

# Xirgo Technologies, LLC (“Xirgo”) Standard Terms and Conditions

1. Offer and Acceptance: Xirgo offers to provide products (“Products”) and services (“Services”) in accordance with the terms and conditions set forth in our quotation and those contained herein (collectively the “Agreement”). Acceptance of this offer, as indicated by Customer issuing a purchase order for Products and/or Services (“Order”) or otherwise purchasing Products or Services, is expressly limited to such terms. Any terms and conditions proposed by the Customer, including those contained in Customer’s Order, shall not apply to purchases of Products and/or Services from Xirgo, unless Xirgo expressly agrees to such terms in writing.

2. Lead Time, Title and Delivery: Product lead times are stated in the price quotation. All shipments shall be delivered Ex-Works (Incoterms 2000) to Customer’s designated carrier. Title and risk of loss or damage shall pass to Customer upon Xirgo’s delivery to Customer’s designated carrier. Xirgo may make partial shipments against Customer’s Orders. Xirgo shall not be liable for any damages, losses or expenses incurred by Customer or due to delays in shipment of units or failure to meet the estimated shipment dates and Customer shall accept such shipments.

3. Payment Terms: Payment terms are stated in the price quotation. Xirgo reserves the right to modify prices for Products not yet shipped if there is a material increase in raw material and/or component prices by notice to Customer. The preferred method of payment is via wire transfer, per Xirgo’s wire transfer instructions. CUSTOMER AGREES THAT TIME IS OF THE ESSENCE WITH RESPECT TO PAYMENT AND CUSTOMER AGREES TO MAKE FULL AND TIMELY PAYMENT. If any payment is not made when due, Customer agrees to pay interest on such outstanding amount(s) at the lesser rate of one percent (1%) per month (12% per annum) or the maximum amount permitted by law. Customer is liable for all reasonable costs associated with the collection of delinquent payments including without limitation, reasonable collection, legal and court costs.

4. Taxes: Prices are exclusive of all taxes or duties. Unless Customer provides Xirgo with a duly executed sales tax exemption certification prior to shipment of Product, Xirgo will add sales taxes to the sales price where required by applicable law, and Customer will pay such taxes. Without limiting the foregoing, with respect to cellular data service, Customer shall pay applicable taxes, governmental fees, and charges including: (a) a regulatory cost recovery charge, (b) a gross receipts surcharge, (c) state and federal universal service charges, and (d) other governmental assessments, including, without limitation, a property tax allotment surcharge.

5. Order Cancellation: Orders are binding and non-cancellable within Product lead times. In the event that Customer cancels all or parts of an Order outside of applicable lead times, or fails to meet all its obligations causing the cancellation of an Order or portion thereof, Customer agrees to pay a cancellation fee of 50% of the Product price, as stipulated in Customer’s Order. Recognizing that the damages to Xirgo arising from any cancellation or rescheduling of any Order will be difficult to estimate, the parties agree that the aforementioned cancellation fee covers Xirgo’s expenses and is not intended as a penalty.

6. Subject to Section 9 below, for a period of twelve (12 months) from date of shipment, Xirgo warrants that Xirgo Products shall be free from material defects in material or workmanship and shall conform to Xirgo’s published specifications for such Product. Xirgo shall not be liable for any defects that are caused by neglect or mistreatment, including improper installation or testing, or for any Products that have been altered, misused, abused, damaged, repaired, or modified in any way by an entity other than Xirgo. Xirgo shall not be liable for any defects that result from Customer’s design, specifications or instructions for such Products, or combination of such Products with accessories or devices not approved by Xirgo as being compatible, or acts of God. Xirgo may, at any time, make changes to the Products that do not affect their form, fit or function.

7. Subject to Section 9 below, Xirgo warrants that for as long as Customer contracts for Services, Services will be provided materially in accordance with their specifications as of the date of their initial delivery. Such specifications may be updated from time to time by Xirgo. This limited Services warranty does not apply if the Services or software provided in connection therewith are (i) installed or used on or in connection with any Products or software not provided or specified by Xirgo; (ii) modified or damaged and such modification or damage causes the failure to perform; or (iii) used other than as specified in the documentation or as authorized in writing by Xirgo.

8. If any Products fail to conform to the warranty set forth in Section 6 above, Xirgo’s sole liability shall be, at its discretion, to repair or replace such Products, or credit Customer’s account for such Products. Xirgo’s liability under this warranty shall be limited to Products that are returned during the warranty period to the address designated by Xirgo, using Xirgo’s then current Returned Materials Authorization (“RMA”) process, and that are determined by Xirgo not to conform to such warranty. Repaired or replaced Products shall be warranted for the remainder of the original warranty period. Customer shall pay the shipping costs for the return of Products to Xirgo and Xirgo shall pay the costs of shipping repaired or replacement Products back to Customer.

Following receipt of written notice from Customer detailing the nature and scope of the Services non-conformance during the warranty period, Xirgo’s liability under the Services warranty set forth in Section 7 above shall be to promptly use commercially reasonable efforts to verify the non-conformance and, if confirmed, to replace or undertake to correct any

such non-conforming element of the Services. The foregoing is Customer’s sole remedy and Xirgo’s sole liability for such breach.

9. EXCEPT FOR THE LIMITED EXPRESS WARRANTIES SET IN SECTIONS 6 AND 7 ABOVE; XIRGO MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY. XIRGO SPECIFICALLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NON-INFRINGEMENT, EXCEPT WHERE PROHIBITED BY LAW AND, WHERE PROHIBITED, ANY SUCH WARRANTY SHALL BE LIMITED TO THE MINIMUM WARRANTY AND PERIOD REQUIRED BY LAW. WITH RESPECT TO WIRELESS SERVICES, XIRGO MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER) AND MAKES NO GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING OR THAT SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO CUSTOMER’S DATA AND INFORMATION.

10. Customer agrees, and agrees to communicate to its customers, that the Products and Services are not intended for use (a) in safety-critical or military applications (such as life support) where a failure of the Product or Service would reasonably be expected to cause severe personal injury or death, or (b) in a vehicle along with any other OBD II device. Customer shall fully indemnify Xirgo and its representatives against any damages arising out of the unauthorized use of Products and Services, including but not limited to any use in such safety-critical or military applications or along with any other OBD II device.

11. Customer represents that it has all necessary expertise in the safety and regulatory ramifications of its applications, and Customer acknowledges and agrees that it is solely responsible for compliance with all legal, regulatory and safety-related requirements of applicable federal, state, local or foreign governments and any agency or public authority thereof, concerning its products and any use of Products and/or Services in Customer’s applications or resale of units containing Products and/or Services, notwithstanding any applications-related information or support that may be provided by Xirgo. CUSTOMER AGREES THAT, TO THE EXTENT CUSTOMER WILL USE OR RESELL THE PRODUCTS AND/OR SERVICES TO ASSIST IN COLLECTION OF AMOUNTS OWED TO IT OR ITS CUSTOMERS, CUSTOMER OR ITS CUSTOMERS, AS THE CASE MAY BE, WILL PROVIDE ITS OR THEIR CUSTOMERS WITH A WRITTEN DISCLOSURE EXPLAINING THE PURPOSE AND FUNCTIONALITY OF THE PRODUCTS AND, AS THE CASE MAY BE, OBTAIN ITS OR THEIR CUSTOMERS’ CONSENT TO THE INSTALLATION OF THE PRODUCTS AS A CONDITION, AS THE CASE MAY BE, TO CUSTOMER’S OR ITS CUSTOMERS’ FINANCING ANY CUSTOMER’S PURCHASE OF A VEHICLE FROM CUSTOMER OR ITS CUSTOMER. Customer understands that certain GPS and/or starter disablement technology may not now, or in the future, be permitted by law in certain states. Customer bears exclusive responsibility for verifying that the Products and/or Services may be used in any particular installation or location. Xirgo shall not be liable for any claims or damages that may arise because the GPS and/or starter disablement technologies are not permitted in a particular jurisdiction and Customer indemnifies Xirgo against such claims and damages.

12. Customer acknowledges that all intellectual property related to Products and Services is the property of Xirgo. Customer shall not reverse engineer, have Products and/or Services reverse engineered, and shall not aid a third party in reverse engineering Products and/or Services. Xirgo grants to Customer a limited, non-exclusive license to use firmware contained in, or software provided with, Xirgo Products and/or Services, exclusively for the operation, configuration, management, maintenance or use of Xirgo Products and/or Services, as approved by Xirgo. Unless otherwise agreed in writing with Xirgo, Customer has no rights to use any of Xirgo’s trade names, trade marks, service marks, logos, domain names, or other distinctive product features. Customer agrees that it shall not remove, obscure, or alter any proprietary rights notices (including copyright and trademark notices) which may be affixed to or contained within Products and/or Services.

13. Limitations of Technology: Customer acknowledges the following inherent technical limitations relating to Product and Services use. Complete service area coverage at all times is improbable. The existence of unfavorable conditions, such as weather and wave interference from distant stations can interrupt Product and Service functionality. Moreover, if a Product is moved out of an available service area, communication with that Product will be unavailable until it returns to the available service area. Other environmental issues including, but not limited to service interruptions, poor coverage areas, network congestion, roaming and other wireless access issues may affect Product and Service performance. Global Positioning System (“GPS”) is a satellite based positioning technology providing expansive coverage throughout the world. However, the GPS antenna in a Product must have a radio frequency link to the GPS satellites. If such radio frequency link is impaired, the Product may be unable to correctly recognize its location. Products and Services have many complex elements and are not

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guaranteed against eavesdroppers, hackers, service attacks, viruses or interception. Customer agrees to inform all users of Products and/or Services, that Xirgo shall not be liable for any lack of privacy or security resulting from use of the Products and/or Services. Products and Services are based on cellular technology which 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, Xirgo shall have no obligation to issue a refund or furnish replacement Product. Further, Xirgo shall incur no liability arising from a lack of network capacity of the Product which results from concentrations of usage in certain locations. With respect to wireless technology Services, Xirgo is not obligated to maintain any particular technology if a wireless provider reduces or terminates such technology network. Xirgo will provide written notice of intended changes to such technology as soon as possible following Xirgo's receipt of such notice.

14. Non-waiver of Default: In the event of any default by Customer, Xirgo may decline to make further shipments. If Xirgo elects to continue to make shipments, Xirgo's action shall not constitute a waiver of any such default or affect Xirgo's legal remedies for any such default.

15. Customer agrees that unless prior authorization is obtained from the U.S. Department of Commerce, neither Customer nor its subsidiaries shall export, re-export, or release, directly or indirectly, any technology, software, or software source code (as defined in Part 772 of the Export Administration Regulations of the U.S. Department of Commerce ("EAR")), received from Xirgo, or export, re-export, or release, directly or indirectly, any direct product of such technology, software, or software source code (as defined in Part 734 of the EAR), to any destination or country to which the export, re-export or release of the technology, software, software source code, or product is prohibited by the EAR. Customer shall furnish the assurances provided herein to Xirgo in compliance with Part 740 (Technology and Software Under Restriction) of the EAR.

16. Customer further agrees to obtain any necessary export license or other documentation prior to the exportation or re-exportation of any Product and/or Service, technical data, software or software source code acquired from Xirgo under this Agreement or any direct product of such technical data, software or software source code.

17. General Limitations: **XIRGO SHALL NOT BE LIABLE TO CUSTOMER OR TO ANY OTHER PERSON FOR ANY LOSS OR DAMAGE CAUSED BY THE USE OF THE PRODUCTS AND/OR SERVICES, REGARDLESS OF THE CAUSE. IN NO EVENT SHALL XIRGO BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE USE OF PRODUCTS AND/OR SERVICES PROVIDED HEREUNDER, REGARDLESS OF WHETHER XIRGO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUCH DAMAGES MAY INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, COSTS TO PROCURE SUBSTITUTE PRODUCTS AND/OR SERVICES, RETESTING, OUTSIDE COMPUTER TIME, LABOR COSTS, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF USE, LOSS OF DATA, OR BUSINESS INTERRUPTION. WITH RESPECT TO WIRELESS SERVICES, IN NO EVENT WILL XIRGO BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO, SERVICE DEFECTS, SERVICE LEVELS, DELAYS OR ANY SERVICE ERROR OR INTERRUPTION, INCLUDING INTERRUPTIONS OR ERRORS IN ROUTING OR COMPLETING ANY 911 OR OTHER EMERGENCY RESPONSE CALLS OR ANY OTHER CALLS OR TRANSMISSIONS, LOST OR ALTERED MESSAGES OR TRANSMISSIONS, OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF 'S (OR ITS AFFILIATES', USERS' OR THIRD PARTIES') APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORKS OR SYSTEMS. CUSTOMER AGREES TO INDEMNIFY AND HOLD XIRGO HARMLESS FROM AND AGAINST ANY AND ALL LOSSES OR DAMAGES CAUSED BY USE OF PRODUCTS AND/OR SERVICES BY CUSTOMER OR CUSTOMER'S CUSTOMERS. NO CLAIM, SUIT OR ACTION SHALL BE BROUGHT AGAINST XIRGO MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS OCCURRED. TO THE EXTENT THAT ANY OF THE ABOVE LIMITATIONS ARE PRECLUDED IN A GIVEN STATE, SUCH PRECLUSION SHALL NOT AFFECT ANY OTHER LIMITATIONS NOT SO PRECLUDED.**

18. Specific Limitations: **IN NO EVENT SHALL XIRGO'S AGGREGATE LIABILITY FROM ANY WARRANTY, INDEMNITY, OR OTHER OBLIGATION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR ANY USE OF ANY XIRGO PRODUCT AND/OR SERVICE PROVIDED HEREUNDER, EXCEED THE LESSER OF THE TOTAL AMOUNT PAID TO XIRGO DURING THE PRECEDING TWELVE MONTHS FOR THE PARTICULAR PRODUCTS AND/OR SERVICES SOLD UNDER THIS AGREEMENT WITH RESPECT TO WHICH THE LOSSES OR DAMAGES ARE CLAIMED, AND ONE HUNDRED THOUSAND DOLLARS. THE EXISTENCE OF MORE THAN ONE CLAIM AGAINST THE PARTICULAR PRODUCTS AND/OR SERVICES**

**SOLD TO CUSTOMER UNDER THIS AGREEMENT SHALL NOT ENLARGE OR EXTEND THIS LIMIT.**

19. **CUSTOMER UNDERSTANDS AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS AGREEMENT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.**

20. Special Wireless Data Provisions:

a. Customer must not use or assist others to use the wireless service or a Product for any unlawful, unauthorized, abusive or fraudulent purpose. Customer must make good faith efforts to minimize abuse or fraudulent use, to promptly report to Xirgo any abuse or fraudulent use of which they become aware, and to cooperate in any investigation or prosecution initiated. Customer must use its best efforts to disable any SIMs, or otherwise block access to the wireless service to any user suspected of abuse or fraudulent use.

b. Customer understands and agrees that: (1) it has no contractual relationship with the underlying wireless service carrier, (2) it is not a third party beneficiary of any agreement between Xirgo and the underlying carrier, (3) the underlying carrier has no liability of any kind to Customer, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, (4) messages or data transmissions may be delayed, deleted or not delivered, and 911 calls may not be completed, (5) the underlying carrier cannot guarantee the security of wireless transmissions and will not be liable for any lack of security relating to the use of the services.

c. Customer shall not use the wireless service provided hereunder in any manner that (a) infringes the intellectual property, publicity, privacy or other proprietary rights of others, (b) violates any applicable laws, including those related to export, spamming, privacy, consumer and child protection, obscenity or defamation, or (c) is harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, or otherwise inappropriate.

d. Customer shall not violate or attempt to violate the security of the wireless service provided hereunder, including (a) accessing data not intended for Customer, (b) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization, (c) attempting to interfere with, disrupt or disable service to any user, host or network, including via means of overloading, "flooding", "mail-bombing" or "crashing," (d) forging any TCP/IP packet header or any part of the header information in any e-mail, (e) taking any action in order to obtain services to which Customer is not entitled or (f) sending any virus, worm, Trojan horse or other harmful code or attachment. Violations may result in civil or criminal liability. Customer consents to the processing of information necessary to provide the service from Cisco Jasper's data centers in the United States or elsewhere in the world.

21. Contingencies: Xirgo shall not be in breach of this Agreement and any non-performance or delays in performance shall be forgiven when such non-performance or delays in performance are due to a force-majeure event or other circumstances beyond Xirgo's reasonable control, including but not limited to, shortages of labor, energy, fuel, machinery or materials, technical or yield failures, war, civil unrest, any government act, law or regulation, including any judicial order or decree, any communication or power failure, labor dispute, natural disaster, fire, flood, earthquake, explosion, terrorist act, epidemic or Act of God. If Xirgo is unable to wholly or partially provide Products and/or Services because of any cause beyond its control, Xirgo may terminate this Agreement without any liability to Customer or any third party, other than the refund of any amounts paid for the undelivered Products and/or Services.

22. Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without reference to conflict-of-laws principles. If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision will be enforced to the maximum extent possible to effectuate the intent of the parties, and the remainder of this Agreement will continue in full force and effect. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Customer agrees that exclusive jurisdiction for any dispute arising out of or relating to this Agreement lies within courts located in the State of California and consents to venue in Ventura County, California. Notwithstanding the foregoing, any judgment may be enforced in any United States or foreign court, and Xirgo may seek injunctive relief in any United States or foreign court.

23. Entire Agreement: This Agreement and the price quotation constitute the entire agreement between the parties relating to the sale of the Products and supersedes all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof.