

# Terms & Conditions / Subscriber Agreement

1. **Definitions.** In this Agreement the following definitions apply:
2. "we," "us," "our," "SmartCar GPS" and "PGI" mean Payment Guardian Inc. and its affiliates;
  1. "you," "your," "customer," and "user" mean an account holder or user with us;
  2. "Device" means any device, accessory or other product we sell, lease or finance to you or that is active on your account with us;
  3. "Service" means our offers, rate plans, options, or Devices on your account with us.
  4. "Services" means our offers, plans, options, or Devices on account with us.
3. **The Subscription Agreement.** This Subscriber Agreement ("Agreement") is a contract under which we agree to provide and you agree to accept our Services. In addition to these Terms and Conditions of Service ("T&Cs"), there may be other Agreements including, but not limited to, the detailed plan or other information on Services we provide or refer you to during the sales transaction, any confirmation materials we may provide you, and Early Termination Fees if applicable. It is important that you carefully read ALL terms of this Agreement and any other Agreement you sign or accept.
4. **Services Covered By These T&Cs & Additional Terms.** These T&Cs apply to our Services Plans and any other Service we offer you that references these T&Cs. Additional Terms and Conditions may be applicable in the event you added services beyond our Services Plans. Also, a different dispute resolution provision will likely apply for services provided by another company, although the dispute resolution provisions in this Agreement still apply to our Services. You will be provided details on any additional terms with your selection of any of our bundled Service.
5. **Our Policies.** Services are subject to our business policies, practices and procedures ("Policies") including, but not limited to, our Privacy Policy available at our website. You agree to all of our Policies when you use our Services. Our Policies are subject to change at any time, with or without notice.
6. **When You Accept The Agreement.** You must have the legal capacity to accept the Agreement. You accept the Agreement when you do any of the following:
  1. sign a contract with us on paper or electronically;
  2. accept Agreement through an oral or electronic statement;
  3. attempt to or in any way use the Services;
  4. pay for the Services; or
  5. open any package or start any program that says you are accepting the Agreement when doing so.

If you don't want to accept the Agreement, don't do any of these things.

7. **Term Commitments & Early Termination Fees.** Many of the Services (for example, rate plans and Device discounts) that we offer require you to maintain certain Services with us for a minimum term, usually 1, 2, or 3 years ("Service Term Commitment"). You will be charged a fee ("Service Early Termination Fee") for each Device that you terminate early (i.e., prior to satisfying the Service Term Commitment) or for each Device that we terminate early for good cause (for example, violating the payment or other terms of the Agreement) in accordance with the following Early Termination Fees.

Service Term Commitment (years)	Service Early Termination Fee (\$US)		
	Month 0-12	Month 13-24	Month 25-36
1	\$199.00	N/A	N/A

If you terminate your service early and fail to pay the Early Termination Fee, it can result in your account being sent to collections. If your account is sent to collections, you will be responsible to pay all outstanding balances for each device under contract including the total service fees for any months remaining on your contract or the unpaid Early Termination Fee (whichever amount is greater).

After you have satisfied your Term Commitment, your Services continue on a month-to-month basis without any Early Termination Fee, unless you agree to extend your Term Commitment or agree to a new Term Commitment – for example, by accepting a new rate plan or upgrading your Device. As explained directly below, there are instances when you will not be responsible for an Early Termination Fee for terminating Services early.

8. **When You Don't Have To Pay A Service Early Termination Fee.** You are not responsible for paying an Early Termination Fee when terminating Services:
  1. provided on a month-to-month basis;
  2. consistent with our published return policy; or
  3. in response to a materially adverse change we make to the Agreement as described directly below.
  
9. **Our Right To Change The Agreement & Your Related Rights.** We may change any part of the Agreement at any time including, but not limited to, rates, charges, how we calculate charges, or your terms of Service. We will provide you notice of changes that may impact you in a manner consistent with this Agreement (see "Providing Notice Under This Agreement" paragraph). Except as provided below, if a change we make to the Agreement is material and has a material adverse effect on you, you may terminate each Device materially affected without incurring an Early Termination Fee only if you:
  1. call us within 10 days after the effective date of the change; and
  2. specifically advise us that you wish to cancel Services because of a material change to the Agreement that we have made.

If you do not cancel Service within 10 days of the change, an Early Termination Fee will apply if you terminate Services before the end of any applicable Term Commitment. The following, without limitation, will generally not be considered changes to the Agreement as contemplated in this provision and will not result in the waiver of applicable Early Termination Fees:

3. changes to our Policies;
4. changes to rates or charges that are not a core part of the rate plan package for which you contracted – for example, incidental, occasional or casual use charges and other options that do not require a Term Commitment;
5. changes to Taxes & Government Fees; or
6. changes to Surcharges, including assessing new Surcharges.

10. **Our Right To Suspend Or Terminate Services.** We can, without notice, suspend or terminate any Service at any time for any reason, including, but not limited to:
1. late payment;
  2. exceeding an Account Usage Limit ("AUL");
  3. harassing/threatening our employees or agents;
  4. providing false information;
  5. interfering with our operations;
  6. using/suspicion of using Services in any manner restricted by or inconsistent with the Agreement or applicable state or federal laws;
  7. breaching the Agreement, including our Policies;
  8. providing false, inaccurate, dated or unverifiable identification or credit information, or becoming insolvent or bankrupt;
  9. modifying a Device from its manufacturer specifications; or
  10. if we believe the action protects our interests, any customer's interests or our network.
11. **Your Right To Terminate Services.** You can terminate Services at any time by writing and/or emailing us and requesting that we deactivate all Services. You are responsible for all charges billed or incurred prior to deactivation. If Services are terminated before the end of your invoicing cycle, we will not prorate charges to the date of termination and you will not receive a credit or refund for any unused Services. Except as provided above, you must also pay us an Early Termination Fee for each applicable Device that you terminate.
12. **Restrictions On Using Services.** You may not use our Services:
1. to transmit content/messages that are, or in any manner that is, illegal, unlawful, fraudulent, threatening, abusive, defamatory, or obscene;
  2. in a way that could cause damage or adversely affect our customers, reputation, network, property or Services;
  3. to communicate any unsolicited message;
  4. to infringe on the copyright of another, or upload or transmit any virus, worm, or malicious code; or
  5. in any way prohibited by the terms of our Services, the Agreement or our Policies.
13. **Your Device ID Number.** Your Device is designed exclusively for use on our network and in other coverage areas we make available to you. Except for any legal right you may have to port/transfer your Device number to another provider, you have no and cannot gain any (for example, through publication, use, etc.) proprietary, ownership or other rights to any Device ID Number we assign to you, your Device, or your account. We will notify you if we decide to change or reassign your Device ID Number.
14. **Warranty.** Subject to the exclusions contained below, PGI warrants its products ("Device"), and/or certified accessories sold for use with the Device ("Accessories") to be free from defects in materials and workmanship under normal consumer usage for the term of coverage outlined below. This limited warranty is a consumer's exclusive remedy, and applies as follows only to new Devices and/or new Accessories purchased by consumers in the United States or Canada.
1. **Terms.** All Devices and Accessories shall be covered under this warranty in accordance with the table below. Coverage begins from the date of purchase regardless of when the Device or

Accessory is actually received and continues until the end of the Coverage Term or Termination of Services, whichever comes first.

Device Type	Coverage Term
Vehicle Tracker	Three (3) Years
Portable Tracker	One (1) Years

2. **Exclusions.** The following are excluded from coverage under this warranty.
  1. **Ornamental Decorations.** Ornamental decorations such as emblems, graphics, and other decorative elements, are excluded from coverage.
  2. **Abuse & Misuse.** Defects or damage that result from:
    1. improper operation, storage, misuse or abuse, accident or neglect, such as physical damage (cracks, scratches, etc.) to the product resulting from misuse;
    2. contact with liquid, water, rain, extreme humidity or heavy perspiration, sand, dirt or the like, extreme heat, or food;
    3. subjecting the Product or Accessory to abnormal usage or conditions; or
    4. other acts which are not the fault of PGI, are excluded from coverage.
  3. **Unauthorized Service or Modification.** Defects or damages resulting from service, testing, adjustment, installation, maintenance, alteration, including without limitation, software changes, or modification in any way by someone other than PGI, or its authorized service centers, are excluded from coverage.
  4. **Altered Products.** Products or Accessories with:
    1. serial numbers or date tags that have been removed, altered or obliterated;
    2. broken seals or that show evidence of tampering;
    3. mismatched board serial numbers; or
    4. nonconforming or non-PGI housings, antennas, or parts, are excluded from coverage.
3. **Transferability.** This warranty extends only to the first consumer purchaser, and is not transferable.
4. **Actions.** PGI, at its option, will at no charge repair or replace any Product, Accessory or Software that does not conform to this warranty. We may use functionally equivalent reconditioned/refurbished/pre-owned or new Products, Accessories or parts.
5. **How to obtain warranty service.** To obtain service, please call 1-800-477-6590. Additionally, To obtain service, you must include:
  1. your account name and/or number;
  2. a written description of the problem; and, most importantly;
  3. your address and telephone number.
6. **Additional Limitations.** ANY IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SHALL BE LIMITED TO THE DURATION OF THIS LIMITED WARRANTY, OTHERWISE THE REPAIR,

REPLACEMENT, OR REFUND AS PROVIDED UNDER THIS EXPRESS LIMITED WARRANTY IS THE EXCLUSIVE REMEDY OF THE CONSUMER, AND IS PROVIDED IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. IN NO EVENT SHALL PGI BE LIABLE, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) FOR DAMAGES IN EXCESS OF THE PURCHASE PRICE OF THE PRODUCT, ACCESSORY OR SOFTWARE, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF INFORMATION OR DATA, SOFTWARE OR APPLICATIONS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE ABILITY OR INABILITY TO USE THE PRODUCTS, ACCESSORIES OR SOFTWARE TO THE FULL EXTENT THESE DAMAGES MAY BE DISCLAIMED BY LAW. Some states and jurisdictions do not allow the limitation or exclusion of incidental or consequential damages, or limitation on the length of an implied warranty, so the above limitations or exclusions may not apply to you. This warranty gives you specific legal rights, and you may also have other rights that vary from state to state or from one jurisdiction to another. Laws in the United States and other countries preserve for PGI certain exclusive rights for copyrighted PGI software such as the exclusive rights to reproduce and distribute copies of the PGI software. PGI software may only be copied into, used in, and redistributed with, the Products associated with such PGI software. No other use, including without limitation disassembly of such PGI software or exercise of the exclusive rights reserved for PGI, is permitted.

15. **Coverage; Where Your Device Will Work.** Services that rely on location information, such as GPS, depend on your Device's ability to acquire satellite signals (typically not available indoors) and network coverage. Network coverage and satellite signals are dependent on a number of factors not within our control including weather, topographical changes, changes to and support of network cellular technologies, the functionality of various satellites, cell towers, clouds, and other factors. You understand and expressly limit and agree to hold harmless any and all harms that result from the Device not working, malfunctioning, or failing except as specifically provided herein.
16. **Our Service and Device are not substitutes for direct supervision.** Our Service and Devices are not substitutes for responsible child care, adult care, or any other form of monitoring for person who may or may not need competent adult supervision, and should not be used as such. You agree to utilize all your best efforts to care for and tend to the dependents in your control. You may not utilize our service or device as a substitute for direct supervision and competent care. Our Device and Services may not function and is thus an ineffective substitute for adequate direct supervision and competent dependent care.
17. **Activation & Miscellaneous Charges.** Based on our Policies, we may charge activation, prepayment, reactivation, program or other fees to establish or maintain Services. Certain transactions may also be subject to a charge (for example, convenience payment, changing device numbers, upgrades, etc.). You will be provided notice of these types of fees before we complete the requested transaction.
18. **Account & Service Charges; Pro-rating; Unused Services.** You are responsible for all charges associated with your account and the Services on your account, no matter who uses the Services or whether the Services were used. Charges include, but are not limited to, the monthly recurring charges, usage charges, taxes, surcharges and fees associated with your Services. These charges are described or referred to during the sales transaction, in our marketing materials, and in confirmation materials we may send to you.
19. **Your Bill.** Your bill provides you notice of your charges. It reflects monthly recurring charges (usually billed one bill cycle in advance) and usage/transaction specific charges (usually billed in the bill cycle in which they're incurred). Your bill may also include other important notices (for example, changes to this Agreement, to your Service, legal notices, etc.). Your bill will only be available via the internet. You

are responsible for providing a valid email address for communication. You agree to assume all responsibility, including payment of any additional fees or limitations incurred as a result of your email malfunctioning or not receiving our communication.

20. **Your Payments; Late Fees; Overages.** Payment is due in full as stated on your bill. If we do not receive payment in full by the date specified on your bill or the end of any given month, a late payment charge, which may be charged at the highest rate permissible by law, may be applied to the total unpaid balance. We may also charge you any costs, including attorney's fees, we pay to a collection agency to collect unpaid balances from you. You may be charged additional fees for certain methods of payment. We may charge you, up to the highest amount permitted by law, for returned checks or other payments paid by you and denied for any reason by a financial institution. Acceptance of payments (even if marked "paid in full") does not waive our right to collect all amounts that you owe us. We may restrict your payment methods to cashier's check, money order, or any other reasonable method at any time at our sole discretion.
21. **Taxes & Government Fees.** You agree to pay all federal, state and local taxes, fees and other assessments that we're required by law to collect on the Services we provide you and remit to the government. These charges may change from time to time without advance notice. If you're claiming any tax exemption, you must provide us with a valid exemption certificate. Tax exemptions generally won't be applied retroactively.
22. **Disputing Charges - You Must Still Pay Undisputed Charges.** Any dispute to a charge on your bill must be made within 30 days of the date of the bill that initially contained the charge. Disputes can only be made by calling or writing us as directed on your invoice or elsewhere. You accept all charges not properly disputed within the above time period – undisputed charges must still be paid as stated on your bill.
23. **Your Service** - Your service shall be as follows:
  - Alerts via Email or Email to SMS
  - 24 hour a day, 7 day per week web portal access
  - Automatic location updates to the web portal as follows:
    - Vehicle trackers:**
      - Every 2 minutes while the device is in motion and capable of sending a valid location
      - Every 4 hours while the device is stationary and capable of sending a valid location
    - Portable trackers:**
      - Every five (5) minutes while the device is in motion and capable of sending a valid location
      - Every six (6) hours while the device is stationary and capable of sending a valid location
  - Geofencing
  - Bread crumbing
  - Archived travel and alert histories

Note: If the Vehicle Tracker is not installed in accordance with the devices Installation Instructions, your Vehicle Tracker can make excessive use of the data network. In those cases, we reserve the right to first raise the Vehicle Tracker's ping rate to 60 minute intervals and to work with the customer to correct the issue. Once an issue is resolved, we will return the device to its normal ping rate. If the customer refuses or is unable to rectify the situation, we will keep the Vehicle Tracker at the higher ping rate.

24. **Payment Policy.** You agree to make payments on or before the day of the purchase of each month in the amount set forth in your Agreement plus additional taxes, fees, or surcharges as provided for in this T&Cs. You are required to maintain valid credit card information on file for the processing of any applicable service fees. You hereby authorize us or our assigns or agents to charge your credit card a monthly reoccurring fee for the pendency of your contract in the full amount of the bill owing. If a payment is not successfully settled, due to expiration, insufficient funds, or otherwise, and you do not edit your Payment Method information or cancel your account in a timely manner (see, Section 10), you remain responsible for any uncollected amounts and authorize us to continue billing the Payment Method, as it may be updated. You must contact us by phone or email to edit your Payment Method information before your next billing date or end of any given month. At our sole discretion, PGI may use credit card issuer-approved services, such as Chase Account Updater, to acquire updated payment information for the purpose of processing outstanding payments that are on your account.
25. **Assignment.** PGI may assign the rights to this contract to third parties at our sole discretion without input or consent from you.
26. **International Usage.** Your Device may be set to operate both domestically and may also operate internationally. However, you will be charged additional fees if the Device is in another country other than the United States and is utilized. The rate on these fees shall be the actual cost of international roaming charges plus a 40% administration fee. These rates will be charged for any month in which there is any international usage, no matter if the usage was less than an actual month.
27. **Protecting Our Network & Service.** We can take any action to:
1. protect our network, our rights and interests, or the rights of others; or
  2. optimize or improve the overall use of our network and Services. Some of these actions may interrupt or prevent legitimate communications.
28. **Your Privacy.** You agree to the terms of our Privacy Policy, available at our website, when you use our Services. This policy may change from time to time, so review this policy with regularity and care. Among other things, the policy includes important information on what information we collect about you, how we use that information, and with whom we share that information (for example, to provide you certain Services, to protect our rights and interests, to respond to legal process, to facilitate a merger, etc.). Also, to ensure the quality of our Services and for other lawful purposes, we may also monitor or record calls between us (for example, your conversations with our customer service or sales departments). If you do not agree with the terms of our Privacy Policy, do not purchase or use our Services.
29. **Location Based Services.** Our network generally knows the location of your Device when it is outdoors and turned on. Environmental factors (such as structures, buildings, weather, geography, landscape, and topography) can significantly impact the ability to access your Device's location information and use of location-sensitive services. Use of location-sensitive services require network coverage. You (the accountholder) are responsible for clearly and regularly notify the actual user of your Device that their location may be tracked or discovered. For additional information on location-sensitive services, see our Privacy Policy at our website.
30. **If Your Device Is Lost or Stolen.** Call us immediately if your Device is lost or stolen because you may be responsible for usage charges before you notify us of the alleged loss or theft. You agree to cooperate if we choose to investigate the matter (provide facts, sworn statements, etc.). We may not waive any Early Termination Fees if you choose to terminate Services as a result of loss or theft of your Device.
31. **Disclaimer of Warranties.** WE MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (TO THE EXTENT ALLOWED BY LAW) ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE CONCERNING YOUR SERVICES

(INCLUDING YOUR DEVICE). WE DON'T PROMISE UNINTERRUPTED OR ERROR-FREE SERVICES AND DON'T AUTHORIZE ANYONE TO MAKE WARRANTIES ON OUR BEHALF.

- 32. You Agree We Are Not Responsible For Certain Problems.** You agree that neither we nor our vendors, suppliers or licensors are responsible for any damages resulting from:
1. anything done or not done by someone else;
  2. providing or failing to provide Services, including, but not limited to, deficiencies or problems with a Device or network coverage (for example, dropped, blocked, interrupted messages, etc.);
  3. traffic or other accidents, or any health-related claims relating to our Services;
  4. False messages sent while using our Services;
  5. an interruption or failure in accessing or attempting to access emergency services from a Device;
  6. interrupted, failed, or inaccurate location information services; or
  7. things beyond our control, including acts of God (for example, weather-related phenomena, fire, earthquake, hurricane, etc.), riot, strike, war, terrorism or government orders or acts.
  8. unauthorized access to your Personal Information or Vehicle by hackers or others who have obtained such access through illegal measures.
- 33. You Agree Our Liability Is Limited - No Consequential Damages.** TO THE EXTENT ALLOWED BY LAW, OUR LIABILITY FOR MONETARY DAMAGES FOR ANY CLAIMS YOU MAY HAVE AGAINST US IS LIMITED TO NO MORE THAN THE PROPORTIONATE AMOUNT OF THE SERVICE CHARGES ATTRIBUTABLE TO THE AFFECTED PERIOD. UNDER NO CIRCUMSTANCES ARE WE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE WHATSOEVER ARISING OUT OF OR RELATED TO PROVIDING OR FAILING TO PROVIDE SERVICES IN CONNECTION WITH A DEVICE, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF BUSINESS, BODILY HARM, DEATH, EMOTIONAL DISTRESS, OR COST OF REPLACEMENT PRODUCTS AND SERVICES.
- 34. DISPUTE RESOLUTION.** We each agree to first contact each other with any disputes and provide a written description of the problem, all relevant documents/information and the proposed resolution. You agree to contact us with disputes by calling or writing us first. We will contact you by letter to your billing address or on your Device. Instead Of Suing In Court, We each agree to finally settle all disputes (as defined and subject to any specific exceptions below) only by arbitration. In arbitration, there's no judge or jury and review is limited. However, just as a court would, the arbitrator must honor the terms and limitations in the Agreement and can award the same damages and relief, including any attorney's fees authorized by law. The arbitrator's decision and award is final and binding, with some exceptions under the Federal Arbitration Act ("FAA"), and judgment on the award may be entered in any court with jurisdiction. We each also agree as follows:
1. "Disputes" are any claims or controversies against each other related in any way to our Services or the Agreement including, but not limited to, coverage, Devices, privacy, or advertising, even if it arises after Services have terminated – this includes claims you bring against our employees, agents, affiliates or other representatives, or that we bring against you.
  2. If either of us wants to arbitrate a dispute, we agree to send written notice to the other providing a description of the dispute, previous efforts to resolve the dispute, all supporting documents/information, and the proposed resolution. Notice to you will be sent to your address provided us when you sign up for our service, and notice to us will be sent to: 29783 Evans Rd., Menifee, CA 92586. We agree to make attempts to resolve the dispute. If we cannot



resolve the dispute within forty-five (45) days of receipt of the notice to arbitrate, then we may submit the dispute to formal arbitration.

3. The FAA applies to this Agreement and arbitration provision. We each agree the FAA's provisions, not state law, govern all questions of whether a dispute is subject to arbitration.
4. Unless we each agree otherwise, the Arbitration will be conducted by a single neutral arbitrator and will take place in the county of your last billing address. The federal or state law that applies to the Agreement will also apply during the arbitration.
5. We each agree not to pursue arbitration on a classwide basis. We each agree that any arbitration will be solely between you and us (not brought on behalf of or together with another individual's claim). If for any reason any court or arbitrator holds that this restriction is unconscionable or unenforceable, then our agreement to arbitrate doesn't apply and the dispute must be brought in court.
6. We each are responsible for our respective costs relating to counsel, experts, and witnesses, as well as any other costs relating to the arbitration.

**35. Exceptions To Our Agreement To Arbitrate Disputes.** Either of us may bring qualifying claims in small claims court in Riverside County, California. In addition, this arbitration provision does not prevent you from filing your dispute with any federal, state or local government agency that can, if the law allows, seek relief against us on your behalf.

**36. No Class Actions.** TO THE EXTENT ALLOWED BY LAW, WE EACH WAIVE ANY RIGHT TO PURSUE DISPUTES ON A CLASSWIDE BASIS; THAT IS, TO EITHER JOIN A CLAIM WITH THE CLAIM OF ANY OTHER PERSON OR ENTITY, OR ASSERT A CLAIM IN A REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE IN ANY LAWSUIT, ARBITRATION OR OTHER PROCEEDING.

**37. No Trial By Jury.** TO THE EXTENT ALLOWED BY LAW, WE EACH WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LAWSUIT, ARBITRATION OR OTHER PROCEEDING.

**38. Indemnification.** You agree to indemnify, defend and hold us harmless from any claims arising out of your actions including, but not limited to, failing to provide appropriate notices regarding location-sensitive services (see "Location Based Services" paragraph), or violating this Agreement, any applicable law or regulation or the rights of any third party.

**39. Providing Notice To Each Other Under The Agreement.** Except as the Agreement specifically provides otherwise, you must provide us notice by calling or writing us as instructed. We will provide you notice in your bill, correspondence to your last known billing address, or to any fax number or e-mail address you've provided us, by calling you on your home or mobile, by voice message or text message on your home or mobile phone.

**40. Other Important Terms.** Subject to federal law or unless the Agreement specifically provides otherwise, this Agreement is governed solely by the laws of the state of California, without regard to the conflicts of law rules of that state. If either of us waives or does not enforce a requirement under this Agreement in an instance, we don't waive our right to later enforce that requirement. Except as the Agreement specifically provides otherwise, if any part of the Agreement is held invalid or unenforceable, the rest of this Agreement remains in full force and effect. This Agreement isn't for the benefit of any third party except our corporate parents, affiliates, subsidiaries, agents, and predecessors and successors in interest. You may not assign the Agreement or any of your rights or duties under it. We may assign the Agreement. The Agreement and the documents it incorporates make up the entire agreement between us and replaces all prior written or spoken agreements – you cannot rely on any contradictory documents or statements by sales or service representatives. The

rights, obligations and commitments in the Agreement that, by their nature, would logically continue beyond the termination of Services (including, but not limited to, those relating to billing, payment, dispute resolution, no class action, no jury trial), survive termination of Services.

**41. Money back Guarantee.** If you are dissatisfied with our service or product for any reason, you may request a refund of money paid to us for the SmartCar GPS device, any accessories purchased, and any applicable taxes from your initial order, within 10 days of shipment of the device. We will not refund credit for any shipping fees, and the first month subscription service you initially ordered. You will not be charged the early termination fee normally charged upon early cancellation IF YOU MEET ALL THE FOLLOWING CONDITIONS:

1. You must call, within 10 days of the date your device was shipped (or if purchased at a store, the date your device was purchased), 1-800-477-6590 between the hours of 9am- 5pm PST, Monday-Friday. Your cancellation must be completed within the 10 day period after your device was shipped.
2. You remain responsible for paying any overage on usage, or international usage fees, and the service charge you paid for your first month of service.
3. Return Authorization: Before returning your device to us, you need to obtain a valid return authorization number which you can obtain when you call 1-800-477-6590 to cancel.
4. Wear and Tear: We receive your device in its original condition, with the UPC or bar code intact, reasonable wear and tear excluded, no later than 10 days after you cancel your service. We are not responsible if your device is lost in transit. All components, manuals and registration card(s) must be included.
5. Shipping Costs: You pay all costs of shipping your device back to us.
6. Certain taxes, such as per-line taxes required by a state or locality, may not be refundable. Sales taxes paid at the time of your order are refundable.
7. Customers who buy their devices at retail must refer to the return policy of the retailer where you purchased your device for anything related to the device. If you qualify for a money back guarantee, once you call us to cancel your service within the money back guarantee period, you will be refunded all amounts specified above except for what you paid the retailer for the device.

# SMS Terms & Conditions

Please read these terms and conditions carefully. By providing a mobile number for the PGI text messaging programs, you expressly consent to receive non-marketing and marketing text messages from Payment Guardian Inc. (PGI) and its affiliates (collectively “Company”) at the telephone number(s) that you provide. You may opt-out of these communications at any time, and consent to receive marketing text messages is not required to purchase any goods or services.

You also accept and agree to be bound by these SMS Terms and Conditions, the Company Terms & Conditions, and the Company Privacy Policy, and any other applicable terms and agreements related to your use of Company services.

## **Program Description**

Company may use an automatic telephone dialing system (“autodialer”) to deliver text messages to you. Text messages are intended to provide you with information about Company services and promotional offers (e.g., discount and sales offers, product launches, sweepstakes, and contests).

## **Message Frequency**

The number of Company text messages that you receive will vary. You will receive a maximum of four promotional messages per month.

## **Cost**

Message and data rates may apply to each text message sent or received in connection with Company text messages, as provided in your mobile telephone service rate plan (please contact your mobile telephone carrier for pricing plans), in addition to any applicable roaming charges. Company does not impose a separate fee for sending text messages.

## **Supported Carriers**

Supported carriers may change from time to time, but currently include AT&T, T-Mobile, Verizon Wireless, Sprint, Nextel, Boost, Alltel, US Cellular, and Cellular One, among others.

## **How to Opt-In**

By providing your mobile number on one of our forms, you agree to receive text messaging.

## **How to Opt-Out**

To stop receiving text messages from the Company text messaging program, text STOP to the message or email [support@mysmartcargps.com](mailto:support@mysmartcargps.com) and ask that your mobile number be removed from text messaging lists.

## **Your Mobile Telephone Number**

You represent that you are the account holder for the mobile telephone number(s) that you provide. You are responsible for notifying Company immediately if you change your mobile telephone number. You may notify PGI of a number change by emailing [support@mysmartcargps.com](mailto:support@mysmartcargps.com).

You agree to indemnify Company in full for all claims, expenses, and damages related to or caused in whole or in part by your failure to notify Company if you change your telephone number, including, but not limited to, all claims, expenses, and damages related to or arising under the Telephone Consumer Protection Act.

## **Access or Delivery to Mobile Network is Not Guaranteed**

Delivery of information and content to a mobile device may fail due to a variety of circumstances or

conditions. You understand and acknowledge that network services, including but not limited to mobile network services, are outside of Company control, and Company is not responsible or liable for issues arising from them.

### **Changes to Terms and Conditions**

Company may revise, modify, or amend these SMS Terms and Conditions at any time. Any such revision, modification, or amendment shall take effect when it is posted to the website. You agree to review these SMS Terms and Conditions periodically to ensure that you are aware of any changes. Your continued consent to receive Company text messages will indicate your acceptance of those changes.

### **Termination of Text Messaging**

Company may suspend or terminate your receipt of text messages if we believe you are in breach of these SMS Terms and Conditions. Your receipt of Company text messages is also subject to termination in the event that your mobile telephone service terminates or lapses. Company reserves the right to modify or discontinue, temporarily or permanently, all or any part of Company text messages, with or without notice.

### **Support/Help**

To receive more information, please contact [support@mysmartcargps.com](mailto:support@mysmartcargps.com) or call (800)477-6590.