



# PLANTCOM END-USER LICENSE AGREEMENT

IMPORTANT! BY DOWNLOADING, USING, OR ACCESSING THE SOFTWARE THAT ACCOMPANIES THIS AGREEMENT OR USING OR ACCESSING ANY OF OUR PRODUCTS OR SERVICES, YOU AGREE TO BECOME BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MUST NOT INSTALL, USE, ACCESS OR RETAIN ANY COPIES OF THE SOFTWARE OR USE OR ACCESS ANY OF THE PRODUCTS OR SERVICES AND MAY, WITHIN 14 DAYS OF RECEIPT OF THIS AGREEMENT, RETURN ANY PRODUCTS YOU HAVE PURCHASED TO US, OR TO THE RESELLER FROM WHICH YOU PURCHASED SUCH PRODUCTS AS THE CASE MAY BE, FOR A FULL REFUND OF THE PURCHASE PRICE.

## TERMS AND CONDITIONS

All tracking plans and GPS services offered in association with your PLANTCOM system are provided by PLANTCOM Pty Ltd. All services are offered and provided exclusively and independently by and from third-party service are provided PLANTCOM. Or such other entity or entities that PLANTCOM has designated to provide such services to you.

PLANTCOM Pty Ltd, are independently owned and operated.

Your purchase and use of tracking plan services associated with your GPS device or devices are expressly subject to the terms and conditions of this separate agreement, as may be periodically updated, and your timely payment of monthly and all other applicable tracking plan service fees. The terms and conditions of this end user license may change from time to time. For the most recent version which applies to you, please visit [www.PLANTCOM.com.au](http://www.PLANTCOM.com.au), which supersedes all prior versions of this agreement including, without limitation, all print versions that accompanied your GPS tracking device or devices at the time of purchase.

### 1. Scope of this Agreement.

1.1 This Agreement is for the software or firmware product or products (in object code form only), including without limitation firmware which is embedded into any hardware product delivered to you and all related documentation (printed or electronic), data, and other materials which accompany this Agreement, all modifications, enhancements, improvements and derivative works based on same and all copies thereof (collectively, the "Software") certain conditions related to your use of our products, including any Plantcom branded hardware or equipment (the "Products") and certain services that we may provide in connection with the use of the Software or the Products or both (the "Services") such as, without limitation, the facilitation of data transmission from Products you use through a gateway computer or facility operated by or on behalf of us for use with the Software, or the Plantcom service which facilitates storage of your data on computers or facilities operated by or on behalf of us and which is accessible through the use of the Software.

1.2 If you have entered into a Reseller Agreement (as defined in Section 2 below), the scope of this Agreement as it relates to you is limited to those terms governing use of the Software accompanying Products that you have purchased from the reseller and certain Services provided by Plantcom relating to such Software that are in addition to any services you are receiving through the reseller.

## **2. Exclusions.**

2.1 Except as expressly set out in this Agreement, this Agreement does not govern: (a) any and all third party software, data, products, information or services; (b) the terms and conditions relating to the purchase and sale of Products by you from a reseller pursuant to any written agreement between you and such reseller (each, a “Reseller Agreement”); and (c) other products and services which you have separately purchased from a reseller through a Reseller Agreement (collectively, the “Reseller Products and Services”), such as installation, support or maintenance services for the Products, the Software or the Services, other than Software (including Updates) provided to you through such services, which are governed by this Agreement. The Reseller Agreement constitutes a separate and distinct agreement between you and the reseller.

## **3. Changes to this Agreement.**

3.1 We may change this Agreement from time to time by posting revisions to our website or by presenting such revisions upon the execution of the Software or when Updates are installed. We may (but have no obligation to) send you an e-mail or indicate through the Software that a revision has been made. If posted on our website, it is your responsibility to check our website from time to time for any such changes. Such changes will become effective upon the earlier of: (a) 30 days after they are posted to our website; or (b) upon presentation and your acceptance of such changes.

3.2 If you do not agree with any such changes, your sole and exclusive remedy is to terminate this Agreement by delivering written notice to us or by not electronically accepting such changes or the amended version of this Agreement when you are asked to do so whilst using our on-line services. If you have entered into a Reseller Agreement, changes made to this Agreement pursuant to this Section 3 will not change the terms and conditions of the Reseller Agreement.

## **4. Installation Warning.**

4.1 Our Products do not contain any user-serviceable parts. Installation, configuration, servicing, repairs and removals must only be made by an authorized Plantcom reseller or installer. Unauthorized installation or other servicing of Products will void your warranty. Improper installation may also lead to short circuits and the risk of fire, leading to personal injury or significant damage to your vehicle. Installation or servicing may also require modifications to your vehicle. Failure to comply with specified procedures or without adequate knowledge of our Products, proper installation, configuration, servicing, repair or removal procedures or your vehicle may result in damage to the Product or your vehicle, which may cause malfunctions of vehicle controls or vehicular environmental systems and result in personal injury. You understand that any such activities not performed by an authorized Plantcom



reseller or installer will be at your sole risk.

4.2 You hereby release and forever discharge, and will indemnify and hold harmless, us, our affiliates, resellers and agents and their directors, officers, employees and representatives from any and all losses, actions, causes of action, liability, claims, demands, penalties, costs, expenses (including legal fees and disbursements on a full indemnity basis), judgments and damages of any nature or kind whatsoever, whether under contract, tort, statutory warranty or other remedy, or any other theory of law or equity, which you or any other third party has or will have, arising or accruing from, as a result of, in relation to, or in connection with, any act or omission by you, or with your approval or consent, contrary to the requirements of, or warnings in, this Clause 4.

## **5. Optional Product Rental.**

5.1 If you have not rented Products from us or your reseller, this Section 5 does not apply to you. If you have rented Products from us or your reseller, this Section 5 will apply. You will make rental payments in advance, with the first rental payment due upon the rental commencement date recorded on the rental agreement. You have no right, title or interest in rented Products other than the right to possess and use rented Products as set forth in this Agreement. If we or a reseller affix any plates or markings identifying the rented Products as being rented to you and owned by us or the reseller, you will not, and will not permit any person to, remove, alter, obscure or deface any such plate or marking. You will assume all risk of loss and damage for rented units and will ensure that all rented Products are adequately insured for the full replacement value thereof, under policies and insurers satisfactory to us and with our interest in the Products being noted.

5.2 You agree to furnish to us a certificate of insurance evidencing such coverage upon request. Upon reasonable prior written notice, we, your reseller and our agents will have the right, during normal business hours to inspect all vehicles and other locations where rented Products have been installed. You will not make any representation to any third-party inconsistent with our sole ownership of rented Products. You will not, and will not permit anyone to, hypothecate, charge, pledge or encumber the rented Products or our interest in the rented Products in a manner to create or permit to exist any levy, security interest, hypothec, lien or encumbrance thereof or thereon except those created by or through us. All rented Products will remain our movable or personal property whether or not affixed to real or immovable property and shall not become a fixture or be made to become a part of any immovable or real property on which it is placed, without our prior written consent. You shall not locate or relocate any rented Product such that any third party comes into possession or control thereof without our prior written consent. You agree to surrender the rented Product to us in the event of termination of this Agreement resulting from a breach or default by you related to your rental of the rented Products. The term of any rental may be subject to a minimum term



as specified in our then-current price list and will continue until terminated by you, us or your reseller.

5.3 Rental payments will continue to accrue and be payable until all rented Products are returned to us. Upon any termination, you will promptly return all rented Products to us or, if you have acquired the Products through a reseller, to your reseller at your risk and expense unless you have purchased such product. Rented Products must be returned in the same condition as delivered to you, except for ordinary wear and tear resulting from normal use thereof. If any rented Products returned do not meet such standard, we reserve the right to charge you, and you agree to promptly pay, the lesser of: (i) all fees and expenses required to repair such Products to such standard; and (ii) the fair market value of the same Products meeting such standard, as determined by us in our sole discretion. You will keep all rented Products in good working order at your expense and will ensure that all rented Products are stored, installed, operated, used and maintained in accordance with the relevant Product documentation.

## **6. License.**

6.1 Subject to the terms and conditions of this Agreement, we hereby grant you a limited, non-exclusive, non-assignable, non-transferable, non-sub licensable right to install and use the Software solely for your internal business purposes and solely in connection with your use of our in-vehicle telematics hardware Products, provided, however, that notwithstanding the foregoing, all firmware embedded in any of our Products: (i) may only be used in connection with the use of the Product in which such firmware is embedded (the "Related Product") and may not be extracted, copied or used in connection with any other Product or for use on any other device; and (ii) the right to use such firmware may be transferred in connection with the transfer of ownership of the Related Product, provided the transferee is made aware of and agrees to be bound by the terms of this Agreement. If the owner, renter or lessee of the Products is a corporation, organization or a person other than the individual person to whom this Agreement is presented, you represent and warrant that you have the authority to legally bind such owner, renter or lessee. The license granted to you under this Agreement is subject and conditional upon such representation and warranty. All references to "you" are deemed to refer to the owner, renter or lessee of the Products which are used in connection with the Software.

## **7. Beta Software and Services.**

7.1 If you have downloaded or received an alpha, beta, pre-release or similar version of the Software ("Beta Software"), or have been granted access to alpha, beta, pre-release or similar versions of any Services ("Beta Services"), you acknowledge that: (a) Beta Software and Beta Services constitute pre-release software or services, may include defects, errors or other discrepancies, and may be modified, enhanced or otherwise changed by us substantially before general release and consequently may not be suitable for use for production

purposes or with production systems or applications and if you do so, you do so at your sole risk; (b) you may not use, access or retain a copy of the Beta Software or Beta Services beyond the Beta Period, unless otherwise agreed to by us in writing; (c) certain functions of Beta Software or Beta Services may be limited or disabled; and (d) Beta Software and Beta Services may automatically stop functioning at the end of the Beta Period. As Beta Software has been licensed to you solely for testing and evaluation, we may or may not correct some or all errors, defects or deficiencies.

## **8. Minimum Requirements and Third Party Products.**

8.1 You may need to purchase, license or procure products, software, data or services from third parties to enable the full use or functionality of our Products, Software or Services. You are responsible for ensuring that such products, software, data or services meet our minimum requirements, including without limitation, processing speed, memory, client software, internet access, internet or other communication channel bandwidth. You acknowledge that the terms and conditions applicable to your procurement of such products, software, data or services may accompany the supply thereof or may otherwise be provided or made available by the suppliers thereof and it is your responsibility to review and comply with such terms and conditions, as may be amended from time to time by the suppliers thereof. Without limiting the generality of the foregoing, you understand and acknowledge that map and related data or services provided by or through: (a) Microsoft Bing (the "Microsoft Service"), is subject to Microsoft's applicable terms and conditions, as amended from time to time by Microsoft, available through the Microsoft Bing website (<http://go.microsoft.com/fwlink/?LinkId=21969>) or such successor website as Microsoft may designate from time to time; (b) Microsoft's MapPoint software, is subject to Microsoft's terms and conditions which accompany such software, as amended from time to time; and (c) OpenStreetMap, is provided subject to the terms and conditions, as amended from time to time, available through the OpenStreetMap website (<http://openstreetmap.org/>) or such successor site as may be designated from time to time. You agree not to use the Microsoft Service: (i) in connection with the transmission, sale, license or delivery of any infringing, defamatory, offensive, or illegal products, services or materials; (ii) to copy, store, archive, or create a database of any maps, images and other data and third party content that you are authorized to access via the Microsoft Service, except that geocodes may be stored locally when used in conjunction with the Software; (iii) in violation of local government, state, Commonwealth or equivalent privacy or other laws or regulations; (iv) in any way that threatens the integrity, performance, or availability of the Microsoft Service; or (v) in violation of any end-user, end-use and destination restrictions issued by U.S. and other governments. The Microsoft Service is subject to U.S. export jurisdiction. You acknowledge and agree that Microsoft may collect information such as, but not limited to, your IP address, request, time of submission and the results returned to you, in connection with transaction requests to the Microsoft Service. All such information collected will be subject to, and used in accordance with, the data practices described in the then-current Microsoft Online Privacy

Statement.

## **9. Protective Measures.**

9.1 You understand and acknowledge that the Software and the Services may contain technological measures designed to prevent the illegal usage of the Software or usage that violates the terms and conditions of this Agreement. Such measures may include disabling of the Software or the Services or the automatic transmission by the Software or the Services to us of information regarding your usage. You hereby consent to the transmission of such information to us and agree not to circumvent or attempt to circumvent such measures.

## **10. Updates and Patches.**

10.1 This Agreement also governs, and the term "Software" as used in this Agreement includes, any patches, revisions, updates, upgrades or replacements of the Software, or separate scripts, modules or software to be used with or in conjunction with the Software ("Updates") that may be subsequently delivered to you or that you may subsequently receive, unless other terms and conditions are delivered with such Updates, in which case such other terms and conditions shall govern. You agree that, upon installation of any Updates, you may only use the Software as modified or replaced by the Updates. You also acknowledge and agree that we may, from time to time, cause Updates to be automatically installed with or without notification to you, upon your use or execution of the Software. We may also from time to time provide you the ability to access Updates through our website. You may not install or use any Update except in conjunction with the Software for which it is intended. If the Software accompanying this Agreement consists of Updates, you agree that this Agreement shall supersede and replace any previously issued Agreement in respect of the Software.

## **11. Services.**

11.1 The Services may be subject to limitations on the amount of data stored or transmitted, which limitations may be changed from time to time in our sole discretion. Some Services may be subject to a fee. If you subscribe to or use wireless data services, you shall comply with the attached wireless terms. If you subscribe to or use any Services that require the use of internet service ("Internet Bandwidth Services") which are procured by us, you shall comply with the attached acceptable use policy. If you subscribe to or use any posted speed limit data, you shall comply with the attached data end-user terms. You will be solely responsible for all expenses related to the replacement of subscriber identity module cards ("SIM Cards") for any reason, including without limitation a change in carrier. We may add, delete, modify, change, discontinue, suspend or limit the Services from time to time, acting reasonably and, where reasonably possible, with prior notice, in order to: (a) address changes in technology; (b) maintain, upgrade or improve our Services; (c) facilitate changes required by third party service providers, such as providers

of cellular communication services; (d) address security incidents and risks; or (e) as otherwise reasonably required to manage our business. Such changes may include changes in formats or standards which may result in incompatibility with Products we have discontinued. You understand that any discontinuance, suspension or interruption of the Services may affect the ability to access your data. You will be solely responsible for backing up any data that you may wish to access in such event. Certain services including, without limitation, installation, warranty service, maintenance and support, may be available only through your reseller and if so do not constitute a part of the Services we may provide to you, and in such cases this Section 11 does not apply to such services.

## **12. Restrictions.**

12.1 You agree not to: (a) distribute, disclose, sublicense, sell, resell, give away, loan, lend, lease, rent, pledge, create a security interest in, transfer or transmit in any manner the Software or the Services or any rights therein or thereto, whether temporarily or permanently; (b) modify, adapt, translate, reverse engineer, decompile, disassemble or convert into human readable form the Software or the Products, or create derivative works based on, or any competitive or emulating software using, the Software or any Product; (c) permit others to use the Software or Services, or use the Software or the Services on a service bureau or similar basis, including without limitation using the Software or Services to access, use or process the work or data of others or otherwise making available the functions of the Software or Services available for use by others; (d) use the Products, the Software or the Services in a manner that infringes upon the lawful rights of others or in contravention of any applicable laws; (e) except as otherwise expressly set out in applicable documentation, use the Products, the Software or the Services in conjunction with any in-vehicle telematics device other than our Products; (f) use the Products, the Software or Services: (i) where failure of same may result in a risk of property damage, death or personal injury; or (ii) in any situation requiring fail-safe controls or fail-proof delivery of information, including without limitation any operations involving radioactive or hazardous materials, life support systems or munitions or weapons; (g) use any Services except through the Software or other interfaces provided by us; (h) engage in any activity that interferes or disrupts the Services or any computer, software, network or other device used to provide the Services; or (i) attempt, or cause, permit or encourage any other person to do any of the foregoing.

## **13. Registration Information.**

13.1 In order to download or use the Software or the Services, you may be required to provide registration information to us. You represent and warrant that all such information is true, accurate, complete and current and further agree to promptly update all such information from time to time to ensure that such information is at all times true, accurate, complete and current.

#### **14. Security.**

14.1 In order to use our website and certain Services you may be required select one or more user identifications and passwords (your “Login Credentials”). We will use your Login Credentials, through automated means, to validate that the person using them is authorized to access your data, make changes on your account and make inquiries on your behalf. You agree that we will be entitled to treat all such communications, instructions and transactions as authorized by you if your Login Credentials are used. It is your responsibility to keep your Login Credentials safe and secure and not to disclose them to any other person, unless you intend to give such person the authority to act on your behalf. You are solely responsible for any actions taken using your Login Credentials. You must only provide your Login Credentials when logging into our website or through other automated means. For security reasons, individual service representatives will never ask you for your password and you must not disclose them to any individual asking for it. When speaking with our representatives, they will follow other verification procedures to validate your identity. If you believe the security of your Login Credentials has been compromised, or you suspect unauthorized use, you must notify us immediately. You will be responsible for all changes to your account, communications, use of Services or use, disclosure, modification or deletion of data using your Login Credentials, whether by you or anyone else, until you notify us. Once you notify us, we will promptly suspend your account and may make arrangements for continued use by you of our Services. If we suspect, in our reasonable opinion, fraudulent or unauthorized activity on your account or, we reserve the right to terminate or suspend your access to our website or any applicable Services or both and will use reasonable efforts to contact you. You acknowledge and agree that your data may be stored or transmitted through third party facilities, third party services or common carriers, including without limitation the internet, in the course of using the Software or the Services. It may be possible for third parties to monitor or access such data. We will implement and maintain security measures consistent with industry standards for facilities within our control. We will not be responsible or liable in any manner for any loss, corruption or monitoring of data or data transmissions or any security or privacy breaches through third party facilities, third party services, common carriers or facilities under your control.

#### **15. Ownership.**

15.1 The Software is protected by copyright and other intellectual property rights and is licensed, not sold. Notwithstanding anything to the contrary herein, and notwithstanding the any reference to the sale of any product to you hereunder, except for the rights expressly granted to you under this Agreement, all right, title and interest (including all copyrights, trademarks, service marks, patents, inventions, trade secrets, intellectual property rights and other proprietary rights) in and to the Software and all copies thereof (regardless of the form or media upon which such copies are recorded) and all Services are and shall remain exclusively owned by Plantcom. of Unit 7/1029



Manly Road Tingalpa, QLD 4173 (“Plantcom”) and its licensors. You agree not to contest or dispute Plantcom’s ownership of same or our licence to use and distribute same. All trade names, company names, trademarks, service marks and other product and service names and logos in the Software or the Services are the proprietary marks of Plantcom or its licensors, and are protected by law and may not be copied, imitated or used, in whole or in part, without the consent of their respective owners. This Agreement does not grant you any rights in respect of any such marks. You agree to include all proprietary rights legends on all copies of the Software in the same form and location as the legends on or in the Software and you agree not to remove or attempt to remove any such legends. You understand and agree that any feedback, input, suggestions, recommendations, improvements, changes, specifications, test results, or other data or information that is provided or made available to us (whether directly or through a reseller) arising from or related to your use, testing, integration or evaluation of the Products, the Software or the Services (including any Beta Software or Beta Services), our website or the course of utilizing support, maintenance or other services, shall become our exclusive property and may be used by us to modify, enhance, maintain and improve our Software, Products and Services without any obligation or payment to you or to any of your customers whatsoever. The foregoing does not apply to any of your data or information that is transmitted or processed using our Software, Products or Services, provided however that you hereby grant to us the right to use such data or information and your registration information: (a) as reasonably required for the purposes for which it is provided it to us (whether directly or indirectly, including through a reseller), including for the provision of support, maintenance or other services; (b) to modify, enhance, maintain and improve our Products and Services and create or develop new software, products or services; (c) to understand and meet your needs and preferences; (d) to manage and develop our business and operations; and (e) to communicate with you including delivery of product information and notices related to software, products or services (including third party products or services). You represent, warrant and covenant that you will obtain all necessary consents, if any, required to permit us to collect, use, store, process, transmit, disclose and otherwise handle for our use and use by third parties for such purposes.

## **16. Confidentiality.**

16.1 You acknowledge that any unauthorized publication or disclosure to third persons of the Software or Services will cause immediate and irreparable harm to us. Consequently, you agree to take all reasonable steps to maintain the confidentiality of the Software and the Services and shall not, without our prior written consent, disclose, or make them available in any form to any other person. For greater certainty, the foregoing does not amend any separate rights or obligations of confidentiality between you and a reseller pursuant to a Reseller Agreement in respect of Reseller Products and Services.

**17. Personal Information.**

17.1 You represent and warrant that if and to the extent you use any of our Software, Products or Services to store personal information, that you will comply with all applicable laws regarding the collection, use, transmission, and storage of same, including by us in the course of providing the Services and have, as applicable, obtained all consents and rights in order to do so and to enable us to provide to you such Services and otherwise discharge our obligations hereunder, to the extent related to such personal information. For greater certainty, the foregoing does not amend any separate rights or obligations in respect of personal information between you and a reseller pursuant to a Reseller Agreement in respect of Reseller Products and Services.

**18. OUR PRODUCT WARRANTY.**

18.1 Subject to you complying properly and by the due date with all of your obligations we warrant that each Product (excluding all Software and any beta, test or demonstration products or product versions) will be free from defects in material and workmanship during the Warranty Period. For the purposes of this Section 18, "Warranty Period" means: (a) for purchased Products, the one year period commencing on the date of purchase of the Products; and (b) for rented Products, the term of the rental. Provided you properly complete and submit a request for warranty service through us or your reseller prior to the expiration of the Warranty Period and return such Product to us or your reseller at your expense and in accordance with applicable policies and procedures, we will repair or replace such Product, subject to the manufacturer of the Products continuing to trade and provide GPS Fleet Management products to us. Any changes or modifications made to any Products or any interference therewith, including interference by other programmes used on the computer on which the Product is operated, shall automatically result in termination of the Warranty. We reserve the right to replace such Product with a more current version or model in our sole discretion or refurbished units. We also reserve the right to charge you return shipping and a service fee if we determine that Products that have been returned do not perform substantially in accordance with their specifications. The remaining Warranty Period for any purchased Products we repair or replace under warranty is deemed to be the greater of: (a) the actual remaining Warranty Period; and (b) 90 days following the completion of such repair or replacement. To the maximum extent permitted by applicable law, the foregoing constitutes your sole and exclusive remedy and our sole and exclusive obligation for any breach of the foregoing warranty and no person will have any other entitlement, remedy or recourse, whether in contract, tort or otherwise, it being agreed that all of such other remedies, entitlements and recourse are expressly waived and released by you to the fullest extent permitted by law.

**19. Reseller Product Warranty.**

19.1 Resellers may offer extended warranty terms (the "Reseller Warranty") for our

Products under the terms of a Reseller Agreement with you and which vary from our warranty set out in Section 18 above and the warranty disclaimer in Section 20 below, in which case the Reseller Warranty will govern your warranty rights in between yourself and the reseller in the event of any conflict or inconsistency. However, we have no obligation or liability in respect of any Reseller Warranty.

## **20. Warranty Disclaimer.**

20.1 EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN SECTION 18 ABOVE, AND SUBJECT TO SECTION 19 ABOVE, YOU UNDERSTAND AND ACKNOWLEDGE THAT WE HAVE MADE THE PRODUCTS, SOFTWARE AND THE SERVICES AVAILABLE TO YOU ONLY ON AN "AS IS" BASIS, AND MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS WHATSOEVER REGARDING THE PRODUCTS, SOFTWARE, THE SERVICES OR YOUR USE OR INABILITY TO USE THE PRODUCTS, THE SOFTWARE OR THE SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN SECTION 18 ABOVE, AND SUBJECT TO SECTION 19 ABOVE, WE DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, QUIET ENJOYMENT OR QUIET POSSESSION AND THOSE ARISING BY STATUTE OR IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. SUBJECT TO SECTION 19 ABOVE, THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE PRODUCTS, THE SOFTWARE OR THE SERVICES REMAINS WITH YOU. WE CANNOT AND DO NOT REPRESENT, WARRANT OR COVENANT THAT: (a) ANY OF THE PRODUCTS, THE SOFTWARE OR THE SERVICES WILL MEET YOUR BUSINESS OR OTHER REQUIREMENTS; (b) THE PRODUCTS, THE SOFTWARE OR SERVICES WILL OPERATE OR BE PROVIDED WITHOUT INTERRUPTION; (c) THE PRODUCTS, THE SOFTWARE OR SERVICES WILL BE ERROR-FREE, VIRUS-FREE OR THAT THE RESULTS OBTAINED FROM THEIR USE WILL BE ACCURATE, RELIABLE OR CURRENT; (d) ALL ERRORS IN THE PRODUCTS, THE SOFTWARE OR THE SERVICES CAN BE CORRECTED OR FOUND IN ORDER TO BE CORRECTED. WE ACCEPT NO RESPONSIBILITY FOR, AND DO NOT WARRANT THE ACCURACY, CURRENCY OR RELIABILITY OF ANY REPORT, OUTPUT, DATA PREPARED BY OR WITH THE ASSISTANCE OF THE PRODUCTS, THE SOFTWARE OR THE SERVICES OR ANY OTHER RESULTS OBTAINED FROM THE USE OF THE PRODUCTS, THE SOFTWARE OR SERVICES. WHILST PLANTCOM WILL USE ITS BEST ENDEAVOURS TO FULFIL ORDERS IN A TIMELY MANNER, IT SHALL NOT HAVE ANY LIABILITY TO THE CUSTOMER FOR NON-DELIVERY OR LATE DELIVERY OF ANY PRODUCTS. NO ORDER PLACED BY A CUSTOMER FOR ANY PRODUCTS SHALL BE BINDING ON PLANTCOM UNLESS AND UNTIL ACCEPTED BY PLANTCOM IN WRITING.

## **21. Third Party Products and Services.**

21.1 We do not endorse, make no representation, warranty or condition with

respect to, and assume no responsibility, obligation or liability for, any third party products, software, data or services or the selection, implementation, use, interoperability or performance thereof, or any replacement or substitution thereof (including without limitation the replacement or substitution of any service provider or product supplier) or any function or feature thereof, or any failure, error, defect, interruption or inability to use any of the foregoing or the terms and conditions applicable to same or any breach thereof, whatsoever, or any third party products, software, data or services that you may require to use any features or functions of the Software, Products or Services, or any third party websites or similar facilities which we may identify or link to from our website, including without limitation vehicles, other geographic positioning or navigation devices, other communication devices, mapping software and data, computers, operating system software, networking equipment, other hardware or software or systems, website or similar site, internet service, telecommunications service, wireless service or cellular service, whether or not supplied directly or indirectly by us.

## **22. Warranty Exclusion.**

22.1 None of our directors, officers, agents, representatives or employees has any authority, express or implied, to make any representations, warranties or agreements not expressly set forth in this Agreement and subject to the limited remedies herein provided. You specifically disclaim that you are relying upon or have relied upon any such other representations or warranties that may have been made by any person, and acknowledge and agree that we have specifically disclaimed and do hereby specifically disclaim any such other representation or warranty made by any person. For greater certainty, this Section 22 does not apply to any representations, warranties or other terms in respect of Reseller Products and Services under a Reseller Agreement, including any Reseller Warranty.

## **23. Intellectual Property Infringement Claims.**

23.1 (a) We or if we so elect, Plantcom, will defend or, at our option, settle, any claim or action brought against you to the extent that it is based on a claim (an "Infringement Claim") that any of our Software, Products or Services which we have supplied to you directly or through an authorized reseller infringes any copyright, patent, trade secret or trademark of any third party (excluding any of your affiliates) and indemnify you against damages awarded against you by a court of competent jurisdiction by final order from which no appeal is taken or the time for appealing has expired, provided that you: (i) notify us promptly in writing of such claim; and (ii) permit us or Plantcom, as we may nominate, to defend, compromise or settle the claim or action and provide all available information, assistance and authority to enable us or Plantcom as the case may be to do so. We shall not be liable to reimburse you for any compromise or settlement made by you without our prior written consent, or for any legal fees or expenses incurred by you in connection with such claim. You shall have no authority to settle any Infringement Claim on our behalf or on behalf of

Plantcom. (b) Should any of our Software, Products or Services or any part thereof become, or in our sole opinion are likely to become, the subject of an Infringement Claim, we may: (i) procure, at no cost to you, the right to continue to use such Software, Products or Services which are the subject of the Infringement Claim; (ii) replace or modify the Software, Products or Services or infringing part thereof with non-infringing equivalents, at no cost to you; or (iii) if none of the foregoing alternatives are reasonably practical in our sole judgement, we may, in the case of Software or Services, terminate such services or the licenses for such Software or, in the case of Products, require you to return such Products and refund to you: (A) any prepaid but unused fees paid for such Software or Services, if any, which are pre-paid for a specified period of use; or (B) the purchase price paid by you to us for the Products returned, depreciated on a prime cost/straight-line basis over a 36 month period from the date of purchase; or (C) for any Software that is licensed on a perpetual basis in consideration for a one-time fee, the one-time fee that was paid, depreciated on a prime cost/straight-line basis over a 36 month period from the date of purchase. (c) We have no obligation or liability whatsoever in respect of any Infringement Claim that is based on: (i) in the case of any Software, the use of other than the latest release and version of such Software; (ii) the use of any Software, Products or Services in breach of this Agreement or any other agreement to which you are a party; (iii) the use, association or combination of any of our Software, Products or Services with any third party product, software, service, data, information or other material (including your own) that is not supplied by us or expressly identified by us in the documentation as being required for the use and operation of our Software, Products or Services, or the incorporation or integration into our Software, Products or Services of any third party product, software, service, data, information or other material (including your own) that is not supplied by us or expressly identified by us in the documentation as being required for the use and operation of our Software, Products or Services; (iv) the use or operation of any of our Software, Products or Services, in any manner or for any purpose other than as expressly specified in our documentation for same; (v) any modification, alteration, change, enhancement, customization or derivative work of the Software, Products or Services made by anyone other than us or our agents, or any use of data (including without limitation any use in, or in the preparation of, any analysis, compilation and report, or any use as input to generate any further data or information) that is collected through the operation of or generated by our Software, Products or Services, except as expressly specified in our documentation or expressly authorized by us in writing; (vi) the use of the Software, Products or Services in association with driving, driver or vehicle activity or performance for insurance purposes; or (vii) any reselling or distribution of our Software, Products or Services, unless you have entered into a reseller agreement with us which expressly provides for defence by us of Infringement Claims (collectively, the "Excluded Claims"). This Section 23 states our entire liability and your sole and exclusive remedies with respect to any Infringement Claim.

**24. Indemnification.**

24.1 YOU SHALL INDEMNIFY AND HOLD HARMLESS PLANTCOM AND THEIR RESPECTIVE AGENTS, SUPPLIERS, LICENSORS, SERVICE PROVIDERS, DISTRIBUTORS, SUB-DISTRIBUTORS, CONTRACTORS, SUCCESSORS OR ASSIGNS, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, AGENTS AND REPRESENTATIVES (EACH AN "INDEMNIFIED PARTY"), FROM AND AGAINST ANY AND ALL DAMAGES, LIABILITIES, COSTS, LOSSES AND EXPENSES (INCLUDING REASONABLE LEGAL COSTS AND FEES) ARISING FROM OR RELATED TO ANY CLAIM, DEMAND, COMPLAINT OR ACTION BY A THIRD PARTY (INCLUDING BUT NOT LIMITED TO ACTUAL OR ALLEGED INFRINGEMENT, VIOLATION OR MISAPPROPRIATION OF DOMESTIC OR FOREIGN PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS) WHICH AN INDEMNIFIED PARTY MAY SUFFER OR INCUR IN CONNECTION WITH YOUR BUSINESS ACTIVITIES OR IN ANY WAY ARISING OUT OF OR INCIDENT TO ANY EXCLUDED CLAIMS.

**25. Limitations of Liability.**

25.1 YOU AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR OUR OBLIGATIONS TO YOU PURSUANT TO SECTIONS 18 (OUR WARRANTY) AND 23 (INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS), IN NO EVENT SHALL THE LIABILITY OF ALL INDEMNIFIED PARTIES TO YOU HEREUNDER OR OTHERWISE IN RESPECT OF THE PRODUCTS, THE SOFTWARE OR THE SERVICES EXCEED THE AMOUNT YOU HAVE PAID FOR THE PRODUCTS OR SERVICES OR THE RIGHTS TO USE THE SOFTWARE IN THE TWO MONTH PERIOD IMMEDIATELY PRECEDING THE TIME THE CAUSE OF ACTION AROSE, SUBJECT TO ANY LESSER LIMITATION OF LIABILITY IN THE WIRELESS TERMS, IF APPLICABLE. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL ANY INDEMNIFIED PARTY, BE LIABLE OR OTHERWISE RESPONSIBLE FOR, AND YOU HEREBY WAIVE THE RIGHT TO MAKE ANY CLAIM WITH RESPECT TO: (i) SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING LOSS OF REVENUE OR PROFITS, LOSS OF DATA, BUSINESS INFORMATION OR LOSS OF USE THEREOF, FAILURE TO REALIZE EXPECTED PROFITS OR SAVINGS, COST OF CAPITAL, LOSS OF BUSINESS OPPORTUNITIES, LOSS OF GOODWILL OR ANY OTHER NON-DIRECT, PECUNIARY, COMMERCIAL OR ECONOMIC LOSS OR DAMAGE OF ANY KIND OR ANY CLAIM BY ANY THIRD PARTY; (ii) ANY LOSS OR DAMAGE ARISING FROM OR RELATED TO: (A) ANY CHANGES WE MAY MAKE TO THE SOFTWARE OR SERVICES; (B) ANY MODIFICATION, INTERRUPTION, SUSPENSION, FAILURE OR DISCONTINUANCE OF THE SERVICES; (C) ANY LOSS, DELETION, CORRUPTION OR FAILURE TO STORE OR TRANSMIT ANY OF YOUR DATA; (D) THE COMPLETENESS OR ACCURACY OF YOUR DATA OR ANY OTHER COMMUNICATIONS; (E) A THIRD PARTY'S UNAUTHORIZED ACCESS TO YOUR DATA OR COMMUNICATIONS TRANSMITTED THROUGH THE SERVICES; (F) YOUR FAILURE TO UPDATE YOUR REGISTRATION INFORMATION; (G) YOUR FAILURE TO KEEP YOUR LOGIN CREDENTIALS SECURE; OR (H) ANY ACCIDENT OR INJURY CAUSED BY OR TO A VEHICLE, WATERCRAFT OR AIRCRAFT OWNED

OR OPERATED BY YOU OR ANY OTHER PERSON IF THE ACCIDENT RESULTED FROM THE OPERATION OR FAILURE OF ANY PRODUCT OR SERVICE, IN EACH CASE, EVEN IF WE COULD FORESEE OR HAVE BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. FOR GREATER CERTAINTY, THIS SECTION 25 DOES NOT APPLY TO ANY REPRESENTATIONS, WARRANTIES OR OTHER TERMS IN RESPECT OF RESELLER PRODUCTS AND SERVICES UNDER A RESELLER AGREEMENT.

**26. Applicability.**

26.1 THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS AGREEMENT WILL APPLY IRRESPECTIVE OF THE NATURE OR FORM OF THE CLAIM, CAUSE OF ACTION, DEMAND, OR ACTION, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY AND SHALL SURVIVE A BREACH OF CONDITION, A FUNDAMENTAL BREACH OR BREACHES OR THE FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR OF ANY REMEDY CONTAINED HEREIN. YOU ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET FORTH HEREIN ARE INTEGRAL TO US MAKING THE SOFTWARE AND SERVICES AVAILABLE TO YOU, AND THAT, BUT FOR SUCH LIMITATIONS, EXCLUSIONS AND DISCLAIMERS, WE WOULD NOT AGREE TO ENTER INTO THIS AGREEMENT UNLESS SUBSTANTIAL FEES WERE CHARGED. BECAUSE SOME JURISDICTIONS DO NOT ALLOW SOME OR ALL OF THE EXCLUSIONS OR LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT, THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

**27. Termination.**

27.1 We reserve the right to terminate this Agreement in whole or in part without notice: (a) if you breach or otherwise fail to comply with any provision of this Agreement; (b) we determine that any registration information you submit or any update thereof is not true, accurate, complete or current; (c) you become insolvent or bankrupt; (d) you reorganize your business, make an assignment under or otherwise take advantage as a debtor of, bankruptcy or insolvency laws; (e) any steps are taken to windup or otherwise terminate your existence as a legal entity; (f) you cease operating or substantially change the nature of your business; or (g) you make an assignment under applicable bankruptcy or insolvency laws or have a receiver, administrator, controller or trustee appointed, unless such appointment is vacated within 30 days of such appointment. You may terminate the grant of rights to use the Software or the provision of Services by ceasing use of same. Upon any termination of this Agreement: (i) any and all rights granted to you under this Agreement shall immediately cease; (ii) you shall destroy all copies of the Software in your possession or control; (iii) if so requested by us, you shall certify in writing that all copies of the Software in your possession or control have been destroyed; and (iii) you shall cease all usage of the Services. We have no obligation to safeguard or transmit to you any data that you may have stored through the

use of the Services. It is your sole responsibility to retrieve any such data prior to termination. For greater certainty, the foregoing does not amend any separate rights or obligations between you and a reseller relating to the termination of a Reseller Agreement.

**28. Assignment.**

28.1 This Agreement, the Software, the Services and any rights granted to you under this Agreement may not be transferred or assigned by you (including, without limitation, the granting of any security interest in the Software), in whole or in part, whether voluntarily, by operation of law, or otherwise, without our prior written consent and any such attempted assignment or transfer shall be null and void. Notwithstanding the foregoing, you may assign your rights and obligations hereunder in connection with the sale and transfer of any Product which includes Software provided the assignee agrees to be bound by the terms and conditions of this Agreement. This Agreement will enure to the benefit of and be binding upon the respective successors and permitted assigns of you and us. This Agreement may be assigned by us in our sole discretion.

**29. Publicity.**

29.1 Subject to your prior written consent in each instance, we may identify you (including through the use of your company name or trade name) as a purchaser of our Products, or a user of our Software or Services and publishing or otherwise making available your name on marketing and advertising materials, including our website.

**30. Legal Proceedings.**

30.1 You agree that all claims, disputes or disagreements of any nature whatsoever arising from or relating to with this Agreement, the Software, the Services or us (a "Dispute") will be settled by will be settled by final and binding arbitration pursuant to the provisions of the Commercial Arbitration Act (QLD) 2011. Judgment upon the award rendered in any such arbitration may be entered in any court having jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award and an enforcement, as the law of such jurisdiction may require or allow. The arbitration panel will consist of a sole arbitrator mutually agreed to by the parties. In the event the parties are unable to agree upon an arbitrator, either party may apply to a court of competent jurisdiction for the appointment thereof. No person may be appointed as an arbitrator unless he or she is independent of the parties, is skilled in the subject matter of the Dispute and is not directly or indirectly carrying on or involved in a business being carried on in competition with the business of the parties. The venue for the arbitration shall be in the City of Adelaide, South Australia, unless otherwise agreed to by the parties in writing. You agree that the existence of any Dispute and any steps, proceedings or awards relating to the arbitration will be confidential. You agree to waive any



right you may have to commence or participate in any class action against us related to any Dispute and, where applicable, you also agree to opt out of any class proceedings against us. We reserve the right not to arbitrate Disputes involving: claims by us for contribution or indemnity; (ii) claims relating to infringement or violation of any intellectual property rights; (iii) claims involving third parties; or (iv) where we seek injunctive or other equitable relief. For greater certainty, the foregoing does not amend any separate rights or obligations between you and a reseller relating to claims, disputes or disagreements under a Reseller Agreement.

### **31. Choice of Law.**

31.1 This Agreement will be deemed to have been made and performed exclusively in the state of Queensland, and will be governed by and construed under the laws of the state of Queensland without giving effect to South Australia's conflict of laws principles and without reference to the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. You hereby irrevocably attorn to the exclusive jurisdiction of the courts of the state of Queensland for any claim related to this Agreement, the Software, Products or Services that is not subject to arbitration arising from or in connection with this Agreement and agree not to bring any action, claim, suit or proceeding against Plantcom, us, our affiliates or agents (or any officer, director, or employee thereof) in any jurisdiction other than the state of South Australia. For greater certainty, the foregoing does not amend the choice of law applicable between you and a reseller under a Reseller Agreement.

### **32. Entire Agreement.**

32.1 This Agreement constitutes the entire agreement between you and us with respect to the subject matter of this Agreement and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between you and us other than as expressly set forth in this Agreement. You represent and warrant that you have not been induced to enter into this Agreement by any statement, representation or warranty not contained in this Agreement. The headings in this Agreement are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

### **33. Severability.**

33.1 To the extent that any provision of this Agreement is declared by a court or other lawful authority of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed and deleted or limited so as to give effect to the intent of the parties insofar as possible and you and we will use our respective best efforts to substitute a new provision of like economic intent and effect for the illegal, invalid or unenforceable provision, and the

remainder of this Agreement shall continue in full force and effect with respect to all other provisions.

#### **34. Amendments and Waivers.**

34.1 No modification, amendment, addition to or waiver of any rights, obligations or defaults shall be effective unless in writing and signed by the party against whom the same is sought to be enforced. One or more waivers of any right, obligation or default shall be limited to the specific right, obligation or default waived and shall not be construed as a waiver of any subsequent right, obligation or default. No delay or failure on our part in exercising any right hereunder and no partial or single exercise thereof shall be deemed of itself to constitute a waiver of such right or any other rights hereunder.

#### **35. Notices.**

35.1 You agree to receive communications from us, including service notices and amendments to the Agreement through e-mail and postings on our website or communications transmitted through the Software or through the Services. We may also send notices to you by fax, post, personal delivery or courier sent to the most recent address or number you have provided through our website, the Software or the Services. You may send communications to use through our website, subject to this provision. You agree that legal claims and demands against us arising from this Agreement must be sent to us by personal delivery, registered post or courier to the Managing Director, Plantcom Pty Ltd, Unit 7/1029 Manly Road, Tingalpa QLD 4173, or such other address as we may advise you from time to time in accordance with this provision. Any notice will be deemed to be received: (i) if mailed, ten business days following mailing; (ii) if delivered by courier, three business days following acceptance for delivery by the courier; (iii) if delivered personally, on the actual day of delivery unless after business hours, in which case it will be deemed to be received the following business day; (iv) if delivered by e-mail, on the next business day following transmission; and (v) if delivered through our website, on the actual day where our website confirms the notice to have been delivered unless after business hours, in which case it will be deemed to be received the following business day. If you have entered into a Reseller Agreement, this Section 35 only applies to those notices regarding the Software and related Services provided by Plantcom, and does not apply to notices sent or received pursuant to the Reseller Agreement.

#### **36. Force Majeure.**

36.1 We will be relieved of our obligations under this Agreement and not be liable to you or to any third party if we are unable or fail to perform any of our obligations under this Agreement, including any failure or inability to provide any Service, as a result of any fire, explosion, war, riot, strike, walk-out, labour dispute, flood, shortage of water, power, labour or necessary materials or supplies, breakdown in or the loss of any computer or other facility, act of God

or public enemy, act of war or terrorism, any law, act or order of any court, board, government or other authority, or any other direct cause (whether or not of the same character as the foregoing) beyond our reasonable control, for so long as such cause prevents us from so performing.

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## **WIRELESS TERMS AND CONDITIONS**

### **37. Wireless Terms.**

37.1 You acknowledge that the services provided to us by the underlying carrier are made available only when the Products are in operating range of the facilities of the underlying carrier. In addition, the services of the underlying carrier may be temporarily refused, interrupted, or limited at any time because of: (a) limitations to facilities or services of the underlying carrier or its vendors; (b) transmission limitations caused by atmospheric, topographical, terrain, other natural or artificial conditions or other factors or causes outside of the underlying carrier's reasonable control; or (c) usage concentrations, modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of the services provided to us by the underlying carrier. Individual data transmissions may be involuntarily disconnected or delayed for a variety of reasons, including without limitation atmospheric conditions, topography, weak batteries, system over-capacity, movement outside a geographic locations in which the services are available from time to time and gaps in coverage within said geographic locations. None of us, an underlying carrier or a reseller shall incur any liability for the failure to provide adequate services. The underlying carrier and/or the reseller thereof reserve the right, in their sole discretion and without any obligation, to make improvements to, or correct any error or omission in any portion of the underlying carrier's network, which may or may not affect your access thereto. You acknowledge that services may be temporarily suspended or permanently terminated upon little or no notice in the event that our agreement with the reseller or the underlying carrier is suspended or terminated. You waive any and all claims against us, the reseller and the underlying carrier for such suspension or termination.

**38.** You acknowledge that: (a) it is possible for third parties to monitor wireless transmissions and data traffic over the facilities of the underlying carrier and neither privacy nor security can be guaranteed; (b) if you desire to secure transmission of data, you must provide for its own means of doing so; and (c) you assume full responsibility for the establishment of appropriate security measures to control access to its own respective equipment and information. YOU UNDERSTAND THAT PLANTCOM, WE, THE RESELLER AND THE UNDERLYING CARRIER CANNOT GUARANTEE THE SECURITY OF WIRELESS TRANSMISSIONS, AND THAT NONE OF PLANTCOM, US, THE RESELLER OR THE UNDERLYING CARRIER WILL BE LIABLE FOR ANY LACK OF SECURITY RELATING

TO THE USE OF THE SERVICES.

- 39.** The wireless communication services are furnished to you subject to the condition that there will be no unauthorized, abusive or fraudulent use of such services, the facilities used to provide such services or the Products (collectively the "Unauthorized Use"). You agree to make good faith efforts to minimize Unauthorized Use, to promptly report to us and the underlying carrier any Unauthorized Use of which you become aware, and to fully cooperate in any investigation or prosecution. Unauthorized Use includes, but is not limited to: (a) attempting or assisting another to access, alter or interfere with the communications of and/or information about another user of such services or the facilities used to provide such services; (b) tampering with or making an unauthorized connection to such facilities; (c) using or assisting another to use any scheme, false representation or false credit device, or other fraudulent means or devices in connection with such services; (d) installing any amplifiers, enhancers, repeaters, or other devices that modify the radio frequencies used to provide the services; (e) attempting or permitting anyone to attempt to use such services or facilities in such a manner so as to avoid incurring charges for usage, including without limitation the use of any mobile VOIP solution over such facilities; (f) using or assisting another to use any scheme, false representation, or false credit device, or other fraudulent means or devices in connection with the services; (g) using such services so as to interfere unreasonably with the use of such services by other users thereof or interfere with our, the underlying carrier's or the reseller's ability to provide such services; (h) using the such services to convey information that is obscene, salacious, abusive, prurient or unlawful; or (i) excessive data usage. Upon our discovery of any Unauthorized Use by you, we reserve the right to notify the underlying carrier and reseller to order you to cease (and you agree to cease) from engaging in such acts of interference. You acknowledge that services or SIMs may be suspended, limited, restricted, deactivated or cancelled without notice if we, the reseller or the underlying carrier, in our or its sole discretion, determine that you have engaged in any Unauthorized Use or there is a reasonable suspicion of Unauthorized Use.
- 40.** None of us, the reseller or the underlying carrier have any liability to you as a result of any such suspension, limitation, restriction, deactivation or cancellation. You further acknowledge that the underlying carrier may temporarily block automatic roaming in a particular portion of the territory that the underlying carrier services which is experiencing fraudulent usage. You shall have sole liability for charges, costs or damages resulting from: (a) any abuse or fraud facilitated by you, your employees, agents or persons authorized by you to use the services; (b) using or assisting another to use any scheme, false representation, or false credit device, or other fraudulent means or devices in connection with the services ("Subscription Fraud"); or (c) any failure to give prompt notice of suspected abuse or fraudulent use based on information available to you.

- 41.** You may use the services for web browsing, messaging, and similar activities on equipment approved by the underlying carrier and not on any other equipment. Unless explicitly permitted by the plan for your services, other uses, including for example, tethering a device to a personal computer or other hardware, are not permitted. Examples of prohibited uses include but are not limited to: (a) server devices or host computer applications, including continuous Web camera posts or broadcasts, automatic data feeds, or peer-to-peer (P2P) file-sharing applications that are broadcast to multiple servers or recipients, “bots” or similar routines that disrupt net user groups or email use by others or other applications that denigrate network capacity or functionality; (b) any activity that adversely affects the ability of other users or systems to use either the underlying carrier’s services or the network-based resources of others, including the generation or dissemination of viruses, malware or “denial of service” attacks or which interferes with the reseller’s or underlying carrier’s ability to provide services; (c) any activity that the underlying carrier in its sole discretion deems may harm its transmission facilities in any way, including any use of the services that interfere unreasonably with the underlying carrier’s ability to provide the services; (d) accessing, altering or interfering with, the communications, information, accounts or devices of others, confidential information or subscriber information or any activity relating to or causing a security breach, or to penetrate, or to attempt to penetrate, the underlying carrier’s or another entity’s network or systems or attempting or assisting another with any of the foregoing; (e) abuse or fraudulent use, including, without limitation: (i) tampering with or making an unauthorized connection to the underlying service provider’s network; (ii) installing any amplifiers, enhancers, repeaters, or other devices that modify the radio frequencies used to provide the services; (iii) Subscription Fraud; (iv) using the services to convey obscene, salacious or unlawful information; (v) using the services without permission on a stolen or lost device; (vi) any unauthorized use of services which includes the practices generally referred to as “counterfeiting,” “cloning fraud,” or “tumbling fraud” ; (vii) using the services to provide voice over IP services; (viii) extensive use of the services outside of the areas where the underlying carrier is licensed to provide the services and is providing the services, which area changes from time to time, in such a manner as to unreasonably increase the costs of the underlying carrier; or (ix) excessive data usage.
- 42.** You understand and acknowledge that we are bound by certain obligations under a written agreement with the underlying carrier and that the underlying carrier has also established rules, policies and procedures governing the provision of the wireless communication services and may, from time to time, develop and adopt new rules, policies and procedures. You agree to comply with all such obligations, rules, policies and procedures, new or otherwise, related to any of the foregoing, as we request from time to time.
- 43.** You will be fully responsible for all SIMs purchased from us. You agree not to remove such SIMs from the Products or use such SIMs in connection with any



services other than the wireless communication services provided by Plantcom, us and the reseller and/or underlying carrier from whom such SIM is procured. You understand that the reseller or the underlying carrier retains ownership of the SIMs. You must not insert a SIM into any device other than the Product for which it has been designated and which has been approved by the underlying carrier, including without limitation any device bearing the mark of an underlying carrier or purchased from any underlying carrier where the device was packaged with an underlying carrier SIM. You must not provide, sell or transfer in any manner any SIM, whether separately or together with any device, to any individual or entity or program, reprogram, or tamper with any SIM in any manner. You will be responsible for any and all charges and other fees incurred with respect to the SIMs supplied to you by us, including fees for unauthorized services (e.g. voice services). You understand and acknowledge that you may not use any Product or any SIM for any voice calls and the underlying carrier has implemented measures to block voice calls. In the event you are able to make any voice calls, you understand and acknowledge that additional fees will be payable for same.

**44.** SUBJECT TO NUMBER PORTABILITY RULES UNDER APPLICABLE LAW, YOU HAVE NO PROPERTY RIGHT IN ANY CODE OR IDENTIFIER (INCLUDING ANY NUMBER, PHONE NUMBER, IMEI, IMSI, UNIQUE NETWORK IDENTIFIER, INTERNET PROTOCOL (IP) ADDRESSES, PERSONAL IDENTIFICATION NUMBER OR E-MAIL ADDRESS) ISSUED TO, ASSIGNED TO OR ASSOCIATED WITH YOU OR ANY PRODUCT USED BY YOU IN CONNECTION WITH THE SERVICES PROVIDED TO US BY THE UNDERLYING CARRIER (EACH, AN "IDENTIFIER"). YOU ACKNOWLEDGE THAT THE UNDERLYING CARRIER MAY CHANGE ANY IDENTIFIER AT SUCH TIME OR TIMES AS THE UNDERLYING CARRIER, CONSIDERS NECESSARY WITHOUT ANY LIABILITY WHATSOEVER, WHETHER ON OUR PART OR THE PART OF THE UNDERLYING CARRIER. YOU FURTHER ACKNOWLEDGE AND AGREE THAT DYNAMIC IP ADDRESSES MAY BE USED WITH RESPECT TO THE PRODUCTS WHICH IP ADDRESSES WILL CHANGE WHENEVER A PRODUCT IS DISCONNECTED FROM AND THEN RECONNECTED TO THE FACILITIES OF THE UNDERLYING CARRIER OR AFTER AN ELAPSED PERIOD OF TIME.

**45.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOU HAVE NO CONTRACTUAL RELATIONSHIP WHATSOEVER WITH THE UNDERLYING CARRIER OR THE RESELLER OF ANY UNDERLYING CARRIER, AND THAT YOU ARE NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN PLANTCOM OR US AND THE UNDERLYING CARRIER, BETWEEN PLANTCOM OR US AND ANY RESELLER OF ANY UNDERLYING CARRIER, OR BETWEEN ANY RESELLER AND ANY UNDERLYING CARRIER. YOU ALSO UNDERSTAND AND AGREE THAT ANY AGREEMENT BETWEEN US AND A RESELLER DOES NOT CREATE A CONTRACTUAL RELATIONSHIP BETWEEN US AND THE UNDERLYING CARRIER OF SUCH RESELLER. IN ADDITION, YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE UNDERLYING CARRIER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AND SHALL HAVE NO LEGAL, EQUITABLE, OR



OTHER LIABILITY OF ANY KIND TO YOU, INCLUDING WITHOUT LIMITATION FOR ANY DAMAGES WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL, REGARDLESS OF THE FORM OF THE ACTION, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, IN TORT OR OTHERWISE.

- 46.** You expressly understand and agree that the liability and obligations of us or the underlying carrier to you are strictly controlled and limited by the underlying carrier's tariff, if any, and the laws, rules and regulations of the governmental authorities which from time to time have jurisdiction.
- 47.** YOU ACKNOWLEDGE AND AGREE THAT, REGARDLESS OF THE FORM OF ACTION, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, IN TORT OR OTHERWISE, YOUR EXCLUSIVE REMEDY AGAINST PLANTCOM AND/OR US, AND THE EXCLUSIVE REMEDY WE OR PLANTCOM HAVE AGAINST AN UNDERLYING CARRIER OR A RESELLER THEREOF, AND THE TOTAL LIABILITY OF PLANTCOM, US, ANY RESELLER, THE UNDERLYING CARRIER OR ANY SUPPLIER OF SERVICES TO YOU FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO THOSE ARISING IN ANY WAY IN CONNECTION WITH THE SERVICES, IN CONNECTION WITH OUR AGREEMENT WITH AN UNDERLYING CARRIER OR A RESELLER THEREOF, OR ANY FAILURE OR DISRUPTION OF SERVICES, IS LIMITED TO PAYMENT OF DAMAGES IN AN AMOUNT NOT TO EXCEED THE AMOUNT PAID TO US FOR THE SERVICES DURING THE ONE (1) MONTH PERIOD PRECEDING THE DATE THE CLAIM AROSE. IN NO EVENT SHALL WE, PLANTCOM, ANY RESELLER OR THE UNDERLYING CARRIER BE LIABLE FOR ANY COST, DELAY, FAILURE OR DISRUPTION OF SERVICE, LOST PROFITS (DIRECT OR INDIRECT) OR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL WE, ANY RESELLER OR THE UNDERLYING CARRIER BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING OUT OF OR RELATED TO THE FAILURE OR INCOMPATIBILITY OF EQUIPMENT UTILIZED BY YOU IN CONNECTION WITH THE SERVICES; INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICE WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT OR NETWORKS PROVIDED BY US OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS OR INTERRUPTIONS; ANY INTERRUPTION OR ERROR IN ROUTING OR COMPLETING CALLS OR OTHER TRANSMISSIONS (INCLUDING 000 CALLS OR ANY SIMILAR EMERGENCY RESPONSE NUMBER); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS, OR DESTRUCTION OF YOUR OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORK, OR SYSTEMS. YOU SHALL USE EQUIPMENT AT YOUR OWN RISK.
- 48.** YOU SHALL INDEMNIFY, DEFEND (IF REQUIRED BY US OR THE UNDERLYING CARRIER) AND HOLD HARMLESS PLANTCOM, US, THE RESELLER AND THE UNDERLYING CARRIER SUPPLYING SERVICES TO US, AND THE OFFICERS, EMPLOYEES, AND AGENTS OF EACH OF THEM FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LOSSES, EXPENSES, LIABILITY OR DAMAGES

(INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS), INCLUDING WITHOUT LIMITATION CLAIMS FOR LIBEL, SLANDER, INFRINGEMENT OF COPYRIGHT, PROPERTY DAMAGE OR PERSONAL INJURY OR DEATH, ARISING IN ANY WAY DIRECTLY OR INDIRECTLY IN CONNECTION WITH ANY AGREEMENT BETWEEN US AND THE RESELLER OR THE UNDERLYING CARRIER OR THE USE, MISUSE, FAILURE TO USE, OR INABILITY TO USE THE SERVICES OR ANY IDENTIFIER. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT. THIS PROVISION WILL SURVIVE THE TERMINATION OF ANY SERVICES PROVIDED TO YOU AND ANY RELATED AGREEMENT FOR SAME. YOU ACKNOWLEDGE THAT SUCH AGREEMENT IS ASSIGNABLE BY US.

- 49.** Subject to the terms of the Agreement, unless you provide express consent or disclosure is pursuant to a legal power, all information kept by us, the reseller or the underlying carrier regarding you, other than your name, address and listed telephone number, is confidential and may not be disclosed by us, the reseller or the underlying carrier to anyone other than: (a) you; (b) the underlying carrier or the reseller; (c) a person who, in our reasonable judgement or that of the underlying carrier or the reseller, is seeking the information as your agent; (d) another telecommunications carrier, telephone company or other person providing services to a telecommunications carrier, provided the information is required for establishment of, or the efficient and cost-effective provision of services and disclosure is made on a confidential basis with the information to be used only for that purpose; (e) a company involved in supplying you with telephone or telephone directory related services, provided the information is required for that purpose and disclosure is made on a confidential basis with the information to be used only for that purpose; (f) an agent retained by the us, the reseller or the underlying carrier in the collection of your account, or to perform other administrative functions for us, the reseller or the underlying carrier, provided the information is required for and is to be used only for that purpose; (g) to a law enforcement agency whenever we or the underlying carrier has reasonable grounds to believe that you have knowingly supplied us or the underlying carrier with false or misleading information or you are otherwise involved in unlawful activities; or (h) a public authority or agent of a public authority, if in our reasonable judgment or that of the underlying carrier, it appears that there is imminent danger to life and property which could be avoided or minimized by disclosure of the information. Express consent may be taken to be given by you where the you provide: (i) written consent; oral confirmation by an independent third party; (iii) electronic confirmation through the use of a toll-free number; (iv) electronic confirmation via the internet; (v) oral consent, where an audio recording of the consent is retained by us; or (vi) consent through other methods, as long as an objective documented record of customer consent is created by us or by an independent third party.
- 50.** This section applies only to the provision of emergency services on a mandatory basis. In respect of the provision of emergency services on a mandatory basis, we are not liable for: (a) libel, slander, defamation or the



infringement of copyright arising from material or messages transmitted over the network provided by us or the underlying carrier from your property or premises or recorded by your equipment or our equipment; (b) damages arising out of your act, default, neglect or omission in the use or operation of equipment provided by us; (c) damages arising out of the transmission of material or messages over the network provided by us or the underlying carrier on your behalf which is in any way unlawful; or (d) any act, omission or negligence of other companies or telecommunications systems when their facilities are used in establishing connections to or from your facilities and equipment. Furthermore, except in cases where negligence on our part results in physical injury, death or damage to your property or premises, our liability for negligence related to the provision of emergency services on a mandatory basis is limited to the greater of \$20 and three times the amount (if any) we would otherwise be entitled to receive as a refund for the provision of defective service. However, subject to the terms of the Agreement, our liability is not limited by this section in cases of deliberate fault, gross negligence or anti competitive conduct on our part or in cases of breach of contract where the breach results from our gross negligence.

- 51. YOU HEREBY ACKNOWLEDGE THAT WE ARE ACTING AS AGENT TO THE UNDERLYING CARRIER SUPPLYING SERVICES TO US FOR THE LIMITED PURPOSE OF SECURING PERFORMANCE OF THE PROVISIONS IN THESE TERMS.**
- 52. THE UNDERLYING CARRIER'S SERVICES DO NOT INCLUDE ANY VOICE SERVICES.**
- 53. THE SIM SUPPLIED WITH THE PRODUCTS WE OR OUR RESELLERS HAVE SUPPLIED TO YOU AND MAY ONLY BE USED IN SUCH PRODUCTS AND IN NO OTHER WIRELESS DEVICE.**
- 54. YOU MAY ONLY ROAM INCIDENTALLY TO YOUR USE OF THE SERVICES IN YOUR COUNTRY OF RESIDENCE. THE UNDERLYING CARRIER MAY, AT ITS DISCRETION, AND TO THE EXTENT PERMITTED UNDER ITS AGREEMENTS WITH ITS VENDORS, PROVIDE CERTAIN ROAMING SERVICES TO YOU IN OTHER TERRITORIES THAT THE UNDERLYING CARRIER HAS MADE AVAILABLE TO US. ANY SUCH ROAMING SHALL BE SUBJECT TO THE RESTRICTIONS THAT MAY EXIST IN THE RESPECTIVE AGREEMENTS BETWEEN SUCH PERSONS. THE UNDERLYING CARRIER OR ITS VENDORS MAY IN THEIR SOLE DISCRETION SUSPEND ROAMING PRIVILEGES TO YOU IF THEY DISCOVER OR SUSPECT THAT THE SERVICES ARE BEING USED IN A FRAUDULENT MANNER. THE UNDERLYING CARRIER SHALL BE ENTITLED FROM TIME TO TIME AND AT ANY TIME, AT ITS SOLE DISCRETION, TO ADD, MODIFY OR REMOVE TERRITORIES WHERE ROAMING SHALL BE AVAILABLE TO YOU. YOU ACKNOWLEDGE THAT NOT ALL WIRELESS COMMUNICATION SERVICES ARE AVAILABLE IN EACH TERRITORY WHERE ROAMING IS AVAILABLE AND ROAMING IN CERTAIN TERRITORIES IS ONLY AVAILABLE FOR USE WITH PRODUCTS USING CERTAIN FORMS OF TECHNOLOGY. None of us, an underlying carrier or a reseller thereof makes any warranties or representations as to the availability or quality of roaming**



service provided by other wireless carriers, where available, and none of us, an underlying carrier or a reseller thereof shall have any liability whatsoever for any errors, outages, or failures of roaming services provided by other wireless carriers. You understand and acknowledge that the services may not be used for devices to be permanently deployed outside your country of residence.

- 55.** You have no right to receive, and we have no obligation to provide to you, a separate bill for wireless communication services provided by the underlying carrier or otherwise show such services as a separate item on our price quotes, pricing schedules or our invoices to you.
- 56.** You will only use the wireless communication services for customary purposes and in compliance with law, and will comply with any policies, rules or guidelines communicated to you by us, including safe driving and health and safety guidelines.
- 57.** You will not use the wireless communication services to operate an e-mail, web or news service (provided for greater certainty that the use of our tracking and fleet management solution does not constitute such a service), use the wireless communication services to transmit or send any annoying, inappropriate, improper, excessive, threatening or obscene material or to otherwise harass, offend, threaten, embarrass, distress or invade the privacy of any person; engage in any activity that could compromise the security of or disrupt or interfere with the wireless communication services or any network or computers on the Internet or disrupt or interfere with the services of any Internet access provider; reproduce, alter, adjust, repair or tamper with any signalling, identification (including the MIN, ESN, IMEI, IMSI, and other numbers) or transmission function or component of any device used with the wireless communication services, and will not permit anyone other than a person authorized by the underlying carrier to do so.
- 58.** The wireless communication services are provided on an “as is” and “as available” basis. Your use of the wireless communication services is at your sole risk.
- 59.** Plantcom and the underlying carrier are not responsible for and shall not have any liability to you for (a) libel, slander, defamation or the infringement of copyright arising from material or messages transmitted over our telecommunications network or that of the underlying carrier or recorded on our equipment or that of the underlying carrier; (b) damages arising out of your act, default, neglect or omission in the use or operation of equipment activated on our telecommunications networks or those of the underlying carrier; (c) damages arising out of the transmission of material or messages over our telecommunications network that of underlying carrier on your behalf which is in any way unlawful; or (d) any act, omission or negligence of other companies or telecommunications systems in relation to the provision



of the wireless communication services when the facilities of such other companies or telecommunications systems are used in establishing connections to or from facilities and equipment controlled by you.

- 60.** When roaming outside of the underlying carrier's coverage area, you are responsible for all applicable charges, and are subject to the terms and conditions of service (including limitations of liability) imposed by the wireless service provider providing the roaming services. Charges for roaming calls may be billed in the months after the calls were made.
- 61.** You will indemnify us and the underlying carrier against all manner of actions, claims, damages, liabilities and judgments (including legal fees and courts costs) (collectively, "Claims") sustained by or made against Plantcom, us or the underlying carrier by a third party in connection with the use of our fleet tracking and management solution or the wireless communication services by you or any other person including any Claims sustained by or made against Plantcom, us or the underlying carrier arising out of or in connection in any way with your inability or the inability of any other person to use the wireless communication services or any failure or interruption of the wireless communication services.
- 62.** You must read all collateral materials concerning service and use of the equipment, including, without limitation, any welcome guide, plan brochures, coverage maps, and materials related to equipment and accessories and any additional printed materials and consumer information specified by the underlying carrier from time to time, including any acceptable use policy, which may be found at the underlying carrier's website. Use of the service is subject to restrictions and prohibitions described in the foregoing. The underlying carrier may revise any of the foregoing at any time without notice. You must provide your place of primary use ("PPU") when ordering service in connection herewith, which must be your residential or business street address and which must be within the underlying carrier's service area.
- 63.** The underlying carrier collects information about the approximate location of equipment in relation to its cell towers and the Global Positioning System ("GPS"). The underlying carrier uses that information, as well as other usage and performance information also obtained from its network and the equipment, to provide the services and to maintain and improve its network and the quality of the wireless experience. The underlying carrier may also use location information to create aggregate data from which your personally identifiable information has been removed or obscured. Such aggregate data may be used for a variety of purposes such as scientific and marketing research and services such as vehicle traffic volume monitoring. You understand and agree that the underlying carrier may collect and use location information from your equipment. The equipment may also be capable of purchasing and using optional goods, content and services offered by the underlying carrier or third parties that make use of the equipment's location



information ("Location-Based Services"). It is your responsibility to read the information and the associated privacy policy for each Location-Based Service to learn how the location information will be used and protected. You may refer to the underlying privacy policy at the underlying carrier's website for additional details.

64. You acknowledge that you are acquiring the services as a part of the Services for your use only and not for the purposes of re-licensing, resale, or redistribution without integration with other products and/or services. You must not resell the wireless communication services (either as part of our fleet management and tracking solution or otherwise).
65. We may terminate the provision of wireless communication services to you without notice or any further obligation or liability if the agreement with our underlying carrier governing the provision thereof expires or terminates.
66. If our agreement with an underlying carrier or a reseller thereof is terminated, you may be able to continue the provision of services, provided however that such continued provision may be subject to such underlying carrier's or reseller's then-current terms and conditions.
67. The underlying carrier and/or its reseller is a third party beneficiary of these terms, and may take any equitable or legal action required to enforce same.
68. We may change, modify or amend these terms at any time in accordance with the terms of the Agreement, provided however the notice period applicable will be 15 days.

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#### **Internet Bandwidth Services - Acceptable Use Policy**

69. With respect to any Internet Bandwidth Services, you shall not use and shall not permit such Internet Bandwidth Services or any related Services to be used, including any use by your employees, agents, representatives, clients, contractors, end-users and any third parties who use or access such Services (collectively, "Users"), in any manner which: (i) could cause loss or degradation of our service or our service providers' service to any of other of our or their customers or Internet users; (ii) could compromise the security or integrity of others' computer systems or software; (iii) creates, collects, transmits, stores or exchanges any material in violation of any applicable laws; or (iv) would be reasonably expected to constitute grounds for our or our service providers' exposure to civil or criminal liability.
70. The acts and omissions of Users shall be deemed to be your acts and omissions for the purposes hereof (including for purposes of liability) and you shall be held directly accountable for any actual or attempted contravention of this Acceptable Use Policy ("AUP") by any User. If we or our service providers detect or becomes aware of any

use of any Internet Bandwidth Services in contravention of this AUP, we and our service providers will favour responses that address the breach while minimizing any disruption of the Internet Bandwidth Services or other Services. For example, if the contravention is ongoing and the contravention puts the ongoing operation of our or our service providers' data centres or the provision of Services to our or our service providers' other customers in jeopardy, or exposes us or our service providers to civil or criminal liability, we or our service providers may suspend the Internet Bandwidth Services and any related Services and inform you of the suspension. If the contravention does not put the ongoing operation of us or our service providers' data centres or the provision of Services to us or our service providers' other customers in jeopardy or expose us or our service providers to civil or criminal liability, we will inform you of the contravention. Once informed of any such contravention, you will take reasonable steps to promptly stop any ongoing contravention and mitigate the effect of the contravention.

- 71.** We and our service providers reserve the right to change this AUP from time to time and will notify you by posting a revised copy of the AUP at our website or by such other method of communication as we or our service providers determine appropriate.

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### **Posted Speed Limit Data - End-User Terms**

The posted speed limit data ("Data") is provided for your personal, internal use 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 Plantcom ("Plantcom", "we" or "us") Plantcom and its licensors (including their licensors and suppliers) on the other hand.



## Terms and Conditions

### **72. Internal Business Use Only.**

72.1 You agree to use this Data together with our Products and Services for the internal 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 internal 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.

### **73. Restrictions.**

73.1 Except where you have been specifically licensed to do so by us, 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.

### **74. Warning.**

74.1 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.

### **75. No Warranty.**

75.1 This Data is provided to you "as is," and you agree to use it at your own risk. We and our 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.

### **76. Disclaimer of Warranty.**

76.1 WE PLANTCOM 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, Territories and Countries do not allow certain warranty exclusions, so to that extent the above exclusion may not apply to you.

### **77. Disclaimer of Liability.**

77.1 WE AND OUR 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 DATA; 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 THE DATA, ANY DEFECT IN THE DATA, OR THE BREACH OF THESE TERMS OR CONDITIONS, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF WE OR OUR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Some States, Territories and Countries do not allow certain liability exclusions or damages limitations, so to that extent the above may not apply to you.

**78. Export Control.**

78.1 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.

**79. Entire Agreement.**

79.1 These terms and conditions constitute the entire agreement between us Plantcom and its licensors, including their licensors and suppliers, and you pertaining to the subject matter hereof, and supersedes in their entirety any and all written or oral agreements previously existing between you and us with respect to such subject matter.

**80. Governing Law.**

80.1 The above terms and conditions shall be governed by the laws of the state of Queensland, 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 is explicitly excluded. You agree to submit to the jurisdiction of the state of Queensland for any and all disputes, claims and actions arising from or in connection with the Data provided to you hereunder.

IN WITNESS THEREOF, the undersigned Parties have caused this Agreement to be signed on its behalf by a duly authorized individual or officer as of the Effective date in this Agreement.