

PointWatch Terms of Service

THESE TERMS OF SERVICE (THE “**TERMS**”) ARE A LEGAL AGREEMENT BETWEEN YOU (“**YOU**” OR “**SUBSCRIBER**”) AND POINTWATCH SYSTEMS LLC (“**POINTWATCH**”). BY CLICKING THE “I ACCEPT” BUTTON OR USING ANY SERVICES, SUBSCRIBER ACKNOWLEDGES THAT SUBSCRIBER HAS REVIEWED AND ACCEPTS THESE TERMS. IF YOU ARE AGREEING TO THESE TERMS AS AN INDIVIDUAL, “SUBSCRIBER” REFERS TO YOU INDIVIDUALLY. IF YOU ARE AGREEING TO THESE TERMS AS A REPRESENTATIVE OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY AND “SUBSCRIBER” REFERS TO THAT ENTITY AND ANY USERS USING SUBSCRIBER’S ACCOUNT. IF SUBSCRIBER DOES NOT AGREE WITH ALL OF THESE TERMS, DO NOT ACCESS OR OTHERWISE USE ANY POINTWATCH SERVICES. POINTWATCH MAY MAKE CHANGES TO THE SERVICES AT ANY TIME. IN ADDITION, POINTWATCH MAY MAKE CHANGES TO THESE TERMS AT ANY TIME. IN SUCH CASE POINTWATCH WILL POST A NOTICE ON ITS WEBSITE AND WILL NOTIFY SUBSCRIBERS WHO HAVE REGISTERED WITH POINTWATCH. SUBSCRIBER’S CONTINUED USE OF THE SERVICES AFTER SUCH CHANGES HAVE BEEN POSTED WILL SIGNIFY SUBSCRIBER’S ASSENT TO AND ACCEPTANCE OF THE REVISED TERMS.

1. **DEFINITIONS.**

- 1.1 “**Activation Date**” means the date Subscriber registers to use the Services.
- 1.2 “**Content Access**” means the service under which PointWatch provides access to certain Aggregated Statistics (as defined in Section 9.3 below) to Subscribers, as further described at portal.pointwatch.com.
- 1.3 “**Documentation**” means the online user instructions and help files made available by PointWatch for use with the Services, as may be updated from time to time by PointWatch.
- 1.4 “**Intellectual Property Rights**” means all intellectual property rights or similar proprietary rights, including (a) patent rights and utility models, (b) copyrights and database rights, (c) trademarks, trade names, domain names and trade dress and the goodwill associated therewith, (d) trade secrets, (e) mask works, and (f) industrial design rights; in each case, including any registrations of, applications to register, and renewals and extensions of, any of the foregoing in any jurisdiction in the world.
- 1.5 “**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
- 1.6 “**Monitoring**” means the service under which PointWatch monitors information reported through the Equipment and alerts Subscriber of detected septic tank problems, as further described at portal.pointwatch.com.
- 1.7 “**Services**” means collectively, Monitoring, Support and Content Access, pursuant to these Terms.
- 1.8 “**Subscriber Content**” means any content submitted, posted or otherwise transmitted by Subscriber and received by the Services.
- 1.9 “**Subscription Term**” means the subscription period for Subscriber’s use of the Services.
- 1.10 “**Support**” means the support and maintenance services described in Section 5.3 below.
- 1.11 “**Users**” means those third parties who are authorized by Subscriber to access and use Subscriber’s account.

2. **ORDERS; LICENSES; AND RESTRICTIONS.**

2.1 **Equipment.** To use Monitoring or Support, Subscriber must have installed, itself or through an authorized PointWatch reseller, PointWatch's customer premises equipment (the "**Equipment**") in Subscriber's septic system, and must remain in compliance with these Terms throughout the duration of the Subscription Term. SUBSCRIBER IS RESPONSIBLE FOR ENSURING THAT THE EQUIPMENT IS INSTALLED AND MAINTAINED IN A MANNER CONSISTENT WITH ITS ACCOMPANYING DOCUMENTATION AND TECHNICAL INSTRUCTIONS. SUBSCRIBER ACKNOWLEDGES THAT IT IS THE RESPONSIBILITY OF SUBSCRIBER TO ENSURE THAT, AT ALL TIMES, THAT ALL EQUIPMENT IS PROPERLY CONNECTED TO ANY NECESSARY UTILITIES FOR THE PROPER FUNCTION OF SUCH EQUIPMENT, INCLUDING ELECTRICAL AND COMMUNICATION TRANSMISSION FACILITIES, AND SUBSCRIBER EXPRESSLY ASSUMES THE RISK OF ANY PROBLEMS, ISSUES, OR FAILURES DUE TO THE AVAILABILITY, INTEGRITY, OR QUALITY OF SUCH UTILITIES AND TRANSMISSION FACILITIES.

2.2 **Registration.** Subject to the terms and conditions contained in these Terms, Subscriber may register online at www.pointwatch.com to access and use the Services. Once Subscriber has submitted its registration information, through the account registration page, PointWatch will, in its sole discretion, decide whether to permit Subscriber to use the Services. Subscriber agrees that its decision to use the Services hereunder is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by PointWatch regarding any future functionality or features.

2.3 **Access and Use License.** Subject to Subscriber's compliance with the terms and conditions contained in these Terms, PointWatch hereby grants to Subscriber, during the relevant Subscription Term, a limited, non-exclusive, non-transferable (a) right to access and use the Services in accordance with the Documentation solely for Subscriber's personal use and not for the benefit of any other person or entity. Subscriber's use of the Services may be subject to certain limitations, such as, for example, limits on storage capacity for Subscriber Content. Any such limitations will be specified in the applicable Documentation or otherwise communicated by PointWatch in writing.

2.4 **Restrictions.** Subscriber shall not, directly or indirectly: (a) create more than one personal account; (b) reverse engineer, decompile, disassemble or otherwise attempt to discover the object code, source code or underlying ideas or algorithms of the Services; (c) modify, translate, or create derivative works based on any element of the Services or any related Documentation; (d) rent, lease, distribute, sell, resell, assign, or otherwise transfer its rights to use the Services; (e) use the Services for timesharing purposes or otherwise for the benefit of any person or entity other than for the benefit of Subscriber; (f) remove any proprietary notices from the Documentation; (g) publish or disclose to third parties any evaluation of the Services without PointWatch's prior written consent; (h) use the Services for any purpose other than its intended purpose; (i) interfere with or disrupt the integrity or performance of the Services; or (j) attempt to gain unauthorized access to the Services or PointWatch's related systems or networks.

2.5 **Reservation of Rights.** Except as expressly granted in these Terms, there are no other rights granted to Subscriber, express, implied or by way of estoppel. All rights not granted in these Terms are reserved by PointWatch. Subscriber will not provide any false personal information on the Services, or create an account for anyone other than Subscriber without permission.

3. **PASSWORDS; SECURITY.**

3.1 **Passwords.** Subscriber will create a login and password for use in accessing and using the Services. Subscriber shall be responsible for maintaining the confidentiality of such user logins and passwords and for ensuring that the user login and password is used only by Subscriber. Subscriber is solely responsible for any and all access and use of the Services that occurs using Subscriber's login and password. Subscriber shall not share passwords. Subscriber agrees to immediately notify PointWatch of any unauthorized use of any account or login and password issued to Subscriber, or any other breach of security known to Subscriber. PointWatch shall have no liability for any loss or damage arising from Subscriber's failure to comply with the terms set forth in this Section.

3.2 **No Circumvention of Security.** Subscriber may not circumvent or otherwise interfere with any user authentication or security of the Services. Subscriber will immediately notify PointWatch of any breach, or attempted breach, of security known to Subscriber.

3.3 **Security.** PointWatch will use commercially reasonable efforts to maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Subscriber Content. Notwithstanding the foregoing, Subscriber acknowledges that, notwithstanding any security precautions deployed by PointWatch, the use of, or connection to, the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Services and Subscriber Content. PointWatch cannot and does not guaranty the privacy, security, integrity or authenticity of any information transmitted over or stored in any system connected to or accessible via the Internet or otherwise or that any such security precautions will be adequate or sufficient.

3.4 **Privacy Policy.** PointWatch's policy regarding the privacy and use of Subscribers' registration information and the information PointWatch collects through the Equipment is set forth in our Privacy Policy at www.pointwatch.com/privacypolicy, which may be modified and amended by PointWatch from time to time. By accepting these Terms, Subscriber is also acknowledging that Subscriber agrees to the terms of the Privacy Policy.

4. **SUBSCRIBER OBLIGATIONS.**

4.1 **Responsibilities.** Subscriber is responsible for (a) obtaining all communications equipment necessary for the Equipment to communicate with the Services and for Subscriber to access and use the Services via the Internet as communicated by PointWatch in writing from time to time (such requirements may be provided within the Documentation or otherwise communicated by PointWatch in writing); (b) contracting with third party ISP, telecommunications and other service providers for access to and use of the Internet; and (c) paying all third party fees and access charges incurred in connection with the foregoing. Except as specifically set forth in these Terms, PointWatch shall not be responsible for supplying any hardware, software or other equipment to Subscriber under these Terms.

4.2 **Acceptable Use Policy.** Subscriber shall be solely responsible for its actions and the actions of anyone using its account. Subscriber acknowledges and agrees: (a) to abide by all local, state, national, and international laws and regulations applicable to Subscriber's use of the Services, including without limitation the provision and storage of Subscriber Content; (b) not to send or store data on or to the Services which violates the rights of any individual or entity established in any jurisdiction; (c) not to upload in any way any information or content that contain Malicious Code or data that may damage the operation of the Services or another's computer or mobile device; (d) not to use the Services for illegal, fraudulent, unethical or inappropriate purposes; (e) not to interfere or disrupt networks connected to the Services or interfere with other ability to access or use the Services; (f) not to transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability; (g) not to use the Services in any manner that impairs the Services, including without limitation the servers and networks on which the Services is provided; (h) to comply with all regulations, policies and procedures of networks connected to the Services and PointWatch's Services providers; and (i) to use the Services only in accordance with the Documentation. Subscriber acknowledges and agrees that PointWatch neither endorses the contents of any Subscriber communications, Subscriber Content, or Other Information (as defined in Section 9.1 below) nor assumes any responsibility for any offensive material contained therein, any infringement of third party Intellectual Property Rights arising therefrom or any crime facilitated thereby. PointWatch may remove any violating content posted or stored using the Services or transmitted through the Services, without notice to Subscriber. Notwithstanding the foregoing, PointWatch does not guarantee, and does not and is not obligated to verify, authenticate, monitor or edit the Subscriber Content, Other Information, or any other information or data input into or stored in the Services for completeness, integrity, quality, accuracy or otherwise. Subscriber shall be responsible and liable for the completeness, integrity, quality and accuracy of Subscriber Content and Other Information input into the Services. PointWatch reserves the right to amend, alter, or modify Subscriber's conduct requirements as set forth in these Terms at any time. PointWatch may deliver notice of such updated requirements to Subscriber via e-mail or through the Services. Subscriber's continued access to and use of the Services following issuance of such updated Subscriber requirements shall constitute Subscriber's acceptance thereof. PointWatch may upon written notice to Subscriber amend this Section 4.2.

4.3 **Accuracy of Subscriber's Contact Information; Email Notices.** Subscriber agrees to provide accurate, current and complete information as necessary for PointWatch to communicate with Subscriber from time to time regarding the Services, issue invoices or accept payment, or contact Subscriber for other account-related purposes. Subscriber agrees to keep any online account information current and inform PointWatch of any changes in Subscriber's legal business name, address, email address and phone number. Subscriber agrees to accept emails from PointWatch at the e-mail addresses it provides to PointWatch. In addition, Subscriber agrees that PointWatch may rely and act on all information and instructions provided to PointWatch from the above-specified e-mail address.

4.4 **Temporary Suspension.** PointWatch may temporarily suspend Subscriber's access to the Services in the event that (a) Subscriber is engaged in, or PointWatch in good faith suspects Subscriber is engaged in, any unauthorized conduct (including, but not limited to any violation of these Terms); (b) the Equipment or the connection between the Equipment and the Services is destroyed or are so substantially damaged or degraded that it is impractical to continue service; or (c) PointWatch is unable either to secure or retain the connections or privileges necessary for the transmission of signals between the Subscriber's premises and the PointWatch monitoring center. PointWatch will attempt to contact Subscriber prior to or contemporaneously with such suspension; provided, however, that PointWatch's exercise of the suspension rights herein shall not be conditioned upon Subscriber's receipt of any notification. Subscriber agrees that PointWatch shall not be liable to Subscriber or any other third party if PointWatch exercises its suspension rights as permitted by this Section. Notwithstanding anything in this Section to the contrary, PointWatch's suspension of the Services is in addition to any other remedies that PointWatch may have under these Terms or otherwise, including but not limited to termination of these Terms for cause. Additionally, if there are repeated incidences of suspension, regardless of the same or different cause and even if the cause or conduct is ultimately cured or corrected, PointWatch may, in its reasonable discretion, determine that such circumstances, taken together, constitute a material breach.

4.5 **Evaluations.** At PointWatch's request, Subscriber will provide PointWatch with written or oral report(s) of the results of Subscriber's evaluation of the Services, including, but not limited to, a report of any errors that Subscriber has discovered in the Services.

5. **AVAILABILITY; MONITORING; SUPPORT.**

5.1 **Availability.** The Services may be unavailable at certain times, including during any unanticipated or unscheduled downtime or unavailability or as a result of system failures or force majeure events. PointWatch will use commercially reasonable efforts to provide information regarding any such interruptions and the restoration of use of, and access to, the Services following any such interruption, including by information posted on the Services or sent to the email address PointWatch has on record for Subscriber. However, the availability of some new enhancements to the Services may require the payment of additional fees, and PointWatch will determine at its sole discretion whether access to any other such new enhancements will require an additional fee. These Terms will apply to, and the Services includes, any enhancements, updates, upgrades and new modules to the Services subsequently provided by PointWatch to Subscriber hereunder.

5.2 **Monitoring.** If Subscriber pays for a subscription to Monitoring in accordance with Section 6 below, PointWatch shall use commercially reasonable efforts to provide necessary personnel, material, services, and facilities to provide monitoring twenty-four (24) hours per day, seven (7) days per week. Monitoring may be unavailable at certain times, including during any unanticipated or unscheduled downtime or unavailability or as a result of system failures or force majeure events. PointWatch will use commercially reasonable efforts to provide information regarding any such interruptions and the resumption of Monitoring following any such interruption, including by information posted on PointWatch's website or sent to the email address PointWatch has on record for Subscriber.

5.3 **Support.** From time to time, PointWatch may become aware that a Subscriber's septic tank is not performing properly based on Monitoring purchased by Subscriber (each, a "**Subscriber Issue**"). PointWatch will: (a) notify Subscriber of a Subscriber Issue via e-mail or the contact details otherwise provided by Subscriber to PointWatch, (b) if technically feasible, attempt to resolve the issue remotely, and (c) if Subscriber has separately elected to receive such service, subject to the authorization form, PointWatch shall contact a support service

provider that will contact Subscriber regarding the Subscriber Issue and PointWatch shall contract on Subscriber's behalf to remedy such Subscriber Issue in accordance with PointWatch's authorization form.

6. FEES AND PAYMENT.

6.1 **Fees.** To use the Services, Subscriber must set up an account. Subscriber may either establish a free account or a paid account ("**Premium Account**"). Subscriber agrees to pay all applicable fees for its Premium Account using one of the payment methods PointWatch supports. When Subscriber registers for a Premium Account to use one or more Services (a "**Paid Subscription**"), PointWatch will charge Subscriber's credit card on the date that PointWatch processes the order for the Paid Subscription. PointWatch may suspend a Paid Subscription or terminate Subscriber's Premium Account and/or access to the Services if Subscriber's payment is late and/or Subscriber's offered payment method (e.g., credit card) cannot be processed. Except as otherwise specified in these Terms, (a) fees are quoted and payable in US dollars, (b) fees are based on Services purchased, regardless of actual usage, (c) payment obligations are non-cancelable and fees paid are non-refundable, and (d) PointWatch may gross-up amounts payable to PointWatch to account for any credit card fees assessed to PointWatch. All amounts payable under these Terms will be made without setoff or counterclaim, and without any deduction or withholding. Subscriptions and the rights and privileges provided to you as a Subscriber are personal and non-transferable. Subscriber agrees that PointWatch may invoice Subscriber for any unpaid fees.

6.2 **Pricing.** The fee that PointWatch will charge for Subscriber's Paid Subscription will be the price posted on the PointWatch website on the date that Subscriber registers to use the Services. PointWatch reserves the right to change prices for Paid Subscriptions at any time, and does not provide price protection or refunds in the event of promotions or price decreases. If PointWatch changes its Subscription fees, PointWatch will provide 30 days' notice on PointWatch's website and, if Subscriber has a current Paid Subscription, to the email address PointWatch has on record for Subscriber.

6.3 **Automatic Renewals. IMPORTANT NOTICE: UNLESS SUBSCRIBER CANCELS PRIOR TO THE EXPIRATION OF ITS CURRENT PAID SUBSCRIPTION, POINTWATCH WILL AUTOMATICALLY RENEW SUBSCRIBER'S PAID SUBSCRIPTION ON OR ABOUT THE BEGINNING OF EACH MONTH OF THE DATE THAT POINTWATCH INITIALLY CHARGED SUBSCRIBER'S CREDIT CARD FOR THE FIRST SUBSCRIPTION FEE, AND POINTWATCH WILL CHARGE SUBSCRIBER'S CREDIT CARD WITH THE APPLICABLE RENEWAL PAID SUBSCRIPTION FEE AND ANY TAXES THAT MAY BE IMPOSED ON SUCH FEE PAYMENT. MONTHLY SUBSCRIPTIONS MUST BE CANCELLED AT LEAST 5 DAYS PRIOR TO THE MONTHLY RENEWAL DATE.** By providing a payment method, Subscriber expressly authorizes PointWatch and/or PointWatch's third party payment processor to charge the applicable fees on said payment method as well as taxes and other charges incurred thereto at regular intervals. You may cancel your membership by logging into your account and clicking the "Cancel my Account" button; provided that any Paid Subscription fees charged prior to the effective date of cancellation will not be refunded, in whole or in part.

7. REPRESENTATIONS AND WARRANTIES; DISCLAIMER.

7.1 **Mutual Representations and Warranties.** Each party represents, warrants and covenants that: (a) it has the full power and authority to enter into these Terms and to perform its obligations hereunder, without the need for any consents, approvals or immunities not yet obtained; and (b) its acceptance of and performance under these Terms shall not breach any oral or written agreement with any third party or any obligation owed by it to any third party to keep any information or materials in confidence or in trust.

7.2 **Disclaimer. EXCEPT AS OTHERWISE SET FORTH HEREIN, THE SERVICES ARE PROVIDED ON AN AS-IS BASIS. THE SERVICES, AS WITH OTHER MONITORING SERVICES, ARE NOT FAULT-PROOF. SUBSCRIBER'S USE OF THE SERVICES IS AT SUBSCRIBER'S OWN RISK. OTHER THAN THE EXPRESS WARRANTY ABOVE, POINTWATCH DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS, STATUTORY AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, QUALITY,**

SUITABILITY, OPERABILITY, CONDITION, SYSTEM INTEGRATION, NON-INTERFERENCE, WORKMANSHIP, TRUTH, ACCURACY (OF DATA OR ANY OTHER INFORMATION OR CONTENT), ABSENCE OF DEFECTS, WHETHER LATENT OR PATENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. ANY WARRANTIES MADE BY POINTWATCH ARE FOR THE BENEFIT OF SUBSCRIBER ONLY AND NOT FOR THE BENEFIT OF ANY THIRD PARTY. ANY MATERIALS PROVIDED THROUGH THE SERVICES ARE LICENSED AND NOT SOLD.

NO AGENT OF POINTWATCH IS AUTHORIZED TO ALTER OR EXPAND THE WARRANTIES OF POINTWATCH AS SET FORTH HEREIN. POINTWATCH DOES NOT WARRANT THAT: (A) THE USE OF THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (B) THE SERVICES WILL MEET SUBSCRIBER'S REQUIREMENTS OR EXPECTATIONS; (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE; (D) THE QUALITY OF ANY INFORMATION OR OTHER MATERIAL OBTAINED BY SUBSCRIBER THROUGH THE SERVICES WILL MEET SUBSCRIBER'S REQUIREMENTS OR EXPECTATIONS; (E) THE SERVICES WILL BE ERROR-FREE OR THAT ERRORS OR DEFECTS IN THE SERVICES WILL BE CORRECTED; OR (F) THE SERVER(S) THAT MAKE THE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. POINTWATCH IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

SUBSCRIBER ACKNOWLEDGES AND AGREES THAT POINTWATCH IS NOT RESPONSIBLE FOR THE INSTALLATION, MAINTENANCE, OR OTHER SERVICES PROVIDED BY RESELLERS AND THAT SUCH PARTIES ARE INDEPENDENT CONTRACTORS NOT DIRECTED OR MANAGED BY POINTWATCH.

8. INDEMNIFICATION.

Subscriber shall defend PointWatch and its licensors and their respective officers, directors and employees ("**PointWatch Indemnified Parties**") from and against any and all third party claims which arise out of or relate to: (a) a claim or threat that the Subscriber Content infringes, misappropriates or violates any third party's Intellectual Property Rights; or (b) Subscriber's use or alleged use of the Services other than as permitted under these Terms. Subscriber shall pay all damages, costs and expenses, including attorneys' fees and costs (whether by settlement or award of by a final judicial judgment) incurred by the PointWatch Indemnified Parties from any such third party claim.

9. PROPRIETARY RIGHTS.

9.1 **Services and Other Information.** As between PointWatch and Subscriber, all right, title and interest in (a) the Services, (b) any PointWatch materials furnished or made available hereunder, (c) information about Subscriber's septic tank collected by the Equipment and transmitted to the Services ("**Other Information**"), (d) all Intellectual Property Rights in each of the foregoing, and all modifications and enhancements thereof, and (e) all suggestions, ideas and feedback proposed by Subscriber regarding the PointWatch, including all copyright rights, patent rights and other Intellectual Property Rights in each of the foregoing, belong to and are retained solely by PointWatch or PointWatch's licensors and providers, as applicable. Subscriber hereby does and will irrevocably assign to PointWatch all evaluations, ideas, feedback and suggestions made by Subscriber to PointWatch regarding the Services (collectively, "**Feedback**") and all Intellectual Property Rights in the Feedback.

9.2 **Subscriber Content.** As between PointWatch and Subscriber, all right, title and interest in the Subscriber Content belongs to and are retained solely by Subscriber. Subscriber hereby grants to PointWatch a limited, non-exclusive, royalty-free, worldwide license to use the Subscriber Content and perform all acts with respect to the Subscriber Content as may be necessary for PointWatch to provide the Services to Subscriber, and a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify and

distribute the Other Information as a part of the Aggregated Statistics (as defined in Section 9.3 below). As between PointWatch and Subscriber, Subscriber is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Subscriber Content.

9.3 Aggregated Statistics. Notwithstanding anything else in these Terms or otherwise, PointWatch may monitor Subscriber's use of the Services and use data and information related to such use, Subscriber Content, and Other Information in an aggregate and anonymous manner, including to compile statistical and performance information related to the provision and operation of the Services ("**Aggregated Statistics**"). As between PointWatch and Subscriber, all right, title and interest in the Aggregated Statistics and all Intellectual Property Rights therein, belong to and are retained solely by PointWatch. Subscriber acknowledges that PointWatch will be compiling Aggregated Statistics based on Subscriber Content, Other Information, and information input by other Subscribers into the Services and Subscriber agrees that PointWatch may (a) make such Aggregated Statistics publicly available, and (b) use such information to the extent and in the manner required by applicable law or regulation and for purposes of data gathering, analysis, service enhancement and marketing, provided that such data and information does not identify Subscriber or its Confidential Information.

10. LIMITATION OF LIABILITY.

10.1 No Consequential Damages. NEITHER POINTWATCH NOR ITS LICENSORS OR SUPPLIERS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST DATA, SEPTIC TANK FAILURE, LOST PROFITS, LOST REVENUE OR LOST BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, EVEN IF POINTWATCH OR ITS LICENSORS OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES ARISING OUT OF THE LICENSING, PROVISION OR USE OF THE SERVICES, MONITORING, SUPPORT OR THE RESULTS THEREOF. POINTWATCH WILL NOT BE LIABLE FOR THE COST OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

10.2 Limits on Liability. NEITHER POINTWATCH NOR ITS LICENSORS OR SUPPLIERS SHALL BE LIABLE FOR CUMULATIVE, AGGREGATE DAMAGES GREATER THAN AN AMOUNT EQUAL TO THE AMOUNTS PAID BY SUBSCRIBER TO POINTWATCH UNDER THESE TERMS DURING THE PERIOD OF TWELVE (12)-MONTHS PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE.

10.3 Essential Purpose. SUBSCRIBER ACKNOWLEDGES THAT THE TERMS IN THIS SECTION 10 (LIMITATION OF LIABILITY) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SHALL APPLY EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

11. TERMINATION.

11.1 Term. The term of these Terms commence on the Activation Date and continue until the expiration or termination of all Subscription Term(s), unless earlier terminated as provided in these Terms. Subscription Terms shall automatically renew for additional periods equal to the expiring Subscription Term unless one party gives the other written notice of non-renewal at least sixty (60) days prior to the expiration of the then current Subscription Term. The per-unit pricing during any automatic renewal term shall be the same as that during the immediately prior term unless PointWatch has given Subscriber written notice of a pricing increase at least sixty (60) days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter; provided however that no such pricing increase shall occur until after expiration of the then current Subscription Term..

11.2 Termination for Cause. A party may terminate these Terms (and all Subscription Term(s)) upon written notice to the other party in the event the other party (a) files a petition for bankruptcy or has a petition for bankruptcy filed against it that is not dismissed within sixty (60) days after filing or admits its inability to pay its

debts as they mature, makes an assignment for the benefit of its creditors or ceases to function as a going concern or to conduct its operations in the normal course of business and such termination shall occur immediately upon notice; or (b) commits a material breach of any provision of these Terms and does not remedy such breach within thirty (30) days after receipt of notice from the non-defaulting party or such other period as the parties may agree. Upon any termination for cause by Subscriber, PointWatch shall refund Subscriber any prepaid fees for the remainder of the terminated Subscription Term after the effective termination date. Upon any termination for cause by PointWatch, Subscriber shall pay any unpaid fees covering the remainder of the Subscription Term after the effective date of termination. In no event shall any termination relieve Subscriber of the obligation to pay any fees payable to PointWatch for the period prior to the effective date of termination

11.3 Termination for Convenience. At any time after the Initial Term, Subscriber shall have the right to terminate any Subscription Term for convenience on at least thirty (30) days prior written notice to PointWatch; provided, however, that under no circumstances shall Subscriber be entitled to any refund of any fees for such terminated Subscription Term.

11.4 Effects of Termination. Upon cancellation, expiration or termination of these Terms, (a) Subscriber's use of and access to the Services and the performance of all Monitoring and Support shall cease, and (b) all fees and other amounts owed to PointWatch shall be immediately due and payable by Subscriber. PointWatch shall have no obligation to maintain or provide any Subscriber Content and may thereafter, unless legally prohibited, delete all Subscriber Content in its systems or otherwise in its possession or under its control.

11.5 Survival. This Section and Sections 1, 2.4, 7, 8, 9, 10, 11.4, 11.5 and 12 shall survive any termination or expiration of these Terms.

12. MISCELLANEOUS.

12.1 Notices. PointWatch may give notice to Subscriber by means of a general notice through the Services interface, electronic mail to Subscriber's e-mail address on record with PointWatch, or by written communication sent by first class postage prepaid mail or nationally recognized overnight delivery service to Subscriber's address on record with PointWatch. Subscriber may give notice to PointWatch by written communication sent by first class postage prepaid mail or nationally recognized overnight delivery service addressed to PointWatch, PointWatch Systems LLC 9500 Laurin Court, Vienna, Virginia 22182, Attention: Thomas B. Samburg. Notice shall be deemed to have been given upon receipt or, if earlier, two (2) business days after mailing, as applicable. All communications and notices to be made or given pursuant to these Terms shall be in the English language.

12.2 Governing Law. These Terms and the rights and obligations of the parties to and under this agreement shall be governed by and construed under the laws of the United States and the Commonwealth of Virginia as applied to agreements entered into and to be performed in such State without giving effect to conflicts of laws rules or principles. Notwithstanding the foregoing, this Agreement will not be governed or interpreted in any way by referring to any law based on the Uniform Computer Information Transactions Act (UCITA) or any other act derived from or related to UCITA, and the parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Terms. Any disputes arising out of or in connection with these Terms, including but not limited to any question regarding its existence, interpretation, validity, performance or termination, or any dispute between the parties arising from the parties' relationship created by these Terms, shall be heard in the state and federal courts located in Fairfax County, Virginia and the parties hereby consent to exclusive jurisdiction and venue in such courts.

12.3 Publicity. PointWatch has the right to reference and use Subscriber's name and trademarks and disclose the nature of the Services provided hereunder in each case in PointWatch business development and marketing efforts, including without limitation PointWatch's website.

12.4 Export. The Services utilize software and technology that may be subject to United States and foreign export controls. Subscriber acknowledges and agrees that the Services shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to

countries as to which the United States maintains an embargo (collectively, “**Embargoed Countries**”), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury’s List of Specially Designated Nationals or the U.S. Department of Commerce’s Table of Denial Orders (collectively, “**Designated Nationals**”). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Services, Subscriber represents and warrants that it is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. the Services may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000. Subscriber agrees to comply strictly with all applicable export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. PointWatch and its licensors make no representation that the Services is appropriate or available for use in other locations.

12.5 **General.** Subscriber shall not assign its rights hereunder, or delegate the performance of any of its duties or obligations hereunder, whether by merger, acquisition, sale of assets, operation of law, or otherwise, without the prior written consent of PointWatch. Any purported assignment in violation of the preceding sentence is null and void. Subject to the foregoing, this Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties thereto. Except as otherwise specified in these Terms, these Terms may be amended or supplemented only by a writing that refers explicitly to these Terms and that is signed on behalf of both parties. No waiver will be implied from conduct or failure to enforce rights. No waiver will be effective unless in a writing signed on behalf of the party against whom the waiver is asserted. If any of these Terms is found invalid or unenforceable that term will be enforced to the maximum extent permitted by law and the remainder of the Terms will remain in full force. The parties are independent contractors and nothing contained herein shall be construed as creating an agency, partnership, or other form of joint enterprise between the parties. These Terms constitute the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral. Except for your payment obligations hereunder, neither party shall be liable to the other party or any third party for failure or delay in performing its obligations under these Terms when such failure or delay is due to any cause beyond the control of the party concerned, including, without limitation, acts of God, governmental orders or restrictions, fire, or flood, provided that upon cessation of such events such party shall thereupon promptly perform or complete the performance of its obligations hereunder.