



Contract Number

22-347

SAP Number

Innovation and Technology Department

Department Contract Representative	Jennifer Mancebo
Telephone Number	909-388-5579
Contractor	KLDiscovery Ontrack, LLC
Contractor Representative	Eleonora Smith
Telephone Number	952-562-2159
Contract Term	5/24/22 – 5/23/27
Original Contract Amount	Non-financial
Amendment Amount	N/A
Total Contract Amount	Non-financial
Cost Center	1200604048

Briefly describe the general nature of the contract: *Ontrack PowerControls End User License Agreement with KLDiscovery Ontrack, LLC for software to search, recover and restore data from Microsoft Exchange, SharePoint and SQL environments for the period of May 24, 2022 through May 23, 2027.*

FOR COUNTY USE ONLY

Approved as to Legal Form

► Bonnie Uphold
Bonnie Uphold, County Counsel

Date 5-13-2022

Reviewed for Contract Compliance

► _____

Date _____

Reviewed/Approved by Department

► _____

Date _____



Ontrack® PowerControls™ End User License Agreement

PLEASE READ CAREFULLY BEFORE INSTALLING ANY SOFTWARE FROM THIS WEBSITE.

This license ("License") is a legal and binding agreement between San Bernardino County ("Customer", "you" or "your") and KLDISCOVERY Ontrack, LLC, with address at 9023 Columbine Road, Eden Prairie, MN 55347 (USA) ("Ontrack" or "we") for ONTRACK POWERCONTROLS computer software, including updates, upgrades, agents or add-on components ("Software") and its associated user guides, installation guides or supplemental guides ("Documentation").

1. LICENSE GRANT. Subject to the terms and conditions of this License, including the payment of applicable license fees, Ontrack grants you a non-exclusive, non-transferable, revocable and non-sublicensable license to access and use the Software and Documentation and any associated dongles, license keys or other enforcement mechanisms ("Authentication Component") for your own internal business purposes.

The Software may only be used subject to the limitations set forth in this License and the Documentation. Such use, including but not limited to capacity and/or duration of license, shall be authorized pursuant to a document, quote or invoice (an "Order") provided by Ontrack or its authorized resellers or distributors. Such Order shall incorporate all of the terms and conditions of this License and you may not exceed the authorized use without the payment of additional license fees.

2. LICENSE RESTRICTIONS. You shall not: (a) remove, alter, cover or obfuscate any product identification, copyright notices, or other proprietary rights notice placed or embedded in the Software; (b) sell, lease, rent, copy, or distribute this Software, Documentation and any associated Authentication Component to a third party except as expressly permitted herein; (c) cause or permit reverse engineering, disassembly, decompilation or alteration of the Software except to the extent such restriction is expressly prohibited by applicable law; (d) use a license of the Software with a perpetual term for performing consulting or technical services; (e) sublicense the Software to any third party, including your own customers; or (f) use the Software for competitive analysis purposes. You may make one copy of the Software and Documentation solely for backup or archival purposes. You may not copy any Authentication Component. The Software shall not itself be hosted or made available via a hosted environment or service bureau without additional license fees and terms and conditions.

3. AUDIT RIGHTS. You shall maintain accurate records containing all necessary data required for verification of compliance with the terms of this License. Ontrack, or its designee, may, during normal business hours and upon reasonable prior notice to you, audit and analyze your records to verify compliance hereunder.

4. SUPPORT AND MAINTENANCE. Support and maintenance of the Software is subject to the terms of the PowerControls Maintenance Agreement and payment of additional fees.

5. FEES. The fees payable for the License to use the relevant version of the Software ("Fees") are payable subject to the terms of the Order.

6. TERM. Your License to use the Software is effective for a period of five (5) years. If you selected a time limited license, at the end of this period, your License and your associated rights will expire automatically, unless you choose to renew your License.

7. TERMINATION. Customer and Ontrack each reserve the right to terminate this Maintenance Agreement, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to Ontrack for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Ontrack shall promptly discontinue services unless the notice directs otherwise. Your failure to comply with any term or condition of this License, including failure to pay the appropriate license fees, shall result in termination or suspension of your License to use the Software, Documentation and any associated Authentication Component(s). Upon termination, you shall discontinue all use of the Software, destroy the Software and Documentation, together with all copies thereof, and return any associated Authentication Component(s).

8. TRIAL LICENSE. If a trial version of the Software is obtained from Ontrack or its authorized resellers or distributors, the Software may be used for evaluation purposes only and is subject to the terms and conditions of this License. The trial version of the Software may be used as of the date of delivery until expiration or termination with or without cause by either party. Upon expiration or termination of the trial version of the License, all rights granted to you will terminate and you shall discontinue all use of the Software unless you purchase an authorized license pursuant to a valid Order. If you choose not to purchase a license, the trial version of the Software must be destroyed, including all copies thereof.

9. DATA PROTECTION. Our processing of your personal data shall be governed by Ontrack's Privacy Policy (available at <https://www.ontrack.com/privacy/>) and the terms set out below.

Ontrack collects personal data: (i) when you contact us via email, telephone or by any other means; and (ii) for the purposes of performing our obligations pursuant to this License. The purposes for which we process personal data include: (i) to provide the Software and Documentation to you; (ii) to obtain views on the performance of the Software, and (iii) with the appropriate legal permission, direct marketing.

We may disclose personal data to other entities of the KLDISCOVERY group (of which Ontrack forms part), a full list of which is provided in Ontrack's Privacy Policy (together with the country where they are established which includes the United States), and to: (i) legal and regulatory authorities for the purposes of reporting any actual or suspected breach of applicable law or regulation; (ii) Ontrack's accountants, auditors, lawyers and other outside professional advisors; and

(iii) third party processors such as payment services providers, shipping/courier companies; technology suppliers, processors who provide compliance services. The purpose of disclosure to other entities is to fulfil Ontrack's contractual obligations to you or for legitimate business purposes, in accordance with applicable law. Ontrack has implemented security measures described in Ontrack's Privacy Policy and all entities that may receive the personal data are under a strict contractual obligation to implement security measures ensuring a high level of protection.

You shall at any time have the right to: (i) access and obtain information about the nature, processing or disclosure of your personal data; (ii) rectify your personal data; (iii) request, on legitimate grounds, erasure or restriction of processing of your personal data; (iv) object, on legitimate grounds, to the processing of your personal data; (v) request to have your personal data transferred to another controller; (vi) withdraw your consent to processing of personal data; and (vii) lodge complaints with the applicable data protection authority.

10. THIRD PARTY USE. If you license the Software for your internal business purposes but contract with a third party to perform services such as network management, monitoring, implementation, consulting or other outsourcing services for you (the "Consultant"), the Consultant may use the Software and Documentation licensed by you solely for your benefit in the performance of such contract, provided, however, that you ensure that the Consultant uses the Software, Documentation and/or Authentication Component in accordance with the terms of this License. You shall be liable to Ontrack for the acts and omissions of the Consultant in connection with their use of the Software, Documentation and/or Authentication Component. Notwithstanding the foregoing, a Consultant shall not use the Software, including any Authentication Component if applicable, for its own internal business use.

11. ASSIGNMENT. Neither party may assign or transfer the rights or obligations under this License to another party without the express written consent of the other party. Any attempt to assign this License without consent shall be null and void.

12. COPYRIGHT/OWNERSHIP. Ontrack represents that all intellectual property rights in the Software, its source code, the Documentation and any associated Authentication Component belong to, or are licensed to, Ontrack. The rights granted to you in the Software are licensed (not sold) and you have no rights in, or to, the Software or the Documentation other than the right to use them in accordance with the terms of this License. Ontrack shall at all times retain all rights, title, interest, including intellectual property rights, in the Software, Documentation and any associated Authentication Components.

13. TRADEMARKS. "Ontrack", "PowerControls" and other "Ontrack" brand and product names referred to herein are trademarks or registered trademarks of KLDISCOVERY Ontrack, LLC., in the United States and/or other countries. All other brand and product names are trademarks of their respective owners. This License to use the Software does not provide you with any right to use these trademarks to any purpose whatsoever.

14. IP CLAIMS. Ontrack will indemnify, defend, and hold harmless Customer and its officers, employees, agents and volunteers, from any and all third party claims, costs

(including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by the Software and/or the Documentation. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against Customer, or Customer receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, Customer will use reasonable efforts to notify Ontrack promptly of such lawsuit, claim or election. However, Customer's failure to provide or delay in providing such notice will relieve Ontrack of its obligations only if and to the extent that such delay or failure materially prejudices Ontrack's ability to defend such lawsuit or claim and Customer shall not settle such claim on Ontrack's behalf. Customer will give Ontrack sole control of the defense (with counsel reasonably acceptable to Customer) and settlement of such claim; provided that Ontrack may not settle the claim or suit absent the written consent of Customer unless Ontrack is prejudiced in not settling the claim or unless such settlement (a) includes a release of all claims pending against Customer, (b) contains no admission of liability or wrongdoing by Customer, and/or (c) imposes no obligations upon Customer other than an obligation to stop using the Software and/or the Documentation that is the subject of the claim. In the event that Ontrack fails to or elects not to defend Customer against any claim for which Customer is entitled to indemnity by Ontrack, then Ontrack shall reimburse Customer for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from Customer in line with the limitation of liability provisions found in the Terms of Sale.

(b) If the Software is or is likely to become subject to an IP Claim, Ontrack shall use reasonable endeavours to either: (i) obtain the right for you to continue to use the Software and/or Documentation as applicable; or (ii) replace or modify any relevant software, documentation or materials used in the Software (or the part of it subject to the IP Claim) or the Documentation so that it becomes non-infringing.

(c) If Ontrack is unable to achieve either of the outcomes described above having used reasonable endeavours (including where the costs of doing so are commercially prohibitive), Ontrack may elect by written notification to you that: (i) your use of the Software shall immediately terminate; (ii) you shall promptly uninstall, delete and cease to use the Software; and (iii) Ontrack shall issue you a credit or a refund (at Ontrack's option) for the Fees paid to Ontrack under this License in respect of the Software subject to a reasonable deduction to reflect the time elapsed where you have been able to use the Software prior to termination.

(d) Ontrack shall have no liability or obligations under this clause 14 in respect of (and shall not be obliged to defend) any IP Claim which arises in whole or in part from: (i) any modification of the Software without Ontrack's express written approval; (ii) installation or use of the Software or the Documentation otherwise than in accordance with this License or Ontrack's instructions; (iii) installation or use of the Software in combination with any software, hardware or data that has not been supplied or expressly authorised by Ontrack; or (iv) any unlawful use made of the Software by Client.

The provisions of this clause 14 set out your sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IP Claim or any other actual or alleged infringement of any intellectual property rights.



15. INDEMNITY. Ontrack shall not be liable for 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) Customer's unauthorised use of the Software and/or Documentation; or (ii) any violation of this License by Customer.

16. EXPORT RESTRICTIONS. You agree to comply fully with all laws and regulations of the United States and other countries relating to the prohibition of sales of products and services to designated states or jurisdictions, individuals or companies ("Export Laws") to assure that the Software, Documentation nor any associated Authentication Component are not: (1) exported, directly or indirectly, in violation of Export Laws; or (2) used for any purpose prohibited by Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation. None of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported: (i) into (or to a national or resident of) any country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's List of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders. By installing or using the Software, you are agreeing to the foregoing and you are representing and warranting that you are not located in, under the control of, or a national or resident of any such country or on any such list.

17. WARRANTIES. THIS SOFTWARE, DOCUMENTATION AND ANY ASSOCIATED AUTHENTICATION COMPONENT IS PROVIDED TO YOU ON AN "AS-IS" BASIS. YOU ASSUME ALL RISKS WHEN INSTALLING OR USING THE SOFTWARE. THERE ARE NO WARRANTIES EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE. ONTRACK DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ONTRACK DOES NOT WARRANT THAT THE SOFTWARE IS NON-INFRINGEMENT, THAT IT WILL MEET YOUR REQUIREMENTS OR THAT ITS OPERATION WILL BE UNINTERRUPTED, ERROR-FREE OR VIRUS-FREE.

18. LIMITATION OF LIABILITY. ONTRACK SHALL NOT IN ANY CIRCUMSTANCES WHATEVER BE LIABLE TO YOU, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, ARISING UNDER OR IN CONNECTION WITH THE LICENSE FOR:

- (A) LOSS OF PROFITS, SALES, BUSINESS, OR REVENUE;
- (B) BUSINESS INTERRUPTION;
- (C) LOSS OF ANTICIPATED SAVINGS;
- (D) LOSS OR CORRUPTION OF DATA OR INFORMATION;
- (E) LOSS OF BUSINESS OPPORTUNITY, GOODWILL OR REPUTATION; OR
- (F) ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE.

OTHER THAN THE LOSSES SET OUT BELOW, OUR MAXIMUM AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS LICENSE WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL IN ALL CIRCUMSTANCES BE LIMITED TO ONE MILLION DOLLARS (US\$1,000,000). IN CASES OF ONTRACK'S INDEMNIFICATION OBLIGATIONS, ONTRACK'S TOTAL LIABILITY SHALL IN NO EVENT

EXCEED \$15,000,000 (FIFTEEN MILLION) PER CLAIM OR SERIES OF RELATED CLAIMS.

NOTHING IN THIS LICENSE SHALL LIMIT OR EXCLUDE OUR LIABILITY FOR:

- (A) DEATH OR PERSONAL INJURY RESULTING FROM OUR NEGLIGENCE;
- (B) FRAUD OR FRAUDULENT MISREPRESENTATION;
- (C) ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW.
- (D) GROSS NEGLIGENCE
- (E) WILLFUL MISCONDUCT
- (F) VIOLATION OF LAW

THIS LICENSE SETS OUT THE FULL EXTENT OF OUR OBLIGATIONS AND LIABILITIES IN RESPECT OF THE SUPPLY OF THE SOFTWARE AND DOCUMENTATION.

19. MISCELLANEOUS. This License is governed by **THE LAWS OF THE STATE OF CALIFORNIA**. The parties acknowledge and agree that this License was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this License will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this License is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements in accordance to the limitation of liability limits found in the terms of sale.

The failure by a party to enforce at any time any of the provisions in this License shall not be deemed a waiver of such provision, or any other provision, or the right thereafter to enforce any such provision in the future.

If any provision of this License is in violation of any applicable law, such provision shall to such extent be deemed null and void, and the remainder of the License shall remain in full force and effect.

20. GOVERNMENT USE. The Software and Authentication Components include "commercial computer software" and related documentation within the meaning of Federal Acquisition Regulation ("FAR") 2.101, 12.212, and 27.405-3 and Defense Federal Acquisition Regulations Supplement ("DFARS") 227.7202 and 252.2277014(a)(1). The Software and Authentication Components are proprietary to Ontrack and its third-party licensors. You shall ensure that all users, including, but not limited to employees, personnel, representatives or agents of the U.S. Government, are permitted to use the Software and Authentication Components only as expressly authorised under this License. In accordance with FAR 12.212 and DFARS 227.7202, neither you nor any government agency or entity shall receive any ownership, license, or other rights in and to the Software and Authentication Components other than the commercial software license rights expressly set forth herein.

Contractor/manufacturer is KLDISCOVERY Ontrack, LLC., 9023 Columbine Road, Eden Prairie, MN 55347.

21. INSURANCE. Without in anyway affecting any indemnity obligations provided herein and in addition thereto, Ontrack shall secure and maintain throughout the contract term the types of insurance with limits as shown and in accordance with the requirements set forth in Attachment 1, as attached hereto and incorporated herein.

22. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

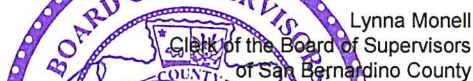
IN WITNESS WHEREOF, San Bernardino County and the Contractor have each caused this Maintenance Agreement to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

► 
Curt Hagman, Chairman, Board of Supervisors

Dated: **MAY 24 2022**

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By 
Lynna Monell
Clerk of the Board of Supervisors
of San Bernardino County

By 
Deputy



KLDISCOVERY Ontrack, LLC

(Print or type name of corporation, company, contractor, etc.)

By ► 
(Authorized signature - sign in blue ink)
Gideon Kaplan

Name _____
(Print or type name of person signing contract)

Title Associate General Counsel
(Print or Type)

Dated: April 18, 2022
8201 Greensboro Drive,
Suite 300

Address McLean, VA 22102

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► _____ County Counsel	► _____	► _____
Date _____	Date _____	Date _____

ATTACHMENT A INSURANCE REQUIREMENTS

Ontrack agrees to provide insurance set forth in accordance with the requirements herein. If Ontrack uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Ontrack agrees to amend, supplement or endorse the existing coverage to do so.

1. Without in anyway affecting any indemnity obligations provided and in addition thereto, Ontrack shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of Ontrack and all risks to such persons under these Terms of Sale. If Ontrack has no employees, it may certify or warrant to Customer that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by Customer's Director of Risk Management. With respect to Ontracks that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

b. Commercial/General Liability Insurance – Ontrack shall carry General Liability Insurance covering all operations performed by or on behalf of Ontrack providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- i. Premises operations and mobile equipment.
- ii. Products and completed operations.
- iii. Broad form property damage (including completed operations).
- iv. Explosion, collapse and underground hazards.
- v. Personal injury.
- vi. Contractual liability.
- vii. \$2,000,000 general aggregate limit.

c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If Ontrack is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If Ontrack owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

e. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

f. Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved Customer entities and cover breach response cost as well as regulatory fines and penalties.

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after contract completion.

2. **Additional Insured.** All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming Customer and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for Customer to vicarious liability but shall allow coverage for Customer to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

3. **Waiver of Subrogation Rights.** Reserved.

4. **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by Customer.

5. **Severability of Interests.** Ontrack agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Ontrack and Customer or between Customer and any other insured or additional insured under the policy.

6. **Proof of Coverage.** Ontrack shall furnish Certificates of Insurance to Customer Department administering the Terms of Sale evidencing the insurance coverage at the time upon written request, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder upon request, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Ontrack shall maintain such insurance from the time Ontrack commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of these Terms of Sale, Ontrack shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
7. **Acceptability of Insurance Carrier.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
8. **Deductibles and Self-Insured Retention.** Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
9. **Failure to Procure Coverage.** In the event that any policy of insurance required under these Terms of Sale does not comply with the requirements, is not procured, or is canceled and not replaced, Customer has the right but not the obligation or duty to cancel the Terms of Sale or obtain insurance if it deems necessary and any premiums paid by Customer will be promptly reimbursed by Ontrack or Customer payments to Ontrack will be reduced to pay for Customer purchased insurance.
10. **Insurance Review.** Insurance requirements are subject to periodic review by Customer. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of Customer. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against Customer, inflation, or any other item reasonably related to Customer's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to these Terms of Sale. Ontrack agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of Customer to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of Customer.