

KeyNetGPS Subscriber Contract

_____ (“Customer”) hereby retains KeyNetGPS to provide services (the “Services”) for the term (the “Term”) set forth as:

Term. The term of this Agreement shall be (i) ___ one year, (ii) ___ one month, or (iii) ___ other. Such term shall commence as of the date set forth above and shall terminate upon the expiration of such period, unless Customer confirms prior to the term’s expiration, via email, its intention to renew this Agreement for a renewal term upon the same terms and conditions. Customer acknowledges its contact email/contact person is an authorized representative of Customer who can bind Customer to this Agreement and any renewal elections.

Customer hereby agrees to the Services, subject to the following general terms and conditions.

Acknowledged and Agreed to this _____ day of _____, 20__

Customer

Authorized Signatory

(Print Name)

GENERAL TERMS AND CONDITIONS

1. DESIGNATED USE

- 1.1 Customer shall use the Services and the resulting data (the “Results”) only for its own business use, namely for compiling positioning data.
- 1.2 KeyNetGPS hereby agrees to furnish and provide the Services to Customer upon the terms and conditions herein provided. KeyNetGPS reserves the right to modify any procedures, methods of operation, security measures or other matters relating to the Services at any time and from time to time.
- 1.3 KeyNetGPS will issue to Customer technical data for connection the Services, such as username, password, IP address or DNS hostname. Customer acknowledges that KeyNetGPS may disclose account information to any party able to provide Customer’s username and password.

2. COVENANTS AND ACKNOWLEDGEMENTS OF CUSTOMER

- 2.1 Customer covenants and agrees with KeyNetGPS as follows:
 - (a) to use the Services and the Results and all modifications, supplements, translations, up-dated works and compilations thereof in accordance with all applicable federal, state and local laws, rules and regulations;
 - (b) not to use the Services or the Results for any purposes other than the use specified in section 1 above in any manner. In particular, the Services are not intended for nor shall the Services be used for primary navigation;
 - (c) not to, or attempt to, copy, electronically or in any other form, any part of or all of Services or the Results, whether for backup, archival or any other purposes, without the prior written consent of KeyNetGPS or modify, change, decompile, disassemble, recreate, reverse engineer, tamper with or generate the Services, in whole or in part, and further agrees not to download/upload Services, in whole or in part, except as contemplated under this Agreement. Customer further agrees not to attempt any of the foregoing or aid, abet or permit any others to do so or to remove, erase or hide from view any copyright, trademark, confidentiality notice, mark or legend appearing on or in respect of the Services;
 - (d) not to sublicense, assign, transfer, sell, resell, provide access to the Services or otherwise encumber or suffer a lien upon or against any interest in this Agreement or the Services, in whole or in part.
 - (e) Use the service and equipment in accordance with generally recognized principals applicable within the surveying and engineering profession and in accordance with the standards adopted by the National Society of Professional Surveyors as amended from time to time.
- 2.2 Customer shall be responsible for obtaining, operating and maintaining, at its own expense, all hardware and software which are required to enable Customer to access and use the Services and the Results properly. Customer acknowledges that certain hardware and software may not operate as intended with the current or future versions of KeyNetGPS. Customer shall make any necessary modifications of its hardware and software to ensure that KeyNetGPS functions properly.
- 2.3 The Global Positioning System (“GPS”) is managed by the United States Department of Defence, which is solely responsible for the accuracy, daily operation, and maintenance of the satellite constellation. Satellite geometry and satellite health affect system accuracy. Customer is responsible for ensuring they inform themselves as to the current constellation status.
- 2.4 Customer acknowledges that the Services are not warranted to be continuous and uninterrupted. KeyNetGPS accepts no liability for the unavailability of the Services whatsoever. Customer expressly acknowledges that Services may be affected by orbital errors, clock errors, ionospheric and tropospheric delay, multipath errors, receiver noise, radio interference, power failures, atmospheric conditions or other natural or man-made phenomenon. Customer further acknowledges and agrees that the Services are dependent on use of the internet and cellular communications and accordingly on services provided by third parties beyond the control of KeyNetGPS. KeyNetGPS cannot guarantee that any transmission of data will be private and confidential. KeyNetGPS accepts no responsibility for the accuracy of the Services.
- 2.5 Customer acknowledges and agrees that any and all use of KeyNetGPS, and/or the Results and any data, compilations, models or other analytical tools derived therefrom by Customer shall be at the sole risk and expense of Customer.

3. DEFAULT, TERMINATION AND REMEDIES

- 3.1 This Agreement may be terminated prior to the expiration of the Term upon the occurrence of any of the following (each an “EVENT OF DEFAULT”):
 - (a) the failure of Customer to pay to KeyNetGPS any sums or amounts due and owing for the Services; or
 - (b) the failure or neglect of Customer to observe, keep or perform any of the covenants, terms and conditions of this Agreement; or
 - (c) the filing of a petition for Customer’s bankruptcy, whether voluntary or involuntary, or the assignment of Customer’s assets for the benefit of creditors, or a trustee or receiver is appointed to take charge of the business of Customer for any reason, or Customer becomes insolvent or voluntary or involuntary dissolves or is wound-up.
- 3.2 Upon the occurrence of any Event of Default and at any time thereafter KeyNetGPS may, in its sole discretion, do any one or more of the following: (i) upon notice to Customer, terminate this Agreement; (ii) declare immediately due and payable, and require Customer to pay, all amounts hereunder that are

past due, currently due and due in the future during the entire Term of the Agreement; (iii) by written notice to Customer, demand that Customer (and Customer agrees that it shall) pay to KeyNetGPS (as liquidated damages for loss of a bargain and not as a penalty) on the date specified in such notice an amount (plus interest thereon at the rate of 10% per annum from said date to the date of actual payment) equal to all unpaid fees which absent an Event of Default would have been payable by Customer hereunder for the full Term hereof; or (iv) proceed by court action to enforce the terms hereof or to recover damages for the breach hereof. In addition, Customer shall be liable for all legal fees and other costs and expenses resulting from the foregoing defaults or the exercise of KeyNetGPS remedies hereunder. No remedy referred to in this section 3 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available to KeyNetGPS at law or in equity. No express or implied waiver by KeyNetGPS of any default shall constitute a waiver of any other default by Customer or a waiver of any of KeyNetGPS rights or remedies. To the extent permitted by applicable law, Customer hereby waives any rights now or hereafter conferred by statute or otherwise which may limit or modify any of KeyNetGPS rights or remedies under this section 3.

3.3 Customer expressly acknowledges and agrees that whenever the Customer is in breach of the terms and conditions of this Agreement, in addition to any other remedies available to KeyNetGPS, KeyNetGPS may prevent access to the Services without any liability to KeyNetGPS of any kind.

4. **INJUNCTIVE RELIEF**

4.1 Since any unauthorized use, copying or other transfer of the Services shall diminish substantially the value to KeyNetGPS of the trade secrets and proprietary rights that are the subject of this Agreement, if Customer breaches any of its obligations with respect to limited use, non-transferability or confidentiality of the Services and KeyNetGPS or any other information relating thereto, as provided under the terms and conditions of this Agreement, KeyNetGPS shall be entitled to obtain equitable relief, without bond, to protect its interests therein, including, without limitation, injunctive relief, as well as monetary damages. Customer hereby acknowledges that remedies other than equitable relief are inadequate to protect fully KeyNetGPS rights. The rights and remedies set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to KeyNetGPS, whether at law or in equity.

5. **LIMITED WARRANTY AND LIMITATIONS ON LIABILITY**

5.1 **KEYNETGPS MAKES NO WARRANTY THAT THE SERVICES OR THE RESULTS ARE ERROR FREE. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, KEYNETGPS MAKES NO EXPRESS, IMPLIED OR STATUTORY WARRANTIES WITH RESPECT TO THE SERVICES OR THE RESULTS, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF DESIGN, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ARISING FROM A COURSE OF DEALING, TRADE USAGE OR TRADE PRACTICE.**

5.2 Customer acknowledges that KeyNetGPS has no responsibility to Customer regarding any issues that arise from the use of the Services or the Results with any other software product, including, without limiting the generality of the foregoing, failure of the Services to function in whole or in part due to incompatibility of another software product used by the Customer. KeyNetGPS shall have no liability with respect to its obligations under this Agreement for consequential, exemplary, or incidental damages even if KeyNetGPS has been advised of the possibility of such damages, including, without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction or any and all commercial damages or losses.

5.3 In no event shall KeyNetGPS be liable for any expenses, losses or damages, including, but not limited to special, incidental, indirect, exemplary or consequential damages, of any kind or nature whatsoever arising from, in connection with or as a result of this Agreement or the use of the Services and/or the Results.

5.4 Notwithstanding anything to the contrary, Customer agrees KeyNetGPS total liability, whether arising out of contract, negligence, strict liability in tort or warranty, to any party arising out of this Agreement or the use of Services and/or the Results will not exceed the amount paid by Customer to KeyNetGPS hereunder.

5.5 Customer hereby agrees to indemnify and save harmless KeyNetGPS and its directors, officers, employees, agents, representatives, licensors, associates and affiliates from and against any and all claims, liabilities, demands, damages or expenses (including reasonable legal fees and expenses) arising out of or in connection with this Agreement.

5.6 Customer acknowledges that the limitations set forth in this section 5 are integral to the amount of fees charged for the Services to Customer hereunder, and recognizes that were KeyNetGPS to assume any further liability beyond that set forth in this section 5, such fees would be substantially higher.

6. **CONFIDENTIALITY AND PROTECTION OF PROPRIETARY RIGHTS**

6.1 Customer agrees that KeyNetGPS and/or its licensor is the exclusive owner of the copyrights, trade marks and other proprietary rights and interests in and to the Services and that any modifications made thereto are proprietary developments and constitute a valuable work product in the form of trade secrets, know-how and confidential information which is the exclusive property of KeyNetGPS, or, in the case of certain software sublicensed to KeyNetGPS by other third parties, the property of the licensor. Customer shall not sell, transfer, publish, disclose, display or otherwise make available, in whole or in part, the Services or the terms and conditions of this Agreement, including copies thereof, to third parties other than its authorized personnel who shall be bound by the terms of this Agreement. One person shall only access KeyNetGPS at a time.

7. **TITLE TO KeyNetGPS**

7.1 Customer's rights hereunder to KeyNetGPS are those of a licensed end user only and are conditional upon Customer's compliance with the terms and conditions of this Agreement. KeyNetGPS and the license granted hereunder shall affect no transfer of any right, title, or interest in and to KeyNetGPS, whether express or implied. KeyNetGPS and all modifications, supplements, translations, up-dated works and compilations thereof, are trade secrets and the exclusive proprietary property of KeyNetGPS or its licensor. Title to KeyNetGPS and all modifications, supplements, translations, up-dated works and compilations thereof shall remain at all times with KeyNetGPS and/or its licensor.

8. **GENERAL**

8.1 Customer shall not assign or sublicense to any other party all or any part of this Agreement, its obligations hereunder, or any other interest herein or any rights hereunder. KeyNetGPS may assign this Agreement to any third party, provided that such party assumes the obligations of KeyNetGPS hereunder. KeyNetGPS may also assign its right to payment under this Agreement or grant a security interest in this Agreement or such payment right to any third party without requiring that such third party be liable for the obligations of KeyNetGPS hereunder. In the event of such an assignment of KeyNetGPS right to payment hereunder to such third party, Customer shall continue to make the payments required hereunder (directly to such third party, if required) notwithstanding KeyNetGPS performance of its obligations hereunder, and Customer shall execute a consent to assignment if required in such form as may be required by such third party. Customer also agrees to accept any venue selected by such third party for the resolution of any disputes.

8.2 In the event that KeyNetGPS is unable to perform obligations under this Agreement due to unforeseen circumstances (commonly referred to as Acts of God or force majeure) not within its reasonable control, that party shall notify the other party as soon as possible after the commencement of such circumstances. Such obligation will be suspended during the continuance of such occurrences. KeyNetGPS shall not be responsible for any failure to perform or delay in performing any of its obligations hereunder where and to the extent that such failure or delay results from causes outside the reasonable control of the party.

8.3 The provisions of sections 5, 6 and 7 shall survive the termination of this Agreement.

8.4 The parties agree that this agreement shall be governed by the laws of the Commonwealth of Pennsylvania and further agree that the proper forum for the litigation of any issues arising out of this agreement or the services or equipment shall lie exclusively within the jurisdiction of the courts of Pennsylvania.

Customer agrees to submit to and waives any objection the jurisdiction of the Pennsylvania Courts and agrees that venue shall lie exclusively in the Court of Common Pleas of Lehigh County, Pennsylvania. This agreement was entered into in Whitehall Lehigh County, Pennsylvania