

# **GENERAL CONTRACTING TERMS**

## **For Service Provider's data servicing and related positioning service**

### **POLAND**

As effective on 01 October 2021

#### **PREAMBLE AND GENERAL DECLARATIONS**

The General Contracting Terms regulate the services in form of positioning activities on the basis of the data forwarded by the On-Board Unit (such is an On-Board Unit marketed or provided by XXX or any member of WebEye Telematics Group) installed in the motor vehicle, to the information technology system provided by the XXX.

Pursuant to the mandatory regulations of the Polish Road Act (Ustawa o drogach publicznych) and Polish Expressways Toll Act (Ustawa o autostradach płatnych i Krajowym Funduszu Drogowym), On-Board Unit marketed or provided by XXX or any member of WebEye Telematics Group has been approved by the proper Polish Institution (Ministerstwo Finansów - Ministry of Finance) for usage as an OBU Unit capable of providing positioning service interconnected with the possibility to calculate and collect road tolls as specified in the above mentioned Acts.  
(hereinafter: **Service Provider or XXX**)

Service Provider declares that under Polish regulations it is not necessary to enter into agreement with Polish national authority over the toll collection.

However, Service Provider declares that his data servicing and positioning service system has been accepted into the national toll collection system (Systemu Poboru Opłaty Elektronicznej KAS) by proper decision on the matter, as required in order to provide a valid technical specification of the OBU Unit.

The operator of the motor vehicle - in accordance to the Polish national regulations - is obliged to install and properly use an OBU Unit capable of providing positioning service interconnected with the possibility to calculate and collect road tolls.  
(hereinafter: **Toll Payer or TP**).

Note: for the course of the General Contracting Terms, the Toll Payer - unless specifically stated otherwise - applies also to the persons acting on behalf of the Toll Payer, particularly the driver of the motor vehicle or mechanics crew maintaining the vehicle, trailer or cargo.

#### **I. SERVICE OBLIGATIONS FOR THE SERVICE PROVIDER**

Principal service provided by Service Provider is:

- based on the Contract between the Service Provide and the Toll Payer and this GCT
- provided with an assumption that the Toll Payer possesses a working OBU Unit device;
- providing a service, that is proper data processing of the information collected and forwarded via OBU Unit allowing a synchronization with a national toll collection

system within the Republic of Poland, regarding the motor vehicle position (positioning activities) and data of the motor vehicle provided by the Toll Payer via the technological application in the OBU Unit. This collective data is then further provided to the state authority responsible for collecting the tolls for the usage of expressways and motorways, together with the calculation of the tolls based on vehicle data (provided by the Toll Payer or collected autonomically, depending on the OBU Unit). Based on the said data, the toll is calculated and automatically charged from the Toll Payer and provided to the national toll collection system;

- keeping the technologies used and utilized in the OBU Unit up to date via self-updating programming. The updates may however require the Toll Payer to manually execute the update sequence;
- keeping the technologies used and utilized in the OBU Unit within the standard framework as provided and demanded by the states authorities;

While providing the above services, The Service Provider executes data servicing by abiding by the legal regulations and the professional and technical conditions and requirements.

The services are provided for the contracted period of time specified in the Contract, after which the Service Provider is no longer bound to provide services unless the Contract has been properly annexed by both Parties.

In order to provide technical assistance to the services, XXX cooperates on technical matters with its Distributive Partners. Distributive Partners are responsible for technical support other than application (software) errors or malfunctions. Distributive Partners also provide Toll Payer with any solutions concerning the hardware errors or malfunctions as well as general physical operation of the OBU Units.

XXX may provide the collected or processed (forwarded) information regarding the vehicle position and vehicle data to the national authorities as specified in the Polish Road Act.

## **II. OBLIGATIONS OF THE TOLL PAYER**

The Toll Payer, as an end-user of the OBU Unit and device, having also included his obligations under the Polish Road Act, is obliged primarily to:

- providing the OBU Unit with correct and genuine information regarding the vehicle register plates, vehicle class as regulated in the Polish Road Act and/or the amount of the axles of the motor vehicle and keep that data updated at all times;
- refraining from obstructing the register plates or decorating them in any manner that could potentially interfere with scanners operated by the national authorities and used for control of the toll collections;
- providing for the professional installation of the OBU Unit into the vehicle;
- using the On-Board Unit properly, protect its condition, and undertake the cost of operation of the Unit – if there are such;
- securing that the costs of operation necessary for the data transfer of the OBU Unit are paid, thus the device's ability to transfer data is secured;
- maintaining the OBU Unit in working order;
- regularly maintaining the OBU Unit or have it maintained, and to secure that the periodical inspections of the OBU Unit by the Service Provider are executed should the need arise for such inspections;

- equipping the motor vehicle with a positioning system allowing the OBU Unit to function correctly;
- in case the OBU Unit is also operated as a tachymetric (tachygraphic) device, maintaining the positioning function of the OBU Unit properly and avoiding device overloads or interferences;
- registering in the proper register for toll collection valid on the territories of Republic of Poland;
- reregistering and deregistering motor vehicles in accordance with the regulations and securing the return of the OBU Unit signal to the Service Provider, as well as keeping the data entered to the device updated with changed information regarding the motor vehicle;

Prior to starting to drive the vehicle in public-road traffic is it obligated to check the operability of the On-Board Unit, as well as follow the operability of the Unit during the complete course of road usage.

If, for imputable reason, the Toll Payer does not ensure the continuous operation of the On-Board Unit, so especially blocks arbitrarily – for a shorter or longer period of time – the electronic enclosure of the On-Board Unit during the road usage, or influences the data-transfer ability of the On-Board Unit in any other way, The Service Provider cannot be held responsible either for the toll payment based on the ostensible road usage, or for the penalty meted out on the Toll Payer.

### **III. LIABILITY**

XXX shall be liable for damages that has arisen due to a contract violation or this General contracting Terms that is a result of intended (directional) action of the XXX representatives (managers, technicians, workers etc.).

The Parties hereby derogate the statutory warranty regulations as specified in the Polish Civil Code.

XXX shall not be liable for any damages due to malfunctions of the OBU other than described above, such as but not limited to:

- fewer road usage entitlement claims than what would have been necessary according to actual road usage, and if due to this, a penalty of any kind is meted out against the Toll Payer;
- payments that were not properly processed and thus did not occur or have occurred in incorrect amount;

Any damage liability claims regarding the physical (hardware) issues shall be directed to the Distributing Partner, who is:

XXX YYY

Any possibly emerging liability of both the XXX and the distributing partner is further limited should the Toll Payer or any person operating the OBU Unit on its behalf (such as driver, technician etc.) fail to:

- notice the malfunction of the OBU Unit;
- disregard the prompt information of the encountered malfunction to the Technical Support;

- promptly cease the vehicle movement equipped with the OBU Unit with regard of safety of the vehicle and the driver;

In accordance with the Polish Road Act, an obligation to cease the vehicle movement arises if the OBU Unit fails to provide valid positioning information for over 15 minutes. In such case, the driver of the motor vehicle is obliged to either stop the vehicle in a safe location or leave the road promptly subjected to the road tolls and may return to travel on the road subjected to the road tolls only if positioning and processing data has returned to normal work.

The driver of the motor vehicle may not cease the movement of the vehicle as regulated in the Polish Road Act under certain circumstances. Those circumstances are, among others (and may be modified or amended by national authorities), if:

- the failure of the valid positioning occurring for over 15 minutes is a result of a malfunction of a toll collection system or toll processing systems provided by the state authorities or the malfunction of the 3<sup>rd</sup> party devices used for the positioning (eg. Satellite system, toll collection server failure etc.);
- the motor vehicle is used for transporting the livestock or any other live animals;
- the motor vehicle is used for transporting the dairy products that are prone for rapid loss of freshness;
- the motor vehicle is used for transporting the medical products;
- the motor vehicle is used for transporting the dangerous materials in the amounts that under separate legislations the orange danger plate markings are required;
- the motor vehicle is used for transporting the concrete and concrete pumps;
- the motor vehicle is used for transporting the general and liquid wastes;
- the above listed transported goods are not subjected to the transport monitoring and control as specified in other, dedicated acts;

If any of the above exceptions arises, continuing the vehicle movement remains legal and valid if the Toll Payer shall immediately provide the toll collection system with the registry plate number and the detailed route - and if the toll has been subjected to prepaid functions, only if the prepayment of tolls has been successful.

The Service Provider shall not be liable for any damages resulting from continuing the vehicle movement on the grounds of the above mentioned or further amended exceptions, nor shall be liable for an incorrect assessment that an exception in ceasing the road movement occurred.

If the Toll Payer fails to satisfy any obligation included in the present contract, outstanding towards the Service Provider, and, as a result of this, the Service Provider suffers damage, the Toll Payer is obligated to reimburse the damage to the Service Provider.

#### **IV. TECHNICAL SUPPORT**

The Service Provider operates a Customer Service Centre with assistants communicating in English and Polish languages, which among others things, but not exclusively:

- provides the Toll Payer with information on issues emerging in connection with the Service Provider tasks, particularly should those tasks be hampered by independent circumstances not related to the Service Provider (such as eg. failure of satellite system etc.);

- provides assistance with any errors or malfunctions reported, particularly those that can be fixed quickly (in under 24 hours since error or malfunction was reported);
- in connection with the Service Provider activity, it manages the complaints received from the Toll Payer;

## **V. SUSPENSION/TERMINATION OF DATA SERVICING**

If, by enforcing its right secured by the individual toll payment contract concluded between the Toll Payer and the national authorities, the authorities suspend the road usage entitlement based on data servicing towards the Toll Payer for any reason, the Service Provider may suspend performance of its data servicing obligation for a period of time identical with the suspension without prior notification of the suspension. In such a case the Service Provider shall not be liable for the penalty meted out due to the suspension of the Service.

If the contract between the Service Provider and the Toll Payer is terminated – related to one or more OBU Unit - or the data positioning service is suspended, furthermore if the Service Provider legal relationship concerning the data servicing is terminated, the Service Provider is entitled to suspend the data servicing.

If, by violating any of the obligations as specified in the present GCT incumbent on the Toll Payer a particular OBU Unit becomes unsuitable for the data transfer required for the data servicing, the Service Provider is entitled to suspend the data servicing based on the relevant OBU Unit on its own authority.

Furthermore, the Service Provider is entitled to suspend the data servicing based on the relevant OBU Unit for any reason which endangers, makes unviable or influences disadvantageously the technical requirements for OBU Units as specified in proper legislations, and thus rendering the particular OBU Unit unusable as a toll collection device.

The Service Provider is as well entitled to suspend the data servicing in order to protect the Toll Payer from any damages, unless duly specifically informed by the Toll Payer otherwise.

In accordance with the hereto General Terms and Conditions, the Service Provider is entitled to terminate the legal relationship with the Toll Payer regarding either the entire stock of contract of the Toll Payer or only a particular On-Board Unit as well, on the conditions stated in those GTC, based on any reason (especially based on reasons stated in those GTC), within the entire contracted period of time specified in the Contract.

The Service Provider is obligated to notify the affected Toll Payer of the termination/cancellation of the contract or of the suspension of the data servicing at least 3 working days prior to the effective date of the termination, cancellation or suspension. In the frame of the notification obligation, the Service Provider notifies the “person to be informed” indicated by the Toll Payer on the Contract, via SMS text message or e-mail or telephone or - if possible - directly via OBU Unit applications.

The notification includes the registration number of the vehicle affected by the suspension or the termination of the contract, the identification number of the OBU Unit (OBU ID), the initial date of the suspension or the termination of the contract as well as a warning of the

Toll Payer that the Toll Payer is obligated to secure a legal usage of the roads due to the suspension/termination of Contract, furthermore on the fact that failing this obligation results in unauthorized road usage, particularly by using the official tolling application or providing a payment in advance.

The Toll Payer accepts that if, enforcing its right to suspend the data servicing, or its right to terminate the entire/a part of the contract based on the hereto General Contracting Terms, the Service Provider suspends or terminates the Data Servicing, the Toll Payer becomes obligated to secure the legality of the road usage in any other way as regulated in the Polish Road Act. Failing this obligation results in improper road usage, for which a penalty or fine can be meted out. The Toll Payer accepts that, if the Service Provider has notified it of the suspension in accordance with the directions of the present contract, and, in spite of this, the Toll Payer failed to secure the legality of the road usage in any other way, and a penalty was meted out against the Toll Payer due to this, the Service Provider cannot be held responsible for the penalty meted out thus.

If the Service Provider re-activates data servicing suspended according to the above regulations for the Toll Payer, the Service Provider notifies the "person to be informed" indicated by the Toll Payer on the Contract, via SMS text message or e-mail or telephone or - if possible - directly via OBU Unit applications, indicating in the notification the time the service is re-launched, the registration plate numbers of the affected vehicle(s), and the Unit ID(s) belonging to them. Until the time of the re-activating of data servicing indicated in the notification, the Toll Payer is obligated to secure a legality of the road usage. The Service Provider is not obligated to take responsibility for the damage emerging from the failure to secure the legality of the road usage – also including possible penalties or fines meted out thus.

## **VI. TERRITORIAL AND TEMPORAL SCOPE OF THE GCT**

The scope of the positioning and data servicing legal relationship recorded in the present GCT extends to the positioning and data servicing activities related to the usage of roads subjected to the toll collections located within the state borders of Republic of Poland.

The positioning and data servicing legal relationship constituting the subject of the present GCT comes into effect toward the Toll Payer on the day the Contract related to the present GCT is signed or, in lieu of a Contract, upon the acceptance of the OBU Unit into the system of the Service Provider.

The positioning and data servicing legal relationship specified in the present GCT is established between the parties for an indefinite period of time, unless the Contract explicitly states otherwise.

## **VII. TERMINATION OF LEGAL RELATIONSHIP (THE CONTRACT)**

The Contract recorded in the present GCT may be terminated based on the following principles:

- the common consent between the parties at any time;
- unilateral notice termination by any contracting party;
- unilateral notice termination by the Service Provider with immediate effect;

- unilateral notice termination by the Toll Payer with immediate effect;

The termination based on common parties consent is regulated as specified in the termination declaration signed by both contracting parties.

Unilateral notice termination by any contracting party is conducted by a statement notice sent to the other party with a 30-day termination notice. The period of notice starts on the day following certified service of the notice by the other party, and expires on the 30th day following receipt.

The Service Provider is entitled to terminate the positioning and data servicing legal relationship defined in the present GCT against the Toll Payer with immediate effect, in the following cases:

- if the Toll Payer violates its obligations included in the present GCT, and does not cease or prevent the status in violation of the contract even in spite of the written warning of the Service Provider;
- if, pursuant to the directions of legal regulations, the national toll collection system is derogated or modified in a way that prevents the Service Provider from providing the services with due diligence or in pursuant with technical specifications demanded by national authorities;
- if any arising new legislation prevents the Service Provider from effective continuity of the service it provides;
- if, by a virtue of legal regulation, the Service Provider ceases to exist as a legal entity;
- if, with respect to the Toll Payer's tolled motor vehicles, brought under the effect of the present Contract, the Service Provider has terminated the positioning activity forming the basis of Data Servicing for some reason emerging within the sphere of interest of the Toll Payer, or data forwarding necessary for positioning ceased for some reason emerging within the sphere of interest of the Toll Payer;

If one of the above listed cases occur and the Service Provider terminated the legal relationship unilaterally with immediate effect, it has no indemnity liability towards the Toll Payer.

The Toll Payer is entitled to terminate the positioning and data servicing legal relationship defined in the present GCT with immediate effect if the Service Provider violates its basic obligations recorded in the present GCT and does not terminate its conduct in violation of the contract in spite of the written warning of the Toll Payer.

Regardless of the base of the Contract and GCT termination, the services provided by the Service Provider cease at 24:00 on the day the Contract is terminated.

## **VIII. MODIFICATIONS AND CHANGES OF THE GENERAL CONTRACTING TERMS**

The Service Provider may modify the GCT unilaterally, at any time it results from the important change of technological or legal circumstances regarding the subject matter of the Contract.

The Service Provider is particularly entitled to modify the GCT unilaterally if:

- the contract modification or the GCT modification is required by provisions of legal regulations;

- if any change takes place in the toll system, including technical specifications of the OBU Units, that makes the modification of the present GCT necessary;

Also the Service Provider is entitled to modify the GCT from any reason, providing such change does not significantly affect crucial interests of the Toll Payer resulting directly from the Contract in comparison with the previous GCT.

Any unilateral modifications to the GCT may come in effect no earlier than within a period of 3 days since modifications of the GCT has been introduced, unless the shorter period is necessary due to independent circumstances of vital bearing to the services.

The Service is obligated to publish the modified GCT on its website, furthermore to inform simultaneously the contracted Toll Payers of the modification via SMS text message or e-mail or - if possible - directly via OBU Unit applications.

If the Toll Payer does not accept the modifications, then within 5 days upon receipt of the notification on the modification, it is entitled to cancel the positioning and data servicing legal relationship specified in the GCT within the period of coming of the GCT into effect, but no shorter than 3 days.

If the Toll Payer does not enforce the right to cancel the Contract within the deadline secured here, then this constitutes the acceptance of the modification communicated by the Service Provider, and the modification communicated comes into force on the 6th day following receipt of the notification thereof or, if the Service Provider established a later date for coming into force, it comes into effect towards the Toll Payer on the date set.

## **IX. FINAL PROVISIONS**

Liaising rules as well as information requests, error reports, complaints, transportation and towing shall be reported via the above listed contact information:

- Telephone number: ZZZ;
- fax number: ZZZ;
- e-mail: ZZZ;

Requests and reports are always has to include the name of the Toll Payer, the registration plate of the vehicle and/or the Unit ID.. The Service Provider will accept exclusively the reports of the contents defined hereunder as complete.

The Service Provider accepts the request for information, and the reporting of errors/complaints/transportation and towing as contractual exclusively if that is executed by the Toll Payer through one of the accessibilities.

The Service Provider is obligated to execute the notifications required in the present GCT, to be performed via SMS or e-mail or over the telephone to the accessibilities provided by the Toll Payer, related to the On-Board Unit in question.

The Toll Payer is obligated to secure that its accessibility data specified expressly for receiving notifications, with respect to the motor vehicle (Unit ID) in question, are always identical with the accessibility data specified to the national authorities following the registration in the national tolling system. If its contact/notification data registered in the

electronic toll system change, it is obligated to inform the Service Provider thereof without delay, but simultaneous with the execution of the change in writing (e-mail, fax). The Service Provider is not obligated to take responsibility for the damage suffered by the Toll Payer due to the failure to satisfy the notification obligation or delayed performance as well as other consequences of the mismatch of the identification data within the Service Provider processing systems and national toll collection system.

If there are changes in any of the notification accessibilities provided by either party, the other party shall be notified about such change without delay. The party failing to abide by the data change reporting obligation is obligated to take responsibility for the damage caused thus to the other party, and is obligated to undertake its own damage.

The Parties will attempt to resolve any of their disputes emerging from the positioning and data servicing legal relationship specified in the GCT primarily in a peaceful manner. If the negotiations between the parties are without success, in the interest of the decision of the legal dispute, any party is entitled to take the case to court.

For the decision of their legal disputes, the parties accept the proceedings of the Polish court with jurisdiction according to the seat of the Service Provider.

The parties set the application of Polish law, thus especially the Polish Civil Code, the Polish Road Act together with its executive orders, Polish Expressways Toll Act with its executive orders, and the directions of other Polish legal regulations guiding.

**XXX**

## **GDPR CLAUSE**

When processing the contact data provided in the Individual contract and other contact data (e.g. person to be informed) provided for the performance of the present Contract, the Service Provider, as the data processor, acts in compliance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council, the General Data Protection Regulation (hereinafter: GDPR).

The legal basis of the processing by the Service Provider of the contact data provided by the Toll Payer, based on Point f) of Subparagraph (1) of Article 6 of GDPR, is the legitimate interest of the Service Provider vested in the establishment, maintenance and management of a business relationship, and the performance of the Service Provider's activity in accordance with the contract, given that the performance of each notification obligation incumbent on the Service Provider and the realization of the communication related thereto requires the data processing by the Service Provider.

In harmony with the foregoing, the purpose of data processing by the contact point is communication with respect to the Service Provider's activity and the performance of the prescribed notification obligations.

The Service Provider processes the contact data provided for a period of 6 years following the termination of the Individual contract, provided that prior to the expiration of the 6-year data processing period the Toll Payer did not change the identity of the contact point

as, if the identity or the data of the contact point are modified, communication is realized with the new data.

In connection with the contact point data processing, the data subject is entitled to the data subject's rights secured by GDPR (right to access, right to erasure, right to object, right to rectification, right to restriction). The detailed provisions of contact point data processing can be found in the prevailing information on data processing in force, published on the webpage of the Service Provider (<http://www.etsch.eu>).

In connection with rendering the service, with respect to the route data appearing in the Processing System of the Service Provider, the Service Provider constitutes a processor and the Toll Payer a controller, and the data processing legal relationship between the parties is regulated by Enclosure No.2 of the present General Contracting Terms.