

## **Datablaze Data Services**

### **Terms and Conditions – Acceptable Use**

*Datablaze LLC (“Datablaze”) will provide data services according to the Terms and Conditions and Acceptable Use policies outlined in this document. You as the “Customer” acknowledge your agreement to the Terms and Conditions and Acceptable Use policies contained herein. These policies are subject to change from time to time and will be posted on the Datablaze website.*

#### **1. PRICING.**

Prices for data service plans are subject to change. Datablaze shall notify Customer of pricing changes with 30 days advance notice. Universal Service fees and taxes assessed by underlying carriers or government agencies are passed on to the Customer and are subject to change at any time. All charges for Service(s) under this Agreement shall be net of all taxes, assessments or other fees or charges (including without limitation all applicable withholding taxes, value added taxes and import duties, fees and taxes).

#### **2. PAYMENT.**

Customer shall provide and maintain a valid Credit Card and billing information via the secure customer login on the Datablaze website. Datablaze will automatically bill the Credit Card on file for Data Services on a set frequency (normally monthly) for all invoices that total less than \$2,000 US dollars. There will be a \$35 charge for any declined Credit Card transactions. Customer will receive electronic statements for all charges via email. When monthly invoiced amounts become larger than \$2,000 US dollars Customer may request to pay invoices by check or money wire. After credit approval, invoiced amounts shall be due and payable within 15 days of the invoice date. All amounts due hereunder shall be paid in U.S. dollars. Datablaze bills 1 month forward for Data Services and bills for any overages from the previous month. Customer agrees to provide timely payments to Datablaze of all amounts due hereunder. Datablaze reserves the right to suspend or terminate services without notice for non-payment. Any device suspended or canceled

for non-payment will incur a \$25 activation fee to re-establish services. Any unpaid balances will accrue interest at the rate of one and one-half percent (1 1/2%) per month or the maximum lawful rate, whichever is less.

#### **3. DATA SERVICES AND LIMITATION OF LIABILITY.**

(i) Customer and Customer’s end-users and subscribers have no contractual relationship with the underlying wireless service carriers and are not a third party beneficiary of any agreement between Datablaze and the underlying carriers. Customer understands and agrees that Datablaze and the underlying carriers shall have no legal, equitable, or other liability of any kind to Customer pursuant to this Agreement. In any event, regardless of the form of the action, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, Customer’s exclusive remedy for claims arising in any way in connection with this Agreement, for any cause whatsoever, including but not limited to any failure or disruption of service provided hereunder, is limited to payment of damages in an amount not to exceed the amount paid by Customer for the Data Services during the 1 month period preceding the date the claim arose. (ii) Subject to FCC Number portability rules, Customer has no property right in any phone or identification numbers assigned by Datablaze or the underlying carrier and Customer understands that any such phone or identification numbers can be changed from time to time. (iii) Customer acknowledges that Data Service may be temporarily refused, interrupted, curtailed or limited because of atmospheric, terrain, other natural or artificial conditions and may be

temporarily interrupted or curtailed due to usage concentrations, modifications, upgrades, relocation and repairs of transmission facilities. Customer agrees that Datablaze and the underlying wireless service carrier shall not be responsible for such interruptions of Data Services or the inability to use the Data Services outside the Territory. Customer understands that Datablaze and the underlying wireless service carrier cannot guarantee the security of wireless transmissions and will not be liable for any lack of security relating to the use of the Data Services.

(iv) Customer expressly understands and agrees that the liability and obligations of Datablaze to Customer and the Subscribers under this Agreement for Data Services are strictly controlled and limited by the underlying wireless service carrier's and the laws, rules and regulations of the Federal Communications Commission and other governmental authorities which from time to time have jurisdiction. In any event, regardless of the form of action, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, Customer's exclusive remedy and the total liability of Datablaze and/or any supplier of services to Datablaze arising in any way in connection with this Agreement, for any cause whatsoever, including but not limited to any failure or disruption of service provided, shall be limited to payment by Provider of damages in an amount equal to the amount charged to Customer for Service provided under this Agreement. In no event shall Datablaze and/or the underlying wireless service carrier be liable for any cost, delay, failure or disruption of Service, lost profits, or incidental, special, punitive or consequential damages.

(v) Customer shall indemnify, defend and hold Datablaze, the underlying wireless service carriers and the officers, employees and agents of each of them harmless from and against all claims, causes

of action, losses, expenses, liability or damages (including reasonable attorneys' fees and costs), and including without limitation for any personal injury or death, arising in any way directly or indirectly in connection with this Agreement; the provision or use of the Data Services; or the use, failure to use or inability to use the Number. This provision shall survive the termination of the Data Services Agreement.

#### **4. SUPPORT SERVICES.**

Customer support is initiated by sending email to support@datablaze.com, by opening a ticket at support.datablaze.com, by using the Live Chat service available on the Datablaze website, or by calling Datablaze. Datablaze does not guarantee or warrant the support provided to Customer. Datablaze and the underlying wireless service carrier will not be liable for any issues arising from support concerns.

#### **5. SOFTWARE LICENSE.**

Customer and Datablaze agree that the arrangement by which Customer acquires equipment and software includes a purchase and sale transaction with respect to the equipment and a use license transaction with respect to the software. Datablaze grants, for as long as Customer, hereinafter also referred to as Licensee in the clause, uses the equipment in the manner provided below, and the Customer accepts, an indivisible, non-exclusive and non-transferable license, in the software (machine readable computer program instructions embodied in a medium of any form), including correction patches, furnished hereunder to use the software less the non-activated features, only on the equipment furnished hereunder for the sole purpose of operating the equipment for the purpose for which it was originally purchased, subject to the following conditions. Licensee shall: (i) limit its use of the software solely to the operation of the equipment

on which it was originally installed and for no other purpose; (ii) execute an End User License Agreement for use of the software and/or equipment if required by Datablaze and/or its licensor(s);

(iii) not merge any software with other computer program materials to form a derivative work or otherwise make changes to the software or alter the software in any manner whatsoever; (iv) not attempt to modify, translate, disassemble, create derivative works, decompile, reverse assemble, sublicense, or distribute all or any portion of the software, equipment, or related documentation, nor shall it authorize or permit any others to do so; (v) not rent, lease, grant a security interest in or otherwise transfer rights to the software; and agrees: (i) that the software (physical materials, including all copies by whomever made) shall be the property of Datablaze or its licensors; and (ii) that the software is and shall remain the proprietary material of Datablaze or its licensors and Licensee shall keep the software confidential, treat it as it does its own proprietary materials and disclose it only to its employees that have a need to know. Customer acknowledges that its purchase hereunder does not transfer any right, title, or interest in or to the software or any intellectual property rights, to Customer. Any added features or enhancements to the Datablaze software remain the property of Datablaze even if such features or enhancements are requested, suggested, or paid for by the Customer.

#### **6. THIRD PARTY MAPPING.**

Datablaze provides mapping integrations with 3rd party mapping systems to present GPS and location information and history. Datablaze assumes no liability for the functionality and availability of 3rd party maps. party mapping APIs change from time to time and Datablaze will make best efforts to provided continued

compatibility. Reverse geo coding or address lookups are also subject to 3rd party constraints and potential outages that are independent from the Datablaze network operation center. Datablaze and the underlying wireless carriers will not be held liable for any issues resulting from mapping or reverse geo coding outages or unavailability.

#### **7. ACCEPTABLE USE.**

Data Service pricing plans are provided by Datablaze under normal use conditions for telemetry applications. Customer may not use Data Services to maintain open channel communications or continual transmission scenarios. If Customer or end users create situations that cause highly concentrated usage Datablaze may charge Customer for overage use and reserves the right to terminate services. Unlimited ping plans for GPS tracking applications are unlimited under normal use. Pings and transmissions in excess of 10,000 per month are considered beyond normal use and will be billable at the overage rate per the selected Data plan.

#### **8. FORCE MAJEURE.**

Neither Datablaze nor Customer shall be liable for any loss or damage due to failure or delay arising out of any cause beyond its control, fault or negligence, including but not limited to, government embargoes, blockades, seizure or freeze of assets, delays or refusals to grant an export license or the suspension or revocation thereof, or any other acts of any government, fires, floods, severe weather conditions, or any other Acts of God, quarantines, labor strikes or lockouts, riots, strife, insurrection, civil disobedience, war, material shortages or delays in deliveries by third parties. In the event of any failure or delay resulting from such causes, an equitable adjustment of schedule and any other appropriate terms and conditions shall be made. No such

failure or delay shall be the basis for an increase in neither Datablaze's obligations nor any termination by Customer.

#### **9. TERM AND TERMINATION.**

Data Service plans are subject to the term of service set forth in the Data Service plans. Services will continue thereafter on a month-to-month basis. Early termination will result in a charge of \$125 or half of the remaining monthly payments left in the term, whichever is greater. Customer will submit device termination requests with 30 days advance notice.

#### **10. VALIDITY.**

Should any provision of this Agreement be found illegal or unenforceable in any respect, such illegality or unenforceability shall not affect any other provision of this Agreement, all of which shall remain enforceable in accordance with their terms, so long as the overall intent of this Agreement is met.

#### **11. DISPUTE RESOLUTION.**

In the event of any dispute between the Parties hereunder, the Parties shall first attempt to resolve the dispute on an informal basis. Upon written request of either Party, the other Party shall, within five (5) business days, designate an authorized representative for the purpose of resolving any dispute. If no party is designated the Party shall be the person whose name authorized this Agreement. Unless otherwise provided in this Agreement, the Parties agree that there shall be no interruption or degradation in Service during the informal dispute resolution procedures. The designated representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute in a timely fashion. Compliance with this provision shall not relieve

either Party from compliance with any other obligation set out in this Agreement.

Any dispute, controversy or claim that cannot be resolved by the Parties arising out of or relating to this Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitration shall be held in Boise, Idaho or such other location as the Parties may mutually agree upon. All aspects of arbitration shall be treated as confidential. Neither the Parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements or in connection with the enforcement thereof.

In the event that suit or arbitration is brought or an attorney retained by either Party to enforce the terms of this Agreement or to collect any money due hereunder or to collect any money damages for breach hereof, the prevailing Party shall be entitled to recover, in addition to any other remedy, the reimbursement of reasonable attorney's fees, court costs and other related expenses incurred in connection therewith.

#### **12. APPLICABLE LAW.**

This Agreement shall be governed by, and construed in accordance with the laws of the State of Idaho, USA, except a provision of that law which would refer resolution of any issue to another jurisdiction.