

End User Service Agreement

AGREEMENT BETWEEN YOU

AND

Applied Telemetrics Inc. (dba PayBySky), hereinafter referred to as "PayBySky"

This is a Terms of Service Agreement between PayBySky (hereinafter referred to as "PayBySky", "us", or "we") and you that governs all access to and use of our Services (the "Agreement" or "Terms"). This Agreement applies to PayBySky's parking payment and ancillary services as provided through an in-vehicle meter and cloud based servers, including software, software updates, software upgrades, documentation, and reports contained or made available to you in the course of your using the Service (collectively referred to as the "Service").

Please read this Agreement carefully. The Service may have other posted notices or codes of conduct. All such notices and codes of conduct are incorporated by reference into this Agreement. **By subscribing to and/or using any of the Service, you agree to be bound by this Agreement, including any modifications made to it from time to time.** If you do not agree to the terms and conditions in this Agreement, do not subscribe to or use the Service. "You" and "your" means you, your company, your employees, and your agents whom you have designated as "authorized users" or "administrators" of the Service and your account. **If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to this Agreement.**

IN THIS DOCUMENT:

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2. Administering Your Account.
3. Data Privacy and Retention.
4. Accessing and Using Our Site and Services.
5. Our Provision of the Services.
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1. Your Account

Initiating Service. Following receipt of payment for any upfront or monthly based charges, PayBySky will activate your account and begin providing the Services (the date of the initial service activation represents the “Service Activation or Provisioning Date”). Your unique account enables you to log in and access the account administration website “www.myPayBySky.com”. Your account will have multiple level of security access, with the highest level being the administrative account (an “Admin Account”). When you provision your Admin Account, you will create your own password, which you must use in order to access and use the Services and make any changes to the account profile. You agree that any information you provide in creating your Admin Account is complete and accurate, and you agree to keep it up to date. For example, we provide some notices by email and you agree to keep your admin account email current and valid as a method for providing notices under these Terms. Prices and terms of payment for the Service options you select will be at published rates, unless specifically agreed to under a separate pricing agreement.

2. Administering Your Account.

Access to your account allows you to manage who has access to the Services, track and report on vehicle activities as well as perform other administrative functions. You are responsible for selecting your passwords, maintaining the confidentiality of your passwords, and internal management or administration of the Services for your Users. You agree that PayBySky has no liability with regard to the use of such passwords by third parties. You agree to notify us immediately if you have any reason to believe that the security of your account has been compromised.

3. Data Privacy and Retention.

We will comply with the Privacy Policy (found at <http://www.PayBySky/privacy-policy/>) in handling and using your User Data, and we will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of your User Data that are consistent with industry standards for similar services. “User Data” means the information generated by our Services and submitted into our system. Upon termination, User Data will not be held longer than three (3) months before being deleted.

4. Accessing and Using Our Site and Services.

- 4.1. **Subscription Services.** Subject to all of the terms and conditions of this Agreement, including your payment of any required fees, PayBySky will make the Services available to you for the period that has been paid.
- 4.2. **Restrictions.** You will not use the Services for any unlawful purpose or contrary to this Agreement. You will (1) ensure that your Users comply with this Agreement; (2) use commercially reasonable efforts to prevent unauthorized use of the Services; and

(3) use the Services only in accordance with the User Guide and applicable laws and government regulations

5. Our Provision of the Services.

- 5.1. **User Guide.** We describe the main functions of our Services in the instructions and manuals we make available via our “User Guide”. When we update and enhance the Services we will update the User Guide from time to time.
- 5.2. **Technical Support.** As part of our Services, we will make our standard technical support available to you. Such support may, in PayBySky’s discretion, include on-line help, FAQ’s, training guides and templates and the use of live help.
- 5.3. **Other Services from PayBySky.** PayBySky may also provide other services, such as administrative log books, location based tracking and geofencing and other services as become available.

6. Requirements for Use of Our Services.

- 6.1. **Availability.** The PayBySky Service is a real time active service. It requires the Skymeter to have access to power and information from the vehicle and surrounding environment at all times in order to function. Any disruption in power, signal jamming or disruption of information flow will disable the Service and void all service level performance stipulated in this agreement and publicly.
- 6.2. **ParkPlus.** The PayBySky service starts and stops parking transactions in the ParkPlus system. It is the Account holder’s responsibility to ensure there are sufficient funds available in their ParkPlus account to cover any and all parking transactions that will be initiated by the PayBySky service. Any change to the account status or connection information must be updated by the User in the Account Administration section of www.myPayBySky.com.

7. Compliance With Laws.

Compliance with Applicable Laws and Regulations. You agree to comply with all federal, provincial, and local laws, rules, and regulations related to or connected with use of the Services, and you assume all liability and responsibility for your use of the Services. If PayBySky reasonably determines that you are not in compliance with applicable laws in your use of the Services, we reserve the right to immediately suspend or terminate your use of the Services, and you will be solely responsible for any penalties and other sanctions for legal noncompliance.

8. Term and Termination.

- 8.1. **Term.** This Agreement commences on the Service Activation Date and shall continue for three (12) months (“Initial Term”) and shall automatically renew for consecutive one (1) year periods (each a “Renewal Period” and all Renewal Periods together with

the Initial Term, the “Term”) thereafter, unless either party has provided notice of its intent not to renew this Agreement. In no event may you terminate this Agreement on less than sixty (60) days written notice to us. Either party may terminate this Agreement for cause on sixty (60) days written notice of a material breach to the other party if the breach remains uncured at the expiration of the notice period. Non-payment of any service or other fees due is a material breach.

8.2. **Suspension of Services.** We may suspend or terminate your use of the Services if we have reason to believe you are using the Services in a manner that may cause harm to us or to a third party, including actions that violate any applicable laws, rules or regulations

8.3. **Effect of Termination.** Upon termination or expiration of this Agreement we will make your User Data available to you (either from www.myPayBySky.com or through a third party offsite storage provider) for up to thirty (30) days after termination. After that thirty (30) day period, you will lose access to any data and we will have no obligation to maintain any, and will have the right to delete, all data related to the expired or terminated Agreement and we will have no further obligation to make such data available to you. Termination will not relieve you of the obligation to pay any fees due or payable to PayBySky incurred prior to the effective date of termination.

9. Warranties.

9.1. **Warranty.** Each party represents and warrants to the other party that (i) it has the power and authority to enter into and perform all obligations under this Agreement, and (ii) it will comply with all applicable laws in its performance under this Agreement.

9.2. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED HEREIN, PAYBYSKY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SERVICES, THIRD-PARTY SERVICES, OR MATERIALS PROVIDED BY PAYBYSKY, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW, REPRESENTATION STATEMENTS, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. EACH PARTY WILL BE SOLELY AND INDIVIDUALLY RESPONSIBLE TO COMPLY WITH ALL LAWS AND REGULATIONS RELATING TO ITS RESPECTIVE BUSINESS OPERATIONS. You agree that the Services may be inaccessible or inoperable due to scheduled periodic maintenance and upgrades or for reasons beyond our reasonable control including but not limited to (i) equipment malfunctions, or (ii) service interruptions caused by independent telecommunications providers that provide data connectivity to our data centers.

9.3. **Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL AND PUNITIVE/EXEMPLARY DAMAGES TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, HOWEVER CAUSED

AND ON ANY THEORY OF LIABILITY ARISING IN ANY WAY OUT OF THIS AGREEMENT, EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE. EXCEPT IN CONNECTION WITH A MISAPPROPRIATION OF INTELLECTUAL PROPERTY, OR OBLIGATIONS UNDER SECTION 2 (DATA PRIVACY) OR SECTION 11 (MUTUAL INDEMNIFICATION), THE AGGREGATE LIABILITY OF ONE PARTY TO THE OTHER FOR DAMAGES UNDER OR ARISING FROM THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION (AND WHETHER IN CONTRACT OR IN TORT) WILL BE LIMITED TO THE TOTAL AMOUNT PAYABLE TO PAYBYSKY IN ONE (1) MONTH OF SERVICE OR THE EQUIVALENT OF \$50 cdn (WHICHEVER IS GREATER) PRECEDING THE APPLICABLE CLAIM UNDER THIS AGREEMENT.

10. Miscellaneous.

- 10.1. **Counterparts; Fax and/or Scanned Signatures.** The Agreement is deemed to have been accepted on the date the Provisioning of PayBySky Services commences.
- 10.2. **Governing Law; Venue.** The validity, construction and interpretation of the Agreement will be governed by the internal laws of the Province of Ontario.
- 10.3. **Assignment.** You may not assign this Agreement to a third party by operation of law or otherwise, without our prior written consent.
- 10.4. **Force Majeure.** Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.
- 10.5. **Interpretation.** Headings in the Agreement are for reference purposes only and will not affect the interpretation or meaning of the Agreement. If any provision of the Agreement is held by an arbitrator or a court of competent jurisdiction to be contrary to law, then the remaining provisions of the Agreement will remain in full force and effect. No delay or omission by either party to exercise any right or power it has under the Agreement will be construed as a waiver of such right or power. A waiver by either party of any breach by the other party will not be construed to be a waiver of any succeeding breach or any other covenant by the other party. All waivers must be in writing and signed by the party waiving its rights.
- 10.6. **Amendments.** From time to time, PayBySky may amend these Terms in its sole discretion. PayBySky will post the amended terms on the PayBySky website and will further notify you of any material changes by promptly sending an email or posting a notice in your Admin Account. By continuing to access or use the Services after PayBySky has provided you with such notice of a change, you are indicating that you agree to be bound by the modified Terms. Any renewed subscription will be governed by PayBySky's then-current Terms.