

This sales contract (the "**Agreement**") consists inclusively of Sections **A** to **F** below.

SECTION A: Terms and conditions

It is agreed

1. Interpretation

These definitions and rules of interpretation apply in this Agreement.

1.1 Definitions:

Add-Ons	any additional features requested by the Customer, which complement Mandata TMS being tracking, integration and warehousing services (see: https://www.mandata.co.uk/our-solutions/our-integrated-tool-kit/ for an up-to-date list of additional features), but excluding Mobile Applications.
Authorised Users	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use Mandata TMS and the Documentation.
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Commencement Date	the date this Agreement is signed by the Customer, as agreed in the Sales Order Form.
Confidential Information	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information subject to the provisions of clause 13.
Control	has the meaning given in section 1124 of the Corporation Tax Act 2010.
Customer	the customer whose details are outlined in the Sales Order Form.
Customer Data	the data inputted by the Customer for the purpose of using Mandata TMS or facilitating the Customer's use of Mandata TMS.

Data Protection Legislation	the Data Protection Act 2018 and any other applicable legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
Documentation	any information made available to the Customer by Mandata from time to time (online or otherwise) which is produced by Mandata to provide general help and assistance to its Customers.
Effective Date	being the date that the Customer shall start to pay for Mandata TMS, as outlined in the Sales Order Form.
Hosting Fee	the fee for Hosting Services.
Hosting Services	the hosting by Mandata of Third Party Software on behalf of a Customer in return for or in consideration of the Hosting Fee (see Section D).
Initial Term	the initial subscription term of this Agreement, as outlined in the Sales Order Form and in clause 3.2.
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Mandata	Mandata (Management and Data Services) Limited (company number: 03385051).
Mandata TMS	the latest version of Mandata's integrated transport management system, available as 'TMS' or 'Go' (dependent on Customer requirements and as set out in the Sales Order Form) (and related features, including but not limited to, Mobile Applications available for the Customer to download, Add-Ons and/or Modified Software).
Minimum Subscription Requirement	means the minimum number of User Subscriptions, Add-Ons or Mobile Applications permitted under the Agreement or as amended from time to time under clauses 6 and/or 7.
Mobile Applications	an application (offered by Mandata) available for a Customer (or any of its employees, contractors or staff) to download from an app-store for use with Mandata TMS (see Section E) (see: https://www.mandata.co.uk/our-solutions/our-integrated-tool-kit/ for an up to date list of mobile applications).
Payment Frequency	the billing frequency agreed between Mandata and the Customer for payment of the Total Subscription Fee.
Professional Services	those services as covered by the provisions of Section C.
Project Plan	the plan agreed between Mandata and the Customer which outlines the initial implementation process for Mandata TMS.
Renewal Term	a period of 12 (twelve) calendar months immediately following the Initial Term, or if this Agreement has already automatically renewed, immediately following any such Renewal Term, unless otherwise agreed in writing.

Restricted Person	any firm, company or person employed or engaged by Mandata during the term of this agreement, who has been engaged in the provision of the Software Support services or the management of this Agreement either as principal, agent, employee, independent contractor or in any other form of employment or engagement and who could materially damage the interests of Mandata if they were involved in any capacity in any business concern which competes with the business of Mandata.
Sales Order Form	the order form generated by Mandata which outlines the services being provided to the Customer.
Software Support	those services covered by the provisions of Section B .
Subscription Term	the Initial Term, together with any Renewal Term(s).
Third Party Software	any software that is used by the Customer but that is not owned by Mandata.
Total Subscription Fee	the total of the fees outlined in the Sales Order Form for all or any of: Mandata TMS, Software Support, Hosting Services, Mobile Applications, Add-Ons and Professional Services. For the avoidance of doubt, this includes any additional User Subscriptions requested by the Customer from time to time.
User Subscriptions	the user subscriptions purchased by the Customer which entitle Authorised Users to access and use Mandata TMS and the Documentation in accordance with this Agreement.
VAT	value added tax chargeable under English law for the time being and any similar additional tax.
Virus	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software,

hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability

a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability.

- 1.2 Clause and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.5 A reference to **writing** or **written** includes email but not fax.
- 1.6 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Application of these terms and conditions

- 2.1 The Customer shall be bound by the terms and conditions in this Section **A**, and any additional terms and conditions in Sections **B** to **F** inclusive, as and when those services become applicable to the Customer.
- 2.2 If there are any conflicts of interest between the Sales Order Form, and any of the Sections of this Agreement, the order of precedence shall be:
 - 2.2.1 Sales Order Form;
 - 2.2.2 the Section applicable to the services in question; and

2.2.3 Section A.

2.3 This Agreement shall prevail over any terms and conditions referred to by the Customer, or contained in a purchase order, confirmation of order, specification or implied by law, trade, custom, practice or course of dealing.

3. **Commencement and duration**

3.1 This Agreement shall commence on the Commencement Date and shall continue for the Initial Term.

3.2 For the avoidance of doubt, the Initial Term includes:

3.2.1 the implementation period prior to the Effective Date; and

3.2.2 the period for which the Customer is liable to pay the Total Subscription Fees in accordance with the Payment Frequency, starting from the Effective Date.

3.3 On expiry of the Initial Term, this Agreement shall automatically renew for the Renewal Term, and at the end of each successive Renewal Term shall renew for a further Renewal Term, unless terminated in accordance with clause 15, or unless either party gives to the other party written notice to terminate. Such notice shall be served on a date no later than 60 (sixty) days prior to the expiry of the Initial Term or any relevant Renewal Term.

3.4 **THE CUSTOMER'S ATTENTION IS DRAWN TO CLAUSE 15.2.**

4. **Implementation**

4.1 Prior to the Effective Date, and after payment of the deposit in line with clause 10, a representative from Mandata shall contact the Customer's nominated representative, to arrange an initial meeting.

4.2 After the initial meeting between both representatives, both parties will agree to a Project Plan.

4.3 If there is a delay, which is, in the sole opinion of Mandata, acting reasonably, due to the Customer not acting in accordance with Mandata's reasonable instructions or other delay, and the Customer is not able to utilise Mandata TMS from the Effective Date, Mandata shall, notwithstanding such delay, be entitled to take payment from the Customer in accordance with clause 10.

4.4 If the delay is the fault of Mandata, the Effective Date shall be amended accordingly and payment for Mandata TMS shall commence on the amended Effective Date, in accordance with clause 10.

5. **User Subscriptions**

- 5.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 6.2, the restrictions set out in this clause 5 and the other terms and conditions of this Agreement, Mandata hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, for Authorised Users to use Mandata TMS and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 5.2 In relation to the Authorised Users, the Customer undertakes that:
- 5.2.1 the maximum number of Authorised Users that it authorises to access and use Mandata TMS and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
 - 5.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use Mandata TMS and/or Documentation;
 - 5.2.3 each Authorised User shall keep a secure password for his use of Mandata TMS and Documentation, that such password shall be changed frequently and that each Authorised User shall keep his password confidential;
 - 5.2.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to Mandata within 5 (five) Business Days of Mandata's written request;
 - 5.2.5 it shall permit Mandata or Mandata's designated auditor to audit Mandata TMS to audit compliance with this Agreement. Each such audit may be conducted no more than once per quarter, at Mandata's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
 - 5.2.6 if any of the audits referred to in clause 5.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Mandata's other rights, the Customer shall promptly disable such passwords and Mandata shall not issue any new passwords to any such individual; and
 - 5.2.7 if any of the audits referred to in clause 5.2.5 reveal that the Customer has underpaid fees to Mandata, then without prejudice to Mandata's other rights, the Customer shall

pay to Mandata an amount equal to such underpayment as calculated in accordance with the prices notified to it within 10 (ten) Business Days of the date of the relevant audit.

6. Additional User Subscriptions

6.1 Subject to clause 6.2, the Customer may, from time to time during the Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Sales Order Form and Mandata shall grant access to Mandata TMS and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.

6.2 If the Customer wishes to increase the number of User Subscriptions, it should contact the Mandata representative referred to in clause 4.1 (or the person notified to it from time to time). Payment for additional User Subscriptions shall be taken in accordance with clause 10.5.

6.3 A Customer may increase the number of User Subscriptions in accordance with this clause 6. Where the Customer does so, the Minimum Subscription Requirement shall be amended accordingly.

7. Add-Ons

7.1 A Customer may, at any time during the Subscription Term, request one or more Add-Ons to be added to its Mandata TMS. Where a Customer does so, the Minimum Subscription Requirement shall be amended accordingly.

7.2 Payment shall be taken for such Add-On's in accordance with clause 10.5.

8. Mandata's obligations

8.1 Mandata shall, during the Subscription Term, make available Mandata TMS and Documentation to the Customer on and subject to the terms of this Agreement.

8.2 Mandata shall use commercially reasonable endeavours to make Mandata TMS available 24 hours a day, seven days a week, except for planned maintenance (which, where possible will be completed outside of Mandata's core business hours and as much notice as possible will be provided). With regards to unplanned, or emergency maintenance, Mandata will endeavour (but is not obliged) to notify Customers in advance of such works, however the Customer acknowledges and agrees that this may not be possible in all instances.

8.3 Mandata:

8.3.1 does not warrant that:

- 8.3.1.1 the Customer's use of Mandata TMS will be uninterrupted or error-free; or
 - 8.3.1.2 that Mandata TMS, Documentation and/or the information obtained by the Customer through the services provided by Mandata will meet the Customer's requirements; or
 - 8.3.1.3 Mandata TMS will be free from Vulnerabilities;
- 8.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that Mandata TMS and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.4 This Agreement shall not prevent Mandata from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 8.5 Mandata warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 8.6 Mandata shall not be responsible for any act, omission, event or circumstance, and shall not be obliged to meet any of its response times in Section **B**, or perform any other obligation in this Agreement, to the extent that the act, omission, event or circumstance results from:
 - 8.6.1 any breach or failure by the Customer to perform its obligations under this Agreement;
 - 8.6.2 failure of any of the Customer's network services;
 - 8.6.3 any event under clause 16; or
 - 8.6.4 planned or emergency maintenance.
- 9. **Customer's obligations**
- 9.1 The Customer shall:
 - 9.1.1 provide Mandata with:
 - 9.1.1.1 all necessary co-operation in relation to this Agreement; and
 - 9.1.1.2 all necessary access to such information as may be required by Mandata; in order to provide Mandata TMS, including but not limited to Customer Data, security access information, access to the Customer's IT system (including but not limited to its server(s)) and configuration services;

- 9.1.2 without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
 - 9.1.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Mandata may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - 9.1.4 ensure that the Authorised Users use Mandata TMS and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
 - 9.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Mandata, its contractors and agents to perform their obligations under this Agreement, including without limitation the provision of Mandata TMS and all or any Hosting Services and/or Professional Services and integration to Third Party Software;
 - 9.1.6 ensure that its network and systems comply with the relevant specifications provided by Mandata from time to time; and
 - 9.1.7 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Mandata's 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.
- 9.2 Mandata reserves the right to discuss usage/volume of data storage with the Customer, through their use of Mandata TMS at any time.
- 9.3 The Customer shall not access, store, distribute or transmit any Viruses or Vulnerability, or any material during the course of its use of Mandata TMS that:
- 9.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 9.3.2 facilitates illegal activity;
 - 9.3.3 depicts sexually explicit images;
 - 9.3.4 promotes unlawful violence;

9.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

9.3.6 is otherwise illegal or causes damage or injury to any person or property;

and Mandata reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

9.4 The Customer shall not:

9.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

9.4.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of Mandata TMS and/or Documentation (as applicable) in any form or media or by any means; or

9.4.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of Mandata TMS; or

9.4.2 access all or any part of Mandata TMS or the Documentation in order to build a product or service which competes with Mandata's; or

9.4.3 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make Mandata TMS and/or Documentation available to any third party except the Authorised Users, unless otherwise agreed by Mandata in writing; or

9.4.4 attempt to obtain, or assist third parties in obtaining, access to Mandata TMS and/or Documentation without Mandata's written consent; or

9.4.5 introduce or permit the introduction of, any Virus or Vulnerability into Mandata's network and information systems; or

9.4.6 solicit or entice away, or attempt to solicit or entice away, from the employment or service of Mandata the services of any Restricted Person of Mandata other than by means of a national advertising campaign open to all-comers and not specifically

targeted at such staff of Mandata. This clause 9.4.6 shall apply for the term of this Agreement, and for a period of 12 months after termination or expiry of this Agreement.

9.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, Mandata TMS and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Mandata.

9.6 The rights provided under this clause 9 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

10. **Charges and payment**

10.1 The Customer shall pay the Total Subscription Fees to Mandata in accordance with this clause 10. (Please see Section C for the payment provisions that apply to Professional Services, in addition to this clause 10).

10.2 The Customer shall on the Commencement Date provide to Mandata valid, up-to-date and complete payment details (along with a completed direct debit mandate, if required) or alternatively its credit card details, and any other relevant valid, up-to-date and complete contact and billing details.

10.3 If the Customer provides its debit card details (and completed direct debit mandate, if required) or alternatively its credit card details, to Mandata, the Customer hereby authorises Mandata to bill such card in accordance with the Payment Frequency from the Effective Date until this Agreement is terminated.

10.4 If at any time the Customer cancels its payments by direct debit or credit card, Mandata reserves the right to revert to issuing invoices and will add a 15% (fifteen percent) administration charge to the Total Subscription Fees, and apply this to the Customer's next invoice, and each month thereafter until the direct debit or regular credit card payment is reinstated.

10.5 Should the Customer purchase any additional User Subscriptions, Mobile Applications, Add-Ons, Hosting Services, and/or Professional Services the Total Subscription Fee shall be increased accordingly from the next calendar month, and in line with the relevant charging procedure set out in this Agreement.

10.6 With effect from the start of each Renewal Term, the Total Subscription Fees shall be subject to an adjustment by Mandata in line with the average percentage change in the CPI (Consumer Price Index) by reference to the data provided by the Office for National Statistics in the relevant

Reference Period as a minimum. In this clause Reference Period means the Renewal Term ending immediately prior to the relevant adjustment under this clause taking effect or the last 12 calendar months of the Initial Term or (if shorter) the Initial Term itself, in the case of an adjustment under this clause taking effect at the start of the first Renewal Term.

10.7 Where Mandata requires a deposit to be paid prior to work commencing, such deposit will be outlined in the Sales Order Form and shall be paid within 5 (five) Business Days of invoice. Mandata shall be under no obligation to commence any work, or allow any use of Mandata TMS, Software Support, Hosting Services, Mobile Applications, Add-Ons and/or Professional Services until the deposit has been received by Mandata in full and cleared funds.

10.8 Where the Customer does not pay by direct debit or credit card, the Customer shall pay all invoices, other than any invoice relating to a deposit, in full and cleared funds within 30 (thirty) days of receipt of such invoice.

10.9 If Mandata has not received payment within 30 (thirty) days after the due date, and without prejudice to any other rights and remedies of Mandata:

10.9.1 Mandata may, without liability to the Customer, disable the Customer's password, account and access to all or part of Mandata TMS and Mandata shall be under no obligation to provide Mandata TMS while the invoice(s) concerned remain unpaid (for the avoidance of doubt, this includes where a Customer incorrectly cancels a direct debit); and

10.9.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Barclays Bank Plc's from time to time, commencing on the due date of the invoice and continuing until full payment of such invoice (including payment of the accrued unpaid interest), whether before or after judgment.

10.10 All amounts and fees stated or referred to in this Agreement:

10.10.1 shall be payable in pounds sterling;

10.10.2 are, subject to clause 14.4.2, non-cancellable and non-refundable;

10.10.3 are exclusive of value added tax, which shall be added to Mandata's invoice(s) at the appropriate rate.

10.11 Time for payment shall be of the essence of the Agreement.

10.12 All payments payable to Mandata under the Agreement shall become due immediately on termination of the Agreement, despite any other provision. This clause is without prejudice to any right to claim for interest under the law, or any such right under the Agreement.

10.13 All amounts due under this Agreement shall be paid by the Customer to Mandata in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Mandata may, without prejudice to any other rights it may have, set off any liability of the Customer to Mandata against any liability of Mandata to the Customer.

11. **Proprietary Rights**

11.1 The Customer acknowledges and agrees that Mandata and/or its licensors own all intellectual property rights in Mandata TMS and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of Mandata TMS or the Documentation.

11.2 Mandata confirms that it has all the rights in relation to Mandata TMS and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

12. **Data Protection**

12.1 Mandata shall, in providing Mandata TMS and the Professional Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data available at <https://www.mandata.co.uk/privacy-policy/> or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Mandata in its sole discretion.

12.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

12.3 The parties acknowledge that:

12.3.1 if Mandata processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the controller and Mandata is the processor for the purposes of the Data Protection Legislation.

- 12.3.2 the data processing table at clause 12.9 sets out the scope, nature and purpose of processing by Mandata, the duration of the processing and the types of personal data and categories of data subject.
- 12.3.3 the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out Mandata's obligations under this Agreement.
- 12.4 Without prejudice to the generality of clause 12.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Mandata for the duration and purposes of this Agreement so that Mandata may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf.
- 12.5 Without prejudice to the generality of clause 12.2, Mandata shall, in relation to any personal data processed in connection with the performance by Mandata of its obligations under this Agreement:
- 12.5.1 process that personal data only on the documented written instructions of the Customer unless Mandata is required by law to process such personal data (**Applicable Laws**). Where Mandata is relying on Applicable Laws as the basis for processing personal data, Mandata shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Mandata from so notifying the Customer;
- 12.5.2 not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
- 12.5.2.1 the Customer or Mandata has provided appropriate safeguards in relation to the transfer;
- 12.5.2.2 the data subject has enforceable rights and effective legal remedies;
- 12.5.2.3 Mandata complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- 12.5.2.4 Mandata complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

- 12.5.3 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 12.5.4 notify the Customer without undue delay on becoming aware of a personal data breach;
- 12.5.5 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use); and
- 12.5.6 maintain complete and accurate records and information to demonstrate its compliance with this clause 12 and immediately inform the Customer if, in the opinion of Mandata, an instruction infringes the Data Protection Legislation.
- 12.6 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 12.7 The Customer authorises the appointment of the third-party processors of personal data listed at <https://www.mandata.co.uk/privacy-policy/> under this Agreement. Mandata confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business and in either case which Mandata confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Mandata, Mandata shall remain fully

liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 12.7.

12.8 Either party may, at any time on not less than 30 (thirty) days' notice, revise this clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

12.9 Data processing table:

Data Processing	
Scope:	To provide Mandata TMS and to allow you to use it.
Nature:	Creation, storing, hosting, retrieval, amendment, updating archiving collating, analysing and deletion.
Purpose:	To provide Mandata TMS and the Professional Services under this Agreement.
Duration:	Mandata will process personal data during the provision of services to the Customer. This will continue for the duration of this Agreement.
Types of personal data:	Names, addresses, email addresses, ages, telephone numbers, driving licence details and infringements, driving metrics, driving hours, location data; and any other personal data held by the Customer in the systems covered by the Mandata TMS and the Professional Services.
Categories of data subjects:	Customer's employees Customer's customers and/or individual contacts at Customer's customers Customer's suppliers and/or individual contacts at Customer's suppliers Customer's other business partners and/or individual contacts at Customer's other business partners

13. Confidentiality

13.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

13.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

13.1.2 was in the other party's lawful possession before the disclosure;

13.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

13.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.

- 13.2 Subject to clause 13.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 13.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 13.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 13.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 13.5 The Customer acknowledges that details of the Professional Services, Mandata TMS and the results of any performance tests of Mandata TMS, constitute Mandata's Confidential Information.
- 13.6 Mandata acknowledges that the Customer Data is the Confidential Information of the Customer.
- 13.7 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 13.8 The above provisions of this clause 13 shall survive termination of this Agreement, however arising.
14. **Limitation of liability**
- 14.1 Subject to clause 14.3, the following provisions set out the entire financial liability of Mandata (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:
- 14.1.1 any breach of the Agreement however arising;

- 14.1.2 any use made by the Customer of Mandata TMS, the Hosting Services, Software Support, Mobile Applications, Add-Ons, the Professional Services, or any part of them (including but not limited to the Modified Software); and
- 14.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 14.2 All warranties, conditions and other terms implied by statute or common law are, to the greatest extent permitted by law, excluded from the Agreement.
- 14.3 Nothing in this Agreement excludes the liability of Mandata:
 - 14.3.1 for death or personal injury caused by Mandata's negligence; or
 - 14.3.2 for fraud or fraudulent misrepresentation.
- 14.4 Subject to clause 14.2 and clause 14.3:
 - 14.4.1 Mandata shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty however arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - 14.4.1.1 any losses, damages, claims, costs, expenses, claims, (whether directly or indirectly arising) as a result of the use of Third Party Software in combination with Mandata TMS; or
 - 14.4.1.2 any claims, losses or legal proceedings brought within the United States of America or Canada; or
 - 14.4.1.3 loss of profits (direct or indirect); or
 - 14.4.1.4 loss of revenue, loss of production or loss of business (in each case whether direct or indirect); or
 - 14.4.1.5 loss of goodwill, reputation, opportunity or similar losses (in each case whether direct or indirect); or
 - 14.4.1.6 loss of anticipated savings or loss of margin (in each case whether direct or indirect); or
 - 14.4.1.7 loss of goods (direct or indirect); or
 - 14.4.1.8 loss of contract (direct or indirect); or
 - 14.4.1.9 loss of use (direct or indirect); or

- 14.4.1.10 loss or corruption of data, loss or use or value of any data or software (except to the extent that such loss or use or value of data or software is caused by the wilful default or negligence of Mandata) or loss of information;
 - 14.4.1.11 loss or damage arising out of any failure by the Customer to keep full and up to date security copies of any computer programs and data held or used by or on behalf of the Customer; or
 - 14.4.1.12 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 14.4.2 Mandata's total liability in contract, tort (including negligence or breach of statutory duty however arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall in respect of any cause of action related to:
- 14.4.2.1 Mandata TMS and/or Software Support (excluding Modified Software) be limited to the Total Subscription Fees paid in the 12 (twelve) calendar months immediately preceding the claim; or
 - 14.4.2.2 the Professional Services be limited to the fees paid for those services which are in dispute only; or
 - 14.4.2.3 the Hosting Services be limited in respect of all acts, omissions, events or circumstances which occur in any 12 (twelve) calendar month period to an amount equal to 125% of the Hosting Fees which (i) have been paid (ii) remain to be paid in respect of the remainder of the 12 (twelve) calendar month period from either the Commencement Date or the beginning of any Renewal Term.

15. Termination

- 15.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement with immediate effect by written notice to the other party and without liability to the other if:

- 15.1.1 the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 15 Business Days after being notified in writing to do so;
- 15.1.2 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- 15.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 15.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 15.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 15.1.6 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party;
- 15.1.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 15.1.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 15.1.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 (fourteen) days;

- 15.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1.3 to clause 15.1.9 (inclusive);
- 15.2 For the avoidance of doubt and notwithstanding clause 15.7.5, if this Agreement is terminated by Mandata pursuant to clause 15.1, all of Mandata's fees become due and payable and in particular but without limitation the Customer shall, on any such termination, pay to Mandata all remaining fees not yet paid or invoiced for the remainder of the applicable Initial Term or Renewal Term. For example, if the Customer seeks to terminate in breach of this Agreement, the fees for the remainder of either the Initial Term, or Renewal Term (as appropriate) will become due and payable, along with any other outstanding invoices. For the avoidance of doubt, no such fees shall be payable where the Customer terminates the Agreement pursuant to clause 15.1.
- 15.3 Without prejudice to any other rights or remedies to which Mandata may be entitled, Mandata may terminate or suspend the Agreement with immediate effect by written notice to the Customer and without liability to the Customer if:
- 15.3.1 the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 Business Days after being notified in writing to make such payment; or
- 15.3.2 the Customer, when reasonably requested by Mandata, fails or refuses to provide access to their IT system and/or server(s); or
- 15.3.3 there is a change of Control of the Customer where the party acquiring Control is a competitor of Mandata.
- 15.4 Mandata reserves the right to terminate any aspect of the services currently offered by Mandata (or by Mandata on behalf of a third party) if it is unable to support any aspect of the services for any reason, including but not limited to, a change in third party supplier.
- 15.5 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

- 15.6 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.
- 15.7 On termination of this Agreement for any reason:
- 15.7.1 access to Mandata TMS, Modified Software, Mobile Applications and any Add-Ons will cease and licences for those services shall be terminated;
 - 15.7.2 Mandata shall be, where required in Mandata's sole discretion, provided access to the Customer's server(s) in order to enforce the terms of this Agreement, including but not limited to clauses 15.3, 15.4 and 15.7.1;
 - 15.7.3 the Hosting Services shall be terminated;
 - 15.7.4 Mandata shall, by request of the Customer, return any Customer Data. If no such request is made, the Customer Data will be deleted in line with Mandata's retention periods, which can be requested by the Customer from time to time, but shall be no shorter than 30 days.
 - 15.7.5 all Professional Services agreed to be supplied but yet to be supplied will be suspended; and
 - 15.7.6 any outstanding invoices, issued or issuable before termination or payments yet to be taken by direct debit will become payable immediately (and please see clause 15.2 with regards to early termination) but, subject to clause 15.2, any invoices which fall due for issue after the date of termination shall be payable in accordance with clause 10.8.

16. **Force majeure**

- 16.1 Neither party shall in any circumstances have any liability to the other party under the Agreement if it is prevented from, or delayed in, performing its obligations under the Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation:
- 16.1.1 failure of a utility service or transport network;
 - 16.1.2 act of God, war, riot or civil commotion;
 - 16.1.3 malicious damage;

16.1.4 pandemics or epidemics (even if such epidemic or pandemic is known or anticipated at the date of this Agreement);

16.1.5 power failure, breakdown in equipment, failure of suppliers, telecommunications failures or internet downtime, or available bandwidth shortage, any distributed denial of service attack or threatened distributed denial of service attack;

16.1.6 compliance with any law or governmental order, rule, regulation or direction; and

16.1.7 accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

17. **Waiver**

No failure or delay by a party to exercise any right or remedy provided under this 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.

18. **Variation**

Mandata may vary this Agreement from time to time on giving the Customer at least 14 days' notice in writing.

19. **Rights and remedies**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20. **Severance**

20.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

20.2 If any provision or part-provision of this Agreement is deemed deleted under clause 20.1, the parties shall negotiate in good faith to amend such provision so that, to the greatest extent possible, the amended provision achieves the intended commercial result of the original provision.

21. **Entire agreement**

- 21.1 This 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.
- 21.2 Each party acknowledges that, in entering into this Agreement, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

22. Assignment

- 22.1 The Customer shall not, without the prior written consent of Mandata (such consent not to be unreasonably withheld), assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 22.2 Mandata on written notice to the Customer, may at any time assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Agreement.

23. No partnership or agency

Nothing in the Agreement is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24. Third party rights

This Agreement does not give rise to any rights under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

25. Notices

- 25.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:
- 25.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or

- 25.1.2 sent by email to the address specified in the Sales Order Form (for the Customer) and to: cancellations@mandata.co.uk for Mandata.
- 25.2 Any notice or communication shall be deemed to have been received:
- 25.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 25.2.2 if sent by pre-paid first-class post or other next working day delivery service at the time recorded by the delivery service; and
- 25.2.3 if sent by email, at 9.00 am on the next Business Day after transmission.
- 25.3 This clause 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.
- 25.4 For the avoidance of doubt, Mandata reserves the right to vary this Agreement, pursuant to clause 18, by posting written notice on Mandata's website at <https://www.mandata.co.uk/msa-terms-and-conditions/>.

26. Governing law

The Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.

27. Jurisdiction

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

SECTION B: SOFTWARE SUPPORT, DEFECTS, SYSTEM UPTIME AND SERVICE CREDITS

This service level statement shall apply to support for Mandata TMS, in addition to the terms and conditions set out in Section A.

Definitions

These additional definitions apply in this Section B (alongside the definitions in Section A).

Defect	failure of Mandata TMS to operate in all material respects in accordance with the Documentation, including any operational failure or error referred to in this Section B and including Vulnerabilities.
TMS Hardware	as defined in Section F.
Normal Working Hours	8.00am to 6.00pm (GMT), Monday to Friday (excluding public holidays).
Out-of-scope Services	either of the following services that are not included within the Software Support, being: <ul style="list-style-type: none"> (a) the 'Out-of-Scope Services' column in paragraph 1 of this Section B; (b) something that is not described in the 'Description of Support' column in paragraph 1 of this Section B; or (c) Professional Services (as defined in Section C).

1. Descriptions of Software Support

Type of Support	Description of Support	Out-of-Scope Services
Add-On or Mobile Application Support	<ul style="list-style-type: none"> • Assistance for Add-Ons and Mobile Applications • Resolution of an issue relating to software, services or reports whereby the established functionality has stopped working or no longer operates in the originally intended manner. • Basic guidance relating to the operation and setup of established software, services and reports. 	<ul style="list-style-type: none"> • Modification of established software, services or reports to alter their behaviour or presentation. • Enhancement of an existing piece of software, service or report to introduce new functionality. • Development of new software, services or reports • Training (beyond the scope of basic operational advice or guidance).

	<ul style="list-style-type: none"> • Scheduled software updates to address security enhancements or issues caused by bugs. • Scheduled software updates to introduce feature enhancements as deemed appropriate by Mandata. • Help with installation of Mandata solutions on small scale hardware projects. 	<ul style="list-style-type: none"> • Generation of customised technical documentation beyond the scope of the in-built help system. • Support, management or configuration advice for hardware or mobile devices that run Mandata software but are not supplied and in contract by Mandata unless otherwise agreed. • Help with installation of Mandata solutions on large scale hardware projects.
Add-On or Mobile Application Hosting Support	<ul style="list-style-type: none"> • Assistance for Mandata Add-On or Mobile Application hosting. • Resolution of an issue relating to Mandata Add-On or Mobile Application connectivity or application performance. 	<ul style="list-style-type: none"> • Management of internet connectivity issues at Customer locations. • Mobile network connectivity or availability. • Management of issues related to Customer hardware and capability. • Management of issues due to Customer not utilising Mandata minimum technical specification hardware / software. • Development of new software, services or reports. • Training (beyond the scope of basic operational advice or guidance). • Generation of customised technical documentation beyond the scope of the in-built help system. • Support, management or configuration advice for hardware or mobile devices that run Mandata software but are not supplied and in contract by Mandata unless otherwise agreed.
TMS Hardware Support	<ul style="list-style-type: none"> • Support for TMS Hardware purchased directly from Mandata. • Diagnosis of TMS Hardware failures where it does not perform to the manufacturer's specification and a TMS 	<ul style="list-style-type: none"> • Support for TMS Hardware outside of its warranty period, or outside of the terms of such warranty. • A guarantee that TMS Hardware can be fully repaired. • The cost of replacement TMS Hardware or parts.

	<p>Hardware issue may be the root cause.</p> <ul style="list-style-type: none"> • Initial and ongoing TMS Hardware configuration to ensure that the Customer can use the TMS Hardware for its intended purpose. • Taking reasonable steps to return TMS Hardware to a functioning state and so it performs in accordance with the manufacturer specifications. • Assistance in sourcing replacement parts. • All labour time required to either fix identified TMS Hardware issues or determine the TMS Hardware is beyond repair. • Acting on behalf of the Customer to pursue TMS Hardware repairs or replacement under the manufacturer's warranty. • Support installing firmware updates where the manufacturer confirms that such updates are essential to address critical security flaws. 	<ul style="list-style-type: none"> • Any enhanced warranty features beyond what the hardware manufacturer offers. • Continuing Hardware guarantees beyond the manufacturer's warranty period. • Resolving the impact of bugs, errors, unexpected system behaviour, hacking, phishing, Viruses, malware, trojans and other similar malicious programs resulting from malfunctioning Third Party Software installed on the TMS Hardware or improper use by any party. • Issues resulting from a lack of training or knowledge of how to use software programs installed on the TMS Hardware. • TMS Hardware upgrades. • Physical or functional damage resulting from unauthorised changes made to the TMS Hardware, including attempts to upgrade or repair the TMS Hardware. • Reconfiguring TMS Hardware for use in a different way to that required at the point of initial configuration. • Support services of any kind for TMS Hardware not procured directly from Mandata.
Third Party Integration Support	<ul style="list-style-type: none"> • Ensure the integration service remains operational and performant. • Identification/diagnosis of root cause source of problems. • Updates required as a result of Mandata roadmap changes / enhancements. 	<ul style="list-style-type: none"> • Assistance required as a result of changes by the Customer or a third party system provider. • Modification of existing integration beyond the existing scope. • Enhancement of an existing piece of software, service or report to introduce new functionality.

		<ul style="list-style-type: none"> • Development of new software, services or reports. • Training (beyond the scope of basic operational advice or guidance). • Generation of customised technical documentation beyond the scope of the in-built Help system. • Fixing or otherwise assisting with any malfunctioning Third Party Software integrated with Mandata TMS.
General IT Support	Mandata do not provide general IT support.	<ul style="list-style-type: none"> • Administration of Customer networks and document storage, including arranging folder access, backups or issues with third party storage services including Microsoft OneDrive, Google Drive, Dropbox, Box, iCloud Drive and similar services. • Installation of Third Party Software on Customer Hardware. • Queries or issues resulting from conflicts between Third Party Software. • Issues relating to incorrect function of email and calendar software, including sending and receiving emails, appointments, calendars and calendar sharing. • Issues relating to incorrect functioning of operating system software, such as Windows, OSX, Ubuntu, Linux and any similar operating systems. • Issues relating to incorrect functioning of productivity software including Word, Excel, PowerPoint, Access and other similar applications. • Issues relating to incorrect functioning of internet browsers including Internet Explorer, Edge, Chrome,

		<p>Firefox, Opera, Safari and similar internet browsers.</p> <ul style="list-style-type: none"> Resolving internet connectivity issues.
Third Party Application Support	<ul style="list-style-type: none"> Support for Third Party Software purchased directly from Mandata. A back-to-backed support contract (where available) with the relevant Third Party Software provider. Diagnosis and first line fixes performed by Mandata where possible. Liaison with and coordination of Third Party Software provider on Customer's behalf when issue requires escalation via the third party support contract. 	<ul style="list-style-type: none"> Support for Third Party Software not purchased from Mandata. Support that is not covered by the third party underlying support contract. Support where the underlying third party support contract has expired. Support where Mandata has acted as a reseller and is not charging for associated support.
IT Engineering / Configuration	Mandata will provide IT engineering and configuration services as part of the installation or upgrade to Mandata TMS.	All other services are Out-of-Scope Services.

2. Support

2.1 Mandata shall ensure that Software Support (as described in the table above) is available by telephone and e-mail during Normal Working Hours. The Customer acknowledges that Mandata is not obliged to provide and support does not cover Out-of-scope Services.

3. Defects

3.1 Where the Customer identifies Defects in Mandata TMS, the Customer must notify Mandata by telephone and/or e-mail during Normal Working Hours.

3.2 Mandata shall use reasonable endeavours to correct (or provide a suitable workaround) for Defects notified to it by the Customer, in a timely manner appropriate to the seriousness of the circumstances in accordance with the following procedure:

3.2.1 the Customer shall promptly notify Mandata of all Defects, through the Mandata helpdesk or website (as applicable);

3.2.2 Mandata shall acknowledge receipt of the notification and shall determine, in consultation with the Customer, how serious the Defect affects the Customer's operations in accordance with the following severity ratings:

Defect Severity Rating	Description
"Defect Severity 1"	a notified Defect renders the Customer's operations which use Mandata TMS, wholly unusable
"Defect Severity 2"	a notified Defect halts or substantially impairs the Customer's operations which use Mandata TMS
"Defect Severity 3"	a notified Defect, while not halting or substantially impairing the Customer's operations, causes those operations to become significantly slowed or causes substantial inconvenience, or causes doubt or concern over data integrity and system stability
"Defect Severity 4"	a notified Defect has little or no operational impact, is low priority, or relates to a request for a cosmetic change.

3.3 Mandata will undertake the resolution of Defects in severity sequence. The target performance criteria for the initial response by Mandata to a Defect are defined as:

Defect Severity Rating	Response	Target Resolution
"Defect Severity 1"	1 hour	within 1 hour
"Defect Severity 2"	2 hours	1 Business Day
"Defect Severity 3"	4 hours	5 Business Days
"Defect Severity 4"	9 hours	10 Business Days

3.4 The parties may, on a case-by-case basis, agree in writing to a reasonable extension of the response times.

4. **System Uptime and Service Credits**

4.1 The Customer will receive service credits in the amounts provided below in the event Mandata fails to meet the below system availability in any particular calendar month (excluding planned maintenance, see clause 8.2 (Section A)). Service credits will be accumulated on a calendar month basis and any credit will be applied to the monthly bill immediately following the end of a calendar quarter.

Monthly System Availability (Hosting)	Service Credit
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97% to 98%	10% of monthly subscription fees
95% to 97%	20% of monthly subscription fees
93% to 95%	30% of monthly subscription fees

4.2 The provision of a service credit shall be an exclusive remedy for a particular system availability failure, save for where system availability drops below 93% in any three consecutive calendar months within any 12-month period during the Subscription Term where the Customer may terminate pursuant to clause 15.1.1 of Section A.

4.3 Service credits are not available for any other aspect of any services provided by Mandata (including the hosting of Third Party Software).

SECTION C: PROFESSIONAL SERVICES

Where a Customer instructs Mandata to perform any other professional services, these supplemental terms and conditions shall apply, in addition to those in Section A.

Definitions

These additional definitions apply in this Section C (alongside the definitions in Section A).

Good Industry Practice the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a company within the relevant industry or business sector.

Modified Software the standard software programs proprietary to Mandata (comprising Mandata TMS) that are modified or to be modified by Mandata under this Agreement.

Professional Services implementation, technical assistance, consultancy training, enhanced support, Modified Software, integration to Third Party Software or any other services requested by the Customer in writing, or as outlined in the Sales Order Form.

1. Mandata’s responsibilities

1.1 Mandata shall use reasonable endeavours to provide the Professional Services to the Customer, in line with Good Industry Practice.

1.2 Mandata shall use reasonable endeavours to meet any performance dates agreed with a Customer, but any such dates shall be estimates only and time for performance by Mandata shall not be of the essence of this Agreement.

2. **Customer's obligations**

2.1 The Customer shall:

2.1.1 co-operate with Mandata in all matters reasonably required relating to the Professional Services;

2.1.2 provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is reasonably requested by Mandata;

2.1.3 provide in a timely manner such information as Mandata may reasonably request in order for it to comply with its obligations under this Agreement and ensure that such information is accurate in all material respects; and

2.1.4 be responsible (at its own cost) for preparing the relevant premises for the supply of the Professional Services.

2.2 If the Customer wishes to make a change to any Professional Services it has requested, such change must be submitted to Mandata in writing. If such change is agreed then Mandata reserves the right to increase the fee for those Professional Services and the Sales Order Form shall be amended accordingly.

3. **Third Party Software Integration**

3.1 Where a Customer requires services from Mandata to assist with integration of Third Party Software to Mandata TMS, such fees shall be outlined in the Sales Order Form and shall be paid in accordance with clause 10.8 (Section A).

3.2 For the avoidance of doubt, Mandata shall not be liable to the Customer for the failure of any Third Party Software integrated to Mandata TMS, that is not directly related to the act or omission of Mandata, its employees, contractors or agents.

4. **Modified Software**

4.1 Where a Customer requires services from Mandata to modify Mandata TMS, Mandata requires the Customer to prepare a scope of work with the requested modifications prior to any work being completed. Provided it is able to do so, Mandata shall make the modifications in accordance with those requirements that are outlined in the Customer's scope of work.

- 4.2 Mandata agrees:
- 4.2.1 to carry out appropriate testing of the Modified Software;
 - 4.2.2 to use its reasonable endeavours to deliver the Modified Software to the Customer by the agreed completion date (but time shall not be of the essence for such delivery);
- 4.3 In performing the services, Mandata shall comply with the Customer's reasonable instructions to ensure minimal disruption to the Customer's business.
- 4.4 The Customer shall be deemed to have accepted the Modified Software once it has notified Mandata in writing that the Modified Software meets the scope outlined in the Sales Order Form. In the absence of such notification in writing, the Modified Software shall be deemed to be accepted by the Customer 30 (thirty) days after Mandata has completed the work and provided the Modified Software to the Customer.
- 4.5 The Intellectual Property Rights in Modified Software are, and shall remain, the property of Mandata, and Mandata reserves the right to grant a licence to use such Modified Software to any other party or parties.

5. **Charges and payment**

- 5.1 Where the Professional Services are provided on a time-and-materials basis:
- 5.1.1 the charges payable shall be calculated in accordance with Mandata's standard daily fee rates as set out in the Sales Order Form (and as may be amended from time to time);
 - 5.1.2 Mandata's standard daily fee rates are calculated on the basis of a seven-hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
 - 5.1.3 Mandata shall be entitled to charge at the overtime rate set out in the Sales Order Form of the normal rate for part days and for time worked by members of the project team outside the hours referred to in paragraph 5.1.2 on a pro-rata basis;
 - 5.1.4 Mandata shall ensure that all members of the project team complete time sheets recording time spent, and Mandata shall use such time sheets to calculate the charges covered by each monthly invoice referred to in paragraph 5.1.5; and
 - 5.1.5 Mandata shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month

concerned, calculated as provided in this paragraph 3. Any expenses, materials and third party services shall be invoiced by Mandata at cost. Each invoice shall set out the time spent by each member of the project team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

5.2 Where the Professional Services are provided for a fixed price, the total price shall be the amount set out in the Sales Order Form, or otherwise agreed in writing between the parties.

5.3 Any fixed price excludes:

5.3.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Professional Services and the cost of any materials or services reasonably and properly provided by third parties required by Mandata for the supply of any such services. Such expenses, materials and third party services shall be invoiced by Mandata at cost and approved by the Customer in writing;

5.3.2 changes to the agreed scope of works, which will be agreed with the Customer, charged separately and added to any such fixed cost; and

5.3.3 VAT, which Mandata shall add to its invoices at the appropriate rate.

5.4 Where the Professional Services being supplied for a fixed price are for a fixed number of days, the Customer may use those days as agreed with Mandata from time to time but in any event shall use the same within 12 (twelve) calendar months or the Initial Term whichever is shorter or the Renewal Term (as appropriate). Where all days acquired are not used in the first 12 (twelve) months or Initial Term or Renewal Term as set out above, then the Customer acknowledges and agrees that Mandata will not provide any refund in respect of unused days and shall have no liability to the Customer in respect of the same.

SECTION D: HOSTING

Where a Customer requests that Mandata provides facilities to host any system or Third Party Software, (other than Mandata TMS and any Modified Software), or its own proprietary software to be hosted, these supplemental terms and conditions shall apply, in addition to those in Section A.

1. Hosting Services

1.1 Mandata shall not be liable or have any responsibility whatsoever for the provision or maintenance of any licensing of Third Party Software (or breach of such licences) and the

Customer agrees to indemnify Mandata against any and all costs, claims, expenses, losses or similar, for any threat or claim, or anticipated threat or claim, that such services infringe any rights in the Third Party Software itself or its licence terms.

- 1.2 The Customer is under an obligation to inform Mandata of any lapse or termination of any Third Party Software licences with reasonable notice to enable Mandata to cease hosting where the Customer no longer requires the Hosting Services of all or any Third Party Software previously provided by Mandata.
- 1.3 Mandata reserves the right to decide to change hosting provider at any time, without consent from the Customer.

SECTION E: MOBILE APPLICATIONS

Where a Customer wishes to download any additional Mobile Applications to complement Mandata TMS, these supplemental terms and conditions shall apply, in addition to those in Section **A**.

Interpretation

These additional definitions apply in this Section **E** (alongside the definitions in Section **A**).

App any of the supplemental Mobile Applications available to download to support the Customer's use of Mandata TMS.

Appstore the app-store relevant to the Customer.

1. Apps

- 1.1 The ways in which the Customer can use any of the Apps will be subject to a separate set of terms and conditions and may also be controlled by the relevant Appstore's terms and policies.
- 1.2 From time to time Mandata may automatically update any of the Apps to improve performance, enhance functionality, reflect changes to the operating system or address security issues.
- 1.3 All Intellectual Property Rights in the Apps belong to Mandata (or its licensors) and the rights in the App are licensed to the Customer, not sold. The Customer acknowledges that it has no rights in or to any of the Apps other than the right to use them.
- 1.4 The Customer must ensure that it, and its representatives, employees, contractors or any one it authorises to use the App must do so responsibly, and in accordance with any terms and conditions applicable to that App.

SECTION F: HARDWARE

Where a Customer purchases Hardware from Mandata, these supplemental terms and conditions shall apply, in addition to those in Section A.

Interpretation

These additional definitions apply in this Section F (alongside the definitions in Section A).

TMS Hardware the tracking and telematics hardware as outlined in the Sales Order Form (or otherwise in writing) to be purchased by the Customer from Mandata (including without limitation any part or parts of it)

Hardware any other hardware a Customer requests to purchase from Mandata, as outlined in the Sales Order Form (or otherwise in writing).

1. Basis of sale

1.1 Each order for TMS Hardware or Hardware by the Customer shall be deemed to be an offer by the Customer subject to the terms and conditions of this Agreement. Where Mandata procures Hardware for a Customer from a third party supplier, the terms and conditions of that third party supplier shall also apply to the purchase, only where such terms and conditions have been provided to the Customer.

1.2 A binding contract shall not come into existence between Mandata and the Customer unless and until the Sales Order Form is signed.

1.3 No order for TMS Hardware or Hardware which has been acknowledged by Mandata may be cancelled by the Customer, except with the agreement in writing of Mandata and provided that the Customer indemnifies Mandata in full against all loss, costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by Mandata as a result of cancellation.

2. Quantity and description

2.1 The quantity and description of the TMS Hardware and Hardware shall be as set out in the Sales Order Form.

2.2 Mandata reserves the right (but does not assume the obligation) to make any changes in the specification of the TMS Hardware (or notify a Customer where a third party supplier has made

changes to the Hardware) which are required to conform with any applicable legislation, which do not materially affect their quality or performance.

2.3 Mandata's employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the TMS Hardware or Hardware.

2.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from this Agreement.

3. **Warranty**

3.1 Unless otherwise agreed, all TMS Hardware is provided to the Customer with a standard warranty of 12 (twelve) months. With respect to any Hardware, where applicable, Mandata shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer of any Hardware to Mandata.

3.2 For the avoidance of doubt, paragraphs 3.3 and 3.4 apply to TMS Hardware only. Any warranty claims, or issues the Customer discovers in respect of Hardware must be directed to the third party supplier or manufacturer of such Hardware.

3.3 Subject to paragraph 3.4 if:

3.3.1 the Customer gives notice to Mandata promptly after discovery that the TMS Hardware is faulty;

3.3.2 Mandata has reasonable opportunity to inspect the TMS Hardware; and

3.3.3 the Customer returns the TMS Hardware;

Mandata shall, at its option (and always in accordance with the limits of any applicable warranty), repair or replace TMS Hardware that is found to be defective, or refund the price of such defective TMS Hardware in full.

3.4 Notwithstanding the provisions of paragraph 3.3 and subject to paragraph 3.1, Mandata shall have no further liability to the Customer if any or all of the following apply:

3.4.1 the Customer makes any further use of such TMS Hardware after giving notice of defects in accordance with paragraph 3.1;

3.4.2 the defect arises because the Customer failed to follow Mandata's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Hardware or (if there are none) good trade practice regarding the same;

- 3.4.3 the Customer uses the TMS Hardware with other software, or software not integrated with Mandata TMS;
 - 3.4.4 the Customer alters or repairs such TMS Hardware without the written consent of Mandata;
 - 3.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
 - 3.4.6 the TMS Hardware is outside of the 12 (twelve) month warranty provided under paragraph 3.1; or
 - 3.4.7 the TMS Hardware differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 3.5 Subject to clause 14.3 (Section **A**), Mandata's only liability in respect of TMS Hardware is as set out in this paragraph 3. Mandata shall have no liability in respect of the Hardware.

4. Price and Payment

- 4.1 All prices shall be as stated in Mandata's Sales Order Form and shall be payable on such terms notified to the Customer from time to time.
- 4.2 Mandata reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the TMS Hardware or Hardware as has not been delivered to reflect any increase in the cost to Mandata which is due to market conditions or any factor beyond the control of Mandata (including without limitation any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Hardware which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Mandata adequate information or instructions.

5. Delivery of Hardware and acceptance

- 5.1 Mandata shall use its reasonable endeavours to deliver the TMS Hardware or Hardware (this paragraph will apply to Hardware, but only if Mandata has agreed to deliver the Hardware) on the date or dates notified to the Customer, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the TMS Hardware or Hardware and Mandata is not in

any circumstances liable for any delay in delivery, for reasons beyond its reasonable control. The TMS Hardware or Hardware may be delivered by Mandata in advance of the quoted delivery date.

5.2 The Customer shall be responsible for preparing its premises for delivery and installation of the TMS Hardware or Hardware.

5.3 Mandata shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies it to Mandata (or its carrier, if applicable) within 3 (three) days of delivery or the proposed delivery date of the TMS Hardware or Hardware and that the TMS Hardware and Hardware has been handled in accordance with Mandata's stipulations. Any remedy under this paragraph 5.3 shall be limited, at the option of Mandata, to the replacement or repair of any TMS Hardware or Hardware which is proven to Mandata's satisfaction to have been lost or damaged in transit.

5.4 If the Customer fails to take delivery of the TMS Hardware or Hardware within 3 (three) Business Days of Mandata notifying the Customer that the TMS Hardware or Hardware is ready, then, except where such failure or delay is caused by Mandata's failure to comply with its obligations under this Agreement, or any event listed under clause 16.1 (Section A):

5.4.1 delivery of the TMS Hardware or Hardware shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Mandata notified the Customer that the TMS Hardware or Hardware was ready; and

5.4.2 Mandata shall store the TMS Hardware or Hardware until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

5.5 If 10 (ten) Business Days after the day on which Mandata notified the Customer that the TMS Hardware or Hardware was ready for delivery the Customer has not taken actual delivery of the TMS Hardware or Hardware, Mandata may resell or otherwise dispose of part or all of the TMS Hardware or Hardware and charge the Customer for any shortfall below the price of the TMS Hardware or Hardware.

6. **Risk and property**

6.1 The TMS Hardware (this paragraph will apply to Hardware, but only if Mandata has agreed to deliver the Hardware) shall be at the risk of Mandata until delivery to the Customer at the place of delivery specified in the Sales Order Form.

- 6.2 Ownership of the TMS Hardware (or Hardware, where applicable) shall pass to the Customer on the later of completion of delivery (including without limitation off-loading), or when Mandata has received in full in cleared funds all sums due to it in respect of the TMS Hardware (or Hardware where applicable).
- 6.3 Until ownership of the TMS Hardware or Hardware has passed to the Customer under paragraph 6.2, the Customer shall:
- 6.3.1 hold the TMS Hardware or Hardware on a fiduciary basis as Mandata's bailee;
 - 6.3.2 store the TMS Hardware or Hardware (at no cost to Mandata) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as Mandata's property;
 - 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the TMS Hardware or Hardware; and
 - 6.3.4 keep the TMS Hardware or Hardware insured on Mandata's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of Mandata, ensure that Mandata's interest in the TMS Hardware or Hardware is noted on the policy, and hold the proceeds of such insurance on trust for Mandata and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4 The Customer's right to possession of the TMS Hardware or Hardware before ownership has passed to it shall terminate immediately if any of the circumstances set out in clause 15.1 (Section A) arise or if the Customer encumbers or in any way charges the TMS Hardware or Hardware, or if the Customer fails to make any payment to Mandata on the due date.
- 6.5 Until ownership of the TMS Hardware or Hardware is transferred to the Customer in accordance with paragraph 6.2, the Customer grants Mandata, its agents and employees an irrevocable licence at any time to enter any premises where the TMS Hardware or Hardware is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by Mandata in repossessing the TMS Hardware or Hardware shall be borne by the Customer.
- 6.6 On termination of this Agreement for any reason, Mandata's (but not the Customer's) rights in this paragraph 6 shall remain in effect.

7. Remedies

- 7.1 Mandata shall not in any circumstances be liable for any non-delivery of TMS Hardware or Hardware (this paragraph will apply to Hardware, but only if Mandata has agreed to deliver the Hardware) (even if caused by Mandata's negligence) unless the Customer notifies Mandata in writing of the failure to deliver within 7 (seven) days after the scheduled delivery date.
- 7.2 Any liability of Mandata for non-delivery of the TMS Hardware or Hardware shall in all circumstances be limited to replacing the TMS Hardware or Hardware within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such TMS Hardware or Hardware.
- 7.3 If Mandata's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer (other than by reason of force majeure under clause 16 (Section **A**)), the Customer shall in all circumstances be liable to pay to Mandata all reasonable costs, charges or losses sustained by it as a result, subject to Mandata notifying the Customer in writing of any such claim it might have against the Customer in this respect.