

End User License And Terms of Purchase Agreement

Terms and Conditions

This End User License and Terms of Purchase Agreement (the "Agreement") is made and entered into immediately by signing or otherwise electronically accepting this Agreement and is between you ("You" or "Your") and ElasticM2M, Inc ("ElasticM2M"). You are bound to the terms of this Agreement.

1. **ACCEPTANCE:** This Agreement constitutes the entire agreement and understanding between You and ElasticM2M and supersedes all previous proposals, oral or written, and all other communications between the parties relating to the purchase of Services (defined below) from ElasticM2M. YOUR SIGNATURE (THROUGH ELECTRONIC ACCEPTANCE) OF THIS AGREEMENT CONSTITUTES ACCEPTANCE OF ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT. This Agreement applies to the Global Positioning System Device and harness ("Device") which you have purchased and online data services and related software ("Services") you purchase from ElasticM2M or ElasticM2M's distributor or agents. In connection with the Device and Services You are activating through this Agreement, ElasticM2M may modify this Agreement at any time by providing You notice or by asking You to accept a new version of the Agreement. Notice may be provided with a Software update or by posting the updated Agreement on the ElasticM2M website. If you do not agree with the modification, then you may not use the Device, Services or Software; your continued access or use of the Services and or Software after notice indicates your acceptance of the modified terms.
2. **LOCATION, TELEMETRY AND DATA COMMUNICATIONS SERVICE:** If properly installed, registered, maintained and used, the Device and Services will enable You to view your vehicle's whereabouts, notifications of ElasticM2M defined location, telemetry and operation events as ElasticM2M may elect to provide from time to time, or send specific commands to the Device by logging onto the ElasticM2M internet websites using standard web browsers or using the ElasticM2M mobile application, subject to the Limitations of Technology set out in Section 20. In consideration for the Subscription plan fees, wireless network service and related software for use in the United States of America under this Agreement ("Subscription Plan") will be included with the purchase of the Device and You acknowledge and agree that the Subscription Plans do not include any voice services and that Full use of the ElasticM2M mobile application require Your own mobile device, with its own airtime, voice services and data plan. The Device is not intended to provide access to emergency personnel or services. You are responsible for the use of Your Devices and You agree to comply with all applicable laws, ordinance, rules and regulations of applicable federal, state, local or foreign government and any agency or public authority thereof, and to hold ElasticM2M, its subsidiaries and its suppliers harmless from liability or loss by reason of asserted or established violation of said laws, rules, or regulations by You, Your agents or representatives. ElasticM2M reserves the right to disable the service if significant international roaming fees are incurred or if ElasticM2M in its sole discretion determines illegal or misuse of the Device and or Service. All Devices come with a three (3) year Subscription Plan. After your Subscription Plan has expired, an annual charge thereafter is required to continue service. You acknowledge and agree that the form and nature of the Software, Services and Subscription Plans that ElasticM2M provides may change from time to time without prior notice to You.
3. **STOLEN VEHICLE RECOVERY CALL CENTER SERVICES:** The Services have no direct connection to any law enforcement agency or emergency services personnel. Use of the Services is limited to use within the United States of America. You have sole responsibility for reporting Your vehicle that is registered and fitted with the Device as stolen to the appropriate law enforcement agency or emergency services personnel and You have sole responsibility for filing a stolen vehicle report with the relevant law enforcement agency and obtaining the correct contact details and a stolen vehicle report case number before calling the Stolen Vehicle Recovery Call Center. You will be able to call the Stolen Vehicle Recovery Call Center 24 hours a day 7 days a week. You must have an unexpired Subscription Plan on the stolen vehicle and You will need to provide satisfactory identification, the vehicle Identification Number ("VIN") which must be the same as the VIN registered on the Subscription Plan, provide the appropriate law enforcement contact details and stolen vehicle report case number. Law enforcement must be treating the vehicle in which the Device is installed and is registered with an active Subscription Plan as stolen before any vehicle location data will be shared with any law enforcement agency on your behalf. The Stolen Vehicle Recovery Call Center will call the law enforcement agency contacts that You provide with the stolen vehicle report case number You provide and supply a temporary token for them to track your vehicle location. It is Your sole responsibility to ensure the law enforcement contact details and stolen vehicle report case number are correct.
4. **DISCLOSURE OF RELATIONSHIP WITH SERVICE PROVIDERS:** You understand that the Device and services provided by ElasticM2M depend upon services provided by third parties ("Service Providers") pursuant to agreements between such Service Providers and ElasticM2M and are subject to certain terms, conditions and limitations set out in such agreements. You expressly understand and agree that you have no contractual relationship with such Service Providers. You acknowledge and agree that your Service may be temporarily suspended or permanently terminated upon little or no notice in the event that ElasticM2M's agreement with the Service Provider is terminated. You understand that ElasticM2M and Service Provider cannot guarantee the security of data transmissions and will not be liable for any lack of security relating to the use of Service Providers or the transmission of data. You further acknowledge that the Service Providers disclaim all liability of any nature to you, whether direct, indirect, incidental or consequential, arising out of use of the Device and Services, and you agree that you shall have no claims against the Service Providers of any kind with respect thereto and that ElasticM2M is acting as an agent to Service Providers. In addition, you expressly agree that the agreement and terms in this Section 4 shall survive the termination of this agreement.

5. PRIVACY DISCLOSURES AND SECURITY:

(A) User ID and password – During the registration process for your Device and Services you created a user id and password that allows you to have access to the Services through the website or mobile application. You will not provide your user id or password to to any other person or entity, or allow any other person or entity to access Services provided to you under your user id and password. You agree that you are solely responsible for any actions that occur under your user id and password. In the event that your user id and password becomes known by a third party you agree to notify ElasticM2M immediately at support@ElasticM2M.com.

(B) Services may access Your phone location and Your identity to determine your precise or approximate location using GPS and or network-based location and You authorize this access. Failure to allow any or all of these permissions may result in your inability to use all of some of the features of the Services and ElasticM2M shall no liability for such failures. Location services must be on for some Service functionality.

(C) Information collected and analyzed by Services can include but is not limited to, Internet protocol (IP) address or any other identifying information for the Device, your mobile device on which mobile application software is installed; login; e-mail address; password; vehicle and mobile device GPS coordinates, vehicle details such as make, model, year, color, vehicle odometer estimate, vehicle data bus information captured by the Device such as vehicle data bus information captured via a standardized (OBD) connector, computer and connection information such as browser type, version, and time zone setting, browser plug-in types and versions, operating system, and platform; purchase history; the full Uniform Resource Locator (URL) clickstream to, through, and from our site, including date and time; cookie number; products you viewed or searched for; the phone number you used to call our phone number; device ID and call information; cellular data settings; and identity. We may also use data on certain parts of our Services applications for fraud prevention and other purposes.

(D) We may use software to measure and collect session information, including page response times, download errors, length of visits to certain pages, page interaction information (such as scrolling, clicks, and mouse-overs), and methods used to browse away from the page. You understand and agree that in conjunction with employee training, quality control and the provision of the Software and Services, ElasticM2M and or its agents or Service Providers may monitor the activities and location of You and Your Vehicle and the usage of the Services.

(E) You understand that privacy cannot be guaranteed on the ElasticM2M Services or other systems such as those used in order to provide the Services, and ElasticM2M will not be liable to You or any other third party for any claims, loss, damages or costs which may result from a lack of privacy. You assume full responsibility for the establishment of appropriate security measures to control access to Your respective equipment and information.

6. CONSENT TO THE USE OF DATA: You understand and Agree that you are granting a license to collect and store user data, You and Your vehicle's location and Your vehicles telemetry data ("User Data") within the system, that the collected data is solely owned by ElasticM2M and agree that anonymous analytics derived from the User Data may be used, marketed, sold and maybe used to provide additional features including but not limited to service alerts, maintenance reminders, dealer product and service offers. You agree that location and telemetry data may be provided to ElasticM2M employees, agents and representatives, law enforcement agencies, emergency services, third-party Service Providers, wireless carriers or other persons for the purpose of providing Services, or in response to a subpoena or other legal process, and grant any licenses required for that use. ElasticM2M may use User Data to provide additional products such as dealer product and service offers or maintenance service reminders and you grant your dealership the right to use some User Data to determine and advise You of product and service offers and or service check reminders and derive engine diagnostics. You also consent and agree to the use of Your personal information to (i) administer Your account, including for credit and collections purposes. YOU AGREE THAT YOU, YOUR EMPLOYEES, AGENTS OR REPRESENTATIVES WILL NOT USE DEVICE AND OR SERVICES DIRECTLY OR INDIRECTLY FOR UNLAWFUL, IMPROPER OR PROHIBITED PURPOSES AND THAT IT IS YOUR RESPONSIBILITY TO ADVISE ALL OWNERS, OPERATORS OR OCCUPANTS OF YOUR VEHICLE, EQUIPPED WITH A DEVICE OR ElasticM2M SOFTWARE ABOUT HOW INFORMATION ABOUT THEM MAY BE COLLECTED, USED AND DISCLOSED BY ElasticM2M AND TO TAKE ANY AND ALL SUCH ACTIONS AS NECESSARY TO COMPLY WITH ALL LAWS, RULES AND REGULATIONS APPLICABLE TO USE OF DEVICE AND OR SERVICES.

7. INSTALLATION: Improper Device installation including location may result in complete or partial loss of functionality of the Device and Services purchased under this Agreement. The device must be installed by an ElasticM2M approved installer. It is solely Your responsibility to ensure that the Device is properly installed at all times. ElasticM2M will not be liable to You or to any person for any loss or damage caused by improper installation of the Device, including any loss of Services functionality due to improper installation. You agree to indemnify and hold ElasticM2M harmless from any and all claims or damages You or any person may have for any loss or damage caused by improper installation of the Device. IF A SUBSCRIBER IDENTITY MODULE ("SIM") CARD IS SUPPLIED WITH THE DEVICE IT MAY ONLY BE USED WITH THE DEVICE IT WAS SUPPLIED WITH. IN NO EVENT SHALL THE SERVICE PLAN BE USED WITH ANY OTHER WIRELESS DEVICE.

8. PRICING OF SERVICES AND PAYMENT TERMS: Your device is assigned a Subscription Plan selected by You at time of purchase. The usage limitations of the Subscription Plan and pricing will be described at the time of purchase. At the conclusion of the Subscription Plan term, any unused airtime will expire and You will not receive any credit, refund, or roll-over. You may not roam or use the

Subscription Plan or any Services outside of the United States. ElasticM2M may, at any time, revise (a) limits on use of such data communication service, and (b) the cost and features or whether to offer for sale the Subscription Plans and Services.

9. **PAYMENT, TAXES, INDEMNITY:** You will bear full responsibility for, and will pay ElasticM2M or its agent or reseller all fees and charges (together with all applicable taxes thereon) in advance of receiving the Device or Services on a prepaid basis. All charges, including wireless network charges, for Services commence immediately upon activation and are billed on a one-time, prepaid basis. All prepaid amounts are non-refundable. Prices relating to the Services purchased pursuant to this Agreement are exclusive of taxes including, without limitation, any federal, state, local or foreign excise, VAT, sales, use, property, retailer's occupation or similar taxes, or any duties, customs or similar charges. **YOU AGREE THAT TIME IS OF THE ESSENCE AND YOU AGREE THAT PREPAID FEES ARE NON-REFUNDABLE REGARDLESS OF ANY PROBLEMS YOU MAY HAVE WITH THE DEVICES OR SERVICES INCLUDING THE OPERATION, CAPABILITY, INSTALLATION, OR REPAIR THEREOF, AND REGARDLESS OF ANY CLAIM, SETOFF, COUNTERCLAIM, OR DEFENSE YOU MAY HAVE AGAINST ElasticM2M, THE MANUFACTURER, SALESPERSON, OR ANY OTHER PARTY.**
13. **LIMITED SOFTWARE LICENSE** - In consideration of the payment of the Subscription Plan fees, ElasticM2M grants You a limited personal, non-exclusive and non-transferable license to use the software provided to You by ElasticM2M as part of the Services. This license is for the sole purpose of enabling You to use the Services as provided by ElasticM2M, in the manner permitted by this Agreement and your Subscription Plan. This Limited Software License will automatically terminate on termination of Subscriber Plan. You agree not to access (or attempt to access) any of the Services by any means other than directly through the user interfaces that are provided by ElasticM2M. You agree that You will not engage in activity that interferes with or disrupts the Services (or the servers and networks which are connected to the Services). You may not (and You may not cause or permit anyone else to) copy, reproduce, modify, create any derivative work of, reverse engineer, disassemble, decompile, or otherwise attempt to gain access to or extract the source code of the Software or any part thereof. Or otherwise transfer any part of Your rights to use the Services.
14. **PROPRIETARY RIGHTS:** You acknowledge and agree that ElasticM2M owns all legal right, title, and interest in and to the Software and Services, including any intellectual property rights which exist in the Software and Services (whether those rights happen to be registered or not, and wherever in the world those rights may exist). You further acknowledge. You have no right to use any of ElasticM2M's trade names, trademarks, service marks, logos, domain names, and other distinctive features.
15. **LIMITED WARRANTY AND LIMITATION OF LIABILITY:** ElasticM2M warrants to You, as the original purchaser, that the Device will be free from defects in workmanship, excluding installations performed by non ElasticM2M approved third-parties, and materials under normal use ("Defects") for a period of one (1) year from the date the service is activated by the selling party. During the limited warranty period the Device will be repaired or replaced at ElasticM2M's sole discretion, at its expense. This limited warranty **ONLY COVERS** failures due to defects in materials or workmanship for the Device as delivered, and **DOES NOT COVER** : (i) normal wear and tear or cosmetic damage, (ii) failures which are caused by products not supplied by ElasticM2M, (iii) failures which result from accidents, misuse, abuse, neglect, mishandling, misapplication, alteration, opening or attempting to open the device, faulty installation, setup adjustments, improper maintenance, if the Device has been used or combined with accessories or device not approved by ElasticM2M, power surge, connection to an improper voltage supply, lightning damage, modification, introduction of sand, humidity or liquids, proximity or exposure to heat or chemicals, industrial use of the product, or reception problems caused by signal conditions or cable or antenna systems outside the Device, reception problems caused by an inadequate signal level in the operating area, unauthorized use, (iv) service by anyone other than a Factory Service Center or other Authorized Servicer, or (v) damage that is attributable to acts of God. **EXCEPT AS LISTED UNDER THIS "LIMITED WARRANTY POLICY" THERE ARE NO OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES OF NON-INFRINGEMENT, ACCURACY, OR ANY OTHER WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW.** Further this warranty will be deemed null and void if You did not contact ElasticM2M prior to transferring Device to different vehicle. Claims Process: In order to make a claim under the Limited Warranty, you must contact ElasticM2M at support@ElasticM2M.com during the Limited Warranty Period to explain the Defect. ElasticM2M will troubleshoot the matter. In the event ElasticM2M is unable to resolve the issue, ElasticM2M shall issue a return authorization number. Upon receipt of the return authorization number, You shall arrange to have the Defective Device returned to ElasticM2M (Note: You are responsible for shipping charges to the returns center). ElasticM2M shall be responsible for replacement of the replacement Device and shipping costs to Your Dealer for installation. Within thirty (30) days of ElasticM2M's issuance of an return authorization number. **Miscellaneous:** If any part of this Limited Warranty is held to be invalid or unenforceable, the remainder of the Limited Warranty shall nonetheless remain in full force and effect. **REPAIR OR REPLACEMENT OF A DEFECTIVE PRODUCT IS YOUR SOLE AND EXCLUSIVE REMEDY UNDER THE LIMITED WARRANTY. SOFTWARE LOADED ON THE DEVICE AND SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY. ElasticM2M SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES FOR BREACH OF THE LIMITED WARRANTY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ElasticM2M EXPRESSLY DISCLAIMS, AND YOU EXPRESSLY WAIVE, ALL OTHER WARRANTIES, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ANY WARRANTY ARISING OUT OF ANY PROPOSAL, SPECIFICATION, OR SAMPLE. THE TERM OF ANY IMPLIED WARRANTIES THAT CANNOT BE DISCLAIMED UNDER APPLICABLE LAW SHALL BE LIMITED TO THE DURATION OF THE FOREGOING EXPRESS WARRANTY PERIOD. NO EMPLOYEE OR AGENT OF ElasticM2M HAS THE AUTHORITY TO GRANT ANY OTHER WARRANTY TO YOU WRITTEN OR ORAL.**

16. Limitation of Liability and Indemnification. EXCEPT AS PROVIDED EXPRESSLY HEREIN, ElasticM2M WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ANY LOSS OR DAMAGE CAUSED BY THE INSTALLATION OR USE OF THE DEVICE, SOFTWARE OR SERVICES OR FOR ANY ERRORS IN OR INTERRUPTION OF THE DEVICE, SOFTWARE OR SERVICES, REGARDLESS OF CAUSE, OR FOR TERMINATION REQUIRED BY CHANGES TO POLICIES, REGULATIONS OR RULES BY THE FEDERAL COMMUNICATIONS COMMISSION ("FCC") AND OTHER GOVERNMENTAL AUTHORITIES COVERING WIRELESS NETWORKS AND DEVICES. IN NO EVENT WILL ElasticM2M'S LIABILITY TO YOU EXCEED THE AMOUNT PAID BY YOU FOR THE DEVICE, SERVICES OR THE SOFTWARE. ElasticM2M will not be liable to You or any third party for consequential, incidental, general, special or exemplary damages, including, without limitation, loss of or damage to Your vehicles or loss of profits, revenues or data, even if ElasticM2M has been advised of the possibility of such damages. You agree to indemnify, defend and hold ElasticM2M, its officers, directors, employees, contractors, agents and affiliates and Service Providers harmless from and against any and all losses, costs, expense, (including attorney's fees, expert fees, and expenses), demand, claim, liability or damages or cause of action of any kind or character (collectively referred to as "Claim") including without limitation, for any personal injury or death, in any manner arising out of or relating to or caused by the use of the Devices, Services and the Software, whether authorized or not, violate or breach any provision of this Agreement, acts or for inaccessibility of the ElasticM2M call center, delay in response by law enforcement agencies, public service answering point ("PSAP"), or other emergency personnel, compliance with any and all laws (whether statutory, under common law or otherwise) rules or regulations, installation of the Device, ElasticM2M's refusal to provide service for any reason and or for any interruption of the Device, Services and the Software. No action will be brought for any breach of this Agreement more than one (1) year after accrual of such cause of action except by ElasticM2M for money due on an open account. Certain of the above limitations may not apply in some states. To the extent that any such limitations are precluded in a given state, such preclusion will not affect any other limitations not so prohibited or precluded. NOTWITHSTANDING ANYTHING ELSE SET FORTH IN THIS AGREEMENT, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE DEVICES, SERVICES AND SOFTWARE IS AT YOUR SOLE RISK. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE DEVICES, SERVICES AND SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS; AND ElasticM2M EXPRESSLY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES, REPRESENTATIONS AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE DEVICES, SERVICES AND SOFTWARE. TO THE MAXIMUM EXTENT ALLOWED BY LAW, ElasticM2M DOES NOT WARRANT SUITABILITY, AVAILABILITY, ACCURACY, RELIABILITY, COMPLETENESS, OR TIMELINESS OF ANY DATA OR MATERIAL OF ANY KIND CONTAINED WITHIN THE DEVICES, SERVICES OR SOFTWARE FOR ANY PURPOSE. ElasticM2M MAKES NO REPRESENTATIONS THAT THE SERVICES WILL BE FREE FROM LOSS, INTERRUPTION, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING OR OTHER SECURITY INTRUSION, AND ElasticM2M DISCLAIMS ANY LIABILITY RELATING THERETO. ElasticM2M DOES NOT PROVIDE ANY WARRANTY AS TO THE AVAILABILITY OF THE SERVICES INCLUDING BUT NOT LIMITED TO GPS SYSTEM, WIRELESS TELEPHONE NETWORK, OR THAT THE SERVICES WILL OPERATE WITHOUT INTERRUPTION OR BE ERROR FREE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ElasticM2M IS NOT RESPONSIBLE FOR ANY FAILURES CAUSED BY SERVER ERRORS, MISDIRECTED OR REDIRECTED TRANSMISSIONS, FAILED INTERNET CONNECTIONS, INTERRUPTIONS OR FAILURES IN THE TRANSMISSION OF DATA, ANY COMPUTER VIRUS, ACTS OR OMISSIONS OF THIRD PARTIES THAT DAMAGE THE NETWORK OR IMPAIR WIRELESS SERVICE, DAMAGE OR INJURY CAUSED BY A FAILURE OR DELAY IN CONNECTING A CALL TO ANY ENTITY, INCLUDING 911, OR ANY OTHER EMERGENCY SERVICE, OR OTHER TECHNICAL DEFECT, WHETHER HUMAN OR TECHNICAL IN NATURE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF IMPLIED WARRANTIES OR HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. YOU MAY HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.
17. OTHER PARTY'S LIMITATION: If you purchased Services or the Product through another business or person, or from ElasticM2M through a referral from another business or person, you agree that such other business or person acts solely as an independent contractor. Such business or person shall have no responsibility or liability to you for the performance or nonperformance of the Services ElasticM2M provides under this Agreement. Without limiting the above, you agree that the liability of such other business or person is, in any event, limited in accordance with the provisions of this Agreement.
18. ElasticM2M Is Not An Insurer - ElasticM2M is not an insurer and you must obtain from an insurer any insurance you require. The amount you pay to ElasticM2M is based upon the Services ElasticM2M performs and the limited liability ElasticM2M assumes under this Agreement and is unrelated to the value of your property, any vehicle in which a Device is installed or any property located in any vehicle in which a Device is installed. In the event of any loss or injury to any person or property, you agree to exclusively claim from your insurer to recover damages. You waive all subrogation and other rights of recovery against ElasticM2M that any insurer or other person may have as a result of paying any claim for loss or injury to any other person.
19. INTERRUPTION OF SERVICE; FORCE MAJEURE: ElasticM2M shall have no liability for a failure to provide, or for delay in providing Services due directly or indirectly to the Limitations of Technology Section 20, or other cause beyond the control of ElasticM2M or its Service Providers. If ElasticM2M is unable to wholly or partially perform Services because of any cause beyond its control, ElasticM2M may terminate this agreement before the Term has expired without any liability to you, other than the refund of any amounts paid for unused Service.
20. LIMITATIONS OF TECHNOLOGY: You accept and agree the following inherent technical limitations relating to the use of the Device, and Services:
- (A) Global Positioning System (GPS"), wireless network coverage and Services: Services are only available to you in the United States of America and only when the Device is in the operating range of the Wireless Carrier. Complete coverage of the service area at all times is improbable. The existence of adverse conditions, including but not limited to short-term unpredictable meteorological

effects, wireless capacity limitations, terrain and geographical conditions, other natural or artificial environment conditions beyond ElasticM2M's control and sky wave interference from distant stations, can interrupt the Service at times. Certain circumstances such as weather, tunnels, underground structures, terrain, high-rise buildings, enclosed or underground parking or driving areas, faulty initiation, motor ignition and other electrical noises and radio signals from external sources may interfere with the Service. ElasticM2M utilizes wireless networks with broad coverage areas to access moving vehicles. There are still areas within the service area that have not yet been included in the wireless coverage areas. Therefore, if a vehicle travels out of the available service area that vehicle is unavailable until it returns to the available service area. Also, from time to time, poor coverage areas occur even in fully developed areas, thereby limiting system performance. Other wireless network environmental issues may affect the communications link between developed areas, thereby limiting system performance. Other wireless network environmental issues may affect the communications link between the Device and the Central Computing Systems. Environmental issues may include; service interruptions, network congestion, roaming, and similar access issues.

- (B) Global Positioning System (GPS) is a satellite-based positioning system providing expansive coverage throughout the world. The GPS antenna must have a direct line of sight to the satellites. If said path is impaired (e.g. underground parking lots or the shadow of tall buildings), it can affect the ability of the Service to recognize an accurate location.
- (C) Limitations in the electrical design or condition of the device.
- (D) If the Device is tampered with, disconnected from a power source or there is no power supply, or the Device completely removed, if the Device is removed and re-installed by a non ElasticM2M approved installer, the functionality of the Device and Services will be jeopardized.
- (E) The Device and Services have many complex elements and are not guaranteed against eavesdroppers, hackers, denial of service attacks, viruses or interceptors. You acknowledge and agree and undertake to inform any users of the Device and Services, that ElasticM2M and any of its Service Providers shall not be liable for any lack of privacy or security resulting from use of ElasticM2M Devices or Services. In addition, to the extent you have privacy right in the location, characteristics, performance or operation of vehicle equipped with a Device; you agree to voluntarily waive such right.
- (F) Devices and Services on cellular technology that may become obsolete in the future as a result of changes in wireless technology or actions by telecom regulators with respect to cellular technology in mapping applications. In such event, ElasticM2M shall have no obligation to issue a refund or refund substitute equipment or services. In addition, ElasticM2M assumes no responsibility for the accuracy or inaccuracy of any maps upon which the Service is based
- (G) The parties recognize that unusual concentrations of usage may occur in certain locations. ElasticM2M shall incur no liability to provide adequate Services hereunder arising from or related to a lack of network capacity on the equipment, which result from the aforesaid usage concentration, and nothing herein shall require ElasticM2M to expend effort to insure capacity for your use of the Services.
- (H) ElasticM2M's efforts to combat illegal or fraudulent usage or other legitimate business or operational reasons.
- (I) You understand that ElasticM2M's mobile applications are not available on every mobile device type and every version of the mobile operating system. You understand that web applications may not function fully on all browsers and all versions of browsers. It is Your sole responsibility to provide compatible hardware and software to operate ElasticM2M's mobile and web applications.

21. **USE OF APPLICATIONS, SOFTWARE AND WEBSITES:** You acknowledge and agree that the User Data and Services provided by ElasticM2M are accessed by you through the website or mobile applications under this Agreement and in effect from time to time. You acknowledge and agree that, because the Services are provided using the website and mobile applications, it is necessary for you to have computer equipment, mobile device and an internet connection that meets minimum specifications published by ElasticM2M, and you acknowledge and agree to periodically update your computer equipment, mobile device and or internet connection to meet such minimum specifications. You acknowledge that You will not use or attempt to use the Device and or Services for any purpose that is any way unlawful or prohibited; that interferes with ElasticM2M's Services; that attempts to gain unauthorized access to or impairs ElasticM2M's Services. that transmits any unauthorized or unsolicited email or text messages. You agree that You will only access or use information related specifically to You in accordance with the Device and Services You purchase, and not for any illegal purposes.
22. **ASSUMPTION OF RISK:** You agree that You will access the Device and Services at Your own risk. YOU ASSUME ALL RESPONSIBILITY AND RISK FOR THE USE OF THE DEVICE, SERVICES, AND THE INTERNET GENERALLY. You understand that ElasticM2M cannot and does not ensure continuous access to the Device and Services. Access may be interrupted due to technical limitations, such as heavy use and server malfunctions, or other circumstances such as maintenance. Your access to and use of the Device and Services may be interrupted if Your rights in and to the Device are lost for any reason. You will notify ElasticM2M when You plan to sell or dispose of the vehicle containing the Device. ElasticM2M reserves the right to modify the Software at any time without Your consent. YOU UNDERSTAND AND AGREE THAT ElasticM2M WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES RESULTING FROM, OR IN ANY WAY CONNECTED TO, YOUR ACCESS TO, USE OF, INABILITY TO USE, OR RELIANCE ON THE SOFTWARE OR SERVICES OR ANY MATERIALS, INFORMATION, PRODUCTS OR SERVICES OBTAINED OR ACCESSED THROUGH THE SOFTWARE. FOR THOSE JURISDICTIONS THAT EITHER DO NOT ALLOW OR PLACE RESTRICTIONS UPON THE EXCLUSION OR LIMITATION OF DAMAGES IN CERTAIN TYPES OF AGREEMENTS, THIS LIMITATION WILL BE CONSTRUED TO PERMIT THE MAXIMUM EXCLUSION OR LIMITATION PERMITTED BY APPLICABLE LAW.

23. **TERM AND TERMINATION:** This Agreement and Services may be terminated by ElasticM2M at any time upon the occurrence of: (a) Your default under or failure to perform as required by this Agreement; (b) Your default in payment of any monies due under this Agreement; (c) IF YOU PURCHASED PRODUCT OR SERVICES THROUGH ANOTHER BUSINESS OR PERSON, THE DEFAULT IN PAYMENT OF ANY MONIES DUE TO ElasticM2M FROM SUCH BUSINESS OR PERSON; (d) destruction of or substantial damage to the Device so as to make it impractical for ElasticM2M to continue to provide services under this Agreement; (e) failure or unavailability of the GPS system or the wireless network for the transmission of signals or data in accordance with ElasticM2M's expectations, (f) Your failure to follow the operating instructions; (g) any illegal or fraudulent use of the Device or Service, (h) Your failure to follow any recommendations ElasticM2M may make for the repair or replacement of a defective part of a Device; (i) if a vehicle with the Device installed is so modified or altered as to render continuation of any Service unusable; (j) in the event any governmental regulations or limitations necessitate the discontinuance of the Device or Service as determined by ElasticM2M in its sole discretion, (k) change in vehicle ownership where the new owner has not agreed and signed this Agreement, repossessed, transferred or otherwise taken out of your custody or control, (l) expiration of the Subscription Plan. In the event this Agreement is terminated by ElasticM2M under this provision, ElasticM2M shall not be liable for any damages or subject to any penalty as a result of such termination. In addition to ElasticM2M having the option to terminate this Agreement, upon the occurrence of any of the events set forth in this Section, ElasticM2M shall also have the option to discontinue the Services to the Device until the event resulting in such discontinuance is cured by you or otherwise remedied in ElasticM2M's sole and absolute opinion, and other than discontinuances which are not the result of any act or omission by you, you shall remain liable for any and all Charges applicable to the Device and Services for such period of discontinuance. This Agreement may also be terminated at the option of ElasticM2M at any time with thirty (30) days written notice to you and ElasticM2M will refund any amounts paid for unused Service. In the event of termination or expiration for any reason Your license to the Software and Services will cease immediately; Your access to the Device, Service and call center to report a stolen vehicle will cease immediately; your access to vehicle location information will cease immediately.
24. **ARBITRATION:** In the event of any dispute under this Agreement, the parties hereto desire to avoid litigation. Accordingly, the claimant will give notice of the dispute to the other party and both parties will attempt to settle the dispute during the thirty (30) day period following such notice. If such dispute remains unsettled, the parties agree to then submit such dispute to mediation. If the parties cannot agree on a mediator, each will select a mediator and the two chosen mediators will select a third mediator who shall alone hear the dispute. Such mediation will, if possible, be conducted during the sixty (60) day period following expiration of the thirty (30) day period. If such mediation fails to resolve the dispute, the parties agree such dispute will be submitted to final and binding arbitration in accordance with the rules of the American Arbitration Association. Unless otherwise directed by the arbitrator, such arbitration must be concluded within ninety (90) days of the expiration of the sixty (60) day period previously specified for mediation. If the parties cannot agree on a single arbitrator, each will select an arbitrator, and the two chosen arbitrators will select a third arbitrator who shall alone decide the dispute. Any mediation or arbitration conducted hereunder will be conducted in Northern Virginia. The parties hereto shall equally share the costs of mediation (including the mediator's fees and expenses and costs directly related to the conduct of the mediation, but excluding each party's direct costs for transportation, attorneys, etc., for which each will be responsible). If any party fails to participate in mediation or arbitration after receipt of notice thereof, then each party hereto agrees that the other party shall have the right to proceed immediately to arbitration and that such other party shall be entitled to select the arbitrator in its sole discretion. Each party further agrees that, in such event, such arbitrator shall have the right to decide the dispute as if the non-participating party were participating in the arbitration and that such decision shall be final and binding upon each party hereto.

Attorney Fees and Other Arbitration Expenses. If any party hereto resorts to arbitration to remedy a breach of this Agreement, the prevailing party in the arbitration, in addition to any other remedies available under this Agreement or by law, may collect all or a portion of its reasonable attorney fees and other costs and expenses of arbitration at the discretion of the arbitrator, who shall consider both the reasonableness of the attorney fees and other costs and the relative merits of each party's position. It is the intent of all parties hereto to avoid arbitration without preventing a party from seeking redress for a valid dispute. To that end, all parties express their intent and agreement that unreasonable attorney fees and costs not be awarded, and that all or a portion of reasonable attorney fees and costs be awarded when in the arbitrator's opinion the party against whom such fees and costs are awarded has maintained position(s) which have significantly less merit compared to the prevailing party's position(s). Further, it is all parties intent that any party seeking redress through litigation despite the fact that arbitration is required by this Agreement, shall not be entitled to recover any attorney fees or costs for such litigation or in any subsequent arbitration, regardless of the outcome of such litigation or subsequent arbitration.

25. **GOVERNING LAW:** It is the express intent of the parties that any dispute under this Agreement be decided in accordance with the mediation and arbitration provisions contained in Section 24 hereof. Notwithstanding the foregoing, in the event a court refuses to enforce the provisions contained in Section 24 for any dispute or, in the event a court is asked to decide a dispute concerning the provisions contained in Section 24, the parties expressly agree that jurisdiction and venue for any actions under or pursuant to this Agreement shall be solely in any state court or the Federal District Court in Northern Virginia. Your signature (through electronic acceptance) of this Agreement constitutes Your acknowledgment that You will submit Yourself to the personal jurisdiction of the courts with jurisdiction within Northern Virginia.

26. **WAIVER:** No party will be deemed to have waived any provision hereof unless such waiver is in writing by a duly authorized representative of the waiving party. No waiver by either party of any provision hereof will constitute a waiver of such provision on any other occasion.
27. **ASSIGNMENT** - This Agreement is not assignable by You except upon the prior written consent of ElasticM2M. ElasticM2M shall have the right to assign this Agreement, in whole or in part, or to subcontract its obligations under this Agreement, in whole or in part, without notice to you and upon such assignment, ElasticM2M shall be released from all liability hereunder.
28. **SEVERABILITY.** The invalidity or unenforceability, in whole or in part, of any provision, term, or condition hereof will not affect the validity or enforceability of the remainder of such provision, term, or condition or of any other provision, term, or condition.

BY SIGNING (THROUGH ELECTRONIC ACCEPTANCE), YOU ARE REPRESENTING TO ElasticM2M THAT YOU HAVE FULLY READ AND UNDERSTAND ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND AGREE TO ABIDE BY ALL SUCH TERMS AND CONDITIONS, INCLUDING THE ARBITRATION PROVISION UNDER SECTION 17.