ABAX UK Limited General Terms and Conditions

The Customer's attention is particularly drawn to the provisions of clause 13 (Limitation of liability).

1. Interpretation

1.1. The following definitions and rules of interpretation apply in these Conditions.

"Add-on"	ancillary item designed to complement a main product group outlined in Clause 18.
"Business Day"	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
"Business Purpose"	The provision of the Services by the Supplier to the Customer and the direct or indirect marketing of such services (or similar services) to the Customer and potential customers.
"Commencement Date"	has the meaning given in clause 2.
"Conditions"	these terms and conditions as amended from time to time in accordance with clause 17.7.
"Contract"	the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions and the Product Terms.
"Contract Document"	the document sent to the Customer by the Supplier by post or by email that sets out the basis of the Contract and incorporates these Conditions.
"Customer"	the person or firm who purchases the Goods and/or Services from the Supplier.
"Customer Data"	the Data supplied by the Customer to the Supplier during the course of the Supplier's provision of the Services and processed in accordance with clause 11 of these Conditions.
"Data"	any data or information, in whatever form, including images, still and moving, and sound recordings (wholly or in part), including any personal data.
"Data Controller"	has the meaning set out in section 1(1) of the Data Protection Act 1998.
"Data Subject"	an individual who is the subject of Personal Data.
"Dealer"	a company that subscribes to the ABAX Dealer Portal to obtain data via an ABAX unit they use or have sold to an "End user" or have in their own equipment/machine..
"Delivery Location"	has the meaning given in clause 4.1.
"End user"	the end customer who has an ABAX unit installed or factory-installed unit in his equipment/machine that produces data.
"Force Majeure Event"	has the meaning given to it in clause 16.
"Goods"	the goods (or any part of them) set out in the Contract Document.
"Intellectual Property Rights"	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
"Order"	the Customer's written acceptance of the Supplier's quotation.
"Privacy and Data Protection Requirements"	all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction.
"Processing and process"	have the meaning set out in EU's General Data Protection Regulation (GDPR)
"Product Terms"	those conditions that are specific to the particular type of Goods that are supplied by the Supplier to the Customer as incorporated into the Contract.
"Services"	the services supplied by the Supplier to the Customer as set out in the Service Specification.
"Service Specification"	the description or specification for the Services provided by the Supplier to the Customer.
"Supplier"	ABAX UK Limited registered in England and Wales with company number 07764543.

1.2. Interpretation:

1.2.1. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2. A reference to a party includes its personal representatives, successors and permitted assigns.

1.2.3. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.4. 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.

1.2.5. A reference to **writing** or **written** includes faxes and emails.

2. Basis of contract

2.1. The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).

2.3. The Contract shall start on the Commencement Date and be for the initial term of 36 months unless otherwise stated, thereafter it shall continue from year to year subject to termination in the manner set out in clause 14 ('Rolling Term').

2.4. Contract duration of Add-ons are determined by the remaining Contract duration of its associated Goods or Services outlined in clause 18.

2.5. The Customer shall be invoiced annually in advance unless otherwise agreed.

2.6. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.7. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.8. Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue or as otherwise agreed by the Supplier and Customer.

2.9. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.10. The Supplier may vary this contract with 1 months written notice to the Customer.

3. Goods

3.1. The Goods are described on the Supplier's website, advertising literature and Contract Document.

3.2. The Supplier reserves the right to amend the specification or design of the Goods entirely at its own discretion and/or if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

3.3. The mapping functions of the Goods are subject to the restrictions (if any) of the local or national mapping authorities applicable in the areas in which the Goods may be used.

3.4. The Customers rights and obligations in relation to the Goods are detailed in the service terms and conditions.

3.5. Unless otherwise agreed with the Supplier, in writing, in advance, the Goods shall not be used by the Customer outside of the European Economic Area (EEA)/United Kingdom. If such use arise, the Supplier has the right to invoice the Customer for additional costs incurred, e.g. roaming.

3.6. The Goods work worldwide where there is compatible mobile networks, but the live map may have limitations. Local and geographical conditions can limit GSM and GPS coverage required for functionality.

3.7. The customer is obliged to install the Goods unless otherwise agreed with the Supplier. Installation and product information is available from the Supplier via customer support.

3.8. Before first use of the Goods, the Customer shall register and verify the Goods in accordance with the training materials provided with the Goods and using the Supplier's online interface. If the Customer fails to register and verify the Goods then it must notify the Supplier immediately.

3.9. The Goods must be used only in connection with the Services provided by the Supplier.

3.10. The Goods must not be changed or reconfigured by the Customer beyond the agreed service terms and conditions.

3.11. The Customer must operate and handle the Goods in accordance with training materials provided with the Goods. The Supplier reserves the right to request return of the goods in cases where misuse of the goods by the Customer is believed to have occurred.

3.12. Any mobile device applications are developed to meet modern standards for smartphones. Some smartphones have diverging functionality and therefore functionality may vary device to device.

3.13. The Customer shall ensure that Goods are working correctly. The Customer must contact the Supplier immediately if the Goods are not working correctly. On request, the Supplier can remote test the Goods.

4. Delivery of Goods

4.1. The Supplier shall deliver the Goods to the location set out in the Contract Document or such other location as the parties may agree ("Delivery Location") at any time after the Supplier notifies the Customer that the Goods are ready.

4.2. Delivery of the Goods shall be completed on their arrival at the Delivery Location.

4.3. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.4. If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.5. If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

4.5.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

4.5.2. the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.6. If five Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell part or all of the Goods.

4.7. The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality of Goods

5.1. The Supplier warrants that on delivery, the Goods shall
5.1.1. conform in all material respects with their description;
5.1.2. be free from material defects in design, material and workmanship;
5.1.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2. Subject to clause 5.3 and the Product Terms, the Supplier shall, at its option, repair or replace any defective Goods, or refund the price of the defective Goods in full if:

5.2.1. the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.21;

5.2.2. the Supplier is given a reasonable opportunity of examining such Goods; and

5.2.3. the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.

5.3. The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

5.3.1. the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.1.3;

5.3.2. the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

5.3.3. the Customer alters or repairs such Goods without the written consent of the Supplier;

5.3.4. the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal working conditions; or

5.3.5. the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4. Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5. The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Title and risk

6.1. The risk in the Goods shall pass to the Customer on completion of delivery.

6.2. Title to the Goods shall remain with the Supplier

6.3. Until payment has been received by the Supplier, the Customer shall:

6.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

6.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

6.3.4. notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.3.1 to clause 14.3.4;and

6.3.5. give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4. If before payment has been made to the Supplier the Customer becomes subject to any of the events listed in clause 14.3.1 to clause 14.3.4, then, without limiting any other right or remedy the Supplier may have:

6.4.1. the Customer's right to use them in the ordinary course of its business ceases immediately; and

6.4.2. the Supplier may at any time:

6.4.3. require the Customer to deliver up all Goods in its possession; and

6.4.4. if the Customer fails to do so promptly, enter any premises or any property of the Customer or of any third party where the Goods are stored in order to recover them.

7. Supply of Services

7.1. The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

7.2. The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.3. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

7.4. Software updates and maintenance are included as part of the Services. This only effects Services outlined in the Service Specification.

7.5. The Supplier may update and modify the Services at any time with new and/or modified functionality, as long as there is no significant negative change to the functional level of the Services.

7.6. The Supplier reserves the right to downtime.

8. Customer's obligations

8.1. The Customer shall:

8.1.1. ensure that the terms of the Contract Document and any information it provides in the Service Specification is complete and accurate;

8.1.2. co-operate with the Supplier in all matters relating to the Services;

8.1.3. provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

8.1.4. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and

8.1.5. comply with any additional obligations as set out in the Service Specification or Product Terms.

8.1.6. inform the Supplier of any changes in contact information (including address, phone number, email address) in conjunction with the Contract. Changes should be directed to accounts@abax.co.uk.

8.2. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):

8.2.1. without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

8.2.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and

8.2.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8.3. The Customer is obliged not to use any Services in violation with the law of England & Wales, the laws of any other country where the Customer has access to the service or in a manner that violates the rights of others, including, but not limited to, IPR rights, privacy rights or infringes anyone's privacy. The Customer is also obliged to ensure no other person is given the opportunity for such use. Violations of this provision are considered a significant breach of Contract as set out in this clause 14.3.

9. Charges and payment

9.1. The price for Goods:

9.1.1. shall be the price set out in the Contract Document or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery; and

9.1.2. shall be exclusive of all costs and charges of shipping, packaging, insurance, transport of the Goods.

9.2. The Supplier reserves the right to:

9.2.1. increase the charges for the Goods and/or Services on an annual basis (i.e. no more than once in any calendar year) in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and each increase shall take effect from the date of the annual review and shall be based on the latest available figure for the percentage increase in the Retail Prices Index or Average Earnings Index;

9.2.2. increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

9.2.3. any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or

9.2.4. any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.3. The Customer shall pay each invoice submitted by the Supplier:

9.3.1. within 15 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and

9.3.2. in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

9.4. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.5. If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 14 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.5 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

9.6. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. Intellectual property rights

10.1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

10.2. The Supplier grants to the Customer, for its normal business use in relation to the provision of the Goods and Services only and for no other purpose, a fully paid-up, worldwide, non-exclusive, royalty-free license during the term of the Contract to copy, download, display, save and print map data belonging to the Supplier.

10.3. The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.

10.4. The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable license to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

11. Data protection and data processing

11.1. The Customer and the Supplier acknowledge that the Customer is the Data Controller and the Supplier is the data processor in respect of any Customer Data.

11.2. By using the products and services of the Supplier, anonymous information and data may be generated. This anonymous information and data are the property of the Supplier and the Supplier holds the right to transfer to third parties.

11.3. The Supplier shall process the Customer Data for the Business Purpose only and in compliance with the Customer's instructions set out at clause 11.8 and notified in writing to the Supplier from time to time ("Specific Instructions").

11.4. The Customer acknowledges that the Supplier is under no duty to investigate the completeness, accuracy or sufficiency of any of the Customer's Specific Instructions or the Customer Data.

11.5. The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to the Customer Data.

11.6. Each party warrants to the other that it will process the Customer Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

11.7. The Supplier warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:

11.7.1. take appropriate technical and organisational measures against the unauthorised or unlawful processing of Customer Data and against the accidental loss or destruction of, or damage to, Customer Data to ensure a level of security appropriate to:

11.7.2. the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and

11.7.3. the nature of the data to be protected; and

11.7.4. take reasonable steps to ensure compliance with those measures.

11.8. The Customer warrants and agrees that it is the Supplier's general instructions (for the purposes of data processing) that:

11.8.1. as far as it is aware, the processing of the Customer Data under this Agreement will not infringe the Intellectual Property Rights of any third party; it is not aware of any circumstances likely to give rise to breach of any of the Privacy and Data Protection Requirements;

11.8.2. the Supplier is entitled to process the Customer Data for the Business Purpose and such use will comply with all Privacy and Data Protection Requirements;

11.8.3. all data subjects relating to the Customer Data have given their valid consent to the transfer of their personal data by the Customer to the Supplier and to the processing of their personal data by the Supplier for the Business Purpose within the European Economic Area; and

11.8.4. all Customer Data is necessary, accurate and up-to-date.

11.9. Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 11.

11.10. The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Customer's instructions.

11.11. The Supplier may authorise a third party (subcontractor) to process the Personal Data provided that the subcontractor's contract:

11.11.1. is on terms which are substantially the same as those set out in this Agreement; and

11.11.2. terminates automatically on termination of this Agreement for any reason.

12. Confidentiality

12.1. Each party undertakes that it shall not at any time during the Contract, and for a period of 3 years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.

12.2. Each party may disclose the other party's confidential information:

12.2.1. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and

12.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13. Limitation of liability: The customer's attention is particularly drawn to this clause.

13.1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:

13.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

13.1.2. fraud or fraudulent misrepresentation;

13.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

13.1.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

13.1.5. defective products under the Consumer Protection Act 1987.

13.2. Subject to clause13.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

13.2.1. loss of profits;

13.2.2. loss of sales or business;

13.2.3. loss of agreements or contracts;

13.2.4. loss of anticipated savings;

13.2.5. loss of use or corruption of software, data or information;

13.2.6. loss of or damage to goodwill; and

13.2.7. any indirect or consequential loss.

13.3. Subject to clause 13.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to 5% of the total charges paid under the Contract.

13.4. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.5. This clause 13 shall survive termination of the Contract.

14. Termination

14.1. Without affecting any other right or remedy available to it, the Supplier may terminate the Contract by giving the Customer not less than 30 days written notice.

14.2. The Customer may terminate this agreement, or part of it, by the service of notice, which must not be less than three months duration and shall not expire before the end of the Contract or (if applicable) the first anniversary of the Rolling Term in which the notice to terminate is given.

14.3. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

14.3.1. the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;

14.3.2. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

14.3.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

14.3.4. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

14.4. Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

14.4.1. the Customer fails to pay any amount due under the Contract on the due date for payment; or

14.4.2. there is a change of control of the Customer.

14.5. Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.3.1 to clause 14.3.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

14.6. The responsibility of the Supplier and the right to store Customer Data cease upon the termination of the Contract. The Customer is responsible for the exporting and storing of data prior to the termination of the Contract. After the termination of the Contract, the Supplier only has the right and duty to store Customer Data if the Customer and the Supplier have entered into a separate Contract about data storage. Deletion of data will be based on current storage requirements in accordance with applicable European legislation.

15. Consequences of termination

15.1. On termination of the Contract:

15.1.1. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

15.1.2. the Customer shall return all of the Goods within 30 days. If the Customer fails to do so, then the Customer will be invoiced £90.00. Until they have been returned, the Customer shall be solely responsible for their safekeeping and will not use them for any purpose not connected with this Contract.

15.2. Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

15.3. Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

16. Force majeure

16.1. Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

17. General

17.1. Assignment and other dealings

17.1.1. The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

17.1.2. The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

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

17.3. **Waiver**. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

17.4. **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

17.5. Entire agreement.

17.5.1. The Contract 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.

17.5.2. Each party acknowledges that in entering into the Contract 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 the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

17.5.3. Nothing in this clause shall limit or exclude any liability for fraud.

17.6. **Third parties rights**. The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

17.7. **Variation**. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

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

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

ABAX (UK) Limited Product Terms

18. Interpretation

18.1. In these Product Terms, the following definitions and expressions apply in addition to those definitions and expressions defined in the Conditions and used in these Product Terms:

"Product Group 1": **ABAX Triplog, ABAX Equipment Control and ABAX Toll Road**.

"Product Group 2": **ABAX Fleet Management.**

"Product Group 3": **ABAX API** - The ABAX Application Programming Interface including the following related API Documentation:
API Developer - A third party who is given access to ABAX API and the Customer's data.
ABAX Developers Portal - found at https://developers.abax.cloud
API Documentation - The documentation, data and information that the Supplier provides regarding the use of the ABAX API through the ABAX Developer Site.

"Product Group 4": **ABAX Dealer Portal** – An interface that is used to support Dealer with the "onboarding" of an End-user installed unit, making machine location and usage data/usage time available for e.g. to monitor usage patterns and to schedule service using an ABAX or factory-installed device installed in the machine.

18.2. In respect of **Product Group 1** and their respective add-ons, the following amendments to the Conditions shall apply:

a)	Clause 3.14. added	This clause is inserted into the Conditions: 3.14. The Supplier is not responsible for the consequences resulting from technical failure of the equipment or as a result of inadequate installation.
b)	Clause 3.15. added	This clause is inserted into the Conditions: 3.15. If, once installed, the Customer requires the Goods to be uninstalled and re-installed in a new vehicle or location, the Supplier reserves the right to levy an additional charge on the Customer for this work. Any additional charge shall be made in accordance with the price list applicable at the time of the Customer's request for re-installation.
c)	Clause 3.16. added	This clause is inserted into the Conditions: 3.16 If the Goods develop a material defect during the term of the Contract, the Supplier shall diagnose the defect (remotely or in-situ). If, in the reasonable opinion of the Supplier, the Goods' material defect has been caused or exacerbated by the Customer, an additional charge shall be charged for replacement or repair of the Goods. If the material defect has arisen for any other reason , the Supplier shall replace those Goods that are faulty free of charge.
d)	Clause 7.7. added	This clause is inserted into the Conditions: 7.7. Any changes to the Goods' battery are not included as part of the Services.
e)	Clause 7.8. added	This clause is inserted into the Conditions: 7.8. The Customer is given non-exclusive right to use the map data in systems for their own use. The Customer may download, display, save and print such data for normal use in accordance with the purpose of the Services. Any other use is not permitted.
f)	Clause 7.9. added	This clause is inserted into the Conditions: 7.9. Where the Customer has purchased the ABAX Toll Road product, the Supplier shall be authorised to retrieve information about historic toll road usage for the Customer's vehicles. This data shall be used only to estimate the Customer's future costs relating to toll road usage and will form the basis for advance invoicing of the Customer. Achieving a discount assumes that Services are paid on due date and that advance payment has been paid.
g)	Clause 9.3.1. added	This clause is inserted into the Conditions: 9.3.1. Where the Customer has purchased the ABAX Toll Road product, the first invoice in respect of the toll road passings advance will be issued when the contract has been registered by the Supplier, thereafter invoices shall be raised when the balance of the passings advance falls below 50% of the agreed advance amount.
h)	Clause 9.7. added	This clause is inserted into the Conditions: 9.7. The Supplier shall invoice the Customer on or at any time after the Goods have been dispatched from the Supplier.

18.3. In respect of **Product Group 2** and their respective add-ons, the following amendments to the Conditions shall apply:

a)	Clause 3.16. added	This clause is inserted into the Conditions: 3.16. If the Goods develop a material defect during the term of the Contract, the Supplier shall diagnose the defect (remotely or in-situ). If, in the reasonable opinion of the Supplier, the Goods' material defect has been caused or exacerbated by the Customer, an additional charge shall be charged for replacement or repair of the Goods. If the material defect has arisen for any other reason , the Supplier shall replace those Goods that are faulty free of charge.
b)	Clause 3.17. added	This clause is inserted into the Conditions: 3.17. Where the Customer has purchased the ABAX Fleet Management product, the Customer shall be responsible for ensuring that the necessary verification data is obtained, processed and stored (if applicable) in accordance with all applicable national laws (including, but not limited to, the Data Protection Act), the European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR) and all applicable European legislation.
c)	Clause 3.18. added	This clause is inserted into the Conditions: 3.18. Where the Customer has purchased the ABAX Fleet Management product, the Customer must ensure that there is a valid driver smart card ID number and valid company smart card ID number available for remote download. The Customer is responsible for ensuring that the link between the corporate card and the vehicle is active for remote download.
d)	Clause 3.19. added	This clause is inserted into the Conditions: 3.19. Installation, service, maintenance and repair are completed by the Supplier or a workshop or third party approved by the Supplier. The Supplier and the Customer agree the installation time, location and price. The Customer covers the installation costs, which are invoiced to the Customer either from the Supplier or from a workshop directly. If the Customer installs the Goods, lifetime warranty of the unit will be void.
e)	Clause 3.20. added	This clause is inserted into the Conditions: 3.20. If, once installed, the Customer requires the Goods to be uninstalled and re-installed in a new vehicle or location, the Customer must notify the Supplier of this requirement in writing. After receiving such written notice, and at its option, the Supplier (or a duly authorised workshop) shall uninstall the Goods from one location and re-install it in another. The Supplier reserves the right to levy an additional charge on the Customer for this work. Any additional charge shall be made in accordance with the price list applicable at the time of the Customer's request for re-installation.
f)	Clause 3.21. added	This clause is inserted into the Conditions: 3.21. Customers who purchased remote digital tachograph data downloading are responsible for ensuring that the required DDD format control data, both for company and driver, is handled in accordance with National laws, the AETR Agreement and EU legislation. The Supplier manages data in accordance with EU law.
g)	Clause 7.8. added	This clause is inserted into the Conditions: 7.8. The Customer is given non-exclusive right to use the map data in systems for their own use. The Customer may download, display, save and print such data for normal use in accordance with the purpose of the Services. Any other use is not permitted.
h)	Clause 9.8. added	This clause is inserted into the Conditions: 9.8. The Supplier shall invoice the Customer on or at any time after the date first installation.

18.4. In respect of **Product Group 3** and their respective add-ons, the following amendments to the Conditions shall apply:

a)	Clause 2.11. added	This clause is inserted into the Conditions: 2.11. A Contract with the Supplier is a pre-condition to use ABAX API for existing Customers. ABAX API can be added as separate Order in addition to the Customer's other Goods. For new customers a separate Contract must be entered with the Supplier regarding use of ABAX API .
b)	Clause 3.22. added	This clause is inserted into the Conditions: 3.22. In order to access ABAX API the Customer and/or the API Controller may be required to provide certain information (such as identification or contact details) as part of the registration process for the APIs, or as part of the Customer's continued use of the APIs.
c)	Clause 3.23. added	This clause is inserted into the Conditions: 3.23. The Supplier grants a limited, non-exclusive, non-assignable, non-transferable license to use the Goods.
d)	Clause 3.24. added	This clause is inserted into the Conditions: 3.24. The Customer may not transmit any viruses or other computer programming that may damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system or data.
e)	Clause 3.25. added	This clause is inserted into the Conditions: 3.25. The Customer may not use any Goods supplied to replicate or compete with the services offered by the Supplier.
f)	Clause 11.12. added	This clause is inserted into the Conditions: 11.12. The API Developer is defined as Data Processor according to Article 4 (7) in Regulation (EU) 2016/679. The Customer (the Data Controller) is responsible for entering a contract with the API Developer as Data Processor (a Data Processing Agreement). The Customer must confirm to the Supplier that the API Developer shall be given access to the Customer's data through ABAX API. Before given access to ABAX API, the API Developer must register in the ABAX Developers Portal and approve the ABAX General Terms and Conditions Registration, as well as the specific terms and conditions for ABAX API.
g)	Clause 14.2. replaced	This clause is replaced in the Conditions: 14.2. The Customer may terminate this agreement, by the service of notice, which must not be less than 30 days duration. Upon termination of ABAX API, all rights and licenses granted to the Customer will terminate immediately.

18.5. In respect of **Product Group 4** and their respective add-ons, the following amendments to the Conditions shall apply:

a)	Clause 3.23. added	This clause is inserted into the Conditions: 3.23. The Supplier grants a limited, non-exclusive, non-assignable, non-transferable license to use the Goods.
b)	Clause 3.25. added	This clause is inserted into the Conditions: 3.25. The Customer may not use any Goods supplied to replicate or compete with the services offered by the Supplier.
c)	Clause 11.13. added	This clause is inserted into the Conditions: 11.13. All data must be stored and processed with necessary and secure encryption.
d)	Clause 11.14. added	This clause is inserted into the Conditions: 11.14. The Dealer must be a Customer of ABAX and accept the ABAX General Terms and Conditions before the Dealer is granted access to the ABAX Dealer Portal.
e)	Clause 11.15. added	This clause is inserted into the Conditions: 11.15. The Dealer and End user shall enter into a data processor agreement that regulates the processing of personal data in the ABAX Dealer Portal. In that data processor agreement, ABAX shall be stated as a subcontractor of the Dealer, cf. GDPR article 28 (2) and (4).
f)	Clause 11.16. added	This clause is inserted into the Conditions: 11.16. In the relationship between Dealer and End user, the Dealer is to be regarded as a Data Processor in accordance with GDPR article 4 (8) for personal data processed in ABAX Dealer Portal. End user is to be regarded as Data Controller for processing in accordance with Article 4 of the GDPR (7).