

iTrackPPE



INTELLIGENT ASSET MANAGEMENT & TRACKING

TERMS AND CONDITIONS
OF
BUSINESS

TERMS AND CONDITIONS OF BUSINESS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

1.1.1 In these Terms the following definitions apply:

Accept	successful completion of an Acceptance Test by achieving the relevant acceptance criteria, including deemed acceptance in accordance with clause 6 (<i>Solution Acceptance</i>), and “ Acceptance ” and “ Accepted ” shall be construed accordingly;
Acceptance Certificate	the certificate to be signed by the Customer in respect of an item of the iTrackPPE Hardware (where applicable) under clause 6.1.1 (<i>Solution Acceptance</i>);
Acceptance Date	the date on which the Acceptance Certificate is issued by the Customer under clause 6.1.1(<i>Solution Acceptance</i>);
Acceptance Test	the tests of the Solution after installation to be agreed in accordance with the relevant Order;
Additional Services	has the meaning given in clause 8.2.2 (<i>Services</i>);
Agreement	has the meaning given in clause 2 (<i>Structure of the Agreement</i>);
Applicable Laws	all laws, statutes, regulations and binding guidance from time to time in force;
Authorised Users	directors, employees, agents and contractors of the Customer who are authorised by the Customer to access and use the iTrackPPE Platform in accordance with the Agreement;
Business Day	any day which is not a Saturday, Sunday or a public or bank holiday in England;
Business Hours	the hours of 08.00 –17.00 on any Business Day;
Charges	the fees and expenses (as the case may be) for the Deliverables as set out in the Order;
Confidential Information	any and all information that is proprietary and/or confidential in nature and is clearly labelled as such or would, by its nature, be considered by a reasonable business person to be confidential, in whatever form or medium, disclosed by the party to the other party, (including, in the case of iTrackPPE information any and all information and materials concerning and/or relating to iTrackPPE IPR);

Contract Year	any twelve (12) months period ending on any anniversary of the Effective Date. If the Agreement ends by expiry, termination or otherwise part way through a Contract Year, the last Contract Year shall run from the last anniversary of the Effective Date to the date of termination or expiry;
Customer Data	all data (excluding any personal data as defined in the Data Protection Legislation), information, text and other materials provided by the Customer to iTrackPPE in connection with the Deliverables;
Customer Materials	all content, information, items, materials, electricity, cabling and other necessary equipment and tools, drawings, specifications and all other content, materials, logos, and/or other creative, graphic and/or design assets, including the Customer Data provided or made available to iTrackPPE by the Customer under the Agreement;
Data Protection Agreement or DPA	as described in clause 14 (<i>Data Protection</i>);
Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018); and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;
Deliverables	the Product(s) or Services or both as the case may be;
Delivery Date	the estimated delivery date specified in the Order, on which iTrackPPE will deliver an item of the Products to the Site(s);
Documentation	any description, instruction, manual, technical details or other related materials supplied by iTrackPPE in connection with the Deliverables, including all related documentation provided by third-party manufacturers of items of iTrackPPE Hardware or another item of the Products;
Effective Date	the date on which the Agreement becomes effective, as specified in the relevant Order;
Installation Date	the date or date(s) by which iTrackPPE will complete installation of each item of the iTrackPPE Hardware, as specified in the relevant Order;

Intellectual Property Right	means: (a) patents, any extensions of the exclusivity granted in connection with patents, petty patents, utility models, registered designs, plant variety rights, applications for any of the foregoing (including, but not limited to, continuations, continuations-in-part and divisional applications), the right to apply for and be granted any of the foregoing, rights in inventions; (b) copyrights, design rights, semiconductor topography rights, moral rights, publication rights, database rights; (c) trade marks and service marks, applications for any of the foregoing, the right to apply for any of the foregoing, rights in trade names, business names, brand names, get-up, logos, domain names and URLs; (d) rights in know-how, trade secrets and confidential information, data exclusivity rights; and (e) all other forms of intellectual property right having equivalent or similar effect to any of the foregoing which may exist anywhere in the world;
iTrackPPE Additional Software Modules	iTrackPPE software modules made available via the iTrackPPE Platform, as described in the Specification or SoW (as the case may be) as an option, at additional cost;
iTrackPPE Hardware	the RFID tags and barcodes, fixed and mobile RFID devices, smart devices and tablets, intelligent storage units, and other associated hardware and equipment manufactured by third parties, to be supplied by iTrackPPE in accordance with the Order, under the terms of the Agreement;
iTrackPPE Platform	the software applications, including iTrackPPE Additional Software Modules (as the case may be) and the platform owned and operated by iTrackPPE;
iTrackPPE Platform Subscription Terms	the iTrackPPE Platform subscription terms as set out in Schedule 1 ;
iTrackPPE Core & Logistics App	iTrackPPE mobile app distributed through an app store and/or readily available on iTrackPPE Hardware, as described in the iTrackPPE Core & Logistics EULA;
Losses	all losses, liabilities, damages, costs, charges, and reasonably incurred expenses (including management time, legal fees, other professional advisers' fees, and costs and disbursements of investigation, litigation, settlement, judgment, interest, fines,

penalties and remedial actions) howsoever arising in connection with a party's breach of the Agreement;

Order the Customer's order for the Deliverables;

Products the iTrackPPE Hardware and related accessories to be supplied by iTrackPPE, specifically described as such in the relevant Order;

Professional Services the services to be provided by iTrackPPE under the Agreement, including installation, data migration, configuration, consultancy, Training Services, and/or any other professional services set out in the Specification or SoW;

Renewal Period the period of twelve (12) months;

Representatives directors, agents, sub-contractors, consultants and/or employees of a party;

RFID technology that uses electromagnetic field and radio frequency to identify and track tagged assets;

Services the services set out in the Order, to be delivered or performed by iTrackPPE to the Customer under the terms of the Agreement, including: (a) the Subscription Services; (b) access to the iTrackPPE Core & Logistics App; (c) the Professional Services; (d) the Support Services and other managed services available under the SLA; and/or (e) any other services set out the Specification or SoW;

Service Level Agreement or "SLA" the service level agreement as set out in [Schedule 2 \(SLA\)](#);

Site(s) the address(es), including the Customer's premises, for delivery of the Products and/or performance of the Services (including installation of a specific item of the iTrackPPE Hardware), as set out in the Order;

Statement of Work or SoW the particular Deliverables to be provided by iTrackPPE to the Client agreed between the parties pursuant to clause 2.6 (*Structure of the Agreement*) and forming part of the Order (if applicable);

Solution the system consisting of iTrackPPE Hardware, access to the iTrackPPE Platform, the iTrackPPE Core & Logistics App and the Documentation;

- Specification** the description of the Deliverables agreed between the parties pursuant to clause 2.6 (*Structure of the Agreement*) and forming part of the Order (if applicable);
- Subscription Commencement Date** the date on which iTrackPPE provides the Customer with access to the iTrackPPE Platform (being the date on which iTrackPPE commences the Training Services or such other date as may be specified in the relevant Order);
- Subscription Period** the period of twelve (12) months from the Subscription Commencement Date;
- Subscription Services** means:
- (a) access to the iTrackPPE Platform;
 - (b) the iTrackPPE Core & Logistics App; and
 - (c) the Support Services during the Business Days and Business Hours;
- Support Services** the services to be provided by iTrackPPE in accordance with the Service Level Agreement, and including (as the case may be):
- (a) the support services iTrackPPE will, as part of the Subscription Services and at no additional cost to the Customer, provide the Customer, or
 - (b) 24/7 support services iTrackPPE may provide the Customer at additional cost;
- Terms** these Terms and Conditions of Business;
- Third Party Materials** the materials used in the provision of the Deliverables to which third party licence terms apply, including iTrackPPE Hardware;
- Training Services** the tasks and activities to be performed by iTrackPPE in accordance with the training plan agreed between parties; and
- User Subscriptions** the individual user subscription purchased by the Customer pursuant to the terms of the Agreement for use by Authorised Users.

1.2 Interpretation

- 1.2.1 In these Terms, a reference to the Agreement includes these Terms, the Order, and their respective schedules, appendices and annexes (if any).
- 1.2.2 Any clause, schedule or other headings in these Terms are included for convenience only and shall have no effect on the interpretation of these Terms.

- 1.2.3 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.2.4 Any words that follow '**include**', '**includes**', '**including**', '**in particular**' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words.
- 1.2.5 A reference to '**writing**' or '**written**' includes email.
- 1.2.6 References to clauses and schedules are to the clauses and schedules of the Agreement; references to paragraphs are to paragraphs of the relevant schedule to the Agreement.
- 1.2.7 A reference to a statute or statutory provision:
 - 1.2.7.1 is a reference to it as it is in force as at the date of the Agreement; and
 - 1.2.7.2 shall include all subordinate legislation made as at the date of the Agreement under that statute or statutory provision.

2 STRUCTURE OF THE AGREEMENT

- 2.1 The "**Agreement**" is comprised of: (a) the provisions of these Terms; (b) the Order (c) the iTrackPPE Core & Logistics end-user agreement ("iTrackPPE Core & Logistics EULA"), as described in the Order; (d) the SLA; and (e) all schedules, annexes, appendices, SoW, policies and all other documents referenced in the Terms and the Order.
- 2.2 The Agreement is a binding contract between:
 - (A) **ITRACKPPE LIMITED**, a private limited company incorporated and registered in England and Wales with company number 12663788 and whose registered address is Alexanders Abbey House, 25 Clarendon Road, Redhill, England, RH1 1QZ ("**iTrackPPE**"); and
 - (B) the entity identified as the "**Customer**" in the Order,together, (A) and (B) are the "**parties**" and each are a "**party**".
- 2.3 The Agreement has effect from the Effective Date and shall continue in accordance with the provisions of the Agreement.
- 2.4 These Terms apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 The Customer shall provide iTrackPPE with a written Order for Deliverables.
- 2.6 Where the Deliverables required by the Customer are Deliverables of the type which require the parties to agree a SoW, then:
 - 2.6.1 the Customer shall submit a draft Order for such Deliverables to iTrackPPE requesting iTrackPPE submit a corresponding draft SoW;
 - 2.6.2 the draft Order shall set out in reasonable detail the requirements and specifications of the proposed Deliverables, a description of the proposed

Deliverables, any timescale and any other information reasonably necessary for iTrackPPE to respond to the draft Order;

- 2.6.3 subject always to clause 2.7, iTrackPPE shall submit a draft SoW to the Customer within a reasonable period of time of the date of receipt of the draft Order; and
- 2.6.4 iTrackPPE and the Customer shall sign the SoW when it is agreed, and the signed SoW shall complete the draft Order.
- 2.7 An Order shall not constitute a binding obligation on iTrackPPE to supply the Deliverables unless and until such time as iTrackPPE has acknowledged and accepted the Order in writing (the “**Effective Date**”). iTrackPPE may accept or reject each Order in its absolute discretion.
- 2.8 No variation to an Order shall be binding unless expressly agreed in writing in accordance with the provisions of clause 12 (*Change Procedure*).
- 2.9 Each Order shall form part of and be interpreted in accordance with the provisions of the Agreement.

3 MUTUAL WARRANTIES AND REPRESENTATIONS

- 3.1 On entering into the Agreement, each party warrants and represents to the other that:
 - 3.1.1 it has full capacity and authority to enter into and to perform the Agreement; and
 - 3.1.2 the Order or SoW has been executed by its duly authorised representative.

4 DELIVERY OF THE PRODUCTS

- 4.1 iTrackPPE shall ensure that each delivery of the Products is accompanied with a note showing the type and quantity of the Products, including any special storage instructions (if and where applicable) and related Documentation (each “**Delivery Note**”).
- 4.2 The Products shall be delivered at the Site. iTrackPPE shall use reasonable endeavours to deliver the Products with all related Documentation to the Site by the applicable Delivery Date. Delivery of the Products shall be completed on the completion of unloading of the Products at the Site.
- 4.3 Risk of damage or loss in respect of iTrackPPE Hardware and other items of the Products shall pass on delivery to the Customer and the Customer shall be responsible for maintaining adequate insurance in respect of iTrackPPE Hardware to cover all possible risks to iTrackPPE Hardware whilst in its possession and/or under its control.
- 4.4 Title in iTrackPPE Hardware and other items of the Products remains with iTrackPPE unless and until the Charges in respect of the Products have been paid in full to iTrackPPE in accordance with the Agreement.

5 HARDWARE

- 5.1 **Hardware Configuration and Commissioning**

- 5.1.1 Following the Installation Date, where necessary and as has been agreed in advance (in the relevant Order), iTrackPPE shall carry out hardware configuration and installation test(s) applicable to that item and shall supply the Customer with copies of the test results.
- 5.1.2 If any item fails to pass the applicable installation test, then iTrackPPE shall have two (2) more attempts to remedy the deficiency, unless clause 5.3.2 applies.
- 5.1.3 If iTrackPPE is unable to correct material defects within a period of six (6) months from the first installation tests under clause 5.1, the Customer may reject the item of iTrackPPE Hardware as not being in conformity with the Agreement, in which case the Customer may terminate the Agreement in accordance with clause 19.1 (*Termination and Consequences of Termination*).
- 5.2 Once the installation has been completed, the only remedies available to the Customer are under: (a) the warranty in accordance with clause 5.3 (*Warranty*); or (b) the provisions of the SLA specified in an Order.
- 5.3 **Warranty**
 - 5.3.1 The warranties supplied by iTrackPPE to the Customer and as provided by the original manufacturer of the iTrackPPE Hardware shall apply.
 - 5.3.2 iTrackPPE shall use reasonable endeavours to assist the Customer in pursuing warranty claims against the relevant manufacturer, in particular to obtain a replacement item in substitute for a defective, faulty item of the iTrackPPE Hardware in accordance with [Schedule 2 \(SLA\)](#).

6 SOLUTION ACCEPTANCE

- 6.1 Acceptance of the Solution shall be deemed to have occurred on whichever is the earliest of:
 - 6.1.1 the signing by the Customer of an Acceptance Certificate ("**Acceptance Date**");
 - 6.1.2 subject to clause 5.1.2, the expiry of five (5) Business Days after the completion of all the Acceptance Tests, unless the Customer has given any written notice under clause 5.1.3; or
 - 6.1.3 the use of the Solution by the Customer in the normal course of its business.

7 ITRACKPPE PLATFORM

- 7.1 iTrackPPE shall provide to the Customer access to the iTrackPPE Platform in accordance with [Schedule 1 \(iTrackPPE Platform Subscription Terms\)](#) of the Agreement.

8 SERVICES

- 8.1 iTrackPPE shall use reasonable care and skill to deliver the Deliverables to the Customer in accordance with the Agreement in all material respects.
- 8.2 In the event the Customer requires:

- 8.2.1 a change in requirements, including any modification of the Deliverables (the **"Change Request"**); and/or
- 8.2.2 iTrackPPE to perform any additional services not set out in the Order (the **"Additional Services"**),

the Charges payable in consideration of any such Change Request (including any costs brought about by the Customer's Change Request) and/or Additional Services shall be provided in accordance with iTrackPPE's then applicable Charges for such Deliverables and the parties shall use reasonable commercial endeavours to agree a written SoW for such Change Request and/or Additional Services (as the case may be).
- 8.3 Time of performance shall not be of the essence, unless otherwise expressly agreed between the parties in writing. iTrackPPE shall use its reasonable endeavours to meet any performance dates specified in an Order (including the relevant SoW, as the case may be) but any such dates shall be estimates only based upon information available and circumstances existing prior to, or around the time of the Agreement.
- 8.4 iTrackPPE shall perform its obligations under the Agreement in accordance with:
 - 8.4.1 Applicable Laws, in each case to the extent that such laws, statutes, regulations, codes of practice and binding guidance apply to iTrackPPE, in connection with the provision of the Deliverables; and
 - 8.4.2 iTrackPPE's own established policies and practices.
- 8.5 iTrackPPE shall use reasonable endeavours to observe all health and safety and security requirements that apply at the Site, as have been communicated to it in advance in writing, by the Customer.
- 8.6 iTrackPPE shall have no liability for any delay or Losses incurred under and/or in connection with the Agreement to the extent any such liability is caused by:
 - 8.6.1 use of any Deliverables and/or Documentation contrary to iTrackPPE's instructions and minimum requirements, or modification or alteration of any Deliverables by any person other than iTrackPPE or iTrackPPE's duly authorised Representatives; or
 - 8.6.2 any act or omission of the Customer in breach of the Agreement; or
 - 8.6.3 the unavailability of, or delay or changes to, the Third Party Materials or any incorrect, inaccurate or faulty Third Party Materials; or
 - 8.6.4 any acts, omissions or delays caused by the Customer, its Representatives or a third party relating to the provision of the Deliverables.
- 8.7 iTrackPPE does not warrant, represent or undertake that the information obtained by the Customer through the Deliverables will meet the Customer's requirements.
- 8.8 iTrackPPE shall have no liability for any delays, delivery failures, or any other Loss resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Deliverables may

- be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.9 Changes to the Deliverables required as a result of changes to Applicable Laws shall be agreed via the change procedure set out in clause 12 (*Change Procedure*).
- 8.10 iTrackPPE shall not be liable for any delay or failure in performance of its obligations under the Agreement caused by the delay, act or omission of the Customer, its Representatives or a third party contractor engaged by the Customer. Where due to such circumstance iTrackPPE is unable to fulfil its contractual obligation within the timeframe specified in the Order, without prejudice to any other right or remedy that iTrackPPE may have, the Customer shall pay to iTrackPPE all Charges due for all Deliverables provided or otherwise procured by iTrackPPE in accordance with the Specification and/or SoW. Such Charges shall be calculated by means of complete and accurate written records provided by iTrackPPE and kept in the ordinary course during the provision of the Deliverables.
- 8.11 Subject to clause 8.10, if iTrackPPE is prevented directly or indirectly from delivering the Deliverables for three months, then iTrackPPE shall have the right to terminate the Agreement by notice in writing to the Customer and such termination shall be without prejudice to the accrued rights of iTrackPPE under the Agreement.

9 CUSTOMER OBLIGATIONS

- 9.1 Customer acknowledges and agrees that there may be instances in which iTrackPPE will be unable to perform the Deliverables without assistance from the Customer.
- 9.2 To enable installation of iTrackPPE Hardware at the Site(s), the Customer shall provide in a timely manner and at no charge:
- 9.2.1 access to the Site(s);
 - 9.2.2 the Customer Materials, Third Party Materials (where applicable) and all network connectivity, including any other equipment needed to connect and interface iTrackPPE Hardware with the Customer hardware, as the case may be.
- 9.3 The Customer shall at all times:
- 9.3.1 co-operate with iTrackPPE in all matters relating to the Deliverables;
 - 9.3.2 provide its business and technical requirements in any form (whether owned by the Customer or third party), and all reasonable assistance to iTrackPPE to meet its obligations under the Agreement and to mitigate delays in the performance of its obligations;
 - 9.3.3 perform its obligations in accordance with the terms of the Agreement;
 - 9.3.4 provide to iTrackPPE in a timely manner all Customer Materials, and all other information, documents, materials, data or other items in any form (whether owned by the Customer or third party, subject to confidentiality considerations (as the case may be)), necessary for the provision of the Deliverables;

- 9.3.5 inform iTrackPPE in a timely manner in advance and in writing of any matters (including any health, safety or security requirements) which may affect the provision of the Deliverables; and
- 9.3.6 obtain and maintain all necessary licences, permits and consents required to enable iTrackPPE to perform the Deliverables and otherwise comply with its obligations under the Agreement.
- 9.4 If iTrackPPE's performance of its obligations under the Agreement is prevented or delayed by any delay, act or omission caused by the Customer (including Customer's failure to provide any necessary assistance or resources), then iTrackPPE shall be allowed an extension of time to perform its obligations equal to the duration of the delay caused by the Customer or such other longer period as the parties agree in writing.

10 ASSESSMENT OF THE SITE(S)

- 10.1 The Customer acknowledges that iTrackPPE has had limited access to the Site(s), if any, prior to the Effective Date. Accordingly, an assessment of the Site(s) shall be carried out from the Effective Date, subject to the parties' agreement and additional Charges, to validate the assumptions made by iTrackPPE in respect of the Site(s) and to take account of any information disclosed after the Effective Date or changes to information that had been disclosed prior to the Effective Date (in each case the "Additional Information").
- 10.2 If and to the extent:
 - 10.2.1 iTrackPPE can demonstrate that it has discovered any Additional Information, or that Additional Information was, at the time of disclosure by the Customer, materially inaccurate or incomplete; and
 - 10.2.2 such Additional Information, or inaccuracy or incompleteness of the Additional Information resulted in iTrackPPE setting the Charges at a level lower than it would have done but for the Additional Information, inaccuracy or incompleteness of the Additional Information,

then the Customer and iTrackPPE shall meet in good faith to discuss an appropriate variation to the Charges which shall be documented via clause 12 (*Change Procedure*).

11 CHARGES

- 11.1 In consideration for the provision of the Deliverables, the Customer shall pay iTrackPPE the Charges in accordance with this clause 11 (*Charges*) and the relevant Order.
- 11.2 All amounts payable by the Customer exclude amounts in respect of value added tax (VAT) which the Customer shall additionally be liable to pay to iTrackPPE.
- 11.3 The Customer shall also pay the expenses of iTrackPPE's Representatives incurred solely for the provision of the Deliverables, where this has been prior agreed between the parties.

- 11.4 Where the Customer has a question about, or a bona fide dispute over, an invoice (or any part thereof) (the “**Disputed Sum**”):
- 11.4.1 the Customer shall notify iTrackPPE as soon as reasonably possible and in any event within three (3) calendar days of receipt of the relevant invoice detailing which elements of the invoice are disputed and why (the “**Dispute Notice**”); or
 - 11.4.2 if during the time period specified in clause 11.4.1 no dispute has been raised, iTrackPPE shall regard the invoice as valid and undisputed.
- 11.5 With regard to any Disputed Sum:
- 11.5.1 the Customer may withhold the payment and the parties shall use reasonable endeavours to resolve any such dispute. If the dispute cannot be resolved by the parties’ senior officers, the dispute may be resolved in accordance with clause 20 (*Dispute Resolution*);
 - 11.5.2 the due date stated in the relevant invoice will not begin until such a time that a Disputed Sum is regarded as valid and undisputed; and
 - 11.5.3 interest will not be chargeable on a Disputed Sum.
- 11.6 The Customer shall pay any undisputed amount by the due date stated in the relevant invoice, to a bank account nominated in writing by iTrackPPE.
- 11.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay iTrackPPE any undisputed sum due under the Agreement on the due date:
- 11.7.1 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum is fully paid, whether before or after judgment. Interest will accrue each day on such amounts due, at an annual rate equal to 4% above the Bank of England's current base rate; and
 - 11.7.2 iTrackPPE may suspend all or part of the Deliverables until payment has been made in full.
- 11.8 iTrackPPE may increase the annual Charges upon ninety (90) days' prior notice to the Customer, unless otherwise agreed.
- 11.9 Without prejudice to any other right or remedy, iTrackPPE may at any time, set off any liability of the Customer to iTrackPPE against any liability of iTrackPPE to the Customer.

12 CHANGE PROCEDURE

- 12.1 In the event that either party requires any change to the Deliverables, that party shall submit a Change Request to the other party, containing as much detail as necessary to enable the other party to evaluate the proposed change, including any impact of the proposed change on milestones and Charges.
- 12.2 Such proposed change shall be agreed by the parties only once the Change Request is signed by both parties.
- 12.3 Until such change is made in accordance with clause 12.2, the Customer and iTrackPPE shall, unless otherwise agreed in writing, continue to perform the Agreement in compliance with its terms prior to such change.

- 12.4 Any Deliverables or other work required by the Customer which have not been agreed in accordance with the provisions of this clause 12 (*Change Procedure*) shall be undertaken entirely at the expense and liability of the Customer.

13 CONFIDENTIAL INFORMATION

- 13.1 Each party undertakes not to use the Confidential Information otherwise than in connection with the performance or receipt of the Deliverables.
- 13.2 A party's Confidential Information shall not include information that:
- 13.2.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 13.2.2 was in the other party's lawful possession before the disclosure;
 - 13.2.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 13.2.4 is independently developed by the receiving party.
- 13.3 Each party shall hold the other's Confidential Information in confidence and, subject to clause 13.4 and clause 13.5, not make the other's Confidential Information available to any third party.
- 13.4 Each party shall be entitled to disclose the other party's Confidential Information to any of its Representatives or professional advisors who have a need to know the other party's Confidential Information in connection with the Agreement and/or the Deliverables.
- 13.5 Each party shall ensure that the person to whom the other party's Confidential Information is disclosed under clause 13.4 complies with the obligations set out in this clause as if they were a party to the Agreement.
- 13.6 Either party may disclose the other party's Confidential Information if and to the extent required by applicable law or by any regulatory body or securities exchange, provided that the disclosing party shall as soon as reasonably practicable and to the extent permitted by applicable law notify the other party in writing of the circumstances of such disclosure and the Confidential Information to which such disclosure applies.
- 13.7 Each party shall take reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its Representatives in violation of the terms of the Agreement.

14 DATA PROTECTION

- 14.1 Each party will comply with all obligations and enter into such agreements as are set out in the Data Protection Legislation in so far as they apply to the relevant party.
- 14.2 For the purposes of the Agreement, the terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the Data Protection Legislation.
- 14.3 Without prejudice to clause 14.1, the Customer will (where required by Data Protection Legislation) ensure that it has all necessary and appropriate consents to

- enable the lawful transfer of personal data to iTrackPPE for the purpose of the Agreement.
- 14.4 Where iTrackPPE is the data controller, iTrackPPE will process personal information in accordance with its Privacy Policy available at www.itrackppe.com.
- 14.5 Where iTrackPPE processes personal information as a processor (or sub-processor) on the Customer's behalf, iTrackPPE shall process such personal information in accordance with the Customer's written instructions, to be set out in a separate Data Processing Agreement ("**DPA**").
- 14.6 The parties' liability to each other in relation to any personal data collected or processed under the Agreement shall be separately provided for under the DPA.

15 INTELLECTUAL PROPERTY ("IP")

- 15.1 The Customer acknowledges and agrees that iTrackPPE and/or its licensors own all Intellectual Property Rights in the Solution, including:
- 15.1.1 the iTrackPPE Platform (excluding the Customer Materials);
 - 15.1.2 any software developed for the Customer as part of consultancy services;
 - 15.1.3 the Documentation;
 - 15.1.4 the Deliverables, and all materials provided and/or made available as part of the Deliverables; and
 - 15.1.5 any/all adaptations, add-ons, modifications, updates, and/or enhancements to the iTrackPPE Platform, bespoke software, the Documentation, the Deliverables and such materials (including any Additional Service agreed from time to time),
 - 15.1.6 (together, the "**iTrackPPE IPR**").
- 15.2 iTrackPPE may freely incorporate feedback and/or suggested improvements to iTrackPPE IPR given by the Customer or an Authorised User.
- 15.3 Except as expressly stated in the Agreement the Customer shall have no right or interest in iTrackPPE IPR.
- 15.4 iTrackPPE IPR grants, subject to the terms of the Agreement, the Customer the non-exclusive, non-transferable right to access and use the iTrackPPE Platform and to use the Documentation.
- 15.5 The Customer and/or its licensors own all Intellectual Property Rights in and to all of the Customer Materials and shall have sole responsibility for the legality, non-infringement, reliability, integrity, accuracy and quality of the Customer Materials.
- 15.6 The Customer grants to iTrackPPE (and its sub-contractors) a non-exclusive, non-transferrable right to use the Customer Materials and Customer Data strictly to the extent necessary for iTrackPPE (or iTrackPPE's sub-contractor as the case may be) to provide the Deliverables.

- 15.7 If through the provision of the Deliverables, use of the iTrackPPE Platform or otherwise, the Customer (or an Authorised User) comes to own Intellectual Property Rights in iTrackPPE IPR by operation of applicable law and despite the provisions of clause 15.1 then the Customer shall (or shall ensure that the Authorised User in question shall) at iTrackPPE's request take all steps necessary to assign such Intellectual Property Rights to iTrackPPE and, to the extent permitted by Applicable Law, waive all moral rights (and analogous rights) worldwide in connection with such Intellectual Property Rights.

16 IPR INDEMNITY

- 16.1 iTrackPPE shall indemnify and defend the Customer and its Representatives, against any and all Losses suffered, incurred, or paid by the Customer arising out of, or in connection with, any claim brought against the Customer for actual or alleged infringement of a third party's IP which arise out of or in connection with the Deliverables ("**iTrackPPE Indemnity**") provided that:
- 16.1.1 iTrackPPE is given prompt notice of any such claim;
 - 16.1.2 the Customer provides reasonable co-operation to iTrackPPE in the defence and settlement of such claim; and
 - 16.1.3 iTrackPPE is given sole authority to defend or settle the claim.
- 16.2 In the defence or settlement of any claim under iTrackPPE Indemnity, iTrackPPE at its option, may procure the right for the Customer to continue using the Deliverables or replace or modify the Deliverables (or any item of the Deliverables) so that they become non-infringing.
- 16.3 In no event shall iTrackPPE be liable to the Customer or its Representatives to the extent that the alleged infringement results from: (a) a modification of the Deliverables by anyone other than iTrackPPE or its Representatives; (b) the Customer's use of the Deliverables in a manner contrary to the Agreement and/or the reasonable and lawful instructions given by iTrackPPE; (c) infringing third party software; or (d) infringing Customer Materials.
- 16.4 The Customer shall indemnify and defend iTrackPPE and its Representatives against any and all Losses suffered or incurred or paid by iTrackPPE arising out of or in connection with any allegation or claim that the Customer Materials infringe any third party Intellectual Property Rights (the "**Customer Indemnity**").
- 16.5 iTrackPPE shall ensure that:
- 16.5.1 the Customer is given prompt notice of any allegation or claim to which the Customer Indemnity applies;
 - 16.5.2 it provides reasonable co-operation to the Customer in the defence and settlement of such claim; and
 - 16.5.3 the Customer is given sole authority to defend or settle the claim.
- 16.6 The Customer Indemnity shall apply to Losses to the extent that such Losses are: (a) awarded against the indemnified party by a court or other body having competent jurisdiction or agreed to be paid (with the consent of the indemnifying

party, such consent not to be unreasonably withheld or delayed)) to the third-party claimant in settlement of a claim subject to the Customer Indemnity; and/or (b) reasonably and properly incurred legal fees and disbursements, fees levied by any court of competent jurisdiction, arbitrator or mediator, and/or fees and disbursements charged by expert witnesses.

17 LIABILITY

17.1 Nothing in the Agreement shall limit or exclude either party's liability to the other for:

- 17.1.1 fraud or fraudulent misrepresentation;
- 17.1.2 death or personal injury caused by that party's negligence, or negligence of its personnel, agents, or subcontractors; and/or
- 17.1.3 liability which cannot be limited or excluded by law.

17.2 Subject to clause 17.1, neither party will be liable to the other party howsoever arising, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise for Losses that comprise:

- 17.2.1 loss of profit or revenue (except for Charges payable to iTrackPPE);
- 17.2.2 loss of sale or business;
- 17.2.3 loss of agreements or contracts;
- 17.2.4 loss of anticipating savings;
- 17.2.5 except as provided in clause 0, loss of use or corruption of software, data or information and cost of remediation; and/or
- 17.2.6 loss of damage to goodwill,

in each case, whether arising directly or indirectly under or in connection with the Agreement and whether or not reasonably foreseeable, reasonably contemplatable, actually foreseen or actually contemplated by a party at the start date.

17.3 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for iTrackPPE to use reasonable commercial endeavours to restore the lost and damaged Client Data from the latest back-up of such Client Data maintained by or on behalf of iTrackPPE.

17.4 Subject to clause 17.1, clause 17.2 and clause 17.3, the total aggregate liability of iTrackPPE to the Customer (and any other third party claiming under or through the other) in respect of all causes of action, whether such causes of action arise in contract (including under any indemnity or warranty), in tort (including negligence), in respect of innocent or negligent misrepresentation or misstatement, or for breach of statutory duty or otherwise, arising under and/or in connection with the Agreement in each Contract Year and in respect of all causes of action arising in respect of that Contract Year (as determined at the date when the liability giving rise to the cause of action arose) will be limited to 100% (one hundred per cent) of the total amounts paid to iTrackPPE under the Agreement in respect of the Contract Year in question.

- 17.5 The parties agree that the provisions of this clause 17 (*Liability*) are considered by them to be reasonable in all the circumstances, having taken into account section 11 and the guidelines in schedule 2 of the Unfair Contract Terms Act 1977 and the nature of the services described in the Agreement and the fees payable for services.

18 INSURANCE

- 18.1 During the term of the Agreement, iTrackPPE shall maintain in force, with a reputable insurance company:
- 18.1.1 professional indemnity insurance at an amount of not less than £1,000,000;
 - 18.1.2 public liability and product liability insurance at an amount of not less than £5,000,000;
 - 18.1.3 employer liability insurance at an amount of not less than £5,000,000; and
 - 18.1.4 contractors all risk insurance at an amount of not less than £1,000,000.
- 18.2 If required by the Customer, iTrackPPE will produce copies of the terms of the insurance to show that iTrackPPE's insurance policies listed above have been maintained.

19 TERMINATION AND CONSEQUENCES OF TERMINATION

- 19.1 Without affecting any other right or remedy available to it, either party may terminate the Agreement or any Order (as the case may be) entered into under the Agreement with immediate effect at any time by giving notice in writing to the other party if the other party:
- 19.1.1 commits a material breach of the Agreement or the relevant Order and such breach is not remediable; or
 - 19.1.2 commits a breach of the Agreement or the relevant Order which is not remedied within fourteen (14) Business Days of receiving written notice of such breach, (each a "**Material Breach**");
- 19.2 Without affecting any other right or remedy available to it, iTrackPPE may terminate the Agreement or the relevant Order (as the case may be) by giving the Customer not less than thirty (30) days' written notice if:
- 19.2.1 The Customer has failed to pay any amount due under the Agreement (or the relevant Order) and such amount remains unpaid within thirty (30) days after iTrackPPE has given notification that the payment is overdue; or
 - 19.2.2 Any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Agreement or the relevant Order.
- 19.3 On termination of the Agreement or the relevant Order (as the case may be):
- 19.3.1 the Customer shall immediately pay to iTrackPPE all of iTrackPPE's outstanding unpaid invoices and interest and, in respect of Deliverables supplied but for which no invoice has been submitted, iTrackPPE shall submit an invoice, which shall be payable by the Customer immediately on receipt;

- 19.3.2 all rights and licences granted under the Agreement or the relevant Order shall immediately terminate and the Customer must cease using the iTrackPPE Platform;
- 19.3.3 each party shall return, and make no further use of, any property, and other items (and all copies of them) belonging to the other party; and
- 19.3.4 iTrackPPE may destroy, or otherwise dispose of, any of the Customer Materials or Customer Data in its possession unless iTrackPPE receives, no later than ten (10) Business Days from the effective date of the termination or expiry of the Agreement or the relevant Order, a written request for the delivery to the Customer of such Customer Materials or Customer Data.
- 19.3.5 Termination or expiry of the Agreement or the relevant Order (howsoever occurring) shall be without prejudice to any rights or liabilities which may have accrued up to the date of such termination or expiry and it shall not affect the coming into force or the continuance in force of any of its provisions which are expressly or by implication intended to come into or continue in force on or after such termination or expiry.

20 DISPUTE RESOLUTION

- 20.1 If a dispute arises out of or in connection with the Agreement or the relevant Order (as the case may be) and if the dispute cannot be resolved by the parties within thirty (30) days of being referred to them unless expressly provided otherwise in the Agreement, the dispute may, at either party's request, be referred to mediation.
- 20.2 Any reference to mediation shall be in accordance with the Centre for Effective Dispute Resolution ("CEDR").
- 20.3 Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing ("ADR notice") to the other party to the dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR.
- 20.4 Mediation is without prejudice to the rights of the parties in any future proceedings.

21 DISCLAIMER

- 21.1 Subject to clause 17.1 (*Liability*) and except to the extent expressly set out in the Agreement, all warranties, conditions, representations and terms (whether written or oral, express or implied by statute, common law, custom, trade usage, course of dealing or otherwise, including as to satisfactory quality, fitness for a particular purpose or use, accuracy, adequacy, completeness or timeliness) are hereby excluded to the fullest extent permitted by applicable law.

22 GENERAL

- 22.1 **Force majeure.** Other than in respect of the Customer's obligation to pay the Charges or agreed expenses, neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall

be extended accordingly. If the period of delay or non-performance continues for three (3) months, the party not affected may terminate the Agreement by giving fifteen (15) days' written notice to the affected party.

22.2 Entire agreement

22.2.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22.2.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

22.3 **Conflicts.** If, and to the extent there is any conflict, inconsistency or ambiguity between any provisions of the Agreement then such conflict, inconsistency or ambiguity shall be resolved in accordance with the following order of precedence (with the document higher in the list prevailing over a document lower in the list to the extent of the conflict):

22.3.1 [Schedule 1 \(iTrackPPE Platform Subscription Terms\)](#);

22.3.2 these Terms and [Schedule 2 \(SLA\)](#);

22.3.3 the Order;

22.3.4 all other documents referenced in the Terms and the Order.

22.4 **Variation.** No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

22.6 **Severance.** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 22.6 (*Severance*) shall not affect the validity and enforceability of the rest of the Agreement.

22.7 Notices

22.7.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be:

22.7.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

22.7.1.2 sent by email to:

iTrackPPE: cfo@itrackppe.com

Customer: As specified in the Order

22.7.2 Any notice or communication shall be deemed to have been received:

22.7.2.1 if delivered by hand, at the time the notice is left at the proper address;

22.7.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

22.7.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume.

22.7.3 This clause 22.7 (*Notices*) does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22.8 **No partnership or agency**

22.8.1 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

22.8.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

22.9 **Third party rights.** Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

22.10 **Governing law.** The Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with, the law of England and Wales.

22.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

SCHEDULE 1**iTrackPPE Platform Subscription Terms****1 SUBSCRIPTION TERMS****1.1** These Subscription Terms:

- 1.1.1 apply between iTrackPPE and the Customer to use of the iTrackPPE Platform (including iTrackPPE Additional Software Modules, as the case may be) in addition to the Terms (subject to clause 22.3 (*Conflict*) of the Terms); and
- 1.1.2 are incorporated in the Agreement in accordance with clause 2.1 (*Structure of the Agreement*) of the Terms.

1.2 Any terms and phrases defined in the Terms shall have the same meaning in these Subscription Terms, unless expressly provided otherwise hereunder.**2 COMMENCEMENT AND DURATION****2.1** The Subscription Services shall commence on the Subscription Commencement Date and shall continue for the Subscription Period and, thereafter, the Subscription Services shall be automatically renewed, at the anniversary date, for the Renewal Period, unless:

- 2.1.1 either party notifies the other party of termination, in writing, at least thirty (30) days before the end of the Subscription Period or applicable Renewal Period, in which case the Agreement shall terminate upon the expiry of the Subscription Period or the applicable Renewal Period; or
- 2.1.2 otherwise terminated in accordance with the provisions of the Agreement.

3 USER SUBSCRIPTION**3.1** Subject to the terms of the Agreement, iTrackPPE grants the Customer a non-exclusive and non-transferable right to permit the Authorised Users to access and use the iTrackPPE Platform during the Subscription Period and/or applicable Renewal Period solely for use in the Customer's internal business operations.**3.2** During the Subscription Period or applicable Renewal Period, the Customer may increase the Authorised Users count at any time, subject to iTrackPPE's then applicable User Subscription Charges. However, the Authorised Users count may only be reduced thirty (30) days prior to the renewal date.**4 CONDITIONS OF USE****4.1** The Customer shall not:

- 4.1.1 authorise more Authorised Users to access the iTrackPPE Platform than the number of User Subscriptions that the Customer has purchased in the Order;
- 4.1.2 permit any User Subscription to be used by more than one individual Authorised User unless such User Subscription has been reassigned in its entirety to another individual Authorised User, in which case the Customer shall inform iTrackPPE in writing and without undue delay of any such reassignment;
- 4.1.3 permit anyone access to the iTrackPPE Platform who is not an Authorised User.

- 4.2 The Customer shall procure that each Authorised User shall keep secure and confidential their password for accessing the iTrackPPE Platform.
- 4.3 The Customer shall not (and shall ensure that Authorised Users do not) access, store, distribute or transmit any software, code, file or programme which may prevent, impair or otherwise adversely affect the operation of the Platform (including without limitation; worms, Trojan horses, viruses and other similar things or devices) or submit any material to the iTrackPPE Platform that:
- 4.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing, or offensive (including without limitation racially or ethnically offensive);
 - 4.3.2 facilitates illegal activity;
 - 4.3.3 depicts sexually explicit images;
 - 4.3.4 promotes unlawful violence;
 - 4.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 4.3.6 is otherwise illegal or causes damage or injury to any person or property,
 - 4.3.7 and iTrackPPE reserves the right, without liability to the Customer, to disable the Customer's (and all Authorised Users') access to the iTrackPPE Platform if any breach of this clause 4 (*Conditions of Use*) occurs.
- 4.4 The Customer shall not:
- 4.4.1 have any right to copy, adapt, reverse engineer, de-compile, disassemble, modify, adapt or make error corrections to the iTrackPPE Platform except, with respect to de-compilation of the iTrackPPE Platform, to the extent such de-compilation is necessary for the exclusive purpose of obtaining the information necessary to create an independent program which can be operated with the iTrackPPE Platform or with another program and the Customer's right to de-compile the iTrackPPE Platform shall not apply if:
 - 4.4.1.1 the Customer is in breach of the de-compilation conditions described in section 50B of the Copyright, Designs and Patents Act 1988; or
 - 4.4.1.2 iTrackPPE: (i) is prepared to carry out, and/or procure the carrying out of, such de-compilation in return for a reasonable fee; or (ii) has provided the information necessary to achieve such inter-operation without such de-compilation within a reasonable period, and the Customer shall request that iTrackPPE carries out such action or provides such information (and shall meet iTrackPPE's reasonable costs in providing that information) before undertaking any such de-compilation;
 - 4.4.2 or attempt to, circumvent, disable, or otherwise interfere with any security related features of the iTrackPPE Platform (including features that enforce limitations of use or prevent copying);

- 4.4.3 remove any copyright or other Intellectual Property Rights notices from the iTrackPPE Platform;
- 4.4.4 access the iTrackPPE Platform in order to build a product or service which competes with the iTrackPPE Platform or the Subscription Services;
- 4.4.5 use the iTrackPPE Platform to provide services to third parties; or
- 4.4.6 license, sell, rent, lease, transfer, assign, distribute, display, disclose, commercially exploit or otherwise make the iTrackPPE Platform available to any third party except those comprising the Authorised Users.
- 4.5 The Customer shall:
 - 4.5.1 to the extent within its control, use all reasonable endeavours to prevent any unauthorised access to, or use of, the iTrackPPE Platform; and
 - 4.5.2 in the event that the Customer discovers or is made aware of any such unauthorised access or use, immediately give notice to iTrackPPE of such access or use.
- 4.6 The Customer shall maintain a written, up to date list of current Authorised Users and provide such list to iTrackPPE as soon as reasonably practicable, but no later than within five (5) Business Days of iTrackPPE's written request.

5 ITRACKPPE'S OBLIGATIONS

- 5.1 iTrackPPE shall:
 - 5.1.1 make the Subscription Services available with reasonable skill and care; and
 - 5.1.2 ensure that the iTrackPPE Platform performs in all material respects in accordance with the Agreement; and
 - 5.1.3 the service levels applicable to the iTrackPPE Platform will be as described in the Service Level Agreement.
- 5.2 iTrackPPE shall have no liability under the Agreement to the extent any such liability is caused by one (or more) of the following:
 - 5.2.1 use of the iTrackPPE Platform contrary to the relevant Documentation and iTrackPPE instructions; or
 - 5.2.2 modification and alteration of the iTrackPPE Platform by any party other than iTrackPPE and its authorised Representatives; or
 - 5.2.3 removal, replacement or amendment to any associated iTrackPPE Hardware, other than iTrackPPE and its authorised Representatives;
 - 5.2.4 if the Customer removes or changes one third party integrated solution with another.
- 5.3 iTrackPPE does not warrant, represent or undertake that:
 - 5.3.1 the Customer's use of the iTrackPPE Platform will be uninterrupted or error-free; or

- 5.3.2 the information obtained by the Customer through the iTrackPPE Platform, or the Subscription Services will meet the Customer's requirements.

6 CUSTOMER'S OBLIGATIONS

- 6.1 The Customer shall:
 - 6.1.1 ensure that only Authorised Users use the Subscription Services and that such use is in accordance with the Agreement and iTrackPPE instructions;
 - 6.1.2 ensure all Authorised Users comply with any Applicable Law relating to the use or receipt of the Subscription Services;
 - 6.1.3 use the latest end-point security and versions of anti-virus definitions and software available from an industry accepted anti-virus software provider in respect of its computer systems, technology and network infrastructure;
 - 6.1.4 ensure that its network and systems comply with the relevant specifications necessary to access the iTrackPPE Platform provided by iTrackPPE from time to time; and
 - 6.1.5 unless otherwise agreed in writing, be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to iTrackPPE data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
 - 6.1.6 notify iTrackPPE if the Customer intends to remove or change one third party integrated solution with another. Any such removal or change shall be subject to the Change Request and any additional fees applicable at the time of the Change Request.
- 6.2 The Customer is responsible for all acts and omissions of its Authorised Users as if such acts or omissions were its own.

7 CHARGES

- 7.1 The Customer shall pay the User Subscription Charges (including any additional support fees (as the case may be)), in accordance with the Agreement.
- 7.2 The User Subscription Charges are non-cancellable and non-refundable.
- 7.3 If iTrackPPE does not received payment by the due date, without prejudice to any other rights and remedies available to iTrackPPE, iTrackPPE may without liability to the Customer, disable the Customer's password, account and access to all or part of the Subscription Services and iTrackPPE shall be under no obligation to provide the Subscription Services while the invoice(s) concerned remain unpaid.

SCHEDULE 2**Service Level Agreement (SLA)****1. Availability of the Software Service**

iTrackPPE guarantees that the Software Service is available to the customer (**Availability**) as set out below in Schedule 1, except in the event of Permitted Downtime.

Schedule 1	
Agreed Hours of Service	24 hours x 365 days (366 days in leap years)
Availability	99%
Standard Maintenance Windows	As agreed with customer

The term “**Permitted Downtime**” means any period within the Agreed Hours of Service during which the Software Service is unavailable due to any one of the following reasons:

- A. maintenance carried out at times agreed between iTrackPPE and customer;
- B. any action justifiably taken by iTrackPPE to prevent damage to the Platform or iTrackPPE’s systems;
- C. Force Majeure;
- D. a fault or failure of customer’s computer systems or networks; or
- E. any breach of the Contract by customer.

For the sake of clarity, customer acknowledges that the Availability of the Software Service guaranteed by iTrackPPE under this SLA does not apply to testing or development instances.

2. Support Services

Schedule 2	
Access to Support Portal	24/7
Access to telephone support	09:00 – 17:00 (UK) Mon – Fri (excluding bank holidays).
Response Time (first response)	Within 8h from receipt
End of Life of a version of the software	occurs 18 months after commercial release of the immediately subsequent version and is the point in time when iTrackPPE ceases to provide Support Services for the version in question.

iTrackPPE shall provide customer with access to the Support Portal from the Go Live Date and shall respond to technical failures of the Software Service (“**Support Issues**”) reported by customers on the Support Portal within the Response Time set out in Schedule 2. customer and iTrackPPE shall determine the severity level of a Support Issue together in good faith based on the following definitions:

- | | |
|-----------------|--|
| Minor | indicates a minor issue occurring on the deployed systems with a minor impact on customer’s use of the Software Service or any issue occurring on testing or development instances. A small number of users of the production system are affected and there is a workaround. |
| Major | indicates an issue occurring on the deployed system severely impacting customer’s use of the Software Service. A large number of users are affected, but customer’s operations can continue in restricted fashion and there is a reasonable short-term workaround. |
| Critical | indicates an issue occurring on the customers deployed system severely impacting customer’s use of the Software Service. A large number of users are affected and there is no procedural workaround. |

iTrackPPE shall exercise commercially reasonable efforts to correct Support Issues as soon as possible and shall prioritise Critical Support Issues over Major Support Issues, and Major Support Issues over Minor Support Issues. iTrackPPE may elect to resolve Support Issues in connection with future Upgrades and will, if possible, provide customer with a work-around until implementation of the relevant Upgrade.

Whereas the Support Portal is the primary means of communication for Support Issues, customer also has access to telephone support as set out in Schedule B.

iTrackPPE does not have an obligation to respond to specific support Issues:

- A. not submitted in the English language; or
- B. not described in sufficient detail to allow iTrackPPE to reasonably be able to determine the appropriate course of action.

The following are not Support Issues:

- A. Failures that arise from misuse or incorrect use of the Software Service, including use contrary to the integrated Hardware and Software Specifications;
- B. Failures that arise from the Platform not having been updated with a new version of the Software, where customer has rejected the Upgrade and the version of the Software used to provide customer’s Software Service has reached its End of Life;
- C. Problems, the root cause of which is not a malfunction of the Platform, but a missing functionality of the Software.

Customers can submit a development request regarding the Software Service to iTrackPPE via the Support Portal. iTrackPPE will, at its own discretion, determine whether or not to accommodate a development request in a future Upgrade.

2.1 Upgrades

During the term of the Contract, iTrackPPE will update customer's Software Service upon commercial release of a new version of the Software ("Upgrade"). Upgrades include updates of GUI configurations and standard commercially available adaptations of the Software Service. Upgrades of customer-specific adaptations are not covered by this SLA and will be charged for at the rates set out in iTrackPPE's current price list at the time.

Before initiating the implementation of an Upgrade, iTrackPPE will give customer the possibility to postpone the Upgrade (via the Support Portal), however not until a later date than one that, at iTrackPPE's sole discretion, allows iTrackPPE to complete the Upgrade before the End of Life of the previous version of the Software. Upon implementation by iTrackPPE, an Upgrade will become part of the Software used to provide the Software Service and will be subject to the provisions of the Contract.

2.2 Maintenance Windows

iTrackPPE may carry out maintenance work during Standard Maintenance Windows, provided that iTrackPPE has informed customer of its intention to do so at least 48 hours in advance. iTrackPPE may also carry out maintenance work at other times, subject to customer's prior approval.

3. Consultancy Services

The following services are not covered by this SLA, and may be acquired separately by customer from iTrackPPE (as a part of Extended Support Services or otherwise):

- Software development services.
- Upgrades of customer-specific adaptations

