

## DRIVETRACKER SOFTWARE SUBSCRIPTION SERVICE (SaaS) AGREEMENT

This Software Subscription Service (SaaS) Agreement (the “Agreement”) sets forth the obligations and conditions between you (“Client”) and Earthvisionz, Inc., a Colorado corporation (“Provider”), relating to your use of the Service defined herein. Please read these terms and conditions in full. Your use of the Services is expressly conditioned on your acceptance of this Agreement.

BY CLICKING THE “I AGREE” BOX, AND/OR BY USING THE SERVICES, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ANY TERM OF THIS AGREEMENT, DO NOT USE THE SERVICES.

### RECITALS

A. Provider is the owner of certain proprietary computer software known as **DriveTracker** that is used to generate and optimize multi-stop routes and perform GPS tracking (the “Software”).

B. Provider provides and sells subscriptions for subscribers to access and use the Software via <https://drivetracker.earthvisionz.com> or any website notified to the subscribers from time to time (the “Services”).

C. Client desires to use the Services for Client’s personal business purposes, including to generate multi-stop routes and/or perform GPS tracking, pursuant to the terms and conditions set forth herein.

D. Provider is willing to provide access to the Services for Client’s internal business use pursuant to the terms and conditions set forth herein.

E. Provider and Client acknowledge and agree that this Agreement shall be effective and in force immediately upon the date that Client clicks the “I Agree” icon below (the “Effective Date”).

**NOW THEREFORE, in consideration for the mutual promises contained herein and other good and valuable consideration, the parties agree as follows:**

### 1. SOFTWARE SUBSCRIPTION

a. Provider grants to Client and Client accepts from Provider, a limited, non-exclusive, non-transferable right to access and use the Services solely for Client’s internal business use and only for lawful purposes.

b. The Software and Services shall not be used by Client for, or on behalf of, third parties that are not authorized under this Agreement. In particular, Client may not resell the Services to any third parties.

c. Client shall use the Services in accordance with the terms and conditions of this Agreement. Client acknowledges that its right to use the Services will be web-based only pursuant to the terms of this Agreement and the Software will not be installed on any servers or other computer equipment owned or controlled by Client or otherwise provided to Client.

b. The use of the Services by Client pursuant to this Agreement shall be subject to any end user agreement, terms of use, and/or privacy policy applicable to <https://drivetracker.earthvisionz.com> or any other applicable website used to access the Services.

### 2. INTELLECTUAL PROPERTY RIGHTS

a. Client acknowledges that all right, title, and interest in and to the Services and the Software, together with its codes, sequences, derivative works, organization, structure, interfaces, any documentation, data, trade names, trademarks, or other related materials (collectively, the “Provider IP”), is, and at all times shall remain, the sole and exclusive property of Provider.

The Provider IP contains trade secrets and proprietary information owned by Provider and is protected by United States copyright laws (and other laws relating to intellectual property). Except the right to use the Services, as expressly provided herein, this Agreement does not grant to Client any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered) or any other rights or licenses with respect to the Services or the Software.

b. Client shall not attempt, or directly or indirectly allow any third party to attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, reverse compile, disassemble, reverse engineer, download, transmit or distribute all or any portion of the Services and/or Software in any form or media or by any means.

c. The provisions of this paragraph 2 shall survive termination of this Agreement.

### **3. TRIAL PERIOD**

a. Provider may offer Client, at its own discretion and subject to modification or withdrawal at any time, unpaid, trial, access to the Software for a limited period of time as indicated on the sign up page ("Trial Period").

b. Provider offers at most one Trial Period to Client. Client agrees not to attempt to circumvent this limitation by, for example, signing up for the service with more than one email account.

c. During the Trial Period, Client agrees to abide by all of the terms in this agreement except that no Subscription Fee will be required to be paid by Client to Provider, and no warranty will be made by Provider to Client as to the accessibility or performance of the service.

d. At any time during the Trial Period, Client may elect to enter into a paid subscription to the service, as discussed in section 4 of this agreement.

e. At the close of the Trial Period, Client must either enter into a paid subscription or cease using the service.

### **4. SUBSCRIPTION FEE**

a. Client shall pay to Provider the subscription fee (the "Subscription Fee") in the amount and for the duration that Client has entered and agreed to pursuant to the sign up page or account page.

b. The Subscription Fee for the first Subscription Period (either month or year, as applicable) of the term of this Agreement shall be paid at the time Client clicks on the "Submit Payment" button on the Billing Information Page under Account/Subscription. (the "Active Until Date").

c. The Subscription Fee for all subsequent Subscription Periods of the term of this Agreement shall be paid to Provider on the first day of each subsequent Subscription Period, pursuant to subsection e, below.

d. The amount of the Subscription Fee does not include any applicable taxes. Client is responsible for any and all applicable taxes.

e. Client shall provide a valid credit card, ACH payment system information, bank account information authorized for automatic bill paying, or other acceptable method of payment to Provider and shall take all necessary steps to authorize automatic payment of the Subscription Fee. By agreeing to this Agreement, Client hereby authorizes Provider to automatically charge said method of payment for all Subscription Periods during the term of this Agreement. If, for any reason, automatic payment shall be denied, then Client shall pay the applicable Subscription Fee, to Provider within five (5) days of notice from Provider. Failure to make such payment during this grace period will result in Provider terminating Client's access to the Software.

Provider uses a third-party service provider to manage credit card processing. This service provider is not permitted to store, retain, or use Billing Information except for the sole purpose of credit card processing on the Company's behalf. Provider does not store any credit card information on the Servers that support DriveTracker except perhaps the last four digits of a subscribed Client's credit card number for informational/display purposes only.

f. Any additional payment terms between Provider and Client shall be agreed to in writing and set forth in an invoice, billing agreement, or other written document.

g. Subscription fees may increase or decrease at the end of the subscription period chosen (monthly or annual) at the discretion of the Provider. Provider will give at least thirty (30) days advance notice to Client prior to making such a change and Client will have the opportunity to opt out of the change by cancelling the Subscription prior to the change going into effect.

## **5. ACCESSIBILITY/PERFORMANCE**

a. Provider shall use commercially reasonable efforts to make the Services available on a 24x7 basis (twenty-four hours per day, seven days per week) during the Term, except for: (i) scheduled system back-up or other on-going maintenance as required and scheduled in advance by Provider, or (ii) for any unforeseen cause beyond Provider's reasonable control, including but not limited to internet service provider or communications network failures, denial of service attacks or similar attacks, or any force majeure events set forth in this Agreement.

b. Provider will monitor performance indicators on the systems and network infrastructure (its own and that of third party suppliers) in order to gauge the overall performance of its hosting services, and will take reasonable steps to address systems and network infrastructure as required to maintain satisfactory performance of the Software.

c. Provider further reserves the right to monitor and reasonably restrict Client's ability to use the Services if Client is using excessive computing resources which are impacting the performance of the Services for other subscribers. Provider agrees to notify Client in cases where it restricts such use and use good faith efforts to determine an appropriate alternative or work around solution.

d. The GPS tracking portions of the Services use cellular or other wireless telecommunications networks in the continental United States, Alaska, and Hawaii, as well as the global positioning system ("GPS") satellite network. The Services are not available everywhere, particularly in remote areas, or at all times. Service may be disrupted by factors beyond our control including, but not limited to, terrain features (hills, mountains, dips, valleys), buildings, bridges, tunnels, weather, localized "gaps" in cellular telephone network coverage, cellular telephone network congestion, and interference with the satellite transmissions that help supply the GPS data used by us to provide the Services.

e. The AutoComplete feature when manually adding locations/addresses is limited to no more than 1000 calls per day. After that, users will still be able to continue to import locations from a file, pasting them or adding them from the map.

## **6. MAINTENANCE AND SUPPORT**

a. Provider shall maintain the Software and provide all patches and fixes to the Software at no additional cost. Provider may, however, at its own discretion, require Client pay an additional fee as agreed between the parties to access major releases, additional functionality, or custom programming.

b. Provider will make available to Client a Support and Feedback form by which Client may report to Provider problems with the Software including service outages, performance degradation, and bugs with published features. Provider will respond to such reports within one business day of the report, and will

make a good faith effort to resolve any such issues as quickly as possible, however no warranty is made as to the length of time required to resolve any such issue.

c. This Agreement does not guarantee any other support services, including but not limited to implementation of requested features, and training on use of the Software beyond what is provided on the website through help documentation and/or training videos. Provider may, at its discretion, offer supplementary support services ("Support Contract") at an additional fee covering these items as well as making guarantees as to support request response times and Software availability.

## **7. NO REFUNDS**

a. Provider provides the Software on an as-is basis, and does not offer refunds due to service outages, performance degradation, or bugs. Provider may, at its sole discretion, offer usage credits to Client if Provider is unable to resolve such issues in a reasonable period of time, providing Client has reported the issue to Provider with sufficient detail to allow Provider to confirm the problem and attempt to resolve it.

b. Client is free to cancel the Subscription at any time, but will not receive a refund on any pre-paid Subscription Fee. Client may, however, continue to use the Software without additional charge for the duration of the pre-paid Subscription Period, after which Client must either reinstate the Subscription or cease using the Software.

## **8. TERM**

The Term of this Agreement shall commence on the Effective Date and shall continue until terminated as provided herein. Following any Trial Period, Client shall elect whether the term will consist of annual or monthly periods (each a "Subscription Period"). The Agreement shall automatically renew for subsequent Subscription Periods unless Client cancels the subscription in DriveTracker under their Account (by clicking the 'Cancel Subscription' button) or either party provides written notice of its election not to renew this Agreement prior to end of the then-current Subscription Period or otherwise terminates this Agreement pursuant to the terms of this Agreement. Upon termination of this Agreement for any reason, all rights and subscriptions granted to Client shall immediately terminate, and the Client shall cease using the Software.

## **9. DEFAULT**

Client shall be in default of this Agreement if Client fails to make any payment when due and fails to cure said default within five (5) days after receipt of written notice thereof from Provider. In addition to the monetary breach described in the previous sentence, either party will be in default of this Agreement if the party is in material breach of this Agreement and fails to cure such breach within fifteen (15) days after receipt of written notice thereof from the non-breaching party. If a party is in default, the non-breaching party may terminate this Agreement or seek any other remedies available at law or in equity, except as otherwise provided in this Agreement. In the event Client breaches or attempts to breach any of the provisions of this Agreement, Provider shall have the right, in addition to such other remedies that may be available, to injunctive relief enjoining such breach or attempt to breach, Client hereby acknowledging the inadequacy of any remedy at law.

## **10. CONFIDENTIALITY**

a. In addition to, and in no way limiting the requirements relating to the Provider IP as set forth in Section 2 of this Agreement, Client shall use its reasonable efforts (but in no case less than the efforts used to protect its own proprietary information of a similar nature) to protect all proprietary,

confidential, and/or non-public information pertaining to or in any way connected to the Software, the Services, the Provider's financial, professional and/or other business affairs, and this Agreement (the "Confidential Information").

b. Client shall not disclose or publicize the Confidential Information without the Provider's prior written consent.

c. Client shall use their reasonable efforts (but in no case less than the efforts used to protect its own proprietary information of a similar nature) not to disclose and not to use the Confidential Information for their own benefit or for the benefit of any other person, third-party, firm or corporation in a manner inconsistent with the purpose of this Agreement.

d. The terms of confidentiality and non-disclosure contained herein shall expire five (5) years from the date of the termination of this Agreement.

e. The restrictions on disclosure shall not apply to information which was: (i) generally available to the public at the time of disclosure, or later available to the public other than through fault of the Client; (ii) already known to the Client prior to disclosure pursuant to this Agreement; (iii) obtained at any time lawfully from a third-party under circumstances permitting its use or disclosure to others; or (iv) required by law or court order to be disclosed.

## **11. LIMITED WARRANTY**

Provider warrants that it has the power and authority to grant the subscription for the Services granted to Client hereunder. EXCEPT FOR THE WARRANTY SET FORTH HEREIN, THE SERVICES ARE PROVIDED "AS IS," AND PROVIDER DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**Limitation of Remedy and Liability.** Client represents that it accepts sole and complete responsibility for: (a) the selection of the Services to achieve Client's intended results; (b) use of the Services; and (c) the results obtained from Services.

Provider does not warrant that the Client's use of the Services will be uninterrupted or error-free. Client shall not assert any claims against Provider based upon theories of negligence, gross negligence, strict liability, fraud, or misrepresentation, and Client shall defend Provider from any demand or claim, and indemnify and hold Provider harmless from any and all losses, costs, expenses, or damages, including reasonable attorneys' fees, directly or indirectly resulting from Client's use of the Services. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED UPON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In any event, under no circumstances shall Provider be liable for any loss, costs, expenses, or damages to Client in an amount exceeding the Subscription Fee actually paid to Provider by Client for the previous three (3) months.

## **12. MISCELLANEOUS**

a. Notice and Demands. Notice, demand, or other communication mandated to be given by this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested or delivered personally. Unless Provider is

otherwise notified in writing, the Client's address for notice purposes shall be Client's address provided as part of Client's billing information.

b. **Governing Law; Forum Selection.** This Agreement shall be governed exclusively by the laws of the State of Colorado, without regard to its conflicts of laws principles. Any action under or concerning this Agreement shall be brought exclusively in the District Court of Boulder County, Colorado. The parties irrevocably agree and consent that said forum is convenient and has jurisdiction to hear and decide any such action.

c. **Compliance with Laws.** Client shall use the Services in accordance with any and all applicable local, state, and federal laws.

d. **Headings.** The paragraph headings in this Agreement are for convenience only and they form no part of the Agreement and shall not affect the interpretation thereof.

e. **Severability.** If any provision of this Agreement shall be held illegal, void, or unenforceable, the remaining portions shall remain in full force and effect.

f. **No Waiver.** The delay or failure of either party to exercise any right under this Agreement or to take action against the other party in the event of any breach of this Agreement shall constitute a waiver of such right, or any other right, or of such breach, or any future breaches, under this Agreement.

g. **Assignment.** Client shall not assign or transfer this Agreement.

h. **No Partnership or Agency.** Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorize either party to act as an agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise bind the other in any way.

i. **Force Majeure.** Provider will not be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the Provider's reasonable control, including but not limited to fire, flood, storm, act of God, war, malicious damage, failure of a utility service or transport or telecommunications network.

j. **Complete Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the Services, and supersedes any and all prior or contemporaneous understandings or agreements whether written or oral. No amendment or modification of this Agreement will be binding unless reduced to a writing signed by duly authorized representatives of the parties and such writing makes specific reference to this Agreement and its intention as an amendment hereto.

**BY CLICKING "I AGREE" AND/OR BY USING THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTOOD IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT THIS AGREEMENT SHALL BE SUPERIOR TO, AND SUPERCEDE ANY CONFLICTING OR INCONSISTENT TERMS CONTAINED IN ANY PURCHASE ORDERS, OTHER DOCUMENTS PROVIDED TO THE COMPANY BY YOU, OTHER DOCUMENTS PROVIDED TO YOU BY THE COMPANY, OR AGREEMENTS PREVIOUSLY ENTERED INTO BY THE PARTIES. IF YOU DO NOT AGREE TO THE TERM OF THIS AGREEMENT, DO NOT USE THE SOFTWARE SERVICE AND/OR THE DATA.**