

GROUNDCLLOUD ONLINE CUSTOMER AGREEMENT v.24.01

GROUNDCLLOUD ONLINE CUSTOMER AGREEMENT ("GC ONLINE AGREEMENT") v.24.0

The specific terms of each online order made by you, on behalf of a company or other entity as its representative ("You" or "Your" or "Customer") via Your Descartes Store Account (each the "Order"), together with the terms and conditions of this GroundCloud online customer agreement ("GC Online Agreement"), including the Applicable Terms and Conditions incorporated herein by reference (collectively the "Agreement"), contain the terms and conditions that govern your access to and use by You of the GroundCloud Services and VEDR Hardware identified in and purchased from Descartes by You pursuant to the Order ("Solutions").

The Agreement comprises a contract between You and either, Descartes GroundCloud, Inc., or one of its Affiliates as identified in the invoice associated with the Order ("Descartes").

When You click the "I Accept" button or check box presented with this GC Online Agreement, as part of the Order process, You intend to be legally bound and agree to: (i) purchase the Solutions on the terms and conditions contained in the Agreement; and (ii) that as of the date of our email which will confirm the Order ("Order Completion Date"), the Agreement is a binding contract between You and Descartes.

1. SOLUTIONS & FEES. For the Fees specified in the Order and subject to the terms of this Agreement, You agree to purchase, and Descartes agrees to provide, the Solutions set out in the Order.

2. USAGE RIGHTS & SCOPE OF USE

2.1 Usage Rights. Based on the "Solution Type" as specified in the Order for each product or service, Customer shall have the following usage rights, subject to the terms of this Agreement and any terms incorporated by reference into this Agreement:

- i. Products described as "Solution Type: GroundCloud Services" are licensed to Customer on a term-based license only for the duration of this Agreement.
- ii. Products described as "Solution Type: VEDR Hardware" are provided to Customer subject to term of the Agreement and title to VEDR Hardware is transferred to Customer as provided in section 3.3.3.
- iii. Products without assigned Solution Type are provided on a one-time basis and deemed to be "Professional Services" for the purposes of the Master Terms and require a valid subscription or license to a Descartes Solution and that Your account with Descartes be in good standing.

2.2. DESCARTES GROUNDCLLOUD PLATFORM. Customer acknowledges and agrees that in order to use GroundCloud Services and VEDR Hardware, Customer is required to (i) create an account on Descartes GroundCloud Platform: <https://groundcloud.com> and (ii) to activate VEDR Hardware, and to link VEDR Hardware, for use with Customer's Descartes GroundCloud Platform account and GroundCloud Services.

3. APPLICABLE TERMS AND CONDITIONS

3.1 The Solutions provided under this Agreement are subject to the following terms which are incorporated by reference into this Agreement:

- i. Version DSG23.0 of Descartes' master terms and conditions of service, available at <https://www.descartes.com/legal/customer-agreements/master-terms-dsg> ("Master Terms").
- ii. Additional terms specific to the Descartes GroundCloud Platform available <https://groundcloud.com/tos/> (collectively "Additional Terms"):

All capitalized terms used in this Agreement will have the meaning set out in the Order, this GC Online Agreement or any applicable document described above. In the event of any inconsistency, the order of preference to resolve any such inconsistency shall be as follows: (i) the Order; (ii) the GC Online Agreement; (iii) Master Terms; (vi) Additional Terms. For greater clarity, the fact that a document or a set of terms is silent on any particular item or issue shall not be considered an inconsistency.

3.2. CONSENT AND LICENSE TO CREATE AND USE WORKS & USE OF ARTIFICIAL INTELLIGENCE CONSENT & RELEASE ("RELEASE").

Customer understands that in purchasing VEDR Hardware or a subscription to use the GroundCloud Services in connection with VEDR Hardware or by activating and linking VEDR Hardware for use with Customer account on Descartes GroundCloud Platform, Customer:

- A.** represents and warrants to Descartes that Customer and/or any drivers that may utilize any vehicles in which the GroundCloud Services or VEDR Hardware are used in (collectively "Drivers") shall at all times be of the age of majority of the applicable jurisdictions; and
- B.** Customer, ON BEHALF OF ITSELF AND ON BEHALF OF ALL DRIVERS and to the maximum extent permitted by law, does hereby:
 - 1)** consent to and permits Descartes to capture and utilize video recordings that may feature the image, likeness, voice, and mannerisms and actions of Drivers within videos, images, and printed or online materials, along with any modification or other derivative works thereof (collectively, the "Works");

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- 2) grant to Descartes, its Affiliates, and those parties authorized by Descartes (collectively the "Authorized Parties") a perpetual, irrevocable, royalty-free, worldwide, right to use, broadcast, display, distribute, modify, and publish the Works, either alone or in combination with any other material, for use on the internet and any other forms of media for purposes including but not limited to training purposes, product development, distribution, advertising, promotion, and any other business purpose, without any compensation or right to inspect or approve the Works;
 - 3) consent to and permit Descartes to utilize the Works to support, train, enhance, or develop formulas, algorithms, machine learning mechanisms, and/or artificial intelligence related to the provision of the GroundCloud Services or the GroundCloud Services themselves;
 - 4) acknowledge and agree that Descartes shall retain exclusive discretion and control over all aspects of the Works, including whether to publish the Works at all, the editing thereof, and the time, manner, and other details of such publication, if any;
 - 5) agree to be responsible for obtaining or collecting from all Drivers all consents, permissions, or releases that are currently or may in the future be necessary by law to give effect to this Release; and
 - 6) agree (i) to be responsible for ensuring that it has all necessary rights to transfer or provide such images and video to Descartes to allow Descartes to comply with its obligations under this Agreement; (ii) that as between Customer and Descartes, Descartes may consider any data provided to Descartes through the VEDR Hardware as having been provided directly by Customer to Descartes; (iii) to indemnify and hold Descartes harmless from any claims, complaints, or disputes by any third party, including any Driver, in the event Customer's fail to obtain any such consents, permissions, or releases.
- C. Further, Customer acknowledge and agree that, as between Customer and Descartes, Descartes shall exclusively own all right, title, and interest in and to the Works and that no additional compensation shall be provided to Customer or a Driver by Descartes either now or in the future. You understand and agree that the Authorized Parties will not be liable to you or a Driver for any claims or damages arising out of the use of your or Drivers image, video, voice and any material you or Drivers contribute to the Works and hereby release the Authorized Parties from any and all claims arising out of the Works or related to this Release and the subject matter thereof.
- Notwithstanding the foregoing, Descartes will not, and this Release does not permit the use of your or your Drivers personal name or company name, and to the extent reasonably possible Descartes will use technology to obscure your or a Driver face. Further, Descartes does not use and does not intend to collect any retina or iris scans, fingerprints, voiceprints, or scans of hand or face geometry of any Driver.
- D. Customer agrees that each provision of this Release shall be interpreted in such a manner as to be effective and valid under applicable law, but that if any provision of the Release shall be prohibited or invalid, such provision shall be ineffective only to the extent of such prohibition or invalidity and shall not invalidate the remainder of such provision or the remaining provisions of the Release which shall continue in full force and effect.

3.3 DELIVERY, SHIPPING AND OWNERSHIP OF VEDR HARDWARE

3.3.1 Delivery of Hardware. Any Hardware purchased by Customer pursuant to the Agreement is delivered by Descartes EXW (Incoterms 2020), Descartes' depot facility or such alternate location as expressly identified in the Agreement. Risk of loss or damage, but not title, in the Hardware passes to Customer on Descartes' EXW (Incoterms 2020) delivery. Descartes may effect delivery of VEDR Hardware purchased pursuant to an Order in one or more installments.

3.3.2 Shipping. Customer is responsible for all shipping costs associated with the shipment of VEDR Hardware to and from Descartes. At Customer's request Descartes will ship VEDR Hardware to Customer on Customer's behalf at standard rates unless otherwise provided for under this Agreement. Shipping of VEDR Hardware by Descartes at Customer's request is limited only to Customer's locations in the following jurisdictions: Canada and the United States of America. For shipment to jurisdictions outside of those locations or shipment to a third-party, Customer will be responsible for making their own shipping arrangements after Customer's receipt of the VEDR Hardware from Descartes. Shipping charges for fulfillment of VEDR Hardware orders incurred by Descartes ("Shipping Charges") shall be billed to the Customer immediately following shipment. Customer may request that Descartes ship VEDR Hardware through Customer's own shipping account or may arrange for pickup from Descartes' facilities.

3.3.3 Ownership of VEDR Hardware. Title to any VEDR Hardware purchased by Customer pursuant to an Order will pass to Customer when Descartes receives in full cleared funds all sums due and payable to Descartes in respect of the VEDR Hardware. Where Customer receives a complimentary unit of VEDR Hardware in connection with a GroundCloud Services Promotion, title to the complimentary unit will pass to Customer on Ship Date.

4. TERM OF AGREEMENT & TERMINATION

- i. **Orders for GroundCloud Services Promotion or GroundCloud Services Subscription with a specified Subscription Term.** Where an Order is for GroundCloud Services Promotion or GroundCloud Services and has

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a specified Subscription Term, the Agreement will become effective upon the Order Completion Date and will remain in force for the duration of Subscription Term from the Billing Start Date (the "Initial Term") or until terminated earlier by a party as permitted under the terms of the Agreement. Unless otherwise expressly specified in the Order, on expiry of the Initial Term, the Agreement will automatically renew for successive monthly periods (each a "Renewal Term") at Descartes' then current Fees and shall be terminable during any Renewal Term by either party on at least thirty (30) days prior written notice.

Should You cancel before the expiry of the Subscription Term or any Renewal Term, You authorize Descartes to bill Your chosen payment method for any Fees that would have become due for the balance of the Subscription Term or for the Renewal Term, as applicable, using the payment method on file on the renewal date or provided later.

- ii. **Orders for VEDR Hardware only.** Where an Order is for VEDR Hardware only, the Agreement will become effective upon the Order Completion Date and will remain in force until Fees contemplated in the Order are paid to Descartes in full and until the expiry of the Warranty Period for VEDR Hardware. Except as expressly permitted under the Agreement, the Agreement is non-cancellable.

5. FEES AND METHOD OF PAYMENT ("Payment Terms").

5.1 Payment Frequency.

- i. **Orders with a Specified Subscription Term.** Where an Order has a specified Subscription Term, Subscription Fees will be invoiced in arrears at the frequency described in the Order as of the Billing Start Date. Where a frequency is not prescribed in the Order, Fees will be invoiced monthly in arrears. Unless otherwise noted in the Order, any one-time Fees, or Shipping Charges are due and payable on Order Completion Date will be due and payable in full as of Order Completion Date.
- ii. **Orders without a specified Subscription Term and Shipping Charges.** Where an Order does not have a specified Subscription Term, all Fees and shipping charges are due and payable on Order Completion Date, unless expressly specified otherwise in the Order.

5.2 Additional Fees. Subscription Fees for GroundCloud Services are the minimum Fees Customer agrees to pay during the term of the Agreement. Additional Fees will apply and will be charged to Customer in accordance with Additional Terms should Customer elect to utilize VEDR Hardware with additional functionality and features via Customer's account on Descartes GroundCloud Platform. If you have purchased a GroundCloud Services subscription for VEDR Services only for a Subscription Term and use VEDR Hardware in combination with VEDR Services and GroundCloud CSP in a billing cycle, an overage fee of USD\$20/billing cycle/VEDR Hardware involved in such combination use will be applicable and paid by Customer.

5.3 Method of Payment and Recurring Payment Terms. All Fees are expressed in USD. Fees shall be paid only by credit card or, where the option is made available by Descartes and selected by Customer, direct debit. Availability of payment methods may vary.

- i. You: (a) authorize Descartes to initiate recurring automated clearing house (ACH) debit entries or debit card payments from the checking or savings account You specify or charge from Your specified credit card ("Payment Method") and give permission to Your financial institution to debit Your account or charge Your debit or credit card in accordance with Your specified Payment Method for withdrawals made by Descartes.
- ii. The amount withdrawn or charged in accordance with Your Payment Method will be the then current balance owing to Descartes under the Agreement in accordance with the GC Online Agreement. Your current balance is the outstanding amount on Your invoice(s) from Descartes, plus additional charges after Your invoice was issued, less credits or payments after Your invoice was issued. Upon Your acceptance of these Payment Terms, any outstanding balance owing to Descartes will be immediately and automatically withdrawn or charged in accordance with Your specified Payment Method.
- iii. You agree to be bound by any rules Your financial institution requires for pre-authorized electronic funds transfers and/or that Your debit or credit card issuer requires for pre-authorized debit or credit card transactions. You are responsible for all fees charged by Your financial institution associated with Your specified Payment Method.
- iv. You must update all changes to Your Payment Method and Your contact information by updating Your Descartes Store Account and Your Descartes GroundCloud Platform account and making the changes to Your Payment Method section of your account. If You do not update Your specified Payment Method and Descartes is unable to withdraw or charge You using Your specified Payment Method for the amount due on Your Descartes invoice, You may be subject to applicable late fees, returned item charges and any other fees or charges assessed by Your financial institution. In addition, your access to the Solution or functionality within the Solution may be limited or turned off entirely.

- v. To the extent this option is made available to you by Descartes at Descartes' sole discretion, if You have

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created a Descartes PayCenter account, Descartes will make Your monthly invoice available through the Descartes PayCenter. You can access Your monthly invoice by logging into Your Descartes PayCenter account. You agree to review each invoice You receive from Descartes and give Descartes notice of any errors or disputed charges within ninety (90) days after such invoice is posted to Your Descartes PayCenter account.

- vi.** You represent and warrant that: (a) You have the necessary funds to pay Descartes in full for any payments due to Descartes; and (b) all Payment Method information is accurate and agree to inform Descartes in accordance with Section 5.3 iv of these Payment Terms of any changes to Your Payment Method at least twenty one (21) days prior to the next payment due date and that, unless otherwise agreed with Descartes, these Payment Terms continue in respect of any new or updated Payment Method information.
- vii.** NEITHER DESCARTES OR ANY OF ITS SUBSIDIARIES OR AFFILIATES SHALL BEAR ANY LIABILITY OR RESPONSIBILITY FOR ANY LOSSES OF ANY KIND THAT YOU MAY INCUR AS A RESULT OF A PAYMENT MADE ON ITEMS INCORRECTLY BILLED, FOR ANY DELAY IN THE ACTUAL DATE ON WHICH YOUR PAYMENT METHOD IS DEBITED OR CHARGED OR SERVICE CHARGES LEVIED BY YOUR FINANCIAL INSTITUTION.
- viii.** This Section 5 shall survive termination of the Agreement and will remain in effect until Your outstanding balance with Descartes under the Agreement is paid in full to Descartes.

6. SUPPORT SERVICES

Subject to payment by Customer of Subscription Fees when due, Descartes will provide Support Services for the VEDR Hardware and GroundCloud Services in the manner as set out under Attachment "A".

7. VEDR HARDWARE INSTALLATION

Unless Descartes is specifically contracted to provide installation services, Customer is solely responsible for the installation and removal of VEDR Hardware and is responsible to ensure that all VEDR Hardware is properly installed. Improperly installed VEDR Hardware is excluded from any support or warranty obligations Descartes may have under the Agreement.

8. VEDR HARDWARE WARRANTY

For a period of twelve (12) months from Ship Date ("Warranty Period"), VEDR Hardware, excluding SD cards and cables, shall be subject to a warranty against defects in material or workmanship and, if reasonably determined to be suffering from a defect in material or workmanship shall, at the election of Descartes, either be repaired or replaced with new or refurbished parts, subject to the following procedures:

- A.** Customer shall contact Descartes Customer Support to apply diagnostic tests while the device is still installed. Customer will cooperate on remote troubleshooting of VEDR Hardware.
- B.** If these techniques are not successful in resolving the problem, Descartes will, in its sole discretion, either arrange for a service call to repair the device or issue a return material authorization (RMA) to Customer and provide Customer with a replacement device at no charge to Customer, subject to (E) and (F) below.
- C.** If an RMA has been issued, Customer is to remove the defective VEDR Hardware and at the direction of Descartes either i) ship the defective VEDR Hardware to Descartes as per Descartes' instruction and provide Descartes with the packing slip or courier waybill number; or ii) dispose of the VEDR Hardware as per Descartes' disposal instructions.
- D.** Where Descartes has indicated that the VEDR Hardware is to be returned to Descartes, Customer is responsible for ensuring that the VEDR Hardware is returned to Descartes within seven (7) days.
- E.** If the VEDR Hardware is returned to Descartes, upon receipt of the packing slip/ courier waybill number, Descartes will ship to Customer with replacement VEDR Hardware. If the VEDR Hardware is to be disposed of by Customer, replacement VEDR Hardware will be sent on confirmation from Customer of its disposal.
- F.** If VEDR Hardware is returned to Descartes, upon receipt of the defective VEDR Hardware, Descartes will troubleshoot the VEDR Hardware. If the failure is determined to be the result of misuse, abuse, improper usage, or is otherwise not subject to the warranty, Customer will be charged for the replacement device along with Descartes' shipping costs.
- G.** Customer is responsible for removal of VEDR Hardware as well as the installation of replacement and/or repaired VEDR Hardware. Customer is solely responsible for any of Customer's costs associated with the removal and installation of VEDR Hardware.
- H.** Customer acknowledges and agrees that the warranty provided herein is conditional on Customer activating the VEDR Hardware for use with Customer's account on Descartes GroundCloud Platform.

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Customer acknowledges and agrees that the foregoing warranty will NOT apply in respect of VEDR Hardware that:

- Constitute an SD cards and cables;
- was installed incorrectly or installed in vehicles or locations not approved for the VEDR Hardware to be installed in;
- is not activated and currently linked to Customer's account on Descartes GroundCloud Platform;
- was serviced, modified, or repaired by service persons other than service persons that have been certified and approved by Descartes;
- was disassembled, reassembled, changed, misused, modified or otherwise tampered with;
- was subjected or exposed to moisture, humidity, extreme thermal conditions or a rapid change in thermal conditions, spillage of food or liquid, influence of chemical products, accidents, impacts, collision, rough handling, theft, connection to improper electrical sources or battery leakage;
- has been exposed to environmental hazards such as fire, rain, snow, flooding, dirt, sand, or smoke;
- has water damage or any other physical damage, or where the damage is cosmetic in nature only or does not affect any operative parts; and/or
- has been used for purposes other than its intended purpose or contrary to instructions and documentation provided by Descartes or by a person failing to use reasonable care and attention.

9. DATA RETENTION

GroundCloud Services are not intended to be an archival service. Data generated from the VEDR Hardware will be stored for up to one (1) year by Descartes after which such data will be securely deleted in accordance with Descartes' standard data destruction practices. The Customer understands that any such data will not be accessible through the GroundCloud Services after it has been deleted.

10. WIRELESS SERVICE

GroundCloud Services includes a subscription to a Wireless Service operated by a third party telecommunications service provider to enable the transmission of data collected by the VEDR Hardware to the GroundCloud Services over a Wireless Network.

Descartes does not guarantee the uninterrupted working service of the Wireless Service and shall not be liable to Customer or any other person or entity for any damages whatsoever and however caused related to interruption or failure of the Wireless Service.

The Subscription Fees include the fees for transmission of data related to, and reasonably foreseeable in connection with the use of, the GroundCloud Services as subscribed to under this Agreement only.

In addition to the above, Customer acknowledges that the additional terms of Attachment "B" under the heading "Wireless Service" shall also apply to use of the Wireless Service under this Agreement.

11. ADDITIONAL DEFINITIONS

For the purposes of this Agreement, the following terms will have the following meaning:

"Billing Start Date" means the earlier of the following dates: (i) thirty (30) days from Ship Date; or (ii) the date VEDR Hardware is activated and linked to Customer's account on Descartes GroundCloud Platform.

"Descartes GroundCloud Platform" means the services platform managed and utilized by Descartes for provision of GroundCloud Services.

"Descartes Store Account" means Your account with Descartes Web Shop associated with this Order.

"Descartes Store Terms" means the terms and conditions governing Your use of Descartes Web Shop available at <https://www.descartes.com/legal/general-terms/descartes-store-terms>.

"Descartes Web Shop" has the meaning specified in Descartes Store Terms.

"GroundCloud Services" means those subscription services identified under the Order as being GroundCloud Services, which in any case does not include any GLN Services.

"GroundCloud Services Promotion" means complimentary single quantity VEDR Hardware provided by Descartes in connection with the purchase of subscription to GroundCloud Services for Subscription Term detailed in the Order for use with such complimentary unit.

"Permitted User" means internal personnel of Customer but may also include any independent contractors employed by Customer as drivers or other similar such functions.

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“Ship Date” means the date the Descartes has shipped VEDR Hardware to Customer

“Subscription Fees” means those recurring fees due for the provision of GroundCloud Services.

“Subscription Term” means the period of time identified in the Order as subscription term.

“VEDR Hardware” means each unit of the following bundle of one (1) camera, one (1) SD card, and one (1) cable, being purchased, or provided complimentary to Customer by Descartes as part of GroundCloud Promotion, pursuant to an Order.

“Wireless Service” means data transmission services on Wireless Network.

“Wireless Network” means a commercial broadband network, compatible with the VEDR Hardware, over which parties may pass electronic messages such as IDEN, GPRS, CDMA, LTE or HSPA.

[End of GC Customer Agreement -Attachments A and B to immediately follow.]

ATTACHMENT A – SUPPORT SERVICES

1. SUPPORT SERVICES

1.1. Descartes shall make available to Customer online and/or telephone support services ("First Line Support") Monday to Friday during the hours of 6 am to 7 pm Central Standard Time (CST), and on Saturdays during the hours of 6am to 4pm CST, and on Sundays during the hours of 6am to 2pm CST. First Line Support shall be the initial point of contact and response for addressing customer problems.

1.2. The First Line Support response may be notification that the call has been closed or information indicating the status of the problem determination and resolution process. In the event that the call cannot be closed, First Line Support will provide a status update to the Customer and log the report within Descartes' problem tracking system. First Line Support will stay 'problem-owner' until the problem has been resolved and closed.

2. SUPPORT RESPONSE AND RESOLUTION

2.1. All calls to report a problem in the operation of the GroundCloud Services shall be answered as soon as practicably possible or shall receive a return call within thirty (30) minutes of the original call.

Descartes shall gather such information from Customer as may be necessary to assess or replicate the reported problem and to confirm whether the reported problem is a Severity Level 1, 2 or 3 problem. Severity levels are defined as follows:

2.1.1. "Priority Level 1" - a problem in the operation of the GroundCloud Services which causes the destruction of data or otherwise results in the GroundCloud Services being totally unavailable for use or access by a Permitted User in connection with mission-critical business processes with no immediately available workaround.

2.1.2. "Priority Level 2" - a problem in the operation of the GroundCloud Services which causes performance issues which adversely effect the normal business operations of Permitted Users but for which there may be a temporary workaround.

2.1.3. "Priority Level 3" - a problem in the operation of the GroundCloud Services which does not have an immediate adverse impact on the business operations of Permitted Users.

3. SERVICE UPTIME

4.1 The GroundCloud Service shall be made available to Customer with a minimum Monthly Uptime Percentage of 99%.

4.2 The Monthly Uptime Percentage shall be calculated as total number of minutes in a month, minus the number of minutes of Downtime suffered in a month, divided by the total number of minutes in a month. "Downtime" shall mean a period of time during which data from GroundCloud Services is inaccessible to Customer, provided that the following shall not be counted as Downtime under this calculation: (i) any period of time of less than five (5) minutes consecutively; (ii) any inaccessibility resulting from: (a) errors or failure within any hardware platform or device being used by Customer to access the GroundCloud Services, including any computer, mobile phone or server of Customer; (b) any failure, error or delay within Customer's IT infrastructure; (c) any failure or delay within the public internet; or (d) any force majeure event; or (iii) any period of scheduled downtime for system maintenance.

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ATTACHMENT B - ADDITIONAL TERMS AND CONDITIONS REGARDING THE WIRELESS SERVICE

1. Customer acknowledges that Customer has no contractual relationship with the underlying Wireless Service carrier and Customer is not a third party beneficiary of any agreement between Descartes and the underlying Wireless Service carrier. Customer understands and agrees that the underlying Wireless Service carrier shall have no legal, equitable or other liability of any kind to the Customer.
2. Subject to Federal Communications Commission (FCC) or Canadian Radio and Telecommunications Commission (CRTC) number portability rules, as the case may be, Customer has no property right in any number assigned to it by Descartes and Customer understands that any such number can be changed from time to time.
3. Customer acknowledges that the Wireless Service may be temporarily refused, interrupted, curtailed or limited because of atmospheric, terrain, other natural or artificial conditions and may be temporarily interrupted or curtailed due to usage concentrations, modifications, upgrades, relocation and repairs of transmission facilities of the underlying Wireless Service carrier. Customer agrees that the underlying Wireless Service carrier and Descartes shall not be responsible for such interruptions of Wireless Service or the inability to use the GroundCloud Service arising from such interruptions. Customer understands that the underlying Wireless Service carrier cannot guarantee the security of wireless transmissions and neither the underlying Wireless Service carrier nor Descartes shall be liable for any lack of security relating to or arising from the use of the Wireless Service.
4. Customer expressly understands and agrees that the liability and obligations of Descartes to Customer under the Agreement are strictly controlled and limited by the underlying Wireless Service carrier's tariff, if any, and the laws, rules and regulations of the FCC, CRTC and other governmental authorities which from time to time have jurisdiction. In any event, regardless of the form of action, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, Customer's exclusive remedy and the total liability of Descartes and/or any supplier of services to Descartes arising in any way in connection with this Agreement for any cause whatsoever, including but not limited to any failure or disruption of service provided, shall be limited to payment by Descartes of damages in an amount equal to the amount charged to Customer for the GroundCloud Service provided under this Agreement. In no event shall Descartes and/or the underlying Wireless Service carrier be liable for any cost, delay, failure or disruption of the GroundCloud Services, lost profits, or incidental, special, punitive or consequential damages.
5. In no event shall the underlying Wireless Service carrier be liable for the failure or incompatibility of VEDR Hardware utilized by Customer in connection with the Wireless Service.
6. Wireless Service may be restricted or cancelled if there is a reasonable suspicion of misuse or fraudulent use by Customer. In the event of misuse or fraudulent use of the Wireless Service which includes, but is not limited to: (i) attempting or assisting another to access, alter, or interfere with the communications and/or information about another wireless customer, (ii) tampering with or making an unauthorized connection to the network, (iii) installing any amplifiers, enhancers, repeaters, or other devices that modify the radio frequencies used to provide the Wireless Service, (iv) subscription fraud, (v) using the Wireless Service in such a manner so as to interfere unreasonably with the use of the Wireless Service by one or more other wireless customers or to interfere unreasonably with the underlying Wireless Network carrier's ability to provide Wireless Service, (vi) using the Wireless Service to convey obscene, salacious, or unlawful information; (vii) using the Wireless Service without permission on a stolen or lost device, (viii) unauthorized access, (ix) taking any action that imposes an unreasonable or disproportionately large load on the Wireless Service infrastructure, (x) using the Wireless Service in such a manner that it is not used in compliance with applicable law, Descartes may, without notice, take any necessary action, including interrupting, or even terminating Customer's Service. Customer will be responsible to Descartes for any costs incurred (including legal fees) as a result of Customer's misuse or fraudulent use of the Wireless Service. Customer agrees not to resell or re-bill the Wireless Service provided to Customer to any other individual or entity.
7. Wireless Service may be temporarily suspended or permanently terminated upon little or no notice in the event that Descartes' agreement with the underlying Wireless Service carrier is terminated. Customer waives any and all claims against the underlying Wireless Service carrier for such suspension or termination.
8. CUSTOMER ACKNOWLEDGES THAT THE GROUND CLOUD SERVICE RELIES ON THE AVAILABILITY OF UNDERLYING WIRELESS SERVICE CARRIERS AND SUPPLIERS AND THEIR NETWORKS AND FACILITIES WHICH ARE UNDER THE SOLE CONTROL OF THOSE THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, TELECOMMUNICATIONS SWITCHING EQUIPMENT, SERVERS, CELL SITES, CELL SITE/BTS TRANSCEIVER EQUIPMENT, CONNECTIONS, BILLING SYSTEMS AND OTHER EQUIPMENT UTILIZED BY WIRELESS SERVICE CARRIERS AND THEIR SUPPLIERS TO ADMINISTER CONTRACTS. AS SUCH CUSTOMER WAIVES ANY RIGHTS TO MAKE ANY CLAIMS AGAINST DESCARTES WHERE THAT CLAIM AROSE DUE TO THE FAILURE OF THE WIRELESS SERVICE.

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