



## FLEX ASSET TRACKER PURCHASE AND SUBSCRIPTION AGREEMENT

THIS FLEX ASSET TRACKER PURCHASE AND SUBSCRIPTION AGREEMENT (“**AGREEMENT**”) GOVERNS A CUSTOMER’S ACQUISITION AND USE OF FLEX PRODUCTS (AS DEFINED BELOW). CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

IF CUSTOMER PURCHASES OTHER PRODUCTS FROM BSM, CUSTOMER’S PURCHASE AND ONGOING USE OF THOSE PURCHASED PRODUCTS WILL BE GOVERNED BY THE MASTER SOFTWARE SUBSCRIPTION, PROFESSIONAL SERVICES AND HARDWARE PURCHASE AGREEMENT (THE “**MASTER AGREEMENT**”) AVAILABLE AT <https://www.bsmtechnologies.com/company/legal/agreements>, AND ANY SUCCESSOR WEBSITES, AND CUSTOMER HEREBY AGREES TO SUCH MASTER AGREEMENT. IF CUSTOMER HAS ENTERED INTO OR ENTERS INTO THE MASTER AGREEMENT WITH BSM, THAT MASTER AGREEMENT SHALL NOT APPLY TO THE FLEX PRODUCTS, AND THE FLEX PRODUCTS SHALL NOT BE CONSIDERED A PRODUCT OR PART OF ANY SERVICE OR PRODUCT UNDER SUCH MASTER AGREEMENT, UNLESS EXPRESSLY AGREED IN WRITING BY BSM.

BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, (2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR (3) USING FLEX PRODUCTS, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT, IN WHICH CASE THE TERM “CUSTOMER” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THIS AGREEMENT, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE FLEX PRODUCTS.

BSM’s direct competitors are prohibited from accessing Flex Products, except with BSM’s prior written consent. In addition, Flex Products may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on March 15, 2019. The “**Effective Date**” of this Agreement is the date on which Customer first indicates its assent to the terms of this Agreement, such as submitting an Order Form (as defined below).

### 1. DEFINITIONS AND INTERPRETATION

1.1. **Definitions.** For the purposes of this Agreement, except as otherwise defined herein, the following words and phrases shall have the following meanings:

- (a) “**Affiliate**” means any person or entity that directly or indirectly controls, is controlled by, or is under common control with the subject person or entity. “**Control**”, for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject person or entity.
- (b) “**Agreement**” means this Flex Asset Tracker Purchase and Subscription Agreement.
- (c) “**BSM**” means the BSM Technologies Inc. entity described in Section 17.11 of the Master Agreement.
- (d) “**BSM Master Agreement**” means the master software subscription, professional services and hardware purchase agreement between BSM and the Customer, available at <https://www.bsmtechnologies.com/company/legal/agreements>, and any successor websites.

- (e) **“Customer”** means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into Order Form(s).
- (f) **“Flex”** means Flextronics Telecom Systems Ltd.
- (g) **“Flex Hardware”** means Flex hardware devices and firmware of Flex asset trackers.
- (h) **“Flex Managed Services Subscription”** means a type of subscription plan where Customer receives Flex Hardware as a part of its Flex Subscription Services, which are provided as a single product offering to the Customer.
- (i) **“Flex Products”** means Flex Hardware and Flex Services.
- (j) **“Flex Services”** means the data transmission services related to Flex Hardware.
- (k) **“Flex Subscription Plan”** means the subscription plan specified in the applicable Order Form for Flex Subscription Services or Flex Managed Services Subscriptions.
- (l) **“Flex Subscription Services”** means the Flex Services to which Customer subscribes each as specified in the applicable Order Form.
- (m) **“Flex Subscription Start Date”** means, with respect to each Order Form, the later to occur of the “Contract Start Date” specified in the Order Form, or the date on which Customer executes the Order Form.
- (n) **“Flex Subscription Term”** has the meaning ascribed to it in [Section 7.4\(a\)](#).
- (o) **“Force Majeure Event”** has the meaning ascribed to it in [Section 7.7](#).
- (p) **“Geotab”** means Geotab Inc.
- (q) **“Geotab Marketplace”** means the Geotab online directory, catalog or marketplace of applications that interoperate with Geotab products, available at <https://marketplace.geotab.com/about-marketplace>, and any successor websites.
- (r) **“Geotab Third Party Terms”** means the Geotab third party terms and conditions located at <http://my.geotab.com/eula.html>, and any successor website.
- (s) **“Governmental Authority”** means any government, parliament, legislature, regulatory authority, agency, commission, board or court or other law, rule, or regulation-making entity having or purporting to have jurisdiction on behalf of any nation or state or province or other subdivision thereof including any municipality or district.
- (t) **“Non-BSM Application”** means a Web-based, mobile, offline or other software application functionality that interoperates with a Flex Product, that is provided by Customer or a third party and/or listed on the Geotab Marketplace. Non-BSM Applications, other than those obtained or provided by Customer, will be identifiable as such.
- (u) **“Order Form”** means an ordering document or online order specifying Flex Products to be provided hereunder that is entered into between Customer and BSM or any of their Affiliates. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.
- (v) **“Person”** shall mean any individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, joint venture, body corporate, a government or any department or agency thereof, and a natural person in such person's capacity as trustee, executor, administrator or other legal representative.
- (w) **“Taxes”** means any consumption, excise, goods and services, harmonized sales, retail sales, social services, use, value added taxes and any other tax, duty, governmental fee or other like assessment or charge of any kind whatsoever imposed by any federal, provincial, state, territorial, municipal or other Governmental Authority in any jurisdiction.

**1.2. Interpretations.** Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation”

or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

- 1.3. **Currency.** Unless otherwise specified in an Order Form, all currency or dollar references shall be in Canadian dollars.
- 1.4. **Conflict of Terms.** In the event of a conflict or any inconsistency between, or an omission or ambiguity with respect to following documents, the following documents shall apply and prevail in the following successive order of priority to the extent of such conflict, inconsistency, omission or ambiguity: [(a) this Agreement; and (b) an Order Form.

## 2. FLEX PRODUCTS

- 2.1. **Sourcing of Flex Products.** BSM has entered into an agreement with Geotab which permits BSM to resell Flex Products. Unless otherwise specifically indicated in this Agreement, Flex Products are third party products and, as such, the terms and conditions of the BSM Master Agreement and the Geotab Third Party Terms do not apply.
- 2.2. **Flex Products Specifications.** Flex Products will be those described on the Geotab Marketplace, which description may be modified from time to time by Geotab and will be modified if the specifications are changed by Flex. During term of this Agreement or any Order Form, Flex Product's general form, fit or function may change or Flex Products may be discontinued (also known as end of life) and BSM and/or Geotab will use reasonable efforts to notify you if any of these events occur.
- 2.3. **Flex Products Territory.** Flex Products may only be acquired and used **within the United States and Canada.**
- 2.4. **Flex Products Limited Warranty.** Flex Products are provided pursuant to the limited warranties set out in Schedule “A” attached hereto.
- 2.5. **Title, Shipment and Risk of Loss of Flex Hardware.** Title to Flex Hardware shall be as described in Section 6.1 and 6.2 of the Master Agreement, *mutatis mutandis*.
- 2.6. **Installation.** Installation of Flex Products will be Customer's responsibility. If Customer requests BSM to install Flex Products, such installation will be done in accordance with the installation terms set forth in Section 6.3 of the Master Agreement, *mutatis mutandis*.
- 2.7. **Return of Flex Products.** If Customer receives Flex Hardware under a Flex Managed Services Subscription, Customer shall be responsible for complying with Section 6.4 of the Master Agreement (including the non-return fee set forth therein), *mutatis mutandis*.
- 2.8. **Flex Products Data Security.** Flex Products are provided by Flex and/or Geotab, and BSM has no control over any aspect of Flex or Geotab's data server infrastructure and BSM accepts no responsibility or liability for any aspects of Flex or Geotab's data security practices or handling of Flex Products data by Flex or Geotab. Flex has agreed with Geotab to use, at a minimum, industry standard data security practices when gathering, transmitting and storing data from Flex Hardware, and Flex has also agreed with Geotab that it will obtain all required consents from all relevant parties before using or sharing any data gathered by Flex Products for any purpose other than to the service.

Flex claims no ownership of data that Customer generates in relation to the assets upon which the Flex Hardware is installed (“**Individual Asset Data**”) and which Customer transmits or processes using Flex Products. Flex shall have the right to process, store and transmit Individual Asset Data solely to provide, maintain and improve the Flex Products (including, but not limited to warranty services and obligations) and to perform obligations under this Agreement, its agreement with Geotab and applicable law. Flex maintains reasonable technical and organizational security and data

storage policies and measures for facilities within Flex's control. Individual Asset Data may be stored or transmitted through third party facilities, third party services or common carriers, including, without limitation, the internet, in the course of using Flex Products.

Flex will not disclose Customer's Individual Asset Data to any third party except in the following circumstances: (i) to Flex's service providers, who have a need to know in order to assist Flex in providing Flex Products to Customer or in improving Flex Products, and who have agreed to confidentiality terms and use restrictions similar to those set forth herein; (ii) with Customer's consent; (iii) to comply with a subpoena, warrant, production order, court order or other legal requirement (but to the extent practicable and unless prohibited from doing so, Geotab will provide BSM and/or Customer notice of the disclosure so that Customer may seek a protective order or otherwise object to the disclosure; or (iv) where a company acquires Flex or assets of Flex.

Flex compiles, stores and uses aggregated data and system usage information to monitor and improve the Flex Products and for the creation of new products. The aggregated data that Flex uses in this manner is no longer associated with a specific asset and, as such is not Individual Asset Data ("**Aggregated Data**"). Flex shall have ownership of Aggregated Data and will not attempt to disaggregate the data or re-associate it with an asset without Customer's consent or unless legally compelled to do so or unless required for safety, troubleshooting or preventative maintenance purposes.

When Flex Product data is integrated into the data maintained by BSM and/or Geotab for Customers, then the provisions of Section 8 (Confidentiality and Data Transfer), Section 9 (Your Vehicle Data) and section 10 (Aggregated Data) of the Geotab Third Party Terms will apply to Flex Product data once the Flex Product data is received by BSM and/or Geotab controlled servers.

### **3. PROPRIETARY RIGHTS AND LICENSES**

- 3.1. License by BSM.** Subject to the terms and conditions of this Agreement, BSM hereby grants to Customer a non-exclusive, revocable, non-transferable (except in accordance with Section 9.7), limited, royalty-free license, without right to sub-license, for the Flex Subscription Term, solely to access and use, and to permit its Users to access and use, Flex Products, in accordance with Documentation, solely for Customer's operations in its ordinary course of business.
- 3.2. BSM's Intellectual Property and Ownership Rights.** As between Customer and BSM, BSM and BSM's licensors retain and own all right, title and interest and all Intellectual Property Rights in and to Flex Products, BSM's Confidential Information, and all enhancements or improvements to, or derivative works of any of the foregoing created or developed by or on behalf of BSM, including any application programming interface created or developed by or on behalf of BSM between a Flex Product and a Non-BSM Application (collectively, "**BSM Intellectual Property**"). Nothing in this Agreement transfers or conveys to Customer any ownership interest in or to the BSM Intellectual Property. To the extent any interest of any kind whatsoever in the BSM Intellectual Property becomes vested in Customer, Customer hereby assigns, and further automatically assigns upon creation, any and all such interests in or to the BSM Intellectual Property to BSM, and agrees that it shall execute any documents BSM requires in its sole and absolute discretion to give full effect to this Section.
- 3.3. License by Customer to BSM.** Customer grants BSM, its Affiliates, BSM's licensors and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display any Non-BSM Applications and program code created by or for Customer using a Flex Product or for use by Customer with Flex Products, and Customer Data, each as appropriate for BSM and/or its licensors to provide and ensure proper operation of, Flex Products and associated systems in accordance with this Agreement (the "**Customer License**"). Customer hereby represents and warrants to BSM that it is entitled to grant to BSM the Customer License under the terms of all applicable agreements. If Customer chooses to use a Non-BSM Application with a Flex Product, Customer grants BSM permission to allow the Non-BSM Application and its provider to access Customer Data and information about Customer's usage of the Non-BSM Application as appropriate for the

interoperation of that Non-BSM Application with Flex Products. Subject to the limited licenses granted herein, BSM acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data, Non-BSM Application or such program code.

- 3.4. Customer License to Use Feedback.** Customer grants to BSM, its Affiliates, its licensors and applicable contractors a worldwide, perpetual, irrevocable, royalty free license to use and incorporate into its products and services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of BSM, its Affiliates' and/or its licensors products, including the Flex Products.
- 3.5. Feedback and Surveys.** Customer agrees to provide feedback to BSM, Geotab or Flex regarding the operation of the Flex Products during the Flex Subscription Term. All such feedback will be governed by Section 3.4 above. In addition, Customer agrees to complete surveys regarding Flex Products as provided by Geotab from time to time during the Flex Subscription Term.
- 3.6. Equitable Relief.** Each of Customer and BSM acknowledges that damages will be an inadequate remedy if the other violates the terms of this Agreement pertaining to protection of a party's Intellectual Property Rights, or Confidential Information. Accordingly, each party has the right, in addition to any other rights each of them may have, to seek in any court of competent jurisdiction, temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any of the obligations in this Agreement.

#### **4. INDEMNIFICATION**

- 4.1. MUTUAL INDEMNIFICATION. UNLESS PROHIBITED BY APPLICABLE LAW, EACH PARTY ("INDEMNIFYING PARTY") SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY (OR AT ITS OPTION SETTLE) AND HOLD HARMLESS THE OTHER PARTY FROM AND AGAINST ANY CLAIM, ASSERTION, ACTION, LOSS, EXPENSE, DAMAGES OR LIABILITIES (INCLUDING REASONABLE ATTORNEYS' FEES) AWARDED BY A COURT OF COMPETENT JURISDICTION, SOLELY TO THE EXTENT ARISING OUT OF THIRD PARTY CLAIMS BROUGHT AGAINST THE OTHER PARTY, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS, AND EMPLOYEES, (EACH AN "INDEMNIFIED PARTY"), ARISING OUT OF OR INCIDENT TO: (A) A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT; (B) FOR BSM ONLY, A THIRD PARTY CLAIM (AND FOR GREATER CERTAINTY NOT CUSTOMER, OR A CUSTOMER AFFILIATE AS THE CASE MAY BE) THAT AN FLEX PRODUCT (INCLUDING ANY RELATED SERVICES) INFRINGES THAT THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS; (C) FOR BSM ONLY, ANY FAILURE OF FLEX PRODUCTS SOLD BY BSM HEREUNDER TO COMPLY WITH ANY SAFETY STANDARD BUT SOLELY TO THE EXTENT CAUSED BY A BREACH OF THE WARRANTIES SET FORTH IN SECTIONS 1.1 AND 1.2 OF SCHEDULE "A" TO THIS AGREEMENT.**
- 4.2. BSM INDEMNIFICATION. FOR BSM'S INDEMNIFICATION OBLIGATION IN SECTION 4.1(B) ABOVE, BSM SHALL UNDERTAKE THE SOLE AND COMPLETE DEFENSE OF ANY CLAIM OF INFRINGEMENT. BSM SHALL, AT BSM'S OPTION AND EXPENSE, EITHER: (I) PROCURE FOR CUSTOMER THE RIGHT TO CONTINUE PURCHASING AND USING THE FLEX PRODUCTS, (II) HAVE FLEX MODIFY THE FLEX PRODUCTS SO AS TO RENDER THEM NON-INFRINGEMENT, OR (III) ACCEPT THE RETURN OF FLEX PRODUCTS AND REFUND THE PURCHASE PRICE PAID BY CUSTOMER. THIS SECTION 4.2 SETS FORTH CUSTOMER'S SOLE REMEDIES AND BSM'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING FLEX PRODUCTS OR ANY RELATED SERVICES) INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.**
- 4.3. Exclusions from BSM Indemnity.** Notwithstanding Section 4.1(B) above, BSM will not pay any cost or have any liability for any damages, loss or claims arising from or incurred by reason of: (a) any modification or combination of Flex Products with a product furnished by a party other than Flex if in

the absence of such modification or combination Flex Products would be non-infringing; (b) BSM's compliance in conformance with any specifications or custom elements made to Flex Products by request of Customer; or (c) infringement that arises as a result of any packaging or other artwork supplied by Customer (collectively, "**Indemnification Exclusions**").

- 4.4. Indemnification Procedure.** Each party's indemnification obligations in Section 4.1 are contingent upon: (i) prompt notification by the Indemnified Party; and (ii) permitting the Indemnifying Party to defend, compromise or settle the claim or action and providing all available information, assistance and authority to enable the Indemnifying Party to do so. The Indemnifying Party shall not be liable to reimburse any compromise or settlement made without the Indemnifying Party's prior written consent, or for any legal fees or expenses incurred in connection with such claim. Any settlement will require the written authorization of the Indemnified Party.

## **5. LIMITATION OF LIABILITY**

- 5.1. Limitation of Liability.** Both parties' liability under this Agreement will be limited in the aggregate to the amount paid by Customer to BSM for Flex Products in the 12 months preceding the date the claim first arose (other than a claim covered by above indemnities in Section 4). The above limit of liability shall not apply to Customer's obligation to pay for Flex Products provided hereunder.

In no event shall either party be liable for indirect, special, consequential, incidental, punitive or exemplary losses, damage or expenses of any kind, or for any third party claim against the other (other than a claim covered by above indemnities in Section 4), or for business interruption, lost data, lost revenue, lost profits, lost savings or any other commercial or economic loss of any kind, even if it has been advised of their possible existence, or even if same were reasonably foreseeable.

The limitations set out above shall apply irrespective of the nature or the cause of action, demand or claim, including but not limited to, breach of contract, negligence, tort or any other legal theory, and shall survive a fundamental breach or breaches and/or failure of the essential purpose of the Agreement or of any remedy contained herein.

## **6. FEES; PAYMENT FOR FLEX PRODUCTS**

- 6.1. Fees.** Customer will pay BSM the fees for all Flex Products as specified in the applicable Order Form. Except as otherwise specified herein or in an Order Form, (i) fees are based on Flex Products purchased; and (ii) payment obligations are noncancelable and fees paid are non-refundable.
- 6.2. Payment Terms.** Unless otherwise stated in the Order Form, payment terms in respect of Flex Products will be as set out for Products in the Master Agreement, *mutatis mutandis*.
- 6.3. Taxes.** Customer will be responsible for any applicable Taxes payable with respect to its acquisition of Flex Products, or otherwise arising out of or in connection with this Agreement, other than Taxes based upon BSM's personal property ownership or net income. Unless expressly specified otherwise in any Order Form, all Fees, rates and estimates exclude Taxes. If Customer has tax-exempt status, Customer will provide written evidence, such as with a valid tax exemption certificate authorized by the appropriate taxing authority, of such status.
- 6.4. Withholding.** If Customer is required to withhold Taxes imposed upon BSM for any payment under this Agreement by virtue of any Governmental Authority in which any Flex are delivered or obtained, then such payments will be made by Customer on behalf of BSM by deducting them from the payment then due BSM and remitting such Taxes to the proper authorities on a timely basis, and the payments provided for under this Agreement will be adjusted upwards appropriately so that BSM actually receives the full amount of the fees set forth in the applicable Order Form. Customer will provide BSM with official documentation or tax receipts on such withholdings supporting such Taxes and such payments as may be required by BSM for its tax records as soon as reasonably possible

following payment to the applicable tax authority, and in any event no later than when required by applicable law.

## 7. TERM AND TERMINATION

7.1. **Term of Agreement**. This Agreement will commence on the Effective Date and will continue in effect until terminated in accordance with Section 7.2 or Section 7.4 below.

7.2. **Termination On Material Breach**. In the event of a material breach of the Agreement by either party, the nonbreaching party may terminate the Agreement or any Order Form affected by the material breach by giving the breaching party written notice of the material breach and the non-breaching party's intention to terminate. If the material breach has not been cured within the period ending 30 days after such notice, and if the non-breaching party provides written notice of termination to the breaching party ("**Termination Notice**"), then this Agreement or any such Order Form will terminate within the time period specified in the Termination Notice. Notwithstanding the foregoing, Customer's failure to pay any overdue fees and expenses within 30 days of BSM notifying Customer of the overdue payment will constitute a material breach of this Agreement. If Customer has not cured a material breach within the applicable cure period, then BSM may, on not less than 5 business days' prior written notice to Customer, in its sole discretion, and without prejudice to its other rights following material breach and failure to cure, until such breach has been cured in full, suspend performance of some or all of BSM's obligations to provide Flex Products under this Agreement.

7.3. **Termination for Convenience**. The parties acknowledge and agree that this Agreement and any applicable Order Form is priced as a minimum term, and may not be terminated for convenience.

### 7.4. **Flex Subscription Term and Renewal**.

(a) **Subscription Term**. Each subscription term for Flex Subscription Plans will commence on the Flex Subscription Start Date and will continue for the period specified in the Order Form or, if not so specified, three years (an "**Initial Term**"). Upon expiration of the Initial Term, Flex Subscription Plans will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter) (each, a "**Renewal Term**"), at such rates as may be mutually agreed in writing between them, unless either party gives the other notice of non-renewal at least 90 days before the end of the relevant subscription term. Where a fee increase is contemplated, BSM will provide Customer with notice of its proposed fees for renewal at least 90 days prior to the expiration of the then-current subscription term. The Initial Term and each Renewal Term are individually referred to in this Agreement as the "**Flex Subscription Term**".

(b) **Flex Subscription Term Renewal Pricing**. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced Flex Subscription Plans will be at BSM's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which the number of Flex Subscription Plans has decreased from the prior subscription term will result in repricing at renewal without regard to the prior subscription term's pricing.

(c) **Upgraded Subscriptions or Additional Subscriptions**. If Customer upgrades any Flex Subscription Plans during a Flex Subscription Term, then the Flex Subscription Term for the upgraded Flex Subscription Plan will be coterminous with the current Flex Subscription Term and BSM will invoice Customer an amount equal the upgraded subscription fee. If Customer subscribes to an additional Flex Subscription Plan, the Flex Subscription Term for that additional Flex Subscription Plan will begin on the Subscription Start Date for that additional Flex Subscription Plan in accordance with the corresponding Order Form.

7.5. **Refund of Prepaid Subscription Fees if Customer Terminates for Material Breach**. If Customer terminates this Agreement or any Order Form for material breach in accordance with Section 7.2 above, then BSM will refund to Customer a pro-rata amount of any affected Flex Subscription Plan

fees prepaid to BSM and applicable to the unutilized portion of the Flex Subscription Term for terminated Flex Subscription Plan(s).

- 7.6. **Fulfillment of Obligations on Termination.** Except as otherwise specified in this Agreement, termination of this Agreement or of any Flex Subscription Plan(s) will not, in any event, entitle Customer to any refund of or relief from payment of any Flex Subscription Plan(s) fees paid or payable under this Agreement.
- 7.7. **Force Majeure Event.** In the event that BSM is delayed in or prevented from performing BSM's obligations under this Agreement or applicable Order Forms due to a Force Majeure Event then, upon written notice to Customer: (a) the affected obligations under this Agreement and applicable Order Forms will be suspended to the extent necessary during the period of the Force Majeure Event, and (b) BSM will not have any liability to Customer or any other Person in connection with such suspended obligation. For purposes of this Agreement, a "**Force Majeure Event**" means an event beyond its reasonable control, including an act of God, fire, flood, explosion, public health emergencies, communicable disease outbreak, general Internet outages, outages caused by the wireless network data providers, civil disorder, strike, lockout or other labour trouble, material shortages of utilities, delay in transportation, destruction or damage to production facilities breakdown or accident, any law, ruling, judgment, demand or requirement of any Governmental Authority, riot, war, or other cause beyond the reasonable control of BSM.
- 7.8. **Suspension of Products.** BSM and/or its licensors may suspend Customer's Flex Subscription Plans and access or use of any portion of Flex Products, if BSM determines that Customer's use of Flex Products, (i) pose a security risk to Flex Products or any third party, (ii) may adversely impact Flex Products, or the networks or data of any other BSM customer, business partner or service provider, or (iii) may subject BSM, or any third party, to liability. BSM will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension, and to reinstate such Flex Products as soon as reasonably practicable following correction of the issue.
- 7.9. **Survival.** The provisions of Sections 2, 3, 4, 5, 6, 7 and 8 of this Agreement will survive any termination or expiration of this Agreement.

## 8. CONFIDENTIALITY

- 8.1. **Definition of Confidential Information.** "**Confidential Information**" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of BSM includes Products and Content, and the terms and conditions of this Agreement and all Order Forms (including pricing). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. For the avoidance of doubt, the non-disclosure obligations set forth in this "Confidentiality" section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional BSM services.
- 8.2. **Protection of Confidential Information.** Except as otherwise outlined in this Agreement, as between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential



Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section. Notwithstanding the foregoing, BSM may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or Non-BSM Application provider to the extent necessary to perform BSM's obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

**8.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## **9. GENERAL**

**9.1. Legal Expenses.** If any proceeding is brought by either party to enforce or interpret any term or provision of this Agreement, the substantially prevailing party in such proceeding will be entitled to recover, in addition to all other relief arising out of this Agreement, such party's reasonable legal and other experts' (including without limitation accountants) fees and expenses.

**9.2. Entire Agreement.** This Agreement is the entire agreement between BSM and Customer regarding Customer's use of Flex Products and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms) is void.

**9.3. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

**9.4. Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.

**9.5. Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

**9.6. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

**9.7. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety, without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor

of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, BSM will refund Customer any prepaid fees covering the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

- 9.8. Governing Law and Venue.** This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of the Province of Ontario and the applicable federal laws therein which shall be deemed to be the proper law of this Agreement. Each of the parties hereby agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario sitting in Toronto for any matter, dispute, claim or proceeding arising out of or in relation to this Agreement.
- 9.9. Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.
- 9.10. United Nations Convention on Contracts for the International Sale of Goods.** The *United Nations Convention on Contracts for the International Sale of Goods* will not apply to applicable Order Forms and this Agreement and its application is strictly excluded.
- 9.11. Waiver of Jury Trial.** **THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT.**
- 9.12. No Agency.** For the avoidance of doubt, BSM is entering into this Agreement as principal and not as agent for any other BSM Technologies Inc. company. Subject to any permitted Assignment under Section 9.7 above, the obligations owed by BSM under this Agreement will be owed to Customer solely by BSM and the obligations owed by Customer under this Agreement will be owed solely to BSM.
- 9.13. Independent Legal Advice.** The parties acknowledge that they have had the opportunity to consult with legal counsel to the fullest extent it deems appropriate and necessary prior to signing applicable Order Forms and entering into this Agreement.
- 9.14. Drafting.** This Agreement has been considered and negotiated between the parties in an arm's length transaction, and will not be construed against either party by reason of the drafting or preparation hereof.
- 9.15. Governing Language.** The governing language for this Agreement and its related transactions, for any notices or other documents transmitted or delivered under this Agreement, and for the negotiation and resolution of any dispute or other matter between the parties, will be the English language. If there is any conflict between the provision of any notice or document and an English version of the notice or document (including this Agreement), the provisions of the English version will prevail. Customer waives any right it may have under any applicable law to have the Agreement written in any language other than English.
- 9.16. Third Party Terms Amendments.** Customer acknowledges that BSM may be required to change the terms of the Geotab Third Party Terms from time to time by notifying Customer via email or other means. Customer agrees to accept, and Customer hereby accepts, any changes in the Geotab Third Party Terms, unless the changes impose commercially unreasonable disadvantages on Customer. If a change imposes commercially unreasonable disadvantages on Customer and BSM receives a written objection from Customer within 30 days of the date when Customer received notice or Customer should have noticed the change, BSM may, at BSM's sole option and discretion, (a)

reverse such change with the effect that the immediately prior version of this Agreement shall continue to apply to Customer, or (b) if after making commercially reasonable efforts to obtain the third party consents and agreements required to reverse such change as contemplated above BSM is unable to do so, terminate this Agreement and Customer's use of the Flex Products and refund to Customer, upon receipt of all Flex Products, in good working condition, subject to ordinary wear and tear, in Customer's possession (aa) the purchase price for any Flex Products, depreciated on a 36 months straight line basis, accounting for Customer's use, and (bb) any prepaid Flex Products for time periods after the effective date of the change to which Customer objected in accordance with this Agreement.

- 9.17. Amendments to this Agreement.** Except for Section 9.16 above, no amendment, modification, supplement, or other purported alteration of this Agreement will be binding upon BSM and Customer unless it is in writing and is signed on behalf of BSM and Customer by their duly authorized representatives and unless such amendment, modification, supplement or alteration expressly references this Agreement. Notwithstanding the foregoing, BSM and Customer may amend, modify, supplement or alter this Agreement and such amendment, modification, supplement or alteration shall be binding on all of the parties to this Agreement provided that such amendment, modification, supplement or alteration is in writing and is signed on behalf of BSM and Customer by their duly authorized representatives and expressly references this Agreement.
- 9.18. Counterparts.** Order Forms may be executed in any number of counterparts (including counterparts by facsimile or other electronic means) and all such counterparts taken together will be deemed to constitute one and the same instrument. The execution and delivery of a facsimile or other electronic transmission of any Order Forms will constitute delivery of an executed original and will be binding upon the person whose signature appears on the transmitted copy.

**BY SIGNING AND/OR SUBMITTING APPLICABLE ORDER FORMS, CUSTOMER ACKNOWLEDGES THAT IT HAVE READ OR HAD THE OPPORTUNITY TO READ THIS AGREEMENT, UNDERSTAND THIS AGREEMENT, AND AGREES TO BE BOUND BY THIS AGREEMENT.**

## SCHEDULE "A"

### FLEX PRODUCTS WARRANTIES

#### 1. **Limited Warranty.**

- 1.1. **Express Limited Warranty.** The express limited warranty set forth in this Section 1.1, the design warranty set forth in Section 1.2, and the express limited extended warranty set forth in Section 1.3, are BSM's sole and exclusive warranties and Customer's sole, and together with Sections 1.4 and 2 below, the exclusive remedies with respect to a breach by BSM of such warranties.

Subject to Section 1.3, if applicable, the express limited warranty is as follows:

- (a) For 12 months from the date on which a Flex Hardware is activated, BSM warrants that

- (i) the Flex Hardware will be free from defects in workmanship and materials; and
- (ii) the Flex Hardware is in compliance with all applicable regulations.

(b) Notwithstanding anything else in this Schedule and the Agreement, this express limited warranty does not apply to: (i) defects resulting from Customer specifications or custom elements; (ii) Flex Hardware that has been abused, damaged, altered or misused by any person or entity after title passes; (iii) first articles, prototypes, pre-production units, test units or other similar Flex Hardware; (iv) Flex Hardware that has been repaired or disassembled (including any partial disassembly such as opening the housing) by any person or entity other than Flex; or (v) defects resulting from tooling, materials, designs or instructions produced or supplied by Customer. Customer will be liable for costs or expenses incurred by BSM, Geotab or Flex related to the foregoing exclusions to this express limited warranty.

(c) Upon any failure of a Flex Hardware to comply with the above warranty, BSM's sole obligation, and Customer's sole remedy, is for BSM, at its option, issue a credit equal to the original purchase cost of the Flex Hardware.

- 1.2. **Express Limited Warranty – Design and Software.** For a period of twelve (12) months from the date of activation, BSM warrants: (a) that the design of the Flex Hardware (excluding any custom elements) complies with current published technical product specifications of the Flex Hardware, and (b) that the Flex Hardware design will comply with applicable safety and regulatory standards applicable to the Flex Hardware, if any. Except as provided in Section 1.4 below, in the event that there are any design-related defects actually experienced by users and which result in a material adverse impact on the performance of the Flex Hardware, then BSM's sole obligation, and Customer's sole remedy, is for BSM, at BSM's sole cost and expense, to modify the design for all future Flex Hardware, and to repair or replace any Flex Hardware returned by Customer, and deploy any applicable over-the-air updates to Flex Hardware in the field.

BSM further warrants that the software contained in the Flex Hardware will be free from material programming errors that substantially impair the intended operation thereof for the warranty period set forth in Section 1.1 of this Schedule "A". In the event of a breach of this warranty that is reproducible by Flex, BSM shall use reasonable commercial efforts to provide a software work-around or correction.

- 1.3. **Express Limited Extended Warranty – Flex Hardware.** The "Flex Extended Warranty" means (a) if Customer has received Flex Hardware under a Flex Managed Services Subscription, the Flex Subscription Term; or (b) if Customer has purchased certain Flex Subscription Plans which have an extended warranty in accordance with the applicable Documentation, the Flex Subscription Term. BSM may announce additional Flex Subscription Plans that are eligible for the Flex Extended

Warranty Period from time to time. The Flex Extended Warranty is subject to the same exclusions and limitations set forth in Section 1.1(b) and Section 1.1(c) above and Section 1.4 below.

- 1.4. **NO REPRESENTATION OR OTHER WARRANTIES**. OTHER THAN AS SET OUT ABOVE IN THIS SCHEDULE "A", BSM MAKES NO REPRESENTATIONS AND NO OTHER WARRANTIES OR CONDITIONS ON FLEX PRODUCTS, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS AGREEMENT, AND BSM SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.