

Terms and Conditions

The terms set out below (the "Terms") govern all contracts between you (the "Customer") and Movolytics ("Movolytics") for the provision of Equipment and/or Services by Movolytics to the Customer. By ordering Services from Movolytics, the Customer agrees to be bound by the Terms. The Terms, together with any Services Order Form, Authorisation Agreement or other document referenced herein, constitute the whole agreement between Movolytics and the Customer (the "Agreement") and supersede any previous arrangement, understanding or agreement between the parties relating to the subject matter they cover. All other terms are excluded from this Agreement. No variation to this Agreement shall take effect unless explicitly agreed in writing by a numbered modification addendum, change order or amendment authorised in writing by Movolytics.

1 Interpretation

- 1.1 The following definitions apply in this Agreement:

Authorisation Agreement: the document under which the Customer authorises direct debit or credit card payments to be made to Movolytics.

Services Order Form: the document for placing orders of the Services, whether by e-mail, post, the Internet or otherwise, including addenda thereto. These Terms shall be deemed incorporated herein by reference to each Services Order Form and each Services Order Form shall be deemed a separate contract.

Equipment: any physical equipment, including vehicle tracking units provided by Movolytics as part of the Services, as described in a Services Order Form.

Services: the subscription services ordered by the Customer from Movolytics under a Services Order Form, including any associated documentation.

Software: the online software applications provided by Movolytics as part of the Services, together with any other software provided in connection with the Services.

Subscription Fees: the subscription fees payable by the Customer to Movolytics for the Subscriptions, as set out in a Services Order Form.

Minimum Service Period: the term of a subscription entered into by the Customer constituting an initial period of 36 months unless otherwise stated on the Services Order Form, as set out in the Services Order Form, together with any renewal thereof.

2 Purchase of Subscriptions

- 2.1 The applicable Subscription Fees and Minimum Service Period in respect of the Customer's subscription for Services shall be as set out in a Services Order Form. First payment shall be taken by direct debit and the Minimum Service Period shall commence 45 days from the date of this Agreement
- 2.2 Each and every purchase of Services by the Customer under a Services Order Form shall be subject to these Terms.
- 2.3 A concluded contract between Movolytics and the Customer for the purchase of Services shall only come into existence upon acceptance of the relevant Services Order Form by Movolytics through signature of the Services Order Form by a duly authorised officer or employee of Movolytics and communication of same to the Customer.
- 2.4 The Customer shall pay the Subscription Fees to Movolytics in accordance with this clause and as specified in an applicable Services Order Form. The billing cycle for Subscription Fees shall be in accordance with the applicable Services Order Form. Unless otherwise specified in the Services Order Form, payment of all amounts due shall be made within 30 days of the date of invoice or within any period specified for payment in the applicable invoice or in accordance with the applicable Authorisation Agreement.
- 2.5 Subscription Fees paid are non-refundable and all amounts stated or referred to in this Agreement are exclusive of VAT or any other relevant taxes, and are payable in sterling. The Customer is responsible for payment of all applicable taxes. The subscriptions for Services purchased under a Services Order Form cannot be reduced during the relevant Minimum Service Period and cannot be cancelled prior to the end of the relevant Minimum Service Period.
- 2.6 If Movolytics has not received payment within 30 days after the due date for payment, and without prejudice to any other rights and remedies it may have:
- (a) Movolytics may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Movolytics shall be under no obligation to provide any or all of the Services while the amount owing remains unpaid; and
- (b) Movolytics may, claim interest at its discretion on any unpaid amounts under the Late Payment of Commercial Debts (Interest) Act 1998.
- 2.7 The Customer agrees that Movolytics may issue invoices to it by electronic means and that invoices issued in this manner shall be valid. It is the Customer's responsibility to notify Movolytics of any change to the email address to which it would like invoices to be issued.
- 2.8 Notwithstanding any other provision in this Contract all payments payable to Movolytics under this Contract shall become due immediately upon termination of this Contract, howsoever arising.
- 2.9 All payments and fees due under this Contract are subject to the addition of VAT and any other applicable taxes, duties or levies at the then prevailing rate. Any firm prices quoted are with errors and omissions excepted.

3 Services

- 3.1 Movolytics shall, during the Minimum Service Period, provide the Services to the Customer on and subject to the terms of this Agreement.
- 3.2 Movolytics will provide on-line training, upgrades in software and mapping (upon availability) and technical support in accordance with Movolytics' support services policy (which may be amended from time to time) as part of the Services at no additional cost to the Customer and in accordance with its policies in force from time to time.

4 License

- 4.1 In consideration of the Customer purchasing subscriptions for the Services in accordance with a Services Order Form and complying with the terms of an Authorisation Agreement and the other terms of this Agreement, Movolytics hereby grants to the Customer a non-exclusive, non-transferable license to use the Software and Equipment for the purpose of receiving the Services during the Minimum Service Period solely for the Customer's internal business operations in the territory in which the Customer is located.

- 4.2 The Customer shall not, except to the extent expressly permitted under the Agreement, attempt to copy, modify, duplicate, create derivative works from, republish, download display, transmit, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form or distribute all or any portion of the Software and/or associated documentation in any form or media or by any means.

5 Proprietary and Intellectual Property Rights

- 5.1 The Customer acknowledges and agrees that Movolytics and/or its suppliers/licensors own all intellectual property rights and any other title or proprietary rights in the Services, including the Software and Equipment. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights, title, interest or licenses in respect of the Services, including the Software and Equipment.

6 Third Parties

- 6.1 The Customer acknowledges that the Services may enable it to access third-party websites and that it does so entirely at its own risk and that Movolytics shall have no obligation to the Customer in that regard.
- 6.2 The Services may contain features designed to interoperate with third party applications. To use such features, the Customer may be required to obtain access to such third party applications from their providers. If the provider of any such third party application ceases to make the third party application available for interoperation with the corresponding Services feature on reasonable terms, Movolytics may cease providing such Services feature without entitling the Customer to any refund, credit or other compensation.
- 6.3 This Agreement does not confer any rights on any entity (including any group company of the Customer) which is not a party hereto under the Contracts (Rights of Third Parties) Act 1999.

7 Warranties

- 7.1 The provision of Services as contemplated herein requires the installation of Equipment into Customer vehicles. All Equipment delivery times and dates are approximate, but Movolytics shall use its reasonable efforts to respect them. The parties shall each make commercially reasonable efforts to schedule and complete the installation of the Equipment within 14 days from the date this Agreement is executed, unless an alternate schedule is agreed upon in advance by both parties. Movolytics shall not be liable for any loss or damage resulting from late delivery or installation. Should Customer not make reasonable efforts to make vehicles available to Movolytics or our agent for installation of Equipment within 45 days from the date of this Agreement, Movolytics' obligation to install such Equipment shall expire, and any installation thereafter shall be subject to an additional installation fee of £100 per vehicle, in addition to all other fees due. Movolytics' inability to install such Equipment in Customer vehicles due to unavailability of Customer vehicles shall not relieve Customer of its Subscription Fees pertaining to such vehicle(s).
- 7.2 Movolytics warrants that the Equipment supplied in connection with the Services will be free from defects for the duration of the Minimum Service Period (the "Warranty Period"). If the Equipment is defective within the Warranty Period, Movolytics will repair or replace them within a reasonable period using components or replacements that are new, or equivalent to new in accordance with industry standards and practice. The Customer shall allow Movolytics reasonable access to any relevant vehicle to affect such repairs or replacements.
- 7.3 The above remedy shall be the Customer's sole and exclusive remedy and shall be in lieu of any other remedy available to the Customer at law or in equity in respect of any defective Equipment. Under no circumstances shall Movolytics be responsible to the Customer or any third party for the loss of use of any vehicle during the Warranty Period. The warranty under clause 7.2 shall be void and of no effect if failure of the Equipment or part thereof is due to damage caused by external force, accident, incorrect installation, misuse, modification or repair by any unauthorised third party or by the Customer or the connection of the Equipment to any third party products not provided by Movolytics.
- 7.4 Movolytics:
- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free, nor that the Services and/or the information obtained by the Customer through the Services will be accurate or meet the Customer's requirements;
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities;
- (c) does not warrant that the Services will be merchantable, satisfactory quality or fit for any particular purpose and any such warranties or similar warranties (whether implied under statute or otherwise) are hereby expressly excluded; and
- (d) makes no warranties with respect to the content of any third party information which it makes available to the Customer in the course of providing the Services.

8 Customer Obligations

- 8.1 The Customer shall provide Movolytics with (i) all necessary co-operation in relation to this Agreement, (ii) all necessary and timely access to its premises and vehicles to enable Movolytics to comply with its obligations in relation to the installation of the Equipment, and (iii) all necessary access to such information as may be required by Movolytics in order to render the Services.
- 8.2 The Customer shall ensure that (i) only authorised users access the Services, (ii) usernames and passwords are protected from unauthorised use, (iii) it immediately notifies Movolytics in respect of any suspected or actual breach of security, and (iv) its network and systems comply with the relevant specifications provided by Movolytics from time to time.
- 8.3 The Customer acknowledges and agrees that although Movolytics' Service contains maps, routing instructions and driving directions, Movolytics assumes no responsibility for the accuracy of this information. The Customer is responsible for checking directions for accuracy, confirming that the designated routes still exist, responding appropriately to construction and other road hazards and adhering to all traffic laws.
- 8.4 The Customer confirms that to the extent that it collects personal data of any person through the devices operated within the Customer's vehicles or inputs personal data into the Movolytics Service that: (a) it shall notify the individual whose personal data of the anticipated use of his or her personal data by the Customer and by Movolytics and (b) it shall collect, transfer to Movolytics and use any such data in compliance with all applicable data protection, privacy and security laws. If Movolytics process any personal data on the Customer's behalf when performing Services under this Agreement, the Customer shall ensure that it remains the data controller in respect of such personal data and Movolytics shall be a data processor in respect of such personal data. The Customer shall comply with all applicable data protection legislation in that regard. Movolytics' processing of any personal data shall be subject to the instructions of the Customer and in that regard Movolytics agrees to take appropriate security measures equivalent to those imposed on the Customer by section 2(1)(d) of the Data Protection Act 1988 (as amended).

- 8.5 The customer will be responsible for:
- ensuring that the equipment is used properly and safely;
 - any damage caused to the Equipment apart from fair wear and tear
 - the Customer will notify Movolytics immediately if any Equipment is lost, stolen or damaged. In such circumstances the Customer will replace the Equipment at its own expense and continue with this contract and any replacement Equipment will become Movolytics property. Pending replacement of the Equipment the Customer will remain liable to pay all Subscription Fees due under this Contract.
 - The Customer must not transfer the benefit of this Contract or do anything which affects Movolytics rights in the Equipment including without limitation using it as a security for a debt or any other obligation or selling or disposing of it.
- 9 Vehicle Information**
- 91 The Equipment and Services are designed to collect certain data and information from Customer's vehicles, including, without limitation, data regarding the location of the vehicles, rate of travel, ignition on/off, idle time, number of stops and other similar information (collectively, "Vehicle Information"). The collection, amalgamation, manipulation or recording of Vehicle Information may give rise to intellectual property rights including database rights, copyrights, rights in know-how and confidential information, design rights and other similar rights anywhere in the world ("Vehicle IP"). Customer acknowledges and agrees that as between Customer and Movolytics, Movolytics owns all Vehicle Information and Vehicle IP, including all rights in and to such Vehicle Information and Vehicle IP, and Customer hereby assigns for good and valuable consideration (the receipt of which is hereby acknowledged by Customer) any rights it may have in the any current and future Vehicle Information and Vehicle IP. Customer has right to use any Vehicle information and Vehicle IP provided to Customer as part of the Movolytics service for its own business purposes.
- 92 Without limiting the generality of the foregoing, Customer acknowledges and agrees that, as the owner of the Vehicle Information, Movolytics may review, analyse, manipulate, copy and modify the Vehicle Information. Movolytics may use the information to produce and distribute reports, analyses and data based upon the Vehicle Information or Vehicle IP, provided, however that Movolytics shall not disclose to any third parties any Vehicle Information that identifies specifically Customer or any of the drivers of Customer's vehicles. It being understood, however, that the foregoing restriction shall not apply to disclosures of Vehicle Information or Vehicle IP that are (i) required by law or in response to a request from law enforcement authorities, (ii) made in connection with a subpoena or other similar demand, (iii) made in connection with a contemplated merger, acquisition or similar transaction, (iv) made to Movolytics' affiliates or related companies, and/or (v) made to Movolytics' service providers for delivering Services on behalf of Movolytics.
- 10 Indemnity**
- 10.1 Movolytics shall, subject to clause 10.2, defend the Customer, its officers, directors and employees against any claim that the Services infringe any patent, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that (i) Movolytics is given prompt notice of any such claim, (ii) the Customer provides reasonable co-operation to Movolytics in the defense and settlement of such claim, at Movolytics' expense, and (iii) Movolytics is given sole authority to defend or settle the claim.
- 10.2 In no event shall Movolytics, its employees, agents and sub-contractors be liable to the Customer under clause 10.1 to the extent that the alleged infringement is based on (i) a modification of the Services by anyone other than Movolytics, or (ii) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by Movolytics or in breach of this Agreement, or (iii) the Customer's use of the Services after notice of the alleged or actual infringement from Movolytics or any appropriate authority.
- 10.3 The foregoing sets out the Customer's sole and exclusive rights and remedies, and Movolytics' entire liability for infringement of any third party patent, copyright, trade mark, database right or right of confidentiality.
- 10.4 The Customer shall defend, indemnify and hold harmless Movolytics against any third party claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with (i) any data inputted by the Customer to Movolytics' systems, or (ii) the Customer's breach of this Agreement.
- 11 Confidentiality**
- 11.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of five years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as may be required by law, court order or any governmental or regulatory authority.
- 11.2 The provisions of clause 11.1 shall not apply to confidential information received by a party which: (i) that party can prove was known before receipt; (ii) is in or enters the public domain through no wrongful default by or on behalf of that party; or (iii) was received from a third party without obligations of confidence owed directly or indirectly to that party.
- 11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under this Agreement.
- 12 Liability**
- 12.1 This clause sets out the entire liability of Movolytics arising under or in connection with (i) any breach of this Agreement by Movolytics, (ii) any representation, statement or tortious act or omission (including negligence) by Movolytics, or (iii) any breach of statutory duty by Movolytics.
- 12.2 Except as expressly and specifically provided in this Agreement:
- Movolytics shall have no liability for any damage caused by errors or omissions in any information or instructions provided to Movolytics by the Customer in connection with the Services, or any actions taken by Movolytics at the Customer's direction;
 - all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
 - the Services are provided to the Customer on an "as is" basis.
 - Movolytics shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
 - Movolytics' total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid by the customer during the 12 months immediately preceding the date on which the claim arose.
- 12.3 Nothing in this Agreement excludes the liability of Movolytics for death or personal injury caused by Movolytics' negligence or for fraud or fraudulent misrepresentation.
- 12.4 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, misrepresentation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement. Accordingly, each of the parties acknowledges and agrees that the only remedy available to it in respect of the subject matter of this Agreement shall be for breach of contract under the terms of this Agreement and it shall have no right of action against the other party in respect of any such representation, promise, assurance, warranty or undertaking.
- 13 Term and Termination**
- 13.1 This Agreement shall commence upon acceptance of an Order Form under clause 2.3 by Movolytics and shall terminate upon expiry of the Minimum Service Period. The initial Minimum Service Period shall begin on the earlier of installation of the Equipment or 45 days from the date the Services Order Form is executed, and continue for the period indicated on the Services Order Form (the "Minimum Service Period"). The Minimum Service Period for renewal Services shall commence on the date of execution of the applicable Services Order Form for the renewal or, if later, the date specified on the Services Order Form as the start date for the applicable renewal Service. Unless otherwise specified in the Services Order Form, add-on features will run for the same term as the base vehicle tracking units to which the add-on features apply.
- 13.2 Without prejudice to any other rights or remedies to which Movolytics may be entitled, Movolytics may terminate this Agreement without liability to the Customer if the Customer commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 10 business days of the Customer being notified in writing of the breach, or the Customer becomes the subject of a petition in insolvency or any other proceeding relating to insolvency, receivership, examinership or liquidation.
- 13.3 Without prejudice to any other rights or remedies to which the Customer may be entitled, the Customer may terminate this Agreement without liability to Movolytics if Movolytics commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 business days of Movolytics being notified in writing of the breach, or Movolytics becomes the subject of a petition in insolvency or any other proceeding relating to insolvency, receivership, examinership or liquidation.
- 13.4 In the event of termination under clause 13.2, the Customer shall pay any unpaid fees covering the remainder of the Minimum Service Period under an Order Form.
- 13.5 On termination of this Agreement for any reason:
- all licenses granted under this Agreement shall immediately terminate;
 - each party shall return and make no further use of any Equipment, Software, property, and other items (and all copies of them) belonging to the other party and the Customer permits Movolytics to enter any premises or vehicles over which the Customer has control for the purposes of retrieval of such items belonging to Movolytics; and
 - the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.
- 13.6 This Contract will endure until the expiry of the Minimum Service Period and shall be renewed automatically thereafter for successive 12 month periods (each such period being a "Renewal Period") unless or until terminated by either party on giving to the other at least three months' written notice to expire at the end of the Minimum Service Period or any Renewal Period.
- 13.7 If this Contract expires or is terminated by either party for any reason whatsoever (other than where it automatically renews), the Customer agrees to return the equipment, at its own expense and risk, to Movolytics within 28 days of termination to an address nominated by Movolytics within the United Kingdom in good condition (except fair wear and tear). If the Customer does not do so without prejudice to any other sums due to Movolytics pursuant to the terms of this Contract the Customer agrees to pay Movolytics the Subscription Fees, at a rate equal to the last Subscription Fee paid under the contract, due in respect of each item of non-returned Equipment for each month or part month after expiration of the 28-day period following termination during which the Equipment is not returned as agreed damages. The Customer will be responsible for all costs incurred by Movolytics in the refurbishment of the equipment where this is required other than as a result of fair wear and tear.
- 14 Force Majeure**
- 14.1 Movolytics shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement by acts of God, war, riot, civil commotion, embargo, strikes, fire, theft, delay in delivery of services of sub-contractors or sub-suppliers, shortage of labour or materials, confiscation or any other unforeseen event (whether or not similar in nature to those specified) outside the reasonable control of Movolytics.
- 15 Assignment**
- 15.1 The Customer shall not, without the prior written consent of Movolytics, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Movolytics may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 16 Waivers and Remedies**
- 16.1 Except as otherwise stated in this Agreement, the rights and remedies of each party under this Agreement are in addition to and not exclusive of any other rights or remedies under this Agreement or the general law and may be waived only in writing and specifically.
- 16.2 Delay in exercising or partial exercise or non-exercise of any right under this Agreement is not a waiver of that or any other right and shall not preclude any further or other exercise of that right or any other right under this Agreement. Waiver of a breach of any term of this Agreement shall not operate as a waiver of breach of any other term or any subsequent breach of that term.
- 17 Governing Law and Jurisdiction**
- 17.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of England and Wales. The parties irrevocably agree that the English courts have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).