



## Terms and Conditions

These Terms and Conditions ("Terms") govern the ELM/Teletrac Services Agreement (the "Agreement") between ELM Technologies Ltd. (ELM) and the Customer named in the Agreement ("Customer") and shall also collectively be referred to as "the Agreement".

### 1. DEFINITIONS

The following definitions shall be used throughout these Terms:

- ~ **"20/20"** or **"Teletrac 20/20"** means a specific configuration of Fleet Director provided by Teletrac;
- ~ **"Account"** means the bank account on which the Customer's first payment was drawn or another account as advised by the Customer to ELM in writing as provided for in Paragraph 17.2;
- ~ **"ACH"** means Automated Clearing House;
- ~ **"Alert"** or **"Fleet Director Alert"** means the service provided by ELM/Teletrac whereby alerts are directly sent to a Client's designated mobile phone, pager or email;
- ~ **"Associated Components"** means those components used in conjunction with the TD such as antennae, interconnecting cables, touch-screens, batteries, casings, cables, coverings and other non-electrical components;
- ~ **"Business Hours"** means Monday through Friday, 9:00 a.m. to 5:00 p.m. Eastern Standard Time, excluding statutory holidays;
- ~ **"Coverage Area"** means Canada (and United States of America and Mexico);
- ~ **"Delivery Date"** means the date a TD has been delivered and accepted by the Customer;
- ~ **"Enhancements"** means updates, changes or improvements to the Software;
- ~ **"Fleet Director<sup>TM</sup>"** means Teletrac's fleet management and messaging service as detailed on the Website from time to time;
- ~ **"GPRS"** means General Packet Radio Services, a packet-based wireless communication service;
- ~ **"GPS"** means Global Positioning System;
- ~ **"Hours of Service"** or **"HOS"** means the service provided by Teletrac enabling Customers to automate the entry, recording, completion and storage of driver logbook information;

- ~ **"IPR"** means any patents, trademarks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights or obligations whether registerable or not in any country;
- ~ **"License"** means the license to use the Telematics Devices and the Software granted by Teletrac to the Customer as set out in Paragraphs 4.1 and 7.2 herein;
- ~ **"Lifetime"** means for as long as the Customer (or its assignee under the provisions herein) is paying for Services;
- ~ **"Map Engine"** means mapping software licensed to Teletrac;
- ~ **"Map Suppliers"** means the suppliers of the Map Engine and Mapbase which together enable the Software to process location data and represent the locations of TD on computers and in-vehicle displays;
- ~ **"Mapbase"** means map databases licensed to Teletrac;
- ~ **"Overage Charges"** means any and all extra data charges resulting from the Customer's data usage above the levels allowed for in the Plan;
- ~ **"Plan"** means the monthly Services/communications/maintenance plan selected by the Customer and detailed in the Agreement;
- ~ **"Premier Service"** means the maintenance (including the repair and/or replacement of TD at ELM's and Teletrac's election), warranty, upgrade and support service package as defined by ELM and Teletrac from time to time in ELM's/Teletrac's Premier Service Advantage document/pamphlet;
- ~ **"RMA"** means Returned Materials Authorization;
- ~ **"Services"** means the provision of TDs, location and data communication services, the Software as well as any ancillary support or maintenance services provided by Teletrac to the Customer together more commonly known as **"Fleet Director"** and as detailed in the Plan and includes any or all of Teletrac SmartNav, Alert, HOS, 20/20, the Premier Service and any other service detailed on the Website;
- ~ **"SIM card"** means the Subscriber Identity Module inserted into a TD to enable communications;
- ~ **"Site"** means the location specified by the Customer for installation of the TD and listed in the Agreement;
- ~ **"Software"** means Teletrac's Fleet Director™, eClient® and/or Reporter software applications as described on the Website, the software installed on any TD and includes all third party licensed software used by Teletrac including the Mapbase and Map Engines and Updates;
- ~ **"Support Hours"** means Monday through Friday, 9:00 a.m. to 6:00 pm (Eastern Standard Time), excluding statutory holidays;

- ~ **"Telecommunication Carrier(s)"** or **"TC(s)"** means Teletrac's 3rd party communication providers;
- ~ **"Telematics Device(s)"** or **"TD(s)"** means the mobile tracking and communications device(s) detailed in the Agreement and Associated Components and installed software provided by Teletrac or a 3<sup>rd</sup> party to the Customer for installation on Vehicles to enable the provision of Services;
- ~ **"Teletrac"** means Teletrac Inc.
- ~ **"Teletrac SmartNav"** means the vehicle routing and navigation service sometimes incorporating traffic data provided by Teletrac;
- ~ **"Term"** means for the number of years or months as detailed in the Agreement commencing from the activation of Services, in addition to the period from Delivery to the activation of Services;
- ~ **"Updates"** means updates to the Software, such as bug fixes, patches, enhanced functions, missing plug-ins and new versions;
- ~ **"VAR Agreement"** means a Commercial Value Added Reseller Agreement between Teletrac and the Customer or an approved dealer or distributor;
- ~ **"Vehicle"** means a vehicle owned or controlled by the Customer and designated in the Agreement (or otherwise agreed by the parties in writing) for installation with a TD; and
- ~ **"Website"** means the Teletrac website at [www.elmtechnologies.com](http://www.elmtechnologies.com) and all other associated websites including [www.teletrac2020.net](http://www.teletrac2020.net).

## 2. ACCEPTANCE

- 2.1. The provision by ELM and Teletrac to the Customer of Services shall be subject to these Terms and the provisions of Paragraph 20.3 apply. ELM AND TELETRAC SHALL NOT BE BOUND BY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS IN ANY CUSTOMER PURCHASE ORDER OR ORAL AGREEMENT OR ELSEWHERE UNLESS EXPRESSLY AGREED TO IN WRITING BY AN OFFICER OF ELM AND TELETRAC. The signing of the Agreement by the Customer and/or use of Services having had the opportunity to read these Terms shall be deemed conclusive evidence of the Customer's acceptance of the Terms of the Agreement. Customer authorizes ELM or Teletrac to insert any missing information onto the Agreement and to correct any misspelling or other such minor errors.
- 2.2. The technology related to the Services and the Software is constantly changing and being developed. As a result of this, ELM and Teletrac reserves the right to make reasonable changes to the terms of the Agreement at any time during the Term, but will only do so when it has good reason. In the case of a change ELM will advise the Customer by email .

### **3. DELIVERY, SHIPPING AND HANDLING**

- 3.1. Unless otherwise stated in the Agreement, ELM will ship the Equipment as close as reasonably practicable to Customer's requested date, subject to ELM's available inventory and then-current lead time requirements. ELM is permitted to allocate its then-current inventory and other resources in its discretion. ELM and/or Teletrac shall not be liable for any damage or penalty arising from delay in delivery or from failure to give notice of any delay. All deliveries will be F.O.B. ELM (Mississauga, ON). Risk of loss or damage to any Equipment shall pass to Customer at time of shipment and Equipment will be deemed accepted upon delivery.
- 3.2. Shipping or delivery dates of TD are best estimates only. ELM or Teletrac reserves the right to make deliveries of TD in installments. Delivery delay or default of any installment shall not relieve the Customer of its obligation to pay for Services provided by ELM or Teletrac or accept remaining deliveries of TD.

### **4. LICENSE, RISK OF LOSS, TITLE AND SECURITY INTEREST**

- 4.1. Teletrac grants the Customer a limited, non-transferable license to use TD provided to it by Teletrac for the purposes of the Agreement and for the Term.
- 4.2. The Customer assumes the risk of any loss, fire, damage, and theft of TD after delivery to the Customer.
- 4.5. The Customer hereby acknowledges that any IPR relating to the TD shall remain Teletrac's exclusive property.
- 4.6. If a Vehicle is repossessed, stolen or disposed of and a TD remains in the Vehicle, the Customer obligations under the Agreement continue and ELM or Teletrac will not be liable to pay any refund of any payments made by the Customer.
- 4.7. The Customer may not sublicense, assign, rent, lease or otherwise transfer or market a TD.
- 4.8. ELM or Teletrac may reasonably inspect TD during the Term.
- 4.9. At the end of the Term, the Agreement automatically renews for successive one month periods with the same payment and Terms as set forth in the Agreement.

### **5. INSTALLATION OF TD AND WARRANTY**

- 5.1. ELM shall install TD using a qualified person or agency. ELM shall have the right to subcontract the installation in whole or part and shall notify Customer of the name and contact details of the subcontractor appointed on request. The installation of TD shall be completed within a reasonable period of time. ELM may charge the Customer a surcharge for waiting time and other delays associated with installation caused by the Customer's failure to have the Site or Vehicles available as specified in the Plan or otherwise agreed with ELM. The Customer acknowledges that it is aware that in order to install TD it might be necessary for ELM or one of ELM's subcontractors to drill holes in either the exterior or interior of Vehicles and agrees that ELM shall not be liable for any costs, expenses or damages arising in any way from such work. ELM warrants the installation of TD for a period of 90 days. All warranty claims must be in writing to ELM.

- 5.2. Installation of TD and any warranty or maintenance services shall take place at the Site. If the Site is not at ELM's service centre then the Customer shall provide a Site which meets the following standards:
  - 5.2.1. The Site shall be safe and present no hazards;
  - 5.2.2. All necessary utilities (including plumbing, lighting, electrical power) shall be easily accessible and provided without charge to ELM;
  - 5.2.3. The Customer shall, at its expense, obtain and keep in force during the period of installation a policy of general liability insurance covering any liability arising out of ELM's use or occupancy of the Site and all appurtenant areas;
  - 5.2.4. Customer shall indemnify and hold harmless ELM from and against any and all liabilities, including reasonable legal fees arising from ELM's use of the Site or the condition of the Site; and
  - 5.2.5. Customer shall allow ELM, its authorized agents, and subcontractors full and free access to the Site at agreed and scheduled installation times during Business Hours and shall not require that ELM waive any claim arising from its use of the Site or impose any other restrictions as a requirement of access to the Site. ELM shall attempt to honour any Customer requests for installation during non-Business hours, but may charge the Customer a surcharge for such installation.
- 5.3. Subject to Paragraphs 8 and 19, Teletrac warrants TD against defects in materials and workmanship for a period of 12 months from installation on a Vehicle. To obtain a warranty or maintenance service, Customer must contact ELM's Help Desk at 905-826-1545-Ext 221 or as advised from time to time. ELM may at its discretion:
  - 5.3.1. Advise the Customer to (a) obtain a RMA; (b) adequately package the defective TD; (c) ship the defective TD to the address provided by ELM; and (d) mark the RMA number prominently on the outside of the carton. TD received without an RMA number will be returned Freight Collect to Customer. ELM will return the repaired or replacement TD to the Customer Freight Prepaid and fully insured if the warranty claim or request for maintenance is valid, but may charge for repaired or replaced Associated Components; and
  - 5.3.2. Repair, remove and/or reinstall the TD at a location and time agreed between the parties in which case ELM shall be entitled to charge for travel costs, Associated Components, travel time and labour.
- 5.4. In the event that a warranty claim or request for maintenance is not pursuant to the Agreement, ELM may agree to repair or replace TD in accordance with the same process as outlined in 5.3 and ELM shall be entitled to charge for travel costs, Associated Components and labour and freight charges.
- 5.5. The TD is an electronic assembly that consumes electrical current. It is designed to draw low amounts of current when the Vehicle is not being operated and therefore there is a small drain on the Vehicle battery that may adversely affect Vehicles that are not in regular operation. ELM or

Teletrac is not liable for any consequences of the battery drain associated with use of TD and recommends that the Vehicle battery should be recharged periodically to ensure maximum performance.

- 5.6. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH 5, ELM AND TELETRAC MAKES AND CUSTOMER RECEIVES NO OTHER WARRANTY WITH RESEPCT TO TD, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, EFFECTIVENESS, COMPLETENESS, ACCURACY, TITLE AND NON-INFRINGEMENT ARE EXPRESSLY EXCLUDED, EXCEPT WHERE PROHIBITED BY LAW, AND WHERE PROHIBITED, ANY SUCH WARRANTY IS LIMITED TO THE MINIMUM WARRANTY AND PERIOD PROVIDED BY LAW. NO EMPLOYEE OR AGENT OF ELM OR TELETRAC HAS THE AUTHORITY TO GRANT ANY OTHER WARRANTY TO CUSTOMER, WRITTEN OR ORAL.
- 5.7. The above warranties shall be null and void in the event that there has been any alteration, modification, or special configuration made by the Customer to a TD.

## **6. LOCATION AND DATA COMMUNICATION SERVICES**

- 6.1. The Services are intended only for routine messaging and ascertaining of location, Vehicle status and business information (i.e. not emergency or prevention of crime, save for Alert).
- 6.2. All Services may not be available to Customer now or in the future. Availability and scope of Services will be in accordance with the Plan.
- 6.3. The Services are priced as in the Plan with communications at either fixed rates (with allowances for kilobytes (KB) or megabytes (MB) of data transmitted and received, with each type of location and data communication service being assigned a specific number of access units or KB/MB) or at variable rates, specified in the Plan. If the Customer's data communications usage materially exceeds the Plan, ELM may at its sole discretion charge the Customer Overage Charges.
- 6.4. Customer acknowledges that ELM or Teletrac may, for its internal test and quality control purposes, without charge to the Customer, locate or communicate with TD used by the Customer.
- 6.5. The Services provided by ELM or Teletrac to Customer hereunder are solely for Customer's internal business use as set forth in the Agreement allowing the Customer to locate and communicate with TD and the data or output from the Services may not be resold or otherwise offered to or used by third parties and the Customer shall not use the Software to operate as a value added reseller or for any other use involving using the Services to process the data of other persons and/or entities, unless it has signed a VAR Agreement.

## **7. SOFTWARE**

- 7.1. The Software includes software components and the Mapbase and Map Engine licensed to Teletrac by various entities (collectively, "Teletrac's Licensors") and is provided with RESTRICTED RIGHTS. The Software is a proprietary product of, and constitutes copyright ©1991-2010 by Teletrac and Teletrac's Licensors. ALL RIGHTS RESERVED UNDER THE COPYRIGHT LAWS OF THE UNITED STATES and international treaty. For purposes of any public disclosure provision under any federal state, or local law, it is agreed that the Software is a trade secret and a proprietary commercial product

and not subject to disclosure. All right, title and interest in and to the Software and all copies and duplicates thereof, and all related copyrights, trademarks, trade names, trade secrets rights and other intellectual property and proprietary rights and interests, are vested and remain in Teletrac and Teletrac's Licensors. The Software is licensed, not sold, to the Customer for use only under the terms of the Agreement. Teletrac is NOT transferring title or any ownership rights in the Software to the Customer and Teletrac and Teletrac's Licensors reserve all rights not expressly granted to the Customer. The Customer may not damage or compromise Teletrac's or Teletrac's Licensors' copyrights, trademarks, trade names, trade secrets or other proprietary interests in the Software. If the Customer breaches the Agreement, monetary damages will not suffice to compensate Teletrac and/or Teletrac's Licensors and Teletrac and/or Teletrac's Licensor's will be entitled to equitable remedies, including, without limitation, temporary restraining orders and temporary and permanent injunctions, without being required to post any bonds or security or prove special damages.

- 7.2. Teletrac grants the Customer a limited nonexclusive, non-transferable license to use the Software for the purposes of the Agreement.
- 7.3. The Customer must use the Software on computers with minimum processing capabilities as designated by Teletrac and with access to an internet connection, preferably a high speed dedicated connection.
- 7.4. The Customer may not sublicense, assign, rent, lease or otherwise transfer or market the Software, the Agreement or the License.
- 7.5. The Customer may not derive or attempt to derive the source code or structure of all or any portion of the Software by reverse engineering, disassembly, decompilation, or any other means. The Customer may not decompile, disassemble, reverse engineer, port, translate, modify, copy, transfer, make derivative works of, or otherwise use the Software, except as expressly authorized by the Agreement. The Software and all materials and knowledge related thereto is obtained by the Customer and its employees, agents and representatives in confidence and shall not be duplicated or disclosed or published by any such persons in any form, or reproduced, transcribed, imitated or simulated in whole or in part. The Customer may disclose relevant aspects of the Software to employees, agents and representatives to the extent that such disclosure is reasonable necessary to use the Software in accordance with the Agreement; provided however, that the Customer shall take all reasonable steps to ensure that the Software is not disclosed or duplicated in contravention of the Agreement by such employees, agents and representatives.
- 7.6. If there is any violation or suspected violation of any provision of Paragraph 7.5, the Customer shall immediately notify ELM and Teletrac and shall, at its expense, assist Teletrac in the enforcement of Paragraph 7.5 against any of its current or former employees, agents, or representatives. Regardless of any right to enforce its rights directly, ELM or Teletrac shall not be obligated to do so, and the obligation to enforce shall remain with the Customer whether or not ELM or Teletrac takes such action. The Customer agrees to indemnify and hold ELM and Teletrac harmless from any claim, liability, damage or expense, including reasonable legal fees, suffered by ELM or Teletrac as a result of any violation of Paragraph 7.5 by it or its current or former employees, agents or representatives.

- 7.7. The Customer agrees to notify ELM and Teletrac immediately if it learns of any infringement or suspected infringement of the Software by a third party. In addition, it should promptly notify Teletrac if anyone makes a claim against it that the Software infringes their rights. If the Customer gives ELM and Teletrac sufficient notice, it will, at its option and if required by law, make the Software non-infringing within a reasonable period of time, obtain for the Customer the right to use the Software or give the Customer a refund on the unamortized portion of the fees for Services. This is the Customer's only remedy in the event of a claim of infringement.
- 7.8. Teletrac warrants that the Software will perform in substantial compliance with the written materials provided to the Customer by Teletrac or as detailed on the Website. No oral or written advice or information provided by Teletrac or any of its agents or employees, whether given before or after first use of the Software shall create a warranty or in any way increase the scope of this limited warranty, and the Customer is not entitled to rely on any such advice or information. This warranty shall not be applicable if there has been any alteration, modification, or special configuration made to the Software by the Customer.
- 7.9. Only the current version of the Software and the immediately preceding version will be supported by Teletrac. The Customer will be advised of changes to the Software (which may be implemented at Teletrac's discretion from time to time) and the Customer shall diligently follow any such instructions as soon as reasonably possible. Customer may be required to pay Teletrac the then current license upgrade fee. Teletrac shall have no liability to the Customer should it fail to upgrade the Software after having received notice of changes and download options.
- 7.10. The Software utilizes a Mapbase owned and maintained by the Map Suppliers. The Customer's use of these Services is subject to the terms of the Map Suppliers listed at Paragraphs 14 and 15 herein.
- 7.11. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SOFTWARE IS PROVIDED AS IS. THE EXPRESS WARRANTIES PROVIDED IN PARAGRAPH 7.8 ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY TELETRAC. TELETRAC AND TELETRAC'S LICENSORS MAKE AND CUSTOMER RECEIVES NO OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, EFFECTIVENESS, COMPLETENESS, ACCURACY, TITLE AND NON-INFRINGEMENT ARE EXPRESSLY EXCLUDED, EXCEPT WHERE PROHIBITED BY LAW, AND WHERE PROHIBITED, ANY SUCH WARRANTY IS LIMITED TO THE MINIMUM WARRANTY AND PERIOD PROVIDED BY LAW. NO EMPLOYEE OR AGENT OF TELETRAC HAS THE AUTHORITY TO GRANT ANY OTHER WARRANTY TO CUSTOMER, WRITTEN OR ORAL.
- 7.12. ELM or Teletrac does not warrant, represent or guarantee that Alert will work 100% of the time for the reasons including but not limited to those detailed in Paragraphs 9.4-9.6 herein and because the operation of Alert depends on the Customer's configuration of the Software and whether or not the computers and/or mobile phones used by the Customer to receive messages are operational or not.
- 7.13. The Customer acknowledges that if traffic data forms part of the Services in the Plan it may contain inaccurate or incomplete information due to changing circumstances, sources used and the nature of collecting comprehensive traffic data, any of which may lead to incorrect results.

- 7.14. The Customer also acknowledges that if Teletrac Smartnav forms part of the Services in the Plan it may not always provide accurate results due to changing road configurations, updates of changes from sources used and the nature of collecting comprehensive mapping and road information, any of which may lead to incorrect results.
- 7.15. Subject to Paragraphs 10 and 19, Teletrac shall provide the services described below without additional charge (unless specified) during each period for which Customer has purchased Services:
- 7.15.1. Defects in the Software. During the Term, if the Customer reports a defect in the Software, ELM and Teletrac shall use reasonable endeavours to resolve such defect as part of an Update. In the event of each notification to ELM or Teletrac, ELM or Teletrac may request that the Customer first submit to ELM or Teletrac a written description of the apparent defect, a complete copy of all output, including, when possible, screen shots of print outs of the apparent defect and sufficient information to reproduce the defect;
- 7.15.2. Material Defects in the Software: If the Customer reports in writing, a material defect in the Software to Teletrac within 90 days of the defect first becoming apparent, and Teletrac is unable to reasonably correct it within 90 days of the date of the report, ELM will refund to the Customer a proportion of fees paid for those parts of the Services that were inoperative for the period from when the defect first became apparent to when the defect was corrected. In the event of each notification, ELM or Teletrac may request that the Customer first submit to ELM or Teletrac a written description of the apparent defect, a complete copy of all output, including, when possible, screen shots of print outs of the apparent defect and sufficient information to reproduce the defect. The Customer agrees that its only remedy under this limited warranty is to receive a refund of the amount paid for the inoperative Services in the said period;
- 7.15.3. Telephone Consultation/On-Line Diagnostic Support. ELM or Teletrac provides telephone support by its representatives during Support Hours. In addition, Teletrac offers on-line diagnostic support through the use of remote access software of Teletrac's designation, or other connectivity software where available; and
- 7.15.4. On-Site Troubleshooting and training. When necessary, ELM or Teletrac may offer the Customer on-site troubleshooting support. ELM and Teletrac retains the right to charge the Customer for such support. Any additional support requested by the Customer, including general maintenance, installation of Upgrades, which requires support by ELM or Teletrac representatives at Customer's site, shall be provided and charged to the Customer at ELM or Teletrac's standard support rates as specified by ELM or Teletrac from time to time plus the cost of travel of ELM or Teletrac representatives (including meals and overnight lodging, if necessary).

## **8. FURTHER LIMITATION TO WARRANTIES**

The warranties specified in these Terms (TD, installation and Software) shall be null and void in the event that there has been:

- 8.1. Use of TD and/or Software that is not in the ordinary course of business or has not been approved in writing by Teletrac;
- 8.2. Accidents, misuse, abuse, neglect, damage and tampering with TD and/or the Software;
- 8.3. Improper installation, maintenance, or repair (not provided or authorized by ELM or Teletrac) of TD and/or the Software;
- 8.4. Connection of TD to an improper voltage supply, reception or transmission problems caused by inadequate or improper antenna (not provided by ELM or Teletrac);
- 8.5. Water damage to TD or exposure to the elements;
- 8.6. Use of TD with accessories or devices not approved by ELM or Teletrac; or
- 8.7. Use of the Services other than in the normal and customary manner.

## **9. TELECOMMUNICATION CARRIERS & GPS**

The Customer acknowledges that communication services (such as GPRS) used in the provision of the Services are provided by TCs. The Customer specifically acknowledges and agrees the following:

- 9.1. Customer has no contractual relationship with the TCs nor is the Customer a third party beneficiary of any agreement between ELM or Teletrac and any TC. The Customer understands that the TCs shall have no legal, equitable or other liability of any kind to the Customer;
- 9.2. Subject to Federal Communications Commission ("FCC") local number portability ("LNP") rules, the Customer has no property right in any SIM Card identifier assigned to it by Teletrac and Customer understands that any such SIM Card identifier can be changed from time to time;
- 9.3. Neither ELM or Teletrac nor any TC can guarantee the security of the communications to and from a TD and neither will be liable for any lack of security relating to the use of the Service;
- 9.4. The Customer acknowledges that Services may be temporarily refused, interrupted, curtailed or limited because of failure of communications due to atmospheric, terrain, other natural or artificial conditions and may be temporarily interrupted or curtailed due to usage concentrations, modifications, upgrades, relocation and repairs of transmission facilities. Customer agrees that neither ELM or Teletrac nor the TCs shall be held responsible for any interruption, curtailment or limitation to the Services or the inability to use the Services outside the Coverage Area;
- 9.5. The TDs utilize GPS technology in order to establish geographic location information. While GPS can provide worldwide, three-dimensional positions, 24 hours a day, in any type of weather there are some limitations inherent to GPS technology. There must be a relatively clear "line of sight" between the GPS antenna and 4 or more satellites. Objects, such as buildings, overpasses, and other obstructions (such as parking in garages or underground structures) that shield the antenna from a satellite can potentially weaken a satellite's signal such that it becomes too difficult to ensure reliable and/or accurate positioning. These difficulties are particularly prevalent in densely urban areas; and

9.6. The Customer acknowledges that it is improbable that the communication services used and GPS will have one hundred percent coverage or functionality in any area at all times. Any deviations from any coverage representations made or from any coverage map shown to the Customer shall not constitute default by ELM or Teletrac. Any surveys, if provided, are to indicate general parameters of expected coverage, subject to previously mentioned conditions, and are not binding as an exact representation of coverage.

## **10. INTERRUPTION OF SERVICES; FORCE MAJEURE**

ELM or Teletrac shall have no liability for a failure to provide or for delay in providing TD, installation of TD, Software or Services due directly or indirectly to causes beyond the control of ELM or Teletrac or its subcontractors, including, without limitation, acts of God, or governmental entities, or of the public enemy, termination of Services due to actions of a TC, including, but not limited to, deactivation/dismantling of a TC's GPRS network, acts of the Customer, strikes, unusually severe weather conditions, interruptions of transportation or inability to obtain necessary labour, materials or facilities, default of any supplier, or delays in Federal Communications Commission ("FCC") or Canadian Radio-television and Telecommunications Commission (CRTC) frequency authorization or license grant. Delivery schedules of TD shall be considered extended by a period of time equal to the time lost because of any such delay. If ELM or Teletrac is unable to wholly or partially provide TD or perform the Services for more than 30 days because of any cause beyond its control, ELM or Teletrac may terminate the Agreement without any liability to Customer, other than refund any amounts paid for TD, Software or Services which have not been provided and all deposits and advance payments made by the Customer will be retained by ELM or Teletrac as compensation for documentation, processing and other expenses.

## **11. REVISION OF FEES AND SERVICES**

Before the end of the Term ELM may, upon 60 days notice revise the monthly rates for Services set forth in the Plan, such changes to take effect immediately after the Term finishes. If the Customer terminates the Agreement as herein provided, all accrued and unpaid charges shall be immediately due and payable.

## **12. AUTOMATIC RENEWAL & TERMINATION**

- 12.1. At the expiration of the Term, the Agreement shall automatically renew for successive 12 month periods unless express written notice is received by either party from the other at least 30 days, but not more than 90 days, prior to the expiration date.
- 12.2. The Customer shall pay ELM the unpaid aggregate price and fees for all Services listed in the Plan for the remaining term of the Agreement if the Customer cancels the Agreement otherwise in accordance with 12.1 above.
- 12.3. The Agreement shall terminate immediately without liability if either the GPRS or GPS networks are shut down.
- 12.4. Save for the provisions of Paragraph 4.7 the Agreement may be terminated on 90 days written notice if the other party is in breach of any of the material terms of the Agreement, and such breach is not cured within the 90-day notice period. In addition, ELM or Teletrac may terminate

the Agreement with no advance notice upon the occurrence of any Event of Default (as defined in Paragraph 13 below.

- 12.5. The Customer is not entitled to terminate the Agreement pursuant to 12.4 above for any alleged breach of warranty under Paragraphs 5.1, 5.3 or 7.8 herein unless such warranty claim is in writing and follows the procedures set out in Paragraphs 5.1, 5.3, 7.8 or 7.15 and ELM or Teletrac fails to meet its obligations under Paragraphs 5.1, 5.3, 7.8 or 7.15 herein and after 90 days written notice of breach as prescribed in 12.4 above.
- 12.6. Upon termination of the Agreement for whatever reason the Customer shall not use the Software for any purpose and immediately de-install any Software installed on any of its computers and return to ELM or destroy all related documentation if requested by ELM. The enforceability of the Agreement which by its nature shall survive the termination of the Agreement.
- 12.7. In the event that the Agreement relates to a Customer's trial or evaluation of the Services ("a Trial"), and in the event that the Agreement does not continue after a Trial, ELM shall be entitled to charge the Customer a handling and administration fee per Unit at ELM's then current rates in addition to de-installation charges in the event that the Customer does not return TD as provided for in Paragraph 4.9 (save that in the event of a Trial ELM will pay the shipping costs of returning TD to Teletrac) . Otherwise these Terms apply to the Agreement until its termination or expiry.

### **13. CUSTOMER DEFAULT AND TELETRAC REMEDIES**

- 13.1. Customer shall be deemed to be in default in the event of any of the following (each an "Event of Default"):
  - 13.1.1. Customer does not pay any amount due within 10 days of when it first becomes due;
  - 13.1.2. Customer is in breach of any of the material terms of the Agreement, or any other obligation with ELM or Teletrac, and does not cure such breach within 30 days of receipt of notice of such breach;
  - 13.1.3. Customer transfers or attempts to transfer any TD to another party; or
  - 13.1.4. Customer gives ELM or Teletrac reasonable cause to be insecure with Customer's willingness or ability to make required payments, such as: Customer is unable to pay its debts as they fall due, becomes insolvent or bankrupt, enters into liquidation, whether voluntary or compulsory, passes a resolution for its winding up, has a receiver or administrator appointed over the whole part or any part its assets, makes any composition or arrangement with its creditors or takes or suffering any similar action in consequence of its debt.
- 13.2. In the event of the Event of Default ELM may, in addition to the other rights set forth elsewhere in the Agreement take all or any of the following steps:
  - 13.2.1. Suspend any or all Services;

- 13.2.2. Charge the Customer a \$5 per TD administration charge and a late fee and interest at the rate of one and one-half percent (1 1/2%) per month (or the highest rate permitted by law, if such rate exceeds the highest rate permitted by law) to compensate ELM for the extra administrative expenses incurred by it;
- 13.2.3. Accelerate all sums due or to become due in connection with the Agreement as liquidated damages for breach of the Agreement and not as a penalty;
- 13.2.8. Refer the Agreement to an attorney for legal action, in which case, Customer agrees to pay ELM's reasonable legal fees and actual costs, including our travel costs to any deposition or court appearance. Customer further agrees that a reasonable legal fee is not less than the greater of \$300.00 or 25% of the total amount in collection as a liquidated damage and not a penalty; and/or
- 13.2.9. Charge the Customer a reactivation fee for each TD should ELM or Teletrac suspend Services and then re-activate the Services at ELM's then current rates.

#### **14. NAVTEQ North America, LLC (a Map Supplier) End User Terms (applicable to selected Services)**

The data ("Data") is provided for you to use for the business purposes for which you were licensed only and not for resale. It is protected by copyright, and is subject to the following terms and conditions which are agreed to by you, on the one hand, and Teletrac and its licensors (including their licensors and suppliers) on the other hand. © 2011 NAVTEQ. All rights reserved.

The Data for areas of Canada includes information taken with permission from Canadian authorities, including: © Her Majesty the Queen in Right of Canada, © Queen's Printer for Ontario, © Canada Post Corporation, GeoBase®, © Department of Natural Resources Canada. All rights reserved.

NAVTEQ holds a non-exclusive license from the United States Postal Service® to publish and sell ZIP+4® information. ©United States Postal Service® 2009. Prices are not established, controlled or approved by the United States Postal Service®. The following trademarks and registrations are owned by the USPS: United States Postal Service, USPS, and ZIP+4.

**Personal Use Only.** You agree to use this Data together with Fleet Director solely for the business purposes for which you were licensed, and not for service bureau, time-sharing or other similar purposes. Accordingly, but subject to the restrictions set forth in the following paragraphs, you may copy this Data only as necessary for your business use to (i) view it, and (ii) save it, provided that you do not remove any copyright notices that appear and do not modify the Data in any way. You agree not to otherwise reproduce, copy, modify, decompile, disassemble, create any derivative works of, or reverse engineer any portion of this Data, and may not transfer or distribute it in any form, for any purpose, except to the extent permitted by mandatory laws.

**Restrictions.** Except where you have been specifically licensed to do so by Teletrac, and without limiting the preceding paragraph, you may not (a) use this Data with any products, systems, or applications installed or otherwise connected to or in communication with vehicles, capable of vehicle navigation, positioning, dispatch, real time route guidance, fleet management or similar applications; or (b) with or

in communication with any positioning devices or any mobile or wireless-connected electronic or computer devices, including without limitation cellular phones, palmtop and handheld computers, pagers, and personal digital assistants or PDAs.

**Warning.** The Data may contain inaccurate or incomplete information due to the passage of time, changing circumstances, sources used and the nature of collecting comprehensive geographic data, any of which may lead to incorrect results.

**No Warranty.** This Data is provided to you "as is," and you agree to use it at your own risk. ELM and Teletrac and its licensors (and their licensors and suppliers) make no guarantees, representations or warranties of any kind, express or implied, arising by law or otherwise, including but not limited to, content, quality, accuracy, completeness, effectiveness, reliability, fitness for a particular purpose, usefulness, use or results to be obtained from this Data, or that the Data or server will be uninterrupted or error-free.

**Disclaimer of Warranty:** ELM AND TELETRAC AND ITS LICENSORS (INCLUDING THEIR LICENSORS AND SUPPLIERS) DISCLAIM ANY WARRANTIES, EXPRESS OR IMPLIED, OF QUALITY, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. Some States, Provinces, Territories and Countries do not allow certain warranty exclusions, so to that extent the above exclusion may not apply to you.

**Disclaimer of Liability:** ELM\TELETRAC AND ITS LICENSORS (INCLUDING THEIR LICENSORS AND SUPPLIERS) SHALL NOT BE LIABLE TO YOU: IN RESPECT OF ANY CLAIM, DEMAND OR ACTION, IRRESPECTIVE OF THE NATURE OF THE CAUSE OF THE CLAIM, DEMAND OR ACTION ALLEGING ANY LOSS, INJURY OR DAMAGES, DIRECT OR INDIRECT, WHICH MAY RESULT FROM THE USE OR POSSESSION OF THE INFORMATION; OR FOR ANY LOSS OF PROFIT, REVENUE, CONTRACTS OR SAVINGS, OR ANY OTHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF YOUR USE OF OR INABILITY TO USE THIS INFORMATION, ANY DEFECT IN THE INFORMATION, OR THE BREACH OF THESE TERMS OR CONDITIONS, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF TELETRAC OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Some States, Provinces, Territories and Countries do not allow certain liability exclusions or damages limitations, so to that extent the above may not apply to you.

**Export Control.** You agree not to export from anywhere any part of the Data provided to you or any direct product thereof except in compliance with, and with all licenses and approvals required under, applicable export laws, rules and regulations.

## **15. MICROSOFT Corporation (a Map Supplier) End User Terms (applicable to selected Services)**

The Microsoft Terms of Use and Online Privacy Statements are available at <http://go.microsoft.com/fwlink/?LinkId=21969> and <http://privacy.microsoft.com/en-us/fullnotice.aspx> and Microsoft may change their terms from time to time and will provide electronic notice of any change.

## **16. DOT REPORTS**

To the best of Teletrac's knowledge the Services meet the requirements of FMCSA Regulation 395.15 Paragraph (i) relating to the performance of on board recorders, as it is presently written and effective in law and Teletrac will use best endeavours to ensure that the Services are improved over time to continue to comply with the relevant laws and regulations in force from time to time.

## **17. PAYMENT/TAXES**

Customer shall make payments to ELM in accordance with the Agreement, at such place and/or by such means as ELM designates from time to time. Specifically:

- 17.1. Unless otherwise detailed in the Plan a pro-rata portion of the aggregated average of the charges for all Services based on a daily charge of one-thirtieth (1/30) of a monthly charge or one-ninetieth (1/90) of a quarterly charge or one three-hundred and sixty-fifth (1/365) of an annual charge from Delivery Date to the end of that calendar month shall be payable by the Customer at the beginning of the Term ("Part Payment"). Thereafter charges for the Services are due in advance at the beginning of each calendar month or quarter or year as detailed in the Plan, from the start of the next calendar month to the expiry of the Term and are not refundable;
- 17.4. Incremental charges and other service charges, including, without limitation, Overage Charges and warranty charges are billed in arrears and shall be paid on 30 days terms;
- 17.5. If ELM makes a charge for installation it will be billed separately as specified in the Plan;
- 17.6. Except for the amount, if any, of any tax or fee included in the Agreement, the prices set forth therein are exclusive of and the Customer agrees to pay when due any amount for federal, provincial, state, local or foreign excise, sales, use, personal property tax, retailer's occupation, telecommunication or similar taxes, or any duties, customs or similar charges or any fines or penalties or fees relating to this Agreement or TD ("Impositions"). If any such Imposition is determined to be applicable to the Agreement or ELM is required to pay or bear the burden thereof or if any Imposition included in the Agreement is incorrect, the prices set forth in the Plan shall be increased by the amount of the Imposition, and Customer shall pay to ELM the full amount of any such increase no later than 10 days after receipt of a bill thereof.

## **18. INFORMATION**

- 18.1. The Customer warrants that it will advise any employee or other authorized user of a Vehicle that the:
  - 18.1.1. Vehicle may be tracked;
  - 18.1.2. The Customer and designated employees will be able to view details relating to the Vehicle(s) using the Software; and
  - 18.1.3. The Customer will be able to produce historical reporting of the movements of the Vehicle(s) for a period of up to 6 months prior to the date on which the report is requested or for the period from when the Services were active if less.
- 18.2. The Customer acknowledges that for quality control, security reasons and training, telephone calls between ELM or Teletrac and the Customer and/or its employees may be recorded.

- 18.3. The Customer consents to ELM and Teletrac tracking and tracing the location, time and speed of Vehicles via the TD for the purposes of the Agreement.
- 18.4. The data produced by use of the Services is the property of the Customer however, Teletrac reserves the right to use and to allow third parties to use anonymised location, time, speed and other information obtained from Vehicles for traffic information, journey data analysis, mapping or other related purposes. Teletrac will retain such data for 3 years save that access by the Customer without charge may be shorter if detailed in the Plan or if otherwise advised to the Customer.
- 18.5. ELM or Teletrac and its agents, its business partners and/or carefully selected companies may use the Customer's information to keep the Customer informed by post, telephone, facsimile, e-mail, SMS or other means about Teletrac products and services. By providing ELM or Teletrac with contact details, the Customer consents to being contacted by these parties for these purposes. If the Customer does not wish to receive marketing information, the Customer must state this in writing to ELM at 4141 Sladeview Cr., Unit 11, Mississauga, ON L5L 5T1 or Teletrac at 7391 Lincoln Way, Garden Grove, CA 92841-1428 or in a message by email to [www.teletrac.net](http://www.teletrac.net) or another email address specified by Teletrac from time to time.

## **19. LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES**

The liability obligations of ELM and/or Teletrac to the Customer or any 3rd party under the Agreement are strictly controlled and limited by the laws, rules and regulations of the FCC, CRTC and other governmental authorities which from time to time have jurisdiction. In any event, the Customer acknowledges and agrees that:

- 19.1. ELM or Teletrac shall have no liability for any single isolated failure of the Services, or delay that does not exceed 48 hours;
- 19.2. Regardless of the form of action, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, the Customer's exclusive remedy and the total liability of ELM and/or Teletrac to Customer arising in any way in connection with the Agreement, for any cause whatsoever, including, but not limited to, any failure or disruption of Services provided, shall be limited to the right of repair or replacement of defective TD (depending on warranty conditions) and payment by ELM or Teletrac of damages in an amount equal to the amount charged to Customer for undelivered Services provided under the Agreement and in no event shall ELM and Teletrac's liability exceed the amount paid by the Customer for the Services in question in the 12 months preceding such failure or disruption to the Services, nor shall any action be brought for any breach more than one year after the accrual of such cause of action. ELM or Teletrac shall not be liable for any damages or loss of any kind, whether increased costs, lost profits or goodwill, lost revenues or data or incidental, special, punitive, indirect, incidental, exemplary or consequential damages, arising from the use of the Services even if ELM or Teletrac has been advised of the possibility of such damages;
- 19.3. ELM and Teletrac and its suppliers shall not be liable to any other person or entity or third party for any loss or damages caused by any interruption of Services, regardless of cause;

- 19.4. Customer agrees to indemnify, defend and hold ELM and Teletrac and its licensors harmless from and against any liability, loss, injury (including injuries resulting in death), demand, action, cost, expense or claim of any fees (including reasonable legal fees) arising out of or in connection with any use or possession by Customer of the data produced by the Services (including location, navigation and routing information and including a breach of the provisions of Paragraph 18.1) and/or the improper or unauthorized use of the Services or the failure to use the same properly or as directed by ELM or Teletrac from time to time;
- 19.5. If the Customer becomes aware of any matter which might give rise to a claim against ELM or Teletrac or the Customer with regard to Teletrac's IPR and/or the IPR relating to the Services, the following provisions shall apply:
- 19.5.1. The Customer shall immediately give written notice to ELM or Teletrac of the matter (stating in reasonable detail the nature of the matter. If the matter has become the subject of any court proceedings the Customer shall deliver the notice of such proceedings within sufficient time to enable ELM and/or Teletrac to contest the proceedings before any material time limits have passed;
- 19.5.2. The Customer shall provide ELM and/or Teletrac and its professional advisers reasonable access to premises and personnel and to any relevant assets, documents and records within its possession or control (and at ELM or Teletrac's expense take copies of any of the documents or records, and photograph any premises or assets) for the purposes of investigating the matter; and
- 19.5.3. Customer shall:
- 19.5.3.1. Take such action and institute such proceedings, and give such information and assistance, as ELM and/or Teletrac may reasonably request to:
- 19.5.3.1.1. Dispute, resist, appeal, compromise, defend, remedy or mitigate the matter; or
- 19.5.3.1.1. Enforce against any person (other than ELM and Teletrac) the rights of the Customer in relation to the matter; and
- 19.5.3.2. In connection with any proceedings related to the matter (other than against ELM and Teletrac) use professional advisers nominated by ELM or Teletrac and, if ELM or Teletrac so requests, allow ELM or Teletrac the exclusive conduct of the proceedings, in each case on the basis that ELM or Teletrac shall fully indemnify the Customer for all reasonable costs incurred as a result of any request or nomination by ELM or Teletrac as detailed above;
- 19.5.4. The Customer shall not admit liability in respect of or settle any matter without the prior written consent of ELM or Teletrac, such consent not to be unreasonably withheld or delayed; and
- 19.5.5. Nothing in this Paragraph 19.5 shall in any way restrict or limit the general obligation at law of the Customer to mitigate any loss which it may incur as a result of any matter giving rise to a claim pursuant to Paragraph 19.5.1; and

19.6. The provisions of this Paragraph limiting and excluding the liability of ELM or Teletrac are reasonable given the complex nature of the technology involved in the provision of Services and the many other factors affecting the Services outside ELM & Teletrac's reasonable control.

## **20. GENERAL**

20.1. Teletrac (or its associated companies) is the proprietor of the "Teletrac", "Fleet Director", "eClient", "Teletrac Smartnav", "Teletrac 20/20", "Turn by Turn", "Spectrum" names, derivatives, associated symbols and trademarks and all documentation relating thereto and any use is specifically prohibited unless under the Agreement or by separate written agreement with Teletrac.

20.2. If any provision of the Agreement shall be unlawful, void, or unenforceable, then that provision shall be deemed limited to the extent required to make it enforceable, or, if necessary, severed from the Agreement. Such a provision shall not affect the validity and enforceability of the remaining provisions of the Agreement.

20.3. The Agreement (and for the avoidance of doubt including these Terms) constitutes the entire agreement and understanding between the parties as to the subject matter of the Agreement and supersede all previous and contemporaneous communications, representations or agreements, written or oral relating to the Services purchased under the Agreement.

20.4. Any waiver of a breach of the Agreement shall not be a continuing waiver and shall not prevent any claim of a breach of the same terms or any other term of the Agreement.

20.5. No amendment or modification hereof shall be binding upon ELM or Teletrac unless such amendment or modification is in writing signed by an authorized officer of ELM or Teletrac.

20.6. In these Terms, words incorporating the masculine gender only include the feminine and neuter genders and words incorporating the singular number only include the plural and vice versa.

20.8. The Customer agrees to observe and abide by all applicable laws, ordinances, rules and regulations of the federal, provincial, local or foreign government and any agency or public authority thereof, and to hold ELM and/or Teletrac harmless from liability or loss by reason of any asserted or established violation of said laws, rules, or regulations by Customer, its employees, agents or representatives.

20.9. The Customer acknowledges and agrees that the Services must not be used in any way which would or may affect the ability of any driver of the Vehicle to drive safely and in accordance with local laws and regulations. The Customer or its employees or other authorized users are ultimately responsible for the Vehicle under his/her control and they should be aware of their surroundings at all times. In certain geographic areas one way streets, turn restrictions and entry prohibitions (e.g. pedestrian zones) are not recorded or displayed. ELM or Teletrac is not liable for any loss or damage caused by the acts or omissions of the driver of the Vehicle. Users of the Vehicle remain at all times responsible for observing all relevant laws and codes of safe driving and ELM or Teletrac is not liable for any fine, penalty, or punishment issued to the Customer or any user of the Vehicle.

- 20.10. The Agreement is fully assignable and transferable by ELM or Teletrac to any person or entity and shall inure to the benefit of such assignee or successor, Customer may not assign the Agreement without the prior written consent of ELM, except that Customer may, without ELM's consent, assign the Agreement (a) to Customer's parent company, a subsidiary, or an affiliate; (b) to any successor corporation by consolidation or merger; or (c) to any corporation with the authority to carry on a business of a nature transacted by Customer and to which Customer has sold all or substantially all of its assets, provided that Customer has advised ELM in writing of such assignment and Customer remains liable for any obligations or liabilities arising under the Agreement.
- 20.11. The headings used in these Terms are for convenience only and are not to be used in the interpretation of the Agreement.
- 20.12. All notices and other communications required or permitted to be given under the Agreement shall be in writing and shall be delivered or transmitted by the Customer to ELM at the address specified on the Agreement or such other address as ELM may notify to the Customer for this purpose from time to time. Notices by ELM to the Customer shall be to the Customer Address listed on the Agreement and it is the responsibility of the Customer to advise ELM of any change of address expeditiously. Any notice shall be treated as having been served on delivery if delivered by hand or email, 4 working Days after posting if sent by pre-paid registered mail, 2 working Days after dispatch if sent by courier and on confirmation of transmission if sent by facsimile.
- 20.13. The Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario without giving effect to (i) its conflict of laws provisions, or (ii) the United Nations Convention for Contracts for the International Sale of Goods, which are explicitly excluded. The parties agree to submit to the jurisdiction of Ontario and that any and all disputes, claims, proceedings or actions arising from or in connection with this Agreement shall be brought in the Provincial or Federal courts having within their jurisdiction in Ontario.

The parties thereto have expressly required that this contract and all documents, agreements and notices related thereto be drafted in the English language. **Les parties aux présentes ont expressément exigé que le présent contract et tous les autres documents, conventions ou avis qui y sont afférents soient rédigés en langue anglaises.**

**END OF TERMS AND CONDITIONS**

August 10, 2011