

WHERIBLE GPS, INC. TERMS OF SERVICE AND LICENSE AGREEMENT

Effective Date: January 1, 2017

Last Update: February 1, 2017

THIS **TERMS OF SERVICE AND LICENSE AGREEMENT** (THIS "AGREEMENT") IS BETWEEN WHERIBLE GPS, INC., A GEORGIA CORPORATION ("WHERIBLE GPS"), AND YOU THE CUSTOMER ("YOU", "YOUR" OR "CUSTOMER"). BY AGREEING TO THIS AGREEMENT AND/OR USING THE SERVICE OR DEVICE, YOU ARE CONSENTING TO AND AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND THE WHERIBLE GPS PRIVACY POLICY AND WARRANTY AS AVAILABLE AT WWW.WHERIBLEGPS.COM, OR ANY OTHER PRIVACY POLICY ON OR FOR ANY APPLICABLE THIRD PARTY WEBSITE.

1. DEFINITIONS; AGREEMENT BY USE; WIRELESS SERVICE PROVIDER; NOTICE AND CONSENT OF USE OF DATA.

a. Definitions.

"Authorized Dealer" – an individual, person or entity that (1) is authorized to act as a dealer for Wherible GPS pursuant to a valid and effective dealer agreement between the individual, person or entity and Wherible GPS, and (2) has sold to you one or more Devices, Services, and/or Licenses to which this Agreement is applicable.

"Device" - a Wherible GPS wireless hardware device and/or other related or derivative hardware including third party hardware, which collects, processes and/or communicates to you location, direction, movement and other data in connection with the Service.

"Equipment" - those items of hardware or equipment sold to you by Wherible GPS, or an Authorized Dealer who in turn purchased from Wherible GPS, in each case including, without limitation, Devices.

"License" - a non-exclusive, non-assignable, revocable, limited right to use the Software solely in connection with the use of the Device and the Service.

"Service" - Wherible GPS's tracking and data reporting services accessed through the Website, which may be modified from time to time by Wherible GPS or the Authorized Dealer.

"Software" – Wherible GPS program modules, feature set(s) or features provided by Wherible GPS and incorporated into the Device or utilized by the Device for its operation or through which the Device interfaces with you or reports any data to you including, without limitation, the Website, and includes any and all upgrades, updates, bug fixes or modified versions or back-up copies thereof, and further includes any and all third-party licensed software incorporated into and/or required for the operation of the Device or the Service.

"Service/License Fees" – the periodic fees that Wherible GPS or the Authorized Dealer, as applicable, charges primarily per Device for the Services and/or Licenses, as from time to time revised by Wherible GPS.

"Website" – the customer interface website portal through which you access the Services which may be Wherible GPS's website or the website of a third party authorized by Wherible GPS.

The plural and singular form of each defined term above does not constitute a separate definition and shall have the same meaning other than as denotes plural or singular.

b. **WIRELESS SERVICE PROVIDER. YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOU HAVE NO CONTRACTUAL RELATIONSHIP WHATSOEVER WITH THE UNDERLYING WIRELESS SERVICE PROVIDER OR ITS AFFILIATES OR CONTRACTORS AND THAT YOU ARE NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN WHERIBLE GPS AND THE UNDERLYING CARRIER. IN ADDITION, YOU ACKNOWLEDGE AND AGREE THAT THE UNDERLYING CARRIER AND ITS AFFILIATES AND CONTRACTORS SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO YOU AND YOU HEREBY WAIVE ANY AND ALL CLAIMS OR DEMANDS THEREFOR.**

c. **NOTICE AND CONSENT TO USE OF DATA. IN ATTACHMENT A TO THIS AGREEMENT, THE AUTHORIZED DEALER AND/OR WHERIBLE GPS PROVIDE YOU WITH CLEAR AND CONSPICUOUS NOTICE OF WHERIBLE GPS' AND, AS APPLICABLE, AUTHORIZED DEALER'S ACCESS, USE, COPYING, STORAGE AND DISCLOSURE OF PERSONAL INFORMATION, INCLUDING LOCATION INFORMATION, WHEN WHERIBLE GPS PROVIDES SERVICE PURSUANT TO THIS AGREEMENT AND OTHERWISE OPERATES ITS BUSINESS. YOUR REVIEW OF AND SIGNATURE TO ATTACHMENT A, WHERIBLE GPS'S PRIVACY NOTICE AND YOUR PRIOR EXPRESS CONSENT, IS A CONDITION TO THIS AGREEMENT. FURTHER, YOU AGREE, REPRESENT AND WARRANT, AS DESCRIBED FULLY IN PARAGRAPH 3 OF ATTACHMENT A, THAT PRIOR TO USING A WHERIBLE GPS DEVICE OR SERVICE IN A MANNER THAT TRACKS THE LOCATION OF ANY EMPLOYEE OF YOURS OR ANY PERSON WHO IS NOT YOUR LEGAL DEPENDENT, YOU WILL PROVIDE THE PRIVACY NOTICE APPEARING IN ATTACHMENT A (OR ITS SUBSTANTIAL EQUIVALENT) TO THE PERSON WHO WILL BE TRACKED AND OBTAIN HIS OR HER PRIOR EXPRESS CONSENT TO LOCATION TRACKING BY YOU AND WHERIBLE GPS ACTING PURSUANT TO THIS AGREEMENT. WHERIBLE GPS PROVIDES ACCESS TO MAPPING SERVICES THROUGH ONE OR MORE VENDORS, WHICH MAY CHANGE FROM TIME TO TIME, SUCH AS, BY WAY OF EXAMPLE, GOOGLE MAPS OR APPLE MAPS, AND YOU ARE TO BE BOUND BY THEIR RESPECTIVE PRIVACY POLICIES.**

e. **AUTHORIZED DEALER; WIRELESS CARRIER AND APPLICABLE SERVICE PROVIDERS AS A THIRD PARTY BENEFICIARY. YOU FURTHER HEREBY CONSENT TO AND AGREE THAT THE AUTHORIZED DEALER IS A THIRD PARTY BENEFICIARY OF THIS AGREEMENT. FURTHER, THE APPLICABLE WIRELESS CARRIER AND ANY APPLICABLE SERVICE PROVIDERS INTERGRAL TO WHERIBLE GPS PROVIDING THE SERVICE TO YOU SHALL BE A THIRD PARTY BENEFICIARY OF THIS AGREEMENT WHERE AND AS APPLICABLE.**

YOU FURTHER UNDERSTAND THAT IN THE EVENT THAT FOR ANY REASON THE AUTHORIZED DEALER IS NO LONGER AUTHORIZED AS A DEALER FOR WHERIBLE GPS, THEN WHERIBLE GPS SHALL HAVE THE RIGHT TO EITHER TERMINATE THIS AGREEMENT IMMEDIATELY OR CONTINUE THE AGREEMENT IN THE PLACE AND STEAD OF THE AUTHORIZED AGREEMENT.

2. USE; TERMS OF PAYMENT.

a. You hereby represent and warrant that if you are an individual, then you are at least eighteen (18) years of age, you have not been previously removed or suspended from the Service and that you possess the legal right to enter into this Agreement. If you are using the Service on behalf of an individual, company, entity or an organization, you represent and warrant that you are an authorized representative of such party with the authority (i) to bind such party to this Agreement and (ii) agree to be bound by this Agreement on behalf of such party. **THIS SERVICE IS NOT FOR PERSONS UNDER THE AGE OF 13 OR ANY USERS PREVIOUSLY REMOVED OR SUSPENDED FROM THE SERVICE BY WHERIBLE GPS. IF YOU ARE UNDER 13 YEARS OF AGE, PLEASE DO NOT USE OR ACCESS THE SERVICE IN ANY MANNER.** Individuals under the age of 18 may use the Services through the use of the Service by a parent or legal guardian (who must supervise the Device(s)), but they may not themselves use the Service. Without limiting the applicability of other provisions of this Agreement, you acknowledge and agree that the Device is not intended for use in connection with any illegal or surreptitious activities including, without limitation, tracking illegal guns or illegal drugs and further shall not be used for a single use and returned for a refund. The Device shall at all times be used in a manner that complies with this Agreement. By using the Device, you understand, acknowledge and agree that Wherible GPS or the Authorized Dealer, as applicable, shall have the right, to be exercised in its sole discretion, to disable any Device (either on a temporary or permanent basis, as the case may be) and cause its functionality to cease from being operational. Wherible GPS and/or the Authorized Dealer will consider all relevant factors, including, without limitation, any violation of this Agreement, misuse, lapse in applicable licenses, or requests from law enforcement officials, as part of its determination on whether to disable any Device.

b. As part of the registration process, you will be asked to create a user name and password. You are responsible for protecting the confidentiality of your account and password. You agree to notify Wherible GPS immediately if your account is hacked or your password is stolen at cs@wheriblegps.com.

c. You agree the Services and License were sold to you by Wherible GPS or an Authorized Dealer, as applicable, in accordance with the terms and conditions of this Agreement and the Services and the License are to be used by you solely in connection with your use of the Devices and solely for the period of time for which you have paid the applicable Service/License Fees, as from time to time renewed, unless and until any respective Services and/or Licenses for a Device are earlier terminated or this Agreement is earlier terminated.

d. Prices do not include federal, state and/or local excise, sales, use, property, or other taxes. All taxes shall be billed to you as separate items at checkout and shall be paid by you unless you furnish a tax-exemption certificate.

e. You agree to pay late charges, as and when billed by the Authorized Dealer or Wherible GPS, as applicable, on any unpaid delinquent balance in an amount equal to the lesser of 1.5% per month or the maximum late charge permitted by law. You agree to pay attorney's fees and expenses the Authorized Dealer and/or Wherible GPS, as applicable, incurs to collect any delinquent balance.

3. LIMITED WARRANTY.

a. Wherible GPS warrants to you only that the Device(s) purchased hereunder will be free from defects in workmanship and materials ("**Limited Warranty**") for a period of ninety (90) days from the date that Wherible GPS or the Authorized Dealer, as applicable, delivers to you each paid for Device with respect to such Device, which may be extended to twelve (12) months for the extended warranty fee, as from time to time published by and payable to your Authorized Dealer (the "**Warranty Period**").

b. This Limited Warranty does not apply to normal wear and tear and does not cover repair or replacement of Devices damaged by tampering, misuse, accident, abuse, neglect, misapplication, alteration of any kind, disaster, water damage, or defects due to repairs or modifications made by anyone other than Wherible GPS or its authorized service representative. In addition, this Limited Warranty does not apply to physical damage of any nature whatsoever to the Device. The Device does not contain any end user serviceable parts, therefore any opening or attempted opening of the Device shall constitute a breach of this Agreement by you. All Devices are shipped in working condition. It is your responsibility to verify that the Device is working properly upon receipt. Wherible GPS, at its sole discretion, will repair or replace the Device solely in accordance with the terms of this Limited Warranty and Wherible GPS's policies and procedures for submitting a Limited Warranty claim in effect at such time.

REPAIR OR REPLACEMENT BY WHERIBLE GPS AS STATED ABOVE IS YOUR SOLE AND EXCLUSIVE REMEDY UNDER THIS LIMITED WARRANTY. NEITHER WHERIBLE GPS NOR THE AUTHORIZED DEALER SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES FOR BREACH OF THIS LIMITED WARRANTY. WHERIBLE GPS AND THE AUTHORIZED DEALER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY ARISING OUT OF ANY PROPOSAL, SPECIFICATION OR SAMPLE. ANY SOFTWARE PROVIDED WITH THE WHERIBLE GPS DEVICE IS PROVIDED "AS IS" WITHOUT WARRANTY. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY ALSO HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE. SOME STATES MAY NOT ALLOW LIMITATION OF THE DURATION OF WARRANTY, OR THE EXCLUSION OR LIMITATION OF SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

For further information on this Limited Warranty and making a claim on this Limited Warranty, see the Wherible GPS Device Defect Warranty, as from time to time updated, published on the Wherible GPS website at www.wheriblegps.com.

c. In no event has the underlying wireless service provider made any warranty of any kind whatsoever for the Equipment, Service or Software of Wherible GPS or the Authorized Dealer or any third party including, without limitation, the wireless carrier.

4. SOFTWARE AND INTELLECTUAL PROPERTY.

a. **License.** Subject to the terms and conditions of and except as otherwise provided in this Agreement, Wherible GPS (and its suppliers to the extent third party software is incorporated in the Software) grant to you the License to use the Software incorporated into and made a material part of the Device for which you have either paid for the Device and the applicable Service/License Fees or received a free trial period. This License is subject to each of the limitations identified in this Agreement and, following expiration of the initial term, continued usage shall be subject to the then-current Service/License Fees in effect at the time you elect to renew your use of the Service and/or License of the Software used in connection with the Device.

b. **Service/License Fees.** In lieu of providing you the Services and Licenses, you agree to pay to Wherible GPS, or as applicable, the Authorized Dealer the Service/License Fees and any expenses in accordance with any orders by you from Wherible GPS or, as applicable, the Authorized Dealer, in effect at the time you purchase Device(s) or as from time to time renewed by you, which fees and expenses may be revised from time to time by Wherible GPS or, as applicable, the Authorized Dealer.

c. **General Limitations.** Except as otherwise expressly provided under this Agreement, you shall have no right, and you specifically agree not to:

- (i) copy, sell, resell, rent, lease, loan, redistribute, transfer, assign or sublicense your Services or Licenses to any other person, and any such attempt to copy, sell, resell, rent, lease, loan, redistribute, transfer, assign or sublicense shall be void *ab initio*;
- (ii) make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or to permit third parties to do the same; or
- (iii) decompile, decrypt, reverse engineer, disassemble or otherwise reduce the Software to human-readable form to gain access to trade secrets or confidential information in the Software; or
- (iv) use any robot, spider, screen or database scraper, site search or retrieval application, or other automated device, process or means to access, retrieve or index any portion of the Service; or
- (v) probe, scan or test the vulnerability of any system or network or breach any security or authentication measures; or
- (vi) reformat, mirror, or frame any portion of the web pages that are part of the Service; or
- (vii) express or imply that any statements you make are endorsed by Wherible GPS or, as applicable, an Authorized Dealer, without the applicable prior written consent in each instance; or
- (viii) transmit any software or other materials that contain a virus, worm, time bomb, Trojan horse, or other harmful or disruptive component; use any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, "data mine", or in any way reproduce or circumvent the navigational structure or presentation of the Service or its contents; or
- (ix) harvest or collect information about other users without their prior written consent; or
- (x) solicit, or attempt to solicit, personal information from other users, except as permitted through the Service and its functionality; or
- (xi) gain unauthorized access to the Service, to other users' accounts, names or personally identifiable information.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, YOU SHALL HAVE NO LICENSE OR RIGHT TO USE ANY SUCH ADDITIONAL COPIES OR UPGRADES UNLESS YOU, AT THE TIME OF ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLD A VALID LICENSE TO THE ORIGINAL SOFTWARE CONTAINED IN ANY DEVICE AND HAVE PAID ANY APPLICABLE FEE FOR THE UPGRADE AND ARE CURRENT ON ALL SERVICE/LICENSE FEES.

d. **Ownership of Intellectual Property.** The Equipment, Services and Software, and all worldwide patents, copyrights, trademarks, trade secrets and other intellectual property rights therein, are and will be the sole and exclusive property of Wherible GPS and its suppliers. The laws of the United States and other applicable jurisdictions protect such rights. The Software and related intellectual property is licensed, not sold, to you. All rights not expressly granted to you by this Agreement are reserved to Wherible GPS. Title to Software and documentation shall remain solely with Wherible GPS and/or its licensors, as the case may be.

e. **Protection of Information.** You agree that aspects of the Software and associated documentation, if any, including the specific design and structure of individual programs, constitute trade secrets and/or copyrighted material of Wherible GPS and/or any of its licensors. You shall not disclose, provide, or otherwise make available such trade secrets or copyrighted material in any form to any third party without the prior written consent of Wherible GPS or applicable licensors. You shall implement reasonable security measures to protect such trade secrets and copyrighted material.

f. **Warranty Disclaimer.** THE WHERIBLE GPS SERVICES AND SOFTWARE AND INTELLECTUAL PROPERTY ARE PROVIDED "AS IS". ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SECURITY, NON-INFRINGEMENT, SATISFACTORY QUALITY OR ANY WARRANTY ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE

EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE MINIMAL LEGAL WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

g. **Licensee Records.** You grant to Wherible GPS, any applicable the Authorized Dealer, and each of their respective independent accountants, within two (2) weeks after written notice, the right to examine your books, records and accounts during your normal business hours to verify compliance with this Agreement. In the event such audit discloses non-compliance with this Agreement, you shall promptly pay to the Authorized Dealer or Wherible GPS, as applicable, the appropriate Service/License Fees, any damages incurred by the Authorized Dealer or Wherible GPS, as applicable, due to the non-compliance and all costs incurred by the Authorized Dealer or Wherible GPS, as applicable, to conduct such audit (including reasonable attorneys' fees, employee costs and other internal expenses directly related to the audit). Failure of the Authorized Dealer and/or Wherible GPS to conduct an audit shall not be a waiver or negatively affect any rights either the Authorized Dealer or Wherible GPS may have under this Agreement. This audit right shall not apply to individual retail customers.

5. LIMITATION OF LIABILITY.

a. NEITHER THE AUTHORIZED DEALER NOR WHERIBLE GPS' TOTAL LIABILITY WITH RESPECT TO ANY AND ALL CLAIMS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND PRODUCE LIABILITY) OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR USE OF ANY DEVICE(S) OR SOFTWARE SHALL NOT EXCEED THE PRICE PAID TO THE AUTHORIZED DEALER AND/OR WHERIBLE GPS ALLOCABLE TO THE DEVICE WHICH GIVES RISE TO THE CLAIM.

b. IN NO EVENT SHALL THE AUTHORIZED DEALER OR WHERIBLE GPS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE DEVICES, LOSS OF DATA, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWNTIME COSTS OR CLAIMS OF CUSTOMERS FOR SUCH DAMAGES, EVEN IF THE AUTHORIZED DEALER OR WHERIBLE GPS KNEW OF OR SHOULD HAVE KNOWN OF OR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

c. Neither the Authorized Dealer nor Wherible GPS shall have any liability whatsoever to you for any claims of patent, copyright or other intellectual property right infringement and/or misappropriation of trade secrets, made against you in connection with your purchase and/or use of the Device, or Software incorporated into the Device.

d. NEITHER THE AUTHORIZED DEALER, WHERIBLE GPS NOR THE WIRELESS CARRIER GUARANTEES YOU UNINTERRUPTED SERVICE OR WIRELESS COVERAGE. NEITHER THE AUTHORIZED DEALER, WHERIBLE GPS NOR THE WIRELESS CARRIER CAN ASSURE YOU THAT IF YOU RELY ON THE DEVICE FOR LOCATION THAT YOU WILL BE FOUND.

e. To the fullest extent allowed by law, you hereby waive, release, indemnify, and hold the Authorized Dealer, Wherible GPS and the applicable wireless carrier, and each of their respective officers, directors, members, employees and agents harmless from and against any and all claims of any person or entity for damages of any nature arising in any way from or relating to, directly or indirectly, services provided by the Authorized Dealer, Wherible GPS or applicable wireless carrier, any person's use thereof (including, but not limited to, vehicular damage and personal injury, and claims of invasion of privacy) or any reliance on the Device's tracking results or related tracking data to indicate, suggest or otherwise corroborate that a person, vehicle or anything else to which the Device is affixed, was at a particular location

at a given time, INCLUDING CLAIMS ARISING IN WHOLE OR IN PART FROM THE ALLEGED NEGLIGENCE OF WHERIBLE GPS, or any violation by you of this Agreement. This obligation shall survive termination of your use of the Device. Neither the Authorized Dealer, Wherible GPS nor the applicable wireless carrier is liable to you for changes in operation, equipment, or technology that cause your Device or the Software to be rendered obsolete or require modification.

6. TITLE OF DEVICE.

Title (and right of possession without legal process) to the Device sold to you hereunder shall remain with the Authorized Dealer or Wherible GPS, as applicable, until the total of all payments due for Device(s) shall have been made in accordance with any order therefore from either Wherible GPS or the Authorized Dealer.

7. DELIVERY AND RISK OF LOSS.

The Authorized Dealer and Wherible GPS will use commercially reasonable efforts to meet the delivery dates requested by you; however, neither the Authorized Dealer nor Wherible GPS will have any liability whatsoever for delays in delivery for any reason. Each of the Authorized Dealer and Wherible GPS respectively reserves the right, in each of their sole discretion, to allocate hardware product shipments among all of their respective customers. Hardware products held for you shall be at your risk and expense. Unless otherwise specified by the Authorized Dealer and/or Wherible GPS, delivery will be made "FOB Origin Freight Collect" to you. Risk of loss passes to you upon delivery to you.

8. EXPORT.

Customer shall not export the Device, directly or indirectly, from the United States of America. Software, including technical data, may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Licensee agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Software.

9. TERM AND TERMINATION.

This Agreement is effective for the period beginning with your first use of the Service or License for any Device and shall be in effect during any use periods during which Service/License Fees for any Device have been paid; provided that Wherible GPS may terminate this Agreement and your Services and Licenses at anytime in which case, unless terminated for cause, including, without limitation, a breach of this Agreement by you, you will be refunded pro rata unused Service/License Fees. Your license rights under this Agreement will terminate immediately without notice from the Authorized Dealer or Wherible GPS upon the expiration or termination of this Agreement or if you fail to comply with any provision of this Agreement.

10. ASSIGNMENT.

Wherible GPS may assign in whole or in part its rights or duties under this Agreement without prior notice to you and, upon such assignment, Wherible GPS, shall be released from all liability hereunder. The provisions of this Agreement are for the benefit of the parties hereto and, except for Wherible GPS, are not for any other entity or third party, including any third party beneficiaries. The delegation or assignment by you of any or all of your duties or rights hereunder without Wherible GPS' prior written consent shall terminate this Agreement and you shall be subject to cancellation fees equal to all of the remaining Service/License Fees, if any, that would be due and payable hereunder if this Agreement continued until the end of its term.

11. INDEMNIFICATION.

You will indemnify and hold harmless the Authorized Dealer, Wherible GPS and the applicable wireless carrier, and each of their respective directors, officers, agents and employees from any and all claims,

liabilities, damages, debts, settlements, costs, attorneys' fees, expenses, and liabilities of any type whatsoever that arise on account of: (i) your breach of this Agreement; (ii) misuse of the Equipment, Services, Licenses or Software; or (iii) your acts or omissions, or those of your employees, independent contractors or agents, including, without limitation, failure to comply with Attachment A.

12. GENERAL.

a. *Governing Law; Mandatory Arbitration; Consent to Jurisdiction.*

(i) This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, United States of America, as if performed wholly within the state and without giving effect to the principles of conflict of law. The Authorized Dealer and Wherible GPS hereby specifically disclaim the UN Convention on Contracts for the International Sale of Goods.

(ii) Should a dispute arise under or related to this Agreement, the parties shall meet within 30 days after legal notice of such dispute is given to attempt to resolve the matter in good faith. Thereafter, the parties agree to arbitrate any dispute arising out of this Agreement. The Federal Arbitration Act, 9 USC §§ 1-16, as amended, shall govern the interpretation and enforcement of this provision. The arbitration shall be held before an independent arbitrator pursuant to the Wireless Industry Arbitration ("WIA") rules in effect at the time of the dispute, as modified by this Agreement and administered by the American Arbitration Agreement ("AAA"). In the event of any conflict, the WIA rules shall govern. No arbitration between the parties may proceed on a class basis or be consolidated with any other arbitration without the written consent of all parties. If the prohibition on class arbitration set forth above is deemed unenforceable, then neither party shall be required to arbitrate. Any award shall be binding upon the parties with no right of appeal. If for any reason the provisions of this Agreement requiring arbitration are declared unenforceable, void, or voidable, or if any action or judicial proceeding is permitted, each party waives any right it may have to a trial by jury. Notwithstanding the above, either party may seek preliminary and final injunctive relief in a court of law in the event of either the unauthorized disclosure of such party's confidential information or an intellectual property infringement. In such event, the parties hereby irrevocably submit to the personal and subject matter jurisdiction of the State and Federal Courts situated in the county or jurisdiction in Fulton County, Georgia. In addition to the foregoing, and not in limitation thereof, you acknowledge and agree that in the event the Authorized Dealer or Wherible GPS is so directed by law enforcement authorities, the Authorized Dealer and/or Wherible GPS shall have the right and ability (without liability to you) to deactivate the services that enable the Device to operate, which may include, without limitation, utilization of the immediate Service and License associated with one or more Devices during an active law enforcement event.

b. *Severability.* If any portion of this Agreement is found to be void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

c. *Injunctive Relief.* You agree that your breach of the provisions of this Agreement, including, without limitation, the provisions of Sections 4 and 5, will result in irreparable harm to the Authorized Dealer and Wherible GPS and you agree that remedies at law are inadequate and that the Authorized Dealer and Wherible GPS shall have the right to pursue equitable remedies including, without limitation, injunctive relief, in addition to any remedies at law. Wherible GPS and the Authorized Dealer shall be entitled to such injunctive relief without the necessity of posting a bond.

d. *Waiver.* The failure of either party to enforce at any time any of the provisions of this Agreement shall not constitute or be construed to be a waiver of such provisions or of the right of such party thereafter to enforce any such provisions.

e. *Survival.* The terms and conditions of this Agreement that by their sense and context are intended to survive the performance by the Authorized Dealer, Wherible GPS and/or you shall survive

completion of performance or termination of this Agreement, including, without limitation, Sections 4, 5 and 11.

f. **Regulatory Agencies.** You are solely responsible for complying with any orders, rules and regulations of the Federal Communications Commission, or any other Federal, State or local governmental authority, applicable to the purchase, installation and operation of the Device and use of the Services and Licenses.

g. **Wireless Network Coverage.** You acknowledge and agree that Wherible GPS does not guarantee availability of wireless network coverage. Use of the Device is subject to compatibility/limitations including network availability, coverage, and accessibility. Actual network speeds depend upon Device characteristics, network, network availability and coverage levels, and other factors. Performance of the Device may be impacted by transmission limitations, terrain, in-building/in-vehicle use and capacity constraints. Service and operation of the Device may be interrupted, delayed, or otherwise limited for a variety of reasons, including environmental conditions, unavailability of radio frequency channels, system capacity, priority access by National Security and Emergency Preparedness personnel in the event of a disaster or emergency, coordination with other systems, equipment modifications and repairs, and problems with the facilities of interconnecting carriers.

h. **Force Majeure.** Neither Wherible GPS nor Authorized Dealer shall be deemed in default hereof for delay, failure in performance or loss or damage due to any condition beyond its actual control, including, without limitation, the following force majeure conditions; fire, strike, embargo, explosion, power irregularities, earthquake, hurricane, tornado, nuclear accident, volcanic action, flood, war, water, the elements, labor disputes, civil disturbances, government requirement, civil or military authority, acts of God or public enemy, inability to secure products or transportation facilities, acts or omissions of common carriers.

i. **Entire Agreement.** This Agreement and any purchase order forms, if any, you execute with Wherible GPS and/or the Authorized Dealer, as applicable, collectively constitute the entire understanding between you, the Authorized Dealer and Wherible GPS concerning the purchase of the Equipment and Services. Any prior or contemporaneous written or oral representation, promise, understanding, proposal, agreement, warranty, course of dealing or trade usage not expressly contained or referenced herein are superseded by the terms hereof and shall not be binding on the Authorized Dealer, Wherible GPS or you.

j. **Amendment.** Wherible GPS reserves the right to update and amend this Agreement at its sole discretion. In the event that this Agreement is from time to time updated and/or amended, you hereby agree to be bound by any such update and/or amendment to this Agreement by continuing to use the Service and/or License ten days after the updated and/or amended Agreement has been made available on either the website through which you initially agreed to this Agreement or the Website. It is your responsibility to check the Website for updates.

k. **Counterparts.** This Agreement may be executed in one or more counterparts.

l. **Notices.** All notices required or permitted under this Agreement shall be in writing and delivered and effective: (i) upon confirmed transmission of facsimile, (ii) upon delivery by courier, (iii) one business day after prepaid dispatch by overnight delivery service or (iv) five days after prepaid dispatch by certified or registered mail. All notices will be sent to you at your address on record with the Authorized Agent and/or Wherible GPS, or as otherwise amended by your proper notice to the Authorized Agent and Wherible GPS. Any notice to the Authorized Agent shall be to Authorized Agent's address on record with you, or as otherwise amended by proper notice to the you. Any notice to Wherible GPS shall be to 15 Office Park Circle, Suite 130, Birmingham, Alabama 35223, Attn.: William K. Holbrook, or as otherwise amended by proper notice to you.

m. **Transaction Language.** The parties hereto agree that this Agreement and all correspondences and all documentation respecting this Agreement be written and interpreted in the English language.

n. **U.S. Government Rights.** The Software and the documentation which accompanies the Software are "Commercial Items," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such term is defined at 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §§227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government bodies as end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

PRIVACY NOTICE AND YOUR PRIOR EXPRESS CONSENT

1. Privacy Notice

Wherible GPS, Inc. (“Wherible GPS”), on behalf of itself and the Authorized Dealer, as applicable, wishes to provide you and the end users with clear and conspicuous notice about how Wherible GPS will access, use, copy, store and disclose personal information when Wherible GPS provides you services pursuant to the Customer End User Service and License Agreement (“Agreement”). Personal information includes any information that identifies or reasonably could identify an individual, including location information. More information about Wherible GPS’ privacy practices appears in its Privacy Policy, available at www.wheriblegps.com, which is incorporated by reference. Defined terms not otherwise defined have the meanings ascribed to them in the Agreement.

2. Your Prior Express Consent with respect to Location and Personal Information

Your signature to this Privacy Notice indicates your prior express consent (“opt-in consent”) to the access, use, copying, storage and disclosure of your personal information, as well as the personal information of any of your legal dependents that use a Wherible GPS device or service, by Wherible GPS in performance of this Agreement or as described in Wherible GPS’ Privacy Policy.

3. Your Agreement, Representation and Warranty with respect to End-Users’ Location and Personal Information

Your signature to this Attachment A also indicates your agreement, representation and warranty that, prior to using a Wherible GPS Device or Service in a manner that tracks the location of any employee of yours or any person who is not a legal dependent of yours, you will provide this Privacy Notice (or its equivalent) to the person who will be tracked and obtain his or her prior express consent (“opt-in consent”) to location tracking by you and Wherible GPS acting for your benefit. Such Privacy Notice will contain provisions appearing in sections 1-2, 4-6 or their substantial equivalent.

You also agree to keep records of such notice and opt-in consent for a period of five years and to make such records available to Wherible GPS upon reasonable request. Failure to obtain such prior, express consent as described above will represent a breach of this Agreement, and your indemnification of Wherible GPS pursuant to Section 11 of this Agreement shall apply.

4. Wherible GPS Handling of Personal Information, including Location Information

Wherible GPS makes location information about an end-user of a Wherible GPS Device available to you by your Agreement with Wherible GPS to provide you the Service. In order to provide you the Service, Wherible GPS accesses, uses, stores and displays the location information of end-users of the Device(s) and Service(s), as well as other personal information about end-users that you make available to Wherible GPS. In connection with providing to you the Service, Wherible GPS will not disclose, sell or lease location or personal information to any third party without your approval except as required by law; provided that, Wherible GPS may allow access to end-user or asset location information with its directors, employees and independent contractors, originating distributors, affiliates, and third party vendors necessary to provide you the Service.

The location information will include the relatively precise location, past or present, of the end-user(s) carrying each Device or equipment, goods and assets to which the Device is attached including, without limitation, your employees, vehicles and equipment. Wherible GPS location information provided to you may include raw GPS data, street address information, speed, time, direction and other processed information appearing on maps, reports or alerts. Wherible GPS may, notwithstanding anything herein to the contrary but only if Wherible GPS believes necessary with the advice of counsel, use and retain your location and personal information to protect its property and legal rights. Additionally, in the event that Wherible GPS is sold to a third party, end user and asset location information may be among the property that Wherible GPS sells or transfers as part of a transaction to sell or transfer all or parts of Wherible GPS.

Wherible GPS will retain such location and personal information for end users and tracked assets until the earlier to occur of (i) such time as Wherible GPS deems necessary but in the ordinary course for up to three years after obtained, or (ii) your request for Wherible GPS to delete your identifiable location information, sent to Wherible GPS at:

Wherible GPS, Inc.
Attn: Legal Department
15 Office Park Circle, Suite 130
Birmingham, Alabama 35223

5. Revocation of Consent

You may revoke your prior express consent to Wherible GPS’ collection and handling of your personal information at any time by contacting Wherible GPS at the contact information provided above. Please be advised, however, that Wherible GPS cannot provide service pursuant to this Agreement without your consent to gather and handle location information as described in this Privacy Notice and Wherible GPS’ Privacy Policy. Your revocation of your consent accordingly may terminate this agreement, at the sole discretion of Wherible GPS. Also, if using a Wherible GPS device is a condition of an end-user’s employment, revoking consent could affect that employment: end user’s should consult their employer for more information. In case a revocation of consent, Wherible GPS will provide no refund, in full or part, of any payment made to Wherible GPS.