

# TracPlus Global Limited - Terms and Conditions

(Last updated 13 October 2021)

**IMPORTANT NOTICE:** PLEASE CAREFULLY READ THE FOLLOWING TERMS, CONDITIONS, AGREEMENTS, POLICIES AND NOTICES THAT GOVERN ALL DEALINGS BETWEEN YOU AND TRACPLUS GLOBAL LIMITED, AFFECT YOUR LEGAL RIGHTS AND ARE BINDING ON YOU TO THE FULLEST EXTENT PERMITTED BY LAW.

## A. GENERAL TERMS, CONDITIONS, AND AGREEMENTS

### 1. AGREEMENT

1.1 These terms and conditions, together with your Plan and our Privacy Policy (together the **Agreement**) apply when we, TracPlus Global Limited, agree to provide access to you for use of our TracPlus tracking and communications solution, an internet-based service that allows you to manage and monitor certain assets and store that data centrally. As part of the TracPlus Service, we may also sell you tracking and communications equipment and arrange for airtime for you (to allow the equipment to operate correctly), and we may provide you with our TracPlus application software. If you do not agree to the terms of this Agreement, you are not authorised to access and use the TracPlus Service or any part of it, and you must immediately stop doing so.

### 2. DEFINITIONS

2.1 References in this Agreement to "we" or "us" or "our" are to TracPlus Global Limited and where the context allows, includes its associated and related companies (as defined in the Companies Act 1993 (NZ)). In registering for TracPlus, you have told us your legal name and your contact details. You confirm these are correct and that, if these change, you will advise us as soon as possible. References to "you" or "your" refers to you, the customer who has registered to use the TracPlus Service.

2.2 In this Agreement, the following words are defined as:

**"Associated Services"** means any implementation, consulting, support or other services provided by us to you in connection with your access to and use of the TracPlus Solution.

**"Customer Data"** means:

- (a) all data, content, and information (including Personal Information) owned, held, used or created by you, or your personnel, that is stored using or inputted into, the TracPlus Solution; and
- (b) all tracking data that the Customer receives as an output from the TracPlus Solution, but only to the extent such tracking data arises solely from the Customer's own data, content and information inputted into the TracPlus Solution, and not from the data or outputs of any other user of the TracPlus Solution.

**"Data Privacy Laws"** means the data protection and privacy laws applicable to the processing of Personal Information that we are committed to comply with, including:

- (a) the Privacy Act 2020 (New Zealand);
- (b) where we are dealing with persons based in the European Union, the GDPR; and
- (c) any other applicable privacy laws.

**"Equipment"** means all equipment, including devices, hardware and connections involved in the supply of the TracPlus Solution and/or Associated Services that are supplied to you by or on behalf of TracPlus.

**“Equipment Price”** means the purchase price for the Equipment, payable by the Client to TracPlus where the Client is purchasing Equipment from TracPlus.

**Fair Use Policy** means that the use of the TracPlus Solution must be fair, reasonable and not excessive as determined by us (acting reasonably) and by reference to usage by other users, and usage will be considered excessive and unreasonable where it materially exceeds the average and/or estimated use patterns over all users across the TracPlus Solution.

**"Fees"** means the fees we charge for set up and use of the TracPlus Service, as specified in your Plan and includes, if applicable, the Equipment Price. Our Fees may, as applicable, include airtime usage fees, fees for messaging, alerts, tracking, voice communications, data, support, user codes, software modification, activation fees, device fees, late payment fees, implementation fees, third party charges, fees for the use of third-party maps, and training fees.

**“GDPR”** means the General Data Protection Regulation of the European Union.

**"Intellectual Property Rights"** means all rights in the TracPlus Service and in our Website,, together with all intellectual property relating to third party maps, including rights to patents, trademarks, service marks, inventions, copyright, know how whether or not registered, and any related enhancement or modifications, but excludes any Customer Data.

**“NZ”** means New Zealand.

**“Objectionable”** includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.

**“Personnel”** includes officers, employees, contractors and agents, but a reference to your personnel does not include us or any of our officers, employees, contractors or agents.

**“Personal Information”** means information about an identifiable individual.

**“Plan”** means the TracPlus plan (including as to pricing) that you have subscribed for, the details of which are as notified (or made available) to you by TracPlus.

**“Privacy Policy”** means the TracPlus privacy policy together with our cookie policy and, if applicable, GDPR addendum, each of which can be accessed at [www.tracplus.com/termsandconditions](http://www.tracplus.com/termsandconditions).

**“TracPlus Service”** means the TracPlus Solution, together with any Equipment, Software, Associated Services and/or data supplied to you in connection with your access to and use of the TracPlus Solution.

**"TracPlus Solution"** means the TracPlus tracking and communications solution that you have subscribed for, as specified in your Plan.

**“Software”** means any application software made available to you by TracPlus in connection with your access to and use of the TracPlus Solution.

**“Unlimited Data Plan”** means any “unlimited data” airtime Plan that you have subscribed for, and which does not limit the number of transmissions that you may send through the TracPlus Solution each month (other than as provided for in these terms and conditions).

**“Website”** means that TracPlus website, at [www.tracplus.com](http://www.tracplus.com).

2.3 The terms “perfected” and “security interest” have the meanings given to them under, or in the context of, the Personal Properties Securities Act 1999.

### 3. ACCESS AND USE OF TRACPLUS

- 3.1 We agree to provide, and you agree to accept, setup and ongoing access to the TracPlus Service in accordance with the terms of this Agreement.
- 3.2 You acknowledge that:
- a. You are responsible for obtaining all computer equipment, hardware, communications channels and links, and internet or other access you require to access and use the TracPlus Service (other than where we agree to provide Equipment and/or Software to you, or to arrange for airtime for you), and for all charges in relation to those things.
  - b. Your selection of hardware, other equipment and software, communication channels, plans and links, and the quality of the installation and environment that you arrange, will affect your access to the TracPlus Service, the performance of the TracPlus Service, and the quality of the data you receive as an output from the TracPlus Solution. For example, if transmission of data is affected by location of your assets, the data you receive will only be the data that we have received from your assets. Suitability of your selections is your sole responsibility and risk, and we shall not be liable for any loss or damage suffered by you as a result of your selections and quality of installation arranged.
  - c. You must follow all the guidelines, user guides, instructions and manuals we give you for use of the TracPlus Service. We are not responsible for any loss or damage as a direct or indirect result of a failure to follow any such guidelines.
  - d. You are responsible for ensuring that all Customer Data that you input or store in the TracPlus Solution is, at all time, accurate, complete and up to date, and you acknowledge that the accuracy and reliability of the TracPlus Service (including any data you receive as an output from the TracPlus Solution) is entirely reliant on such matters.
  - e. You must comply with any limitations or restrictions (including as to user numbers) identified in your Plan.
- 3.3 You must always use the TracPlus Service in compliance with all relevant laws and regulations in your areas of use including without limitation applicable laws and regulations relating to the use of any of them for aeronautical, marine, military or other purposes that you may use the TracPlus Service in relation to specifically. For the avoidance of doubt, if you elect to install or otherwise use equipment (including any Equipment) that is not certified or approved for the relevant area of use, you are responsible for ascertaining whether such equipment is suitable for that purpose and that it is installed and used in compliance with all relevant laws and regulations of all relevant authorities in the relevant area of use.
- 3.4 You confirm that you understand that the TracPlus Service is intended for business use and that you will be using the TracPlus Service for the purposes of a business. To the maximum extent permissible by law, the provisions of the New Zealand Consumer Guarantees Act 1993 (NZ) therefore do not apply to your use of the TracPlus Service and you agree it is fair and reasonable that we and you are bound by this clause.
- 3.5 If the TracPlus Service (or any part of it) is being offered to you on a trial basis (where we have agreed in writing that the TracPlus Service is provided to you for an agreed trial period), you agree:
- a. that, except as specified otherwise in this clause 3.5 and any limitations specified in the Plan, the terms of this Agreement apply to your use of the TracPlus Service during the trial period;
  - b. that the TracPlus Services are provided on an “as is” basis, with no warranties during any trial period, and to the extent TracPlus does incur any liability to you in connection with

the TracPlus Service provided during a trial period, such liability shall not exceed (in aggregate for all claims) an amount equal to the fee paid by you for the trial TracPlus Services;

- c. unless expressly provided otherwise by us, to pay all applicable Fees in advance, at the commencement of the trial period. If, at the end of the trial period, you advise us that you do not wish to continue with the TracPlus Service and purchase the Equipment, we will refund any Equipment Price payments made by you in advance on the return of the relevant Equipment in accordance with (and subject to) clause (h) below;
- d. that if you wish to continue using the TracPlus Service after the trial period, you will notify us in writing at least 5 days before the end of the agreed trial period that you wish to continue to use the TracPlus Service beyond the agreed trial period, in which case we will invoice you for the Equipment supplied to you in addition to tracking and voice services already supplied. You agree that the terms of this Agreement will apply to your continued use of all TracPlus Services provided by us;
- e. that the TracPlus Service will only be supplied on the return of duly completed and authorised paperwork;
- f. that if you do not wish to continue using the TracPlus Service following the end of the trial period, you will notify us in writing at least 5 days before the end of the agreed trial period, and you shall promptly return all Equipment supplied to you by us in the same condition as it was supplied to you (fair wear and tear excepted) by shipping all Equipment back to us (at your expense) within 5 working days of the end of the agreed trial period;
- g. that if any Equipment is not returned, or is returned to us at the end of any agreed trial period damaged other than fair wear and tear, that you agree to pay for the reasonable costs of repair or replacement at our discretion, together with any interest and other costs incurred by us as invoiced to you. We may set off such amounts against any refund payable to you under clause (c) above;
- h. that if you fail to notify us of whether or not you wish to proceed, we may, at our discretion, withdraw the tracking and communications services or continue to invoice you for further tracking and communication services supplied after the end of the agreed trial period (in addition to the Equipment costs set out in this clause); and
- i. that title to all Equipment remains with us during the trial period and, subject to you notifying us that you wish to continue receiving the TracPlus Services after the trial period, will not transfer to you until such time as it has been agreed that TracPlus will sell the Equipment to you and TracPlus has received the Equipment Price in full in cleared funds.

3.6 If the TracPlus Service (or any part of it) is being offered to you on a loan, lease, support, promotional or other similar basis (where we have agreed in writing that TracPlus Service is provided to you for an agreed loan, lease or support period), you agree:

- a. that, except as specified otherwise in this clause 3.6 and any limitations specified in the Plan, the terms of this Agreement apply to your use of all such TracPlus Services during the loan, lease or support period;
- b. unless expressly provided otherwise by us, to pay all applicable Fees in advance, at the commencement of the trial period. If, at the end of the trial period, you advise us that you do not wish to continue with the TracPlus Service and purchase the Equipment, we

will refund any Equipment Price payments made by you in advance on the return of the relevant Equipment in accordance with (and subject to) clause (f) below;;

- c. that if you wish to continue using the TracPlus Services beyond the loan, lease or support, you will notify us in writing at least 5 days before the end of the agreed loan or support period that you wish to continue to use the TracPlus Service beyond the agreed loan or support period, in which case we will invoice you for the Equipment supplied to you in addition to tracking and communications services already supplied. You agree that the terms of this Agreement will apply to your continued use of all the TracPlus Service;
- d. that TracPlus Services will only be supplied on the return of duly completed and authorised paperwork;
- e. that if you do not wish to continue using the TracPlus Services, you will notify us in writing at least 5 days before the end of the agreed loan, lease or support period, and you shall return all Equipment supplied to you by us in the same condition as it was supplied to you (fair wear and tear excepted) by shipping all Equipment back to us (at your expense) within 5 working days of the end of the agreed support period;
- f. that if any Equipment is not returned, or is returned to us at the end of any agreed loan, lease or support period damaged other than fair wear and tear, then you agree to pay for the reasonable costs of repair or replacement at our discretion, together with any interest and other costs incurred by us as invoiced to you. We may set off such amounts against any refund payable to you under clause (b) above;
- g. that if you fail to notify us of whether or not you wish to proceed, we may, at our discretion, withdraw the tracking and communication services or continue to invoice you for further tracking and communication services supplied after the end of the agreed loan, lease or support period (in addition to the equipment costs set out in this clause); and
- h. that title to all Equipment remains with us during the loan, lease or support period and, subject to you notifying us that you wish to continue receiving the TracPlus Services after the loan, lease or support period, will not transfer to you until such time as it has been agreed that TracPlus will sell the Equipment to you and TracPlus has received the Equipment Price in full in cleared funds for all such Equipment.

3.7 If the TracPlus Service (or any part of it) is being offered to you on a sponsorship basis (where we have agreed in writing that the TracPlus Service is provided to you for an agreed sponsorship period and agreed sponsorship purpose), you agree:

- a. that, except as specified otherwise in this clause 3.7 and any limitations specified in the Plan (including as to payment for tracking and communication services), the terms of this Agreement apply to your use of all such TracPlus Services during the sponsorship period;
- b. that the TracPlus Services will only be supplied on the return of duly completed and authorised paperwork;
- c. to return all Equipment supplied to you by us in the same state of repair as it was supplied to you (fair wear and tear excepted) by shipping all Equipment back to us within 5 working days of the end of the agreed sponsorship period;
- d. that if any Equipment is not returned, or is returned to us at the end of any agreed sponsorship period damaged other than fair wear and tear, that you agree to pay for the reasonable costs of repair or replacement at our discretion, together with any other costs incurred by us, as invoiced to you; and

- e. that title to all Equipment remains with TracPlus at all times during the sponsorship period.

3.8 If you have subscribed for an Unlimited Plan, you acknowledge and agree that:

- a. the unlimited transmissions apply to messages only, and not to videos or images;
- b. despite the unlimited nature of the Plan, your use of the TracPlus Solution is subject to the Fair Use Policy.

3.9 If specified in your Plan, or you are notified by us at any time throughout the Term on no less than 30 days written notice, that any part of the TracPlus Service (e.g emergency response services) will be provided by a third party service provider (**Outsourced Service**), you acknowledge and agree:

- a. that the Outsourced Service will be supplied to you directly by the relevant third party service provider pursuant to its terms and conditions of service and privacy policy (**Applicable Terms**), and not this Agreement, except as specified otherwise in this clause 3.10;
- b. despite the provision of the Outsourced Service directly to you by the relevant third party service provider, the Fees charged by TracPlus for the Outsourced Service shall continue to be payable by you to TracPlus (on the terms of this Agreement), who shall collect such Fees on behalf of the third party service provider. However, you acknowledge and agree that such Fees are payable for the standard Outsourced Service only (as contracted for under this Agreement) and any additional fees or charges you incur in connection with the Outsourced Service (for any reason, including as a consequence of any TracPlus Services received under this Agreement), such additional fees and/or charges will be payable by you direct to the third party service provider (pursuant to its terms and conditions of service). TracPlus shall not be responsible for or liable to you in connection with any such additional fees or charges;
- c. to accept the Applicable Terms and enter into an agreement with the relevant third party service provider if you wish to access and use the Outsourced Service;
- d. on the date that any part of the TracPlus Service becomes an Outsourced Service, this Agreement shall terminate in respect of such service, other than as specified in (b) above in respect of the payment of Fees; and
- e. that we will have no responsibility or liability for, or in connection with, the Outsourced Service and that your contract for such service will be directly with the relevant third party service provider.

If, following notification from us that a part of the TracPlus Service is to become an Outsourced Service, you no longer wish to receive the relevant service, you must notify us (in writing) within 10 working days of the date of such notice, advising us of such election and we will immediately terminate this Agreement in respect of such service (from the date of your notice).

3.10 Without limiting any other provisions of this Agreement, maps, images and supporting files used in or relating to the TracPlus Service may not be copied, modified or used for any purpose at all other than for the purposes of using the TracPlus Service. The dataset used for labels for the Geographx maps is a set of delimited text tables that have been derived from the New Zealand Geographic Place Names database, sourced from Land Information New Zealand. Users of this data are advised that New Zealand Place Names were captured for the labelling of text on the 1:50 000 Map Series. The co-ordinates were digitised at the bottom left corner of the text labels that appear on the printed map. The coordinates are not a GPS position for the geographic

location of the feature. Neither we nor Land Information New Zealand accepts any responsibility or liability for problems that users encounter due to using this data or the accuracy of its contents.

#### **4. SOFTWARE LICENCE; SUPPORT**

- 4.1 As part of the TracPlus Service, we may provide you with access to Software to use in conjunction with the TracPlus Solution. We retain ownership of that Software at all times, and you only receive a licence you to use the Software in conjunction with the TracPlus Solution and only while you use the TracPlus Service pursuant to and during the term of this Agreement and pay the Fees. You must not:
- a. sub-licence or otherwise transfer in whole or in part the Software to anyone else;
  - b. copy, modify, alter, translate, vary, decompile, disassemble or reassemble it in any way; or
  - c. use it for any other purpose other than in conjunction with your use of the TracPlus Solution, or use it to resell or otherwise provide the TracPlus Service in any way to any third party.
- 4.2 As an Associated Service, we will provide you with support for your use of the TracPlus Solution as follows:
- a. We will provide you with reasonable telephone or email advice (at our discretion) to assist in your use of the TracPlus Solution, and may charge Fees for such support.
  - b. We may update or upgrade any part of the TracPlus Service (including the Software) with new versions or updates at our discretion. If we require you to, you must install new updates or upgrades in accordance with our instructions and you acknowledge that if you do not do so, your use of the TracPlus Solution may be impaired or suspended.
- 4.3 We may charge you additional Fees at our discretion with advance notice to you, at our then current hourly rates for support that is required to be provided as a result of:
- a. you using equipment not supplied by us;
  - b. you using new equipment (including any Equipment supplied by or on our behalf);
  - c. you requiring additional configuration or additional access to the TracPlus Solution;
  - d. any unauthorised access or use, attempted modification, or alteration you or your Personnel make in any way to the TracPlus Service; or
  - e. you failing to install any update or upgrade to any Software.
- 4.4 We may also charge you, at our discretion with advance notice to you, for our reasonable travel and accommodation expenses we incur in visiting any location nominated by you for the purpose of providing support, and where we are making a Fee under clause 4.3 above, this may include our travelling time.
- #### **5. TRACPLUS SERVICE; WARRANTIES**
- 5.1 We warrant that:
- a. We have the power and authority to allow you to use the TracPlus Service, provided it is used in accordance with this Agreement.
  - b. To the best of our knowledge, the TracPlus Solution and our database configuration does

not infringe any patent, copyright, trade secret or other proprietary right of any third party.

- c. When we provide Associated Services to you, we will do so to the standard of care and skill reasonably expected in the provision of such services.
- d. We will use reasonable commercial endeavours to ensure that:
  - i. the TracPlus Solution is available 24 hours a day, 7 days a week, excepting outages for planned updates, new versions, updates and upgrades and routine maintenance; but we do not guarantee this; and
  - ii. the TracPlus server(s) will have an uptime availability of 99.9% excluding scheduled maintenance. You acknowledge that the availability of the Internet, your communication links and your equipment are integral to the availability of the TracPlus Solution and will affect your use of it, including your access to the server(s),

provided that we shall under no circumstances be responsible for any loss or damage incurred by you or any other person as a result of outages or failures of any aspect of the tracking and communication services which have resulted from any of you (or your Personnel's) acts or omissions or are beyond our reasonable control (including, without limitation, an ISP fault, hardware manufacturing fault, inadequate or inaccurate installation or maintenance, or inadequate, inaccurate or faulty Customer Data or data provided by a third party tracking service provider).

- e. If we have agreed to provide a distress monitoring and notification service to you (other than as an Outsourced Service), we will use reasonable endeavours to contact you in the way we have agreed, but we do not guarantee that we will be able to do so. You must notify us immediately if any of the contact numbers you have provided us with change or are unavailable or unattended by English speaking personnel for any reason. We are not responsible for any loss or damage incurred by you as a result of any failure to provide an alert which results from your failure to notify us as required by this clause, or if we are otherwise unable to provide an alert after using reasonable endeavours to do so.
- f. If we have agreed to provide an automatic monitoring and notification service to you, we will use reasonable endeavours to contact you in the way we have agreed, but we do not guarantee that we will be able to do so. You must notify us immediately if any of the contact numbers you have provided us with change or are unavailable or unattended by English speaking personnel for any reason. We are not responsible for any loss or damage incurred by you as a result of any failure to provide an alert which results from your failure to notify us as required by this clause, or if we are otherwise unable to provide an alert after using reasonable endeavours to do so.

5.2 We do not warrant that the format of any data you receive as an output of the TracPlus Solution will be compatible with any software or that such data will be error free.

5.3 Where we supply Equipment (including third party Equipment) to you:

- a. we will endeavour to give you the benefit of any manufacturers or providers warranty that we receive, to the extent that such warranty is available at the time of sale of the Equipment to you. You must follow any specific instructions we give you in relation to that warranty. This may include returning Equipment to us at your cost (including shipping costs) if it fails to perform in accordance with that warranty. No other warranty



is (or will be) provided in respect of such Equipment; and

- b. we will use our reasonable endeavours to meet the timeframes that we indicate to you for delivery and/or implementation, but we do not guarantee that we can meet those timeframes and we have no liability should we be unable to do so.

5.4 If you have elected to use the “Notify Only” option for any emergency monitoring and notification service, you are responsible for ensuring that cell phone or page numbers nominated for notification purposes are valid and monitored at all times; you acknowledge that we will take no further action beyond the attempted delivery of notification messages to your nominated contacts.

5.5 In order to receive the benefit of any warranties, you must follow all storage, installation, maintenance and user guides related to installation and use of the TracPlus Service. You acknowledge that in relation to third party Equipment, the tampering, removal or damaging of any “warranty void if removed” shall render all warranties relating to that Equipment void.

5.6 TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT FOR THE WARRANTIES EXPLICITLY SET OUT IN THIS CLAUSE 5, ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. WE MAKE NO REPRESENTATION CONCERNING THE QUALITY OF THE EQUIPMENT OR THE TRACPLUS SERVICE AND DO NOT PROMISE THAT ANY PART OF THE TRACPLUS SERVICE WILL BE SECURE, FREE OF VIRUSES OR OTHER HARMFUL CODE, UNINTERRUPTED OR ERROR FREE. TO THE EXTENT WARRANTIES CANNOT BE EXCLUDED, LIABILITY FOR THEM IS LIMITED AS SET OUT IN CLAUSE 10.

## 6. SUPPLY OF EQUIPMENT

6.1 Where we supply Equipment (including third party Equipment) to you:

- a. Risk in the Equipment will pass to you upon delivery of such Equipment to you. You must obtain and maintain appropriate insurance in respect of the Equipment from the date on which risk in the Equipment passes to you.
- b. Title in Equipment will remain with TracPlus until payment of the Equipment Price has been made in full by you for all Equipment. However, it is acknowledged and agreed that title in the Equipment will remain with TracPlus at all times unless it has been agreed in writing that the Equipment will be sold by TracPlus to you as part of the TracPlus Service (for example, during any period in which you are in possession of Equipment pursuant to a trial, promotion, lease, sponsorship or other similar arrangement).
- c. You grant a security interest to TracPlus in each and every part of the Equipment located in New Zealand as security for payment for the Equipment, for any other amounts owing by you to TracPlus from time to time, and for the performance by you of all your other obligations under this Agreement. You:
  - i. will do all things that TracPlus reasonably requires to ensure TracPlus has a perfected security interest in all Equipment to the extent of the standard TracPlus sale price for such Equipment (or, if applicable, the Equipment Price), and TracPlus may allocate amounts received from you in any manner TracPlus determines;
  - ii. will reimburse TracPlus for all costs and/or expenses incurred or payable by TracPlus in relation to registering, maintaining or releasing any financing statement in respect of any security interest under this Agreement; and

- iii. waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest.

If the Equipment is located out of NZ you agree to supply us with any additional details reasonably necessary for us to register our security interest in the Equipment in that jurisdiction with your assistance and at your expense.

6.2 In relation to all Equipment or services you are given access to pursuant to this Agreement, you agree that you will not:

- a. transfer lease or otherwise dispose of any property owned by us or any third party to anyone else (subject to clause 7.2);
- b. copy, modify, alter, translate, vary, decompile, disassemble or re-assemble it in any way; and
- c. use it for any other purpose other than in conjunction with your use of the TracPlus Solution, or use it to resell or otherwise provide the TracPlus Service or any part of it in any way to any third party;

You agree to indemnify us against any claims, damages, and losses (including costs) incurred by us as a result of your breach of any term in this clause 6.

## 7. COMMENCEMENT DATE, TERM AND TERMINATION

7.1 This Agreement commences on the earlier of:

- a. the date we agree to provide access to the TracPlus Service or any part of it to you; or
- b. the date that you order any Equipment from us,

and, subject to clause 7.3, continues in force until terminated in accordance with the remainder of this clause.

7.2 Either of us may terminate this Agreement as follows:

- a. By giving the other 30 days' notice in writing at any time;
- b. Immediately by notice in writing if the other party breaches any of its obligations under this Agreement and fails to remedy the breach within 14 days after receiving notice requiring it to be remedied including where you fail to pay amounts due within the time prescribed in a reminder notice given by us; or
- c. Immediately by notice in writing if the other party becomes bankrupt, is put into liquidation or has a receiver, voluntary administrator or statutory manager appointed over any of its assets (or similar), or becomes insolvent or ceases to carry on its business or otherwise makes any composition or arrangement with its creditors (or similar).

7.3 Subject to clauses 11.3 and 13.6, if you sign up for TracPlus on a minimum or fixed term plan:

- a. the earliest date we may terminate this Agreement under clause 6.2 will be at the expiry of the minimum or fixed term; and
- b. if you terminate before the expiry of the minimum or fixed term, you must pay us an early termination fee equal to 50% of all Fees that would have otherwise been payable until the expiry of the minimum or fixed term. You acknowledge that this early termination fee represents a genuine pre-estimate of the loss that we will suffer should you terminate this Agreement without cause prior to the end of the expiry of the minimum or fixed term,

and is not a penalty.

- 7.4 If any amounts due and payable by you to us or to anyone else involved in providing any part of the TracPlus Service to you remains unpaid we may immediately and without further notice disable or suspend your ability to use the TracPlus Service pending payment or remedy.
- 7.5 Termination or expiry of this Agreement does not affect either party's rights and obligations that accrued before that termination or expiry.
- 7.6 On termination or expiry of this Agreement:
- a. you must either return or destroy all documentation related to the TracPlus Service;
  - b. you must immediately cease using any Software we provided you and you must delete it and all copies of it from any system or machine or other media that you use or have installed it on or stored any copies of it on;
  - c. pay all Fees for your use of the TracPlus Service or any part of it provided, prior to that termination, plus any early termination fee payable under clause 6.3a; and
  - d. if requested by you within six months of the date of expiry or termination of this Agreement, we may transfer copies of your Customer Data from our server(s) to you in the standard format at the time which we usually transfer such data provided that:
    - i. You pay the Fee notified by TracPlus for undertaking any such transfer; and
    - ii. You have paid all sums due to us under this Agreement.

Following this six month period, your Customer Data may have been deleted from our systems and may no longer be available for transfer under this clause 6.6d. We do not warrant that the format of the Customer Data we transfer to you will be compatible with any software.

- e. We will retain your Customer Data on our systems for such period as is necessary to comply with any law, rule or regulation in New Zealand or overseas, and as we reasonably believe is necessary to assist in the investigation, detection and/or prevention of fraud, money laundering or other criminal offences or investigations undertaken by Government authorities (such as crash investigations).
- 7.7 Without limiting any other right or remedy available to us, we may restrict or suspend your access to the TracPlus Service or any part of it and/or delete, edit or remove the relevant Customer Data if we consider that you (including any of your Personnel) has:
- a. undermined, or attempted to undermine, the security or integrity of any part of the TracPlus Service;
  - b. used, or attempted to use, any part of TracPlus Service:
    - i. for improper purposes; or
    - ii. in a manner, other than for normal operational purposes, that materially reduces the operational performance of any part of the TracPlus Service;
  - c. transmitted, inputted or stored any Customer Data that breaches or may breach this Agreement or any third party right (including Intellectual Property Rights and privacy rights) or any applicable law (including any Data Privacy Law), or that is or may be Objectionable, incorrect or misleading; or
  - d. otherwise materially breaches this Agreement.

## 8. OWNERSHIP AND RESTRICTIONS; CONFIDENTIAL INFORMATION

- 8.1 You understand that the Intellectual Property Rights belong to us or to third parties who provide such equipment or services to us, and you will not assert or dispute ownership in them. Your only rights in and to any Intellectual Property Rights are as expressly provided for in this Agreement.
- 8.2 You must use the TracPlus service as directed by us from time to time. Your right to use it is non-exclusive, and non-transferable. You must not:
- a. attempt to bypass any security mechanism in place on any system we use to make the TracPlus Solution available to you or in the TracPlus Solution itself;
  - b. gain or attempt to gain unauthorised access to the TracPlus Service, our systems, or any other customers' systems, information or data; or
  - c. resell or sublicense the TracPlus Service or any part of it.

For the avoidance of doubt, the provisions of this Agreement do not prohibit you from leasing to or allowing a third party to use a vehicle of any kind that includes or has affixed to it any Equipment for your use of the TracPlus Solution. You agree that you will remain personally bound by this Agreement in the event you lease such a vehicle including any Equipment to a third party, and any act or omission of such third party lessee in connection with the Equipment shall be deemed an act or omission of you under this Agreement.

- 8.3 Access to TracPlus is by way of usercode and/or password. You are responsible for the use and safekeeping of user codes allocated to you and all associated passwords. You are responsible for all use or access of TracPlus by anyone using your user codes, and for payment of Fees arising from that use. You must change your password if we request you to do so, and we may change any of your user codes at any time if we elect to do so. You must contact us immediately if you suspect any unauthorised use or disclosure of any passwords or if you would like any user codes changed. We may charge you a reasonable Fee for change of user codes.
- 8.4 You are responsible for all use of the Equipment associated with your (and your Personnel's) access to the TracPlus Service and for payment of all Fees associated with use of the Equipment and data generated by them.
- 8.5 You must not attempt to make any copy of the TracPlus Service or any part of it except as we explicitly authorise as part of this Agreement or elsewhere in writing. You must not share your access (including without limitation the passwords you use to access) to the TracPlus Service with any third party, except with our prior consent. You must tell us immediately if you become aware of any circumstances that cause you to believe any person may have unauthorised knowledge, possession or use of the TracPlus Service or any part of it.
- 8.6 We acknowledge that the Customer Data uploaded from your use of the TracPlus Solution is your confidential information. We will not knowingly disclose such information other than as required to perform the TracPlus Services, unless the information is already in the public domain, we reasonably believe we are required to do so by law (this may include for example if anyone has a warrant to access any of the Customer Data) or such disclosure is to persons that are otherwise bound by obligations of confidentiality.
- 8.7 If you have given consent or permission (including by way of your use of any sharing functionality within the TracPlus Solution) for your Customer Data to be made available to (or comingled with) any third party (including other users of the TracPlus Service), a third party website or gateway service, you acknowledge that we have no responsibility for (or liability to you in connection with) the use of your Customer Data by such third parties (in its original or comingled form), or

via such a website or service by visitors or users thereof. If you are using the TracPlus Service as part of a publicly hosted site, you acknowledge that your Customer Data is publicly available, and that we have no responsibility for the use the public make of such data.

- 8.8 You authorise us to disclose your Customer Data to the police, government agencies in NZ or overseas where we reasonably believe that the disclosure will assist us to comply with any law, rules or regulations in NZ or overseas or will assist in the investigation, detection and/or prevention of fraud, money laundering or other criminal offences.
- 8.9 If, in connection with the TracPlus Service, you gain access to the data of another user of the service, you will only use such data for the purpose for which that data was provided, and otherwise strictly in accordance with the Privacy Policy and all applicable laws.
- 8.10 You will not make media or other public statements about your use of the TracPlus Service without our prior written consent.

## **9. DATA**

9.1 You acknowledge that:

- a. we may require access to the Customer Data to exercise our rights and perform our obligations under this Agreement (including as specified in the Privacy Policy) and otherwise comply with all applicable laws; and
- b. to the extent that is necessary but subject to clause 7.6, we may authorise a member or members of our Personnel or a third party to access the Customer Data for these purposes.

9.2 You must arrange all consents and approvals that are necessary for us to access the Customer Data as described in clause 9.1a. and 9.1b.

## **10. LIMITATION OF LIABILITY**

- 10.1 We will not be liable to you, whether in tort, contract or otherwise, for any indirect loss of any kind (including special, incidental, consequential or punitive damages) or for any direct or indirect loss of profits, loss of use, loss of data, loss of anticipated savings, loss of goodwill, however caused, arising out of or in connection with your use of the TracPlus Service or entry into this Agreement.
- 10.2 To the fullest extent permitted by law, our liability to you arising out of all claims for damages under this Agreement:
  - a. in respect of Equipment under warranty is limited to replacement of the Equipment or refund of the price paid; and
  - b. in all other cases, will not exceed 50% of the Fees paid by you and attributable to the TracPlus Solution (excluding device fees, airtime and other third party charges) during the year preceding the date of your claim, but limited in aggregate to 100% of the Fees in any one year.
- 10.3 We are not in default or liable to you by reason of any failure or delay in performing our obligations under this Agreement caused by any act or omission by you or any of your Personnel or by any act or event beyond our reasonable control. In the event of such an event, we will use reasonable commercial endeavours to resume our obligations under this Agreement as soon as reasonably practicable. Without limitation, the technology that is used to provide the TracPlus Solution may be subject to intermittent outages outside our reasonable control; such as weather conditions or failure of third party networks or equipment.

10.4 All claims by you under this Agreement must be made within 12 months of the cause of action arising, otherwise we shall have no liability to you (or any of your Personnel) in respect of such claim.

## 11. FEES AND PAYMENTS

11.1 You agree to pay our Fees plus GST or other applicable State and/or Federal taxes and/or fees (if any) for use of TracPlus and for any ancillary services. You agree to keep us informed of your correct country of tax residency and to advise us immediately of any changes to your tax residency status.

11.2 Unless specified otherwise in your Plan, Fees shall be payable in advance (at the commencement of each billing period specified in your plan), with any adjustments required to reflect actual use of the Tracplus Service during the relevant billing period, to be invoiced (or credited, if applicable) in arrears.

11.3 Our Fees are calculated in US dollars and converted to your nominated billing currency. If you wish to change your nominated billing currency you must inform us in writing no later than 7 days before the end of the current billing period, otherwise such notification will be effective from the next billing period. We will clearly identify the currency used in all calculations and the exchange rate used, including the source of the exchange rate.

11.4 Except where you are currently signed up to a minimum or fixed term, we reserve the right to change our Fees from time to time. Any change to Fees takes effect 30 days from the date we notify you of them. If you do not wish to pay the increased Fees, you may terminate this Agreement on no less than 10 days' notice, provided the notice is received by us before the effective date of the Fee increase. If you do not terminate this Agreement in accordance with this clause, you are deemed to have accepted the increased Fees.

11.5 We will send you invoices setting out our Fees. You must pay us in full and without deduction or set off within 14 days of the date of invoice.

11.6 If we provide services such as implementation or training for you, we will tell you how much those services will cost, and you must pay us our charges for them, plus goods and services tax and/or other applicable State and/or Federal taxes (if any).

11.7 If any duties including shipping, import duties, taxes or other levies ("Duties") are imposed in relation to the provision of TracPlus or on any Equipment or services we provide to you, you must either pay those Duties or, where such Duties have met by us, pay us those Duties in addition to the Fees. We will send you a bill for any such Duties.

11.8 If you elect to pay our charges by bank draft, transfer, credit card, debit card or by such means where fees or commissions may be charged by any third party or parties, we reserve the right to recover all such fees or commissions from you.

11.9 If you do not pay an invoice or bill by the due date for payment, we may charge you interest on the unpaid amount from the due date for payment until the date you pay it; the interest rate will be 2% per month.

11.10 If your invoice remains unpaid after the due date for payment, we will send a reminder to your last notified contact address. If your invoice still remains unpaid 30 days after the reminder notice is sent, then without prejudice to our ability to suspend provision of services, we may withdraw the provision of tracking and communication services at any time thereafter by giving final written notice not less than 24 hours prior to the time of withdrawal of tracking and communication services.

- 11.11 If we agree, at our absolute discretion, to re-supply or continue to supply tracking and communication services, we may, in addition to any other rights or remedies we may have, require either full payment of all outstanding monies owing to us, or agreement on a payment arrangement satisfactory to us (which may include prepayment or security), prior to any such re-supply or continuation of supply.
- 11.12 We may use personal information you provide to us for the purposes of collecting any money owed by you and to obtain a credit report about you from time to time, or to appoint a debt collection agency if required. The credit information gathered by the credit reporter (as defined in the Credit Reporting Privacy Code 2020 (NZ)) may be used by that credit reporter to generate subsequent credit reports and be given to their other customers for the purposes of procuring credit reporting services. If you default on any obligation then information about the default may (without prejudice to any other remedies) be provided to credit reporters.

## **12. DISPUTES**

- 12.1 If a dispute arises out of this Agreement, a party may not commence court or arbitration proceedings unless it has complied with the remainder of this clause.
- 12.2 A party claiming a dispute has arisen must give written notice to the other party specifying the nature of the dispute. On receipt of that notice, the parties will use all reasonable endeavours to resolve the dispute by way of good faith discussion, consultation, negotiation or other informal means, using Personnel of appropriate seniority within each party's organisation.
- 12.3 If the dispute is not resolved within 15 business days of notice being given, either party may commence proceedings against the other party in New Zealand by way of arbitration or court action.
- 12.4 Nothing in this clause prevents a party seeking urgent interlocutory relief.

## **13. GENERAL**

- 13.1 We may give you notice by email, post or by fax to the address you gave us when you registered. Any communication by email or fax is deemed to be received when transmitted to the correct email or fax address of the recipient. Communication in writing is deemed to be received 3 days after posting, or when left at the specified address.
- 13.2 NEW ZEALAND LAW GOVERNS THIS AGREEMENT. NEW ZEALAND COURTS HAVE NON- EXCLUSIVE JURISDICTION OVER THIS AGREEMENT. IF YOU WISH TO BRING A CLAIM AGAINST US, YOU MUST DO SO IN A NEW ZEALAND COURT.
- 13.3 This Agreement constitutes the entire agreement between us in relation to the TracPlus Service.
- 13.4 You acknowledge that you have received a copy of these terms and in particular that your Agreement with TracPlus constitutes a "security agreement" for the purposes of the Personal Properties Securities Act 1999, and that TracPlus may register a financing statement.
- 13.5 We may change this Agreement from time to time by giving you notice of the change by email or by posting a notice on our Website. Changes are effective from the date we notify you that they apply from. You are responsible for ensuring you are familiar with the latest Agreement. By continuing to access and use the TracPlus Service or any part of it from the date on which this Agreement is changed, you agree to be bound by the changed Agreement.
- 13.6 If a change to this Agreement has a materially adverse effect on you, you may terminate this Agreement on no less than 10 days' notice, provided you give such notice within 30 days of the date we notify you of the change. If you do not terminate this Agreement in accordance with this clause, you are deemed to have accepted the changed Agreement. If you terminate this

Agreement in accordance with this clause 13.5, you will not be required to pay the applicable early termination fee (if any). In any other case, if you terminate during any minimum or fixed term, you must pay the applicable early termination fee (if any). This clause 13.5 does not apply where, in our reasonable opinion, the change to this Agreement is required to give effect to, or as a result of, a change in law.

- 13.7 You may not assign or transfer this Agreement, or your access or use of the TracPlus Service or any part of it, or any of your other rights and obligations under this Agreement without our prior written consent. We may transfer our rights and obligations under this Agreement on giving notice in writing to you and, for clarity, a change in control of TracPlus (including any transfer of shares or other arrangement affecting TracPlus which results in a change in the effective control of TracPlus) will not constitute an assignment or transfer by TracPlus for the purposes of this Agreement.
- 13.8 The provisions of clauses 5.4, 5.6, 6, 7, 8, 10 will survive termination or expiry of this Agreement.
- 13.9 If any provision of this Agreement is invalid or unenforceable the remaining provisions of this Agreement are not affected and continue in full force.
- 13.10 Any unlawful provision in this Agreement may be severed, and the remaining provisions remain enforceable.
- 13.11 The word "including" or "for example" or any examples given in this Agreement do not have a limiting effect.
- 13.12 No delay or failure to act is a waiver of any other or any subsequent breach. The failure of a party to enforce a provision of this Agreement is not to be interpreted as a waiver of that provision. No waiver is effective unless it is in writing.
- 13.13 The singular includes the plural and vice versa.
- 13.14 If the customer comprises more than one person, the liability of such persons shall be joint and several.
- 13.15 We will not be liable for any act, omission, or failure to fulfil our obligations under this Agreement if such act, omission or failure arises from any cause reasonably beyond our reasonable control including strikes, lockouts, riots, acts of war or terrorism, epidemics, government action superimposed after the date of this Agreement, fire, communication line failures, power failures, earthquakes or other disasters ("Force Majeure"). If we are unable to fulfil our obligations due to a Force Majeure we shall immediately notify you in writing and provide full information concerning the Force Majeure event including an estimate of the time likely to be required to overcome the event, use feasible commercial endeavours to overcome the event and minimise the loss to you and continue to perform our obligations as far as practicable.

## B. PRIVACY

- 1.1 We collect and process Personal Information of your Personnel and any other persons who access or use the Website or TracPlus Service in connection with your Plan (each a **User**) when you (or your Users, as applicable) access or use the Website and/or the TracPlus Service. In order to provide you with the TracPlus Service (and improve on it), we may also collect certain information about the performance of the Website and any part of the TracPlus Service and your (and your Users') use of the Website and/or the TracPlus Service.
- 1.2 Our access to and use of all such Personal Information is governed by our Privacy Policy. However, you acknowledge that information transmitted over the internet is inherently insecure.



- 1.3 By agreeing to this Agreement, you also agree to the way we handle your Users Personal Information in the manner specified in this Agreement (including our Privacy Policy).
- 1.4 You must comply with our Privacy Policy and all Data Privacy Laws in connection with your collection and use of any Personal Information of any person. You will not (and will ensure your Users do not) use the TracPlus Service: (i) to collect personal information about third parties (other than as anticipated by this Agreement), including without limitation, e-mail addresses; or (ii) in a way that violates (or may be considered inconsistent with) the privacy, rights or civil liberties of any person (including in a way that prevents the exercise of them).
- 1.5 You warrant that you have obtained all necessary consents and approvals from all Users to ensure that we are able to lawfully process all Personal Information of such persons in the manner anticipated by this Agreement and otherwise as required by law.

#### **C. ANTI-SPAM POLICY**

- 1.1 We comply with the Unsolicited Electronic Messages Act 2007 (NZ). We will not send you unsolicited information without your consent nor shall we assist anyone else to.
- 1.2 You may choose whether to receive promotional messages from us by notifying us in writing or by email, or by any other electronic means that we may choose to offer you.
- 1.3 Emails regarding service availability or issues relating to your ability to use our services will be sent to the email address advised by you during the registration process. You agree that such emails are not considered to be unsolicited under the terms of the above Act.

## **D. REGISTERED TRADEMARKS, COPYRIGHT NOTICES AND CREDITS**

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- geonames.org
- SkyVector.com
- GeoBase
- Openstreetmap.org
- HERE Maps

This Agreement is intended to convey a benefit to and be enforceable by each of them and any related parties of ours (where relevant) under the Contract and Commercial Law Act 2017 (NZ).