

SOFTWARE LICENSE AGREEMENT

This Software License Agreement (the "AGREEMENT") is made and entered into by and between OMNI RTLS 1, LLC. ("LICENSOR"), and Customer. ("LICENSEE"). LICENSOR and LICENSEE shall be referred to herein individually as a Party, and collectively as the Parties.

NOW, THEREFORE, LICENSOR and LICENSEE hereby agree as follows:

1. Rights and Limitations of Use.

1.1 Subject to the terms and conditions of this Agreement and the Master Service Agreement between OMNI and Customer ("MSA"), LICENSOR grants to LICENSEE a limited, non-exclusive, non-transferrable right and license during the applicable License Period, as defined below, to use and permit Authorized Users to use The OMNI Real Time Location System ("Software"). For purposes of this Agreement, the term "Authorized User" shall mean (i) LICENSEE's employees, agents, contractors, and/or consultants who are authorized by LICENSOR to access and use the Software under the rights granted to LICENSEE pursuant to this Agreement and (ii) any individual or entity, including said individual or entity's employees or agents, who have purchased the right to use or access the Software through a separate software license agreement or service contract approved and authorized by LICENSOR.

1.2 Except for the rights granted in section 1.1 above, no other rights in or to any Software or other intellectual property of LICENSOR, expressed or implied, or granted to LICENSEE. LICENSEE may not: (a) transfer or assign to any other person or entity any of its rights to use the Software, except as permitted herein; (b) share any Software with any unauthorized users; (c) permit any person or entity who is not an Authorized User to use or access any Software; (d) modify or create any derivative works based upon any Software or other company, or other intellectual property of LICENSOR; (e) reverse engineer, decompile, disassemble, or attempt to drive the source code or architecture of the Software; (f) use or access the Software or other intellectual property of LICENSOR in order to build a competitive solution, or to assist another person or entity to build a competitive solution; or (g) alter, remove, or conceal any government restricted rights, notice, or any copyright, trademark, tradename, or other proprietary marking or notice that may appear in the Software.

2. Consideration. In full consideration for the rights, licenses, and privileges herein granted to LICENSEE, LICENSEE shall pay to LICENSOR an annual license fee as set forth in the MSA.

3. Maintenance and Support. During the License Period, as defined below, LICENSOR shall perform routine maintenance and repairs to the Software, in accordance with that certain Service Level Agreement (SLA) between the Parties.

4. Warranties.

4.1 Each Party represents and warrants to the other Party that: (a) it has the full power and authority to enter into this Agreement, and perform its obligations under this Agreement; and (b) the execution delivery and performance of this Agreement by it

does not violate, conflict, or constitute a default under any other agreement or instrument to which it is a Party, or by which it is bound by applicable law.

4.2 LICENSOR further warrants to LICENSEE that: (a) the Software, as delivered, will function without material error.

4.3 Except as expressly provided in section 4.1 or 4.2, neither Party makes any warranty of any kind, whether expressed, implied, statutory or otherwise, in connection with this Agreement. Without limiting the foregoing, except as expressly provided herein, LICENSOR is providing the licensed Software and maintenance and support services on an “as is” and “as available” basis, and LICENSOR does not make, and hereby expressly disclaims, to the fullest extent permitted by law, all representations, warranties and conditions, expressly implied, with respect to the licensed Software and such services or their performance, including the warranties of merchant ability, fitness for particular purpose, and non-infringement.

5. Indemnification.

5.1 LICENSOR shall indemnify, defend, and hold harmless LICENSEE and its employees and agents from and against any loss, cost, damage, or expense, including reasonable attorney’s fees, in respect of any claim, demand, action, suit, or other judicial proceeding asserted, brought or threatened by any third party or entity, alleging that the Software infringes any third party or entity’s intellectual property rights, copyright, trademark, or patent.

5.2 LICENSEE shall indemnify, defend, and hold harmless LICENSOR and its employees, agents, affiliates, and members from and against any loss, cost, damage, or expense, including reasonable attorney’s fees and costs, with regard to LICENSEE or any of its affiliate’s use of the Software.

5.3 In the event that either Party becomes aware of any legal action or claim, the indemnified person shall: (a) promptly notify the indemnifying Party of any claim for which indemnity will sought; (b) permit the indemnifying Party to assume control of the defense in settlement of such claim with counsel of its choosing; and (c) provide cooperation, as may be reasonably requested, by the indemnifying Party, in investigating and defending such claim. The indemnified person shall have the right to participate in, but not control, the defense of any such claim, at its sole cost and expense, using counsel of its choosing.

6. Limitations on Liability.

6.1 Except for liability arising from a willful or intentional breach of this Agreement, no Party shall be liable to the other for any loss of data, loss of business, or loss of profits, or any other special damages, punitive damages, indirect damages, incidental damages, or consequential damages, or loss, of any sort, whether or not such damages are reasonably foreseeable, arising under or in connection with this Agreement.

- 6.2 LICENSOR's aggregate liability to LICENSEE, arising under or in connection with this Agreement, whether in contract, tort, or otherwise, shall in no event exceed the total fee actually paid by LICENSEE, to LICENSOR, under this Agreement, during the twelve (12) month period immediately preceding the date on which the applicable claim occurred.
- 6.3 The limitations of liability and damage exclusions contained in this Agreement will apply regardless of the success or effectiveness, or lack thereof, of any remedies provided herein.
- 6.4 Any action by either Party related to an actual or alleged breach of this Agreement, by the other Party, other than a willful intentional breach of this Agreement, must be commenced within one (1) year after the date on which the breach was discovered. Any action not brought within that one (1) year period shall be barred, without regard to any longer limitation periods set forth in any applicable law or statute.
7. License Period, Renewals and Termination.
- 7.1 LICENSOR makes the Software available on a term limited basis, and LICENSEE is purchasing a license to use the Software, upon the term and conditions set forth in this Agreement. The term of the initial License Period shall be for the period set forth in the Service Invoice between LICENSEE and LICENSOR ("License Period"), and may be renewed for successive periods in accordance with any subsequent Service Invoices between LICENSEE and LICENSOR (each renewal term shall also be deemed a "License Period"), upon written request, and acceptance, of the Parties. Neither Party may terminate this Agreement, for convenience, prior to the end of the License Period.
- 7.2 Either Party may terminate this Agreement by notice, to the other Party, in the event of a material breach of this Agreement, that should continue for a period of thirty (30) days, after a notice to cure has been submitted to the breaching Party, and not cured. Any such termination shall be without limitation of any other right or remedy available to the terminating Party.
- 7.3 Upon termination or expiration of this Agreement: (a) all rights and licenses granted by LICENSOR, to LICENSEE, pursuant to this Agreement shall terminate; (b) LICENSEE shall immediately discontinue any further use of the Software, and shall promptly uninstall all copies thereof, from any and all servers, computers, and/or other media owned or controlled by LICENSEE, or any of its affiliates, and if requested by LICENSOR, certify to LICENSOR, in writing, that LICENSEE has fully complied with each of the foregoing; (c) LICENSEE shall pay all amounts that have accrued and are owed hereunder within thirty (30) days following any termination or expiration of this Agreement; and (d) if requested by a Party, the other Party shall promptly destroy, or return to the requesting Party, as all of the requesting Party's Confidential Information, and other materials of the requesting Party, in the other Party's possession or control.
8. Confidentiality.

- 8.1 Each Party that receives Confidential Information of the other Party agrees that unless the disclosing Party gives its prior written authorization, it shall not: (a) use such Confidential Information other than for the purposes of this Agreement; or (b) disclose any such Confidential Information to any third party except those directors, officers, employees, or other agents of the receiving Party who are required to have such Confidential Information in order to carry out the purposes of this Agreement, and who have signed a nondisclosure agreement, or otherwise bound by confidentiality as set forth herein. The receiving Party shall prevent the unauthorized use, disclosure, dissemination, or publication of such Confidential Information using at least the same degree of care that the receiving Party uses to protect its own Confidential Information of a similar nature, but in no event less than a reasonable degree of care.
- 8.2 The obligations of the Parties hereunder shall not apply to the extent of any disclosure required pursuant to a duly authorized subpoena, court order, or government authority, provided that the receiving Party has provided prompt notice, and assistance, to the disclosing Party prior to such disclosure, so that such Party may seek a protective order, or other appropriate remedy, to protect against disclosure.
- 8.3 Any breach of the Confidentiality obligations set forth herein would constitute a material breach of this Agreement, which the breaching Party acknowledges would cause irreparable harm to the non-breaching Party, leaving it no adequate remedy at law. As such, any such breach shall entitle the non-breaching Party to injunctive relief, in addition to all other remedies, without necessity of posting upon or other security in connection therewith. The provisions contained herein shall not be construed as limiting a Party's right to dispute the factual basis underlying any contention that it has committed any breach.
- 8.4 Paragraph 8 will remain in effect during the term of this Agreement, and for a period of five (5) years following termination, or expiration, of this Agreement for any reason.
- 8.5 In the event that the provisions of Paragraph 8 are inconsistent with the provisions of any applicable nondisclosure agreement, separately executed by the Parties, the terms of this Paragraph 8 shall govern with respect to Confidential Information disclosed in connection with the subject matter of this Agreement.

9. Force Majeure. Neither Party shall be liable for failure to perform, or for any delay in performing, its obligations under this Agreement when such failure or delay is due to force majeure, provided the Party claiming the existence of force majeure gives notice to the other Party within fourteen (14) days at the commencement or continuance of circumstances which constitute such force majeure. For purposes of this Agreement, the term "force majeure" means events beyond the control of the applicable Party, including but not limited to strikes, walkouts, fires, floods, delays in transportation or delivery of materials, acts of God or the public enemy, embargos, wars, declared or undeclared, riots, civil commotion, interference by civil or military authorities, terrorist acts, or governmental actions. Neither Party shall be relieved from performing any pending obligation under this Agreement when the existence of force majeure has been eliminated or terminated.

10. Cost of Litigation. If any action is brought by either Party to this Agreement against the other Party regarding the subject matter of this Agreement, the prevailing Party shall be entitled to recover, in addition to any other relief granted, reasonable attorney's fees, costs, and expenses of litigation.

11. Choice of Law. This Agreement shall be construed by and in accordance with the laws of the State of Missouri. Jurisdiction and venue for any such suit to interpret or enforce the terms of this Agreement shall be proper in the state court of Greene County, Missouri. **The Parties hereto expressly waive their right to a jury trial.**

12. No Assignment. LICENSEE may not assign or delegate, sublicense, or otherwise transfer this Agreement, or its services to be performed, or obligations, under this Agreement, to any third party or entity.

13. Waiver. No waiver by either Party of any default shall be deemed as a waiver of a prior or subsequent default of the same or other provisions of this Agreement.

14. Severability. If any term, clause, or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause, or provision, and such invalid term, clause, or provision shall be deemed to be severed from the Agreement.

15. Entire Agreement. This Agreement constitutes the entire understanding of the Parties, and revokes and supersedes all prior agreements between the Parties, and is intended as a final memorandum of their agreement. This Agreement shall not be modified or amended, except in writing signed by both Parties hereto.

16. Notices. All notices, demands, or consents required or permitted under this Agreement shall be in writing, and shall be delivered personally or sent by registered mail, certified mail, return receipt requested, or by reputable overnight courier service, to the appropriate Party.