Ontrack® PowerControls™ Terms of Sale

These Terms of Sale ("Terms of Sale") apply to Orders of ONTRACK® POWERCONTROLS™ computer software, including updates, upgrades, agents or add-on components ("Software") and if applicable, maintenance ("Maintenance") 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").

Terms Relating to Your Purchase of Software and Maintenance.

1. Order
The Order form sets out your order of license(s) of the Software and if applicable, Maintenance, pursuant to these Terms of Sale ("Order"). Ontrack will deliver to you, through delivery methods chosen by Ontrack, the number and type of licenses that are subject to the Order.

2. Fees
You agree to pay to Ontrack the fees set out in the Order, either in advance to Ontrack prior to receiving a download of the Software or, if Ontrack agrees, payment within the date specified by Ontrack. If Ontrack agrees to terms of payment, you agree that, by providing Ontrack with a payment method including a Purchase Order Number, you: (i) represent that you are authorized to use the payment method that you provided and that any payment information you provide is true and accurate; and (ii) authorize Ontrack to charge you for the Software and Maintenance using your payment method. Failure to make any payment when due authorises Ontrack to suspend or terminate your license to the Software. VAT or sales/good tax shall be applied to the fees in the Order.

3. End User License
The Software is at all times expressly subject to the terms and conditions of an end user license agreement set out below ("EULA"). The EULA is provided to you prior to installation of the Software and installation will not complete without your acceptance of the EULA. The EULA sets out the terms of the license to the Software and the applicable restrictions. A failure to adhere to the terms of the EULA may result in suspension or termination of the license to the Software.

4. Maintenance
For all new Orders of Software, you are required to purchase a Maintenance contract with the Order. The Maintenance contract is valid for the period of time specified in the Order. Purchases of Maintenance contracts can be made at other times and will be valid for the period of time specified in the Order. All Maintenance contracts are subject to Ontrack's Maintenance Terms and Conditions set out below.

5. No Unlawful or Prohibited Use
As a condition of these Terms of Sale, you warrant to us that you will not use the Software for any purpose that is unlawful or prohibited by these Terms of Sale, or the EULA.

6. Data Protection
Our processing of your personal information shall be governed by Ontrack's Privacy Policy (available at https://www.ontrack.com/privacy/) and the terms set out below. Ontrack collects personal information: (i) when you contact us via email, telephone or by any other means; and (ii) for the purposes of performing our obligations pursuant to these Terms of Sale.

We may disclose personal information 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), 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 information 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 information; (ii) rectify your personal information; (iii) request, on legitimate grounds, erasure or restriction of processing of your personal information; (iv) object, on legitimate grounds, to the processing of your personal information; (v) request to have your personal information transferred to another controller; (vi) withdraw your consent to processing of personal information; and (vii) lodge complaints with the applicable data protection authority.

You confirm that you have read and accept the storage and use of any personal information provided as set out in Ontrack's Privacy Policy for contract administration, marketing and other purposes specified in the Privacy Policy.

7. 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 is 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.

8. Change in Terms of Sale
Any alterations, variations, modifications, or waivers of the provisions of these Terms of Sale, shall be valid only when reduced to writing, executed and approved by the person(s) authorized to do so on behalf of Ontrack and Customer.

9. Warranties
ONTRACK AND ITS SUPPLIERS MAKE NO ADDITIONAL WARRANTIES, GUARANTEES, OR CONDITIONS, INCLUDING FOR MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT UNDER THESE TERMS OF SALE.

10. 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 THESE TERMS OF SALE 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 THESE TERMS OF SALE 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 THESE TERMS OF SALE SHALL LIMIT OR EXCLUDE OUR LIABILITY FOR: (A) DEATH OR PERSONAL INJURY RESULTING FROM OUR NEGLIGENCE; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; (C) GROSS NEGLIGENCE; (D) WILLFUL MISCONDUCT; (E) VIOLATION OF LAW; OR (F) ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW.

11. Choice of Law.
The Terms of Sale shall be governed by **THE LAWS OF THE STATE OF CALIFORNIA**. The parties acknowledge and agree that these Terms of Sale are 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 these Terms of Sale 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 these Terms of Sale 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 with the limitation of liability provisions found in the Terms of Sale. This is the entire agreement between you and Ontrack, which supersedes any prior agreement, including your purchase order terms, whether written or oral, relating to this subject matter. In the event of any inconsistency between these Terms of Sale and the EULA,

the terms of the EULA shall prevail to determine such inconsistency.

12. Assignment
Without the prior written consent of Customer, these Terms of Sale are not assignable by Ontrack either in whole or in part.

12. Indemnification and Insurance Requirements
Ontrack agrees to indemnify, in accordance with the limitations found in Section 10 of these terms, defend (with counsel reasonably approved by Customer) and hold harmless Customer and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of these Terms of Sale from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by Customer on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall be apportioned based on the degree of fault of indemnities. Ontrack's indemnification obligation will be apportioned based on to Customer's "active" as well as "passive" negligence but Ontrack will have no duty to indemnify with regard to Customer's "sole negligence", fraud, violation of law,or "willful misconduct" within the meaning of California Civil Code section 2782. 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.

RESELLER ONLY TERMS AND CONDITIONS

If you are an authorised reseller of the Software ("Reseller"), the following and specific terms and conditions apply to sales of the Software and Maintenance to your end users who require the Software for their internal business use only ("Endusers") in addition to the Ontrack Terms and Conditions:

1. Data Privacy Consent
Reseller confirms that it has received explicit consent from all End-users whose personal data Reseller has provided to Ontrack to enable Ontrack to deliver the Software, Documentation, support and to generally communicate with such third party in the provision of the Software and Maintenance Services (as defined in the Maintenance Agreement). Ontrack shall deliver the Software and Documentation directly to the End-users through electronic means following confirmation of the Order and shall allow the End-user access to Software and support through the Maintenance Services, subject to the terms of the Maintenance Agreement.

2. Applicability of Terms and Conditions Reseller shall ensure that its contractual documentation with the End-users contains, at a minimum, the following terms: (i) adherence by the End-users to the terms of the EULA (as defined in the Ontrack Terms and Conditions); (ii) a prohibition by the End-users from reselling, distribution or otherwise offering the Software to any other third party; (iii) enforcement by the Reseller of the terms of the EULA; (iv) a prohibition on dissembling, de-compilation or reverse engineering the Software or any of its components save as allowed by applicable law; (v) makes no warranties and representations in relation to the Software save as set out by Ontrack in the Ontrack Terms and Conditions; and (vi) adherence by the End-

user to the export restrictions set out in clause 7 of the Ontrack Terms of Sale.

3. Audit

Reseller shall maintain accurate records necessary to verify compliance with the terms of the Ontrack Terms and Conditions for a minimum of five (5) years. Ontrack may, at its own expense, during normal business hours and upon reasonable prior notice to Reseller, no more than once per calendar year, audit or have an independent auditor selected by Ontrack, all aspects regarding the distribution and sale of the Software and shall provide all reasonable assistance to Ontrack in performance of the audit including delivery of documents to Ontrack, attendance by personnel with knowledge of the resale of the Software and access to premises for the audit. This audit right shall also extend to End-users and Reseller shall procure Ontrack the same audit right for Ontrack in relation to End-users as is set out in this clause. In the event that the audit reveals any use of the Software which is not permitted or other breach of the Ontrack Terms and Conditions, the cost of the audit shall be borne by the Reseller and the Reseller shall compensate Ontrack for all damages incurred as a consequence of any breach of the Ontrack Terms and Conditions by the Reseller, including any over-use of the Software.

4. Marketing

In marketing the Software to the End-users, Reseller confirms that it made no misleading or inaccurate claims relating to the

use and performance of the Software nor did it distribute any material containing Ontrack's intellectual property in breach of Ontrack's brand guidelines.

5. License Use

Reseller confirms that perpetual licenses of the Software are End-user specific and that it has not provisioned or allowed any other use of a perpetual license to a different end-user nor used such license for its own financial gain.

6. Reseller Indemnity

Reseller shall defend, indemnify, and hold harmless, Ontrack from and against all liabilities, claims, damages, demands, expenses, judgments, costs (including reasonable legal fees) brought against Ontrack by any third party arising from any breach by the Reseller of the Ontrack Terms and Conditions.

7. 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 Ontrack have each caused these Terms of Sale to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

KLDiscovery Ontrack, LLC

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

► _____

Curt Hagman, Chairman, Board of Supervisors

By ► *Shannon Gaughan*

(Authorized signature - sign in blue ink)

Dated: _____

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

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

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

Title   Commercial Counsel
_____
(Print or Type)

By _____
                                    Deputy

Dated: 3/28/2022

Address   9023 Columbine Road, Eden Prair

FOR COUNTY USE ONLY

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