

TrackEnsure Terms of Use  
Legal Information & Notices

These Terms of Use apply to the TrackEnsure located at <https://trackensure.com/>, and all associated TrackEnsure links to <https://trackensure.com/> (collectively, the «TrackEnsure»). The TrackEnsure is the property of TrackEnsure Inc. («TrackEnsure»).

BY USING THE TRACKENSURE, YOU AGREE TO THESE TERMS OF USE; IF YOU DO NOT AGREE, DO NOT USE THE TRACKENSURE.

BY USING THIS INFORMATION, YOU ARE REPRESENTING AND WARRANTING THAT APPLICABLE LAWS AND REGULATIONS OF YOUR JURISDICTION ALLOW YOU TO ACCESS THE INFORMATION AND YOU CONFIRM THAT YOU ACCEPT THE TERMS OF USE.

When you use TrackEnsure (the «Site»), when you sign up for and use our services, when you purchase a GPS or an ELD piece of equipment, when you use TrackEnsure through our mobile and browser-based apps, and all related sites, widgets, tools, apps, data, software, APIs and other services provided by TrackEnsure (the «Services»), you agree to the terms of this Privacy Policy.

## 1. BASIC CONCEPTS (TERMS)

**Personal Data Subject** - this is an individual to whom personal data relate and who can be identified by this personal data, or who is already identified as:

**Customers** - employer or another entity for use of the Services by their employer or another entity («Customer») their represent and warrant that (a) they have the legal authority to bind the applicable entity to these Terms, and are 18 years or older, and (b) that their agree, on behalf of the entity they represent, to these Terms.

**Users** - an individual who's Customer and Administrator has the ability to access, disclose, restrict, and remove information in or from an End User account, with the Administrator's ability to monitor, restrict, or terminate access to an End User account.

**Installation** means the installation and set-up of a Transmission Unit in the Customer's Asset and Installs has a corresponding meaning.

**Tracking Pack** means the Products, Subscriptions to the Tracking Service inclusively (or any part of the Tracking Pack in isolation) and any enhancements and modifications to the same.

**Order Form** means the Customer Purchase Order Form which TrackEnsure provides to the Customer and the Customer completes and accepts to purchase Products and a Subscription to the Tracking Service in accordance with the terms of the Terms of Use;

**Warranty Period** - means 12 months from the time of delivery of the sold Tracking Pack.

## 2. AGREEMENT TO TERMS OF USE

2.1 TrackEnsure reserves the right, at its sole discretion, to change, modify, add or remove portions of these Terms of Use, at any time.

2.2 It is your responsibility to check these Terms of Use periodically for changes.

2.3 Your continued use of the TrackEnsure following the posting of changes will mean that you accept and agree to the changes. As long as you comply with these Terms of Use, TrackEnsure grants you a personal, non-exclusive, non-transferable, limited privilege to enter and use the TrackEnsure.

## 3. EQUIPMENT

You shall be responsible for obtaining and maintaining equipment needed for access to and use of TrackEnsure services as:

3.1 to download Apps including the mobile device software available via the Apple, Inc. («Apple») App Store (each an «Apple Store App»), and «Play Market» to enable the Customer

to monitor the location of, and other data relating to, the Asset, to the extent that such Asset is located in the Territory, including by facilitating the transmission of Location Data and Asset Data between the Platform and the Transmission Units via a Transmission Service;

3.2. GPS, RFID, IR equipment;

3.3. Provide IR equipment for maintaining precise information on hooking transports together from individual trucks and trailers;

3.4. Provide GPS equipment for tracking location of fleet assets;

3.5. Provide cargo sensors, door sensors, temperature sensors;

3.6. Provide RFID tags and readers for warehouse management;

3.7. Provide ELD/HOS solution, compliant with FMCSA regulations eCFR Title 49, part 395.

#### **4. START OF THE AGREEMENT**

4.1. The Customer should submit via the Order Form on the TrackEnsure an application for the Tracking Packs. The application must be considered as an offer by the Customer to purchase the Service.

4.2. The Agreement, or the amendment thereof, is established electronically at the moment when TrackEnsure representative sends the confirmation (or verbal confirmation and clarification approval by TrackEnsure representative) to the Customer that the request has been accepted. TrackEnsure representative has the right to not accept an application without stating reasons.

4.3. The Customer declares to complete the application form completely and truthfully and declares that he will immediately provide Track Assistant with changes to these data.

4.4. CUSTOMER MUST PURCHASE TRACKING PACK WITH SERVICES AS FURTHER DESCRIBED IN AN ORDER FORM AND CANNOT BE SOLD SEPARATELY FROM EACH OTHER. PRODUCTS MUST ONLY BE USED IN CONJUNCTION WITH THE TRACKING SERVICE AND FOR NO OTHER PURPOSE.

4.5. Legal and beneficial ownership, intellectual property rights of the Tracking Pack will remain with TrackEnsure.

#### **5. INVOICING OF SERVICES**

5.1. Upon agreement, the cost and scope of Services shall be governed after individual communication with a TrackEnsure representative with Customer and must be paid within 10 days from the date of invoicing or / and order approval.

5.2. The rates consist of monthly (Single-subscription) amounts.

5.3. All payments are due in U.S. dollars unless otherwise indicated on the electronic invoice.

5.4. This invoice is sent to the e-mail address that the Customer has specified on the order form on the TrackEnsure.

5.5. The services are paid off after the payment from you is credited to the TrackEnsure account.

5.6. If you are making a payment you agree to provide us with valid payment information.

5.7. Please note, that the currency of payment and the savings of your funds in your account is and payment systems make currency conversion. Before payment, please check with your bank for real exchange rates.

5.8. For your convenience, we give you the opportunity to make transactions using a number of different sources of financing, such as credit and debit cards, other payment methods.

5.9. Please note, that we use the services of third-party payment service <https://stripe.com/>. The methods of payment used by us may vary depending on your country and may be changed by us at any time at our sole discretion.

5.10. Before making a payment, carefully study the details of the transaction, since the total cost may include commissions, taxes, fees and other mandatory payments established by third parties that you will be required to pay.

5.11. When making a payment, you give us (and our special payment systems) permission to debit the full amount from the payment data that you specify for the operation. You also give us permission to collect and store payment data along with other transaction information. In addition, we can use certain services for updating payment card details, the availability of which depends on the issuer, so that the information on payment data stored with us is always up to date.

5.12. If you pay by credit or debit card, we can obtain from the card issuer prior approval of payment in an amount that may equal its full value. Funds will be debited from your card at the time of payment initiation or shortly after it. If you cancel the operation before it is completed, the transaction amount may not be returned to you immediately due to the need to obtain the approval mentioned above.

5.13. If the debit operation leads to an overdraft or the collection of other bank charges from you, you are solely responsible for the specified obligations to the bank.

5.14. When you use any form of payment, you represent and warrant to TrackEnsure that:

5.15. You are the legal owner of this payment method and have the right to use it.

5.16. The payment method you use is valid.

5.17. The use of such a payment method and the initiation of payments in the TrackEnsure are carried out in accordance with the law applicable to you.

TrackEnsure reserves the right to change prices and/or performance criteria on the following basis: a new price list is announced by email or push notifications sent to Customer account at least one month prior to its expiry date.

5.18. The Customer has the right to terminate its contract with TrackEnsure on the date when the new price list enters into force with the limitations of the refund conditions specified in the Terms of Use. However, by continuing to use TrackEnsure Services, the Customer accepts the changed conditions.

5.19. The agreement can be terminated electronically by the Customer each month three (3) days before the end of the current period via account TrackEnsure with no refund to the Customer. The next month no subscription costs are due.

5.20. TrackEnsure refunds money only if we would receive notice from the Customer of the early termination 15 days before the next monthly payment, TrackEnsure will refund to the Customer within 90 days a pro rata amount for unused Services.

5.21. Measures we can take:

We may deny you the right to make payments in the TrackEnsure at any time at our discretion.

5.22. We may cancel any transaction if it seems to us that it violates this Privacy policy or such cancellation can prevent financial losses.

5.23. In order to avoid financial losses that you or we may suffer, we have the right to postpone the payment for some time, restrict the possibility of using payment data for a transaction or the possibility of making a payment or deactivate your account.

5.24. In order to avoid financial losses that you or we may suffer, we have the right to contact the issuer or the source of your payment data, law enforcement agencies or interested third parties (including other users), and exchange information with them about any payments related to you, if we proceed from the assumption that this will prevent financial loss or violation of the law.

5.25. We reserve the right to terminate or suspend your use of the paid services of the TrackEnsure at any time and for any reason without any obligations.

5.26. Fee for unpaid Monthly ELD service and other Service:

5.26.1. A Customer should always on-time provide Accounting Department when his payment method was changed.

5.26.2. In case that card was changed and a Customer did not inform the accounting department of TrackEnsure, all future debt will be with Fee of 10% of all debt amounts.

5.26.3. If Customer's fees are past due (including any fees owing to any third party equipment financing company), TrackEnsure may suspend the Services automatically and provide notice of termination for material breach.

## **6. DELIVERY AND RISK OF LOSS**

6.1. All Tracking Pack will be shipped in a commercially reasonable manner to the «ship to» address designated in Customer's Order Form by delivery service <https://www.ups.com/ca/en/Home.page>, or in case of mutual agreement by another delivery service.

6.2. An order for Tracking Packs may not be cancelled without prior approval by TrackEnsure.

6.3. With respect to Purchased Tracking Pack, (except with respect to the Software installed on the Purchased Tracking Pack) will pass to Customer upon TrackEnsure's delivery to the carrier.

6.4. Customer is responsible for all freight, insurance, and other shipping related expenses, including, but not limited to, taxes and duties.

6.5. TrackEnsure will not be liable for any loss or damage for failure or delay in delivery of Tracking Packs (including consequential loss or liability for any amount payable by you to a third party).

6.6. Risk of damage to or loss of the Tracking Pack, including any SIM cards, passes to the Customer upon delivery of the Tracking Pack to the Customer.

6.7. Installation.

Customer is solely responsible for installing the Tracking Pack in accordance with TrackEnsure's written instructions and Documentation. Customer agrees that TrackEnsure is not liable for any cost, expense or damages arising from the installation of the Tracking Pack.

6.8. The Tracking Pack connects to the battery of a vehicle and consumes a small drain on the vehicle's battery, which may adversely affect the vehicle while not in operation. TrackEnsure is not liable for any consequences of the battery drain associated with use of the Tracking Pack or the Services.

6.9. Compatibility.

Customer is solely responsible for determining whether or not the Services and Tracking Pack are compatible with any vehicles utilizing the Services and Tracking Pack. Customer agrees that TrackEnsure is not responsible for any cost, expense or damage arising from compatibility issues.

6.10. If the Tracking Pack takes back within 14 days a fee of 20% of the cost for the Tracking Pack will be charged. Also, The Customer takes on himself the payment for the delivery of the Tracking Pack.

## **7. THE CONDITIONS OF OPERATION**

7.1. IF YOU DON'T FOLLOW THESE INSTRUCTIONS, YOU MIGHT BREAK THE DEVICE.

7.2. Cable Insertion and Removal Instructions for Pacific Track PT30 ELD Device. When inserting & removing the cable, please follow these important instructions:

7.3. The 10-pin Molex connector uses a «latch & catch» locking system. The latch is on the cable connector and the catch is on the device connector. The latch and catch are situated on the bottom of the device, so you need to flip the device upside down to see the latch.

7.4. Make sure to carefully align the pins when you insert the connector.

7.5. Make sure when inserting and removing the cable, do not rock, bend, or torque the connector in a left/right or up/down direction. Doing so may permanently damage the plastic and/or terminals on the device connector. It is very important that the connector be inserted and removed in a level and straight orientation.

7.6. Make sure to push down the back side of the latch before pulling the cable out from the device. The latch works on a rocking principle – pushing down one end lifts the other end.

## **8. SOFTWARE: REFUNDS, RECALCULATIONS AND CHARGE FEES**

**8.1.** Monthly / Yearly ELD Service is for using TrackEnsure ELD application. This is a payment not for truck or device. Payment deducted for a user of the application.

**8.2.** Software could not be refunded.

**8.3.** At the time of connection PT30 device to truck, customers should have - ELD Subscription.

**8.4.** Actual Monthly Subscriptions plans and prices Customer could find at official web site: <https://trackensure.com/>

**8.5.** Cancellation Prior to Automatic Renewal:

If the Customer wishes to cancel before automatic renewal, the Customer must contact TrackEnsure Sales/ Accounting Department at [acc.trackensure@gmail.com](mailto:acc.trackensure@gmail.com) or 647-362-9900 ex.1

All fees paid are non-refundable.

We are in touch with you 7 days per week

Mon: Fri

1 am: 10 pm (EST)

Sat: Sun

1am: 4.00 pm (EST)

## **9. REPRESENTATIONS AND WARRANTIES**

9.1 In addition, Customer must comply with all applicable laws, regulations, and codes of practice when engaging in the foregoing practices.

9.2 The Customer acknowledges that:

9.2.1 The Customer relies upon its own knowledge, skill and judgment in relation to the particular use or suitability of the Tracking Pack for the Customer's purpose;

9.2.2 We will accept no liability for any damages or Losses arising from a consequence of any act, default or negligence on the part of TrackEnsure or of an employee, agent or contractor of TrackEnsure ;

THE CUSTOMER REPRESENTS AND WARRANTS TO US THAT:

- THE CUSTOMER HAS THE FULL CORPORATE RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS TERMS OF USE, TO GRANT THE RIGHTS GRANTED AND TO CARRY OUT THE TERMS AND CONDITIONS CONTAINED HEREIN;

- THE EXECUTION OF THIS TERMS OF USE BY THE CUSTOMER, AND THE PERFORMANCE OF ITS DUTIES, DO NOT AND WILL NOT VIOLATE OR CONFLICT WITH ANY AGREEMENT TO WHICH THE CUSTOMER IS A PARTY OR BY WHICH IT IS OTHERWISE BOUND;

- WHEN EXECUTED BY THE CUSTOMER THIS AGREEMENT WILL CONSTITUTE THE LEGAL, VALID AND BINDING OBLIGATION OF SUCH PARTY, ENFORCEABLE AGAINST SUCH PARTY IN ACCORDANCE WITH ITS TERMS.

## **10. LIMITED TRACKING PACK WARRANTY BY TRACKENSURE**

10.1 TrackEnsure warrants to Customer that any Tracking Pack shall be free of defects in materials and workmanship, for the duration of the applicable Warranty Period (as defined in Section 1).

10.2 If the Tracking Pack fails to conform to this Limited Tracking Pack Warranty during the Warranty Period, TrackEnsure will, at its discretion repair or replace any defective Tracking Pack or component or (ii) if the Tracking Pack is no longer available and repair is not possible, refund the purchase price less reasonable depreciation based on actual use.

### **10.3 How to Make a Claim**

In order to make a claim under this Limited Tracking Pack Warranty, Customer must report any defect to TrackEnsure by email at Website. The subsequent procedure will be mutually determined by the parties.

10.4 This Limited Tracking Pack Warranty is null and void in the event that Tracking Pack has been:

10.4.1 altered or modified (physical damage);

10.4.2 used in a way that does not substantially conform with instruction manuals, user guides, and other information provided by TrackEnsure, posted to its website, or set forth in the Terms of Service;

10.4.3 tampered with, abused, improperly maintained, or otherwise damaged in a way outside of TrackEnsure's control;

10.4.4 installed or de-installed without following TrackEnsure's written instructions;

10.4.5 used with the Services not in the ordinary course of Customer's business operations,

10.4.6 connected to an improper voltage supply;

10.4.7 used with accessories and/or devices which are not expressly approved by TrackEnsure;

10.4.8 used with incorrect or unauthorized Cables;

10.4.9 cosmetic damage, including but not limited to scratches, dents and broken plastic on ports;

10.4.10 damage caused by acts of God, to include but not limited to civil disturbance, war, flood, fire, rodents or insects;

10.4.11 damage caused during delivery.

## **11. REGISTRATION OF CUSTOMER ACCOUNT**

11.1 TrackEnsure grants you the non-exclusive, non-transferable, revocable, limited right to access and use the TrackEnsure.

11.2 You are solely responsible for activities that take place on your account and you must keep your account password secure.

11.3 You must immediately notify TrackEnsure about any security breach or unauthorized use of your account.

11.4 TrackEnsure is not responsible for any damages caused by unauthorized use of your account.

11.5 We are entitled at any time, without notice and without prejudice, to delete, suspend or change your account in the event of your violation or suspected violation of these Terms or applicable law.

11.6 When we deleting your account, you will no longer have access to TrackEnsure which requires your registration and/or login as a Registered Customer. Also, we reserve the right to delete the Customer content (information).

11.7 Our disclaimer applies without limitations.

## **12. ADDITIONAL TERMS FOR GOOGLE MAPS**

Our Services may incorporate certain Google Maps features and content; and your use of Google Maps features and content is subject to the then-current versions of the: (1) Google Maps/Google Earth Additional Terms of Service at [https://maps.google.com/help/terms\\_maps.html](https://maps.google.com/help/terms_maps.html); and (2) Google Privacy Policy at <https://www.google.com/policies/privacy/>.

## **13. RIGHTS YOU GRANT US**

- If you provide feedback (contact us), ideas, or suggestions («Feedback») to TrackEnsure in connection with the TrackEnsure you acknowledge that they is not confidential and you authorize TrackEnsure to use that Feedback without restriction and without payment to you. Feedback is considered a type of Content.

## **14. USE OF TRACKENSURE CONTENT**

- We grant you limited, non-exclusive, revocable permission to make use of the TrackEnsure. This grant shall remain in effect until and unless terminated by you or TrackEnsure.
- The TrackEnsure software applications and Content or material that is made available through the TrackEnsure («Content») are not sold or transferred to you, and TrackEnsure retain ownership of all copies of the TrackEnsure software applications and Content even after installation on your personal computers, mobile handsets, tablets, wearable devices, and/or other devices («Devices»).

The Terms of Use do not grant you any rights to use any TrackEnsure Brand Features whether for commercial or non-commercial use.

## **15. LEGAL USE OF THE TRACKENSURE**

The following is not permitted for any reason whatsoever:

- ✓ copying, redistributing, reproducing, «ripping» recording, transferring, performing or displaying to the public, broadcasting, or making available to the public any part of the TrackEnsure or the Content;
- ✓ otherwise making any use of the TrackEnsure or the Content which is not expressly permitted under the Terms of Use or applicable law or which otherwise infringes the intellectual property rights (such as copyright) in the TrackEnsure or the Content or any part of it;
- ✓ using the TrackEnsure to import or copy any local files that you do not have the legal right to import or copy in this way;
- ✓ transferring copies of cached Content from an authorized Device to any other Device via any means;
- ✓ reverse - engineering, decompiling, disassembling, modifying, or creating derivative works of the TrackEnsure, Content or any part thereof except to the extent permitted by applicable law.
- ✓ use «robot», «web scraper», «spider» or another mechanized program, algorithm device or any similar or equivalent manual process to access, obtain, copy or control any part of TrackEnsure or any Content or in any way reproduce or by pass the navigation structure or presentation of TrackEnsure or any Content in order to obtain or attempt to obtain any materials, documents or information by any means that were not intentionally provided through TrackEnsure.
- ✓ manipulate identifiers to obscure the origin of any message or message that you submit to TrackEnsure

TrackEnsure reserves the right to prohibit any such activity.

## **16. RESTRICTED ACCESS**

Access to certain areas of our website is restricted.

We reserve the right to restrict access to other areas of our website, or indeed our whole website, at our discretion.

We may disable your user ID in our sole discretion without notice or explanation.

## **17. LIABILITY**

WE SHALL IN NO CASE BE HELD LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR DAMAGES FOR THE USE OF THE TRACKENSURE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING:

- LOSS OF PROFITS, CONTRACTS, TURNOVER, BUSINESS, BUSINESS OPPORTUNITY, LOSS OR CORRUPTION OF DATA OR RECOVERY OF DATA,

GOODWILL, SECURITY BREACH RESULTING FROM A FAILURE OF THIRD PARTY TELECOMMUNICATIONS AND/OR THE INTERNET, ANTICIPATED SAVINGS OR REVENUE (REGARDLESS OF WHETHER ANY OF THESE ARE DIRECT, INDIRECT OR CONSEQUENTIAL);

- ANY LOSS OR DAMAGE ARISING IN CONNECTION WITH LIABILITIES TO THIRD PARTIES (WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL);
- ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER. SOME STATES AND OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

THIS SECTION APPLIES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. YOU MAY HAVE RIGHTS UNDER APPLICABLE LAW IN YOUR JURISDICTION WHICH PROVIDES FOR REMEDIES IN ADDITION TO THOSE SET OUT ABOVE.

YOUR SOLE AND EXCLUSIVE RIGHT AND REMEDY IN CASE OF DISSATISFACTION WITH THE TRACKENSURE SERVICE, RELATED SERVICES, FEATURES, OR ANY OTHER GRIEVANCE SHALL BE YOUR TERMINATION AND DISCONTINUATION OF ACCESS TO, OR USE OF THE SERVICE.

YOU FURTHER AGREE THAT NO CLAIMS OR ACTIONS ARISING OUT OF, OR RELATED TO, THE USE OF OUR WEBSITE OR SERVICES OR THESE TERMS MAY BE BROUGHT BY YOU MORE THAN ONE (1) YEAR AFTER THE ACTIONABLE EVENT.

## **18. DISCLAIMERS**

THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT AS SET FORTH IN THESE TERMS TRACKENSURE AND ITS AFFILIATES, LICENSORS, SUPPLIERS, AND DISTRIBUTORS (A) MAKE NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE REGARDING THE TRACKENSURE SERVICES AND ANY OUTPUT FROM THE TRACKENSURE SERVICES, AND (B) DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES OF (I) MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INTERFERENCE, AND NON-INFRINGEMENT, (II) ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, OR (III) THAT THE TRACKENSURE SERVICES OR ANY TRACKENSURE OUTPUT ARE, SECURE, ERROR-FREE OR UNINTERRUPTED.

THE TRACKENSURE SERVICES AND TRACKENSURE OUTPUT ARE PROVIDED “AS IS” AND “AS AVAILABLE” AND TRACKENSURE MAKES NO WARRANTY REGARDING THE ACCURACY, COMPLETENESS, QUALITY, RELIABILITY, TIMELINESS, OR TRUTHFULNESS OF ANY TRACKENSURE OUTPUT. CUSTOMER IS SOLELY RESPONSIBLE FOR (AND TRACKENSURE DISCLAIMS) ANY AND ALL LOSS, LIABILITY, OR DAMAGES RELATING TO OR ARISING FROM CUSTOMER’S INSTALLATION OF THE TRACKING PACK, CUSTOMER’S OR END USER’S USE OF THE TRACKENSURE SERVICES OR TRACKING PACK, CUSTOMER’S VEHICLES, AND INTERNET CONNECTIVITY.

This is our disclaimer of our legal liability for the quality, reliability, or safety of our Services and Tracking Pack.

18.2. CUSTOMER AND END USER(S) ACKNOWLEDGE AND AGREE THAT THE TRACKENSURE SERVICES ARE A DRIVER AID ONLY. THEY ARE NOT A



SUBSTITUTE FOR A SAFE, CONSCIENTIOUS DRIVER. THEY CANNOT COMPENSATE FOR A DRIVER THAT IS DISTRACTED, INATTENTIVE, OR IMPAIRED BY FATIGUE, DRUGS, ALCOHOL, OR OTHERWISE. THE DRIVER IS RESPONSIBLE TO AVOID AN ACCIDENT. CUSTOMER'S DRIVERS AND END USERS SHOULD NEVER WAIT FOR ANY OF THE TRACKENSURE SERVICES TO PROVIDE A WARNING BEFORE TAKING MEASURES TO AVOID AN ACCIDENT OR ANY VIOLATIONS.

FAILURE OF A DRIVER TO TAKE FULL RESPONSIBILITY FOR THE OPERATION OF A VEHICLE AT ALL TIMES CAN RESULT IN SERIOUS PERSONAL INJURY OR PROPERTY DAMAGE.

18.3. CUSTOMER AND END USER(S) ACKNOWLEDGE THAT USE OF THE SOFTWARE (OTHER THAN SOFTWARE EMBEDDED IN TRACKING PACK), INCLUDING THE APPS, WHILE DRIVING IS STRICTLY FORBIDDEN. DISTRACTED DRIVING IS DANGEROUS AND ILLEGAL IN MANY JURISDICTIONS.

## **19. FORCE MAJEURE**

TrackEnsure is not liable or responsible for any failure to perform, or delay in performance of any of TrackEnsure obligations under this Terms of Use that is caused by events outside TrackEnsure reasonable control («Force Majeure Event»), in particular (without limitation):

- unavailability of public or private telecommunication networks
- acts, decrees, legislation, regulations or restrictions of any government or
- strikes, lock-outs or other industrial action, civil commotion, riot, invasion, terrorist attacks or threats of terrorist attacks, war (whether declared or not) or any natural disaster.

TrackEnsure performance under this Terms of Use is deemed to be suspended for the period that Force Majeure Event continues, and TrackEnsure will have an extension of time for performance for the duration of that period.

## **20. TERM AND TERMINATION**

We may terminate your right to access and use the services offered on the TrackEnsure Website at any time for any reason without liability. If we do so, or if you elect to delete your profile, any rights granted to you herein will immediately cease.

## **21. TRIALS AND ADDITIONAL SERVICES**

Access and use of some features made available by TrackEnsure may require authorizations of additional terms and conditions as a Customer. If you use any such services, the additional terms and conditions will be made available and will become an integrated part of this Terms of Use. In the event of conflict between the additional terms and conditions and this Terms of Use, the additional terms and conditions shall prevail to the extent of the conflict as it applies to those services.

## **22. ARBITRATION**

WHERE PERMITTED UNDER THE APPLICABLE LAW, YOU AND TRACKENSURE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF.

You and TrackEnsure agree that any dispute, claim, or controversy between you and TrackEnsure arising in connection with or relating in any way to these Terms of Use or to your relationship with TrackEnsure as a user of the Service (whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and whether the claims arise during or after

the termination of the Terms of Use) will be determined by mandatory binding individual arbitration.

The arbitrator must follow this Terms of Use. This arbitration provision will survive termination of the Terms of Use.

- **Arbitration rules**

Any arbitration will be conducted in the English language.

- **Time for filing**

Any arbitration must be commenced by filing a demand for arbitration within ONE (1) YEAR after the date the party asserting the claim first knows or reasonably should know of the act, omission, or default giving rise to the claim; and there shall be no right to any remedy for any claim not asserted within that time period.

If applicable law prohibits a one-year limitation period for asserting claims, any claim must be asserted within the shortest time period permitted by applicable law.

## **23. THIRD PARTY WEBSITES**

We have no control over the Contents of third party websites, and we accept no responsibility for them or for any loss or damage that may arise from your use of them.

## **24. GENERAL PROVISIONS**

- TrackEnsure will only rely on the conditions expressly specified in these Terms and Special Conditions in relation to certain TrackEnsure is provided by TrackEnsure. Any statements or agreements made or concluded elsewhere, whether directly or indirectly, in writing, verbally or in advertising, are not binding for TrackEnsure unless TrackEnsure provides you with written confirmation.

- If any provision of this Terms of Use is deemed invalid, illegal or unenforceable (in whole or in part), as determined by a court, the validity, legality and applicability of the remaining provisions will not be any way to be affected or weakened.

This Terms of Use and your relationship with TrackEnsure in accordance with this Terms of Use shall be governed by and construed in accordance with the laws of the jurisdiction in which TrackEnsure reside, without regard to conflict of law's provisions and in accordance with the non-exclusive jurisdiction of the courts to resolve any legal issues arising in connection with the Terms of Use. Notwithstanding the foregoing, TrackEnsure may apply for injunctive relief (or the equivalent type of emergency legal assistance) in any jurisdiction.

## **25. DISPUTE RESOLUTION AND ARBITRATION**

TrackEnsure is a provincially regulated entity in Ontario, Canada.

You and TrackEnsure agree that any dispute, claim, or controversy between you and TrackEnsure arising in connection with or relating in any way to these Agreements or to your relationship with TrackEnsure as a user of the Service (whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and whether the claims arise during or after the termination of the Agreements) will be determined by mandatory binding individual arbitration.

The arbitrator must follow this agreement and can award the same damages and relief as a court (including attorney fees), except that the arbitrator may not award declaratory or injunctive relief benefiting anyone but the parties to the arbitration. This arbitration provision will survive termination of the Agreements.

**Time for filing.**

Any arbitration must be commenced by filing a demand for arbitration within ONE (1) YEAR after the date the party asserting the claim first knows or reasonably should know of the act, omission, or default giving rise to the claim; and there shall be no right to any remedy for any claim not asserted within that time period. If applicable law prohibits a one-year limitation

period for asserting claims, any claim must be asserted within the shortest time period permitted by applicable law.

## **26. FEEDBACK AND INFORMATION**

The information contained in this TrackEnsure is subject to change without notice.

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<https://trackensure.com/>