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COVERTRACK®

TERMS AND CONDITIONSThis document limits our liability, your use of the product or service constitutes your acceptance of the following terms and conditions.

This Agreement ("Agreement") is by and between CovertTrack Group Inc., its subsidiaries, affiliates, partners, licensees, and authorized agents/distributors, (collectively hereinafter "CovertTrack") and You, Your heirs, agents, successors and assigns ("You"), and is made effective as of the date of your product usage, purchase or electronic execution. This Agreement sets forth the terms and conditions of Your use of CovertTrack's products, software and services, including all 'CovertTrack' software and services, and explains CovertTrack's obligations to You and Your obligations to CovertTrack in relation to the Products, Software and Services You purchase.

By purchasing CovertTrack's Product, Software or Services, You acknowledge that You have read, understood, and agree to be bound by all terms and conditions of this Agreement and any other policies or agreements made part of this Agreement by reference, as well as any new, different or additional terms, conditions or policies which CovertTrack may establish from time to time, and any agreements that CovertTrack is currently bound by or will be bound by in the future. You may view the latest version of this Agreement online by searching for CovertTrack or GPS Intelligence and navigating to the applicable portion of the website.

**\*TO ALL PURCHASERS AND USERS, BY USING THIS PRODUCT, SERVICE OR SOFTWARE YOU AGREE TO LIMIT THE LIABILITY OF THE MANUFACTURER AND DISTRIBUTORS TO THE REPLACEMENT COST OR A REFUND IN THE AMOUNT OF THE PRODUCT, SERVICE OR SOFTWARE'S COST TO YOU FROM THE MANUFACTURER OR AUTHORIZED DISTRIBUTOR, AS PERMITTED BY LAW**

**\*\* DUE TO THE INHERENT NATURE OF GPS TECHNOLOGY AND DEPENDENCE UPON OTHER TECHNOLOGIES THAT ARE PROVIDED BY NON-PARTIES TO THIS AGREEMENT, NO GUARANTY CAN BE MADE AS TO THE PRODUCT, SOFTWARE OR RELATED SERVICES' FITNESS FOR A PARTICULAR PURPOSE OR USE - YOU MUST READ ALL INSTRUCTIONS TO BE AWARE OF THE INHERENT LIMITATIONS, SUCH AS LOSS OF SIGNAL, IN USING GPS TECHNOLOGY**

GENERAL TERMS APPLICABLE TO ALL PRODUCTS, RELATED SOFTWARE AND/OR SERVICES1 TERMS OF USE

You agree that CovertTrack may modify this Agreement and its related Services from time to time. Your continued use of the product, related software or services constitutes your acceptance and agreement to be bound by any such modifications. If You have purchased Services or Software from CovertTrack, the terms of this Agreement shall continue in full force and effect as long as you use the Product, Software or Services. In the event You terminate Your usage, CovertTrack will not refund any amounts You have paid unless otherwise agreed to in writing.

You agree that CovertTrack shall not be bound by any representations made by third parties whose products, software or services you may use in conjunction with your use of CovertTrack products. Any statement of a general nature, which may be posted on CovertTrack's Web site or contained in CovertTrack's promotional materials, will not bind CovertTrack. CovertTrack may, at times, offer certain promotions with different charges and features, such promotions may be discontinued at any time, without prior notice.

2 NOTICE

By using CovertTrack products, software or related services, you are agreeing that you have read and understand all related warnings and notices provided therewith, or in the event you did not see the warnings included with the product or software, that you have reviewed and understood the warnings available on the CovertTrack website for the product, software or service you are using, and you have provided access and/or discussed those warnings and instructions with any parties to whom you provide access to or use of, the product, software or service. CovertTrack disclaims any liability for your failure to read or follow warnings or instructions.

**Batteries** In products that contain batteries, CovertTrack recommends yearly factory maintenance and/or inspections. Inspections are provided free of charge by CovertTrack, however, Customers are responsible for any shipping costs, and should contact CovertTrack for details related to sending in products for inspection. Customers are solely responsible for product maintenance and ensuring products are sent in for inspection on a timely basis.

3 TERMS OF USAGE & SERVICE

Subject to the terms and conditions of this Agreement, CovertTrack shall attempt to provide, but cannot guarantee, GPS Related Services for twenty-four (24) hours a day, seven (7) days a week throughout the term of this Agreement. Customer understands and agrees that CovertTrack DOES NOT ACCEPT ANY LIABILITY for service, product or access outages. Customer understands and accepts that from time to time, without notice, the Services may be inaccessible or products may be inoperable for a variety of reasons, many of which may be outside of CovertTrack's control, including, without limitation (i) equipment damage or malfunctions, (ii) periodic maintenance procedures or repairs which CovertTrack may undertake, or (iii) causes beyond the control of CovertTrack or which are not reasonably foreseeable by CovertTrack, including, without limitation to, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures and shall not be entitled to any setoff, discount, refund or other credit.

Customer agrees and understands that CovertTrack has no control of availability of Tracking Services on a continuous or uninterrupted basis, in light of a variety of factors which can affect GPS reception, in addition to the factors listed above. Any break in service known to CovertTrack will be relayed to Customer as soon as possible, but no guarantees are made with regards to the provision of notice. In the event that a pre-established interruption is necessary CovertTrack will notify the customer with as much advanced notice as possible.

In the event that a break in service or problem with product functioning occurs due to forces beyond control of CovertTrack, CovertTrack will attempt to notify Customers using reasonable means (such as posting information on its website) and will make efforts to re-establish service on customers' behalf, however, CovertTrack cannot make any guarantees with regards to re-establishing services. If the performance of any part of this Agreement by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, not fire, judicial or governmental action, labor disputes, act of God or any other causes beyond the control of either party, that party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes.

4 NO UNLAWFUL CONDUCT OR IMPROPER USE

As a condition of Your use of CovertTrack's Products, Software and Services, You agree not to use them for any purpose that is unlawful or prohibited by these terms and conditions, and You agree to comply with any applicable local, state, federal and international laws, government rules or requirements. You agree You will not be entitled to a refund of any fees paid to CovertTrack if, for any reason, CovertTrack takes corrective action with respect to Your improper or illegal use of its Services. CovertTrack reserves the right at all times to disclose any information as CovertTrack deems necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in CovertTrack's sole discretion. You agree that your information & tracking records may be released to any Law Enforcement Officer who requests the information in regards to an ongoing investigation regarding Your tracking device without a Subpoena or Warrant.

If You have purchased Services, CovertTrack has no obligation to monitor Your use of the Services. CovertTrack reserves the right to review Your use of the Services and to cancel the Services in its sole discretion. CovertTrack reserves the right to terminate Your access to the Services at any time, without notice, with the limitation on your damages being a refund for unused services.

CovertTrack reserves the right to terminate Services if Your usage of the Services results in, or is the subject of, legal action or threatened legal action, against CovertTrack or any of its affiliates or partners, without consideration for whether such legal action or threatened legal action is eventually determined to be with or without merit. CovertTrack may review every account for excessive space and bandwidth utilization and to terminate or apply additional fees to those accounts that exceed allowed levels.

Customer also agrees to be solely responsible for obtaining any necessary consent from the person(s), vehicles, or assets that they will be tracked and agrees to abide by all state and federal laws concerning using tracking devices. Customer agrees to indemnify and hold CovertTrack, and its subcontractors, Members, Officers & Employees harmless from any and all costs and expenses regarding any claim(s) arising from the unauthorized tracking by Customer. Customer is urged to speak with an attorney if they are not sure of applicable laws regarding tracking devices. Laws can vary from State to State, and Country to Country, regarding use of tracking devices.

5 NO MODIFICATION OF PRODUCTS OR SOFTWARE

Customer agrees not to remove or alter any equipment or software provided by CovertTrack including removal of the SIM card from the tracking device. Customer will be billed, and agrees to be responsible for, any and all charges associated with altering the SIM card or using the SIM card in any other device other than the device registered with the CovertTrack website.

6 ACCOUNT SECURITY

You are responsible for maintaining the confidentiality of Your customer number/login, password and any related information. You agree You are entirely responsible for any and all activities that occur under Your account. You agree to notify CovertTrack immediately of any unauthorized use of Your account or any other breach of security. You agree that to the extent permitted by law, CovertTrack will not be liable for any loss that You may incur as a result of someone else using Your Account Access Information, either with or without Your knowledge. You further agree You could be held liable for losses incurred by CovertTrack or another party due to someone else using Your Account Access Information.

For security purposes, You should keep Account Access Information in a secure location and take precautions to prevent others from gaining access to Your Account Access Information. CovertTrack specifically disclaims liability for any activity in Your account, whether authorized by You or not.

#### 7. ACCURATE INFORMATION

While You are using CovertTrack's Services, You agree that You have provided CovertTrack with accurate information and that You will notify CovertTrack within five (5) business days when any of the information You provided as part of the application and/or registration process changes. Failure by You, for whatever reason, to respond within five (5) business days to any inquiries made by CovertTrack to determine the validity of information provided by You will constitute a material breach of this Agreement.

You agree that CovertTrack may use and rely on any such information provided by You for all purposes in connection with Your use of the Product, Related Software or Services, subject to CovertTrack's Privacy Policy. If You provide any information that is false, misleading or incomplete, or if CovertTrack has reasonable grounds to suspect that Your information is misleading or incomplete, CovertTrack has the absolute right, in its sole discretion, to terminate its Services and close Your account. Further, CovertTrack may investigate any account without notice to You in order to respond to credit card dispute inquiries or inquiries from law enforcement.

#### 8. FEES AND PAYMENT

As consideration for the Software or Services purchased by You and provided to You by CovertTrack, You agree to pay CovertTrack at the time You order. All fees are due immediately and are **non-refundable** unless otherwise expressly noted, even if Your Services are suspended, terminated, or transferred prior to the end of the Services term. CovertTrack expressly reserves the right to modify pricing through email notification and/or notice on its Web site. Payment may be made by You by providing a valid credit card, an online check or a personal check.

Subscribers are billed in advance for the contract term. No pro-ration or refunds are done for cancellations before the end of the contract term. **If a written or email cancellation notice is not received at least 10 days prior to the end of the contract term, the contract will be automatically extended on a month to month basis. Email cancellation notices can be sent to [cancel@coverttrack.com](mailto:cancel@coverttrack.com). Include Your account email address and tracking device serial number.** Once an account is on a month to month term, billing is performed 10 days before the end of the monthly billing period to pay for tracking services for the following month. Cancellation requests must be received by CovertTrack at least 10 days prior to the end of the monthly billing cycle to prevent You from being charged for an additional month of tracking services.

If You signed up for a monthly payment plan or Your plan was converted to a monthly plan after your contract ended, Your monthly billing date will be determined based on the day of the month You purchased the Services unless that date falls after the 28th of the month in which case Your billing date will be the 28th of each month.

Customer's failure to pay any fees when due shall be considered a material breach of this Agreement, and CovertTrack may, in addition to any rights available to it at law or in equity, do any or all of the following: (i) assess late charges of the greater of one and one-half (1.5%) per month or the maximum allowable under applicable law, (ii) suspend performance of the Tracking Services, and terminate the Agreement without penalty, or (iii) require future payments hereunder to be made in advance of Tracking Services being rendered by CovertTrack. Any suspension or termination of Tracking Services will not relieve Customer from paying past due fees plus late charges and in event of collection enforcement, Customer shall be liable for any costs associated with such collection, including, but not limited to, legal costs, attorneys' fees, court costs, and collection agency fees. Upon suspension of a customer's account for non-payment, customer will be charged a re-activation fee after all past due balances have been settled if customer wishes to resume tracking on the network.

#### 9. PRIVACY POLICY

To serve you as a customer, we will initially collect information about you such as your name, street address, email address, and phone number. We collect this information in person, by telephone, by mail, e-mail or on our Web site through your use of the Services you purchase. CovertTrack will not sell or provide this information to any 3rd party without your consent with the exception of Law Enforcement Requests.

#### 10. SURVIVAL

Sections shall survive any termination or cancellation of this Agreement.

#### 11. DISPUTES/ARBITRATION/JURISDICTION/VENUE

Any claim, controversy or dispute that arises between the parties, their agents, employees, officers, directors or affiliates ("Dispute") that the parties are unable to settle through consultation and negotiation may be mediated under the Commercial Mediation Rules of the American Arbitration Association ("AAA") by a mutually acceptable mediator. Any Dispute that cannot be resolved through negotiation or mediation may be resolved by binding arbitration. The arbitrator will be selected in accordance with AAA procedures from a list of qualified people maintained by the AAA and will conduct the arbitration under the rules of the AAA then in effect, except as otherwise provided in this Agreement. The arbitration will be conducted in Phoenix, Arizona and all expedited procedures prescribed by the AAA rules will apply. The arbitrator's decision and award will be final, conclusive and binding, and judgment may be entered upon the decision and award in accordance with applicable law in any court having jurisdiction thereof. If arbitration is not used and a civil remedy is needed, CovertTrack and You agree to use a court of appropriate jurisdiction within Maricopa County, Arizona.

#### 12. DISCLAIMER OF WARRANTIES

CovertTrack disclaims any and all responsibility or liability for the accuracy, content, completeness, legality, reliability, operability or availability of information or material displayed in or accessible through the use of the product or related software in conjunction with the internet. CovertTrack disclaims any responsibility for the deletion, failure to store, mis-delivery, or untimely delivery of any information or material obtained from the use of the product, related software or services. CovertTrack disclaims any responsibility for any harm resulting from downloading or accessing any information or material on the Internet.

CovertTrack, its suppliers and licensors DISCLAIM any warranties for services or goods received through or advertised on any third-party Internet sites that any user of the product may access related to the use of the product or software.

CovertTrack will attempt to retain all data for a period of 1yr from the date the data entered our system for active accounts. For GPS tracking data that was deleted by a customer, or accounts that were terminated, closed, or suspended, CovertTrack charges a fee of approximately \$1,500.00 to attempt to recover deleted data from an account.

#### 13. LIMITATION OF LIABILITY

You understand and agree that GPS Technology relies upon multiple independent factors to provide data, possibly including satellites, cell towers and independent service providers. Data from the use of the product, related software or services cannot be guaranteed against interruptions or errors, and thus there is no warranty express or that should be implied about the product, software or services operating at any minimum data speed or otherwise be guaranteed to be operating at any one time. CovertTrack has no control over third party network sites you may access in the course of your use of the product, related software or services and can assume no responsibility for third-party websites. Any information you download or otherwise obtain through the use of the product, related software or services is at your own discretion and risk and you will be solely responsible for any damages to your computer system or loss of data that results from the download of such material or data.

Under no circumstances shall CovertTrack, its suppliers or its licensors be liable to you, any user, or any third party on account of your, or that party's use or misuse of, or reliance on, the data obtained from the use of the product, related software or services or that result from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation, or transmission or any failure of performance.

Under no circumstances shall CovertTrack, its suppliers or its licensors be liable to you, any user, or any third party on account of the inability to use the product, related software or services, or from the interruption, suspension, or termination of any related services, or from your reliance on or use of the information obtained by your use of the product, software or services. In further limitation, CovertTrack, its suppliers or licensors shall not be responsible for the cost of procurement of substitute goods or services, lost profits, lost property, injury or lost data resulting from your use of the product.

**SUCH LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE FULLEST EXTENT PERMITTED BY LAW.**

Without limiting the foregoing, under no circumstances will CovertTrack its suppliers, or licensors, be liable for any delay or failure in performance resulting in any way from forces or causes beyond its reasonable control, including without limitation, Internet failures, computer failures, any type of equipment failure, acts of god, acts of governments, orders of domestic or foreign courts or tribunals, or environmental conditions.

#### INDEMNIFICATION

Customer agrees to indemnify and hold harmless CovertTrack, including its affiliates, directors, officers, agents, licensees, employees and contractors, from any claim, liability, loss, damage, cost or expense (including, without limitation, suits, judgments, litigation, costs and attorney's fees of every kind and nature) arising out of or related to: (i) Customer's breach of this Agreement, (ii) any negligence or willful misconduct of Customer, (iii) any action or conduct of CovertTrack undertaken pursuant to this Agreement at the direction of the Customer, (iv) any use of the product, related software or services, or (v) from any actions taken by in connection with the use of the product, related software or services, in particular, but not limited to, any claim arising from a violation of any third party's rights, violations of law, or a breach of the foregoing. Customer agrees that CovertTrack shall have the right to participate in the defense of any such claim through counsel of its own choosing.

#### SOFTWARE SECURITY NOTICE AND DISCLAIMER

NOTICE! The use of this product may expose your computer to an open network, which you agree to use at your own risk. Any such network may not be SECURE. CovertTrack cannot and does not guarantee the privacy of your data and communication while using a device or when using related software programs or the Internet in connection with the use of this product.

There are potentially serious security issues with any computer connected to the Internet without the appropriate protection, ranging from viruses, worms and other programs that can damage the user's computer, to attacks on the computer by unauthorized or unwanted third parties. By using this product, you acknowledge and knowingly accept the potentially serious risks of accessing the Internet over an unsecured network to retrieve information related to the use of this product. It is recommended that users take steps to protect their own computer system, such as installing current anti-virus software and maintaining appropriate firewall protection. For further information on how to protect you on this open network, consult a security professional.

By using this product, you further acknowledge and agree that YOUR USE OF THIS PRODUCT OR SOFTWARE AND ANY RELATED SERVICE IS SOLELY AT YOUR OWN RISK and you also agree to all terms set forth in CovertTrack's Terms and Conditions, including the Disclaimer of Warranties, Limitation of Liability and the Indemnification policies, as well as its Privacy Policies.

ALL MATERIALS, INFORMATION, PRODUCTS AND SERVICES INCLUDED HEREIN ARE PROVIDED "AS IS," WITH NO WARRANTY UNLESS SPECIFIED IN WRITING IN A SPECIFIC PRODUCT'S OR SOFTWARE'S MANUAL. Except as otherwise specified in writing, CovertTrack, its suppliers and licensors, expressly disclaim to the fullest extent permitted by law, all express, implied and statutory warranties, including without limitation, the warranties of merchantability, or fitness for a particular purpose.

ITS SUPPLIERS AND ITS LICENSORS DISCLAIM ANY WARRANTIES FOR ANY INFORMATION OR ADVICE OBTAINED THROUGH THE USE OF THE PRODUCT, RELATED SOFTWARE OR SERVICES. COVERTTRACK, ITS SUPPLIERS AND ITS LICENSORS DISCLAIM ANY WARRANTIES FOR SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON ANY INTERNET SITES THAT ANY USER OF THE PRODUCT MAY ACCESS RELATED TO THE PRODUCT OR SOFTWARE.

Questions? Call 480 657 9545 for Customer Service or Technical Support

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## ADDENDUM

The City of Glendale, Arizona ("City") and CovertTrack ("Contractor") further agree as follows:

**I. Conflicts.** The CovertTrack Terms and Conditions (the "Agreement") between the parties is subject to cancellation for conflicts of interest under the provisions of Arizona Revised Statutes ("A.R.S.") § 38-511.

### **II. Immigration Law Compliance.**

- A. Contractor, and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- B. Any breach of warranty under subsection (A) above is considered a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.
- C. City retains the legal right to inspect the papers of Contractor or subcontractor employee who performs work under the Agreement to ensure that Contractor or any subcontractor is compliant with the warranty under subsection (A) above.
- D. City may conduct random inspections, and upon request of the City, Contractor shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection (A) above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Paragraph II.
- E. Contractor agrees to incorporate into any subcontracts under the Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under the Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- F. Contractor's warranty and obligations under this Paragraph II to the City are continuing throughout the term of the Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- G. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

**III. Entire Agreement.** The Agreement and this Addendum constitute the entire understanding between the parties with respect to the subject matter of the Agreement and Addendum.

**IV. Addendum and Agreement Conflict.** In the result of any conflict between the Agreement and this Addendum, the terms of this Addendum prevail.

[SIGNATURES ON NEXT PAGE]

  
Contractor

  
City

8/8/14  
Date

8/18/14  
Date

ATTEST:  
  
City Clerk

Approved as to form

  
City Attorney