



CARETRACK LICENCE

(Version 3 – April 2010)

This licence is issued by VOLVO CONSTRUCTION EQUIPMENT DIVISION, VOLVO GROUP UK LTD incorporated and registered in England and Wales with company number 2190944, whose registered office is at Wedgnoek Lane, Warwick, CV34 5YA (“**Supplier**”, “**We**” “**us**”, “**Our**”), and if accepted by you Our customer (“**You**”, “**Customer**”) forms the contractual terms under which use of Our CareTrack system is licensed to You.

BACKGROUND:

Volvo Construction Equipment AB has developed a telematic, remote machine management system that is capable of providing up to date data on the activities of construction machinery in the field. This technology is licensed to the Supplier together with the authority to sub-licence to Customers. This licence is subject to the terms set out below.

AGREED TERMS:

1. Interpretation

1.1 In this Licence (which expression includes the recitals, the schedules and any appendices or attachments hereto) the following words and phrases shall, unless the context otherwise requires, have the following meanings:

“ CareTrack ”	means the telematic remote machine management system referred to in the Background above;
“ Data ”	means all information transmitted from Machine’s to Volvo’s CareTrack Server;
“ Fee ”	means the licence fee payable by the Customer to the Supplier under clause 3 ;
“ Hardware ”	means the CareTrack ECU and other associated items such as cables, antennae and fixtures;
“ Intellectual Property Rights ”	means all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world;
“ Machine ”	means any machine owned or used by a Customer and registered with CareTrack;
“ Software ”	means all software used in relation to CareTrack and any modification or update which is made to it during the subsistence of this Licence;
“ Volvo ”	means Volvo Construction Equipment AB, together with its associated companies;
“ Website ”	means Volvo’s website which details the CareTrack services and which is located at www.caretrackvolvo.com .

1.2 The headings in this Licence do not affect its interpretation. Save where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this Licence.



1.3 Unless the context otherwise so requires:

- 1.3.1 references to the Supplier and the Customer include their permitted successors and assigns;
- 1.3.2 references to statutory provisions include those statutory provisions as amended or re-enacted; and
- 1.3.3 references to any gender include all genders.

2. Licence And Term

2.1 Grant of Licence

In consideration of the Fee paid by the Customer to the Supplier, the Supplier grants to the Customer a non-exclusive licence, for a term equal to that purchased by the Customer, to use CareTrack commencing on, and including, the date on which CareTrack is activated by the Supplier.

2.2 Scope of use

- 2.2.1 CareTrack, including the associated Hardware and Software, may be used for the purpose of monitoring and obtaining statistical information in respect of Machinery.
- 2.2.2 The Customer shall have no rights in the data collected by CareTrack and shall only use such data in accordance with the terms of this Licence.

2.3 Conditions of Licence

- 2.3.1 The services facilitated by CareTrack include the recording of various data about the Machines in which CareTrack Hardware is installed. The Customer gives its consent to such data being collected and transferred to a Volvo server, and, for an unlimited period of time, being used by Volvo and its associated companies as well as dealers and repairers for marketing purposes and in the product development process (e.g. to improve the safety of the products), for error detection and for statistical purposes.
- 2.3.2 The Customer warrants to the Supplier that it, at all times during the term of this license, has all necessary consents, permissions, licenses and authorisations in place to ensure that the Data can be transferred and used by the Supplier and Volvo in the way contemplated by this license agreement and within the Website. The Customer is responsible for ensuring that every operator of each Machine and other persons involved with the operation of any Machine are informed and have given their approval to the use of the Data (which may contain personal data) stipulated in this license agreement and the Website.
- 2.3.3 The Customer is responsible for any registration, deregistration or recording of data in respect of each Machine effected by its personnel.
- 2.3.4 The Customer shall ensure and be responsible for compliance with Volvo's or the Supplier's user guidelines in respect of each Machine.
- 2.3.5 The Customer shall ensure that passwords used to access CareTrack are kept safe and secure at all times.
- 2.3.6 The Customer acknowledges that the CareTrack licence is personal to the Customer and cannot be assigned. The customer undertakes to notify the Supplier if the Customer sells the goods and notify the new customer that CareTrack is fitted.



3. Fees

- 3.1 The Supplier shall render invoices for the Fee at the agreed intervals and in accordance with current VAT regulations. The Customer shall pay any invoices for the Fee in accordance with the Supplier's standard terms and conditions or as agreed with the Supplier.

4. Updates and Maintenance

- 4.1 Volvo and/or the Supplier may, without prior notice, make such updates or amendments to CareTrack as they deem appropriate.
- 4.2 The Supplier will use its reasonable endeavours to inform the Customer of scheduled maintenance work which might interrupt access to CareTrack.

5. Supplier's Warranties And Limits Of Liability

- 5.1 The Supplier warrants that CareTrack and the Software and Hardware used by it will work without error and in all material respects be free from defects in materials and workmanship under normal use, and will continue to operate in accordance with the specifications detailed on the Website. If the Customer notifies the Supplier in writing of any defect or fault in the Software or Hardware in consequence of which CareTrack fails to work without error, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having modified or amended the Software or Hardware or used it outside the terms of this Licence, the Supplier shall, at the Supplier's option, do one of the following within 30 days of the Customer notifying the Supplier of such defect or fault:

5.1.1 repair the Software and/or Hardware; and/or

5.1.2 replace the Software and/or Hardware;.

Provided the Customer provides all the information as may be reasonably required to assist the Supplier in resolving the defect or fault including sufficient information to enable the Supplier to re-create the defect or fault.

- 5.2 The Hardware is supplied with a warranty from date of activation of 12 months or 2,000 hours, whichever comes first. This covers the need to repair or replace (carriage free), any part which develops a fault due to defects in materials and workmanship
- 5.3 The Supplier does not provide any warranty as to the accuracy of any Data.
- 5.4 The Supplier will use all reasonable effort to ensure that the Website is always operational (excluding downtime for maintenance). However, no warranty in respect of Website uptime is provided.
- 5.5 The Supplier will make available the Data covered by this licence for the following periods:
- 5.5.1 on-line CareTrack Data – for up to 1 year;
- 5.5.2 off-line CareTrack Data – for up to 3 years.
- 5.6 The Customer is aware that there is no contractual relationship between the Customer and Volvo in connection to CareTrack. Volvo will therefore not be liable towards the Customer (whether in contract, tort, negligence, statute or otherwise) for any loss or cost such as for example loss of profits, loss of business, wasted management time or costs of data reconstruction or recovery whether such loss arises directly or indirectly and whether Volvo was aware of its possibility or not or for any direct, indirect or consequential losses.



- 5.7 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Licence or any collateral contract, whether by statute, common law or otherwise, are excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 5.8 Except as expressly stated in **clause 5.8**:
- 5.8.1 The Supplier shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, which fall within the following categories:
- (a) special damage even though the Supplier was aware of the circumstances in which such special damage could arise;
 - (b) loss of profits; anticipated savings; business opportunity or goodwill; and
 - (c) loss of Data.
- 5.8.2 The total liability of the Supplier, whether in contract, tort or otherwise and whether in connection with this Licence or any collateral contract, shall in no circumstances exceed the Fee paid by the Customer to the Supplier during the annual period of this Licence in which the event giving rise to the claim arises.
- 5.9 The exclusions in **clause 5.8** shall apply to the fullest extent permissible at law but the Supplier does not exclude liability for death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents, for fraud, for breach of the obligations implied by s.12 Sale of Goods Act 1979 or s.2 Supply of Goods and Services Act 1982 or for any other liability which may not be excluded by law.
- 5.10 The Customer shall be solely responsible for monitoring their Machines and interpreting the data made available. The Supplier is not in any way responsible for monitoring Machines that are registered with CareTrack or responding to data produced.
- 6. Intellectual Property Rights**
- 6.1 The Customer acknowledges that all Intellectual Property Rights in the Software belong and shall belong to Volvo and the Supplier and the Customer shall have no rights in or to the Software, Hardware or CareTrack other than the right to use it in accordance with the terms of this Licence.
- 7. Termination**
- 7.1 Either party may terminate this Licence at any time on written notice to the other if the other:
- 7.1.1 is in material or persistent breach of any of the terms of this Licence and either that breach is incapable of remedy or the other party fails to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or
 - 7.1.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986); or becomes insolvent; or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction); or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets; or enters into or proposes any composition or arrangement with its creditors generally; or is subject to any analogous event or proceeding in any applicable jurisdiction.



- 7.2 Termination by either party in accordance with the rights contained in this **clause 7** shall be without prejudice to any other rights or remedies of that party accrued prior to termination.
- 7.3 The Licence may be terminated at any time by either party giving to the other party not less than 30 days written notice.
- 7.4 Upon termination for any reason:
- 7.4.1 All rights in CareTrack granted to the Customer under this Licence shall cease;
- 7.4.2 the Customer shall cease all activities authorised by this Licence;
- 7.4.3 the Customer shall within 30 days pay to the Supplier any sums due to the Supplier under this Licence

8. Force Majeure

No party shall be liable to the other for any delay or non-performance of its obligations under this Licence arising from any cause or causes beyond its control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion, failure of satellite communication providers. For the avoidance of doubt, nothing in this **clause 8** shall excuse the Customer from any payment obligations under this Licence.

9. Confidentiality And Publicity

- 9.1 Each party agrees and undertakes that during the term of this Licence and thereafter it will keep confidential all, and will not use for its own purposes nor without the prior written consent of the other disclose to any third party any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its affiliates unless such information is public knowledge or already known to such party at the time of disclosure or subsequently becomes public knowledge other than by breach of this Licence or subsequently comes lawfully into the possession of such party from a third party.
- 9.2 The provisions of this **clause 9** shall remain in full force and effect notwithstanding any termination of this Licence.

10. Waiver

- 10.1 No forbearance or delay by either party in enforcing its rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

11. Severability

If any provision of this Licence is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced.

12. Amendments

Any amendment, waiver or variation of this Licence shall not be binding on the parties unless set out in writing, expressed to amend this Licence and signed by or on behalf of each of the parties.



13. Third Party Rights

13.1 No term of this Licence is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Licence.

14. Notices

Notices shall be in writing, and may be sent by first-class mail or facsimile transmission provided that facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above.

15. Entire Agreement

This Licence, the schedule and the documents annexed hereto as appendices or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

16. Arbitration

Any dispute or difference arising out of or in connection with this contract shall be determined by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within fourteen days, after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President or a Vice President of the Chartered Institute of Arbitrators.

17. Governing Law And Jurisdiction

This Licence shall be governed by and construed in accordance with English law and each party hereby submits to the non-exclusive jurisdiction of the English courts.