

## DATA SYSTEMS AGREEMENT

OSK Entity: _____	Customer name: _____
Entity Address: _____	Customer Address: _____
_____	_____
_____	_____
_____	Email: _____
("Company")	("Customer")

This DATA SYSTEMS AGREEMENT sets out the terms and conditions upon which Customer may access and use the System and related Services (each as defined in the attached [Appendix 1](#)) in connection with one or more vehicles (each, as "**Vehicle**" and collectively, the "**Vehicles**"). In consideration for such access and use, Customer agrees to be bound by the terms and conditions of this Data Systems Agreement (together with all appendices referenced herein, the "**Agreement**") and each telematics subscription agreement entered into by the parties (each, a "**Subscription Agreement**"). All capitalized terms used but not defined herein shall have the meanings set forth in the attached [Appendix 1](#).

If Customer subsequently rents, leases, resells or otherwise transfers the Vehicle to a third party, Customer is solely responsible for (i) notifying such third party of this Agreement and (ii) obtaining all consents and authorizations required from the third party in order to access and use the System (which may include the execution and delivery of a grant of rights in the form set forth in [Appendix 2](#) attached hereto).

By signing this Agreement or any Subscription Agreement, and by installing, accessing, or using the System (and related Services), Customer expressly agrees to be bound by the Terms set forth in the attached [Appendix 1](#) (the "**Terms**"), which are subject to change by Company from time to time. The current version of the Terms are available at [clearskysupport@oshkoshcorp.com](mailto:clearskysupport@oshkoshcorp.com). Customer should review the Terms periodically for updates. Customer's continued use of the Services for at least three (3) months after any updates to the Terms have been published will constitute Customer's acceptance of and agreement to such changes. If Customer does not agree to the Terms, Company has no obligation to license, sell, or otherwise provide any access to or use of the System or the Services and Customer is expressly prohibited from accessing, installing, using or copying the System (or any portion thereof).

**DATA PRIVACY NOTICE.** In the course of providing the Services, Company will process data on behalf of Customer. Some data may be considered "personal data" within the meaning of the European General Data Protection Regulation (the "**GDPR**") and other data privacy and data protection Laws (collectively, "**Data Privacy Laws**"). Customer shall comply with all applicable Data Privacy Laws, including, but not limited to, providing information to data subjects when applicable. Customer expressly acknowledges and agrees that, as set forth in more detail in the Terms, the Oshkosh Group Companies may process data for their own purposes. [Appendix 3](#) may be included with this Agreement and set out additional terms and conditions applicable to such data processing.

This Agreement may be executed in one or more counterparts, each of which is an original, and all of which together constitute only one agreement between the parties. Delivery of an executed counterpart of this Agreement, by facsimile, electronic email in portable document format (.pdf) or by any other electronic means has the same effect as delivery of an executed original of this Agreement. Further, each party agrees that the electronic signature (whether digital or encrypted) of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.

The following Appendices shall form part of this Agreement:

- Appendix 1. General Terms and Conditions
- Appendix 2. Example Grant of Rights by Third Party (see Section 4.2 of [Appendix 1](#))
- Appendix 3. Jurisdiction-Specific Privacy-Related Terms and Conditions (if applicable)

### COMPANY:

Authorized Signatory: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

### CUSTOMER:

Authorized Signatory: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

## 1. DEFINING THE SYSTEM & SERVICES

1.1 The “**System**” is a telematics-based system provided by Company to support Customer with information on Vehicles, driver and fleet performances, positioning, tracking, messaging and integration of third-party applications. The System is comprised of:

- 1.1.1 all software associated with the System and Services, including any mobile applications (“**System Applications**”) (together the “**System Software**”). If Customer is acting on behalf of, or under the direction or control of, the U.S. federal government, then the System Software shall be considered commercial computer software under 48 C.F.R. Chapter 2;
- 1.1.2 the internet-based telematics services web portal (the “**System Portal**”);
- 1.1.3 the vehicle telematics unit and other vehicle-based components (the “**System Hardware**”); and
- 1.1.4 tools as may be developed in connection with the System from time to time.

1.2 The “**Services**” include all wireless and telematics monitoring services, including without limitation, the collection of usage data regarding the Vehicle, the processing, monitoring and analysis of such data and making such data available to Customer in a useful form through various aspects of the System. Information regarding the specific Services to be provided to Customer, together with additional terms and conditions regarding any specific Services, shall be set forth in an applicable Subscription Agreement. Customer shall be required to sign a Subscription Agreement prior to access and use of the System and the Services.

1.3 As part of the Services, the System will collect information about the Vehicle on which it is operating, such as vehicle health data (e.g., vehicle diagnostic data, the number of engine hours, the number of vehicle hours, etc.), vehicle efficiency data, vehicle operation data (e.g., the amount of fuel used, etc.), vehicle identification number (VIN), vehicle location, mileage, software and firmware versions, machine attachments or implements, System usage, data usage, and other information (collectively, the “**Vehicle Data**”).

1.4 The System collects, processes, monitors, analyzes and sends Vehicle Data over the

wireless network from the Vehicle in order to enable Company’s systems to further process the Vehicle Data and to provide the Services.

1.5 As a part of the consideration for providing the System and performing the Services, Customer expressly authorizes and consents to Company sharing all Vehicle Data (and any other data related to the Services) with Company’s parent, subsidiaries and affiliated entities (together with Company, the “**Oshkosh Group Companies**”). Further, Customer expressly authorizes and agrees that the Oshkosh Group Companies may use, process, share, disclose and transfer any Vehicle Data for their own purposes during the Term of this Agreement and thereafter. Such purposes may include, but are not limited to:

- 1.5.1 conducting product and services research and development to enhance and maintain the System and the Services and to assist with the development of new products and services;
- 1.5.2 troubleshooting and resolution of any performance or quality issues;
- 1.5.3 conducting warranty and accident research investigations;
- 1.5.4 fulfilling contractual audit or regulatory compliance obligations;
- 1.5.5 performing marketing;
- 1.5.6 performing proactive maintenance and diagnostics;
- 1.5.7 carrying out obligations and enforcing rights arising from contracts entered into between Customer and Company, including for billing and collection;
- 1.5.8 transferring anonymous Vehicle Data to third party business partners domestically and internationally; and
- 1.5.9 in any other way Company may describe when Customer provides the information, or for any other purpose at Customer’s direction or with Customer’s consent.

1.6 Company may modify, upgrade or substitute any part of the System and/or the Services to improve the Services, as may be required for added functionality or as is otherwise required from time to time in order to comply or conform with any applicable safety or legal requirement (including any statute, law, ordinance, regulation, rule, requirement, code, order, treaty, common law, or other requirement or rule of law of any federal, state, local or foreign

government (or political subdivision thereof) (collectively, “**Laws**”).

## **2. AVAILABILITY OF THE SYSTEM**

- 2.1 The right of Customer to use the System and the Services is subject to the availability of the System. Not all Services will be available in all locations (particularly in remote or enclosed areas), on all Vehicles, or at all times. Additional availability restrictions may result from the use of certain internet or telecommunication services. Other problems that are outside the control of Company may arise that impair Customer’s access to or use of the System or Services, including weather, obstructing objects and buildings, Customer’s failure to properly maintain the Vehicle and the System, Customer modification of the System or Vehicle, or damage to the Vehicle. Company operates in accordance with and subject to all applicable Laws, and as such, the Services may not be available in every state or country.
- 2.2 The System may be unavailable due to maintenance work on the System Software or System Portal. Company will endeavor to minimize disruption of the System during maintenance.

## **3. USE OF THE SYSTEM**

- 3.1 Customer shall only use, access, and operate the System, in compliance with all applicable Laws. Customer may only use or access the System when it is safe to do so. Access to or use of the System is at Customer’s sole risk. Customer is solely responsible to exercise its own discretion, and observe all safety measures required by Law, as to how and when to access or use the System and the Services. **CUSTOMER SHOULD NOT ACCESS THE SYSTEM WHILE OPERATING THE VEHICLE.**
- 3.2 The System and Services are **NOT FOR EMERGENCIES or EMERGENCY SITUATIONS**, including vehicle or medical emergencies. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICE IS LIMITED SOLELY TO RELAYING INFORMATION COLLECTED BY THE SYSTEM TO CUSTOMER, AND THAT COMPANY HAS NO DUTY OR OBLIGATION TO ACTIVELY MONITOR,

ANALYZE, NOTIFY, RESPOND TO, OR FOLLOW-UP ON ANY DATA RELAYED FROM TIME TO TIME TO CUSTOMER. Customer shall ensure that Vehicle users are advised not to disregard or delay seeking emergency help based on anything that does or does not appear on the System or Services.

- 3.3 Customer may be required to create an account to use the System and the Services. Customer shall protect the security of the System at all times by ensuring that access and login credentials are maintained confidential and secure. Customer agrees to prohibit any third party from using Customer’s account credentials and agree to immediately notify Company of any actual or suspected unauthorized use of Customer’s account credentials or other security concerns of which Customer becomes aware. As part of the Services, for the purpose of protecting the security of Customer’s account, Customer’s rights, and the security of the Vehicle and the System, Customer agrees that Company may: (i) monitor the System in Customer’s Vehicle and the information within them; and (ii) implement protective measures within the System and Services to defend against security threats. Customer access to the System and the Services may be revoked by Company at any time with or without cause.
- 3.4 Customer agrees to indemnify, defend, and hold harmless Company and its directors, officers employees and agents from and against any and all claims, losses, liabilities, damages, fees, expenses and costs (including reasonable attorneys’ fees) (“**Losses**”) arising out of or in connection with: (i) Customer’s breach of any of the terms of this Agreement (or any Subscription Agreement) or violation of applicable Law, (ii) Customer’s use or access of the System or Services, or (iii) any unauthorized third party’s access to or use of the System or Services using Customer’s access and login credentials.
- 3.5 All aspects of the System and the Services (including without limitation, all System Software, System Applications and associated intellectual property (including without limitation, all patents, copyrights, trade secrets, trademarks, service marks, or other intellectual property or proprietary rights)) are the property of Company, or its licensors or suppliers, as

applicable. Subject to this Agreement and the payment of all applicable fees, Company grants Customer a revocable, nontransferable (except as provided below), personal, nonexclusive license to use the System and the Services (including an object code version of the System Software).

- 3.6 Neither the System or the Services, nor any part of the System and the Services, may be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any commercial purpose without the express written consent of Company.
- 3.7 Customer agrees that Company may remotely access, deliver, install, update, or change the System or the Services (collectively, “**Updates**”) to the System without any further notice or consent. Customer may be asked to consent to Updates, and failure to promptly do so may result in loss of functionality or unavailability of certain Services. Customer shall not modify, remove, or destroy any proprietary markings or confidential legends placed upon or contained within the System, the System Software, any documentation, or any related materials.
- 3.8 In respect to users of the Vehicles and/or the System, Customer is responsible for ensuring that:
  - 3.8.1 any and all actions or authorizations required for the collection, processing and use of Vehicle Data are taken or obtained;
  - 3.8.2 users of the Vehicle and/or the Services are fully informed about and comply with the instructions for use of the Services; and
  - 3.8.3 Customer and users of the Vehicle do not use the System in violation of any Laws or for unlawful or abusive purposes; and
  - 3.8.4 all users of the Vehicle and Services are aged 18 or over.
- 3.9 Customer is further responsible for compliance with all applicable Data Privacy Laws, including the GDPR if applicable, including obtaining any required consents. Customer shall indemnify and hold Company, its present and future affiliates, employees, agents, successors and assigns, harmless for any and all Losses resulting from or arising out of Customer’s failure to comply with such Laws.

- 3.10 Customer is prohibited from violating or attempting to violate the security of the System or Services, including: (a) accessing data not intended for such user or logging onto a server or an account which the user is not authorized to access; or (b) attempting to probe, scan, or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization; or (c) accessing or using the System or Services or any portion thereof without authorization, in violation of this Agreement (or any Subscription Agreement) or in violation of applicable Law.

#### **4. TRANSFER, LEASE AND RENTAL OF VEHICLES OF VEHICLES TO THIRD PARTIES**

- 4.1 Customer is obliged to (a) inform Company about any sale, permanent transfer or change in ownership (together a “**Transfer**”) of any Vehicle and (b) inform such new owner of the existence of this Agreement (and all Subscription Agreements). If the new owner indicates its desire to use the System and receive the Services, Customer shall provide Company with the name and contact information for such new owner or shall, prior to such Transfer, ensure that any such third party using the Services enters into a Data Systems Agreement (and Subscription Agreement) and registers the Vehicles with Company.
- 4.2 If Customer rents, leases or otherwise transfers possession or control of a Vehicle to a third party or otherwise permit a third party to use the Vehicle, the Customer is responsible for notifying the third party of this Agreement (and all Subscription Agreements), and for obtaining all necessary consents and authorizations from the third party in connection with its use of the System and the Services (which may include the execution and delivery of a grant of rights in the form set forth in **Appendix 2** attached hereto).

#### **5. PROCESSING OF PERSONAL DATA**

- 5.1 Customer’s access to and use of the System and Services may result in the collection, processing, analysis and transmission of data and information that includes references to Customer or other party that is the System or Vehicle user, and Company may therefore

- process personal data (“**Personal Data**”) on behalf of Customer. The terms and conditions of this Section 5 supplement Company’s general data privacy policy, which can be found at <https://www.oshkoshcorp.com/en/privacy-policy>, the terms of which are expressly incorporated in to this Agreement.
- 5.2 The System and Services are not intended for use by or in connection with children under 18 years of age. No one under age 18 may provide any information to or through the System. Company does not knowingly collect Personal Data from children under 18. If a user is under 18, do not use or provide any information on the System or on or through any of their features, including Customer’s name, address, telephone number, email address, or any screen name or user name the individual under 18 may use. If Company learns it has collected or received Personal Data from a child under 18 without verification of parental consent, Company will delete that information. If Customer believes Company might have any information from a child under 18, Customer must notify Company immediately.
- 5.3 The Personal Data shall include:
- 5.3.1 Data which is provided directly into the System by Customer or the Vehicle user. This may include information which may allow Customer to be reasonably personally identified, such as name, postal address, billing address, work address, shipping address, e-mail address, home, work, and mobile telephone numbers, Vehicle ownership (i.e., is the Vehicle owned, leased, or rented), Social Security Number, information Customer provided for other individuals (such as emergency contact information), driver’s license number, date of birth, credit or debit card number (for payment purposes), gender, license plate numbers, and other personal information.
- 5.3.2 Data about the System or Vehicle user created using the System, such as Vehicle operation and use data, Vehicle and System diagnostics, Vehicle location data, logs, referring/exit pages, date and time of visits to Company websites or use of Company applications, error information, clickstream data, and other communication data.
- 5.3.3 Data about Customer’s internet connection, the equipment used to access the System and usage details; and
- 5.3.4 Data provided by third-parties.
- 5.4 Where Personal Data is collected and/or processed in a jurisdiction or territory where specific Data Privacy Laws apply, such as the GDPR in the European Union, then Customer and Company shall enter into specific data processing terms in order to comply with the relevant obligations and requirements, which shall be included with this Agreement as **Appendix 3**. In terms of a conflict between the country specific terms and the terms set forth in **Appendix 3** and any other provision of this Agreement or any Subscription Agreement, the country specific terms shall apply.
- 5.4.1 When required by applicable Law, Company shall ensure that all sub processors engaged for the processing of Customer’s Personal Data conform to processing requirements of this Agreement. When required by applicable Law, Company shall at Customer’s request disclose the identity of any sub-processors and the location of the processing.
- 5.5 Company may use Personal Data to:
- 5.5.1 Perform the Services and to provide the System, (including Customer or Vehicle support services such as maintenance support, warranty services, Vehicle health monitoring and management services, and Vehicle diagnostic services);
- 5.5.2 To provide Customer with information, products, or services requested from Company;
- 5.5.3 To process, fulfill, and administer transactions and orders for products and services ordered by Customer, including to verify Customer’s identity or Vehicle ownership and to prevent fraud;
- 5.5.4 To fulfill any purpose for which Customer provides the information;
- 5.5.5 To notify Customer about changes to the System, or any products or services Company offers or provides though it;
- 5.5.6 To carry out Company’s obligations and enforce Company’s rights arising from any contracts entered into between customer and Company, including for billing and collection;

- 5.5.7 For research and evaluation purposes, including for product improvement programs, for product recall purposes, and for quality, safety, and System enhancement;
- 5.5.8 Provide a personalized service by enabling Company to estimate user size and usage patterns; verify Customer or use location to ensure Company can provide Services to Customer; store information about Customer preferences, allowing Company to customize the System and recognize Customer when returning to the System; and
- 5.5.9 For any other purpose with Customer consent. Company will only process Personal Data where it has a legal basis to do so.
- 5.6 Company may disclose Personal Data:
  - 5.6.1 To comply with any court order, Law or legal process, including to respond to any government or regulatory request;
  - 5.6.2 To enforce or apply this Agreement, any Subscription Agreement and other agreements, including for billing and collection purposes;
  - 5.6.3 To a buyer or other successor in the event of a merger, divestiture, restructuring, reorganization, dissolution, or other sale or transfer of some or all of Company's assets, whether as a going concern or as part of bankruptcy, liquidation, or similar proceeding, in which Personal Data held by Company about the System users are among the assets transferred; and
  - 5.6.4 If disclosure is necessary or appropriate to protect the rights, property, or safety of Company, its customers, or others. This includes exchanging information with other companies and organizations for the purposes of fraud protection and credit risk reduction and sharing with maintenance or emergency service providers.
- 5.7 Company does not share, sell, or otherwise disclose Customer's Personal Data for purposes other than those outlined in this Agreement. However, Company may disclose anonymized information about its users, and information that does not identify any individual, without restriction.
- 5.8 The Oshkosh Group Companies share information with each other or with third party service providers for general business purposes

pursued by Company, such as internal administration, wireless services providers, billing, claim handling and services, Vehicle rental and leasing providers, and providing Customer, or Customer's organization with services.

- 5.9 Company may use automated data collection technologies to collect information about Customer's online activities over time and across third party websites or other online services. Some web browsers permit users to broadcast a signal to websites and online services indicating a preference to "do not track" the user's online activities. At this time, Company does not honor such signals and Company does not modify what information it collects or how it uses that information based upon whether such signal is broadcasted or received.

## **6. CUSTOMER'S OBLIGATIONS REGARDING PERSONAL DATA**

- 6.1 Customer remains legally responsible for the assessment of the lawfulness of the collection, processing and use of Personal Data as well as for the safeguarding of the rights of affected third parties and with regard to claims asserted by such third parties, such as information claims. Customer is the responsible body vis-à-vis the affected third party. Customer must therefore ensure that any Personal Data is lawfully collected and used.
- 6.2 Customer must inform Company immediately if Customer determines errors or irregularities in the data processing by Company.

## **7. COMPANY'S OBLIGATIONS REGARDING PERSONAL DATA**

- 7.1 Company shall inform Customer without undue delay if violations have occurred at Company against Customer's instructions regarding the data processing carried out by Company for Customer or if the technical and organizational measures implemented by Company have been breached with effect to Personal Data.
- 7.2 To the extent that Company's employees access Personal Data in the course of providing the Services, Company will supervise that the access

and use is limited to what is necessary for providing the Services.

- 7.3 Company will not disclose any information following information requests by third parties without consent from Customer, unless Company is required to do so by applicable Law or order by a court or competent authority. Notwithstanding the foregoing, Company is expressly authorized to disclose Personal Data with vendors as may be necessary in order for Company to provide the Services under this Agreement and the Subscription Agreement(s).

## **8. LIMITED WARRANTIES; DISCLAIMER**

- 8.1 Company delivers, and Customer accepts, the System and the Services on an **"AS IS", "AS AVAILABLE"** and **"WITH ALL FAULTS"** basis, and without any representations or warranties of any kind.
- 8.2 Customer acknowledges that Company is not the manufacturer of the System Hardware. Such System Hardware will be subject to any warranties provided by the manufacturer of such System Hardware (if any). Company makes no representations or warranties whatsoever with respect to System Hardware or other System components manufactured or sold by third parties.
- 8.3 COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, DIRECTLY OR INDIRECTLY, WITH RESPECT TO THE SYSTEM, THE SERVICES OR CUSTOMER'S USE THEREOF, INCLUDING ANY FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR OTHER SUITABILITY, DURABILITY, CONDITION, QUALITY, PERFORMANCE OF THE SYSTEM, THE SERVICES OR CUSTOMER'S USE THEREOF (INCLUDING THE ACCURACY OR COMPLETENESS OF ANY INFORMATION GENERATED BY OR OBTAINED THROUGH THE SYSTEM OR SERVICES); WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.
- 8.4 COMPANY CANNOT PROMISE UNINTERRUPTED OR ERROR-FREE SERVICE. Company makes no

representations whatsoever about any third-party website, application, product or service that Customer may access or use in connection with the System and the Services. Company has no control over the content, performance, or materials used or provided in connection with any third-party website, application, product or service. Company shall not be liable for any loss or damage caused by network or internet down time or failure or failure of other communication systems on which the System is dependent. Customer is aware that the System or Services could include typographical errors, statistical or mathematical errors, locations or navigation errors, and other inaccuracies and errors, and that unauthorized additions, computations, deletions, and alterations could be made to the System or Services by third parties. In the event that an inaccuracy arises, Customer shall promptly inform Company so that it can be corrected. Company shall have no responsibility or liability for information or content posted to the System or Services from any non-Company affiliated third party.

- 8.5 COMPANY DOES NOT GUARANTEE THAT DATA TRANSMITTED THROUGH THE SYSTEM WILL BE PRIVATE OR SECURE. Notwithstanding the technological and organizational measures the parties are required to have in place to comply with Data Privacy Laws, Customer acknowledges that Company does not operate or control the internet and that (i) viruses, worms, trojan horses or other undesirable data or systems exist, and (ii) unauthorized users may attempt to obtain access to and damage Customer data, websites, computers or networks. Customer is responsible for implementing and maintaining sufficient safety and security procedures to protect Customer data, websites, computers or networks.
- 8.6 Customer's wireless carrier, the manufacturer and retailer of Customer's mobile device, the developer of the operating system for Customer's mobile device, the operator of any application store, marketplace, or similar service through which Customer obtains or accesses the System Applications, and their respective affiliates, suppliers, and licensors (collectively, the **"Select Third Parties"**) are not parties to this Agreement and they do not own and are not responsible for the System Applications.

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Customer is responsible for complying with all application store and other applicable Select Third Parties' terms and conditions.

- 8.7 Customer represents and warrants to Company that, at all times during the term of this Agreement (and all Subscription Agreements), Customer has, and will have, all necessary consents, permissions, licenses and authorizations in place to ensure that Customer uses the Services and Systems in full compliance with all applicable Laws, including without limitation, such consents and authorizations as are necessary to ensure that Personal Data arising from or relating to the Services is processed in strict compliance with all applicable Data Privacy Laws.

## 9. LIMITATIONS OF LIABILITY

- 9.1 Company will not be liable for any loss or damage of any kind whatsoever caused by the acts, omissions, negligence or willful misconduct of Customer.
- 9.2 TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL COMPANY OR ITS SUPPLIERS, VENDORS, OR SERVICE PROVIDERS, INCLUDING ANY UNDERLYING WIRELESS SERVICE CARRIER (COLLECTIVELY, THE "**SERVICE PROVIDERS**") BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INDIRECT OR OTHER ENHANCED DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR PERSONAL INJURY, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, LOSS OF DATA (INCLUDING COSTS OF DATA RECOVERY OR RECONSTRUCTION) AND BUSINESS INTERRUPTION, ARISING OUT OF, OR RELATING TO, OR IN CONNECTION WITH THE SYSTEM OR THE SERVICES, INCLUDING ANY USE OF, DISRUPTION TO OR INABILITY TO USE THE SYSTEM OR THE SERVICES, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN ANY CASE, THE ENTIRE AGGREGATE LIABILITY OF COMPANY AND ITS SUPPLIERS, VENDORS, AND SERVICE PROVIDERS UNDER THIS

AGREEMENT (AND ANY SUBSCRIPTION AGREEMENT) FOR ALL DAMAGES OF EVERY KIND AND TYPE (WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) SHALL BE LIMITED TO FIVE HUNDRED DOLLARS (\$500).

- 9.3 THE LIMITATION OF LIABILITY PROVISIONS SET FORTH IN THIS SECTION 9 SHALL APPLY EVEN IF THE CUSTOMER'S REMEDIES UNDER THIS AGREEMENT FAIL THEIR ESSENTIAL PURPOSE. Customer acknowledges and agrees that the parties entered into this Agreement and each Subscription Agreement in reliance upon the limitations of liability set forth in this Section 9, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.
- 9.4 CUSTOMER HAS NO CONTRACTUAL RELATIONSHIP WITH COMPANY'S SERVICE PROVIDERS AND CUSTOMER IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN COMPANY AND ITS SERVICE PROVIDERS. CUSTOMER UNDERSTANDS AND AGREES THAT COMPANY'S SERVICE PROVIDERS HAVE NO LIABILITY OF ANY KIND TO CUSTOMER, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS COMPANY'S SERVICE PROVIDERS AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS (INCLUDING WITHOUT LIMITATION CLAIMS FOR LIBEL, SLANDER, OR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH) AND RELATED LOSSES (AS DEFINED IN SECTION 3.4, ABOVE), ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH THE USE, FAILURE TO USE, OR INABILITY TO USE THE SERVICES EXCEPT WHERE THE CLAIMS RESULT FROM SUCH SERVICE PROVIDERS' NEGLIGENCE OR RECKLESS OR WILLFUL MISCONDUCT. CUSTOMER HAS NO PROPERTY RIGHT IN ANY ACCOUNT NUMBER OR OTHER ACCOUNT CREDENTIALS ASSIGNED TO IT, AND UNDERSTANDS THAT ANY SUCH NUMBER OR OTHER ACCOUNT CREDENTIALS CAN BE CHANGED. CUSTOMER UNDERSTANDS THAT COMPANY'S SERVICE PROVIDERS CANNOT



GUARANTEE THE SECURITY OF WIRELESS TRANSMISSIONS TO CUSTOMER, AND WILL NOT BE LIABLE TO CUSTOMER FOR ANY LACK OF SECURITY RELATING TO THE USE OF THE SERVICES. THE CUSTOMER MAY NOT RESELL THE SERVICE TO ANY OTHER PARTY.

## **10. FEES.**

- 10.1 Any fees payable to Company in connection with the Services shall be provided by Company in the Subscription Agreement.

## **11. TERM AND TERMINATION**

- 11.1 The Agreement shall commence as of the date it is executed by both parties and shall continue until terminated by either party as provided in this Section 11. Each Subscription Agreement shall have a separate term for the specific Services to be provided under that Subscription Agreement (which may extend beyond the term of this Agreement).
- 11.2 Either party may terminate this Agreement at any time by providing the other party with at least 30 days' written notice of termination; provided, however, that if this Agreement is terminated pursuant to this Section 11.2, the terms and conditions of this Agreement shall remain in full force and effect with respect to any Subscription Agreement(s) still in effect as of the date of termination until such Subscription Agreement(s) expire or earlier terminate pursuant to their terms.
- 11.3 Either party may terminate this Agreement immediately upon written notice if: (i) the other party is in material breach of this Agreement or any Subscription Agreement; (ii) either party receives notice of the termination or withdrawal of any consent or authorization necessary for the System to process any Personal Data under applicable Data Privacy Laws; (iii) any or all Services are suspended or terminated for a period in excess of thirty (30) days due to Force Majeure; or (iv) the other party enters into insolvency, bankruptcy, any arrangement with its creditors or any other arrangement or situation which has a like effect.

- 11.4 Company may terminate this Agreement immediately upon written notice to Customer if: (i) Customer fails to comply with the obligations set out in Sections 3.1, 3.9, 3.10 or 8.7 of this Agreement; (ii) Customer fails to make timely payment of any amounts as and when due, unless Customer has paid such outstanding amounts within fifteen (15) days after written notice of non-payment is sent to Customer; or (iii) Company is adversely restricted or prohibited from providing the Services under applicable Law.

- 11.5 The termination of this Agreement pursuant to Section 11.3 or 11.4 above will automatically terminate any and all Subscription Agreement(s) and all outstanding subscriptions for Services under this Agreement, without refund or reimbursement of any pre-paid fees of any kind whatsoever.

- 11.6 Notwithstanding anything herein to the contrary, Company shall have the right to modify and/or terminate the provision of specific Service(s) from time to time. The modification and/or termination of any specific Service(s) shall have no effect on the continuance or effectiveness of this Agreement or any Subscription Agreement.

- 11.7 Upon termination of this Agreement or any Subscription Agreement, Company will have the right to disable the sending and receiving operability of the applicable System Hardware with effect to the date of termination.

- 11.8 Termination of this Agreement or any Subscription Agreement shall not affect either party's accrued rights, limitations of liability, indemnities, or other obligations under this Agreement as they exist at the time of termination, or any rights or obligations that either expressly or by implication survive and continue after this Agreement (and any Subscription Agreement) has ended, including but not limited to Section 1.5, Section 3, Section 5, Section 8, Section 9, this Section 11.8 and Section 12.

## **12. MISCELLANEOUS**

- 12.1 Any notice required under this Agreement or any Subscription Agreement shall be in writing and

shall be valid and sufficient if delivered by: (a) registered or certified mail, postage prepaid, in any U.S. post office; (b) hand delivery; or (c) nationally recognized express courier. Such notice shall be deemed effective upon delivery to the address designated on the cover page of this Agreement (as may be updated in writing from time to time). All other notices and communications may be made via mail and/or e-mail.

- 12.2 This Agreement (together with all Subscription Agreements) constitutes the entire understanding and agreement between Company and Customer with respect to the transactions contemplated in this Agreement, and supersedes all prior or contemporaneous oral or written communications with respect to the subject matter of this Agreement, all of which are merged in this Agreement.
- 12.3 Customer may not assign any of its rights or delegate any of its obligations under this Agreement or any Subscription Agreement without the written consent of Company, which consent shall not be unreasonably withheld. Any purported assignment or delegation in violation of this Section 12.3 shall be null and void. Subject to the provisions of this Section 12.3, this Agreement and each Subscription Agreement shall inure to the benefit of and be binding upon the respective successors and assigns, if any, of the parties hereto.
- 12.4 Company will not be liable for any failure or delay in performance under this Agreement or any Subscription Agreement which is due to any event beyond the reasonable control of Company, including without limitation: failure of a third-party wireless or telecommunications provider serving a particular area; flood, fire, explosion, severe weather conditions or other acts of God; unavailability of utilities, raw materials or components; strike, work stoppage or other labor disturbance; war, riots, terrorism or other civil unrest; or export control regulation, laws, judgments, instructions or other interference by any governmental authority or agency ("**Force Majeure**").
- 12.5 Company reserves the right to modify or change these Terms at any time, effective upon notice to Customer or by posting the revised or modified

Terms on our website. Any use of the System or the Services for at least three (3) months after such changes have been published will constitute Customer's acceptance of and agreement to such changes. Customer agrees to review the Terms regularly and at least each time Customer accesses the System so that Customer is aware of any changes to these Terms.

### **13. GOVERNING LAW AND DISPUTES**

- 13.1 This Agreement and all Subscription Agreements are governed by, and construed in accordance with, the laws of the state of Wisconsin, without reference to its conflict of laws provisions thereof. Neither this Agreement nor any Subscription Agreements shall be governed by the 1980 U.N. Convention on Contracts for the International Sale of Goods.
- 13.2 Any forbearance or delay on the part of either party in enforcing any rights under this Agreement (or any Subscription Agreement) shall not be construed as a waiver of such rights. No terms of this Agreement (or any Subscription Agreement) shall be waived unless expressly waived in writing. If any provision of this Agreement (or any Subscription Agreement) is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement (or any Subscription Agreement) shall remain in full force and effect.
- 13.3 Customer agrees that any dispute, claim, or controversy arising out of or relating in any way to the System, the Services, this Agreement or any Subscription Agreement shall be resolved by an action or proceeding brought by either party hereto and shall be brought in, and each party irrevocably and unconditionally submits to the exclusive jurisdiction of, in the United States District Court for the Eastern District of Wisconsin, located in Green Bay, Wisconsin, or in the Circuit Court for Winnebago County, Wisconsin.
- 13.4 **CLASS ACTION WAIVER.** CUSTOMER AND COMPANY AGREE TO PURSUE ANY ACTION OR CLAIM SOLELY ON AN INDIVIDUAL BASIS, AND THAT THIS AGREEMENT DOES NOT PERMIT CLASS ACTIONS, ARBITRATION OR ANY CLAIMS BROUGHT AS A PLAINTIFF OR CLASS MEMBER IN

ANY CLASS OR REPRESENTATIVE PROCEEDING. The court may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this class action waiver provision is found to be unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

- 13.5 The parties intend for the express terms and conditions contained in this Agreement to exclusively govern each parties' respective rights and obligations regarding the subject matter of this Agreement and the Subscription Agreements, and that this Agreement is expressly limited to such terms and conditions. In

case of a conflict between any terms set forth in this Agreement and the terms set forth in any Subscription Agreement, the terms of the Subscription Agreement shall prevail. In case of a conflict between any terms set forth in this Agreement and the terms set forth in any other agreement between Customer and any third party regarding the System or the Services, the terms of this Agreement shall prevail. Customer agrees to indemnify, defend, and hold harmless Company from any Losses incurred by or assessed against Company as a result of any additional or different terms and conditions in any other Customer agreement with any third party.

## Appendix 2 – Form of Grant of Right by Third Party

The undersigned (“**Vehicle User**”) understands, acknowledges and agrees that it/he/she is receiving a vehicle (“**Vehicle**”) equipped with a telematics-based system developed by the Oshkosh Group Companies to support users with information on the Vehicle, driver, and fleet performances, positioning, tracking, messaging and integration of third party applications (the “**System**”). The System is comprised of:

- a) all software associated with the System and the associated services, including any mobile applications and websites;
- b) an internet-based telematics services web portal;
- c) the in-vehicle telematics unit and other vehicle-based components; and
- d) tools as may be developed in connection with the System from time to time.

By executing this document, and by accepting, operating, and using this Vehicle and the System, the Vehicle User consents to, acknowledges and agrees that: (i) it/he/she has received a current copy of the Data Systems Agreement, and all applicable appendices (including the General Terms and Conditions, which are available at [clearskysupport@oshkoshcorp.com](mailto:clearskysupport@oshkoshcorp.com) (collectively, the “**Agreement**”) and Subscription Agreement(s); (ii) the Vehicle User has reviewed and expressly agrees that it is bound by all applicable provisions of the Agreement and Subscription Agreement(s); and (iii) the Oshkosh Group Companies (as defined in the Agreement) may collect, process and use, for their own business purposes, data collected and created through the System about the Vehicle User, the Vehicle and the Services, including personal information that the Vehicle User inputs into the System and related information that is collected automatically by the System, and the Vehicle User authorizes and consents to the collection, processing and use of such data as set forth in the Agreement.

**Vehicle User:** \_\_\_\_\_

**Authorized Signatory:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_