

Guardian Services Subscription Agreement

IMPORTANT - PLEASE READ CAREFULLY: BY UTILIZING THE GUARDIAN SERVICES
YOU AGREE TO BE BOUND BY THIS AGREEMENT.

This subscription agreement (the "Agreement") governs your use of the System (as defined below) and any related services provided by Garmin International, Inc., a Kansas (USA) corporation, having its principal place of business at 1200 E. 151st St., Olathe, Kansas 66062, USA ("Garmin"). You are referred to as "Customer" in this Agreement. If you use the System, or if you click "I agree" or take any other affirmative action indicating your acceptance of this Agreement, then you have agreed to these terms. If you are an agent or employee of the intended subscriber or user, you individually represent and warrant to Garmin that you are authorized to bind that party to this Agreement. If you do not agree to this Agreement, then you are not authorized to use the System. Any of your terms or conditions and any other documents that are different from or in addition to the terms and conditions in this Agreement are hereby expressly rejected.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

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1. DEFINITIONS

"Agreement" means this Subscription Agreement.

"Affiliates" means (i) a parent company (if any) that owns, directly or indirectly, a majority of a party to this Agreement and (ii) any other company that is majority-owned, directly or indirectly, by a party or its parent company.

"Beta Services" means Garmin services or functionality that may be made available to Customer to try at its option at no additional charge which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

"Documentation" means the online or soft copy documentation provided by Garmin.

"System" means the software service for which Customer has paid, including any Updates relating thereto that may be provided hereunder or thereunder, and any derivative works of the foregoing. A System is made up of individual Services.

"Services" means the individual modules or products that make up the System. From time to time, new Services or

features will be introduced to the System, and those Services or features may be restricted to specific versions.

"Order Form" means an ordering document specifying the Services to be provided hereunder that is entered into between You and Us. By entering into an Order Form, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. For the purpose of clarity, You agree that if You or an Affiliate add terms and conditions to an Order Form that differ from the terms and conditions of this Agreement, such terms and conditions will be ignored and will have no effect even if We accept the order.

"Purchased Services" means Services that You or Your Affiliate purchase under an Order Form, as distinguished from those provided pursuant to a free trial.

"Customer Data" means any of Customer's information, documents, or electronic files that are provided to Garmin hereunder. "Error" means any reproducible material failure of the System to function in accordance with its Documentation.

"Maintenance Windows" means collectively, standard maintenance and emergency maintenance. Services Standard maintenance windows will be published in advance on Garmin's website at least 72 hours in advance of the start of the standard maintenance window. Emergency maintenance will occur as needed. Garmin will make reasonable efforts to publish emergency maintenance windows on Garmin's website in advance of the Services emergency maintenance window, but it is possible that advanced notification of an emergency window may not occur.

"Service Administrator" means the person(s) that Customer designate(s) to purchase on behalf of Customer usage of the Service, authorize Users under the Agreement, create accounts for additional Users and otherwise administer Customer's use of System.

"Support" means the ongoing services by Garmin to support the System as described in Section 6 below.

"Update" means any patch, bug fix, release, version, modification or successor to the System.

"User" means a named individual to whom Customer has granted access to use the System on Customer's behalf, regardless of whether or not the User actually accesses the System. Users may be Customer's employees, consultants, contractors or agents.

"Effective Date" is the date on which the Customer's subscription to the System starts. The beginning of the contract term.

"We," "Us" or "Our" means Garmin International, Inc. described in Section 13 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).

"You" or "Your" means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity which have signed Order Forms.

2. USE RIGHTS

2.1. **Use Rights.** During the term and subject to the terms of this Agreement, Garmin hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable right to permit Customer's Users to use the System for Customer's business purposes and you are responsible for your Users' compliance with the agreement. The use right in the preceding sentence is limited to use by the number of Users for which Customer has paid. All rights in and to the System not expressly granted herein are reserved to Garmin. Upon the end of the agreement or the services thereunder, your right to access or use the Garmin System specified in the ordering document and the services shall terminate.

2.2. **License and Use Restrictions.** Customer shall not, directly, indirectly, alone, or with another party:

- 2.2.1. copy, disassemble, reverse engineer, or decompile the System;
- 2.2.2. modify, create derivative works based upon, or translate the System;
- 2.2.3. license, sell, rent, lease, transfer, grant any rights in or otherwise commercially exploit the System in any form to any other party, nor shall Customer attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted hereunder. You acknowledge and agree that Garmin shall own all right, title and interest in and to all intellectual property rights (including all derivatives or improvements thereof) in the System and any suggestions, enhancement requests, feedback, recommendations or other information provided by Customer or any of Customer's Users relating to the System;

- 2.2.4. use the System to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights;
 - 2.2.5. interfere with or disrupt the integrity or performance of any Services or third-party data contained therein;
 - 2.2.6. attempt to gain unauthorized access to any Services or its related systems or networks;
 - 2.2.7. permit direct or indirect access to or use of any Services in a way that circumvents a contractual usage limit, or use any of Our Services to access or use any of Our intellectual property except as permitted under this Agreement, or the Documentation;
 - 2.2.8. copy a System or any part, feature, function or user interface thereof;
 - 2.2.9. frame or mirror any part of any Systems or Services, other than framing on your own intranets or otherwise for your own internal business purposes or as permitted in the Documentation;
 - 2.2.10. access any System or Services in order to build a competitive product or service or to benchmark with a Non-Garmin product or service; or
 - 2.2.11. reverse engineer any Services (to the extent such restriction is permitted by law). Any use of the Services in breach of this Agreement, Documentation or Order Forms, by You or Users that in Our judgment threatens the security, integrity or availability of Our services, may result in Our immediate suspension of the Services.
- 2.3. System Administrator; User Access. Customer shall designate one or more System Administrators. System Administrators shall be responsible for managing User access, including adding and subtracting Users. The System Administrator shall ensure that multiple Users do not share a password or user name. Customer acknowledges and agrees that it is prohibited from sharing passwords and/or user names with unauthorized users.
- 2.4. Customer Data. Customer owns all right, title and interest in the Customer Data. Customer hereby grants to Garmin, a non-exclusive, non-transferable (except as set forth in Section 9.4), non-sublicensable right and license to use, copy, transmit, modify and display the Customer Data solely for purposes of Customer's use of the System. Garmin shall not use the Customer Data except to improve the System and as necessary to perform its obligations hereunder. Garmin reserves the right to provide the services from locations, and/or through use of subcontractors, worldwide.
- 2.5. Customer Responsibilities. Customer acknowledges Customer assumes all risk arising from use of any such sensitive information with the System, including the risk of any inadvertent disclosure or unauthorized access thereto. Customer is responsible for ensuring that Customer and Customer's Users' use of the System is in compliance with all applicable laws and governmental regulations and Customer acknowledges that Customer assumes all risk arising from any such use that is not compliant with applicable laws and regulations.
- 2.6. Security. Customer is solely responsible for maintaining the security of all user names and passwords granted to it, for the security of its information systems used to access the System, and for its Users' compliance with the terms of this Agreement. Garmin will act as though any electronic communications it receives under Customer's user names have been sent by Customer. Customer will immediately notify Garmin if it becomes aware of any loss or theft or unauthorized use of any of Customer's passwords or user names. Garmin has the right at any time to terminate or suspend access to any User or to Customer if Garmin believes in good faith that such termination or suspension is necessary to preserve the security, integrity, or accessibility of the System or Garmin's network.

3. **OUR RESPONSIBILITIES**

- 3.1. Provision of Services. We will (a) make the Services available to You pursuant to this Agreement and the applicable Order Forms, excluding Maintenance Windows, (b) use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (i) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, denial of service attack, or other Force Majeure Event (as defined in Section 13.4). Garmin does not guarantee network availability between Customer and the Garmin hosting servers, as such availability can involve numerous third parties and is beyond the control of Garmin. Garmin will not be liable for any downtime caused in whole or part by a third-party data center provider nor for any downtime that Customer experiences as a result of Customer or Customer's Users' own network connectivity issues. If Customer experiences a System or Service outage and is unable to access the System or any Service, Customer must immediately contact Garmin's help desk, providing any/all necessary information that may assist Garmin in determining the cause of the outage.

- 3.2. **Protection of Your Data.** We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Purchased Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 9.4, or (c) as You expressly permit in writing.
- 3.3. **Beta Services.** From time to time, We may make Beta Services available to You at no charge. You may choose to try such Beta Services or not in Your sole discretion. Beta Services are intended for evaluation purposes and not for production use, are not supported, and may be subject to additional terms. Beta Services are not considered "Services" under this Agreement, however, all restrictions, Our reservation of rights and Your obligations concerning the Services, and use of any related Garmin Services or applications, shall apply equally to Your use of Beta Services. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available without the applicable Beta Services designation. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

4. AIS DATA

- 4.1. **Data sources and networking.** Garmin will receive data from AIS shore stations, Virtual AIS Stations, AIS equipment owned by the Customer or Satellite AIS data feeds, as paid for by the Customer. The Customer acknowledges and agrees that Garmin is dependent on the performance of the parties providing these services and therefore cannot warrant
- 4.1.1. that the AIS Data Services will be available on a continuous basis and at any place (for instance due to gaps in the network coverage, due to atmospheric conditions, that these providers reserve the right to suspend their services for maintenance purposes, for security reasons etc.); or
 - 4.1.2. the speed at which the data will be transmitted.
- 4.2. **Indemnity.** The Customer shall indemnify, defend and hold Garmin and its Affiliates harmless from and against any losses or expenses (including legal fees) arising from or in connection with claims from third parties that the (content of the) AIS Data sent to or from Guardian violates applicable laws and regulations, infringes the rights of such third parties or is otherwise unlawful toward third parties
- 4.3. **License.** The System and Services rely on AIS Data, which Garmin maintains on its servers for the benefit of the Customer who has a non-exclusive license to use that data within the context of the services as long as the subscription is in effect. Garmin maintains the right to use the data to improve services or provide additional services to its customers.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1. **Works.** Title and all intellectual property rights in the System, Services, works, ideas, data, information, knowhow and material embodying or giving expression thereto (together "Works") created by Garmin in carrying out its obligations under the Agreement, are and shall remain vested in Garmin or its licensors (as applicable). In respect of ideas, this Clause shall apply whether or not a final idea developed by Garmin originated or arose from a suggestion or unfinished idea of the Customer and the Customer hereby assigns to Garmin all intellectual property rights which are capable of assignment in any such ideas communicated to Garmin by the Customer.
- 5.2. **Pre-existing Works.** To the extent that any Works submitted or disclosed by Garmin to the Customer constitute a pre-existing proprietary item of Garmin or a third party, title thereto and all intellectual property rights therein shall be vested in Garmin or such third party (as the case may be).

6. SUPPORT

- 6.1. **Services Generally.** Subject to the terms of this agreement, Garmin shall use commercially reasonable efforts to make the System available to Customer.
- 6.2. **Updates.** Garmin shall deliver Updates to the System that apply to the Customer's currently licensed System at no additional charge. From time to time, new Services or features may be released that are applied to the System.
- 6.3. **Support Options.** Garmin shall provide general support to the Customer as set forth on the Maintenance and Support Services Agreement for the Customer's currently licensed System. In addition, Garmin may offer premium support options to Customer at an additional charge.

- 6.4. Error Correction. Garmin shall use commercially reasonable efforts to correct all Errors or to provide a reasonable workaround as soon as is possible using its reasonable efforts during Garmin's normal business hours. Customer shall provide such access, information, and support as Garmin may reasonably require in the process of resolving any Error. This paragraph is Customer's sole and exclusive remedy for Errors.
- 6.5. Support Exclusions. Garmin is not obligated to correct any Errors or provide any other support to the extent such Errors or need for support was created in whole or in part by:
- 6.5.1. the acts, omissions, negligence or willful misconduct of Customer, including any unauthorized modifications of the System or its operating environment;
 - 6.5.2. any failure or defect of Customer's or a third party's equipment, software, facilities, third party applications, or AIS data, internet connectivity (or other causes outside of Garmin's control);
 - 6.5.3. Customer's use of the System other than in accordance with the System's documentation; or
 - 6.5.4. a Force Majeure Event.

7. FINANCIAL TERMS

- 7.1. Fees. In return for the System, Services and use rights provided by Garmin to Customer hereunder, Customer shall pay to Garmin the fees in the amount set forth. Unless otherwise specified on the Order Form and accepted by Garmin, (i) all dollar amounts refer to U.S. dollars, (ii) fees are based on Users subscriptions purchased and not actual usage, (iii) payment obligations are non-cancelable and fees paid are non-refundable, and (iv) quantities purchased cannot be decreased during the relevant subscription term.
- 7.2. Invoicing and Payment. You will provide Us with a purchase order or valid and updated credit card information, or with a valid or alternative document reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit card for all Purchased Services listed in the Order Form for any renewal subscription term(s) as set forth in Section 8.2. Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 60 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.
- 7.3. Payment Terms. Garmin shall invoice Customer 60 days in advance for all recurring charges, which invoices will also include all non-recurring charges and expenses incurred since the previous invoice. If Customer is delinquent in payment of any portion of an invoice, Garmin may, in addition to any other remedies it may have, including termination, suspend access to the System and/or provision of all services to Customer.
- 7.4. Taxes. Customer shall pay for all sales taxes and other transaction taxes, however characterized by the taxing authority, based upon the license fees or other charges under this Agreement or otherwise incurred on account of Customer's use of the System, except for any taxes based upon Garmin's net income.
- 7.5. Pricing Changes. Customers selecting quarterly, bi-annual or annual pricing will receive notice of changes in pricing at least 30 days before each anniversary of the Effective Date.
- 7.6. Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

8. TERM AND TERMINATION

- 8.1. Term. The term of this Agreement commences on the Effective Date hereof. If Customer has selected an annual pricing plan, then the term will continue until the one year anniversary of the Effective Date, and will automatically renew for additional terms of one year each unless either party gives the other party written notice of its intention not to renew at least 30 days in advance of the then current term. If Customer has elected a quarterly or bi-annually pricing plan, this agreement will continue until a party notifies the other party at least 30 days in advance of its intention to terminate.
- 8.2. Term of Purchased Subscriptions. The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term.

- 8.3. Termination for Cause. Either party can terminate this Agreement for cause upon written notice to the other party:
- 8.3.1. if a party fails to pay the other party any delinquent amounts owed to the other party hereunder within 10 days of written notice by the other party specifying the amounts owed; in the case of Garmin, immediately upon any breach by Customer of Section 2.2 and/or Section 2.4 above;
 - 8.3.2. immediately upon any breach of any confidentiality obligations owed to such party by the other party;
 - 8.3.3. if the other party has committed any other material breach of its obligations under this Agreement and has failed to cure such breach within 30 days of written notice by the non-breaching party specifying in reasonable detail the nature of the breach (or, if such breach is not reasonably curable within 30 days, has failed to begin and continue to work diligently and in good faith to cure such breach); or
 - 8.3.4. upon the institution of bankruptcy or state law insolvency proceedings against the other party, if such proceedings are not dismissed within 30 days of commencement.
- 8.4. Termination for Convenience. Either party can terminate this Agreement for any reason upon 90 days written notice to the other party.
- 8.5. Obligations Upon Termination. Upon termination of this Agreement:
- 8.5.1. Garmin shall immediately terminate access to the System by Customer; and
 - 8.5.2. Customer shall immediately pay Garmin any amounts payable or accrued but not yet payable to Garmin, including any deferred payments or payments originally to be made over time.

9. **CONFIDENTIALITY**

- 9.1. Confidential Information. "Confidential Information" means any and all tangible and intangible information (whether written or otherwise recorded or oral) of Garmin that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or (b) Garmin designates as confidential or, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, without limitation: (i) nonpublic information relating to a party's technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (ii) third-party information that Garmin is obligated to keep confidential; (iii) the material terms and conditions of this Agreement; and (iv) any nonpublic information relating to any activities conducted hereunder.
- 9.2. Exclusions. Notwithstanding the above, the term "Confidential Information" does not include any information that is either: readily discernible from publicly available products or literature; or approved for disclosure by prior written permission of an executive officer of the disclosing party.
- 9.3. Use of Confidential Information. Customer shall only use Confidential Information furnished to it hereunder in furtherance of the activities contemplated by this Agreement, and, except as authorized in this Agreement, it shall not disclose the Confidential Information to any other persons without Garmin's express written authorization.
- 9.4. Required Disclosures. Customer may disclose Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it or as otherwise required by law, provided that Customer (i) gives Garmin reasonable written notice to allow it to seek a protective order or other appropriate remedy (except to the extent compliance with the foregoing would cause the receiving party to violate a court order or other legal requirement), (ii) discloses only such information as is required by the governmental entity or otherwise required by law, and (iii) and uses its best efforts to obtain confidential treatment for any Confidential Information so disclosed.
- 9.5. Return of Information. Except as set forth otherwise in the specific provisions concerning Customer Data set forth in Section 2.4 above, if Garmin so requests at any time, the receiving party shall return promptly all copies, extracts, or other reproductions in whole or in part of the Confidential Information in its possession.
- 9.6. Survival. The parties hereto covenant and agree that this Section 9 will survive the expiration, termination, or cancellation of this Agreement for a period of 3 years, except for Confidential Information constituting a trade secret, with respect to which this Section will survive the expiration, termination, or cancellation of this Agreement for so long as such Confidential Information remains a trade secret.

10. **INDEMNIFICATION**

- 10.1. Indemnification by Garmin. FOR CUSTOMERS USING ONLY A FREE VERSION OF THE SYSTEM, THIS SECTION 10.1 DOES NOT APPLY AND YOU ACKNOWLEDGE THAT YOU ARE NOT ENTITLED TO ANY INDEMNIFICATION FROM GARMIN. For Customers using the System on a monthly, quarterly or annual payment plan, Garmin shall defend, indemnify and hold harmless Customer from and against all damages, liabilities, losses and expenses, including reasonable attorneys' fees and expenses, resulting from any third-party claim, suit or proceeding that arises from Customer and/or the Customer's Users' use of the System in accordance with this Agreement that, to Garmin's knowledge, infringes or misappropriates any U.S. trade secret, trademark, or copyright. Garmin will have no indemnity obligation to Customer if the alleged infringement or misappropriation is based on (i) any combination, operation, or use of the System with products, services, information, materials, technologies, business methods or processes not furnished by Garmin to the extent the infringement or misappropriation is based on such combination, operations or use; (ii) any modification (other than by Garmin) to the System to the extent the infringement or misappropriation is based on such modification; or (iii) the Customer's failure to promptly install any Update that is provided by Garmin that would have eliminated the actual or alleged infringement or misappropriation.
- 10.2. Indemnification by Customer. Customer shall defend, indemnify and hold harmless Garmin and its Affiliates from and against all damages, liabilities, losses and expenses, including reasonable attorneys' fees and expenses, resulting from any third party claim, suit or proceeding that arises from the actions or inactions of the Customer and/or from the Customer's Users' use of the System (other than to the extent indemnified by Garmin under Section 10.1 or, in the case of a Customer using only a free version of the System, other than to the extent the third-party claim would have been subject to indemnification by Garmin under Section 10.1 if Section 10.1 applied to Customer).
- 10.3. Indemnification Process. The indemnified party shall promptly notify the indemnifying party in writing of any third-party claim, stating the nature and basis of the third-party claim, to the extent known. The indemnifying party shall have sole control over the defense and settlement of any third-party claim, provided that, within fifteen (15) days after receipt of the above described notice, the indemnifying party notifies the indemnified party of its election to so assume full control. The foregoing notwithstanding, the indemnified party shall be entitled to participate in the defense of such third party claim and to employ counsel at its own expense to assist in the handling of such claim, except that the indemnified party's legal expenses in exercising this right shall be deemed legal expenses subject to indemnification hereunder to the extent that (a) the indemnifying party fails or refuses to assume control over the defense of the third party claim within the time period set forth above; (b) the indemnified party deems it reasonably necessary to file an answer or take similar action to prevent the entry of a default judgment, temporary restraining order, or preliminary injunction against it; or (c) representation of both parties by the same counsel would, in the opinion of that counsel, constitute a conflict of interest. The indemnifying party shall not settle any such third-party claim without the written consent of the indemnified party, which shall not be unreasonably withheld or delayed.
- 10.4. Sole Remedy. Indemnification pursuant to this Section is the parties' sole remedy for any third-party claim against the other party in the nature of intellectual property infringement or misappropriation.

11. DISCLAIMERS AND LIMITATIONS

- 11.1. Disclaimer of Warranties. EXCEPT FOR THE LIMITED SERVICE LEVEL COMMITMENTS SET FORTH IN SECTION 3.1, GARMIN MAKES NO, AND HEREBY DISCLAIMS ANY, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SYSTEM, THE SERVICES PROVIDED OR THE AVAILABILITY, FUNCTIONALITY, PERFORMANCE OR RESULTS OF USE OF THE SYSTEM. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SPECIFICALLY SET FORTH IN THE LIMITED SERVICE LEVEL COMMITMENTS IN SECTION 3.1, GARMIN DISCLAIMS ANY WARRANTY THAT THE SYSTEM, THE SERVICES PROVIDED BY GARMIN, OR THE OPERATION OF THE SYSTEM ARE OR WILL BE ACCURATE, ERROR-FREE OR UNINTERRUPTED. GARMIN MAKES NO, AND HEREBY DISCLAIMS ANY, IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE OR ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.
- 11.2. Disclaimer of Consequential Damages. GARMIN HAS NO LIABILITY WITH RESPECT TO THE SYSTEM, SERVICES, OR ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS AND THE COST OF COVER) EVEN IF GARMIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 11.3. Limitations of Remedies and Liability. GARMIN'S TOTAL AGGREGATE LIABILITY TO CUSTOMER FOR ANY REASON AND UPON ANY CAUSE OF ACTION INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS, IS LIMITED TO (1) IN THE CASE OF CUSTOMER

ON A QUARTERLY OR BI-ANNUAL PAYMENT PLAN, ALL FEES PAID TO GARMIN BY THE CUSTOMER IN RESPECT OF USER LICENSES FOR THE SYSTEM DURING THE THREE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY; (2) IN THE CASE OF CUSTOMER ON AN ANNUAL PAYMENT PLAN, ALL FEES PAID TO GARMIN BY THE CUSTOMER IN RESPECT OF USER LICENSES FOR THE SYSTEM DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY; OR (3) IN THE CASE OF CUSTOMER USING ONLY A FREE VERSION OF THE SYSTEM, ONE HUNDRED UNITED STATES DOLLARS (\$100.00).

12. WHO YOU ARE CONTRACTING WITH; NOTICES, GOVERNING LAW AND JURISDICTION

- 12.1. General. Who You are contracting with under this Agreement, who You should direct notices to under this Agreement, what law will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and which courts have jurisdiction over any such dispute or lawsuit.

You are contracting with: Garmin International, Inc.

Notices should be addressed to: 1200 E. 151st St., Olathe, KS 66062, USA

The governing law is: Kansas (USA)

- 12.2. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to You will be addressed to the relevant billing contact designated by You. All other notices to You will be addressed to the relevant Services system administrator designated by You.

- 12.3. Agreement to Governing Law and Jurisdiction. Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

13. GENERAL

- 13.1. SMS Performance & Limitations. The performance of the SMS service within the System is dependent upon the SMS service provided by a third-party Telecommunications Agent. The contract price includes prepayment for up to 1,000 SMS messages. If the Customer uses more than 1,000 SMS messages in any contract year, Garmin reserves the right to charge for the additional SMS messages at the end of the contractual year in which they were used.

- 13.2. Promotional Materials. Either party may include statements, and may use the other party's name and logos, in its website, commercial advertisements and promotional materials for the sole purpose of indicating that Customer is a user of the System.

- 13.3. Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

- 13.4. Force Majeure. "Force Majeure Event" means any act or event that (a) prevents a party (the "Nonperforming Party") from performing its obligations or satisfying a condition to the other party's (the "Performing Party") obligations under this Agreement, (b) is beyond the reasonable control of and not the fault of the Nonperforming Party, and (c) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. "Force Majeure Event" does not include economic hardship, changes in market conditions, and insufficiency of funds. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance thereby prevented and from satisfying any conditions precedent to the other party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. When the Nonperforming Party is able to resume its performance or satisfy the conditions precedent to the other party's obligations, the Nonperforming Party shall immediately resume performance under this Agreement. The relief offered by this paragraph is the exclusive remedy available to the Performing Party with respect to a Force Majeure Event.

- 13.5. Assignment. Garmin may assign any of its rights or obligations under this Agreement at any time without the prior written consent of Customer; provided, however, that Garmin shall not assign the rights granted to Customer Data in Section 2.4 except (a) to an Affiliate of Garmin or (b) in connection with the sale (whether by merger, asset sale, equity sale or otherwise) of (i) Garmin (or any such Affiliate), (ii) the System or (iii) a portion of Garmin (or any such Affiliate of Garmin) or the System that would reasonably require the acquirer of said portion to be assigned such rights to the Customer Data. Customer shall not assign any of its rights under this Agreement, except with the prior written approval of Garmin, which shall not be unreasonably withheld. The preceding sentence applies to all assignments of rights, except in the event of a voluntary transfer of substantially all assets by Customer to a

transferee which executes Garmin's form of agreement agreeing to be bound all of the terms and conditions of this Agreement. Any change of control transaction is deemed an assignment by Customer hereunder. Any purported assignment of rights in violation of this Section is void.

- 13.6. Export Compliance. The Services, Content, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use any Service or Content in a U.S. embargoed country or in violation of any U.S. export law or regulation.
- 13.7. Anti-Corruption. You agree that You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Garmin in writing.
- 13.8. Recovery of Litigation Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the unsuccessful party shall pay to the successful party its reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which the successful party may be entitled.
- 13.9. Entire Agreement. This Agreement constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement cannot be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. Customer's terms or conditions and any other documents, including without limitation Order Forms, that are different from or in addition to the terms and conditions in this Agreement are hereby expressly rejected. In entering into this Agreement, neither party has relied upon any statement, representation, warranty or agreement of any other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement, other than any that are expressly stated in this Agreement.
- 13.10. Amendments. The parties can amend this Agreement only by a written agreement of the parties that identifies itself as an amendment to this Agreement.
- 13.11. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.
- 13.12. Customer Reference. You agree (i) that Garmin may identify you as a recipient of services and use your logo in sales presentations, marketing materials and press releases, and (ii) to develop a brief customer profile for use by Garmin for promotional purposes.
- 13.13. Statistical Information. Garmin may compile statistical information related to the performance of the Service, and may make such information publicly available, provided that such information does not incorporate your data and/or identify your confidential information or include your company's name. Garmin retains all intellectual property rights in such information.
- 13.14. Surviving Provisions. The sections titled "Intellectual Property Rights", "Financial Terms", "Term and Termination" "Confidentiality", "Indemnification", "Disclaimers and Limitations", "General" will survive any termination or expiration of this Agreement.

Acknowledged and Agreed by Customer:

Company Name: _____

By: _____

Name: _____

Title: _____

Date: _____