

OneTrack

Solution Terms & Conditions

These Standard Terms and Conditions, together with any additional reference documents are incorporated into the Order Form separately executed by Intelligent Flying Machines, Inc. (“OneTrack”), a Delaware corporation, and the “Customer” signatory to such Order Form, and collectively form the “Agreement” as defined and described in the Order Form.

WHEREAS, OneTrack provides access to the OneTrack Solution as defined below to its customers; and

WHEREAS, Customer desires to access the OneTrack Solution, and OneTrack desires to provide Customer access to the OneTrack Solution, subject to these terms & conditions.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. Definitions.

- (a) **“Aggregated Statistics”** means data and information related to Customer’s use of the Solution that is used by OneTrack in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Solution.
- (b) **“Authorized User”** means Customer’s employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the OneTrack Platform under the rights granted to Customer pursuant to this Agreement. An Authorized User shall not include vendors, customers of Customer, suppliers to Customer or any party which is providing competing products or solutions to the OneTrack Solution unless specifically and individually agreed to in writing by OneTrack.
- (c) **“Customer Data”** means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by Customer or an Authorized User through the Solution. Customer Data does not include sensor information captured by the OneTrack Equipment.
- (d) **“Customer Equipment”** means material handling machines that the customer owns, leases, or operates and on which the OneTrack Hardware will be installed and the customer’s Wi-Fi networks accessed by the OneTrack Solution for necessary communications.
- (e) **“Customer Site”** means a particular location that is owned or operated by the Customer
- (f) **“Damaged Equipment Fees”** means the fee Customer shall pay as the result of damage to OneTrack Equipment throughout the term of this Agreement.
- (g) **“Documentation”** means OneTrack’s user manuals, handbooks, and guides relating to the Solution provided by OneTrack to Customer either electronically or in hard copy form, as well as any end user documentation relating to the Solutions.
- (h) **“OneTrack Equipment”** means all new or reconditioned equipment that OneTrack or our agent provides to Customer as part of the Solution, including, but not limited to, any other hardware used for mounting purposes and includes all devices, sensors, software and programs contained within OneTrack Equipment or downloaded to Customer Equipment by OneTrack.
- (i) **“OneTrack IP”** means and includes (i) the Solution, (ii) the Documentation, (iii) the Aggregated Statistics, (iv) any information, data, or other content derived from OneTrack’s monitoring of Customer’s access to or use of the Solution (other than any Customer Data), and (v) any and all content, data, materials, or information of any kind or nature that is provided by OneTrack or through the use of the Solution to Customer or any Authorized User in connection with the foregoing (other than Customer Data).
- (j) **“OneTrack Platform”** means the web and mobile dashboard, email and SMS messaging system, and any other tools that provide access to data captured by OneTrack Equipment.
- (k) **“OneTrack Solution”** (“**Solution**”) means the OneTrack’s OneTrack Platform bundled with OneTrack’s Equipment offering.
- (l) **“Third-Party Products”** means any third-party products described in a Order Form provided with or incorporated into the Solution.
- (m) **“Order Form”** means any order, quote, or invoice that references this Agreement, that outlines any particular Solution to be provided by OneTrack, that sets forth the amounts to be paid by Customer for such solutions, and that has been accepted by both Parties.

- (n) **“Unreturned Equipment Fees”** means the fees Customer shall pay as the result of failure to return, or damage to OneTrack Equipment upon termination of Solution.

2. Access and Use.

- (a) Provision of Access. Subject to and conditioned on Customer’s payment of Fees and compliance with all other terms and conditions of this Agreement, OneTrack hereby grants Customer a limited, non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 13 (h)) right to access and use the Solution during the Term, solely for use in accordance with the terms and conditions herein. Such use is limited to Customer’s internal use. OneTrack shall provide Customer access to the OneTrack Platform for Authorized Users solely through the necessary passwords and network links or connections. The provision of access and use of OneTrack Equipment as part of the Solution is detailed in section 2 (h) below.
- (b) Documentation License. Subject to the terms and conditions contained in this Agreement, OneTrack hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use the Documentation during the Term solely for Customer’s internal business purposes in connection with its use of the Solution.
- (c) Use Restrictions. Customer shall not use the Solution for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Solution or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Solution or Documentation to any third party; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component (including any source code) or databases of the Solution, in whole or in part; (iv) remove any proprietary notices from the Solution or Documentation; (v) use the OneTrack IP to build a product or service using similar ideas, features, functions, or graphics of the Solution; or (vi) use the Solution or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.
- (d) Reservation of Rights. OneTrack reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the OneTrack IP.
- (e) Suspension. Notwithstanding anything to the contrary in this Agreement, OneTrack may temporarily suspend Customer’s and any Authorized User’s access to any portion or all of the Solution if: (i) OneTrack reasonably determines that (A) there is a threat or attack on any of the OneTrack IP; (B) Customer’s or any Authorized User’s use of the OneTrack IP disrupts or poses a security risk to the OneTrack IP or to any other customer or vendor of OneTrack; (C) Customer, or any Authorized User, is using the OneTrack IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) OneTrack’s provision of the Solution to Customer or any Authorized User is prohibited by applicable law or (ii) any vendor of OneTrack has suspended or terminated OneTrack’s access to or use of any third-party services or products required to enable Customer to access the Solution, collectively known as a **“Service Suspension”**; OneTrack shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Solution following any Service Suspension. OneTrack shall use commercially reasonable efforts to resume providing access to the Solution as soon as reasonably possible after the event giving rise to the Service Suspension is cured. OneTrack will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.
- (f) Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, OneTrack may monitor Customer’s use of the Solution and collect and compile Aggregated Statistics. As between OneTrack and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by OneTrack. Customer acknowledges that OneTrack may compile Aggregated Statistics based on Customer Data input into the Solution. Customer agrees that OneTrack may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer’s Confidential Information.
- (g) Customer Equipment. Customer agrees to allow OneTrack and our agents the right to access Customer Equipment, mount OneTrack Equipment onto Customer Equipment, access and tie into Customer Equipment power sources and Customer’s Wi-Fi network. Customer warrants it is either the owner of the Customer Equipment or that Customer has the authority to give OneTrack access to the Customer Equipment. If Customer is not the owner of the Customer Equipment, Customer is responsible for obtaining any necessary approval from the owner to allow OneTrack and its agents access to the Customer Equipment to perform the activities described in this paragraph.

In addition, Customer agrees to supply OneTrack or its agents, if requested, the owner's name, address and phone number and/or evidence that the owner provided such authorization. For avoidance of doubt, "Customer Equipment" does not include OneTrack Equipment for which Customer has paid an Unreturned Equipment Fee.

- (h) OneTrack Equipment. Customer expressly agrees that it will use the OneTrack Equipment exclusively in connection with the Solution. Customer agrees that all OneTrack Equipment belongs to OneTrack and will not be deemed fixtures or in any way part of the premises or site. OneTrack may remove or change the OneTrack Equipment at its discretion at any time the Solution is active or following the termination of the Solution. Customer acknowledges that any addition to, removal of or change to the OneTrack Equipment may interrupt the Solution. Customer may not sell, lease, abandon, or give away the OneTrack Equipment, or permit any other service provider to use the OneTrack Equipment, including OneTrack Equipment for which an Unreturned Equipment Fee has been paid. The OneTrack Equipment may only be used on the site and Machine Enhanced Equipment as defined in the Order Form unless expressly permitted by OneTrack. CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT AN ATTEMPT TO INSTALL OR USE THE OneTrack SOLUTION AT A LOCATION OR ON EQUIPMENT OTHER THAN THE CUSTOMER EQUIPMENT UPON WHICH IT WAS INSTALLED BY OneTrack OR OTHERWISE EXPRESSLY AUTHORIZED BY OneTrack, THE SOLUTION MAY FAIL TO FUNCTION OR MAY FUNCTION IMPROPERLY AND IS A MATERIAL BREACH OF THIS AGREEMENT. Customer shall not allow anyone other than OneTrack or OneTrack's authorized agents to service the OneTrack Equipment. Customer is solely responsible for all loss, repair, replacement and other costs, damages, fees and charges for failure to return the OneTrack Equipment to OneTrack in an undamaged condition. For avoidance of doubt, OneTrack Equipment remains OneTrack-owned equipment, and OneTrack retains title to all OneTrack Equipment, at all times, including but not limited to after payment of an Unreturned, Lost or Damaged Equipment.
- (i) Access to Customer Sites and Customer Equipment. Customer shall provide OneTrack and its agents the ability to access and enter at reasonable times the Customer Sites, and access specific Customer Equipment identified on a particular Site Order Form for purposes of installing, configuring, maintaining, inspecting, upgrading, replacing and removing the OneTrack Equipment. Customer warrants that it is either the owner of the Customer Site or that it has the authority to give OneTrack access to the Customer Site. If Customer is not the owner of the Customer Site, Customer is responsible for obtaining any necessary approval from the owner to allow OneTrack and its agents into the Customer Site to perform the activities specified above. In addition, Customer agrees to supply OneTrack or our agent, if requested, the owner's name, address, and phone number and/or evidence that the owner has provided such authorization.
- (j) Non-Recommended Configurations. Customer Equipment that does not meet our minimum technical or other specifications constitutes a "Non-Recommended Configuration. OneTrack reserves the right to deny support for the Solution and/or terminate Solution if Customer uses a Non-Recommended Configuration. NEITHER OneTrack NOR ANY OF ITS AFFILIATES, SUPPLIERS OR AGENTS WARRANTS THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE CUSTOMER TO SUCCESSFULLY INSTALL, ACCESS, OPERATE OR USE THE SOLUTION. CUSTOMER ACKNOWLEDGES THAT INSTALLATION, ACCESS, OPERATION OR USE OF A NON-RECOMMENDED CONFIGURATION COULD CAUSE CUSTOMER EQUIPMENT TO FAIL TO OPERATE OR CAUSE DAMAGE TO CUSTOMER EQUIPMENT, CUSTOMER, CUSTOMER SITE OR ONETRACK EQUIPMENT. NEITHER OneTrack NOR ANY OneTrack AFFILIATES, SUPPLIERS OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE.

3. Customer Responsibilities.

- (a) General. Customer is responsible and liable for all access to and use of the Solutions and Documentation by Customer, the Authorized Users, or any other person or entity using credentials provided to Customer, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Solutions, and shall cause Authorized Users to comply with such provisions.
- (b) Customer Equipment Responsibility. Customer has responsibility for the operation, support, maintenance or repair of any Customer Equipment.
- (c) OneTrack Equipment. Customer agrees not to attach or assist any person to attach any unauthorized device to, or otherwise tamper, interfere with, or damage the OneTrack Equipment or the Solution for any purpose. If Customer makes or assists any person in making any unauthorized connection or modification to or otherwise tamper with OneTrack Equipment or the Solution, OneTrack may terminate the Solution in accordance with the terms of this Agreement. Customer further agrees not to attach anything, or physically impact the OneTrack Equipment in any way that may impair the integrity of OneTrack Platform or Equipment.
- (d) Third-Party Products. OneTrack may from time to time make Third-Party Products available to Customer. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions and the

applicable flow through provisions, and OneTrack is not responsible for, and disclaims any representations, warranties, and liabilities, arising out of or related to the Third-Party Products. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install or use such Third-Party Products.

4. Service Levels and Support.

- (a) Service Levels. As of the effective date, OneTrack will use commercially reasonable efforts to make the Solution available 24 hours a day, seven days per week, 365 days per year, except for unavailability that may result from a Force Majeure Event as provided in Section 12 of this Agreement and regularly scheduled maintenance windows ("Permissible Downtime Events"). Subject only to downtime caused by Permissible Downtime Events, OneTrack will use commercially reasonable efforts to ensure the aggregate total availability during any one calendar month is not below 95%.
- (b) Problem Definitions and Response Time; Support Requests. Standard problem definitions and response times shall apply to the Service. OneTrack shall perform services for Support Requests according to the Acknowledgement Time, Response Time and Schedule documented in the OneTrack Service Level & Support Process document.
- (c) Maintenance and Support. OneTrack and Customer shall agree to a regularly scheduled maintenance window during low usage periods (e.g., weekends) as is necessary; provided, that such maintenance window shall not be in excess of thirty-six (36) hours) and OneTrack shall notify Customer at least 72 hours before routine scheduled maintenance is performed during the maintenance window. Emergency maintenance and any resulting downtime or instability shall be communicated to Customer as the need for said maintenance is identified.

5. Fees and Payment.

- (a) Solution Fees. Upon execution of a Order Form, OneTrack will invoice Customer, and Customer will pay OneTrack all amounts set forth as defined in the Order Form throughout the entire Contract Term and for any Contract Renewal.
- (b) Implementation of the OneTrack Solution may require purchase of Additional Services as offered by OneTrack and defined in the OneTrack Field Service Implementation Terms & Conditions. Upon requesting Additional Services from OneTrack, OneTrack will furnish a quote to Customer for approval. Services will be invoiced upon completion and Customer shall pay all amounts set forth in those invoices.
- (c) Customer shall pay any Damaged Equipment Fees or Unreturned Equipment Fees as they are incurred. OneTrack will send an invoice when such fees are incurred.
- (d) Customer shall pay all invoices within thirty (30) days of the invoice date. Except as otherwise set forth herein, all amounts paid are nonrefundable and Customer will have no right to setoff any amounts due under this Agreement. OneTrack shall have the right to combine invoicing and issue a single invoice to Customer combining all Order Forms. All amounts payable to OneTrack are the Confidential Information of OneTrack.
- (e) Fees are exclusive of, and Customer is responsible for shipping costs, duties and taxes (including any value added tax or duties which shall be paid by the Customer, if applicable) at the rate and in the manner for the time being prescribed by law. If OneTrack is obligated to pay any taxes on Customer's behalf, such taxes shall be invoiced to and paid by Customer within thirty (30) days of the receipt of the invoice.
- (f) Invoices shall be deemed approved by Customer unless disputed within thirty days of the invoice date, and in the event of a dispute Customer agrees to timely pay the undisputed portion. OneTrack's acceptance of such partial payment shall not waive any of its rights as to the remaining balances nor in any way constitute accord and satisfaction.
- (g) In the event any amount due is not timely paid, Customer shall reimburse OneTrack for all reasonable costs of collection, including but not limited to reasonable attorney fees and court costs. Any overdue amounts shall accrue interest at the lesser of 1.5% per month or the highest rate allowed by law. OneTrack reserves the right to terminate or suspend access to the Solution upon notice in the event of late payment or a disputed payment which is not resolved within thirty days of receipt of written notice of the dispute.
- (h) The payment of an Unreturned Equipment Fee shall not result in a sale of, or the transfer of title to, any OneTrack Equipment, and such equipment shall remain the property of OneTrack, and OneTrack retains title to OneTrack Equipment at all times. OneTrack in no way relinquishes ownership of (including title to) OneTrack Equipment by the payment of an Unreturned Equipment Fee. Even if an Unreturned Equipment Fee has been paid, OneTrack Equipment shall not be resold, used or operated in any manner.
- (i) If Customer elects to submit a Purchase Order, any additional or conflicting terms contained in such order are hereby rejected unless separately agreed to in writing by the Parties.

6. Confidential Information.

- (a) From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information,

and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, whether or not marked, designated or otherwise identified as “confidential” (collectively, “Confidential Information”). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party’s Confidential Information to any person or entity, except to the receiving Party’s employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party’s rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party’s Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party’s obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law. All OneTrack IP is and shall be deemed to be the Confidential Information of OneTrack. Upon the termination or expiration of this Agreement for any reason, or at any time upon written request of the disclosing Party, the receiving Party shall return the disclosing Party’s Proprietary Information and not keep any copies thereof (provided that, for the avoidance of doubt, OneTrack may retain any Customer Data solely as incorporated within the Aggregated Statistics).

7. Intellectual Property, Ownership; Privacy, Feedback.

- (a) OneTrack Intellectual Property. Customer acknowledges that, as between Customer and OneTrack, OneTrack owns all right, title, and interest, including all intellectual property (“IP”) rights, in and to the OneTrack IP. OneTrack does not convey any proprietary interest in or to the Solution set forth in this Agreement.
- (b) Customer Data. OneTrack acknowledges that, as between OneTrack and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to OneTrack a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for OneTrack to provide the Solution to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.
- (c) Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to OneTrack by mail, email, telephone, or otherwise, suggesting or recommending changes to the OneTrack IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like (“Feedback”), OneTrack is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to OneTrack on Customer’s behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and OneTrack is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although OneTrack is not required to use any Feedback.

8. Warranty.

- (a) OneTrack warrants to Customer that the Solution shall operate in material conformance with their published specifications. OneTrack further warrants that Customer’s use of the Solution solely as provided by OneTrack and solely in accordance with all instructions therefore will not, as of the date of this Agreement, knowingly infringe the intellectual property rights of any third party.
- (b) The foregoing warranties shall not apply if (a) the Solution is modified at Customer’s request (other than configurations by OneTrack); (b) the non-conformity was not caused by OneTrack; (c) Customer has misused the Solution (including any use the Service not in conformance with instructions therefor or used the Solution for a purpose not specified by OneTrack; (d) Customer is in material breach of this Agreement; (e) the non-conformity is caused by the combination or use of the Solution with any equipment, products, software, Solution, or content not provided by OneTrack (including if caused by any Customer Data); (f) any instruction, information, designs or other materials (including any Customer Data) furnished by Customer to OneTrack hereunder; and/or (f) Customer

continues any allegedly infringing activity after Customer has been notified by OneTrack of the infringing activity and after Customer has been provided with remedies that would avoid the alleged infringement.

- (c) THE FOREGOING WARRANTIES ARE OneTrack's ONLY WARRANTIES CONCERNING THE SOLUTION (INCLUDING THE SERVICES, HARDWARE AND ALL COMPONENTS THEREOF), AND OneTrack HEREBY DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE OneTrack SOLUTION, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. OneTrack IS NOT RESPONSIBLE TO CUSTOMER OR ANY THIRD PARTY FOR COMPLIANCE WITH DATA PROTECTION OR PRIVACY LAWS, GUIDELINES OR RULES.
- (d) Customer warrants that use and display of Customer Data by OneTrack and the collection, storage and use of Customer Data will not violate the rights of any third party.

9. Indemnification.

- (a) OneTrack agrees to indemnify, defend and hold Customer and its employees, directors, officers and agents harmless against any claim, liability, damages, losses, judgment, and other expenses including reasonable attorney's fees and court costs (each a "Liability") arising out of or resulting from any third party claims made or proceedings brought against Customer to the extent that such Liability arises as a result of (a) OneTrack's breach of its representations, warranties, or obligations under this Agreement; or (b) OneTrack's gross negligence or willful misconduct.
- (b) Customer agrees to indemnify, defend and hold OneTrack and its employees, directors, officers and agents harmless against any Liability arising out of or resulting from any third party claims made or proceedings brought against OneTrack to the extent such Liability arises as a result of (a) Customer's breach of its representations, warranties, or obligations under this Agreement; (b) Customer's gross negligence or willful misconduct, or (c) the Customer Data.
- (c) A Party seeking indemnification hereunder shall promptly notify the other Party in writing of a third party claim or suit upon which it intends to base a request for indemnification and shall provide reasonable cooperation (at the indemnifying Party's expense). No settlement or compromise shall be binding on a Party hereto without its prior written consent, not to be unreasonably withheld. Prior to giving a notice of a claim for indemnification, the indemnified Party shall make a good faith investigation into the claim to determine that the indemnifying Party is at fault, and shall provide, with written notice, a report of such investigation specifying the methods used and the results obtained.
- (d) In the event of an infringement claim against Customer with respect to its use of the Solution, or if OneTrack reasonably believes that a claim is likely to be made, OneTrack, at its option, may: (a) modify the Solution so that they are non-infringing but still comply in all material respects with their applicable documentation; (b) replace the Solution with non-infringing functional equivalents; (c) obtain for Customer the right to use the Solution upon commercially reasonable terms at OneTrack's sole expense; or (d) if the three preceding remedies prove commercially impractical, remove the applicable component part of the Solution at issue, terminate the applicable portion of the subscription cost therefor, and refund to Customer a pro-rata portion of any prepaid subscription fees for the applicable component part of the Solution that is the subject of such a claim.
- (e) OneTrack shall have no obligations or liability under this Agreement for any infringement or misappropriation claim resulting from any of the exclusions set forth in Section 8(b).

10. Limitations of Liability.

THE MAXIMUM AGGREGATE LIABILITY OF OneTrack, ITS AGENTS, DIRECTORS AND OFFICERS, AND CUSTOMER'S EXCLUSIVE REMEDY FOR ANY CLAIM ARISING IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE SUBSCRIPTION FEES FOR THE SOLUTION PAID BY CUSTOMER IN THE SIX MONTHS PRIOR TO THE CLAIM. IN NO EVENT SHALL OneTrack, ITS AGENTS, DIRECTORS OR OFFICERS BE LIABLE FOR ANY LOST DATA OR CONTENT, LOST PROFITS, BUSINESS INTERRUPTIONS, TELECOMMUNICATIONS AND INTERNET INTERRUPTIONS OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE SOLUTION OR ANY OTHER OneTrack IP PROVIDED UNDER THIS AGREEMENT, EVEN IF OneTrack HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. CUSTOMER ACKNOWLEDGES THAT WITHOUT THESE DISCLAIMERS AND LIMITATIONS SET FORTH IN SECTIONS 8 AND 10, THE COST OF THE SOLUTION WOULD HAVE BEEN SUBSTANTIALLY GREATER OR OneTrack WOULD NOT HAVE ENTERED INTO THIS AGREEMENT.

11. Renewal, Term and Termination.

- (a) Term. The initial term of this Agreement begins on the Effective Date and continues for 5 years unless terminated pursuant to this Agreement's express provisions. This Agreement will automatically renew unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least 180 days prior to the expiration of the then-current term (each a "Renewal Term" and together with the Initial Term, the "Term").
- (b) Notwithstanding the generally applicable Agreement Term, each OneTrack Solution identified in an Order Form attached hereto will have its own service term.
 - (i) The service term will start on the first day of the month following the planned installation of the OneTrack solution.
 - (ii) If there is a customer initiated delay of the planned installation, the service term will begin on the original planned start date.
 - (iii) Renewal/Extension - Term will automatically renew unless Customer provides written notice of cancellation up to 30 days prior to the termination date.
- (c) Termination. In addition to any other express termination right set forth in this Agreement:
 - (i) OneTrack may terminate this Agreement, effective immediately on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than 5 days after OneTrack's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(c) or Section 6;
 - (ii) either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach; or
 - (iii) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
 - (iv) The termination of an individual Product Term will not terminate any other Product Term or this Agreement, unless otherwise specified in a properly applicable written notice of termination. Without prejudice to any other right or remedy of OneTrack, in the event either party terminates an Order, Customer will pay OneTrack all fees due and payable upon the effective date of termination.
- (d) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, OneTrack may immediately discontinue Customer's and its Authorized User's access to the Solution, and Customer shall immediately discontinue use of the OneTrack IP and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the OneTrack IP and certify in writing to the OneTrack that the OneTrack IP has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund. Customer expressly agrees that all device removal or deinstallation at the end of a Service Term shall be done in compliance with the OneTrack Equipment Terms and may be subject to fees as defined in OneTrack Field Service Implementation Terms & Conditions.
- (e) Survival. This Section 11(e) and Sections 1, 5, 6, 7, 8(b), 9, 10, and 13 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

12. Force Majeure.

- (a) Conditions of Force Majeure. Neither Party shall be liable for failures and delays in performance due to any cause or circumstance beyond its reasonable control, including without limitation, any failures or delays in performance caused by acts of any State or governmental action, acts of terrorism, freight embargos or quarantine of any type, riots, disturbances, war, terrorist attacks, prolonged shortage of energy supplies, epidemics, fire, flood, hurricane, tornado, typhoon, earthquake, lightning and explosion, and strikes and lock outs and similar labor disputes, strikes, lockouts, fires, acts of God or the public enemy, riots, incendiaries, interference by civil or military authorities, failure of communications or information technology systems (including, by way of example and not to be exclusive, interruption or failure of telecommunication or digital communication links or hostile network attacks such as ransomware and cyberterrorism attacks), epidemics, pandemics including, but not limited to COVID-19 or similar matters, or compliance with the laws of the United States of America or with the orders of any governmental authority including lock downs or travel bans caused by pandemics ("Force Majeure"). Force Majeure is triggered if it takes place in the United States or anywhere within the world regardless of whether the Parties conduct any business transaction where a Force Majeure Event occurs.

- (b) Notice Pursuant to Force Majeure. A Party invoking Force Majeure shall provide to the other Party confirmation of the existence of the circumstances constituting Force Majeure. Upon giving notice to the other Party, a Party affected by an event of Force Majeure shall be released, without any liability, from the performance of its obligations under this Agreement, except for the obligation to pay any amounts due and owing hereunder, to the extent, and for the period that its performance is prevented by the event of Force Majeure, but not for any obligation upon termination or expiration of this Agreement. The Party claiming Force Majeure shall promptly notify the other Party of the termination of such event.

13. Miscellaneous.

- (a) Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related attachments, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Agreement, excluding its Exhibits; (ii) second, the Exhibits to this Agreement as of the Effective Date; and (iii) third, any other documents incorporated herein by reference.
- (b) Marketing. Customer agrees to collaborate in the development of marketing materials (e.g., case studies, blog posts, conference presentations, etc.). Customer agrees to allow OneTrack to share Customer's namesake and logo for sales and marketing purposes, including on its website, in emails, sales presentations, and other marketing materials.
- (c) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.
- (d) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- (e) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- (f) Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Illinois.
- (g) Reference Company. In consideration for the level of compensation and fees set forth in this Agreement, Customer agrees that it may act as a reference client for OneTrack in accordance with this section. OneTrack may use Customer's name, as a reference in OneTrack's promotional materials, including, but not limited to, its client lists, brochures, and electronic media (collectively the "Promotional Materials") and the parties may issue a mutually agreed upon press release regarding Customer's engagement of OneTrack subject at all times to OneTrack's confidentiality obligations in Section 6.
- (h) Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of OneTrack, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.
- (i) Export Regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), that prohibit or restrict the export or re-export of the Solution or any Customer Data outside the US.

- (j) US Government Rights. Each of the Documentation and the software components that constitute the Solution is a “commercial item” as that term is defined at 48 C.F.R. § 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Solution and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.
- (k) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.
- (l) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.