



**ZONAR TERMS & LICENSE AGREEMENT FOR HARDWARE USE,  
DATA TRANSMISSION, & DATA STORAGE SERVICES**

**CUSTOMER INFO:**

Name: Lexington-Fayette Urban County Gov  
Address: 200 E Main St., Lexington KY 40507  
Market Segment: State and Local

P.O. #: \_\_\_\_\_  
Quote #: \_\_\_\_\_  
Account Code: LEX0242

This Zonar Terms and License Agreement is effective as of \_\_\_\_\_, 2016 ("Effective Date") and entered into between Lexington-Fayette Urban County Gov ("Customer") and Zonar Systems, Inc., a Washington Corporation ("Zonar"). The Parties agree that the following terms and conditions shall apply to Customer's purchase of equipment and services from Zonar, whether procured directly from Zonar or from a Zonar authorized reseller, and Customer's access to and use of Zonar's service and software offerings.

**1. DEFINITIONS:** The following capitalized terms shall have the meanings ascribed to them below:

- "Agreement" means this Terms & License Agreement (including any Orders submitted by Customer and accepted by Zonar under this Agreement, any Quotes, including Quick Quotes, included or referenced in such Order), which together form a single agreement.
- "Data" means any and all files, information, data or other content generated by Customer that is collected, transmitted, and/or stored in Zonar's systems in connection with its delivery of the Services. Data does not include information that Zonar collects for relationship management purposes, such as contact, billing, customer relationship management, service delivery, performance measuring, and compliance monitoring or Aggregated User Data (defined in Section 10 below).
- "Hardware" means any equipment provided by Zonar to Customer under this Agreement.
- "Parties" means Zonar and Customer. "Party" means either of Zonar or Customer, as applicable.
- "Services" means Zonar Offerings including one or more of automated data collection from enrolled vehicles (such data includes one or more of time card data, inspection data, location data, diagnostic data, idle data, and/or driver behavior data); automated data transmission from enrolled vehicles to a secured hosted data center; monthly storage of collected data; customer support for hardware and data transmission issues; and/or any other services that Zonar or its authorized resellers makes to available to Customer under this Agreement.
- "Software" means any Zonar sourced computer software and associated documentation made available to Customer under this Agreement. Such Software includes any software and/or firmware loaded on, included with or otherwise provided for use with Hardware.
- "Terms of Use" means the terms and conditions applicable to use of the Services, a copy of which is incorporated herein (see Section 8 below).
- "Zonar Offerings" means the Zonar-branded Hardware, Software and Services that Zonar, a Zonar authorized reseller, or a Zonar authorized agent makes available to Customer for purchase, license or use under this Agreement.

**2. HARDWARE:** Title to Purchased Hardware provided under this Agreement will be transferred to Customer. Hardware may be used only with the Services, in accordance with specifications applicable to such Hardware and all applicable laws. All Purchased Hardware to be delivered by Zonar or its agents to Customer under this Agreement shall be shipped FOB origin, such that title transfers to Customer when such Hardware is made available to Customer at Zonar's premises. Without affecting the transfer of title, Zonar shall, as an additional Service included in the Quote as shipping charges, arrange for insured shipment of such Hardware to Customer via a common carrier of Zonar's choosing, and will assist Customer with any claims against such a carrier for lost or damaged shipments. Unless Customer has purchased Hardware installation Services from Zonar or its agents under, Customer shall be solely responsible for the proper installation of all such Hardware. Unless specifically noted otherwise in a Quotation, GPS units are subject to a \$25 activation fee (which also applies to any reactivation after a unit has been turned off).

**3. SERVICES.** Subject to Customer's timely payment of all applicable fees and expenses and compliance with all material terms of this Agreement, Zonar and/or its agents shall provide the Services to Customer during the Service Term as defined below. The following services are included with each Service subscription: Service activation, 24/7 access to the GTC web-based portal and associated web-based Software applications, email & phone support, Software upgrades made generally available to Service Customers, daily account monitoring, and all associated wireless data charges. Customer acknowledges that Zonar in its sole discretion may update and change the features and functionality of the Services from time to time, with or without notice, so long as such changes do not materially diminish the value of the services based on a standard of commercial reasonableness. Access to different Zonar Offerings and Services is based on the selected Service package. Not all Service packages receive access to all Zonar Offerings. Service packages are defined on the Quote, Quick Quote, or Sales Order, as applicable.

**4. SERVICE TERM/TERMINATION:** The Service Term shall be for a period of three (3) years following commencement of Service billing. Service billing shall commence as follows: (a) For Hardware that is shipped to Customer by Zonar or its agents on or before the 15th day of a month, Service billing shall commence on the first of the month following Hardware shipment; (b) For Hardware that is shipped to Customer by Zonar or its agents after the 15th day of a month, Service billing shall commence on the first day of the second month following Hardware shipment. If, for any reason, the billing for Services is deferred beyond the above defined commencement date, the Service billing commencement date shall be the date of the first invoice for Service that the Customer pays in full. The Term shall automatically renew for additional one-year periods, unless a Party provides written notice of its intent not to renew at least thirty (30) days prior to the expiration of the then-current Term. Upon renewal of any Term, the fees and charges are subject to change provided Zonar provides ninety (90) days' written notice by Zonar, and Customer will have 30 days after receiving such notice to cancel. If Customer attempts to terminate early, or fails to make any payment when due or otherwise violates any material term or condition of this Agreement, Customer may be declared in default by Zonar upon written notice and failure to cure for 15 days following delivery of such notice. Upon declaration of default, all amounts due under this Agreement during the entire Term, including with respect to unexpired portions of the Term, shall accelerate and become immediately due and payable, and also including, without limitation, the cost to repair or replace damaged Hardware (if such Hardware was not purchased outright), interest, and costs/expenses of collection. Zonar shall also have the right to terminate this Agreement and seek any other remedy permitted under law. Upon termination of the Term, Customer shall immediately cease use of the Software, Services, Data (unless Customer has purchased continuing Data retention Services) and any Zonar Confidential Information.

**5. PAYMENT TERMS AND TAXES.** Customer shall pay (in U.S dollars) all invoices issued under this Agreement by wire transfer to Zonar's designated bank, by check, or by any other method acceptable to Zonar within 30 days from the date of Zonar's invoice. Payments are not subject to set off or reduction. Any amounts not paid when due shall bear interest at the rate of one and one half percent (1.5%) per month, or the maximum legal rate if less, and Customer shall be responsible for all costs and expenses, including attorney's fees, incurred by Zonar in connection with the collection of any delinquent amounts. Zonar shall be entitled to withhold performance and suspend the Services until all amounts due are paid in full. **TAXES:** All payments to Zonar exclude taxes unless specifically stated. The Customer is responsible for payment of all applicable taxes, however designated or incurred in connection with the transactions under this agreement, and agrees to reimburse Zonar for any taxes paid on their behalf.

**6. SOFTWARE LICENSE/GRANT:** All Software is licensed, not sold. Subject to Customer's timely payment of all applicable fees and expenses, and compliance with all material terms of this Agreement and, if applicable, any 3<sup>rd</sup> Party Terms, Zonar grants to Customer during the Term a limited, non-transferable license, without rights to sublicense, to access and use the Software solely in connection with Customer's use of the Services and solely for Customer's internal business purposes. Except for the limited license conveyed Customer under this Agreement, Zonar and its suppliers shall retain all right, title, and interest in and to all copyrights, trademarks, service marks, trade secrets, patents, patent applications, mask works, moral rights, contract rights, and all other proprietary rights embodied in the Zonar Offerings and 3<sup>rd</sup> Party Offerings, including, without limitation, any improvements or derivatives of such offerings. Customer acknowledges that the Software is of United States

**CONFIDENTIAL**



origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. Customer represents that it will not permit the Software to be used for, any purposes prohibited by law. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by the U.S. Government shall be governed solely by the terms and conditions of this Agreement. Except as otherwise expressly provided in this Agreement, Customer shall have no right, title or interest in or to any intellectual property relating to the Zonar Offerings and/or 3<sup>rd</sup> Party Offerings and shall not (a) modify or create derivative works from any Software, (b) merge or otherwise combine any Software with other software not expressly approved in writing by Zonar, or (c) copy, reproduce, modify, reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code or algorithms of any Software. Customer will not violate or contest Zonar's or its suppliers' proprietary rights related to any Zonar Offering and/or 3<sup>rd</sup> Party Offering. Additional terms may apply to 3<sup>rd</sup> Party Offerings, which shall be presented to Customer either prior to or at the time of delivery of such 3<sup>rd</sup> Party Offerings. To the extent such Software or any services are part of a 3<sup>rd</sup> Party Offering, Customer acknowledges use of a 3<sup>rd</sup> Party Offering requires acceptance of the 3<sup>rd</sup> Party Terms, which are not controlled by Zonar.

**7. LINKS TO THIRD PARTY TERMS FOR ZONARTABLET APPS:** Navigation App/ALK CoPilot Software. Please note that these terms are controlled solely by ALK, and Zonar has no ability to negotiate these terms. From time to time ALK may change these terms. The most current version of the ALK EULA can be found at: <http://www.copilotlive.com/us/eula.asp>

**8. TERMS OF USE/CUSTOMER OBLIGATIONS:** Customer shall be solely responsible for obtaining and maintaining Internet access to Zonar's web based applications through an Internet service provider and the hardware and software necessary to enable such a connection. Customer is responsible for ensuring that only authorized Customer personnel (noting that a competitor of Zonar can never be an authorized user) have access to Zonar's web based services and for the security of Customer's computer system and the connection to Zonar's systems. At all times during and after the termination or expiration of this Agreement, Customer and its employees and agents shall maintain the confidentiality of trade secret information. Customer shall not disclose any such proprietary information concerning Zonar Products (Hardware and Software), including any flow charts, logic diagrams, user manuals and screens, to persons not an employee of Customer without Zonar's prior written consent.

**9. DATA RETENTION.** Customer acknowledges: (1) that unless it purchases additional Data Retention services, Zonar will have the right to purge all Data as follows: Subject to purge after 3 months, 6 months, or 12 months, as elected by Customer in the check boxes below. If no boxes are checked, Zonar will have the right to purge Inspection Data after 3 months and GPS Data after 6 months. (2) Regulations may mandate specific Data retention requirements for Inspection Data and/or GPS Data, and it is Customer's sole responsibility to understand those requirements, and to export and archive its Data if the Data retention period offered by Zonar is not sufficient. (3) Customer is solely responsible for printing data and inspection reports for vehicles involved in an accident. (4) Unless Zonar specifically agrees in writing otherwise, I/O Data, ZAlert Data, Z Pass card scan Data, Diagnostic Data, Fault Code Data, and Message Data, can be purged by Zonar according to the retention period selected for GPS Data. From time to time, Zonar may offer new types of Data services, and such new Data services may have different data retention periods, to be defined in a corresponding service specification for that offering. (5) Zonar is not required to retain Data except as provided in this Section or in a separate written agreement. Unless other arrangements are made in writing with Zonar, all Data submitted using Zonar's web based applications may be purged as provided above.

Data Retention:

CSA - EVIR Data Retention – Rolling Period:  3 Months  12 Months  
 GTC - GPS & Other Data Retention – Rolling Period:  6 Months  12 Months

**10. INTELLECTUAL PROPERTY (IP):** Zonar retains all right, title and interest and all related IP rights in and to the Zonar Offerings and Zonar's Confidential Information, including any enhancements, updates or other modifications, including custom modifications, thereto, whether made by Zonar, Customer or any third party. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Zonar Offerings. Under no circumstances shall Customer sell or transfer any purchased Hardware or licensed Software, reconstruct or repair such Hardware or Software, or reverse engineer or otherwise attempt to learn the trade secrets, know how or other IP embodied therein. Customer agrees that Zonar may collect data regarding Customer's use of the Service and analyze, use and disclose such data in an aggregated format ("Aggregated User Data") for Zonar's business purposes; provided such Aggregated User Data is not personally identifiable or Customer identifiable.

**11. LIMITED HARDWARE WARRANTY FOR PURCHASED HARDWARE:** Zonar warrants that the serialized Hardware elements of any Zonar Offerings delivered by Zonar or its agents to Customer under this Agreement shall be free from all material defects in workmanship under normal use and service. Zonar's warranty period for such serialized Hardware (V series GPS units, ZTrak GPS units, EVIR 2010 handheld's, Zonar branded Tablets, Z PASS readers) is as follows: V3 Series HD GPS Product Line – 5 Years (V3, and V3R only; V3i, V2, V2J, and earlier Zonar GPS products have 1 year warranties); EVIR and all Other Serialized Hardware – 1 Year. The warranty period runs from the date of shipment, and any replacement hardware provided under warranty will be covered under warranty for the remainder of the warranty term based on the shipment date for the original equipment. Provided that such Hardware is used and handled as intended and in accordance with this Agreement, and that Customer provides Zonar with notice within the applicable warranty coverage period, as Customer's sole and exclusive remedy, Zonar will replace any failed or functionally impaired Hardware with equivalent Hardware in terms of performance and functionality. This warranty does not apply to any Hardware that has been misused, altered, willfully abused or that has been subject to water or other environmental damage or that has been damaged due to improper installation by Customer or its agents. Hardware installations must follow Zonar's equipment-specific installation guidelines to qualify for the foregoing warranty. If Hardware is determined by Zonar to be damaged due to any of the aforementioned causes, Customer will be charged the price of a refurbished unit plus shipping and handling. Return of any Hardware requires a Return Material Authorization ("RMA") number. All RMA's must be pre-authorized by Zonar Customer Care at: E-mail: [Customercare@zonarsystems.com](mailto:Customercare@zonarsystems.com). Phone: 1(877) THE-EVIR. Ancillary hardware such as mounts, brackets, and cables are excluded from the above warranty.

**12. WARRANTY LIMITATIONS:** THE LIMITED WARRANTIES SET FORTH ABOVE ARE APPLICABLE SOLELY TO THE ZONAR OFFERINGS AND ARE MADE PERSONALLY TO CUSTOMER IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. CUSTOMER ACKNOWLEDGES THAT IT IS SOLELY RESPONSIBLE FOR ITS USE OF DATA AND ZONAR EXPRESSLY DISCLAIMS ANY WARRANTY AS TO THE ACCURACY, COMPLETENESS OR SUFFICIENCY OF SUCH DATA. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH ABOVE, ZONAR MAKES NO WARRANTY THAT THE HARDWARE, SOFTWARE OR SERVICES WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; OR OTHERWISE MEET CUSTOMER'S EXPECTATIONS. ZONAR ALSO EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

**13. LIMITATION OF LIABILITY:** EXCEPT WITH RESPECT TO EITHER PARTY'S OBLIGATIONS APPLICABLE TO CONFIDENTIAL INFORMATION, CUSTOMER'S DELIBERATE MISUSE OR MISAPPROPRIATION OF ZONAR'S INTELLECTUAL PROPERTY RIGHTS, AND ANY INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, OR TO ANY THIRD PARTY, FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, GOODWILL, PROFITS, INVESTMENTS, USE OF MONEY OR USE OF FACILITIES; INTERRUPTION IN USE OR AVAILABILITY OF DATA; STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE



POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF (i) THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, USE OF THE ZONAR OFFERINGS, OR (ii) ANY CLAIM, CAUSE OF ACTION, BREACH OF CONTRACT OR ANY EXPRESS OR IMPLIED WARRANTY, UNDER THIS AGREEMENT OR OTHERWISE, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT. ZONAR'S AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE FEES PAID BY CUSTOMER UNDER THIS SUBSCRIPTION AGREEMENT IN THE PRIOR TWELVE (12) MONTHS, IF ANY. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER ZONAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. IF ZONAR EMPLOYEE'S ARE PRESENT ON LFUCG PROPERTY, ZONAR SHALL BE LIABLE FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE CAUSED BY ITS' EMPLOYEES WHILE ON LFUCG PROPERTY.

14. **CONTROLLING TERMS:** All Zonar Offerings licensed or purchased by Customer from Zonar during the term of this Agreement shall be subject to the terms and conditions of this Agreement. Terms related to Order submission, delivery, pricing, or payment shall be established between Customer and Zonar or the authorized reseller. Any terms or conditions appearing on the face or reverse side of any Customer purchase order, acknowledgment, or confirmation that are different from or in addition to those required hereunder shall not be binding on the Parties, even if signed and returned, unless both Parties agree in a separate writing to be bound by such different or additional terms and conditions.

15. **OTHER LIMITATIONS:** Zonar's licensors and suppliers shall have no liability of any kind under this Agreement and Customer shall not be a third party beneficiary under agreements between Zonar and its licensors/suppliers. Customer acknowledges: (1) it is solely responsible for its use of Data, controlling its employees/authorized users access to the Software, Hardware and Services, reviewing inspection reports, and taking appropriate action with respect to vehicles for which inspection reports have been submitted using the Services; (2) the accuracy of Data may be dependent on the accuracy of information provided by individuals using Hardware or Software on Customer's behalf; and (3) Customer is solely responsible for instructing such individuals in the proper use of equipment, execution of inspections and delivery of legally acceptable electronic signatures in compliance with US law regarding commercial vehicle inspection and repair records, if applicable. Zonar shall have no liability whatsoever with respect to Data, except in the case of gross negligence or intentional misconduct by Zonar or its employees. Zonar shall have no liability for any nonperformance/delay caused by any event reasonably beyond its control, including, but not limited to labor disputes, natural disasters and other acts of God, and war.

16. **HOLD HARMLESS AND INJUNCTIVE RELIEF:** To the extent allowed by law, Customer shall hold Zonar harmless from and against any claim, cost, or expense ("collectively, Claims") asserted or initiated by a third party arising out of or relating to Customer's use of the Data provided by the Service for employment decisions. For copying or unauthorized use of the software, or other violations of the terms of this agreement, Zonar may seek and obtain injunctive relief for such breaches or threatened breaches, in addition to, and not in limitation of other legal remedies. This is not deemed a waiver of sovereign immunity or any other third party defense available to the Government.

17. **CONFIDENTIALITY:** To the extent allowed by law, each Party shall retain in confidence all information received from the other Party that the disclosing Party identifies as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as such ("Confidential Information"), except that Zonar may disclose Customer's Confidential Information to the manufacturer of Customer's vehicle for the purpose of providing Customer products or services including data analysis. In no event shall either Party employ less than a reasonable degree of care in protecting the Confidential Information, which includes, but shall not be limited to: pricing, business plans, customer lists, operational and technical data and product plans. Customer shall not share or provide access to Zonar's web based software or device firmware with any competitor of Zonar. The receiving Party's obligations under this Section shall extend for two (2) years following the disclosure of the Confidential Information. For avoidance of doubt, and pursuant to KRS 61.878(c)(1), while this Agreement itself is a public record and not confidential, Zonar's software, manuals, and documentation only available through Zonar's customer portal (GTC) would permit an unfair commercial advantage to Zonar competitors and therefore are not public records.

18. **ELECTRONIC SIGNATURES FOR ZONAR'S EVIR SYSTEM.** Customer acknowledges that implementing a federally compliant electronic inspection system requires adherence to standards for electronic signatures. It is Customer's responsibility to understand and comply with those requirements. Zonar will provide recommendation for implementing a compliant electronic signature program upon request.

19. **WIRELESS DATA POLICIES.** Customer understands and agrees that (a) Customer has no contractual relationship with a wireless carrier and is not a third-party beneficiary of any agreement between Zonar and a wireless carrier, nor does the underlying wireless carrier have any legal, equitable or other liability to Customer. (b) Subject to FCC Number portability rules, Customer has no property or other rights in any Number assigned to it and any such Number can be changed. (c) Zonar and/or wireless carrier shall not be responsible for interruption of service for any reason or the inability to use the service caused by Force Majeure. (d) The liability and obligation of Zonar to Customer for services may be controlled and limited by a wireless carrier's tariff, if any, and the laws, rules and regulations of the FCC and other United States or foreign governmental authorities. (e) In no event shall Zonar and/or wireless carrier be liable for the failure or incompatibility of any equipment utilized by Customer (and not provided by Zonar).

20. **MISCELLANEOUS:** The failure of either Party to exercise in any respect any right provided for herein will not be deemed a waiver of any provision of this Agreement or of any subsequent breach of the same and no waiver of any provision of this Agreement will be effective unless made in writing. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement shall be interpreted under the laws of the Commonwealth of Kentucky, and, in the event of any controversy or claim arising out of or relating to this Agreement or the breach or interpretation thereof, the Parties shall submit to the exclusive jurisdiction of and venue in Fayette County, Kentucky, or the United States District Court for the Eastern District of Kentucky, and their respective appellate courts. Facsimile or scanned signatures will be deemed originals.

READ AND AGREED

Zonar Version 13June2016

MAYOR

Signature:

Print Name:

Jim Gray

Title:

Mayor

Date:

30 Aug 16

ZONAR

Signature:

Print Name:

Michael C. King

Title:

General Counsel

Date:

6/30/16

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