

ORANGE COUNTY  
BOARD OF EDUCATION

AGENDA ITEM ABSTRACT

Meeting Date: September 23, 2013

AGENDA ITEM No. 13-09-(2)-13

ACTION ITEM: (Y/N) Y

SUBJECT: Education Logistics, Inc. Contract Approval

INFO. CONTACT: Pam Jones, Interim Exec. Dir. – Auxiliary Services PHONE: (919) 732-8126

ATTACHMENTS:

- Contract
- 

**PURPOSE:** To consider approving a contract with Education Logistics, Inc. (EDULOG) for GPS equipment and tracking software for use on buses used by Orange County Schools (OCS).

**BACKGROUND:** Over the past several months the Transportation staff has explored a number of options for the installation of GPS software on buses used by OCS. After considerable research, they have turned to EDULOG. There is no statutory requirement to bid software.

The EDULOG system has been successfully used on buses transporting Chapel Hill-Carrboro City Schools students for several years. Since these buses are considered the property of OCS and since the software is an excellent fit for OCS' use as well, it is recommended for the Board's consideration.

This software interfaces with the NC TIMS, thereby enhancing the ability to create more efficient bus routes. Further, through the GPS units installed on each bus, staff can tell the location of each unit at a glance. The ability to give real-time information to parents and/or school administrators calling about late buses is invaluable. Last, but by no means least, the ability to know where all of our buses are at any given time provides a margin of safety the District has heretofore not been afforded.

Other benefits of the EDULOG system include:

- Allows the automation of bus driver time and attendance;
- Allows the drivers to clock in and out on the bus using specific job codes;
- Facilitates pre and post trip inspections;
- Records data that will help gain operational efficiencies;
- Stores historical data for review and reporting purposes;
- Tracks the vehicle via a wireless provider. This is exceptionally reliable since the system will remember the path of travel and re-transmit the data when it regains coverage, thereby giving a complete record of vehicle activity.

**FINANCIAL IMPACT:** The initial installation of equipment on 93 OCS units is \$26,133. The monthly fee is \$39 per bus, bringing the total recurring cost for 93 units to \$43,524 per year. The total expenditure authorized by this action is \$69,657. These funds are available in the FY2014 Transportation operating budget. Future fiscal year expenditures will be limited to the recurring cost. Note that the real time data is obtained via wireless through a provider. The monthly cost for that service is included in the monthly fee per bus.

continued

Staff requests the Board approve this expense and authorize the superintendent to execute future contract amendments to add new buses as may be required (estimated not to exceed @\$350 per unit).

**RECOMMENDATION:** The Superintendent recommends the Board approve a contract with Education Logistics, Inc. (EDULOG), contingent upon attorney review, for GPS equipment and tracking software for use on buses used by Orange County Schools (OCS) in an amount commensurate with costs cited above; to authorize future expenditures to equip new buses as may be required; and authorize the Chair to sign on behalf of the Board.

**EDUCATION LOGISTICS, INC.**

SERVICE, LICENSE AND MAINTENANCE AGREEMENT  
FOR  
GPS HARDWARE AND SOFTWARE

THIS AGREEMENT executed on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, is entered into by and between EDUCATION LOGISTICS, INC., a Montana corporation, of 3000 Palmer Street, Missoula, Montana 59808 (hereinafter referred to as "EDULOG") and ORANGE COUNTY SCHOOLS, 200 East King Street, Hillsborough, North Carolina 27278 (hereinafter referred to as "CUSTOMER") under the following terms and conditions.

**1. SERVICE AND LICENSE AGREEMENT**

- a. EDULOG agrees to provide and the CUSTOMER agrees to purchase the services listed in Paragraph 2 below (hereinafter referred to as "SERVICES") on the terms and conditions contained herein; and
- b. EDULOG agrees to grant to the Orange County Schools a non-exclusive and non-transferable license to use the EDULOG software products listed in Paragraph 2 below (hereinafter referred to as "PROGRAM MATERIALS") on the terms and conditions contained herein; and
- c. CUSTOMER agrees that the PROGRAM MATERIALS will be installed on the computer system specified below:

Model:

Located at:

**2. SERVICES, PROGRAM MATERIALS AND CHARGES**

**a. Program Installation**

EDULOG will provide the following SERVICES, PROGRAM MATERIALS AND GPS HARDWARE to CUSTOMER for the respective prices given below:

**GPS/AVL and Electronic Driver Time and Attendance Software System**

	Units	Unit Price	Total Initial Cost	Total Monthly Recurring Fee*
Zonar V3 GPS Units (internal antenna) with Inputs and Outputs (per vehicle)	93		\$0.00	
Shipping for Zonar V3 GPS Units (per vehicle--one hundred [100] percent of the total will be due thirty [30] days from the date the hardware is shipped to the Customer)	93	\$3.00	\$279.00	
Zonar EVIR Devices for Use with the Edulog eDTA Driver Time and Attendance Tracking System (per vehicle)	93		\$0.00	
Shipping for Zonar EVIR Devices (per vehicle--one hundred [100] percent of the total will be due thirty [30] days from the date the hardware is shipped to the Customer)	93	\$3.00	\$279.00	
<b>Software (Hosted by the Orange County Schools)</b>				
Edulog EduTracker GPS/AVL with TIMS Routing and Scheduling Integration, Comparative Analysis Capabilities, and MapQuest Display (per vehicle)	93		\$0.00	
Edulog EduTracker Software and Service Package (per vehicle)	93	\$8.00		\$744.00
Edulog eDTA Driver Time and Attendance Tracking Software (per vehicle)	93		\$0.00	
Edulog eDTA Driver Time and Attendance Tracking Software and Service Package (per vehicle)	93	\$6.00		\$558.00

**Services**

Remote Project Management	1	Included	Included	
Remote Software Training Through the Internet	1	Included	Included	
Zonar V3 Service Package (Includes Cellular Data Plan and Five Year V3 Warranty) (per vehicle)	93	\$17.00		\$1,581.00
Zonar EVIR (Electronic Vehicle Inspection and Reporting) Hardware Service Package—does not include EVIR software capabilities (per vehicle)	93	\$8.00		\$744.00
Edulog System Implementation	1	No Charge	No Charge	
On-Site Installation of Zonar V3 GPS Units with the Wiring for as many as Five (5) Inputs (per vehicle--one hundred [100] percent of the total will be due upon completion of the service--travel and lodging expenses are included)	93	\$225.00	\$20,925.00	
On-Site Installation of Zonar EVIR Units—installation must occur at the same time as the installation of the GPS Units (per vehicle--one hundred [100] percent of the total will be due upon completion of the service--travel and lodging expenses are included)	93	\$50.00	\$4,650.00	
<b>System Activation</b>				
Zonar Activation (per vehicle)	93	No Charge	No Charge	
<b>TOTAL COST*</b>			<b>\$26,133.00</b>	<b>\$3,627.00</b>

\*Recurring monthly fees paid to EDULOG are subject to yearly CPI adjustments. Monthly fees will be billed yearly for a 12 month period. The last CPI amount published before the annual invoicing will be used to calculate the adjustment.  
 Travel and lodging expenses (except where noted) to be billed to the Customer as they are incurred.

b. Additional Conditions

- 1) The monthly recurring Fee will be adjusted each year for increases in the Consumer Price Index as calculated by the U.S. Department of Labor. This adjustment will take place on the first day of January of each year. The base for the adjustment will be the figure last published by the U.S. Department of Labor prior to the adjustment date. For each succeeding year, the same procedure will be applied.
- 2) Unless otherwise stated in this Agreement, all travel, accommodation and out-of-pocket expenses necessitated by the installation, training, and maintenance of PROGRAM MATERIALS shall be paid by CUSTOMER. Expenses for meals will be charged at a rate not to exceed Federal Travel Regulations (FTA) Sec. 301. If CUSTOMER's staff travels to Montana for training, all travel and lodging expenses will be the responsibility of the CUSTOMER.
- 3) EDULOG shall be entitled to reimbursement from CUSTOMER for special mailing when such mailing is authorized by CUSTOMER. Special mailing includes overnight courier service, Express Mail, air freight service or airline counter-to-counter package services.
- 4) The price and fees charged to CUSTOMER are exclusive of all taxes, including but not limited to sales, use, and like taxes, state or local taxes on lodging or meals, resort taxes, and of all fees, including but not limited to fees paid in connection with customs/duty such as brokerage GST fees, disbursement fees, entry prep fees, customs GST, duty amounts, etc. Any tax and/or fee EDULOG may be required to collect or pay upon the delivery or use of the PROGRAM MATERIALS or hardware or upon the provision of services shall be paid or reimbursed to EDULOG by CUSTOMER. In the event that CUSTOMER is a tax-exempt entity, CUSTOMER will provide a tax exemption certificate upon request.

### 3. PAYMENT SCHEDULE

The CUSTOMER agrees to make the following payments to EDULOG at its principal place of business in Missoula, Montana, or at such other address as may be specified by EDULOG to the CUSTOMER:

**(a) Hardware Shipping**

- |   |          |
|---|----------|
| <input type="checkbox"/> Zonar V3 GPS Units | \$279.00 |
| Due upon shipping of the units              |          |
| <input type="checkbox"/> Zonar EVIR Devices | \$279.00 |
| Due upon shipping of the units              |          |

**(b) Services**

- |   |             |
|---|-------------|
| <input type="checkbox"/> On-Site Installation of Zonar V3 GPS Units | \$20,925.00 |
| Due upon completion of service                                      |             |
| <input type="checkbox"/> On-Site Installation of Zonar EVIR Units   | \$4,650.00  |
| Due upon completion of service                                      |             |

**(c) Recurring Monthly Fee**

- |   |                             |
|---|-----------------------------|
| <input type="checkbox"/> Edulog EduTracker Software and Service Package             | \$8,928.00 for months 1-12  |
| First fee due when software application has been made available for customer access |                             |
| <input type="checkbox"/> Edulog eDTA Driver Time and Attendance Tracking Software   | \$6,696.00 for months 1-12  |
| First fee due when software application has been made available for customer access |                             |
| <input type="checkbox"/> Zonar V3 Service Package                                   | \$18,972.00 for months 1-12 |
| First fee due thirty (30) days after shipment of the hardware to CUSTOMER           |                             |
| <input type="checkbox"/> Zonar EVIR Hardware Service Package                        | \$8,928.00 for months 1-12  |
| First fee due thirty (30) days after shipment of the hardware to CUSTOMER           |                             |

**(d) Travel and Lodging**

Except where noted will be billed as incurred

CUSTOMER will notify EDULOG in writing within sixty (60) calendar days of the date of an invoice indicating the reasons for non-payment of the invoice. In the event that an invoice is not paid and EDULOG does not receive a written explanation for the non-payment within the sixty (60) day period, then EDULOG will assign the invoice to a collection agency for collection. In that case, CUSTOMER will also be liable for all late fees or service charges and all costs of collection, including but not limited to reasonable attorney's fees.

### 3. MAINTENANCE SERVICES

In addition to the License provided in Paragraph 1 (b) hereinabove and in consideration of the charges specified in Paragraph 2 (a), EDULOG will provide to CUSTOMER Maintenance Services:

The Maintenance Program entitles the CUSTOMER to receive the following benefits at no additional charge:

- Correction of any defect in the manuals, forms or programs;
- Updates of user guides as required to insure their continued usefulness;
- Assistance by telephone or by mail regarding the use and operation of the system;
- Upgrades to the PROGRAM MATERIALS. For the purpose of this paragraph, the term "upgrades" shall mean any expansions, modifications, or improvements to the PROGRAM MATERIALS which relate to the operating performance but do not change the basic function of the PROGRAM MATERIALS and which are not regularly charged for by EDULOG to other clients as options. In the event that additional services are required, these services will be charged to CUSTOMER at EDULOG's then current standard time and material costs.

These upgrades will insure that the CUSTOMER's version of the PROGRAM MATERIALS be identical to the most current version available to EDULOG's new clients.

### 4. PROTECTION AND SECURITY

CUSTOMER acknowledges that the PROGRAM MATERIALS constitute a valuable asset and trade secret of EDULOG and that EDULOG has a proprietary right and interest in and to the PROGRAM MATERIALS and that any information with respect thereto is confidential. Accordingly, CUSTOMER agrees as follows that:

- a. The PROGRAM MATERIALS shall not be used for the benefit of any entity, including but not limited to any School District, other than the CUSTOMER's and/or on any computer system other than the CUSTOMER's or at any location other than the location specified in this Agreement.

The PROGRAM MATERIALS may be temporarily transferred to back-up computers in the event of malfunction of CUSTOMER's computer.

- b. CUSTOMER shall not, without prior written permission from EDULOG, sell, assign, transfer or otherwise make available for any purpose, whether gratuitously or for valuable consideration, the PROGRAM MATERIALS or any other documentations, models, description, forms, or instructions or other information

relating thereto, to any individual, business organization, governmental body or third party of any nature, other than authorized employees of the CUSTOMER.

The provisions of this paragraph shall survive the termination of the remainder of this Agreement for a period of five (5) years from the date of termination.

#### 5. LIMITATION OF LIABILITY

EDULOG shall not be liable to CUSTOMER for any loss or damage to CUSTOMER or any third party, caused by failure of the computer programs furnished hereunder to function, in whole or in part, nor shall EDULOG be liable for any incidental or consequential damages under this Agreement.

#### 6. WARRANTY

EDULOG warrants that the SERVICES and PROGRAM MATERIALS furnished and installed pursuant to this Agreement shall perform to their published specifications and shall be free of program coding errors. EDULOG's obligation under this warranty shall be to remedy any failure to perform to the published specifications and to correct program coding errors as soon as is reasonably possible after notification by CUSTOMER of such failure to perform, or coding errors.

The Hardware warranty is the warranty provided by the hardware manufacturer.

EXCEPT FOR THE FOREGOING WARRANTIES, EDULOG MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, PROGRAM MATERIALS AND HARDWARE INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### 7. NON-HIRING OF EMPLOYEES

For the term of this Agreement and for twelve (12) months after its termination, CUSTOMER and EDULOG agree not to offer or provide employment to any employee of the other party unless specific written permission is granted waiving this restriction for an employee named by the grantor.

#### 8. TERMINATION

- a. CUSTOMER may terminate this Agreement by giving EDULOG sixty (60) days prior written notice by registered mail with return receipt requested.

- b. In the event that CUSTOMER shall at any time neglect, fail or refuse to comply with the terms of this Agreement, EDULOG may at its option elect to terminate this Agreement by giving CUSTOMER sixty (60) days prior written notice with return receipt requested.
- c. Upon termination of this Agreement, CUSTOMER shall deliver within thirty (30) days to EDULOG all PROGRAM MATERIALS, including but not restricted to computer program disks, support documentation, printed materials furnished hereunder or subsequently by EDULOG and copies of said materials made by CUSTOMER. Further, CUSTOMER shall warrant in writing that all copies of the PROGRAM MATERIALS stored in the CUSTOMER's computer have been destroyed.
- d. At the conclusion of the term committed to in section 3 above, unless CUSTOMER advises EDULOG to the contrary in writing, EDULOG will assume that CUSTOMER desires to continue using all PROGRAM MATERIALS beyond this initial term and will continue invoicing according to the ongoing payment schedule outlined in section 3.

#### 9. ATTORNEY'S FEES AND COSTS

In the event of any litigation between the parties arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, as determined by the court or arbitrator.

#### 10. CONTINUATION OF BENEFITS

This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, assignees and successors of the respective parties.

#### 11. NON-WAIVER

No delay or failure of EDULOG in exercising any right hereunder and no partial or single exercise thereof shall be deemed of itself to constitute waiver of such right or any other rights hereunder.

#### 12. ZONAR FLOW-DOWN TERMS

It is acknowledged by CUSTOMER that hardware and services supplied by Zonar as a part of this Agreement are passed through to CUSTOMER. The terms and conditions specific to the products provided by Zonar under this Agreement are attached hereto as Exhibit A and are incorporated herein by reference.

This Agreement constitutes the complete and exclusive statement of the Agreement between the parties which supersedes all proposals, oral or written, and shall not be modified or altered except in writing by both parties.

Executed as of the day and year written above.

EDUCATION LOGISTICS, INC.

ORANGE COUNTY SCHOOLS

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

## EXHIBIT A

### ZONAR TERMS OF USE AND SERVICE AGREEMENT

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

- "Data" means any and all files, information, data or other content generated by Customer that is collected and stored in Zonar's systems in connection with its delivery of the Services. Data does not include information that collected for relationship management purposes, such as contact, billing, customer management, delivery, performance measuring, and compliance monitoring or Aggregated User Data (defined below).
- "Hardware" means any equipment provided by Zonar or its agents to Customer under this Services Agreement.
- "Order" means the submission by Customer to Zonar of a written order for Hardware or Services under this Services Agreement, utilizing Zonar's standard sales order form (each a "Quotation" or "Quote") or any other mutually agreeable form (e.g., a purchase order).
- "Parties" means Zonar and Customer.
- "Party" means either of Zonar or Customer, as applicable.
- "Services" means Zonar's Ground Traffic Control<sup>®</sup> service ("GTC"), Compliance Safety Accountability<sup>®</sup> service ("CSA"), which may include, wireless data collection services, Data storage and retrieval services, rights to access and use both distributed and hosted Software and online administrative portal(s), and/or any other services that Zonar makes available to Customer for purchase under this Services Agreement.
- "Software" means any computer software and associated documentation provided by Zonar or its agents to Customer or otherwise made available by Zonar or its agents (e.g., the GTC web-based portal and associated web-based software applications) to Customer under this Agreement. Software also 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 hereto and which is available for review on Zonar's web site at the following address: <http://www.zonarsystems.com/>.
- "Third Party Offerings" means any third party branded Hardware, Software or Services that Zonar, acting solely as a reseller, makes available to Customer for purchase, license or use under this Services Agreement.
- "Zonar Offerings" means the Zonar-branded Hardware, Software and Services that Zonar makes available to Customer for purchase, license or use under this Services Agreement.

**HARDWARE:** Title to Hardware purchased under this Services Agreement will be transferred to Customer in the manner described below, but all associated Software is licensed, not sold, under the terms specified elsewhere in this Agreement. All Hardware to be delivered by Zonar or its agents to Customer under this Agreement shall be shipped ex works (as such term is described in Incoterms 2010 published by the International Chamber of Commerce) from Zonar's chief offices in Seattle Washington, or any other plant or warehouse designated by Zonar, via a common carrier acceptable to Zonar, to Customer's principal place of business, or any other location designated by Customer and approved by Zonar. Hardware may be used only with the Services, in accordance with published specifications applicable to such Hardware and all applicable laws. Unless Customer has purchased Hardware installation Services from Zonar or its agents under an Order, Customer shall be solely responsible for the proper installation of all such Hardware.

**SOFTWARE LICENSE/GRANT:** Subject to Customer's timely payment of all applicable fees and expenses and compliance with all material terms of this Agreement, Zonar grants to Customer during the Services 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. All rights not expressly granted to Customer under this Agreement are reserved by Zonar. Note that additional and/or different terms and conditions may apply to Third Party Offerings, which shall be presented to Customer either prior to or at the time of delivery of such Third Party Offerings. Licensee may not reverse engineer, de-compile, or disassemble the Software Products. Zonar may terminate this Agreement if Licensee fails to comply with the terms and conditions of this License.

**CUSTOMER OBLIGATIONS:** Customer is responsible for ensuring that only authorized persons have access to Zonar's web based applications and for the security of Customer's computer system and the connection to Zonar's web based applications. 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 the prior written consent of Zonar.

**DATA STORAGE:** Customer understands that unless Customer purchases data retention services, Zonar will have the right to purge all data submitted by Customer as follows: (a) Subject to purge after 3 months, 6 months, or 12 months, as elected by Customer in writing. If no election is made, Zonar will default to 3 months of inspection data (CSA) and 6 months of GPS data.

**OWNERSHIP:** (a) Customer grants Zonar the right to use all data submitted to Zonar's web based applications for any and all purposes, including to purge such data as provided in the DATA STORAGE Section and to create compilations of such data as long as Zonar will not identify the data source as being from the Customer nor portray the data in such a manner as to identify the Customer. Customer agrees that Zonar shall own all compilations of the data created by or for Zonar. (b) The Software Products are licensed, not sold. This license provides no ownership interest. Certain ones of Zonar Products (Hardware and Software) and components thereof provided by Zonar for the Customer's use are protected by patent, copyright, trade secret, trademark, international treaties, and/or other laws. Customer agrees that Zonar owns all proprietary rights in Zonar Products (Hardware or Software) and any corrections, enhancements, updates or other modifications, including custom modifications, thereto, whether made by Zonar or any third party. Licensee may not sub-license or otherwise transfer its rights under this EULA without prior written permission of licensor. Licensee may not copy or distribute the Software Products without Zonar's express, written approval.

**INTELLECTUAL PROPERTY:** Zonar retains all right, title and interest and all related intellectual property rights in and to the Zonar Offerings and Zonar's Confidential Information, including any corrections, 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 or the Third Party Offerings or any part thereof. 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 intellectual property 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.

**LIMITED HARDWARE WARRANTY:** Zonar warrants that the 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 Hardware is as follows: V Series HD GPS Product Line – 5 Years; EVIR – 3 Years; All Other Hardware – 1 Year. The warranty period runs from the date of shipment. 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

\_\_\_\_\_: Customer Initials

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. Phone: 1 877 THE EVIR.

**LIMITED SOFTWARE WARRANTY:** Zonar warrants that the Software elements of any Zonar Offerings delivered by Zonar or its agents to Customer under this Agreement shall perform in all material respects in accordance with published technical specifications for a period of 90 days from the date of shipment or if web-based, the date such Software was first made available to Customer. Provided that such Software is installed in accordance with Zonar's instructions and used in an unmodified form, in accordance with applicable specifications and the terms of this Agreement, as Customer's sole and exclusive remedy, Zonar will either repair the non-conforming Software or replace or re-present any nonconforming Software with conforming Software.

**LIMITED SERVICE WARRANTY:** Zonar warrants that the Services elements of any Zonar Offerings will be performed in a good, workmanlike manner and, for a period of 30 days from the date of delivery to Customer, such Services will conform in all material respects to applicable technical specifications. As Customer's sole and exclusive remedy for any failure of the Services to meet the foregoing limited remedy, Zonar will promptly re-perform such Services.

**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. AS BETWEEN ZONAR AND CUSTOMER, THE THIRD PARTY OFFERINGS ARE PROVIDED "AS IS". CUSTOMER ACKNOWLEDGES THAT WARRANTIES (IF ANY) WITH RESPECT TO THIRD PARTY OFFERINGS ARE AS REFLECTED IN THE TERMS AND CONDITIONS APPLICABLE TO SUCH THIRD PARTY OFFERINGS, AND IT SHALL LOOK SOLELY TO THE MANUFACTURER, PUBLISHER OR OTHER THIRD-PARTY PROVIDER(S) OF SUCH THIRD PARTY OFFERINGS FOR SUPPORT WITH RESPECT TO ANY PERFORMANCE OR WARRANTY ISSUES, OR OTHER NON-CONFORMANCE WITH THE THIRD PARTY OFFERINGS. 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, 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.

**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 CUSTOMER'S 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 THE THIRD PARTY 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.

**CONTROLLING TERMS:** All Zonar Offerings shall be subject to the terms and conditions of this Agreement. Customer acknowledges that additional and/or different terms and conditions may apply to Third Party Offerings, which shall be presented to Customer either prior to or at the time of delivery of such Third Party Offerings. 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. Zonar may modify the Terms of Use on 30 days' written notice to Customer or automatically, with or without notice to Customer, upon renewal of a Subscription Term.

**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 and suppliers. Customer acknowledges that it is solely responsible for its use of Data, controlling its employees', contractor's and other permitted designees 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. Customer acknowledges that the accuracy of Data may be dependent on the accuracy of information provided by vehicle drivers or other individuals using Hardware or Software on Customer's behalf. 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 or delay in performance caused by any event reasonably beyond its control, including, but not limited to labor disputes, natural disasters and other acts of God, and war.

**INDEMNIFICATION:** Customer shall defend, indemnify and hold Zonar harmless from and against (a) any claim, cause of action, demand, cost, expense (including attorneys' fees), loss suit, proceeding, damage and liability of any kind ("collectively, Claims") asserted or initiated by a third party arising out of or relating to Customer's use of or inability to use the Hardware, Software, Services or Data, and (b) any Claims asserted or initiated by Customer or any third party to the extent arising out of relating to any unauthorized or illegal use of the Software, Hardware, Services or Data by any individual or entity other than Zonar, including, without limitation, the owner, operator, or insurer of any vehicle or equipment for which the Hardware, Software, Services or Data are used, and any by any individual or entity claiming injuries or damages arising from the use of any vehicle or equipment for which the Hardware, Software, Services or Data are used. The preceding language does not apply to any claim that Zonar products or services violate the intellectual; property rights of any 3rd party, so long as such products and services are used as intended and not combined with any technology not provided by Zonar, and where the claim does not arise because of such a combination.

**WIRELESS DATA POLICIES:** CUSTOMER has no contractual relationship with a wireless carrier and CUSTOMER is not a third-party beneficiary of any agreement between Zonar or a Zonar Agent and a wireless carrier. CUSTOMER understands and agrees that the underlying wireless carrier shall have no legal, equitable or other liability of any kind to CUSTOMER. Subject to FCC Number portability rules, CUSTOMER has no property or other rights in any Number assigned to it and CUSTOMER understands that any such Number can be changed from time to time. CUSTOMER agrees that 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. CUSTOMER understands and agrees that 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 Federal Communications Commission and other United States or foreign governmental authorities which from time to time have jurisdiction.

\_\_\_\_\_: Customer Initials