

MUTUAL CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on the **XX** day of **XXX 20XX** ("**Effective Date**") **BETWEEN:**

- (1) Redtail Telematics Limited a company incorporated in England and registered under number 7407204 whose registered address is at Plextek Building, London Road, Great Chesterford, Essex, CB10 1NY, and
 - (2) **XXX**, a company incorporated in **XXX**, whose registered office is at **XXX**.
- The parties wish to hold discussions about **XXX**. Each party is willing to disclose certain confidential information on the terms of this Agreement.

OPERATIVE PROVISIONS

1. Definitions and Interpretation

1.1 In this Agreement the following words and expressions have the following meanings:

- (a) "**Affiliate**" means with respect to a company or person, any other company or person that directly or indirectly, controls, is controlled by or is under common control with such company or person; "control", and with correlative meanings, "controlled by" and "under common control with", shall mean:
 - (a) the possession, directly or indirectly, of the power to direct the management or policies of a company or person, whether through the ownership of voting securities, by contract or otherwise; or (b) the ownership, directly or indirectly, of at least fifty percent of the outstanding voting securities or other ownership interest of a company or person; and, in addition, the following entities shall also be deemed to be Affiliates of **Redtail Telematics Ltd**: "**Confidential Information**" means all information of a confidential or proprietary nature which is obtained directly or indirectly by one party (the "**Receiving Party**") or its Affiliates, from the other party (the "**Disclosing Party**") or its Affiliates at any time before, on, or after the Effective Date, without regard to the form or manner in which such information is disclosed or obtained (including information disclosed orally or in documentary or electronic form or by way of model, or obtained by observation), and in addition shall include : the fact that the discussions between the parties are taking place and the existence and terms of this Agreement and any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, affairs, customers, clients, suppliers, plans intentions, or market opportunities of the Disclosing Party or of the Disclosing Party's Affiliates; and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party or of the Disclosing Party's Affiliates;
 - (iii) any information or analysis derived from Confidential Information.
- (c) "**Permitted Purpose**" means evaluation of the Confidential Information in order to decide whether to enter into a further agreement with the Disclosing Party or its Affiliates; and

- (d) "**Representatives**" means the directors, officers, employees, contractors and advisors of the Receiving Party and of the Receiving Party's Affiliates.

1.2 In this Agreement:

- (a) references to persons include all forms of legal entity including an individual, company, body corporate, unincorporated association and partnership;
- (b) the word "including" is to be construed as being by way of illustration only and is not to be construed so as to limit the generality of any preceding words; and
- (c) headings are used for convenience only and do not affect its interpretation.

2. Confidentiality Obligations

2.1 Each Receiving Party shall:

- (a) keep the Confidential Information of the Disclosing Party secret and confidential and take all proper and reasonable measures to ensure the confidentiality of the same, including applying the same degree of care to such Confidential Information as the Receiving Party applies to its own confidential information;
- (b) not disclose nor permit the disclosure of any Confidential Information of the Disclosing Party, in whole, in part, or in summary, to any person, except as expressly permitted by this Agreement;
- (c) not reverse engineer, disassemble or decompile any products, prototypes, software or other tangible objects that embody Confidential Information of the Discloser and that are provided to the Receiving Party hereunder;
- (d) not use the Confidential Information of the Disclosing Party, nor permit it to be used, for any purpose other than the Permitted Purpose; and
- (e) inform the Disclosing Party immediately if it becomes aware of the possession or use of any of the Confidential Information of the Disclosing Party by an unauthorised person, and provide any assistance in relation to such possession or use that the Disclosing Party may require.

3. Exceptions to Confidentiality Obligations

3.1 The Receiving Party's obligations under this Agreement shall not apply to any Confidential Information of the Disclosing Party that the Receiving Party can prove by means of reasonable written evidence:

- (a) was known to the Receiving Party or its Affiliates on a non-confidential basis prior to disclosure by the Disclosing Party or its Affiliates; or

- (b) is or becomes publicly known other than as a result of breach of this Agreement by the Receiving Party or by anyone to whom the Receiving Party or its Affiliates disclosed the Confidential Information of the Disclosing Party; or
- (c) is received by the Receiving Party or its Affiliates without restriction on disclosure or use from a third party lawfully entitled to make the disclosure without such restrictions; or
- (d) is developed by any of the Receiving Party's Representatives who have not had any direct or indirect access to, or use or knowledge of, the Confidential Information of the Disclosing Party;

except that the above exceptions do not extend to circumstances where the Confidential Information of the Disclosing Party is (i) specific, does not fall within the above exceptions, and is embraced by more general information which does fall within the above exceptions or (ii) a combination of information in the public domain separated across multiple sources.

3.2 The Receiving Party will not be in breach of its obligations under this Agreement to the extent that it is required to disclose Confidential Information of the Disclosing Party by law (provided, in the case of a disclosure under any freedom of information legislation, that the exemptions under that legislation do not apply) or order of a court or other public body that has jurisdiction over it, provided that, before making such a disclosure, the Receiving Party shall, to the extent it is legally permitted to do so:

- (a) inform the Disclosing Party of the proposed disclosure as soon as possible, and if possible before the court or other public body orders the disclosure;
- (b) take into account the Disclosing Party's reasonable requests in relation to such disclosure and disclose only the minimum amount of such Confidential Information necessary to comply with the requirement;
- (c) ask, and permit the Disclosing Party to ask, the court or other public body to treat such Confidential Information as confidential; and
- (d) take all reasonable measures to ensure the continued confidential treatment of such Confidential Information.

4. Permitted Disclosure

4.1 The Receiving Party shall permit access to the Confidential Information of the Disclosing Party only to those of the Receiving Party's Representatives who:

- (a) reasonably require such access for the Permitted Purpose and have been informed of the confidential nature of such Confidential Information and the provisions of this Agreement; and
- (b) have entered into legally binding confidentiality obligations to the Receiving Party on terms that are no less onerous than those set out in this Agreement, and which extend to such Confidential Information.

4.2 The Receiving Party shall be liable to the Disclosing Party for any acts or omissions of any person to whom the Receiving Party has disclosed the Confidential Information of the Disclosing Party, that would, if effected by the Receiving Party, constitute a breach of this Agreement.

5. Return of Confidential Information

5.1 At the Disclosing Party's written request, the Receiving Party shall make no further use of any Confidential Information of the Disclosing Party, and:

- (a) immediately return to the Disclosing Party (or, if the Disclosing Party so requests, destroy or erase) all such Confidential Information, including any copies made, and permanently delete all electronic copies (to the extent possible) of any such Confidential Information from the Receiving Party's computer systems; and
- (b) provide to the Disclosing Party a certificate from an officer of the Receiving Party confirming that the obligations in this clause have been complied with provided that the Receiving Party may retain documents and materials containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority and to the extent reasonable to permit the Receiving Party to keep evidence that it has performed its obligations under this agreement. The provisions of this agreement shall continue to apply to any documents and materials retained by the Receiving Party.

6. Reservation of rights

6.1 As between the parties, the Confidential Information of the Disclosing Party is proprietary to the Disclosing Party and the Disclosing Party is and shall remain the sole owner of all property rights in tangible records of such Confidential Information and all intellectual property rights in the same.

6.2 Nothing in this Agreement shall be construed or implied as obliging either party to disclose any specific type of information, whether Confidential Information or not.

7. Remedies

The Receiving Party acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this agreement.

8. General

8.1 **Export Control.** The parties recognise that the communication or transfer of any Confidential Information received may be subject to specific governmental export approval. The parties agree to comply with all applicable export control laws.

8.2 **Duration:** This Agreement shall start on the Effective Date and shall continue for a period of 2 years thereafter, unless terminated earlier by agreement of the parties. The Receiving Party's obligations of confidentiality under this Agreement shall continue in force after the Effective Date and will survive termination of this agreement.

8.3 **No further agreement:** Nothing in this Agreement shall create an obligation on either party to negotiate or enter into any further agreement and either party may withdraw from such negotiations at any time without liability.

- 8.4 **Notices:** Any notice required to be given under this Agreement shall be effective only if given in writing in English and personally delivered or sent by recorded delivery to the other party at the address set out above.
- 8.5 **No announcements:** Except to the extent that it may be required to do so by a court or other public or regulatory body that has jurisdiction over it, neither party shall make, or permit any person to make, any public announcement concerning this Agreement.
- 8.6 **Assignment:** Neither party may assign, sub-contract or deal in any way with its rights or obligations under this Agreement without the prior written consent of the other party.
- 8.7 **Third party rights:** A person who is not a party to this Agreement shall not have any rights under or in connection with it.
- 8.8 **Entire agreement:** This Agreement constitutes the entire agreement between the parties relating to its subject matter and in relation to such subject matter supersedes all earlier agreements between the parties. This Agreement may only be varied in writing signed by or on behalf of each of the parties.
- 8.9 **No representations or warranties:** Each party acknowledges that it has not entered into this Agreement in reliance upon any representation or warranty other than as set out in this Agreement.
- 8.10 This clause shall not exclude the liability of a party for fraud or fraudulent misrepresentation.
- 8.11 **Waiver of rights:** No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law will constitute a waiver of that (or any other) right or remedy. No single or partial exercise of such right or remedy will preclude or restrict the further exercise of that (or any other) right or remedy.
- 8.12 **Unenforceable provisions:** If the whole or any part of any provision of this Agreement is void or unenforceable in any jurisdiction, the other provisions of this Agreement, and the rest of the unenforceable provision, will continue in force in that jurisdiction.
- 8.13 **Governing law and jurisdiction:** This Agreement (and any claim relating to it, its subject matter or its enforceability, including non-contractual claims) is governed by and construed in accordance with English law and the courts of England and Wales shall have non-exclusive jurisdiction to resolve any such claim.

This agreement has been entered into on the date shown on the first page.

Signed for and on behalf of Redtail Telematics Limited:

(Signature)

(Print name and title)

Signed for and on behalf of [XXX]:

(Signature)

(Print name and title)