

Australia, New Caledonia and New Zealand only:

KOMTRAX Terms of Use

Article 1 (Scope)

(a) These “Terms of Use” or “Agreement” contains the complete terms and conditions governing the use of the KOMTRAX Units, KOMTRAX, KOMTRAX PLUS (accessed via ‘EQP CARE FOR CUSTOMERS’), KOMTRAX PLUS WEB VIEWER and KOMTRAX AIR RELAY (accessed through purchase of the KOMTRAX AIR RELAY System and associated subscription costs outlined in Annexure A) (collectively “KOMTRAX”), KOMTRAX program, software, and Web Site located at https://eqpcst.komatsu.co.jp/eqpc/init_mk mw.do, <https://komtrax.komatsu.com.au/login>, <https://plus.komtrax.komatsu/base/index.html> or at such other Internet address or Internet addresses as we will designate from time to time (“Site”), and related services (collectively, the “SERVICE”, as further described below).

(b) By registering to use the SERVICE, by clicking “AGREE” to this Agreement or by signing a KOMTRAX Customer Consent, USER and the CUSTOMER agree to use the SERVICE in a manner consistent with all applicable laws and regulations of Australia, New Zealand and New Caledonia, follow and be bound by these terms and conditions, and that the person who clicked “AGREE” and/or the signatory of the KOMTRAX Customer Consent, has the authority to sign on behalf of the USER and CUSTOMER.

Article 2 (Definitions)

The definitions used in this Agreement are as follows:

(a) “we”, “us”, “our”, or “KOMATSU AUSTRALIA” means Komatsu Australia Pty Ltd ABN 63 053 514 739 for Australian or New Caledonian Customers, or Komatsu New Zealand Limited NZBN 9429050679508 for New Zealand Customers;

(b) “you”, “your”, “USER” or “USERS” means the person(s) entering into this Agreement and using the “SERVICE” on behalf of the “CUSTOMER”;

(c) the “CUSTOMER” means the person, company or other legal entity entering into this Agreement and using the “SERVICE” and which employs or otherwise authorizes the USER to use the “SERVICE” on its behalf, and which owns the equipment associated with the KOMTRAX Units;

(d) “Web Site” or “Site” means all viewable pages (including page headers, custom graphics, button icons, links and text), underlying program code, and accompanying “SERVICE” and system features and documentation of the Internet web site made available by us for use of the “SERVICE”;

(e) “Software” means the software provided with, or embedded in, the KOMTRAX Unit or KOMTRAX AIR RELAY (if purchased by the CUSTOMER), the software contained in or underlying the Web Site, and the KOMTRAX information system software, including message processing software, databases, the “CUSTOMER” interfaces, “USER” displays and engineering tools;

(f) “KOMTRAX Unit” means the equipment used by an end “USER” to provide access to the KOMTRAX System and/or the KOMTRAX AIR RELAY System (if purchased by the CUSTOMER), which equipment has been “type-approved” by or on behalf of KOMATSU AUSTRALIA and to which a physical serial number, device control number, associated radio identification codes and/or system address have been assigned by KOMATSU AUSTRALIA, together with components that may include a battery, GPS receiver, antenna, embedded software and the cabling necessary to connect the foregoing components, in each case for installation and/or use on a unit of construction, mining or utility equipment. In some instances, the CUSTOMER and USER may be the same person. For KOMTRAX AIR RELAY

only, that may include a software, data conversion cable, antennas and an in-vehicle computer.

Article 3 (Description of the “SERVICE”)

(a) The SERVICE, as further described in this Agreement and on the Web Site, including updates and other changes that may be posted on the Web Site or otherwise provided to you or the CUSTOMER by us from time to time, includes KOMATSU AUSTRALIA’s KOMTRAX system, which is an equipment data tracking and monitoring system to manage information on utility, construction and mining machines (“KOMTRAX System”). KOMTRAX AIR RELAY is an extension of the KOMTRAX System, with the purpose of providing KOMTRAX functionality in environments where cellular or satellite coverage is non-existent or compromised (“**KOMTRAX AIR RELAY System**”). Equipment related data may include details on machine location, operator usage and diagnostic information. We will provide the CUSTOMER and its USERS with access to this system in accordance with this Agreement. The SERVICE is subject to modification by us at any time. Subject to the terms hereof, the SERVICE will provide the CUSTOMER and its USERS the ability to use the Web Site and the related tools to monitor the equipment related data as part of the SERVICE as provided herein.

(b) The SERVICE includes:

- (i) the processing and delivery of equipment location, operator information relating to how they are using the equipment and other monitoring messages using the Software, hardware and data transmission networks used by KOMATSU AUSTRALIA in connection with the SERVICE;
- (ii) the display of such messages for viewing and/or manipulation by the CUSTOMER and USER, in each case for tracking and monitoring equipment and other functions. The tracking and monitoring of data and information resulting from the provision of the SERVICE to the CUSTOMER will be made available by KOMATSU AUSTRALIA to the CUSTOMER and USER through the Web Site. We may limit CUSTOMER or USER access to the data and the SERVICE (or any portions thereof) at any time without notice, at our sole discretion;
- (iii) for KOMTRAX AIR RELAY CUSTOMERs only – specific conditions can be selected and reported on through customized real time alerts. Each time these conditions are met the occurrence will be reported via an email message as an alert noting the conditions, time and date as well as equipment details.

(c) Unless explicitly stated otherwise, any new features that augment, enhance or otherwise change the current SERVICE will be subject to the terms and conditions stated in this Agreement. You understand and agree that the SERVICE is provided on an “AS-IS” basis and that KOMATSU AUSTRALIA assumes no responsibility for the timeliness, deletion, accuracy or failure to store any CUSTOMER or USER input information or any machine related information. The components of the SERVICE may be changed by KOMATSU AUSTRALIA at any time without notice.

(d) The CUSTOMER and USER also acknowledge and agree that the SERVICE provided under this Agreement may be interrupted or suspended for extended periods, or terminated at any time, and that KOMATSU AUSTRALIA will have no liability with respect thereto and neither the CUSTOMER nor USER will be entitled to any recourse or compensation.

(e) The CUSTOMER and USER will use the SERVICE to process only the CUSTOMER data and data with respect to equipment that the CUSTOMER owns, leases or operates, or the data collected from machines rented by the CUSTOMER to third parties. In the event such rented equipment is used by third parties, whether through rental, lease or otherwise, the CUSTOMER and USER agree to provide notice to such third parties that the equipment is subject to the SERVICE that data and information may be collected, and any such data or information collected may be used by the CUSTOMER and KOMATSU AUSTRALIA.

(f) The CUSTOMER is responsible for obtaining and maintaining access to the SERVICE and that access may involve third party fees (such as internet service provider or wi-fi

charges). The CUSTOMER is responsible for those fees. In addition, the CUSTOMER must provide and is responsible for all computer and telecommunications equipment necessary to access the SERVICE including data collection and transmission hardware and software provided by KOMATSU AUSTRALIA in connection with the use of the SERVICE.

(g) For KOMTRAX AIR RELAY only: the CUSTOMER must provide KOMATSU AUSTRALIA with access to the equipment to install the hardware for the KOMTRAX AIR RELAY System. The CUSTOMER must provide access to and authorize KOMATSU AUSTRALIA's use of the CUSTOMER's internet service or Wi-Fi-connection (at the CUSTOMER's expense) to allow for the KOMTRAX AIR RELAY System to be operational.

Article 4 (Term of the Agreement)

(a) Use of the SERVICE with respect to each KOMTRAX Unit will be deemed to commence upon the date of purchase of the equipment on which the KOMTRAX Unit (and if applicable the KOMTRAX AIR RELAY System) is installed, and will terminate on the earlier of:

- (i) the date upon which you sell or otherwise transfer the equipment on which the KOMTRAX Unit is installed;
- (ii) the termination of these Terms of Use;
- (iii) such other date of which KOMATSU AUSTRALIA may advise the CUSTOMER;
- or
- (iv) for KOMTRAX AIR RELAY subscriptions only: the date the CUSTOMER ceases to pay the Subscription Fee in accordance with Annexure A and/or the KOMATSU AUSTRALIA quotation.

(b) Except in cases of termination of the Terms of Use, we may offer use of the SERVICE to the CUSTOMER or the new owner of the equipment at our then current KOMTRAX rate.

(c) In the event of sale or other transfer of the equipment associated with any KOMTRAX Unit, the CUSTOMER agrees to provide KOMATSU AUSTRALIA with thirty (30) days' advance written notice thereof.

(d) This Agreement will govern the use of any and all KOMTRAX Units the CUSTOMER currently owns or leases and those subsequently obtained by the CUSTOMER whether through purchase, lease or otherwise.

(e) The term of this Agreement will become effective upon acceptance by the CUSTOMER and/or USER and will continue in the case of the CUSTOMER for as long as the CUSTOMER has the right to use any KOMTRAX Unit and will end when such rights to use such KOMTRAX Units terminate.

(f) When this Agreement is terminated by either party or upon the termination, or discontinuance of the SERVICE, whichever is earlier; or in the case of a CUSTOMER and/or USER, the term of this Agreement will become effective upon our acceptance of the CUSTOMER and/or USER'S registration and will end when terminated by either party, upon the termination of employment or service to the CUSTOMER, or upon the termination or discontinuance of the SERVICE.

(g) If not otherwise accepted by us electronically or in writing, if the USER is granted access to the Site, the CUSTOMER and/or USER registration will be deemed to have been accepted.

(h) Either the CUSTOMER, USER or KOMATSU AUSTRALIA may terminate this Agreement at any time, with or without cause, by giving the other party fifteen (15) days' written notice of termination.

(i) Upon termination of this Agreement, all rights granted to the CUSTOMER and/or USER under this Agreement will terminate immediately and the CUSTOMER and/or USER will cease all use of the SERVICE, the KOMTRAX Units and the KOMTRAX System/KOMTRAX AIR RELAY System. In addition, we may immediately terminate or suspend the CUSTOMER's and/or USER's access to the SERVICE, and/or any KOMTRAX Units if the CUSTOMER and/or USER provides us with false or misleading information or for any breach of this Agreement, or if we deem it necessary to comply with any applicable laws or regulations.

(j) If requested, the CUSTOMER will provide KOMATSU AUSTRALIA or its designee access to the KOMTRAX Units to allow for their removal pursuant to any termination hereunder. You will indemnify and hold KOMATSU AUSTRALIA harmless from any liability for such termination or temporary discontinuation of the SERVICE.

Article 5 (Passwords and Use of Information)

(a) Following any applicable registration of the CUSTOMER by KOMATSU AUSTRALIA, and payment of any applicable fees by the CUSTOMER, USERS will be provided with a user name (or names) and passwords, at which time USERS will be provided initial access to the SERVICE and may register for and use the SERVICE, subject to compliance with these terms and conditions.

(b) Only USERS may access the SERVICE. A USER's user name and password must be used each time to access the SERVICE. The CUSTOMER and/or USER agree not to disclose or otherwise make the USER names or passwords of the USER or USERS available to any third party other than the USER or USERS authorized by the CUSTOMER in accordance with these terms and conditions.

(c) The CUSTOMER and USER are responsible for maintaining the security of the user names and passwords of the USER and agree that they are solely responsible for any breach or unauthorized access to the SERVICE by their use. The CUSTOMER is also responsible for all use of the SERVICE by the USER and for their compliance with the terms and conditions of this Agreement.

(d) KOMATSU AUSTRALIA may cancel a USER's user name and password and access to the SERVICE at any time without notice.

Article 6 (Warranty)

KOMATSU AUSTRALIA's warranty of each KOMTRAX Unit (excluding KOMTRAX AIR RELAY) will be limited to its standard warranty for equipment in effect as of the purchase date of such equipment. Any warranty claims may be pursued only in accordance therewith.

For the KOMTRAX AIR RELAY System only:

- (i) for new machines sold with KOMTRAX AIR RELAY System pre-Installed – KOMATSU AUSTRALIA's standard machine warranty (as of the purchase date) will apply;
- (ii) for instances where KOMTRAX AIR RELAY System is sold over the counter – KOMATSU AUSTRALIA's standard 12 months parts warranty (as of the purchase date) will apply; and
- (iii) for instances where KOMTRAX AIR RELAY System is sold over the counter AND retrofitted by KOMATSU AUSTRALIA – KOMATSU AUSTRALIA's standard 6 months service warranty will apply.

Any warranty claims may be pursued only in accordance therewith.

Article 7 (Exclusion of implied terms)

All legal, statutory or equitable liability, conditions or warranties of any type in relation to KOMTRAX are excluded. However, nothing herein will limit those provisions of the *Competition and Consumer Act 2010* (Cth) including the Australian Consumer Law, nor statutes, rules or regulations from time to time in force in Australia which imply or guarantee certain conditions or warranties or impose obligations on KOMATSU AUSTRALIA which conditions, warranties and obligations cannot, or cannot except to a limited extent be excluded, restricted or modified. If any such statutory provisions apply, then to the extent to which KOMATSU AUSTRALIA is entitled to do so, their liability under those statutory provisions will be limited at their option to:

- (a) in the case of goods:
 - (i) the replacement of goods or the supply of equivalent goods; or

- (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
or
 - (iii) the payment of the cost of having the goods repaired; or
 - (iv) the repair of the goods; and
- (b) in the case of services:
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again

Article 8 (Intellectual Property)

(a) The CUSTOMER and/or USER expressly acknowledge and agree that the entire right and title to the SERVICE and the Software, including, but not limited to, all copyright, trade secret and other intellectual or proprietary rights in and to the SERVICE and the Software is, and will remain, with KOMATSU AUSTRALIA, its subsidiaries, affiliates (including Komatsu Ltd) (collectively, the "KOMATSU ENTITIES").

(b) The KOMATSU ENTITIES have the exclusive right to protect the Software by copyright enforcement procedures or otherwise. Neither the CUSTOMER nor USER will remove any copyright notices or any confidential or proprietary legends from the Software or the SERVICE.

(c) The CUSTOMER and/or USER acknowledge and agree that all data developed or collected by us or on our behalf of, or through the SERVICE, including, but not limited to, prior to and after the term hereof (including aggregate data of the CUSTOMER and/or USER or other third parties), in connection with the operation of the SERVICE will be our exclusive property, except for data (excluding aggregate data) provided by the CUSTOMER, USER or on behalf of the CUSTOMER, with respect to the CUSTOMER's machines.

(d) To enable us to use any information provided by or on behalf of the "CUSTOMER" in connection with the operation of the SERVICE without violating any rights that the CUSTOMER or USER may have in the information, the CUSTOMER and/or USER hereby grants to us, a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable right to exercise the copyright and other rights that the CUSTOMER or USER may have in such information for KOMATSU AUSTRALIA and for any other purposes, in any media now known or not currently known.

(e) Without limiting the generality of the foregoing, the CUSTOMER and/or USER acknowledge and agree that KOMATSU AUSTRALIA is entitled to retain and use free of charge, the tracking and monitoring of data obtained through the CUSTOMER's and/or USER's use of the SERVICE under this Agreement for such purposes as it will in its sole discretion determine.

(f) KOMATSU AUSTRALIA may grant access to the tracking and monitoring of data obtained through the CUSTOMER's and/or USER's use of the SERVICE under this Agreement to any affiliate of CUSTOMER upon CUSTOMER's written request or upon the written request of CUSTOMER's global or regional headquarters. It is CUSTOMER's sole and exclusive responsibility to ascertain which of its affiliates should be given access to the tracking and monitoring of data obtained through the CUSTOMER's and/or USER's use of the SERVICE under this Agreement and to ensure that such granting of access complies with applicable law, including relevant data protection laws.

Article 9 (CUSTOMER and USER Conduct)

(a) Neither the CUSTOMER nor USER will perform, permit, or allow any abuse or fraudulent or unlawful use of the SERVICE or use the SERVICE for any fraudulent, unlawful or abusive purpose.

(b) The CUSTOMER and/or USER will take all steps necessary to control and prevent abuse or fraudulent or unlawful use by USERS, or any third party under the CUSTOMER's control, of the SERVICE. Abuse and/or unlawful or fraudulent use of the SERVICE includes, but is not limited to:

- (i) accessing, altering or interfering with the communications and/or information of the SERVICE, including, but not limited to, by rearranging, tampering or making an unauthorized connection with the SERVICE, or any facilities related thereto, or attempting, allowing or assisting any other person, to do the foregoing; and/or
 - (ii) using the SERVICE in such a manner so as to interfere unreasonably with the use of the SERVICE by other persons.
- (c) The CUSTOMER and USER will use the SERVICE in accordance with applicable laws, rules and regulations of the jurisdiction in which the SERVICE is being used, including, but not limited to, those of any applicable governmental authority or agency.
- (d) The CUSTOMER and USER acknowledge that the SERVICE may require licenses or other approvals from applicable governmental authorities and agree to use the SERVICE only in accordance with this Agreement and such governmental licenses and approvals.
- (e) The CUSTOMER and/or USER will use the SERVICE only within Australia, New Zealand and New Caledonia. The CUSTOMER will only use a KOMTRAX Unit (or other similar unit approved by us in our sole discretion) in connection with the SERVICE.
- (f) While using the SERVICE, the CUSTOMER and/or USER represent and agree that any information the CUSTOMER and/or USER upload, post, e-mail, publish, reproduce, disseminate, make available, distribute or otherwise transmit via use of the SERVICE and the KOMTRAX Units:
- (i) will not be unlawful, threatening, harmful, abusive, defamatory, fraudulent, harassing, tortious, obscene, pornographic, libelous, racist, invasive of another's privacy, or contain otherwise objectionable information of any kind, including without limitation any transmissions constituting or encouraging conduct that would give rise to civil liability or constitute illegal activity;
 - (ii) will not violate any contractual or fiduciary relationships, including, without limitation, with respect to inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements;
 - (iii) will not infringe any copyright, patent, trademark, service mark, trade name, trade secret or other proprietary or confidentiality rights of any third party;
 - (iv) will not contain unauthorized advertising, bulk e-mails, promotional materials, chain letters, pyramid schemes, investment opportunities, "junk mail," "spam," or any other similar unsolicited commercial communications, solicitations or offers for sale of goods or provision of service, except for reasonable communications in connection with the SERVICE;
 - (v) will not contain a Virus, Worm, Trojan Horse, or other harmful component or instruction designed to interrupt, destroy or limit the functionality of any computer software, hardware or telecommunications; and/or
 - (vi) will not intentionally or unintentionally violate any applicable local, State, Federal or International law, without exclusivity to those of Australia, New Zealand or New Caledonia.

Article 10 (Modification)

- (a) We may modify or discontinue, temporarily or permanently, the SERVICE (or any part thereof) at any time at our sole and exclusive discretion.
- (b) We may also modify any of the terms and conditions contained in this Agreement, at our sole and exclusive discretion, by sending an e-mail notification, pop-up window or regular mail setting forth such change or directing the CUSTOMER or USER to a change notice or a new agreement on our Site. Such notifications will become effective after they have been on our Site for ten (10) days, or ten (10) days after such notice was sent, whichever is earlier.
- (c) If any modification is unacceptable to the CUSTOMER or USER, the CUSTOMER or USER may terminate this Agreement and that is the CUSTOMER's or "USER's" sole remedy.
- (d) The CUSTOMER or USER's continued use of the SERVICE following that period will constitute binding acceptance of the change. The CUSTOMER and/or USER agree that

KOMATSU AUSTRALIA will not be liable to the CUSTOMER, USER or to any third party for any modification, suspension or discontinuance of the SERVICE.

(e) The CUSTOMER and/or USER agree that we may limit the amount of data stored on the SERVICE and the maximum number of times and duration you may access the SERVICE in a given period of time and may change such limits and times at any time.

Article 11 (Confidentiality)

(a) The CUSTOMER and/or USER agree not to disclose any of the KOMATSU ENTITIES' Confidential Information. Confidential Information includes all competitive, sensitive or secret business, marketing, technical or other similar confidential information belonging to, or licensed to the KOMATSU ENTITIES and disclosed to the CUSTOMER and/or USER as part of, or in connection with, the SERVICE, including, without limitation, any and all Hardware, Software and related documentation, report formats, screen displays, menu features and any technical information relating thereto.

(b) The CUSTOMER and/or USER also hereby acknowledge and agree that the Software constitutes a valuable proprietary product and trade secret of the KOMATSU ENTITIES. Accordingly, the CUSTOMER and/or USER will observe complete confidentiality with respect to the Software, and will not disclose all or any portion of the Software to any third party or entity, provided that the CUSTOMER and USER will be entitled to make such disclosure as may be necessary or appropriate to the CUSTOMER and their employees in their course of work; and provided further, that the CUSTOMER and/or USER will be entitled to allow third parties to view any USER screen displays.

(c) The CUSTOMER and/or USER will advise all employees and consultants who receive access to the Software of the confidential and proprietary nature of the Software and obtain from each his or her agreement to abide by the obligations of the CUSTOMER, including, but not limited to, those set forth in this Agreement. Information will not be considered confidential to the extent, but only to the extent, that such information is:

- (i) already known by you free of restriction at the time it is obtained;
- (ii) subsequently learned from an independent third party free of any restriction; or (iii) available publicly.

(d) The CUSTOMER and/or USER acknowledge that all service marks, trademarks and trade names used in connection with the SERVICE are the service marks, trademarks and/or trade names of their respective owners, and that neither The CUSTOMER nor USER have any license or other rights or licenses whatsoever with respect to such service marks, trademarks or trade names.

Article 12 (Security)

Although we use what we consider to be reasonable security measures, we are not responsible for any data loss, corruption or exposure that may occur, or damages arising there from, in the course of the CUSTOMER and/or USER's access or use of the SERVICE, or otherwise in connection with the SERVICE.

Article 13 (Exclusion of Consequential Loss)

(a) As the CUSTOMER and/or USER, you expressly understand and agree that the KOMATSU ENTITIES will not be liable for any Consequential Loss.

(b) In this article, Consequential Loss means any direct, indirect, incidental, special, consequential or exemplary damages, whether in contract or tort, including negligence or otherwise, including, but not limited to, damages for actual or anticipated profit, loss of use, loss of productivity, loss of revenue, lost savings, business interruption of any nature, computer interruption, loss of contracts, loss of opportunity, increased costs and expenses, wasted expenditure, loss arising from delay, loss by reason of shutdown or non-operation or increased cost of borrowing capital or financing, loss of reputation or goodwill, loss of data or

other intangible losses, even if we have been advised of the possibility of such damages, including, but not limited to, damages resulting from:

- (i) the use or the inability to use the SERVICE or any KOMTRAX units;
- (ii) the cost of procurement of substitute services and goods resulting from any goods, data, information or services purchased or obtained or messages received, or transactions entered into, through or from the SERVICE;
- (iii) unauthorized access to or alteration of your transmissions or data;
- (iv) statements or conduct of any third party on the SERVICE;
- (v) the performance or non-performance of the KOMTRAX units;
- (vi) failure by you to provide any notices required hereunder; or
- (vii) any other matter relating to the SERVICE.

Article 14 (Limitation of Liability)

Notwithstanding anything to the contrary in this Agreement or elsewhere and to the full extent permitted by law, the KOMATSU ENTITIES' cumulative liability to the CUSTOMER and/or USER under or in connection with this Agreement, including any liability for breach of the Agreement, negligence or under any indemnity or law, will be limited to the amount paid by the CUSTOMER and/or USER to the KOMATSU ENTITIES for KOMTRAX.

Article 15 (Indemnity)

(a) Without limiting the generality or effect of other provisions of this Agreement, as a condition of the use of the SERVICE, the CUSTOMER and/or USER agree to indemnify, hold harmless, and defend us and our officers, directors, affiliates, distributors, subcontractors, agents and employees against all liabilities and damages (including reasonable attorney fees) incurred or allegedly incurred by us in connection with any third party claims arising out of:

- (i) the CUSTOMER and/or USER's breach of this Agreement; or
- (ii) the CUSTOMER and/or USER's use of the SERVICE and/or engagement in transactions in connection therewith, including, but not limited to, failure of any products or service to meet specifications, breach of warranty, intellectual property infringement and bodily injury or personal property damage.

(b) The CUSTOMER and/or USER also hereby waive, and agree to indemnify and hold harmless KOMATSU AUSTRALIA, and its partners, affiliates, officers, directors, employees, representatives, agents, and subcontractors against, any and all claims, demands, losses, damages, judgments, liabilities or expenses (including, without limitation, reasonable attorney fees) relating to:

- (i) damage to property of KOMATSU AUSTRALIA, you, or any other person, including, but not limited to, any damage that invalidates any other product warranties and is caused by installation or use of the KOMTRAX Units; or
- (ii) claims (including, but not limited to, those for personal injury) brought against KOMATSU AUSTRALIA or any other aforesaid indemnities by the CUSTOMER, USER, the CUSTOMER's employees, agents, representatives or subcontractors or their respective employees, arising from, or caused by, installation, use or removal of the KOMTRAX Units, or use or discontinuance of the SERVICE as provided hereunder.

Article 16 (Privacy)

(a) The CUSTOMER will ensure that any collection, use and transfer of any Personal Information (as defined in the *Privacy Act 1988* (Cth)), in the course of using the SERVICE under this Agreement complies with all relevant laws in Australia (if the CUSTOMER is domiciled in Australia), New Zealand (if the CUSTOMER is domiciled in New Zealand) and New Caledonia (if the CUSTOMER is domiciled in New Caledonia).

(b) Where necessary, the CUSTOMER must obtain all necessary consents in relation to the collection, use and transfer of Personal Information required under this clause from the relevant individual.

(c) The CUSTOMER must indemnify the KOMATSU ENTITIES against any Liability, loss, damage, cost, expense, claim, suit, action, demand, proceeding, penalty and fine of any nature arising from any one or more of the following:

- (i) a breach of this clause; or
- (ii) the failure of any of the CUSTOMER's personnel to comply with the requirements of this clause.

Article 17 (Force Majeure)

KOMATSU AUSTRALIA will not be liable for failure to perform under this Agreement, including, but not limited to, if such failure is caused by Internet outages, failure of suppliers, vendors or internet service providers, earthquakes, satellite or other communications outages, flood, war, fire, act of God, acts of war or terrorism or the occurrence of any other event beyond the reasonable control of KOMATSU AUSTRALIA.

Article 18 (No Unintentional Waiver)

(a) This Agreement constitutes the entire agreement between the USER, KOMATSU AUSTRALIA and the CUSTOMER with respect to the SERVICE and supersedes all prior agreements between KOMATSU AUSTRALIA and the CUSTOMER related to the SERVICE.

(b) KOMATSU AUSTRALIA's failure to enforce any provision of this Agreement will not be construed as a waiver of any provision or right.

Article 19 (Relationship of the Parties)

Nothing contained in this Agreement will be construed as creating a joint venture, partnership, or employment relationship between the parties hereto, nor will either party have the right, power, or authority to assume, create, or incur any expense or obligation on behalf of the other party, except as expressly provided herein.

Article 20 (Notices)

(a) Notices to you will be in writing and may be made via email, regular mail or posting such notices on the Web Site. Except as otherwise explicitly stated in this Agreement, any notices given by you by email for KOMTRAX PLUS are to be sent to komtraxplus@komatsu.com.au and for KOMTRAX, are to be sent to komtrax@komatsu.com.au, or to the email address provided by KOMATSU AUSTRALIA during the registration process.

(b) Notice will be deemed given, twenty-four (24) hours after any email is sent, unless the sending party is notified within such 24-hour period that the recipient's e-mail address is invalid.

(c) Alternatively, notice may be given by certified mail, postage prepaid, return receipt requested, to Komatsu Australia Pty Ltd, 50-60 Fairfield Street, Fairfield East, NSW 2165, marked to the attention of the KOMTRAX Systems Coordinator, or to you at the address provided to KOMATSU AUSTRALIA during the registration process or in connection with the sale agreement executed by you in connection with this Agreement, or to such other address as either party will specify in a notification in accordance with this paragraph. In such case, notice will be deemed given when received.

Article 21 (Severability)

In the event that a portion of this Agreement is held unenforceable, the unenforceable portion will be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of the provisions will remain in full force and effect.

Article 22 (Assignment)

(a) Neither the CUSTOMER nor USER may assign this Agreement without KOMATSU AUSTRALIA's prior written consent.

(b) Any attempted assignment without KOMATSU AUSTRALIA's consent will be void and without effect and will result in our right to immediately terminate this Agreement and the license rights granted herein without further obligation to you.

(c) Neither the CUSTOMER nor USER may transfer any KOMTRAX Units to any different equipment without KOMATSU AUSTRALIA's prior written consent.

(d) KOMATSU AUSTRALIA reserves the right to assign this Agreement to any third party, including any party that acquires all or substantially all of KOMATSU AUSTRALIA's assets or equity.

(e) This Agreement and the rights and obligations of each of us under it will be binding on our respective successors and assigns.

(f) The CUSTOMER agrees to provide notice to any transferee of the equipment that the equipment is subject to the SERVICE, that data and information may be collected, and that any such data or information collected may be used by the KOMATSU ENTITIES unless such transferee provides notice to KOMATSU AUSTRALIA to discontinue the SERVICE.

(g) The CUSTOMER further agrees not to sell a KOMTRAX Unit or any equipment containing a KOMTRAX Unit unless the CUSTOMER provides KOMATSU AUSTRALIA with thirty (30) days advance written notice thereof, and the transferee agrees to be bound by the terms and conditions of this Agreement but any such sale will not be an assignment or novation of this Agreement, and you will continue to be bound by the terms hereof.

Article 23 (General)

This Agreement, together with any documents or Web pages incorporated herein, constitutes the entire agreement between the parties and supersedes all previous agreements, promises, proposals, representations, understandings and negotiations, whether written or oral, between the parties respecting the subject matter hereof; provided, however, if you have entered into more than one version of these Terms of Use for KOMTRAX Units, the Agreement with the latest revision date below will be the control for all of your KOMTRAX Units.

Article 24 (Governing Law)

This Agreement will be governed by the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the New South Wales courts in respect of all matters relating to the Agreement.

ANNEXURE A – KOMTRAX AIR RELAY

1. **FEES**

1.1 **Komtrax Air Relay**

KOMTRAX AIR RELAY is an extension of KOMTRAX. KOMTRAX AIR RELAY is available for installation on equipment with KOMTRAX or new KOMATSU AUSTRALIA equipment with the purpose of providing KOMTRAX functionality in environments where cellular or satellite coverage is non-existent or compromised. For the avoidance of the doubt, this Annexure A, the Hardware and Installation Fee and the Subscription Fee are only applicable in relation to KOMTRAX AIR RELAY (unless specified otherwise by KOMATSU AUSTRALIA).

1.2 **Hardware and Installation Fee for Komtrax Air Relay**

1. To access KOMTRAX AIR RELAY the CUSTOMER must pay a hardware and installation fee, the hardware and installation fee will be set out in the quotation provided to the CUSTOMER by KOMATSU AUSTRALIA (“**Hardware and Installation Fee**”). The Hardware and Installation Fee will include the installation cost (unless specified otherwise) and the hardware (including the data conversion cable, antennas and an in-vehicle computer) associated with each unit of KOMTRAX AIR RELAY.
2. The CUSTOMER must pay the Hardware and Installation Fee for the use of KOMTRAX AIR RELAY. The Hardware and Installation Fee is charged per unit.
3. The CUSTOMER must pay the Hardware and Installation Fee in accordance with the payment terms provided by KOMATSU AUSTRALIA in the KOMATSU AUSTRALIA quotation.

1.3 **Subscription Fee for Komtrax Air Relay**

1. KOMTRAX AIR RELAY can be accessed only by CUSTOMER’s who have purchased and continue to pay the subscription fee. The subscription fee will be set out in the quotation provided to the CUSTOMER by KOMATSU AUSTRALIA (“**Subscription Fee**”).
2. The CUSTOMER must pay the Subscription Fee for the use of KOMTRAX AIR RELAY. The Subscription Fee is a fee charged to the CUSTOMER by KOMATSU AUSTRALIA and is inclusive of the ongoing costs associated with support and data charges (unless specified otherwise).
3. In the event that KOMATSU AUSTRALIA increases the Subscription Fee throughout the term, KOMATSU AUSTRALIA will provide the CUSTOMER with thirty (30) days’ prior written notice of the increase.
4. The CUSTOMER must pay the Subscription Fee in accordance with the payment terms provided by KOMATSU AUSTRALIA in the KOMATSU AUSTRALIA quotation.

Revised 25 August 2023