to Insolvency. Either party may terminate the Agreement immediately upon written notice if the other party ceases to conduct business in the normal course, becomes insolvent, admits in writing its inability to meet its debts as they mature, makes an assignment for the benefit of creditors, commences any bankruptcy proceedings, or has commenced against it any bankruptcy proceedings that are not dismissed within sixty (60) days.

F. Obligations Upon Termination. Upon termination of the Agreement or any Proposal or upon expiration of any Subscription Term, (i) Customer and its employees and contractors will immediately cease all access to and use of the Software Services and Documentation; and (ii) Customer will promptly destroy or, at TraknProtect’s request, return to TraknProtect, all of TraknProtect’s Confidential Information in its possession, including deleting or rendering unusable all electronic files and data that contain that Confidential Information. Sections 7 (as applicable), 8 (as applicable), 9, 10, 12, 13.F., 14, 15, 20, 22, and 24 survive any termination of the Agreement.

9. Intellectual Property Rights. TraknProtect and its suppliers and licensors, as applicable, are the exclusive owners of all right, title, and interest in and to the Software Services, all Documentation and materials, and all ideas, concepts, know-how, methodologies, and techniques related to the same, including all patent, copyright, trademark, trade secret, and other intellectual property rights, whether developed by or on behalf of TraknProtect prior to or during the term of the Agreement. TraknProtect will be free to use any general knowledge, experience, skills, ideas, concepts, techniques, and know-how that are retained in the memory of TraknProtect’s personnel in connection with these Terms or the Products & Services. TraknProtect is the exclusive owner of and Customer hereby irrevocably assigns to TraknProtect all right, title, and interest (including all intellectual property rights) in and to all feedback pertaining to the Products & Services as may be provided by Customer or Customer’s employees or contractors, including suggestions, enhancements, recommendations, and other comments, but excluding any components that consist of Customer’s Confidential Information (as defined below). Customer understands that feedback may be used by or on behalf of TraknProtect for any purpose but that under no circumstances is TraknProtect required to use any feedback. Except as expressly stated in these Terms, no licenses or other rights, express or implied, are granted by TraknProtect to Customer under any patent, copyright, trademark, trade secret, or other intellectual property right of TraknProtect.

10. Platform Data. “**Platform Data**” means all data that is submitted or uploaded to the Software Services by or on behalf of Customer or otherwise collected by the Software Services in course of Customer’s use of the Products & Services, including geographical location information and other data pertaining to the use of the Hardware. “Platform Data” also includes all reports generated by the Software Services containing, based on, or reflecting that data. TraknProtect is the exclusive owner of all Platform Data and, accordingly, TraknProtect

may copy, modify, prepare derivative works of, distribute, commercially exploit, and otherwise use Platform Data in any manner for its business purposes, provided that TraknProtect will not use Platform Data in a way that allows Customer or any particular individual to be identified by any third party.

11. Use of Marks; Publicity Cooperation. Neither party may, without the other party's prior written consent, use the names, logos, or trademarks of the other party, except that Customer may identify TraknProtect as a vendor and TraknProtect may identify Customer as a customer in its marketing materials and on its customer lists. Customer will, to the extent permitted by Customer's media and publicity policies, cooperate with TraknProtect's reasonable requests in producing, participating in, and sharing testimonials and references regarding TraknProtect's products and services.

12. Confidentiality.

A. *Confidential Information.* "**Confidential Information**" is all information disclosed in connection with the Products & Services or the Agreement by or on behalf of either party ("**Disclosing Party**") to the other party or otherwise obtained by the other party ("**Receiving Party**"), whether or not identified as "confidential," that the Disclosing Party considers or protects as confidential and that is reasonably understood to be confidential given the content of the information and the circumstances of disclosure, including: marketing, advertising, distribution, and sales practices; financial information; customer and vendor lists and information; strategies, tactics, and business plans; business models; policies, methods, and processes; technical specifications; designs, drawings, schematics, models, and prototypes; software applications; computer code; technology; know-how; ideas; trade secrets; algorithms; and data. TraknProtect's Confidential Information includes without limitation the Software Services, all Documentation, Platform Data, and the terms of the Agreement. Customer will not provide any personally identifiable information. Customer is solely responsible for any liability or obligations resulting from Customer's submission of personally identifiable information and will notify TraknProtect in writing if Customer ever becomes aware of any personally identifiable information submitted to allow TraknProtect to remove that personally identifiable information. Confidential Information may be in any form and includes all copies of Confidential Information. Confidential Information is solely the property of the Disclosing Party. Confidential Information does not include information that (i) is or becomes generally available to the public other than as a result of a direct or indirect disclosure by the Receiving Party; (ii) is or becomes available to the Receiving Party from a third-party source, provided the source is not under an obligation of confidentiality to the Disclosing Party; (iii) was lawfully known to the Receiving Party prior to its disclosure by or on behalf of the Disclosing Party; or (iv) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. For the avoidance of doubt, nothing in this Section 12 will limit or otherwise impact TraknProtect's ability to use Platform Data as described in Section 10.

B. *Nonuse; Nondisclosure.* The Receiving Party may not use the Disclosing Party's Confidential Information for any purpose except as necessary to perform its obligations or exercise its rights under these Terms. The Receiving Party may not disclose the Disclosing Party's Confidential Information except to its employees, contractors, and agents who have a need to know for purposes of performing the Receiving Party's obligations or exercising the Receiving Party's rights under these Terms, provided those individuals are bound by confidentiality obligations as least as stringent as those contained in this Section 12. The Receiving Party will use the same measures to protect the Disclosing Party's Confidential Information from unauthorized use and disclosure as it uses to protect its own most confidential information, but in no event less than a reasonable degree of care. The Receiving Party will be responsible for any breaches of this Section 12 by its employees, contractors, and agents.

C. *Third-Party Disclosure Requests.* If a third party requests that the Receiving Party disclose the Disclosing Party's Confidential Information pursuant to a subpoena, summons, search warrant, governmental order, or other lawful process, the Receiving Party will notify the Disclosing Party in writing promptly upon its receipt of the request (to the extent permitted by law) and will, at the Disclosing Party's expense, provide cooperation as the Disclosing Party may reasonably request in resisting the release of the Confidential Information. If the Receiving Party remains obligated to release the requested Confidential Information, the Receiving Party may release that Confidential Information, provided it releases only the Confidential Information that the Receiving Party's legal counsel advises is required to be released in order to comply with the request.

13. Warranties; Disclaimer.

A. *Mutual Warranties.* Each party warrants that it has the authority to enter into the Agreement and perform its obligations under the Agreement and it is under no contractual obligation that will interfere with its ability to satisfy its obligations under the Agreement.

B. *Software and Professional Services Warranties.* TraknProtect warrants that (i) it will perform the Professional Services using qualified personnel, in a good workmanlike manner, and in accordance with industry standards; (ii) the Software Services will substantially conform to any specifications contained in the applicable Proposal; and, (iii) to TraknProtect's knowledge, the Software Services do not and will not, upon delivery, contain any viruses, Trojan horses, or any computer code designed to harm Customer Systems. Upon any breach of the warranty at clause (i), as Customer's sole remedy and as TraknProtect's sole liability, TraknProtect will reperform the applicable Professional Services. Upon any breach of the warranties at clauses (ii) or (iii), as Customer's sole remedy and as TraknProtect's sole liability, TraknProtect will repair or replace the applicable Software Services.

C. *Hardware Warranties.* TraknProtect warrants that, for a period of six (6) months from delivery ("**Hardware Warranty Period**"), the Hardware will be free of material defects and will operate in material conformance with any applicable Documentation. Upon any breach of this warranty, as Customer's sole remedy and as TraknProtect's sole liability, TraknProtect will repair or replace the applicable Hardware. Customer must notify TraknProtect in writing of any alleged breach of this warranty promptly and within the Hardware Warranty Period.

D. *Warranty Exclusions.* TraknProtect is not responsible for any actual or alleged breach of the warranties in this Section 13 to the extent the breach arises from use of the Products & Services in any manner not expressly permitted by these Terms, modification, configuration, installation, or tampering of the Products & Services by any person other than TraknProtect, use of the Products & Services in combination with any software, hardware, or materials not provided or authorized in writing by TraknProtect, use of the Products & Services for unlawful purposes, or TraknProtect's compliance with Customer's instructions.

E. *Customer Warranties.* Customer warrants that the Products & Services will not be accessed or used in any manner not permitted by these Terms.

F. *DISCLAIMER OF WARRANTIES.* EXCEPT AS MAY BE EXPRESSLY STATED IN THIS SECTION 13 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PRODUCTS & SERVICES ARE PROVIDED ON AN "AS IS," "AS AVAILABLE," AND "WHERE IS," BASIS, WITHOUT WARRANTIES OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TRAKNPROTECT DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY, AND OTHERWISE, WITH REGARDS TO THE PRODUCTS & SERVICES, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE IN TRADE. TRAKNPROTECT DOES NOT WARRANT THAT THE PRODUCTS & SERVICES WILL BE FREE OF ERROR, VIRUSES, OR OTHER HARMFUL COMPONENTS, OR THAT ANY DEFECTS WILL BE CORRECTED. TRAKNPROTECT DOES NOT GUARANTEE THE QUALITY, ACCURACY, OR AVAILABILITY OF THE PRODUCTS & SERVICES. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SOFTWARE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, WIRELESS NETWORKS (INCLUDING WIFI), AND ELECTRONIC COMMUNICATIONS. TRAKNPROTECT IS NOT RESPONSIBLE FOR ANY DELAYS, INACCURACIES, DELIVERY FAILURES, OR OTHER FAILURES OR DAMAGE RESULTING FROM THOSE PROBLEMS OR ANY OTHER PROBLEMS OUTSIDE OF TRAKNPROTECT'S REASONABLE AND DIRECT CONTROL, INCLUDING WITHOUT LIMITATION CUSTOMER'S INTERNET, WIRELESS NETWORKS (INCLUDING WIFI), AND ANY THIRD-PARTY SOFTWARE. NO ADVICE OR INFORMATION, ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM TRAKNPROTECT OR IN ANY MANNER FROM THE PRODUCTS & SERVICES CREATES ANY WARRANTY.

14. Indemnification.

A. *Indemnification by TraknProtect.* TraknProtect will indemnify, defend, and hold harmless Customer, its affiliates, and its and their respective directors, officers, employees, owners, contractors, agents, and representatives from and against all third-party claims, complaints, actions, lawsuits, demands, and proceedings (together, "**Claims**"), as well as any losses, liabilities, damages, judgments, settlements, fees, fines, penalties, costs, and expenses (including reasonable attorneys' fees) (together, "**Losses**") directly incurred as a result of those Claims, arising out of or in connection with (i) the gross negligence, willful misconduct, or other tortious acts or omissions of TraknProtect or its employees or contractors; or (ii) a claim that the Software Services as provided by TraknProtect and used as permitted by these Terms infringes, violates, or misappropriates the patent, copyright, trademark, trade secret or other intellectual property right of a third party ("**IP Infringement Claim**").

B. *IP Infringement Claim Exclusions and Procedures.* TraknProtect has no obligations with respect to any IP Infringement Claim to the extent the IP Infringement Claim arises from use of the Software Services in any manner not expressly permitted by these Terms, modification or configuration of the Software Services by any person other than TraknProtect, use of the Software Services in combination with any software, hardware, or materials not provided or authorized in writing by TraknProtect, use of the Software Services for unlawful purposes, or TraknProtect's compliance with Customer's instructions. If an IP Infringement Claim

arises or, in TraknProtect's reasonable opinion, if an IP Infringement Claim is likely to disrupt Customer's use of the Software Services, then TraknProtect will, at its own option and expense, (I) modify the infringing component(s) of the Software Services so as to make them noninfringing while maintaining similar functionality; (II) secure for Customer the right to access and use the infringing component(s) of the Software Services; (III) replace the Software Services with a compatible, functionally equivalent and noninfringing software service; or, (IV) if TraknProtect determines the foregoing options are not commercially reasonable, terminate the Agreement or the applicable Proposal(s) and provide Customer a pro rata refund of any recurring Fees paid for the infringing Software Services, provided Customer ceases all access to and use of the same. The obligations in this Section 14 are TraknProtect's entire liability and Customer's exclusive remedy for IP Infringement Claims.

C. Indemnification by Customer. Customer will indemnify, defend, and hold harmless TraknProtect, its affiliates, and its and their respective directors, officers, employees, owners, contractors, agents, and representatives from and against all Claims, as well as any Losses directly incurred as a result of those Claims, arising out of or in connection with (i) the gross negligence, willful misconduct, or other tortious acts or omissions of Customer or its employees or contractors; (ii) misuse of the Products & Services or any Documentation by Customer or its employees or contractors; or (iii) use of the Products & Services for unlawful purposes.

D. Indemnification Procedures. Upon learning of any Claim or Loss, the party seeking indemnification will notify the indemnifying party in writing; permit the indemnifying party to control the defense of the Claim or Loss at the indemnifying party's own expense, provided the indemnified party may participate with counsel of its own choice at its own expense; and provide reasonable assistance to the indemnifying party, at the indemnifying party's expense, in the defense of the Claim or Loss. Any failure by the indemnified party to satisfy these obligations will limit the indemnifying party's indemnification obligations only to the extent that it suffers actual prejudice as a result of that failure. The indemnifying party may not enter into any settlement agreement, consent to the entry of any judgment, or otherwise settle any Claim or Loss without the indemnified party's specific prior written consent, which consent may not be unreasonably withheld conditioned or delayed. If the indemnifying party does not assume full control over the defense of a Claim, the indemnified party has the right to defend against the Claim or Loss in any manner it deems appropriate at the indemnifying party's expense.

15. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THE AGREEMENT FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS, LOSS OF REVENUES, LOSS OF BUSINESS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, OR OTHERWISE, AND WHETHER OR NOT THE DAMAGES WERE FORESEEABLE, EXCLUDING ANY DAMAGES AVAILABLE UNDER APPLICABLE LAW FOR VIOLATION OF TRAKNPROTECT'S INTELLECTUAL PROPERTY RIGHTS. IN ANY EVENT, TRAKNPROTECT'S MAXIMUM LIABILITY UNDER THE AGREEMENT ARISING OUT OF ANY CLAIM WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WILL BE LIMITED TO THE AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER UNDER THE APPLICABLE PROPOSAL DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT THAT GAVE RISE TO THE LIABILITY.

16. Insurance Certificates. TraknProtect will provide Customer with certificates of insurance evidencing its insurance coverages upon Customer's reasonable written request.

17. Compliance with Laws. Each party will perform its obligations and exercise its rights under these Terms in compliance with all applicable laws and regulations.

18. Force Majeure. Neither party will be liable for failure or delay in performing any obligation under the Agreement due to circumstances beyond its reasonable control that prevent it from performing its obligations, including without limitation acts of God or nature, actions of the government, fires, floods, strikes, civil disturbances, or terrorism, or power, communications, satellite, or network failures.

19. Audit; Suspension. Upon reasonable prior written notice and in a manner that does not unreasonably disrupt Customer's day-to-day operations, TraknProtect and its designated representatives may, at TraknProtect's expense, audit, examine, and make copies of data and other information in the possession or control of Customer that relate to or concern Customer's compliance with these Terms. Additionally, TraknProtect may remotely monitor Customer's use of the Software Services for purposes of evaluating compliance with these Terms. TraknProtect may suspend Customer's access to the Software Services if TraknProtect reasonably suspects a material breach of these Terms or if any undisputed Fees remain unpaid for more than thirty (30) days following any due date. TraknProtect will use commercially reasonable efforts to notify Customer prior to any suspension.

20. Injunctive Relief. Customer's breach of Sections 2 or 5 and either party's breach of Sections 9, 11, or 12 would cause irreparable harm to the other party and monetary damages would be insufficient to remedy any that harm. Accordingly, in the event of actual or threatened breach of any of those sections, the nonbreaching party will be entitled to injunctive relief, without the need to post bond, prove damages, or meet any similar requirement, as well as any other remedy available at law or at equity.

21. Relationship of the Parties. TraknProtect is an independent contractor of Customer. The Agreement does not create any employment, agency, partnership, or joint venture relationship between the parties. Neither party has any authority to contract for or bind the other in any manner or make any representation or commitment on behalf of the other.

22. Notice. All notices, consents, and other communications permitted or required to be given under the Agreement must be in writing and addressed to the recipient's address in this Agreement or such other address as the recipient provides in accordance with this section and will be deemed validly given upon delivery if personally delivered with fees prepaid, including by a recognized courier service; upon receipt if delivered by certified or registered United States mail, postage prepaid and return receipt requested, as indicated by the date on the signed receipt; or on the date the email is sent if via email, provided a hard copy is also provided. Where TraknProtect is the recipient, a copy of each communication must be sent to info@traknprotect.com in order to be valid.

23. Equal Opportunity Employer. TraknProtect is an equal opportunity employer and does not discriminate against any employee on the basis of race, color, religion, sex, sexual orientation, age, national origin, disability, or any other protected class status.

24. Governing Law. The Agreement is governed by the laws of the state of Illinois, without regard for its conflict of law principles. The Uniform Computer Information Transactions Act or any version thereof adopted by any state in any form does not apply to the Agreement. Venue is exclusively in the state or federal courts, as applicable, located in Cook County, Illinois, with respect to any dispute arising under the Agreement.

25. General. The Agreement is the entire agreement between the parties with respect to the subject matter of the Agreement and supersedes all previous agreements and understandings, whether oral or written, between the parties with respect to the subject matter of the Agreement. If Customer submits order forms, purchase orders, or other documents, no preprinted or other terms contained in those documents will be amend or supersede any terms of the Agreement. The Agreement may be modified only in a writing signed by both parties. If any provision of these Terms conflicts with any provision of any Proposal, these Terms will control unless the Proposal expressly amends these Terms. Waiver of any term of the Agreement must be in writing and signed by the party granting the waiver. The waiver by either party of any term of the Agreement will not be deemed a future waiver of the same term or a waiver of any other term. If any term of the Agreement is held to be unenforceable in any jurisdiction, that term will be ineffective as to that jurisdiction to the extent of the invalidity or unenforceability and without invalidating any other term of the Agreement. Customer may not assign these Terms without TraknProtect's prior written consent. TraknProtect may assign the Agreement without obtaining Customer's consent. The Agreement will inure to the benefit of and be binding upon the parties' respective successors and permitted assigns. The headings in the Agreement are for convenience only and will not be construed to affect the construction or interpretation of any terms of the Agreement.