

TERMS OF SERVICE

BY ACCEPTANCE OF THIS AGREEMENT, SIGNING AN ORDER FORM IN WHICH THESE TERMS OF SERVICE ARE REFERENCED, OR ACCESSING OR USING ANY TRACKTIK SERVICES, CUSTOMER IS ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS OF SERVICE. CUSTOMER AGREES THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF CUSTOMER.

These Terms of Service were last updated on **December 14, 2022**. Use this [link](#) to access the previous version.

Customer acknowledges that TrackTik may update these Terms of Service at any time. In the event TrackTik modifies these Terms of Service, TrackTik will use commercially reasonable efforts to notify Customer at the email address on file as provided for in Section 22 (Notice) not less than thirty (30) days before the modification(s). Unless Customer objects in writing, Customer will have been deemed to have accepted the modification(s) on the date the updated Terms of Service come into effect. Continued use of TrackTik Services will be deemed to be Customer's acceptance of the updated Terms of Service. In the event Customer does not accept to be bound by the updated Terms of Service, Customer's only recourse is to terminate the Agreement, which shall be effectively immediately. In the event of termination by Customer under this provision, Customer shall not be entitled to any refund of any Fees already paid, prorated or otherwise.

1 DEFINITIONS

In addition to any other definitions that may be found in an Order Form or throughout these Terms of Service which will be recognizable as they will be bolded and in quotation marks, the following definitions apply:

"Affiliate." With respect to a party, any parent or subsidiary corporation, and any corporation or other business entity controlling, controlled by or under common control with such party; where "control" and its derivatives means the legal or beneficial ownership, directly or indirectly, of 50% or more of the shares (or other ownership interest, if not a corporation) of such entity ordinarily having voting rights or control in fact through the exercise of rights pursuant to an agreement.

"Agreement". These Terms of Service (including any external terms or policy incorporated by reference herein) together with each Order Form entered into by the parties, as amended from time to time.

"API." The TrackTik Application Programming Interface through which the Customer may be accessing the Services.

"Authorized Users." The identifiable unique persons consisting of Customer's employees, third party consultants, outsourcers, contractors and other service providers who are authorized to access and use, as applicable, the Services and / or the Mobile Application.

"Customer." The customer identified on the Order Form.

"Customer Data." Data and other information that Customer (or any of its Authorized Users) loads, transmits to or enters into the Services via any means.

"Intellectual Property Rights." (a) Any and all proprietary rights provided under: (i) patent law; (ii) copyright law (including moral rights); (iii) trade-mark law; (iv) design patent or industrial design law; (v) semi-conductor chip or mask work or integrated circuit topography law; or (vi) any other statutory provision or common law principle applicable to the Agreement, including trade secret law; (b) any and all applications, registrations, licences, sub-licences, franchises, agreements or any other evidence of a right in any of the foregoing; and (c) any and all licences and waivers and benefits of waivers of the intellectual property rights set out in (a) and (b) above, all future income and proceeds from the intellectual property rights set out in (a) and (b) above, and all rights to damages and profits by reason of the infringement or violation of any of the intellectual property rights set out in (a) and (b) above.

"Mobile Application." Any mobile applications for iOS or Android made available by TrackTik for use with the Services.

"Order Form." A written document indicating that it is an "order form" which specifies the Services and Professional Services to be provided and the Fees to be paid, and which incorporates the terms of these Terms of Service and is mutually agreed upon and duly executed by the parties, which shall be binding upon the parties.

"Personal Information." Information about an identifiable individual.

"Professional Services." Any consulting, implementation, training or other professional services made available by TrackTik to Customer as described in an Order Form.

"Related Systems." Any Customer owned or operated computers, web-browsers, operating systems, firewalls, e-mail servers, LDAP servers, portals, networks, third party software, internet connection, and any other equipment or software that connects to the Services or affects the Services



"Services." The services which TrackTik makes available to the Customer and its Authorized Users via the Sites, API or other means, as specified in the applicable Order Form.

"Sites." Websites owned and / or used by TrackTik to provide the Services.

"Third Party Providers." The third parties that TrackTik may use or make available who may offer services, software and/or equipment related or connected to the Services, or that work in conjunction with the Services.

"TrackTik." The TrackTik company described in the "Contracting Entity, Notices, Governing Law, and Venue" section below.

"TrackTik Technology." The Services, TrackTik software powering the Services, any deliverables, any related and underlying technology and documentation, and all derivative works, modifications, or improvements of any of the foregoing.

2 SERVICES AND PROFESSIONAL SERVICES; RESTRICTIONS

- 2.1 Services.** Subject to Customer's compliance with the terms and conditions of the Agreement, TrackTik will make the Services and the Mobile Application available to Customer and its Authorized Users during the Term on the terms and conditions set out in the Agreement. Customer acknowledges that certain features and/or functionality may only be available when accessing the Services via the API.
- 2.2 Modifications to the Services.** TrackTik may, at its sole discretion, modify the Services or the Mobile Application, provided that such modifications do not materially decrease the functionality provided by the Services and Mobile Application. Customer is required to accept all patches, bug fixes and updates made by or on behalf of TrackTik to the Services and the Mobile Application.
- 2.3 Suspension of the Services.** TrackTik may, at its sole discretion, suspend Customer's and Authorized Users' access to or use of the Services or the Mobile Application or any component thereof, at any time with or without notice: (a) for scheduled maintenance; (b) if Customer or any Authorized User violates any provision of this Agreement; or (c) to address any emergency security concerns; and TrackTik will not be liable to Customer or to any third party should it exercise such right.
- 2.4 Professional Services.** TrackTik will use reasonable efforts to provide the Professional Services described in an Order Form in accordance with the applicable requirements described in such Order Form, if any.
- 2.5 Restrictions on Use of Services.** Customer must not itself, and will not permit others to: (a) sub-license, sell, rent, lend, lease or distribute the Services or the Mobile Application or any Intellectual Property Rights therein or otherwise make the Services or the Mobile Application available to others except as provided for in the Agreement; (b) except as expressly agreed by TrackTik, use the Services or the Mobile Application to facilitate or provide timesharing, service bureau use or commercially exploit the Services or the Mobile Application; (c) use or access the Services or the Mobile Application in violation of any applicable law or Intellectual Property Right; or (d) use the Services or the Mobile Application in a manner that threatens the security or functionality of the Services or the Mobile Application.
- 2.6 Restrictions on Customer Data.** Customer must not itself, and will not permit others to use the Services or the Mobile Application to create, collect, transmit, store, use or process any Customer Data: (a) that contains any computer viruses, worms, malicious code, or any software intended to damage or alter a computer system or data; (b) that Customer does not have the lawful right to create, collect, transmit, store, use or process; (c) that is subject to specific regulations or laws that impose increased obligations with respect to handling that type of information or any other information where unauthorized use or disclosure could cause material or severe harm or impact to TrackTik, its Third Party Providers or other third parties; or (d) that violates any applicable laws, or infringes, violates or otherwise misappropriates the Intellectual Property Rights or other rights of any third party (including any moral right, privacy right or right of publicity).
- 2.7 General Restrictions.** Customer must not itself, and will not permit others to: (a) modify the Services or the Mobile Application; (b) reverse engineer, decompile or disassemble the Services or the Mobile Application or otherwise seek to obtain the source code or non-public APIs to the Services or the Mobile Application, except to the extent expressly permitted by applicable law (and then only upon advance written notice to TrackTik); (c) remove or obscure any proprietary notices or labels on the Services or the Mobile Application, including brand, copyright, trademark and patent or patent pending notices, unless otherwise authorized to do so by TrackTik; (d) use the Services or the Mobile Application for the purpose of building a competitive product or service; (e) perform any vulnerability, penetration or similar testing of the Services or the Mobile Application, unless otherwise authorized to do so by TrackTik; or (f) use the Services, Professional Services or the Mobile Application for any purpose or in any manner not expressly permitted in the Agreement.

3 CUSTOMER ACKNOWLEDGEMENTS AND OBLIGATIONS REGARDING THE SERVICES

- 3.1 Services Not a Substitute for Customer Judgement and Experience.** Customer acknowledges that the Services are provided solely to support Customer's performance of security services and are not meant to be a substitute for Customer's independent judgement regarding the manner by which security services should be conducted. The Services are not meant to be, and should not be used as, a substitute for emergency and law enforcement response. Customer assumes all responsibilities and obligations and expertise with respect to: (a) the selection of the Services (including opting to access the Services via the API), to meet its intended results; and (b) any decision it makes based on the results produced by the Services. Customer understands and acknowledges that neither TrackTik nor any Third Party Providers (if applicable) are engaged in rendering legal, accounting, tax or other professional advice either as a service, or through the Services, and that Customer it is not relying on TrackTik or any Third Party Providers for any advice or guidance regarding laws and regulations. Customer shall review all calculations and determinations made using the Services and satisfy itself those results are accurate. If legal, accounting, tax or other expert assistance is required, the services of a competent professional will be sought by Customer. To the extent permitted by law, Customer shall indemnify and hold TrackTik harmless from claims and demands of its employees or former employees arising from the use by Customer of the Services.

- 3.2 Access to the Services.** The Services will be rendered in a manner that will permit Authorized Users to access the Services in accordance with the applicable requirements specified in the applicable Order Form. TrackTik will permit access to the Services only through the Sites or via API or other means using usernames and passwords assigned by TrackTik, and Customer acknowledges and agrees that they shall not transfer such usernames and passwords to anyone who is not authorized to access the Services. Customer may also assign usernames and passwords to Authorized Users, further to Section 3.8 below. Customer shall change all passwords used to access the Services at regular intervals. Should Customer learn of an unauthorized third party having obtained knowledge of a password, Customer shall inform TrackTik thereof without undue delay and promptly change the password. Customer will terminate old users in the Services.
- 3.3 Customer Data.** Customer agrees that it is solely responsible for entering its Customer Data into the Services. Customer can purchase TrackTik Professional Services to assist Customer in entering Customer Data. Customer also agrees that it is responsible for the maintenance of the Customer Data supplied by it. Customer agrees that it has collected and shall maintain and handle all Customer Data in compliance with all applicable data privacy and protection laws, rules and regulations. Customer has sole responsibility to: (a) check the accuracy of Customer Data processed using the Services; and (b) run all normal processes and procedures within the Services such as end of period processing, imports, exports, and file transfers.
- 3.4 API.** In the event the Customer is accessing the Services through the API, the Customer acknowledges that they shall be bound by the “API Terms of Use”, located at <https://www.tracktik.com/api-terms>, which are incorporated by reference herein.
- 3.5 Third-Party Technology.** Customer acknowledges that the Services and the Mobile Application require the use of and integrate certain third-party technology, including Google Maps. Customer hereby agrees to accept and comply with the license terms for such third party technology, as applicable. Without limiting the generality of the foregoing, Customer’s use of Google Maps in the Services or on its own is subject to the current Google Maps/Google Earth Additional Terms of Service at https://maps.google.com/help/terms_maps.html and Google Privacy Policy at <https://policies.google.com/privacy>, both of which are incorporated by reference herein. Licensed third party technology may include APIs provided by third parties that provide integrations between the Services and third-party software used by Customer to manage its business, and Customer acknowledges and agrees to such integrations, as applicable.
- 3.6 Related Systems.** Customer acknowledges and agrees that it is responsible for separately obtaining or licensing the desktop computers, cell phones) and Related Systems necessary or desirable to access the Services and the Mobile Application. Customer is solely responsible for managing and configuring all Related Systems to ensure they operate properly and are up to date as required to use the latest versions of the Services and Mobile Application. TrackTik shall not be responsible for any damages, pecuniary or otherwise, resulting or arising from the Services or Mobile Application not functioning or having reduced functionality as a result of Customer having insufficiently updated or unsupported Related Systems. TrackTik technical support does not apply to Related Systems or problems in the Services caused by any Related Systems. Should TrackTik identify that the root cause of a problem is caused by Customer modifications to the Services or behavior in a Related System it shall notify Customer and request approval to provide additional assistance (if applicable). Should Customer give its approval, the additional time spent by TrackTik after such approval shall be billed to customer on a time and materials basis at the then current rates.
- 3.7 Security.** Customer acknowledges and agrees that they will be solely responsible for acquiring and maintaining technology and procedures for maintaining the security of its link to the Internet. TrackTik will implement reasonable security procedures consistent with prevailing industry standards to protect Customer Data from unauthorized access (the “**Security Standard**”). Provided that TrackTik is in compliance with the Security Standard, the parties agree that TrackTik will not be held responsible or liable for situations: (a) where data or transmissions are accessed by third parties through illegal or illicit means; or (b) where the data or transmissions are accessed through the exploitation of security gaps, weaknesses, or flaws unknown to TrackTik at the time or any other matter beyond its control. TrackTik will promptly report to Customer any unauthorized access to Customer Data upon discovery by TrackTik, and TrackTik will use diligent efforts to promptly remedy any breach of security that permitted such unauthorized access. In the event notification to persons included in such Customer Data is required, Customer will be solely responsible for any and all such notifications at its expense.
- 3.8 Technical Contact.** Customer acknowledges that it shall designate one of its employees as its principal contact for communicating with TrackTik regarding technical issues under the Agreement. Customer may change its technical contact from time to time by written notice to TrackTik.
- 3.9 User Accounts.** Upon Customer’s request and except as otherwise specified in the Order Form, TrackTik will issue one superintendent account and one or more administrator accounts (the superintendent account and the administrator accounts are, collectively, the “**Administrator Accounts**”) to Customer that provides Customer with the capability to create end user accounts (each, a “**Customer User Account**”) for employees and independent contractors that Customer wishes to have access to and use of the Services through the Mobile Application (each, and each other person with an Administrator Account is, an Authorized User). Customer will ensure that Authorized Users only use the Services through the Customer User Account. Customer will not allow any Authorized User to share the Customer User Account with any other person.
- 3.10 Responsibility for Authorized Users.** Customer is responsible for identifying and authenticating all Authorized Users, for Authorized Users’ compliance with this Agreement and for Authorized Users’ use or misuse of the Services or Mobile Application. Customer will promptly notify TrackTik of, and indemnify TrackTik from, any actual or suspected unauthorized use of the Services or the Mobile Application including by anyone who is not an Authorized User. TrackTik reserves the right to suspend, deactivate, or replace any Administrator Account or Customer User Account if it determines that the Administrator Account or Customer User Account may have been used for an unauthorized purpose.

4 TECHNICAL SUPPORT AND BACKUPS

- 4.1 Technical Support.** TrackTik will provide technical support as described at <https://www.tracktik.com/sla/> at no additional charge. If additional Professional Services are required for the proper use and operation of the Services or if other Professional Services are requested by Customer, such services will be provided pursuant to a new Order Form entered into by the parties. Except as set out in the applicable Order Form, TrackTik will provide such Professional Services on a time and materials (“**T&M**”) basis as follows: (a) Customer will pay TrackTik for all the time spent performing such Professional Services (including all travel time), plus materials, taxes, and reimbursable expenses; and (b) the rates for such Professional Services will be TrackTik’s then current standard rates when such services are provided, which is specified in the Order Form. Any monetary amount stated in an estimate for T&M services will be an estimate only for Customer’s budgeting and TrackTik’s resource scheduling purposes. If the estimate is exceeded, TrackTik will cooperate with Customer to provide continuing Professional Services on a T&M basis. TrackTik will invoice Customer for T&M Professional Services on a monthly basis. All such charges

will be payable upon receipt of invoice by Customer. TrackTik reserves the right to require a non-refundable fee and/or cost deposit prior to commencement of any such Professional Services.

- 4.2 Backups.** At no additional charge to Customer, TrackTik will make daily incremental backups (each, a “**Daily Backup**”) of Customer Data archived with the TrackTik Technology. Daily Backups are encrypted and stored off-site in multiple secure facilities designed to store and maintain backups for emergency use. Daily Backups are deleted after ten (10) days.

5 TERM AND TERMINATION OF AGREEMENT

- 5.1 Term.** The term of the Agreement will commence as of the Effective Date listed in the Order Form and will continue for the period listed in the Order Form (the “**Initial Term**”). The Initial Term will automatically renew for an additional term, the length of which is specified in the Order Form (the “**Renewable Term**”) unless either party notifies the other in writing not less than sixty (60) days prior to the expiration of the current term of its intention not to renew, or other such period as specified in the Order Form. Either the Initial Term or any Renewal Term may be referred to in this Agreement as a “**Term**”.

- 5.2 Termination for Cause.** If either party fails to comply with any of the material terms and conditions of the Agreement (including, in the case of Customer, failure to pay any Fee or other amounts payable to TrackTik under the Agreement when due), the non-defaulting party may terminate the Agreement (including any or all Order Forms) upon fifteen (15) days' written notice to the defaulting party specifying any such breach, unless within the period of such notice all breaches specified therein will have been remedied.

- 5.3 Effects of Termination.** For clarity, termination for any reason terminates both the Terms of Service and any outstanding Order Form. Upon the termination of the Agreement: (a) Customer will immediately cease all access, receipt and use of the Services and Mobile Application under any outstanding Order Form; (b) all rights and licenses granted to Customer under the Agreement be immediately revoked; (c) within 30 days following termination, Customer will return any TrackTik property and all copies thereof, in its possession or under its control to TrackTik or at the direction of TrackTik destroy such materials; and (d) each party will return or destroy Confidential Information of the other party in accordance with this Agreement.

- 5.4 Surviving Provisions.** All provisions of these Terms of Service which by their nature should survive termination the Agreement shall survive termination, including without limitation intellectual property provisions, disclaimers, indemnification and limitations of liability

- 5.5 Transition Services.** Upon termination of the Agreement, Customer will no longer have rights to access or use the Services. Within ninety (90) days following termination, TrackTik will, upon Customer's written request and at Customer's option, return to Customer or delete or otherwise render inaccessible any Customer Data that remains in the hardware or systems used by TrackTik to provide the Services. If Customer does not make such request within such ninety (90) day period, Customer agrees that TrackTik may delete any Customer Data without liability. In addition, TrackTik will perform additional transition services that are mutually agreed upon by TrackTik and Customer in a statement of work that is added to an Order Form.

6 FEES

- 6.1 Fees.** Customer will pay to TrackTik the fees and charges set out in each Order Form (the “**Fees**”) in accordance with the payment terms set out therein. If Customer issues a purchase order upon entering into an Order Form, then: (a) any such purchase order submitted by Customer is for its internal purposes only, and TrackTik rejects, and in the future is deemed to have rejected, any purchase order terms to the extent they add to or conflict in any way with this Agreement or the applicable Order Form and such additional or conflicting terms will have no effect; (b) it shall be without limitation to TrackTik's right to collect Fees owing hereunder; (c) it shall be for the total Fees owing under the applicable Order Form; and (d) on request, TrackTik will reference the purchase order number on its invoices (solely for administrative convenience), so long as Customer provides the purchase order at least ten (10) business days prior to the invoice date. The Fees may include subscription Fees for the Services as well usage Fees, which shall be specified in the Order Form. Unless otherwise specified in the applicable Order Form, all Fees are non-refundable and TrackTik will have no obligation to issue refunds or credits for any unused Services, partial months or in connection with any downgrade, cancellation, termination or otherwise.

- 6.2 Annual Automatic Increase to Fees.** At each annual anniversary of the Agreement following the Effective Date as specified in the Order Form, the Fees charged for the Services and Professional Services on the Order Form in effect at the time shall automatically be increased by seven percent (7%) or the increase in the CPI in the US or EU, as applicable, whichever is higher.

- 6.3 Taxes; Currency.** The Fees and other amounts payable by Customer listed in the Order Form in accordance with the Agreement do not include any applicable sales, use, excise, GST, HST, value-added or other taxes or duties, which shall be added at the time of payment, and which Customer is solely responsible for paying. The currency of the Fees shall be specified in the applicable Order Form.

- 6.4 Invoicing and Payment.** TrackTik will prepare and send to the Customer, at the then-current contact information on file with TrackTik, an invoice for any Fees that have become due and payable. Unless otherwise expressly stipulated in an invoice or in the applicable Order Form: (a) all invoiced amounts are due upon receipt of the invoice; and (b) all payments shall be made by electronic funds transfer in the manner specified in the Order Form; e.g. credit card, ACH. If Customer provides credit card information, Customer authorizes TrackTik to charge such credit card for all Services listed in the Order Form for the Initial Term and any Renewal Term. Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, TrackTik will invoice Customer in advance and otherwise in accordance with the relevant Order Form

- 6.5 Additional Users.** If Customer's use of the Services exceeds the allocated number of Authorized Users set forth on an Order Form or if Customer's use of the Services otherwise requires the payment of additional Fees (pursuant to the terms of the Agreement), Customer will be billed for such usage and Customer will pay the additional Fees in accordance with the Agreement. Alternatively, Customer may elect to purchase rights for additional Authorized Users to access the Services by entering into a new Order Form with TrackTik. Any new Order Form shall be coterminous with the then current Order Form.

- 6.6 Expenses.** Any additional expenses that are incurred by TrackTik in providing the Services on behalf of Customer, and for which TrackTik seeks

- 6.7 Disputed Charges.** If Customer believes TrackTik has charged or invoiced Customer incorrectly, Customer must contact TrackTik no later than ninety (90) days after having been charged by TrackTik or receiving such invoice in which the error or problem appeared in order to request an adjustment or credit. In the event of a dispute, Customer will pay any undisputed amounts in accordance with the payment terms herein, and the parties will discuss the disputed amounts in good faith in order to resolve the dispute.
- 6.8 No Withholding or Setoff; Late Payment.** Customer may not withhold or setoff any amounts due under the Agreement. Any late payment will be increased by the costs of collection (if any) and will incur interest at the rate of one and a half percent (1.5%) compounded monthly (19.56% annually), or the maximum legal rate (if less), plus all expenses of collection, until fully paid.
- 6.9 Right to Audit.** Upon ten (10) days prior written notice and during Customer's regular business hours, TrackTik may inspect, either directly or through the use of a third party, Customer's records related to Customer's use of the Services to ensure that Customer complies with the Agreement. Customer will pay TrackTik for any underpaid Fees within thirty (30) days of the issuance of the audit findings.
- 6.10 Suspension of Services for Non-Payment of Fees.** In the event of unpaid fees by Customer, TrackTik reserves the right to suspend Customer's access to and use of the TrackTik Services and the Mobile Application further to this sub-section. In the event of non-payment of Fees, TrackTik shall provide a notice giving Customer ten (10) days notice to remedy the non-payment. In the event the non-payment is not remedied within the 10-day notice period, TrackTik reserves the right to automatically suspend Customer's access to and use of the TrackTik Services and the Mobile Application without any further notice to Customer.

7 PROPRIETARY RIGHTS OWNERSHIP

- 7.1 TrackTik Property.** TrackTik (or its licensors, as applicable) retains all right, title, and interest (including Intellectual Property Rights) in and to: (a) the Services, Mobile Application, Sites (if owned by TrackTik), and TrackTik Technology (including all data, content, and other information and materials contained therein other than Customer Data); (b) anything else provided or made available by TrackTik pursuant to the Agreement; and (c) any corrections, bug fixes, enhancements, adaptations, translations, derivative works, modifications or new versions of the foregoing (a) and (b). Further, Customer acknowledges that the Services are offered as an online, hosted solution, and that Customer has no right to obtain a copy of the underlying computer code for the Services. There are no licenses to the Services, by implication, estoppel or otherwise, and only the right to access the Services is granted to Customer pursuant to the Agreement.
- 7.2 Customer Ownership and Licenses.** Customer retains all right, title, and interest (including Intellectual Property Rights) in and to Customer Data and any branding elements (including but not limited to Customer logos) used with permission of the Customer for TrackTik to include in the Services (the "**Customer Branding**"). Customer grants to TrackTik a nonexclusive, worldwide, royalty-free, irrevocable, fully paid-up right to use, process and transmit Customer Data and Customer Branding to provide the Services. TrackTik may remotely track Customer's and its Authorized Users' use of the Services and collect and analyze metadata and other information relating to the provision, use and performance of the Services as it relates to Customer and its Authorized Users' (the "**Metadata**"), and may create anonymized and aggregated versions of Customer Data (i.e. specific persons are not identified, the "**Unidentifiable Customer Data**"). During and after the term of the Agreement, Customer grants TrackTik a nonexclusive, perpetual, worldwide, royalty-free, irrevocable, fully paid-up right to: (a) use, process and transmit the Metadata and Unidentifiable Customer Data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other TrackTik offerings; and (b) disclose the Metadata and the Unidentifiable Customer Data in connection with its business.
- 7.3 Feedback.** If Customer chooses to communicate to TrackTik (via any means), suggestions for improvements to any of the Services or TrackTik's Products, or TrackTik's business generally (collectively, "**Feedback**"), TrackTik shall own all right, title, and interest in and to the Feedback and will be entitled to use the Feedback without restriction. Customer hereby irrevocably assigns all right, title and interest in and to the Feedback to TrackTik and waives in favor of TrackTik, its successors and assigns all moral rights in the Feedback, and agrees to provide TrackTik such assistance as TrackTik may require to document, perfect, and maintain TrackTik's rights to the Feedback. Customer acknowledge and agree that, by providing any Feedback to TrackTik, they are not entitled to any compensation or reimbursement of any kind from TrackTik under any circumstances.

8 LICENSE FOR MOBILE APPLICATION AND RELATED CLAUSES

- 8.1 Mobile Application License.** The Mobile Application is licensed, not sold. TrackTik grants Customer and its Authorized Users the non-exclusive, non-transferable, non-sublicensable, limited right and license during the Term to download, install and use the Mobile Application onto a handheld device solely and exclusively for use under these Terms of Service, and as permitted by the usage rules set forth in the [App Media Services Terms and Conditions](#) for the Mobile Application for iOS or the [Google Play Terms of Service](#) for the Mobile Application for Android.
- 8.2 iOS Mobile Application.** If the Mobile Application is provided to Customer or Authorized Users through the Apple Inc. (Apple Inc. together with all of its Affiliates, "**Apple**") App Store, the following terms and conditions apply in addition to all the other terms and conditions of these Terms of Service related to the Mobile Application: (a) the parties acknowledge that these Terms of Service are concluded between Customer and TrackTik, and not with Apple. The responsibility for the Mobile Application and content thereof is governed by these Terms of Service; (b) Customer or any Authorized User may use the Mobile Application only on an iPhone or iPad that they own or control; (c) Customer and TrackTik acknowledge that Apple has no obligation to furnish any maintenance or support services with respect to the Mobile Application; (d) in the event of any failure of the Mobile Application to conform to any applicable warranty, Customer may notify Apple, and Apple will refund the purchase price for the Mobile Application (if any). Except for the foregoing, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Mobile Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be governed by these Terms of Use; (e) any claim in connection with the Mobile Application related to product liability, a failure to conform to applicable legal or regulatory requirements, claims under consumer protection or similar legislation is governed by these Terms of Service, and Apple is not responsible for such claim; (f) any third party claim that the Mobile Application or Customer or any Authorized User's possession and use of the Mobile Application infringes that third party's intellectual property rights will be governed by these Terms of Service, and Apple will not be responsible for the investigation, defense, settlement and discharge of such

intellectual property infringement claim; (g) Customer represents and warrants that it, its Affiliates and any of their Authorized Users, are not: (i) located in any country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a terrorist supporting country; or (ii) listed on any U.S. Government list of prohibited or restricted parties; (h) Customer may contact TrackTik in writing regarding any notices, questions, complaints, or claims with respect to the Mobile Application at the addresses in the Notice section of these Terms of Service; (i) Apple is a third party beneficiary to these Terms of Service as it relates to the Mobile Application and may enforce these Terms of Service against Customer; and (j) If any of the terms and conditions in these Terms of Service are inconsistent or in conflict with Apple's applicable instructions for Minimum Terms for Developer's End User License Agreement or the App Store Terms of Service as of the Effective Date, the terms and conditions of Apple's instructions for Minimum Terms for Developer's End User License Agreement or App Store Terms of Service, as applicable, will apply to the extent of such inconsistency or conflict.

- 8.3 Android Mobile Application.** If the Mobile Application is provided to Customer or Authorized Users through the Google Inc. (Google Inc. together with all of its affiliates, "Google") Play Store, the following terms and conditions apply in addition to all the other terms and conditions of these Terms of Service related to the Mobile Application: (a) Customer acknowledges that Google is not responsible for providing support services for the Mobile Application; and (b) if any of the terms and conditions in these Terms of Service are inconsistent or in conflict with the Google Play Terms of Service as of the date these Terms of Service were accepted, the terms and conditions of the Google Play Terms of Service will apply to the extent of such inconsistency or conflict.

9 PRIVACY AND DATA PROCESSING

Customer agrees (on Customer's behalf and on behalf of each Authorized User) to TrackTik's access, use, collection, storage and disclosure of Customer's and each Authorized User's Personal Information for the purposes authorized under the Agreement. Customer understands that Personal Information, including the Personal Information of Authorized Users, will be treated in accordance with TrackTik's privacy policy located at <https://www.tracktik.com/privacy/> (the "Privacy Policy"). By entering into the Agreement, Customer hereby executes and agrees to comply with TrackTik's Data Processing Addendum located at <https://www.tracktik.com/dpa/> (the "DPA"), which is incorporated by reference herein.

10 SERVICE LEVEL AGREEMENT

TrackTik will use reasonable efforts to make the Services available in accordance with the Service Level Agreement located at <https://www.tracktik.com/sla/>, which is incorporated by reference herein.

11 PAYROLL SERVICES AGREEMENT

In the event the Customer subscribes to use TrackTik's payroll services, Customer agrees to be bound by the "TrackTik Addendum for Payroll Services" located at www.tracktik.com/hcm-terms, which is incorporated by reference herein.

12 MUTUAL EXCHANGE OF CONFIDENTIAL INFORMATION

- 12.1 Definition of Confidential Information.** For purposes of the Agreement, "Confidential Information" means: (a) in the case of TrackTik: (i) all trade secrets, know how, software, software updates and enhancements, and other financial, business, or technical information of TrackTik or of any of its Affiliates, licensees, suppliers, and contractors that is disclosed or made available by TrackTik, or on its behalf, in relation to the Agreement; (ii) terms and conditions of the Agreement; and (iii) non-public aspects of TrackTik's Sites and the operation thereof, TrackTik Technology, and the Services, Mobile Application, and Professional Services provided by TrackTik, and TrackTik's business and technical information, and data; (b) in the case of Customer, non-public Customer Data and non-public aspects of Customer's technology, computer programs, and business and technical information, and data; and (c) in the case of both parties, all other information which is provided by a party (the "Owner") to the other party (the "Recipient") and is marked as confidential or which, by the nature of the circumstances surrounding the disclosure, ought to be treated as confidential. Confidential information does not include information (other than Personal Information) that: (a) is in the possession or control of Recipient without restriction on use or disclosure at the time of its disclosure hereunder; (b) is, or becomes, publicly known, through no wrongful act of Recipient; (c) is received by Recipient from a third party free to disclose it without obligation to Owner; or (d) is independently developed by a party as evidenced by its written and dated records and without any breach of the Agreement.

- 12.2 Restrictions on Use and Disclosure.** Recipient may use Confidential Information only for the purpose of performing its obligations under the Agreement and will protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own proprietary information of like importance but in any case, using no less than a reasonable degree of care given the nature of the Confidential Information. Recipient may disclose Confidential Information received hereunder only as reasonably required to perform its obligations or exercise its rights under the Agreement and only to its employees, representatives, and contractors who have a need to know for such purposes and who are bound by signed agreements to protect the received Confidential Information from unauthorized use and disclosure.

- 12.3 Exclusions.** Each Recipient may, where permitted by applicable law, disclose Confidential Information of the Owner to the extent required by a governmental or regulatory authority or otherwise as required by applicable laws and regulations (provided that the Recipient, to the extent legally permissible, must first give the Owner reasonable notice of such compelled disclosure so that the Owner has an opportunity to take such steps as it desires to challenge or contest such disclosure or seek a protective order). In addition, each Recipient may, where permitted by applicable law, disclose Confidential Information of the Owner: (a) to its professional advisors as required to enable such persons or entities to provide professional advisory services; and (b) to potential permitted assignees or successors but only as is necessary in connection with a potential corporate transaction involving the business or assets of the Recipient; provided in each case, that such person or entity is subject to confidentiality obligations in respect of such Confidential Information that are no less stringent than those contained in this Section 12.

- 12.4 Return/Destruction of Confidential Information.** Upon the expiration or termination of the Agreement or the Owner's earlier request, the Recipient will, at the Owner's option, return or destroy Confidential Information of the Owner. Notwithstanding the foregoing, it is understood that the Recipient's computer systems may automatically back-up the Confidential Information of the Owner. To the extent that such computer back-up procedures create copies of any such Confidential Information, the Recipient may retain such copies in its regular archival or back-up computer storage system(s) for the period that such archives or back-ups are normally kept by the Recipient. All archived or backed-up Confidential Information will be subject to the remaining confidentiality

13 CUSTOMER REPRESENTATIONS AND WARRANTIES

13.1 Customer represents and warrants to, and covenants with TrackTik that the performance of its obligations under the Agreement and the use of the Services and Mobile Application (by Customer and its Authorized Users) will not violate any applicable laws or regulations.

13.2 Customer represents and warrants to, and covenants with TrackTik that the execution, delivery and performance of the Agreement: (a) is within its corporate powers; (b) has been duly authorized by all necessary corporate action; and (c) does not and will not contravene or constitute a default under, and is not and will not be inconsistent with, any judgment decree or other, or any contract, agreement, or other undertaking, applicable to Customer.

13.3 Customer represents and warrants to, and covenants with TrackTik that: (a) Customer Data is free of all viruses, Trojan horses, and comparable elements which could harm the systems or software used by TrackTik; (b) for Authorized Users' use of the Services and Mobile Application (including geolocation and GPS-tracking functionality through the Mobile Application); and (c) for Personal Information contained in Customer Data, Customer has provided all notices and disclosures (including to each Authorized User), obtained all applicable third party consents and permissions and otherwise has all authority, in each case as required by applicable laws, to enable TrackTik to provide the Services and the Mobile Application, including with respect to the collection, storage, access, use, disclosure and transmission of personal information by or to TrackTik and to or from all applicable third parties in accordance with the Agreement.

14 TRACKTIK REPRESENTATIONS AND WARRANTIES

14.1 TrackTik represents and warrants to, and covenants with Customer that: (a) it has the legal right to enter into the Agreement and perform its obligations thereunder; and (b) the performance of its obligations will not violate any laws or regulations that are applicable to TrackTik or cause a breach of any agreements between TrackTik and any third parties.

14.2 TrackTik represents and warrants to, and covenants with Customer that the execution, delivery and performance of the Agreement: (a) is within its corporate powers; (b) has been duly authorized by all necessary corporate action; and (c) does not and will not contravene or constitute a default under, and is not and will not be inconsistent with, any judgment decree or other, or any contract, agreement, or other undertaking, applicable to TrackTik.

14.3 TrackTik represents and warrants to, and covenants with Customer that as of the Effective Date and to the best of its knowledge, TrackTik has the right to grant the rights specified in the Agreement.

15 LIMITED WARRANTY

TrackTik represents and warrants that the Services and Mobile Application will: (a) conform to all material operational features as described in the applicable Order Form; and (b) have been tested using commercially available virus detection methodology and based upon such testing, do not, as and when made available, contain any viruses, worms, Trojan horses, web bugs, time bombs, "spyware," or other harmful or invasive code or components; es (the "**Limited Warranty**"), provided that Customer promptly notifies TrackTik in writing of any non-conformity. Customer's sole and exclusive remedy for breach of the Limited Warranty will be, at TrackTik's option, the correction of non-conforming Services at TrackTik's expense or a pro-rated refund of the Fees paid by Customer for the non-conforming Services from the date that TrackTik was notified of such non-conformity.

16 WARRANTY DISCLAIMERS

TRACKTIK DOES NOT WARRANT THAT THE SERVICES OR MOBILE APPLICATION WILL BE UNINTERRUPTED, SECURE OR ERROR FREE OR THAT ALL ERRORS CAN OR WILL BE CORRECTED; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 14 AND 15 IN THESE TERMS OF SERVICE, THE SERVICES, PROFESSIONAL SERVICES, MOBILE APPLICATION, AND ANY OTHER PRODUCTS AND SERVICES PROVIDED BY TRACKTIK TO CUSTOMER, AND ANY AND ALL SERVICES, SOFTWARE, EQUIPMENT, MATERIAL, DATA AND CONTENT FROM THIRD PARTY PROVIDERS, ARE PROVIDED "AS IS" AND "AS AVAILABLE". TO THE EXTENT PERMITTED BY APPLICABLE LAW, TRACKTIK HEREBY DISCLAIMS ALL EXPRESS, IMPLIED, COLLATERAL OR STATUTORY WARRANTIES, REPRESENTATIONS AND CONDITIONS, WHETHER WRITTEN OR ORAL, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, COMPATIBILITY, TITLE, NON-INFRINGEMENT, SECURITY, RELIABILITY, COMPLETENESS, QUIET ENJOYMENT, ACCURACY, QUALITY, INTEGRATION OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, TRACKTIK EXPRESSLY DISCLAIMS ANY REPRESENTATION, CONDITION OR WARRANTY THAT ANY DATA OR INFORMATION PROVIDED TO CUSTOMER IN CONNECTION WITH CUSTOMER'S USE OF THE SERVICES, PROFESSIONAL SERVICES, OR MOBILE APPLICATION IS ACCURATE, OR CAN OR SHOULD BE RELIED UPON BY CUSTOMER FOR ANY PURPOSE WHATSOEVER.

17 DISCLAIMER OF THIRD-PARTY ACTIONS AND TECHNOLOGY

TrackTik does not and cannot control the flow of data to or from TrackTik's Technology and other portions of the Internet. Such flow of data depends on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt customer's connections to the Internet (or portions thereof). Although TrackTik will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, TrackTik cannot guarantee that such events will not occur. TRACKTIK DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF INTERNET SERVICES, SOFTWARE, , RELATED SYSTEMS OR SYSTEMS PROVIDED OR CONTROLLED BY THIRD PARTIES (INCLUDING CUSTOMER) WHICH ARE NOT TRACKTIK'S SUBCONTRACTORS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TRACKTIK IS NOT RESPONSIBLE FOR ANY THIRD-PARTY (INCLUDING CUSTOMER) SOFTWARE OR SYSTEMS (INCLUDING THIRD-PARTY TECHNOLOGY) USED BY CUSTOMER IN ORDER TO ACCESS AND USE THE SERVICES.

- 18.1 By TrackTik.** TrackTik will defend, indemnify and hold harmless Customer, its employees, officers, directors, affiliates, agents, contractors, successors, and assigns against any and all losses (including damages, recoveries, deficiencies, interest, penalties and legal fees) arising out of a third party claim made against Customer that Customer's or its Authorized Users' use of the Services or Mobile Application infringe on any Intellectual Property Right of a third party; provided that TrackTik is notified in writing of such claim promptly after such claim is made upon Customer. TrackTik will have no liability or obligation if the claim arises from: (a) any alteration or modification to the Services or Mobile Application by Customer or a third party not authorized by TrackTik; (b) any combination of the Services or Mobile Application by Customer with Related Systems or software or technology not furnished by TrackTik; or (c) any use by Customer of the Services or Mobile Application that is prohibited by the Agreement or otherwise outside the scope of use for which the Services or Mobile Application are intended.
- 18.2 By Customer.** Customer will defend, indemnify and hold harmless TrackTik, its employees, officers, directors, affiliates, agents, contractors, successors, and assigns against any and all losses (including damages, recoveries, deficiencies, interest, penalties and legal fees) from third party claims directly or indirectly arising from or in connection with: (a) Customer Data; (b) Customer's breach of any of Customer's obligations, representations or warranties under the Agreement; or (c) use of the TrackTik Services (or any part thereof) by Customer or any Authorized User in combination with any third party software, application or service not provided by TrackTik.
- 18.3 Indemnification Procedures.** The indemnified party will fully cooperate with the indemnifying party in the defense of any claim defended by the indemnifying party pursuant to its indemnification obligations under the Agreement. The indemnifying party will not settle any such claim that would bind the indemnified party to any obligation (other than payment covered by the indemnifying party or ceasing to use infringing materials) or require any admission of fault by the indemnified party, without the prior written consent of the indemnified party.

19 OPTIONS FOR INFRINGEMENT CLAIMS

Without limiting TrackTik's obligations under Section 18.1, if Customer or an Authorized User is enjoined from using the Services or Mobile Application, or if TrackTik believes that the Services or Mobile Application may become the subject of a claim of intellectual property infringement, TrackTik, at its option and expense, may: (a) procure the right for Customer to continue to use the Services; (b) replace or modify the Services or Mobile Application so as to make it non-infringing; provided, however, that the Services and Mobile Application continue to materially conform to the descriptions and specifications provided in the applicable Order Form; or (c) terminate the Agreement, in which case TrackTik will refund to Customer any Fees paid by Customer for those Services not yet delivered. This Section 19 and the preceding Section 18.1 set forth the sole liability of TrackTik to Customer, and Customer's sole and exclusive remedy, for any infringement by the Mobile Application or Services of any Intellectual Property Right of any third party.

20 EXCLUSION OF CERTAIN DAMAGES

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY AUTHORIZED USER FOR ANY: (A) SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; (B) LOST SAVINGS, PROFIT, DATA, USE, OR GOODWILL; (C) BUSINESS INTERRUPTION; (D) COSTS FOR THE PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES; (E) PERSONAL INJURY OR DEATH; OR (F) PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN ANY WAY CONNECTED TO THE AGREEMENT.

21 LIMITATION OF LIABILITY

- 21.1** In no event will either party's aggregate liability, if any, including liability arising out of or in connection with contract, negligence, strict liability in tort or warrant, or otherwise, exceed the amount of the Fees paid and payable to TrackTik for the twelve (12) month period leading up to the date any such liability arises.
- 21.2** The parties acknowledge that the provisions of Section 20 and this Section 21 have been negotiated by them and reflect a fair allocation of risk and form an essential basis of the bargain and will survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy.

22 NOTICES

Notices sent to either party will be effective upon receipt when delivered in person or by email, one day after being sent by overnight courier, or five days after being sent by first class mail postage prepaid to the official contact designated by the party to whom a notice is being given. Notices must be in writing (including by email) and sent:

(i) if to TrackTik, to the applicable address in the section titled: **TrackTik Contracting Entity, Address for Notices, Governing Law, and Venue.** Notices sent by email must be sent to notices@tracktik.com.

(ii) if to Customer, to the current postal or email address that TrackTik has on file with respect to Customer. Customer is solely responsible for keeping its contact information on file with TrackTik current at all times during the term of the Agreement.

Notwithstanding the foregoing, except for notices pertaining to non-payment and except as otherwise expressly permitted in this Agreement or in an Order Form, notices related to termination of this Agreement or any claims (including without limitation breach, warranty or indemnity) may not be given via email. TrackTik may change its contact information by posting the new contact information on the Sites or by giving notice thereof to Customer.

23 ASSIGNMENT

Neither party will assign the Agreement to any third party without the other party's prior written consent. Notwithstanding the foregoing, TrackTik may

assign the Agreement, in whole or in part, without the Customer's consent, in connection with the transfer or sale of all or any of its business or assets to an Affiliate or to a third party, whether by merger, sale of stock, sale, reorganization, donation of assets or otherwise. Subject to the first sentence, the rights and liabilities of the parties hereto are binding on, and will inure to the benefit of, the parties and their respective successors and permitted assigns. Any attempted assignment other than in accordance with this Section 23 will be null and void.

24 FORCE MAJEURE

Neither party will be liable for delays caused by any event or circumstances beyond the parties' reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labour problems, storms or other elements of nature, blockages, embargoes, riots, public health emergencies (including pandemics and epidemics), acts of terrorism, criminal acts of third parties, Internet service failures or delays, or the unavailability or modification by third parties of telecommunications or hosting infrastructure or third party websites.

25 MISCELLANEOUS

25.1 Dispute Resolution. Dispute Resolution. Each party agrees that before it seeks any form of legal relief (except for a provisional remedy as explicitly set forth below) it shall provide written notice to the other party of the specific issue(s) in dispute (and reference the relevant provisions of the contract between the parties which are allegedly being breached). Within thirty (30) days after such notice, knowledgeable executives of the parties shall hold at least one meeting (in person or by video- or tele-conference) for the purpose of attempting in good faith, to resolve the dispute. The parties agree to maintain the confidential nature of all disputes and disagreements between them, including, but not limited to, informal negotiations, mediation or arbitration, except as may be necessary to prepare for or conduct these dispute resolution procedures or unless otherwise required by law or judicial decision. The dispute resolution procedures in this section shall not apply to claims subject to indemnification under Section 18 (Indemnification) or prior to a party seeking a provisional remedy related to claims of misappropriation or ownership of intellectual property, trade secrets or Confidential Information.

25.2 Waiver of Jury Trial. CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY DISPUTE WHICH MAY ARISE UNDER THE AGREEMENT OR THE USE OF THE SERVICES IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE, CUSTOMER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE AGREEMENT OR USE OF THE SERVICES.

25.3 Waiver of Class Action. CUSTOMER ACKNOWLEDGES AND AGREES THAT THEY AND TRACKTIK WILL RESOLVE ANY DISPUTES, CLAIMS OR CONTROVERSIES ON AN INDIVIDUAL BASIS, AND THAT ANY CLAIMS BROUGHT UNDER THE AGREEMENT OR THE USE OF THE SERVICES WILL BE BROUGHT IN AN INDIVIDUAL CAPACITY, AND NOT ON BEHALF OF, OR AS PART OF, ANY PURPORTED CLASS, CONSOLIDATED, OR REPRESENTATIVE PROCEEDING. CUSTOMER FURTHER AGREES THAT TRACKTIK AND CUSTOMER SHALL NOT PARTICIPATE IN ANY CONSOLIDATED, CLASS, OR REPRESENTATIVE PROCEEDING (EXISTING OR FUTURE) BROUGHT BY ANY THIRD PARTY ARISING UNDER THE AGREEMENT OR IN CONNECTION WITH USE OF THE SERVICES.

25.4 Waiver. The waiver by either party of a breach of or a default under any provision of the Agreement, will be in writing and will not be construed as a waiver of any subsequent breach of or default under the same or any other provision of the Agreement, nor will any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

25.5 Severability. If any provision of the Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision will be severed from the Agreement and all other provisions of the Agreement will remain in full force and effect.

25.6 Relationship of the Parties. Nothing contained in the Agreement will be deemed or construed as creating a joint venture, partnership, agency, employment, or fiduciary relationship between the parties. Neither party, nor either party's agents, have any authority of any kind to bind the other party in any respect whatsoever, and the relationship of the parties is, and at all times will continue to be, that of independent contractors. While the TrackTik entity contracting with Customer or the Customer Affiliate remains fully liable and responsible for all TrackTik obligations under this Agreement, the parties acknowledge that certain obligations under this Agreement may be fulfilled by other TrackTik Affiliates.

25.7 Public Announcements. TrackTik may issue a press release or make other public announcements concerning the Agreement, may use Customer's name as a customer reference, or use Customer's trademarks on TrackTik's customer lists or any other materials.

25.8 Headings; Interpretation. The section and sub-section headings used in these Terms of Service are inserted for convenience only and will not affect the meaning or interpretation of the Agreement. The term "including" means "including without limiting the generality of the foregoing".

25.9 Modifications and Amendment. Except as otherwise provided for herein, no amendment or modification of any provision of the Agreement will be effective unless in writing and signed by a duly authorized signatory of TrackTik and Customer.

25.10 Entire Agreement. The Agreement, including any additional TrackTik agreements or Third Party Provider terms incorporated by reference herein, constitutes the entire agreement between the parties concerning the subject matter hereof, and supersedes: (a) all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, agreements, and communications, whether oral or written, between the parties relating to the subject matter of the Agreement, except as otherwise specified; and (b) all past courses of dealing and industry custom. The Customer shall also be bound by any other applicable TrackTik terms or policy, including but not limited to the API Terms of Use, Service Level Agreement the DPA, and the TrackTik Addendum for Payroll Services.

25.11 TrackTik Contracting Entity, Address for Notices, Governing Law, and Venue. The TrackTik entity entering into this Agreement, the address to which Customer should direct notices under this Agreement and the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement depend on where Customer is domiciled. Any legal suit, action or proceeding arising out of or relating to the Agreement will be commenced and adjudicated only in the applicable court(s) as specified below, and each party hereto irrevocably submits to the exclusive jurisdiction and venue of such court(s) in any such suit, action or proceeding. This choice of venue does not prevent TrackTik from seeking injunctive relief with respect to a violation of Intellectual



Property Rights or confidentiality obligations in any competent court in any appropriate jurisdiction. Customer and TrackTik expressly disclaim applicability of the terms of the United Nations Convention of Contracts for the International Sale of Goods and any legislation implementing such Convention will not apply to the Agreement, use of the Services nor to any dispute arising therefrom.

If Customer is domiciled in:	The TrackTik entity entering into this Agreement is:	Notices should be addressed to:	Governing law is:	Courts with exclusive jurisdiction are:
North America and rest of the world	TrackTik Software ULC	4200 St-Laurent, #445, Montreal, Quebec, Canada, H2W 2R2 With a copy to: RTM Soft, Inc. 3636 Nobel Dr. Suite 130 San Diego, CA 92122 Attn: Legal Dept.	Delaware	State and Federal Courts in New Castle County, Delaware, U.S.A.
EU and United Kingdom	TrackTik UK Ltd.	5 New Street Square, London, United Kingdom, EC4A 3TW With a copy to: RTM Soft, Inc. 3636 Nobel Dr. Suite 130 San Diego, CA 92122 Attn: Legal Dept.	England and Wales	London, England