

This Sales Contract consists inclusively of Sections **A** to **E** below.

## **SECTION A: Terms and conditions**

It is agreed:

### **1. Interpretation**

These definitions and rules of interpretation apply in this Agreement.

#### **1.1 Definitions:**

<b>Agreement</b>	this Sales Contract and the Sales Order Form.
<b>App</b>	any of the supplemental Mobile Applications available to download to support the Customer's use of Eureka TMS.
<b>Appstore</b>	the app-store relevant to the Customer.
<b>Authorised Users</b>	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use Eureka TMS and the Documentation.
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in Ireland.
<b>Change of Control</b>	the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, of the Customer by another entity in a single transaction or a series of transactions.
<b>Commencement Date</b>	<p>either:</p> <ul style="list-style-type: none"><li>(a) the date the Sales Order Form is signed by the Customer; or</li><li>(b) any other date that may be agreed in the Sales Order Form and is specifically stated to be the Commencement Date.</li></ul> <p>If a Commencement Date is set out in the Sales Order Form, that shall be the Commencement Date rather than the date that the Sales Order Form is signed by the Customer.</p>
<b>Confidential Information</b>	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information subject to the provisions of clause 12.
<b>Customer</b>	the customer whose details are outlined in the Sales Order Form.
<b>Customer Data</b>	the data inputted by the Customer for the purpose of using Eureka TMS or facilitating the Customer's use of Eureka TMS.
<b>Data Protection Legislation</b>	all applicable privacy and data protection laws, including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Acts 1988 - 2018, and the EU ePrivacy Directive 2002/58/EC as amended by Directive 2009/136/EC, and any implementing, derivative or related legislation, rule, regulation and binding regulatory guidance, in each case as such legislation is amended, revised or replaced from time to time.
<b>Defect</b>	failure of Eureka TMS to operate in all material respects in accordance with the Documentation, including any operational failure or error referred to in Section <b>B</b> and including Vulnerabilities.

<b>Documentation</b>	any information made available to the Customer by Eureka from time to time (online or otherwise) which is produced by Eureka to provide general help and assistance to its customers.
<b>Effective Date</b>	being the date that the Customer shall start to pay the Monthly Fees, as outlined in the Sales Order Form.
<b>Eureka</b>	Eureka Information Systems Limited (company number: 516330).
<b>Eureka TMS</b>	the latest version of Eureka's on-premise integrated transport management system, available as 'MoveIT' (as set out in the Sales Order Form) (and related features, including but not limited to, Mobile Applications available for the Customer to download and/or Modified Software).
<b>Good Industry Practice</b>	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a company within the relevant industry or business sector.
<b>Initial Term</b>	the initial term of this Agreement, as outlined in the Sales Order Form and in clause 3.2.
<b>Insolvency Event</b>	if the Customer summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of section 570 of the Companies Act 2014, has a receiver, manager, administrative receiver or examiner appointed over any of its assets, undertakings or incomes, has passed a resolution for its winding-up (except for the purpose of a voluntary reconstruction or amalgamation previously approved in writing, by Eureka), is subject to a petition presented to any court for its winding-up (except for the purpose of a voluntary reconstruction or amalgamation previously approved in writing, by the Eureka), has a provisional liquidator appointed or has any other analogous insolvency proceedings initiated against it whether in Ireland or any other jurisdiction.
<b>Intellectual Property Rights</b>	patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
<b>Licence Term</b>	the Initial Term, together with any Renewal Term(s).
<b>Maintenance and Upgrade Services</b>	the issuing of Maintenance Releases and New Versions of Eureka TMS and/or Eureka TMS Features.
<b>Minimum Order</b>	means the minimum number of User Licences or Mobile Applications permitted

<b>Requirement</b>	under the Agreement or as amended from time to time under clause 6.
<b>Mobile Applications</b>	an application (offered by Eureka) available for a Customer (or any of its employees, contractors or staff) to download from an app-store for use with Eureka TMS (see Section <b>E</b> ).
<b>Modified Software</b>	the standard software programs proprietary to Eureka (comprising Eureka TMS) that are modified or to be modified by Eureka under this Agreement.
<b>Monthly Fee</b>	the total of the fees outlined in the Sales Order Form for all or any of: Software Support, Maintenance and Upgrade Services, Mobile Applications and Professional Services.
<b>Normal Working Hours</b>	9.00am to 1pm and 2pm to 5.30pm (GMT/IST) Monday to Thursday and 9.00am to 1pm and 2pm to 5.00pm (GMT/IST) Friday (excluding public holidays in Ireland).
<b>Payment Frequency</b>	the billing frequency agreed between Eureka and the Customer for payment of the Monthly Fee.
<b>Professional Services</b>	implementation, technical assistance, consultancy training, enhanced support, Modified Software, integration to Third Party Software or any other services requested by the Customer in writing, or as outlined in the Sales Order Form.
<b>Project Plan</b>	the plan agreed between Eureka and the Customer which outlines the initial implementation process for Eureka TMS.
<b>Renewal Term</b>	a period of 12 (twelve) calendar months immediately following the Initial Term, or if this Agreement has already automatically renewed, immediately following any such Renewal Term, unless otherwise agreed in writing.
<b>Restricted Person</b>	any firm, company or person employed or engaged by Eureka during the term of this agreement, who has been engaged in the provision of the Software Support services or the management of this Agreement either as principal, agent, employee, independent contractor or in any other form of employment or engagement and who could materially damage the interests of Eureka if they were involved in any capacity in any business concern which competes with the business of Eureka.
<b>Sales Order Form</b>	the order form generated by Eureka which outlines the services being provided to the Customer.
<b>Software Support</b>	those services covered by the provisions of Section <b>B</b> .
<b>Third Party Software</b>	any software that is used by the Customer but that is not owned by or licensed to Eureka.
<b>Upfront Fee</b>	the initial one-off payment to be paid by the Customer for Eureka TMS.
<b>User Licences</b>	the user licences purchased by the Customer which entitle Authorised Users to access and use Eureka TMS and the Documentation in accordance with this

	Agreement.
<b>VAT</b>	value added tax chargeable under Irish law for the time being and any similar additional tax.
<b>Virus</b>	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
<b>Vulnerability</b>	a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability.

## 2. **Application of these terms and conditions**

- 2.1 The Customer shall be bound by the terms and conditions in this Section **A**, and any additional terms and conditions in (i) Sections **B** to **E** inclusive, as and when those services become applicable to the Customer and (ii) the Sales Order Form.
- 2.2 If there are any conflicts of interest between the Sales Order Form, and any of the Sections of this Sales Contract, the order of precedence shall be:
  - 2.2.1 Sales Order Form;
  - 2.2.2 the Section applicable to the services in question; and
  - 2.2.3 Section **A**.
- 2.3 This Agreement shall prevail over any terms and conditions referred to by the Customer, or contained in a purchase order, confirmation of order, specification or implied by law, trade, custom, practice or course of dealing.

## 3. **Commencement and duration**

- 3.1 This Agreement shall commence on the Commencement Date and shall continue for the Initial Term.
- 3.2 For the avoidance of doubt, the Initial Term includes:
  - 3.2.1 the implementation period prior to the Effective Date; and
  - 3.2.2 the period for which the Customer is liable to pay the Monthly Fees in accordance with the Payment Frequency, starting from the Effective Date.
- 3.3 On expiry of the Initial Term, this Agreement shall automatically renew for the Renewal Term, and at the end of each successive Renewal Term shall renew for a further Renewal Term, unless terminated in accordance with clause 14, or unless either party gives to the other party written notice to terminate. Such notice shall be served on a date no later than 60 (sixty) days

prior to the expiry of the Initial Term or any relevant Renewal Term.

#### **4. Implementation**

- 4.1 Prior to the Effective Date, and after payment of the deposit and/or Upfront Fee in line with clause 9, a representative from Eureka shall contact the Customer's nominated representative, to arrange an initial meeting.
- 4.2 After the initial meeting between both representatives, both parties will agree to a Project Plan.
- 4.3 If there is a delay, which is, in the sole opinion of Eureka, acting reasonably, due to the Customer not acting in accordance with Eureka's reasonable instructions or other delay caused or contributed to by the Customer, and the Customer is not able to utilise Eureka TMS from the Effective Date, Eureka shall, notwithstanding such delay, be entitled to take payment from the Customer in accordance with clause 9.
- 4.4 If the delay is solely the fault of Eureka, the Effective Date shall be amended accordingly and payment of the Monthly Fees shall commence on the amended Effective Date, in accordance with clause 9.

#### **5. User Licences**

- 5.1 Subject to the Customer purchasing the User Licences in accordance with clause 6.2, the restrictions set out in this clause 5 and the other terms and conditions of this Agreement, Eureka hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, for Authorised Users to use Eureka TMS and/or Eureka TMS Features and the Documentation during the Licence Term solely for the Customer's internal business operations.
- 5.2 Eureka may audit the Customer's use of the Services (no more than quarterly, with reasonable notice) to verify compliance, and Customer shall cooperate in good faith

#### **6. Additional User Licences**

- 6.1 Subject to clause 6.2, the Customer may, from time to time during the Licence Term, purchase additional User Licences in excess of the number set out in the Sales Order Form and Eureka shall grant access to Eureka TMS and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.
- 6.2 If the Customer wishes to increase the number of User Licences, it should contact the Eureka dedicated account manager. Payment for additional User Licences shall be taken in accordance with clause 9.2.
- 6.3 A Customer may increase the number of User Licences in accordance with this clause 6. Where the Customer does so, the Minimum Order Requirement shall be amended accordingly.

#### **7. Eureka's obligations**

- 7.1 Eureka shall, during the Licence Term, make available Eureka TMS and/or Eureka TMS Features and Documentation to the Customer on and subject to the terms of this Agreement.
- 7.2 Eureka shall use commercially reasonable endeavours to make Eureka TMS and/or Eureka

TMS Features available in line with Good Industry Practice, except for planned maintenance. With regards to unplanned, or emergency maintenance, Eureka will endeavour (but is not obliged) to notify Customers in advance of such works, however the Customer acknowledges and agrees that this may not be possible in all instances.

7.3 Eureka:

7.3.1 does not warrant that:

7.3.1.1 the Customer's use of Eureka TMS will be uninterrupted or error-free; or

7.3.1.2 that Eureka TMS, Documentation and/or the information obtained by the Customer through the services provided by Eureka will meet the Customer's requirements; or

7.3.1.3 Eureka TMS will be free from Vulnerabilities;

7.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that Eureka TMS and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.4 This Agreement shall not prevent Eureka from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

7.5 Eureka warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

7.6 Eureka shall not be responsible for any act, omission, event or circumstance, or perform any other obligation in this Agreement, to the extent that the act, omission, event or circumstance results from:

7.6.1 any breach or failure by the Customer to perform its obligations under this Agreement;

7.6.2 failure of any of the Customer's network services;

7.6.3 any event under clause 15; or

7.6.4 planned or emergency maintenance.

8. **Customer's obligations**

8.1 The Customer shall:

8.1.1 provide Eureka with:

8.1.1.1 all necessary co-operation in relation to this Agreement; and

8.1.1.2 all necessary access to such information as may be required by Eureka; in order to provide Eureka TMS, including but not limited to Customer Data, security access information, access to the Customer's IT systems (including but not limited to its server(s)) and configuration services;

8.1.2 without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;

8.1.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such

- assistance as agreed by the parties, Eureka may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 8.1.4 ensure that the Authorised Users use Eureka TMS and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
  - 8.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Eureka, its contractors and agents to perform their obligations under this Agreement, including without limitation the provision of Eureka TMS and/or Eureka TMS Features and all or any Maintenance and Upgrade Services, Software Support and/or Professional Services and integration to Third Party Software;
  - 8.1.6 ensure that its network and systems comply with the relevant specifications provided by Eureka from time to time; and
  - 8.1.7 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Eureka's on-premise infrastructure, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 8.2 Eureka reserves the right to discuss usage/volume of data storage with the Customer, through their use of Eureka TMS at any time.
- 8.3 The Customer shall not access, store, distribute or transmit any Viruses or Vulnerability, or any material during the course of its use of Eureka TMS that:
- 8.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 8.3.2 facilitates illegal activity;
  - 8.3.3 depicts sexually explicit images;
  - 8.3.4 promotes unlawful violence;
  - 8.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - 8.3.6 is otherwise illegal or causes damage or injury to any person or property;
- and Eureka reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material including all or part of the Eureka TMS that breaches the provisions of this clause 8.
- 8.4 The Customer shall not:
- 8.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
    - 8.4.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of Eureka TMS and/or Documentation (as applicable) in any form or media or by any means; or

- 8.4.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of Eureka TMS;  
or
  - 8.4.2 access all or any part of Eureka TMS or the Documentation in order to build a product or service which competes with Eureka's; or
  - 8.4.3 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make Eureka TMS and/or Documentation available to any third party except the Authorised Users, unless otherwise agreed by Eureka in writing; or
  - 8.4.4 attempt to obtain, or assist third parties in obtaining, access to Eureka TMS and/or Documentation without Eureka's written consent; or
  - 8.4.5 introduce or permit the introduction of, any Virus or Vulnerability into Eureka's network and information systems.
- 8.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, Eureka TMS and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Eureka.
- 8.6 The rights provided under this clause 8 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 9. **Charges and payment**
- 9.1 The Customer shall pay the Monthly Fees to Eureka in accordance with this clause 9. (Please see Section C for the payment provisions that apply to Professional Services, in addition to this clause 9).
- 9.2 Should the Customer purchase any additional User Licences, an invoice will be issued for the total fee payable with respect to the number of additional User Licences, and the Customer shall pay Eureka's invoice in accordance with clause 9.10 prior to access being provided to Eureka TMS by Eureka for those additional User Licences.
- 9.3 Should the Customer purchase any Eureka TMS Features, unless payment by invoice is requested by Eureka, the Monthly Fee shall be increased accordingly from the next calendar month, and in line with the relevant charging procedure set out in this Agreement.
- 9.4 With effect from the start of each Renewal Term, the Monthly Fees shall be subject to a minimum increase by Eureka in line with the average percentage change in the CPI (Consumer Price Index) by reference to the data provided by the Central Statistics Office in the relevant Reference Period. In this clause "Reference Period" means the Renewal Term ending immediately prior to the relevant adjustment under this clause taking effect or the last 12 calendar months of the Initial Term or (if shorter) the Initial Term itself, in the case of an adjustment under this clause taking effect at the start of the first Renewal Term.
- 9.5 Where Eureka requires a deposit to be paid prior to work commencing, or in relation to the Upfront Fee, such deposit will be outlined in the Sales Order Form and shall be paid within 5 (five) Business Days of invoice. Eureka shall be under no obligation to commence any work, or



allow any use of Eureka TMS and/or Eureka TMS Features until the deposit or Upfront Fee has been received by Eureka in full and cleared funds.

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

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

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

9.7.2 interest shall accrue on a daily basis on such due amounts in accordance with and at the rate set out in the European Communities (Late Payment in Commercial Transactions) Regulations 2012 (as amended or replaced from time to time).

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

9.8.1 shall be payable in Euros (unless otherwise stated on the Sales Order Form);

9.8.2 are, subject to clause 13.4.2, non-cancellable and non-refundable;

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

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

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

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

## 10. **Proprietary Rights**

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

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

10.3 In consideration of the Upfront Fee, and Monthly Fee paid by the Customer to Eureka, Eureka grants to the Customer a non-exclusive, non-transferable right for the Licence Term for Authorised Users to use Eureka TMS and where relevant the Eureka TMS Features

commencing on the Commencement Date at the Customer's site as outlined in the Sales Order Form.

**11. Data Protection**

11.1 Eureka shall, in providing Eureka TMS and the Professional Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data (to the extent that it contains any personal data) available at <https://www.eureka.ie/about-us/privacy-policy/> or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Eureka in its sole discretion.

11.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

11.3 The parties acknowledge that:

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

11.3.2 the data processing table at clause 11.9 sets out the subject matter, nature and purpose of processing by Eureka, the duration of the processing and the types of personal data and categories of data subject.

11.3.3 the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out Eureka's obligations under this Agreement.

11.4 Without prejudice to the generality of clause 11.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Eureka for the duration and purposes of this Agreement so that Eureka may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf.

11.5 Without prejudice to the generality of clause 11.2, Eureka shall, in relation to any personal data processed in connection with the performance by Eureka of its obligations under this Agreement:

11.5.1 process that personal data only on the documented written instructions of the Customer unless Eureka is required by law to process such personal data (**Applicable Laws**). Where Eureka is relying on Applicable Laws as the basis for processing personal data, Eureka shall promptly notify the Customer of this before performing the processing required by the

Applicable Laws unless those Applicable Laws prohibit Eureka from so notifying the Customer;

11.5.2 not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:

11.5.2.1 the Customer or Eureka has provided appropriate safeguards in relation to the transfer;

11.5.2.2 the data subject has enforceable rights and effective legal remedies;

11.5.2.3 Eureka complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

11.5.2.4 Eureka complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

11.5.3 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

11.5.4 notify the Customer without undue delay on becoming aware of a personal data breach;

11.5.5 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use);

11.5.6 maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and immediately inform the Customer if, in the opinion of Eureka, an instruction infringes the Data Protection Legislation;

11.5.7 ensure that Eureka's personnel, agents and contractors that process the personal data are subject to appropriate contractual or statutory obligations of confidentiality; and

11.5.8 allow for and contribute to audits, including inspections, conducted by the Customer (or another auditor mandated by the Customer) in relation to compliance with this clause 11.

11.6 Each party shall ensure that it has in place appropriate technical and organisational measures to ensure a level of security appropriate to the risk, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or

destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

- 11.7 The Customer authorises the appointment of third party processors of personal data including those listed at <https://www.eureka.ie/about-us/privacy-policy/> under this Agreement. A full list of all sub-processors is available upon written request. Eureka confirms that it has entered or (as the case may be) will enter with the third party processor into a written agreement substantially on that third party's standard terms of business and in either case which Eureka confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Eureka, Eureka shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 11.7. Eureka shall inform the Customer of any intended changes concerning the addition or replacement of other sub-processors, thereby giving the Customer the opportunity to object. If the Customer does not object within 15 Business Days of notification, the sub-processor shall be appointed by Eureka.
- 11.8 In accordance with clause 16, at any time Eureka may revise this clause 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.
- 11.9 Data processing table:

<b>Data Processing</b>	
<b>Scope / subject matter:</b>	To provide Eureka TMS and to allow the Customer to use it.
<b>Nature:</b>	Creation, storing, retrieval, amendment, updating archiving collating, analysing and deletion of personal data.
<b>Purpose:</b>	To provide Eureka TMS and the Professional Services under this Agreement.
<b>Duration:</b>	Eureka will process personal data during the provision of services to the Customer. This will continue for the duration of this Agreement.

<b>Types of personal data:</b>	Names, addresses, email addresses, ages, telephone numbers, driving licence details and infringements, driving metrics, driving hours, location data; and any other personal data held by the Customer in the systems covered by the Eureka TMS and the Professional Services.
<b>Categories of data subjects:</b>	Customer's employees Customer's customers and/or individual contacts at Customer's customers. Customer's suppliers and/or individual contacts at Customer's suppliers. Customer's other business partners and/or individual contacts at Customer's other business partners.

## 12. Confidentiality

- 12.1 Subject to clause 12.3, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 12.2 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 12.3 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.3 it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 12.4 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 12.5 The above provisions of this clause 12 shall survive termination of this Agreement, however arising.

## 13. Limitation of liability

- 13.1 Subject to clause 13.3, the following provisions set out the entire financial liability of Eureka (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:
- 13.1.1 any breach of the Agreement however arising;
- 13.1.2 any use made by the Customer of Eureka TMS, Maintenance and Upgrade Services, Software Support, Eureka TMS Features, the Professional Services, or any part of them (including but not limited to the Modified Software); and
- 13.1.3 any representation, misrepresentation (whether innocent or negligent), statement or

tortious act or omission (including negligence) arising under or in connection with the Agreement.

- 13.2 All warranties, conditions and other terms implied by statute or common law are, to the greatest extent permitted by law, excluded from the Agreement.
- 13.3 Nothing in this Agreement excludes the liability of Eureka:
  - 13.3.1 for death or personal injury caused by Eureka's negligence; or
  - 13.3.2 for fraud or fraudulent misrepresentation.
- 13.4 Subject to clause 13.2 and clause 13.3:
  - 13.4.1 Eureka shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty however arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
    - 13.4.1.1 any losses, damages, claims, costs, expenses, claims, (whether directly or indirectly arising) as a result of the use of Third Party Software in combination with Eureka TMS; or
    - 13.4.1.2 any claims, losses or legal proceedings brought within the United States of America or Canada; or
    - 13.4.1.3 loss of profits (direct or indirect); or
    - 13.4.1.4 loss of revenue, loss of production or loss of business (in each case whether direct or indirect); or
    - 13.4.1.5 loss of goodwill, reputation, opportunity or similar losses (in each case whether direct or indirect); or
    - 13.4.1.6 loss of anticipated savings or loss of margin (in each case whether direct or indirect); or
    - 13.4.1.7 loss of goods (direct or indirect); or
    - 13.4.1.8 loss of contract (direct or indirect); or
    - 13.4.1.9 loss of use (direct or indirect); or
    - 13.4.1.10 loss or corruption of data, loss or use or value of any data or software or loss of information;
    - 13.4.1.11 loss or damage arising out of any failure by the Customer to keep full and up to date security copies of any computer programs and data held or used by or on behalf of the Customer; or
    - 13.4.1.12 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
  - 13.4.2 Eureka's total liability in contract, tort (including negligence or breach of statutory duty however arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall in respect of any cause of action related to:
    - 13.4.2.1 Eureka TMS and/or Eureka TMS Features (excluding Modified Software) be limited to the Monthly Fees paid in the 12 (twelve) calendar months immediately preceding the claim; or
    - 13.4.2.2 the Professional Services be limited to the fees paid for those services

which are in dispute only;

- 13.4.2.3 loss or damage arising out of any failure by the Customer to keep full and up to date security copies of any computer programs and data held or used by or on behalf of the Customer; or
- 13.4.2.4 the Maintenance and Upgrade Services be limited to the fees paid for those services which are in dispute only.

#### 14. Termination

- 14.1 Without prejudice to any other rights or remedies to which Eureka may be entitled, Eureka may terminate or suspend the Agreement with immediate effect by written notice to the Customer and without liability to the Customer if:

- 14.1.1 the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 Business Days after being notified in writing to make such payment; or
- 14.1.2 the Customer, when reasonably requested by Eureka, fails or refuses to provide access to their IT system and/or server(s); or
- 14.1.3 there is a Change of Control of the Customer where the party acquiring control is a competitor of Eureka; or
- 14.1.4 the Customer commits a material breach of this Agreement and either that breach is incapable of remedy or it fails to remedy that breach within fifteen (15) Business Days of receiving a notice specifying the breach and requiring it to be remedied; or
- 14.1.5 the Customer is the subject of or suffers an Insolvency Event.

- 14.2 Eureka reserves the right to terminate any aspect of the services currently offered by Eureka (or by Eureka on behalf of a third party) if it is unable to support any aspect of the services for any reason, including but not limited to, a change in third party supplier.

- 14.3 Where Eureka replaces, alters or adjusts any aspect of the services incorporated in and/or relied upon by the Eureka TMS (including software) in accordance with clause 14.2 (**System Change**):

- 14.3.1 Eureka shall provide the Customer with written notice of the changes, including the timetable for implementation;
- 14.3.2 the Customer shall co-operate with Eureka in all matters required relating to the System Change in a timely manner and in accordance with any timetable specified by Eureka; and
- 14.3.3 Eureka shall use all reasonable endeavours to ensure that the System Change is completed in accordance with the timetable communicated to the Customer under clause 14.3.1.

- 14.4 Provided that Eureka has complied with its obligations under clause 14.3:

- 14.4.1 Eureka shall not be liable for any liabilities, costs, expenses, damages or losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and any interest or penalties) suffered or incurred by the Customer in connection with

- or arising directly or indirectly out of the System Change; and
- 14.4.2 the Customer shall indemnify Eureka against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all and other reasonable professional costs and expenses) suffered or incurred by Eureka arising directly or indirectly out of or in connection with the Customer's failure to comply with its obligations under clause 14.3.2, including (but not limited to) claims for actual or alleged infringement of a third party's Intellectual Property Rights or any other claims brought against Eureka.
- 14.5 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.
- 14.6 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.
- 14.7 On termination of this Agreement for any reason:
- 14.7.1 access to Eureka TMS, Modified Software and Mobile Applications will cease and licences for those services shall be terminated;
- 14.7.2 Eureka shall be, where required in Eureka's sole discretion, provided access to the Customer's server(s) in order to enforce the terms of this Agreement, including but not limited to clauses 14.3, 14.4 and 14.7.1;
- 14.7.3 Eureka shall, by request of the Customer, return any Customer Data. If no such request is made, the Customer Data will be deleted in line with Eureka's retention periods, which can be requested by the Customer from time to time, but shall be no shorter than 30 days.
- 14.7.4 all Professional Services agreed to be supplied but yet to be supplied will be suspended; and
- 14.7.5 any outstanding invoices, issued or issuable before termination or payments yet to be received will become payable immediately but any invoices which fall due for issue after the date of termination shall be payable in accordance with clause 9.8.
15. **Force majeure**
- 15.1 Neither party shall in any circumstances have any liability to the other party under the Agreement if it is prevented from, or delayed in, performing its obligations under the Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation:
- 15.1.1 strikes, lock-outs or other industrial disputes (whether involving the workforce of Eureka or any other party);
- 15.1.2 failure of a utility service or transport network;
- 15.1.3 act of God, war, riot or civil commotion;
- 15.1.4 malicious damage;



- 15.1.5 pandemics or epidemics (even if such epidemic or pandemic is known or anticipated at the date of this Agreement);
- 15.1.6 power failure, breakdown in equipment, failure of suppliers, telecommunications failures or internet downtime, or available bandwidth shortage, any distributed denial of service attack or threatened distributed denial of service attack;
- 15.1.7 compliance with any law or governmental order, rule, regulation or direction; and
- 15.1.8 accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

## 16. **Variation**

Eureka may vary this Sales Contract from time to time on giving the Customer at least 14 days' notice in writing. For the avoidance of doubt, subject to clause 14.2, Eureka shall not be entitled to vary the terms set out in the Sales Order Form without the Customer's prior written consent.

## 17. **Entire agreement**

- 17.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 17.2 Each party acknowledges that, in entering into this Agreement, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 17.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## 18. **Severance**

- 18.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 18.2 If any provision or part-provision of this Agreement is deemed deleted under clause 18.1, the parties shall negotiate in good faith to amend such provision so that, to the greatest extent possible, the amended provision achieves the intended commercial result of the original provision.

## 19. **Waiver**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## 20. **Assignment**

- 20.1 The Customer shall not, without the prior written consent of Eureka (such consent not to be

unreasonably withheld), assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Agreement.

- 20.2 Eureka on written notice to the Customer, may at any time assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Agreement.

**21. No partnership or agency**

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

**22. Counterparts**

This Agreement may be executed in counterparts including PDF and other electronic copies. All executed counterparts constitute one document. This Agreement may be executed by any form of electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

**23. Disputes**

If a dispute arises, a party may give the other party notice of the dispute and representatives of each party must promptly meet as many times as required in an attempt to resolve the dispute. If the parties do not resolve the dispute within 30 days of the date the notice of dispute was received, the parties must escalate the matter to a senior representative from each party who will attempt to resolve the dispute. Nothing in this Clause 23 restricts either party from starting legal proceedings to seek the remedies of injunction, specific performance or other equitable relief.

**24. Notices**

- 24.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

24.1.1 delivered by hand or by pre-paid post or other next working day delivery service at its registered office; or

24.1.2 sent by email to the address specified in the Sales Order Form (for the Customer) and to: [credit.control.eureka@eureka.ie](mailto:credit.control.eureka@eureka.ie) for Eureka.

- 24.2 Any notice or communication shall be deemed to have been received:

24.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

24.2.2 if sent by pre-paid post or other next working day delivery service at the time recorded by the delivery service; and

24.2.3 if sent by email, at 9.00 am on the next Business Day after transmission.

24.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**25. Governing law**

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

**26. Jurisdiction**

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

**SECTION B: SOFTWARE SUPPORT, DEFECTS AND SYSTEM UPTIME**

Where the parties agree in a Sales Order Form that Eureka shall provide Software Support to the Customer, these supplemental terms and conditions shall apply, in addition to those in Section A.

**1. Support**

1.1 Eureka shall ensure that Software Support (as described in Clause 1.2 of this Section B below) is available by telephone and e-mail during Normal Working Hours.

1.2 Software Support includes

- 1.2.1 Resolution of an issue relating to software, services or reports whereby the established functionality within Eureka TMS has stopped working or no longer operates in the originally intended manner.
- 1.2.2 Basic guidance relating to the operation and setup of established software, services and reports.
- 1.2.3 Scheduled software updates to address security enhancements or issues caused by bugs.
- 1.2.4 Scheduled software updates to introduce feature enhancements as deemed appropriate by Eureka.
- 1.2.5 Ensure the integration service remains operational and performant.

**2. Defects**

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

- 2.1.1 the Customer shall promptly notify Eureka of all Defects;
- 2.1.2 Eureka shall acknowledge receipt of the notification and shall determine, in consultation with the Customer, how serious the Defect affects the Customer's operations.

2.2 Eureka will undertake the resolution of Defects in severity sequence.

### 3. **Updates**

- 3.1 Updates will be periodically introduced for software bug fixes and to introduce or enhance customer specific modules and features.

## **SECTION C: PROFESSIONAL SERVICES**

Where the parties agree in a Sales Order Form that Eureka shall provide Professional Services to the Customer, these supplemental terms and conditions shall apply, in addition to those in Section A.

### 1. **Eureka's responsibilities**

- 1.1 Eureka shall use reasonable endeavours to provide the Professional Services to the Customer, in line with Good Industry Practice.
- 1.2 Eureka shall use reasonable endeavours to meet any performance dates agreed with a Customer, but any such dates shall be estimates only and time for performance by Eureka shall not be of the essence of this Agreement.

### 2. **Customer's obligations**

- 2.1 The Customer shall:
- 2.1.1 co-operate with Eureka in all matters reasonably required relating to the Professional Services;
  - 2.1.2 provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is reasonably requested by Eureka;
  - 2.1.3 provide in a timely manner such information as Eureka may reasonably request in order for it to comply with its obligations under this Agreement and ensure that such information is accurate in all material respects; and
  - 2.1.4 be responsible (at its own cost) for preparing the relevant premises for the supply of the Professional Services.
- 2.2 If the Customer wishes to make a change to any Professional Services it has requested, such change must be submitted to Eureka in writing. If such change is agreed then Eureka reserves the right to increase the fee for those Professional Services and the Sales Order Form shall be amended accordingly.

### 3. **Third Party Software Integration**

- 3.1 Where a Customer requires services from Eureka to assist with integration of Third Party Software to Eureka TMS, such fees shall be outlined in the Sales Order Form and shall be paid in accordance with clause 9 (Section A).
- 3.2 For the avoidance of doubt, Eureka shall not be liable to the Customer for the failure of any Third Party Software integrated to Eureka TMS, that is not directly related to the act or omission of Eureka, its employees, contractors or agents.

### 4. **Modified Software**

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

- 4.2 Eureka agrees:
  - 4.2.1 to carry out appropriate testing of the Modified Software;
  - 4.2.2 to use its reasonable endeavours to deliver the Modified Software to the Customer by the agreed completion date (but time shall not be of the essence for such delivery);
- 4.3 In performing the services, Eureka shall comply with the Customer's reasonable instructions to ensure minimal disruption to the Customer's business.
- 4.4 The Customer shall be deemed to have accepted the Modified Software once it has notified Eureka in writing that the Modified Software meets the scope outlined in the Sales Order Form. In the absence of such notification in writing, the Modified Software shall be deemed to be accepted by the Customer 30 (thirty) days after Eureka has completed the work and provided the Modified Software to the Customer.
- 4.5 The Intellectual Property Rights in Modified Software are, and shall remain, the property of Eureka, and Eureka reserves the right to grant a licence to use such Modified Software to any other party or parties.
5. **Charges and payment**
- 5.1 Eureka will normally charge the Customer in advance for all Professional Services (but reserves the right to charge the Customer in retrospect in exceptional circumstances).
- 5.2 The charges for Professional Services shall be a fixed fee for the agreed scope of work set out in the Sales Order Form (or as otherwise agreed in writing between the parties), including any overtime and expenses which Eureka shall agree with the Customer in advance.
- 5.3 Any fixed fee excludes:
  - 5.3.1 changes to the agreed scope of works, which will be agreed with the Customer, charged separately and added to any such fixed cost; and
  - 5.3.2 VAT, which Eureka shall add to its invoices at the appropriate rate.

## **SECTION D: MAINTENANCE AND UPGRADE SERVICES**

1. **Eureka's responsibilities**
  - 1.1 Eureka shall use reasonable endeavours to provide the Maintenance and Upgrade Services to the Customer, in line with Good Industry Practice.
  - 1.2 Eureka shall use reasonable endeavours to meet any performance dates agreed with a Customer, but any such dates shall be estimates only and time for performance by Eureka shall not be of the essence of this Agreement.
2. **Customer's obligations**
  - 2.1 The Customer shall:
    - 2.1.1 co-operate with Eureka in all matters relating to the Maintenance and Upgrade Services;
    - 2.1.2 keep full offsite backup copies of all its data, as Eureka is not responsible for this;
    - 2.1.3 provide in a timely manner such access to the Customer's premises (if necessary) and data, and such office accommodation and other facilities, as is requested by Eureka;
    - 2.1.4 provide in a timely manner such information as Eureka may request, and ensure that

such information is accurate in all material respects; and

- 2.1.5 be responsible (at its own cost) for preparing the relevant premises for the supply of the Maintenance and Upgrade Services.

### **3. Maintenance Releases and New Versions**

- 3.1 In relation to Maintenance Releases, Eureka shall from time to time make such Maintenance Releases available to the Customer either without charge as part of the Software Support, or subject to an additional fee notified to the Customer at the time.
- 3.2 If the Customer fails to acquire or install or make arrangements for the installation of a Maintenance Release (which in Eureka's sole and reasonable opinion is not optional for the operation of Eureka TMS and/or Eureka TMS Features) within 3 (three) months of Eureka notifying the Customer that such Maintenance Release is available for installation, Eureka will not be held liable for any performance or security issues that may arise as a result.
- 3.3 Subject to paragraph 3.4, in relation to New Versions, if Eureka releases a New Version and the Customer decides not to acquire and install such New Version, that decision shall not give rise to any right to terminate this Agreement, nor shall it result in any adverse effect on the performance of Eureka's obligations under this Agreement.
- 3.4 However, if Eureka has released multiple New Versions since the version being operated by the Customer and Eureka notifies the Customer that such version is approaching End of Life, Eureka may terminate or suspend this Agreement by giving 3 (three) months' written notice to the Customer if the Customer does not acquire and install the New Version notified to it by Eureka within a reasonable timescale.
- 3.5 Eureka warrants that no Maintenance Release or New Version will adversely affect the then existing facilities or functions of Eureka TMS and/or Eureka TMS Features.

### **4. Charges and payment**

The total price for a Maintenance Release and/or New Version shall be the amount set out in the Sales Order Form, or otherwise agreed in writing between the parties.

## **SECTION E: MOBILE APPLICATIONS**

### **1. Apps**

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

