

## TRAX™ TERMS AND CONDITIONS

This is an agreement between you and Gordon \* Howard Associates, Inc. (referred to as "PASSTIME®", "us", "we", "our", "the company"). Please read this agreement before using any PassTime product, website, or service. Keep a copy of this agreement and all future addenda or amendments to this agreement in a safe place. You are required to read and accept terms of all updated agreements provided by PassTime before continuing usage of any PASSTIME product, website, or service.

### INTRODUCTION

You have purchased a TRAX™ device made by PassTime which has been or will soon be installed on your car. You wish to do this to use the device's GPS (Global Position Satellite) and/or antitheft features for your personal use. As part of this use, you will have access to the PassTime website which will allow you to track the whereabouts of your vehicle if your device has GPS and to pay for airtime and other options available, if any..

1. CHANGES TO TERMS AND CONDITIONS: PassTime, reserves the right, from time to time, with or without notice to you, to change these Terms and Conditions provided PassTime gives at least ten days' notice in writing to you, in our sole discretion subject to applicable law. If you do not cancel your PASSTIME Service Agreement within 30 days after PASSTIME gives you notice, you agree to the change and it becomes part of the agreement between the parties. Any changes are effective prospectively, not retroactively. Further, changes to any dispute resolution terms shall not be enforceable unless agreed to by both parties. **You agree that creating a website account and clicking "Enter" or "I Agree to the Terms of Use" prior to using the site on a given occasion, you are agreeing to the current terms of use in place in this Agreement, for which a link is posted at the initial website screen.** The most current version of these Terms and Conditions can be reviewed by clicking on the "Terms and Conditions" located at the bottom of the pages of the PassTime website. The most current version of this Agreement will supersede all previous versions. Your use of the PassTime website or continued use of our service after changes are made means that you agree to be bound by such changes. As such, you should review the Terms and Conditions periodically.
2. USE OF PASSTIME DEVICE AND ACCESSORY EQUIPMENT; RENEWAL OF AIRTIME: You enter into a PASSTIME plan when you purchase the PassTime device. You will receive certain features included in the purchase price of the device. The device will include either one or two years' airtime when you purchase it. When the initial airtime for your device expires, you will either purchase additional airtime or the device's wireless functionality including GPS will terminate. Additional features may be available including upgrades and renewals of airtime for an additional charge. You will be provided materials explaining the device and its functions when you purchase the device. PRICING for renewal airtime will be posted on the customer website. You will need to click through and choose the pricing and other options at time of renewal and pay PassTime via the website's payment portal.
3. STARTING YOUR PASSTIME PLAN: You can only use PASSTIME plans by accepting this agreement. You accept this agreement when you buy or lease a new PASSTIME Device, OR sign a contract that includes this agreement, OR register for an Additional PASSTIME plan, OR otherwise use a PASSTIME service or accept any of its benefits.
4. CANCELING YOUR PASSTIME PLAN: You may cancel a PASSTIME service at any time by following the instructions on the "Accounts" page of the PASSTIME website. If you cancel some or all of your services, you will not be entitled to any refunds for that service, PASSTIME

Equipment, or amounts already paid. If you cancel all services, PASSTIME may turn off your PASSTIME Equipment and you may have to pay for any reactivation, if reactivation is possible.

5. YOUR RESPONSIBILITY FOR PASSTIME DEVICE: You are responsible for making sure your vehicle and your PASSTIME Device are working. It is also your responsibility to register a device with PASSTIME before you begin using the PASSTIME device. Even if your PASSTIME device is activated and working, some PASSTIME plans/services (such as help with locating a stolen vehicle) may not be available until you register the device. You understand that you are SOLELY responsible for providing PASSTIME with accurate and current information (payment information, address, vehicle information, etc.). You are also SOLELY responsible for any errors in transfer of such data to PASSTIME.
6. ABUSIVE OR FRAUDULENT USE: You promise not to use any PASSTIME plan for any fraudulent, unlawful, or abusive purpose, or in any way that interferes with PASSTIME'S provision of services (including unlawful monitoring of another person's whereabouts). If you do not comply, you hereby agree to defend, hold harmless and indemnify PASSTIME and the underlying wireless carrier for any claims against it that may result, whether by you, any other third party, or government agency. If you use a device for a purpose other than agreed to or intended herein, PASSTIME shall have the right, in addition to all other rights, to disable the device or your ability to access the PASSTIME website or track the device/vehicle in question. Moreover, you may not remove the SIM card from any device for **any purpose** and you agree to defend, hold harmless, and indemnify PASSTIME from any use of a SIM card for purposes except the use contemplated by this Agreement. This indemnification includes your obligation to pay for any and all data, usage, roaming or other charges imposed by any wireless carrier on PASSTIME.
7. PASSTIME WEBSITE TERMS OF USE: The PASSTIME Website ("Website"), owned and operated by PassTime ("PASSTIME"), is provided to you under the terms and conditions of this agreement and any operating rules or policies that may be published by PASSTIME. YOU EXPRESSLY AGREE THAT USE OF THE PASSTIME WEBSITE IS AT YOUR SOLE RISK. PASSTIME WEBSITE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.
8. WEBSITE ACCESS DESCRIPTION: PASSTIME is providing you with access to the PASSTIME website for various functions and services. You must incur all costs relating to computer hardware, software, and internet access in order to utilize the PASSTIME website.
9. MODIFICATIONS TO WEBSITE: PASSTIME may change the functionality of the PASSTIME website from time to time. PASSTIME may do this remotely without notifying you first. Such changes may affect or erase data stored on the PASSTIME website. PASSTIME is not responsible for lost data. Upon any change in the functionality of the PASSTIME website, PASSTIME will notify you by posting the changes on a start-up screen prior to your subsequent use of the Website. Continued use of the website by you acknowledges your acceptance of the modifications/changes; you may terminate use of the Website at any time. Your continued use of the Website constitutes an affirmative: (1) acknowledgment by you of the website functionality and its modifications; and (2) agreement by you to abide and be bound by the website's functionality and its modifications.
10. WEBSITE PRIVACY POLICY: PASSTIME values the privacy of those who visit its Web site and purchase its products, software and services online. PASSTIME thinks it is important for you to understand when and why PASSTIME collects personally identifiable information and how PASSTIME may use it. This Privacy Policy describes PASSTIME data collection and use policies. Please read the entire Privacy Policy before providing any personally identifiable information to PASSTIME. By agreeing to the terms of this Agreement as defined herein, you also agree that

PASSTIME's Privacy Policy is fair and reasonable and agree to its use pertaining to your personally identifiable information.

- a. In addition to the privacy of registration data as discussed above, PASSTIME will not share your personally identifiable information unless required to do so by law or in the good faith belief that such action is necessary to: (1) conform to the edicts of the law or comply with legal process served on PASSTIME; (2) protect and defend the rights or property of PASSTIME; or (3) act under exigent circumstances to protect the personal safety of its customers or the public.
- b. Where appropriate, PASSTIME may pass data to an authorized PASSTIME international distributor who provides PASSTIME services in your local country, or to a PASSTIME domestic distributor and/or Affiliate whose software, data, and services provide solutions to meet your needs. PASSTIME Affiliates and/or distributors are also committed to protecting personally identifiable information as described in their privacy statements/policies.
- c. While browsing the PASSTIME Web site, you may be able to access the Web sites of third parties through a hyperlink. PASSTIME assumes no responsibility for the privacy practices at such third party Web sites and suggests you review the privacy statements/policies on such Web sites before sharing personally identifiable data.
- d. YOU ARE SOLELY RESPONSIBLE FOR ANY USE OF PASSTIME PLAN INVOLVING YOUR WEBSITE IDENTIFICATION EVEN IF YOU ARE NOT THE ONE USING IT, AND EVEN IF YOU LATER CLAIM THE USE WAS NOT AUTHORIZED.

11. WEBSITE DATA COLLECTION/DISCLOSURE & WAIVER:

- a. Certain information, such as the Internet protocol address of your computer, may be stored through the use of "cookies" intended to speed access to PASSTIME information and services. A cookie is a short piece of data that can be used to tell PASSTIME when you visit PASSTIME Web sites and track your browsing habits.
- b. PASSTIME does not use cookies to store personal information such as credit card numbers, telephone numbers, or other sensitive information. PASSTIME will not share personal or financial information with anyone except to process payment of sums due and owing for airtime or optional features under the PASSTIME contract and to enforce payment of same or upon Court Order.

12. DEVICE DATA COLLECTION:

- a. PASSTIME collects information about your device several different ways: information you provide to PASSTIME when you registers the PASSTIME device for use; PASSTIME web pages that you visit; from PASSTIME wireless service providers; and from your device itself when PASSTIME Equipment is active. The information PASSTIME receives from your device includes information such as data about its operation, about your use of the vehicle, about the location of your vehicle before and during requests for PASSTIME service.
- b. You agree that PASSTIME can, subject to applicable law, use any of this information to: (a) provide PASSTIME services to a Third Party for your benefit (including sharing that information with roadside assistance providers, emergency service providers, or others, as needed); (b) check or maintain your PASSTIME Equipment; (c) provide information to the maker of your vehicle about the vehicle's performance and to enable the maker of your vehicle to comply with law; (d) help you to maintain the vehicle; (e) evaluate and improve its service; (f) enforce this agreement with you or others; (g) prevent fraud or misuse of PASSTIME service; (h) comply with legal requirements, valid court orders and exigent circumstances; (i) protect the rights, property, or safety of you or others; (j) offer you new or additional products or services; (k) perform market research; and (l)

provide information to your lender/finance company in accord with agreements with such entity, but only where in compliance with all applicable state and federal privacy laws. You further agree that the above uses do not constitute an invasion of your privacy, or that you waive any such right to privacy to the fullest extent allowed by law.

- c. Because PASSTIME provides service through wireless networks, PASSTIME cannot promise that your communications will not be intercepted by others. You agree PASSTIME will not be liable for any damages for any loss of privacy occurring in communication over such networks. PASSTIME will record and randomly monitor device use by you or others to maintain or improve the quality of PASSTIME service, for training purposes, or to promote and provide PASSTIME service. PASSTIME may also randomly monitor your interactions with PASSTIME's automated services for quality improvement purposes.

13. PROPRIETARY RIGHTS TO CONTENT: You acknowledge that content, including but not limited to text, software, music, sound, photographs, video, graphics or other material contained in either sponsor advertisements or email-distributed, commercially produced information presented to you by the Service ("Content") by PASSTIME or PASSTIME's Advertisers, is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. You may not copy, reproduce, distribute, or create derivative works from this Content without expressly being authorized to do so by PASSTIME.

14. PASSTIME RIGHT TO TERMINATE OR SUSPEND YOUR PASSTIME WEBSITE ACCESS: PASSTIME may terminate your PASSTIME website access without prior notice to you for good cause. This includes but is not limited to circumstances where you breach any part of this Agreement, do not pay amounts that are due to PASSTIME or one of PASSTIME'S service providers, interfere with PASSTIME's efforts to provide service, interfere with PASSTIME business, or if your PASSTIME plan or wireless phone number is used for illegal or improper purposes (including improper or illegal monitoring of another person). PASSTIME can also suspend your PASSTIME website access for any specified termination reason. PASSTIME can also suspend it for network or system maintenance or improvement, or if there is network congestion, or if PASSTIME suspects your website access is being used for any purpose that would allow PASSTIME to terminate it.

15. HOW YOUR PASSTIME WIRELESS SERVICE WORKS:

- a. PASSTIME wireless service works using third party cellular or other wireless phone networks in the continental United States, Alaska, and Hawaii, as well as the Global Positioning System ("GPS") satellite network. PASSTIME WIRELESS SERVICES ARE NOT AVAILABLE EVERYWHERE, PARTICULARLY IN REMOTE AREAS, OR AT ALL TIMES. There also MAY BE other problems PASSTIME cannot control that may prevent PASSTIME from providing PASSTIME service to you at any particular time or place.
- b. PASSTIME wireless service cannot work unless your vehicle is in a place where PASSTIME's wireless service provider has coverage, network capacity, and reception when the service is needed, and technology that is compatible with the PASSTIME service. PASSTIME service that involves location information about your vehicle cannot work unless GPS satellite signals are unobstructed and available in that location.
- c. PASSTIME service may not work if your PASSTIME Equipment is not properly installed or you have not maintained it in good working order, including its electrical system. (If you try to modify any equipment or software in your vehicle including the PASSTIME Equipment, the PASSTIME service may not work and PASSTIME can terminate your PASSTIME service.)

16. PASSTIME DISCLAIMER REGARDING CHANGES IN WIRELESS TECHNOLOGY: In addition to the above, you acknowledge that from time to time, advances in technology that are outside the

control of PASSTIME may render products no longer useable for their ordinary intended purpose (e.g. when technology becomes either unavailable or no longer economically feasible due to advances in such technology). You understand and agree that PASSTIME is not responsible for such changes in technology rendering products obsolete, and further understand and agree that any Product may at some time become unusable. PASSTIME shall have no obligation to replace any unit that becomes unusable due to obsolescence because of a change in available technology.

17. LIMITATION ON WIRELESS SERVICE: You acknowledge that service is made available only within the operating range of the network. You understand that PASSTIME wireless coverage may not work outside of the continental United States and/or may have additional charges for airtime, taxes, etc. for usage outside of the continental United States. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, and other causes reasonably outside of PASSTIME'S control; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service. Connections may be "dropped" (i.e., involuntarily disconnected) for a variety of reasons, including, without limitation, atmospheric conditions, topography, weak batteries, system overcapacity, movement outside a service area or gaps in coverage within a service area. PASSTIME shall incur no liability for its inability to provide adequate services hereunder if such inability is due to the above limitations or to causes beyond the reasonable control of PASSTIME. Nor shall PASSTIME be responsible for any act or omission related to non-PASSTIME equipment or systems used in connection with the service.
18. LIMITATIONS AND CHARGES ON ROAMING WIRELESS SERVICE: PASSTIME will provide the same access to roaming capabilities (including "in-area" roaming where available) that is made available by PASSTIME to other similarly situated subscribers provided that equipment with similar technical capabilities and programming is used by you. The availability of roaming services, and the charges for those services, is dependent in part on the type of equipment used by you and the programming of that equipment. PASSTIME makes no warranties or representations as to the availability or quality of roaming service provided by other wireless carriers, and PASSTIME shall have no liability whatsoever for any errors, outages, additional cost, or failures of roaming services provided by other wireless carriers. **In some instances, you may face increased charges for roaming due to PASSTIME'S wireless carrier charging PASSTIME additional costs for such services. Wireless carrier also reserves the right to terminate devices that, in its discretion, have excessive roaming. These additional charges and possible termination of services are herein agreed to by you.**
19. WIRELESS PRIVACY: The airtime provider's network has many complex elements and is not guaranteed against eavesdroppers, hackers, denial of service attacks, viruses, or interceptors. You agree that PASSTIME shall not be liable to you for any lack of privacy or security related to the airtime provider's network.
20. ACTIVATION OF WIRELESS SERVICE REQUESTS: PASSTIME shall use reasonable efforts to activate devices in vehicles as soon as practicable (normally within twenty-four (24) hours) following receipt by PASSTIME of a completed activation request via the PASSTIME designated web-site or facsimile or email request and associated payment. PASSTIME shall not be obligated to activate Service for any Device assigned to you if you have committed an Event of Default which has not been cured within ten days of Notice by PASSTIME.
21. YOUR RELATIONSHIP WITH WIRELESS CARRIER:

- a. You have no contractual relationship with the underlying wireless service carrier and you are not a third party beneficiary of any agreement between PASSTIME and the underlying wireless service carrier. You understand and agree that the underlying wireless service carrier and its affiliates and contractors shall have no legal, equitable or other liability of any kind to you.
  - b. Subject to FCC Number portability rules, you have no property right in any Number assigned to the device it and you understand that any such Number can be changed from time to time.
  - c. You acknowledge that Service may be temporarily refused, interrupted, curtailed or limited because of atmospheric, terrain, other natural or artificial conditions and may be temporarily interrupted or curtailed due to usage concentrations, modifications, upgrades, relocation and repairs of transmission Facilities. You agree that the underlying wireless service carrier shall not be responsible for such interruptions of Service or the inability to use the Service outside the Territory. You understand that the underlying wireless service carrier cannot guarantee the security of wireless transmissions and will not be liable for any lack of security relating to the use of the Service.
  - d. You expressly understand and agree that the liability and obligations of PASSTIME to you under this agreement for services are strictly controlled and limited by the underlying wireless service carrier's tariff, if any, and the laws, rules and regulations of the Federal Communications Commission and other governmental authorities which from time to time have jurisdiction. In any event, regardless of the form of action, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, your exclusive remedy and the total liability of PASSTIME and/or any supplier of services to PASSTIME arising in any way in connection with this agreement, for any cause whatsoever, including but not limited to any failure or disruption of service provided, shall be limited to payment by PASSTIME of damages in an amount equal to the amount charged to you for airtime or other optional services provided under this agreement. In no event shall PASSTIME and/or the underlying wireless service carrier be liable for any cost, delay, failure or disruption of Service, lost profits, or incidental, special, punitive or consequential damages.
  - e. In no event shall PASSTIME and/or the underlying wireless service carrier be liable for the failure or incompatibility of Equipment utilized by you in connection with the Service. You shall use Equipment at its own risk.
  - f. You shall indemnify, defend and hold PASSTIME, the underlying wireless service carrier and the officers, employees and agents of each of them harmless from and against all claims, causes of action, losses, expenses, liability or damages (including reasonable attorneys' fees and costs), and including without limitation for any personal injury or death, arising in any way directly or indirectly in connection with this agreement; the provision or use of the Service; or the use, failure to use or inability to use the Number. This provision shall survive the termination of the agreement.
  - g. Your Service may be temporarily suspended or permanently terminated upon little or no notice in the event that PASSTIME's agreement with the underlying wireless service carrier is terminated. You waive any and all claims against the underlying wireless service carrier for such suspension or termination.
22. **DEVICE WARRANTY POLICY:** PassTime's warranty obligations are limited to the terms set forth below:
- a. PassTime, as defined below, warrants its PASSTIME-branded hardware products against defects in materials and workmanship under normal use for a period of ONE (1) YEAR from the date of retail purchase by the original purchaser ("Warranty Period") determined by the PASSTIME registration form. If a hardware defect arises and a valid claim is received within the Warranty Period, at ITS OPTION, PASSTIME will either (1)

repair the hardware defect at no charge, using new or refurbished replacement parts, or (2) exchange the product with a product that is new or which has been manufactured from new or serviceable used parts and is at least functionally equivalent to the original product. PASSTIME may request that you replace defective parts with new or refurbished user-installable parts that PASSTIME provides, which shall constitute full performance of its warranty obligation. A replacement product or part, including a user-installable part that has been installed in accordance with instructions provided by PASSTIME, assumes the remaining warranty of the original product or ninety (90) days from the date of replacement or repair, whichever provides longer coverage for you. When a product or part is exchanged, any replacement item becomes your property and the replaced item becomes PASSTIME's property. Parts provided by PASSTIME in fulfillment of its warranty obligation must be used in products for which warranty service is claimed. If repair or replacement as termed herein requires that you have the Vehicle brought to an appropriate venue (e.g. Dealership that sold Vehicle), you must assist fully in this request.

- b. **EXCLUSIONS AND LIMITATIONS:** The Limited Warranty applies only to hardware products manufactured by or for PASSTIME that can be identified by the "PASSTIME" trademark, trade name, or logo affixed to them (and/or the trademark, trade name, or logo of any of PASSTIME's products). The Limited Warranty does not apply to any non-PASSTIME products or any software, even if packaged or sold with PASSTIME hardware. Manufacturers, suppliers, or publishers, other than PASSTIME, may provide their own warranties to you, the purchaser, but PASSTIME, in so far as permitted by law, provides their products "as is".
- i. This warranty DOES NOT apply: (a) to damage caused by use with non-PASSTIME products; (b) to damage caused by accident, abuse, misuse, flood, fire, earthquake or other external causes; (c) damage caused by operating the product outside the permitted or intended uses described by PASSTIME, including but not limited to instances of improper installation and tampering; (d) to damage caused by service (including upgrades) performed by anyone who is not an authorized, certified PASSTIME Agent/Installer; (e) to a product or a part that has been modified to significantly alter functionality or capability without written permission of PASSTIME; (f) to consumable parts, such as batteries, unless damage has occurred due to a defect in materials or workmanship; (g) a device or product becoming inoperable due to a wireless carrier's termination of service to the SIM card in the device, or due to obsolescent technology; or (h) if any PASSTIME serial number has been removed or defaced.
  - ii. To the extent permitted by law, this warranty and remedies set forth above are exclusive and in lieu of all other warranties, remedies and conditions, whether oral or written, statutory, express or implied. As permitted by applicable law, PASSTIME specifically disclaims any and all statutory or implied warranties, including, without limitation, warranties of merchantability, fitness for a particular purpose and warranties against hidden or latent defects. If PASSTIME cannot lawfully disclaim statutory or implied warranties then to the extent permitted by law, all such warranties shall be limited in duration to the duration of this express warranty and to repair or replacement service as determined by PASSTIME in its sole discretion. No PASSTIME reseller, agent, or employee is authorized to make any modification, extension, or addition to this warranty.
  - iii. Except as provided in this warranty and to the extent permitted by law, PASSTIME is not responsible for direct, special, incidental or consequential damages resulting from any breach of warranty or condition, or under any other

legal theory, including but not limited to loss of use; loss of revenue; loss of actual or anticipated profits (including loss of profits on contracts); loss of opportunity; loss of goodwill; loss of reputation; or any indirect or consequential loss or damage howsoever caused including the replacement of equipment and property, any costs of recovering, programming, or reproducing any program or data stored or used with PASSTIME products and any failure to maintain the confidentiality of data stored on the product. The foregoing limitation shall not apply to death or personal injury claims. PASSTIME disclaims any representation that it will be able to repair any product under this warranty or make a product exchange without risk to or loss of the programs or data.

- c. **OBTAINING WARRANTY SERVICE:** To request a warranty return you must FIRST speak with a PASSTIME representative at the provided phone number to obtain a case number/return authorization number (RA #). Any/All returns must include the Return Merchandise Form. Warranties received by PASSTIME without a Return Merchandise Form WILL NOT be processed until the form is received by PASSTIME. You must incur costs of shipping warranty units to PASSTIME as well as any/all installation and/or de-installation costs associated with obtaining warranty service. PASSTIME will ship warranty back to you at no cost.
- i. Warranty Units must be received by PASSTIME PRIOR to any exchange or replacement. Units will not be replaced until they are received and complete testing by PASSTIME.
  - ii. PASSTIME makes no warranty that the wireless service will meet your requirements, or that the service will be uninterrupted, timely, secure, or error free; nor does PASSTIME make any warranty as to the results that may be obtained from the use of the service or as to the accuracy or reliability of any information obtained through the service or that defects in the software will be corrected.
  - iii. You understand and agree that any material and/or data downloaded or otherwise obtained through the use of the service is done at your own discretion and risk and that you will be solely responsible for any damage to your computer system or loss of data that results from the download of such material and/or data.
  - iv. No advice or information, whether oral or written, obtained by you from PASSTIME or through the service shall create any warranty not expressly made herein.

23. **RETURN POLICY:** All returns are subject to the reseller's return policy where product was originally purchased. Please contact your local reseller for its return policy.

24. **LIABILITY: LIMITATIONS OF LIABILITY:** You and PASSTIME are each waiving important rights. Unless forbidden by law in a particular instance, PASSTIME and You each agree as follows:
- a. PASSTIME and the underlying wireless carrier shall not be liable for the actions or inactions of any service provider PASSTIME contacts for you, or for PASSTIME's inability to contact any service provider in any particular situation.
  - b. PASSTIME and the underlying wireless carrier shall not be liable to you for: (1) any injuries to persons or property arising out of or relating to your use of PASSTIME equipment or PASSTIME services, including both personal injury (including death) and property damage (excluding damage to the PASSTIME product itself, for which the sole remedy to the you is repair or replacement per this agreement), or (2) any damages arising out of or relating to the installation, repair, or maintenance of PASSTIME equipment or the equipment of the underlying wireless carrier.

- c. PASSTIME's and the underlying wireless carrier's maximum liability to you under any theory (including but not limited to fraud, misrepresentation, breach of contract, personal injury, or products liability) is limited to an amount equal to the charges YOU HAVE ACTUALLY PAID for PASSTIME services DURING THE TIME ANY CLAIMED DAMAGES OCCURRED.
- d. You cannot recover (1) punitive damages, (2) treble, consequential, indirect, or special damages, or (3) attorney's fees from PASSTIME and the underlying wireless carrier. You and PASSTIME agree not to make, and to waive to the fullest extent allowed by law, any claim for damages other than direct, compensatory damages as limited in this agreement.
- e. PASSTIME and the underlying wireless carrier have no liability for service interruptions beyond its control. Except for any credits provided voluntarily by PASSTIME for interrupted service as described above, no one is liable to you for interrupted service, or for problems caused by or contributed to by you, by any third party, by buildings, hills, tunnels, network congestion, weather, or any other things PASSTIME or its service providers do not control.
- f. Notwithstanding anything else in this agreement, you agree to excuse any non-performance by PASSTIME or any service provider caused in whole or in part by an act or omission of a third party, or by any equipment failure, act of god, natural disaster, strike, equipment or facility shortage, or other causes beyond the control of PASSTIME or its service providers.
- g. If another wireless service provider is involved in any problem (for example, because of roaming), you also agree to any limitations of liability that it imposes on its customers.
- h. Neither PASSTIME, nor any service providers who work with PASSTIME to provide you with data or information, can promise that any information or data supplied will be error-free. All data and information is provided to you on an "as is" basis. You agree that neither PASSTIME nor any service provider who sends you data or information through PASSTIME, is liable for any errors, defects, problems, or mistakes in that data or information. This means you cannot recover any damages of any kind, including consequential (such as lost revenues or lost contracts), indirect, special, or punitive damages for those errors, defects, problems, or mistakes.
- i. Finally, you agree that the limitations of liability and indemnities in this agreement will survive even after the agreement has ended. These limitations of liability apply not only to you, but to anyone using your PASSTIME HARDWARE OR SERVICES (or their legal representative), to anyone making a claim on your behalf, and to any claims made by your family, employees, customers, or any other person or entity arising out of or relating to your PASSTIME service or PASSTIME Equipment in all applicable areas and situations.

25. **YOUR RESPONSIBILITY FOR INSURANCE:** The service PASSTIME provides is intended as a convenience. The payments you make for that service are not related to the value of your vehicle or any property in it, or the cost of any injury to or damages suffered by you. PASSTIME is not an insurance company. For you and for anyone else claiming under you, you hereby release and discharge PASSTIME and its service providers, their parents, affiliates, and subsidiaries, and the respective officers, directors, and employees of any of them from and against all hazards normally covered (or potentially covered) by your insurance, or any other insurance that may potentially cover you in said circumstance. No insurance company or insurer will have any right of subrogation against PASSTIME or its service providers.

26. **DEFAULT REMEDIES:** In the event you fail to make a payment when due under this Agreement ("Default"), PASSTIME shall have the right to demand payment of all sums due within ten days of such default. Failure to timely cure this default shall constitute material breach of this

Agreement. If you Default in payment, PASSTIME shall have the right to suspend any tracking services, remove the devices from website(s), , to disable the device or your ability to access the PASSTIME website or track the device/vehicle in question, and otherwise suspend the privileges pertaining to any and all devices sold by PASSTIME to you. The aforesaid remedies are in addition to any remedies otherwise available by law or in equity.

27. TAXES: You agree, in addition to the base price for any unit, product, service or airtime, to pay any and all applicable local (including municipal and Colorado), State and Federal taxes required to be paid as sales or use taxes, cellular activation or maintenance taxes, and any other taxes required by the aforesaid entities to be paid. These taxes may change, and the change is agreed to as being beyond the control of any party to this Agreement.
28. RESOLUTION OF DISPUTES BETWEEN PARTIES:
- a. If you and PASSTIME have a disagreement related to PASSTIME service, both parties will try to resolve disputes directly, without resort to legal process (litigation, arbitration, and/or mediation). If the parties cannot resolve dispute, both parties agree, to the fullest extent permitted by law, to solve such disputes via binding arbitration, NOT lawsuits (except for small claims court cases) to resolve the dispute.
  - b. Arbitration shall be conducted under commercial rules (and, where applicable, wireless industry arbitration rules) for arbitration by the American Arbitration Association through its offices in Denver, Colorado, USA. Denver shall be the site for any such arbitration process.
  - c. If for some reason these arbitration requirements do not apply, or a claim proceeds in small claims court, PASSTIME and you each waive any trial by jury.
29. GOVERNING LAW: To the fullest extent permitted by law and except as explicitly provided otherwise, this Agreement and any disputes arising out of or relating to it will be governed by the laws of the state of Colorado of the United States of America, without regard to its conflict of law principles, and by any applicable tariffs, wherever filed.
30. HOW PARTIES CAN COMMUNICATE WITH EACH OTHER: Any written notice from you required by this agreement will be considered given when PASSTIME receives it at PASSTIME's corporate address provided at [www.passtimeusa.com](http://www.passtimeusa.com) REGARDLESS of the "mailbox rule" in the law of contracts. Any written notice from PASSTIME required by this agreement will be considered given two days after PASSTIME mails it to you at the billing address PASSTIME have on file for you at the time.
31. AGREEMENT COVERAGE OF THIRD PARTIES: Any of the wireless service providers and other companies who help PASSTIME provide PASSTIME service, including PASSTIME affiliates, suppliers, vehicle makers, distributors and PASSTIME authorized agents, or those who provide you services through PASSTIME, are intended beneficiaries of this agreement.
32. PASSTIME RIGHT TO ASSIGN AGREEMENT: PASSTIME can assign this agreement or your obligations to pay under it in whole or in part to anyone PASSTIME chooses. You cannot assign this agreement or your obligations to anyone else without PASSTIME prior written consent.
33. NO RESALE OR COMMERCIAL USE OF THE SERVICE: You agree not to resell commercial use of the Service without the express, written consent of PASSTIME. You shall NOT resell PASSTIME product to others; nor shall you purchase units from any entity other than PASSTIME or authorized PASSTIME resellers. If you purchase Product from, or sell Product to, any other party without written prior consent of PASSTIME, said product shall NOT be serviced by

PASSTIME, shall not have renewal/activation options issued for it and shall NOT be warranted in any way.

34. WAIVER: The waiver of any provision or default of this Agreement will not constitute a waiver of any other provision or default. If any provision of this Agreement is deemed to be unenforceable, the remaining provisions will remain in full force and effect.
35. FORCE MAJEURE: Neither party will be liable for any loss, damage, cost, delay or failure to perform resulting from causes beyond its reasonable control including, but not limited to, acts of God, fires, floods, earthquakes, strikes, insurrections, governmental orders, riots, terrorism, power failures or surges, lightning or storms, or delays of suppliers or subcontractors for the same causes.
36. CONSTRUCTION OF TERMS: This Agreement shall not be construed more strongly against any party regardless of who is responsible for its preparation or drafting.
37. COUNTERPARTS: This Agreement may be executed in one or more counterparts, each of which shall constitute an original agreement, but all of which together shall constitute one and the same instrument.
38. SECTION HEADINGS: All section headings and captions used in this Agreement are purely for convenience and shall not affect the interpretation of this Agreement.
39. EXHIBITS: All exhibits described in this Agreement shall be deemed to be incorporated in and made a part of this Agreement, except that if there is any inconsistency between this Agreement and the provisions of any exhibit, the provisions of this Agreement shall control.
40. MODIFICATION: Except as otherwise provided, this Agreement shall not be modified except by the written agreement of the parties.
41. SEVERABILITY: If any provision of this Agreement or any Statement of Work is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired.
42. SURVIVAL: The provisions of this Agreement which by their nature extend beyond the expiration or earlier termination of the same shall survive and remain in effect until all obligations are satisfied.
43. ENTIRE AGREEMENT: This Agreement, including all exhibits hereto, and as amended from time to time, constitutes the entire agreement and understanding between the parties as to the matters set forth herein.
44. ATTORNEYS' FEES: If any legal proceeding is commenced to enforce any provision of this Agreement, and PassTime prevails on the merits in any suit, PassTime shall be entitled to recover from you its reasonable attorneys' fees, expenses and costs incurred in such proceeding, in such amounts as the court may award.