

## PIVOTEL SATELLITE TRACERTRAK TERMS AND CONDITIONS

**NOTICE TO USER: USE OF YOUR PIVOTEL PRODUCT WITH THE TRACERTRAK SERVICE CONSTITUTES YOUR AGREEMENT TO THESE TERMS AND CONDITIONS. THIS AGREEMENT IS FULLY ENFORCEABLE LIKE ANY AGREEMENT BEARING A PEN AND INK SIGNATURE. IF YOU DO NOT AGREE, DO NOT USE THE PIVOTEL PRODUCT WITH THE TRACERTRAK SERVICE AND RETURN IT TO THE POINT OF PURCHASE.**

1. You understand and agree that:

**1.1 Agreement.** This document ("**Agreement**") between You and Pivotel Satellite Pty Limited ("**Pivotel**") sets out the terms of the use of the Pivotel product with the Tracertrak service. The term of the Agreement starts when you first activate the Tracertrak service for any Pivotel product that you purchase.

**1.2 Limitations.** Services may become limited or temporarily unavailable without notice from time to time. Pivotel does not own or control the service providers that operate the links between the satellite ground stations, including satellite antennas and supporting equipment, and the satellites, nor does Pivotel own or control the satellite constellations, and cannot be responsible for any Service interruptions that are associated with those Satellite Systems or ground stations and the interconnecting networks. Nor does Pivotel own or control the mobile phone and email service providers who receive the email and SMS messages generated from Pivotel products, and is not responsible for any delays by the email and mobile phone providers related to these messages. The satellite service is wireless and requires a clear line of sight toward the satellite; therefore, the Services are inherently subject to transmission and reception limitations caused by: (i) your location, including conditions that obstruct the line of sight between you and the Satellite Systems; (ii) the condition of the Satellite Systems and ground stations; (iii) the condition of your Pivotel product; and (iv) weather conditions, atmospheric conditions, magnetic interference, environmental, and other conditions beyond Pivotel's or the Satellite Systems' control.

## 2. SERVICE.

In order to use your Pivotel product, it must be activated in connection with a Tracertrak service Plan. The commercial terms for each of the Tracertrak service Plans are set out in the Standard Form of Agreement.

## 3. TERM AND TERMINATION.

**3.1 Term.** Once you activate your Pivotel product the minimum term is in accordance with the terms of your Tracertrak service Plan. You may cancel your Tracertrak service Plan at any time, however early termination fees may apply. Tracertrak service Plan fees are paid monthly in advance, and are not refundable if you cancel your Tracertrak service Plan.

**3.2 Service Plan.** You can upgrade your Tracertrak service Plan to a higher Tracertrak service Plan at any time whilst your Pivotel product is active. You may only downgrade your Tracertrak service Plan or suspend your Pivotel product (where suspension is supported by the Pivotel product) at the end of your current bill cycle. Monthly Tracertrak service Plan fees will be pro-rated and charged in arrears when you have upgraded your Tracertrak service Plan during the billing cycle. Otherwise, all monthly Tracertrak service Plan fees are billed in advance.

**3.3 Renewal.** Your Tracertrak service Plan will automatically renew each month unless you cancel by notifying Pivotel.

**3.4 Cancellation.** To cancel your Tracertrak service Plan, you must notify Pivotel in writing in accordance with the Standard Form of Agreement.

**3.5 Changes to Services.** You agree that Pivotel or its service providers (including DeLorme, Globalstar, Iridium, and GEOS) may make changes to the Services in order to comply with applicable laws, to maintain or improve the Services or for other business reasons without notice to you.

**3.6 Termination by Pivotel.** You agree that in accordance with the Standard Form of Agreement, Pivotel may terminate this Agreement and the provision of Services to you at any time without notice or liability to you if you are in breach of this Agreement.

**3.7 Additional Charges.** Your cell phone service provider and/or internet provider may charge you or your recipients additional fees in relation to any SMS / MMS messages, social connectivity messages and/or other emails and/or data (collectively "Data Plan Fees") sent by you. Please familiarize yourself with any such applicable plans, Services and associated fees before using your Pivotel product. You are solely responsible for any such applicable charges and fees.

#### **4. WARRANTIES**

If you purchased your Pivotel product from Pivotel, Pivotel's Limited Product Warranty will apply. The Standard Form of Agreement sets out the warranties for the use of Pivotel Services.

#### **5. LIMITATION OF LIABILITY.**

**5.1** TO THE FULLEST EXTENT PERMITTED BY LAW, PIVOTEL AND ITS SERVICE PROVIDERS, SUPPLIERS, AND THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, AGENTS AND SUPPLIERS HEREBY EXPRESSLY EXCLUDE LIABILITY FOR ANY DAMAGES OR CLAIMS, INCLUDING INJURY OR DEATH, AND ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, RELIANCE, EXEMPLARY OR PUNITIVE LOSS, DAMAGE, COSTS OR EXPENSES (INCLUDING LOSS OF INCOME, MEDICAL AND OTHER EXPENSES, LOSS OF GUIDANCE, CARE AND COMPANIONSHIP) WHICH MAY ARISE OUT OF OR IN CONNECTION WITH THE PROVISION OF THE TRACERTRAK SERVICES (INCLUDING ANY DELAY IN PROVIDING OR FAILURE TO PROVIDE THE SERVICE) OR ITS USE BY YOU OR BY ANOTHER PERSON WHETHER OR NOT AUTHORIZED BY YOU TO UTILISE THE SERVICE. PIVOTEL AND ITS SERVICE PROVIDERS, AND THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, AGENTS AND SUPPLIERS EXCLUDE ALL LIABILITY, WHETHER RESULTING FROM CONTRACT, TORT (INCLUDING LIABILITY FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY) OR OTHERWISE IN RESPECT OF ANY LOSS, DAMAGE, COSTS, EXPENSES OR OTHER CLAIMS RESULTING FROM THE ACTS OR OMISSIONS OF SUCH PARTIES, FOR ANY FAULTS, FAILURES OR INADEQUACIES OF THE SATELLITE SYSTEMS, THIS SERVICE OR THE SOS EMERGENCY MONITORING AND RESPONSE PROVIDED BY GEOS, INCLUDING ANY FAILURE OR DELAY IN THE PROVISION OF SERVICES CAUSED BY:

**5.1.1** MATTERS OUTSIDE OF PIVOTEL'S OR ITS SUPPLIER'S OR SERVICE PROVIDERS', REASONABLE CONTROL, WHICH SHALL INCLUDE, BUT ARE NOT LIMITED TO, OUTBREAK OF HOSTILITIES, RIOT, CIVIL DISTURBANCE, ACTS OF TERRORISM, FIRE, EXPLOSION, FLOOD, SNOW, FOG OR OTHER INCLEMENT WEATHER CONDITIONS, FAILURE OF TELECOMMUNICATIONS OR SATELLITE SYSTEMS, ELECTRICAL POWER FAILURES OR FLUCTUATIONS, SURGES IN THE ELECTRICAL MAINS OR CURRENTS, DAMAGE CAUSED BY ELECTROMAGNETIC INTERFERENCE, THEFT, MALICIOUS DAMAGE, STRIKE, LOCK OUT OR INDUSTRIAL ACTION OF ANY KIND; OR

**5.1.2** FAILURE, DELAY OR INACCURACY OF THE GPS SATELLITES IN PROVIDING LOCATION COORDINATES; OR

**5.1.3** FAILURE, DELAY OR INACCURACY OF THE PIVOTEL PRODUCT TO PROCESS AND/OR TRANSMIT DATA TRANSMISSIONS, INCLUDING SOS EMERGENCY SIGNAL(S), AND/OR LOCATION COORDINATES, TO THE SATELLITE SYSTEM; OR

**5.1.4** FAILURE OF OR DELAY IN THE SATELLITE SYSTEM AND/OR GROUND STATIONS TO PROCESS DATA TRANSMISSIONS, INCLUDING BUT NOT LIMITED TO SOS EMERGENCY SIGNAL(S), LOCATION COORDINATES, PREPROGRAMMED MESSAGES AND DISPLAY, AND TRANSMIT TO THE IDENTIFIED POINTS OF CONTACT AND/OR IERCC AS APPROPRIATE; OR

**5.1.5** FAILURE OF OR DELAY IN YOUR EMAIL OR MOBILE PHONE PROVIDER TO TRANSMIT THE MESSAGE TO YOU, OR FAILURE OF OR DELAY IN THE IERCC RESPONDING TO SOS EMERGENCY SIGNAL(S); OR

**5.1.6** FAILURE OF OR DELAY IN THE PIVOTEL PRODUCT OR SMARTPHONE APPLICATION TO TRANSMIT ANY MESSAGE(S) TO THE PIVOTEL PRODUCT; OR

**5.1.7** FAILURE OF OR DELAY ON BEHALF OF THE TRACERTRAK SERVICE PROVIDERS, TO PERFORM THE APPLICABLE SERVICE FOR WHICH EACH IS CONTRACTED; OR

**5.1.8** FAILURE TO OBTAIN A CLEAR LINE OF SIGHT TOWARD THE SATELLITE SYSTEMS; OR

**5.1.9** FAILURE TO PROPERLY INSTALL OR CONFIGURE THE PIVOTEL PRODUCTS; OR

**5.1.10** FAILURE OF PIVOTEL AND ITS SERVICE PROVIDERS TO PROVIDE THE SERVICE(S), INCLUDING SOS EMERGENCY SERVICES, DUE TO THE SERVICE(S) HAVING BEEN CANCELLED PURSUANT TO SECTION 3.3; OR

**5.1.11** NON-COMPATABILITY OF PIVOTEL PRODUCTS WITH SMARTPHONE OPERATING SYSTEMS AND THIRD-PARTY SOFTWARE; OR

**5.1.12** FAILURE OR INADEQUACY OF POWER SUPPLY FOR PIVOTEL PRODUCTS AND/OR ASSOCIATED PRODUCTS (INCLUDING PIVOTEL PRODUCTS AND SMARTPHONES).

**5.2** IN NO EVENT SHALL THE TOTAL, MAXIMUM, AGGREGATE LIABILITY OF PIVOTEL AND ITS SUPPLIER'S OR SERVICE PROVIDERS, AND THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, AGENTS AND SUPPLIERS, FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE AMOUNT OF THE SERVICE FEE PAID BY YOU.

**5.3** THE LIMITATIONS IN THIS SECTION 5 SHALL APPLY TO ALL CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES HOWSOEVER CAUSED AND WHETHER FOR BREACH OF CONTRACT, IN TORT, BY WAY OF NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE.

## **6. YOUR OBLIGATIONS.**

**6.1 Use.** Your use of the Pivotel product or Tracertrak services is governed by the Standard Form of Agreement.

**6.2 Misuse.** You agree that you will not use the Services or the Pivotel product (1) to abuse or misuse the SOS Emergency services, (2) to send messages that are offensive, defamatory, abusive or obscene or intended to harass (3) for any purpose in violation of law, (4) in any manner that infringes or misappropriates third party rights, or (5) in any manner which overloads or unreasonably interferes with the Services or the Satellite Systems. You agree to use the Services only with the Pivotel product and not to use any other equipment in connection with the Services unless expressly approved by Pivotel. Failure to adhere to these restrictions may result in termination of this Agreement by Pivotel. You agree that you will not attempt to unlock or modify, or reverse engineer your Pivotel product in order to modify it or render it capable of performing functions outside the approved Iridium network described in this Agreement, for the purpose of re-selling the Pivotel product to a third party, or for any purpose otherwise not permitted by this agreement.

**6.3 Google Pass-Through Terms.** You are bound by the [Google Maps/Google Earth Additional Terms of Service](#) (including the [Google Privacy Policy](#)).

**6.4 Authorised Users.** You are solely responsible, and assume any liability, for any user authorised by you to utilise the Pivotel product and/or the Services. In addition, you agree to pass usage instructions and Tracertrak service Plan terms and conditions to all of your authorised users. You must carefully read the applicable terms for any such optional/bundled service to see if restrictions apply.

## **7. Pivotel and Tracertrak User Account, Websites.**

**7.1 Pivotel Websites.** Your use of the Pivotel and Tracertrak websites is governed by the terms and conditions of use contained on each such website

**7.2 Complete and Accurate Information.** You acknowledge and accept that the information required in your Pivotel and Tracertrak user account, including your Registration Data, contact information, designated contacts, social connectivity settings, supported service options and pre-programmed messages, is essential for proper provision of the Services. You accordingly certify that the information supplied by you is accurate in all respects. It is your responsibility to ensure that the information supplied by you remains accurate, complete and up to date. Changing your address from one country to another country may require service level changes and might incur additional charges on your account. When composing messages, you acknowledge and agree that it is your sole responsibility to ensure that you select the intended designated contact from your available contacts and are satisfied with the content of your message prior to sending it. Please contact customer care for assistance if required.

**7.3 Synchronization of Data.** If you use a Smartphone Application with a Pivotal product, you acknowledge that it is your sole responsibility to ensure that you have followed the synchronization process outlined in your User Manual to export any updates and/or changes to your Registration Data, contact information, designated contacts, social connectivity settings, supported service options and pre-programmed messages from your Tracertrak account to your Smartphone Application.

**7.4 Content License from You.** You agree that you are solely responsible for (and that Pivotal has no responsibility to you or to any third party for) any Content that you create, transmit or display while using the Services and any associated software and for the consequences of your actions by doing so. You acknowledge that the Tracertrak messages may include your location information. You retain copyright and any other rights you already hold in Content which you submit, post or display on or through, the Software and/or the Services. You acknowledge and agree that by submitting, posting or displaying the content you give Pivotal a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute any Content which you submit, post or display on or through, the Services and any associated software. Furthermore, you agree that this license includes a right for Pivotal to make such Content available to other companies, organizations or individuals as required for the provision of the Services. In order to provide the Services, Pivotal may be required to transmit or distribute your content over various public networks and in various media. Pivotal may also be required to make changes to your Content if so required by the technical requirements of connecting networks, devices, services or media.

**7.5 Third-Party Licenses and Content.** If, as part of your use of the Services and any associated software, you download a piece of software, access software online, or purchase goods, which are provided by a third party then your use of these other services, software or goods may be subject to separate terms between you and the third-party provider. This third-party content may be protected by intellectual property rights which are owned by the third party. Any reference or links to any third-party content does not necessarily constitute or imply its endorsement, sponsorship or recommendation by Pivotal or its licensors. Third-party product and service information are the sole responsibility of each individual third-party vendor. In addition, it is possible that you may find some third-party content offensive, indecent or objectionable, and that, in this respect, you use the Services at your own risk. Any opinions, advice, statements, services, offers, or other information or content expressed or made available by third parties are those of the respective authors and not of Pivotal. Pivotal neither endorses nor is responsible for the accuracy or reliability of any opinion, advice, information or statement by anyone other than authorized Pivotal employees acting in their official capacities. You understand and acknowledge that Pivotal is not responsible for and does not monitor third party content for accuracy or reliability.

**7.6 Privacy, Data Protection.** Pivotal is committed to maintaining your privacy. In order to access the Services, you will be required to provide information about yourself (such as identification or contact details). You agree that any registration information you give to Pivotal will always be accurate, correct and up to date. You agree and understand that you are responsible for maintaining the confidentiality of passwords associated with any account you use to access the Software and the Services. Accordingly, you agree that you will be solely responsible for all activities that occur under your account. If you become aware of any unauthorized use of your password or of your account, you agree to immediately notify Pivotal. Pivotal will keep your personal data private and confidential, provided however that Pivotal will provide such information to GEOS, the IERCC provider, and that GEOS may provide such information as required to emergency responders in the event that you or your authorized user triggers a SOS Emergency Signal, including your name, registration information, location and message history. Pivotal may also provide information regarding your data transmissions to your immediate family members and/or emergency responders should it be reasonably determined that an emergency may exist. Pivotal may also share with third parties certain pieces of non-personal, aggregated information, meaning that information from many users is grouped together and is disclosed in such a way that it does not reveal the identity of any particular user, such as User demographic data or usage data for marketing, advertising or other business purposes. Pivotal may collect information about your transmissions, including location, to monitor service quality; however, Pivotal will not monitor the content of your Type & Send, pre-programmed SMS and/or email messages to your Contacts. Any other use of your information will be governed by the Standard Form of Agreement and Pivotal's Privacy Policy.

## **8. GENERAL**

**8.1 Commercial Items / US Government Restricted Rights.** The Pivotel product, any associated software and/or documentation have been developed entirely with private funds. The use of the Pivotel product and any associated software and related documentation by any entity of the United States Government is restricted by the terms of this Agreement. The Pivotel product, any associated software and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as specified under 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users only as Commercial Items and with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

**8.2 Export Restrictions.** The Pivotel product and any associated software may be subject to export controls or restrictions by the United States or other countries or territories. You agree to comply with all applicable U.S. and international export laws and regulations, including the restrictions on destinations, end users, and end use. You agree not to export or re-export the Pivotel product and any associated software to any country in violation of the export control laws of the United States of America. The Pivotel product and any associated software may not be exported or re-exported into any U.S. embargoed countries or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Pivotel product, the Services and any associated software, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use these products for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons.

**8.3 Indemnity.** To the maximum extent permitted by law, you agree to indemnify, defend and hold harmless Pivotel and its parent company, affiliates, licensors and suppliers their respective directors, officers, employees and agents from and against any and all claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses (including reasonable attorney's fees) arising out of or in connection with your use of the Pivotel product, the Services and any associated software.

**8.4 Governing Law.** This Agreement is governed by the laws of New South Wales without giving effect to conflicts of laws principles.

**8.5 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. Any headings are provided for convenience only.

**8.6 No Waiver, Survival.** The failure of Pivotel to exercise or enforce any right under this Agreement shall not constitute a waiver of such right. All rights and remedies granted to Pivotel are cumulative and not alternate. If any provision of this Agreement is found invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining terms and conditions of this Agreement, and the parties shall substitute a valid provision that most nearly approximates the intent and economic effect of the invalid or unenforceable one. Any provisions that expressly or by their nature should survive termination of this Agreement, including payment obligations, disclaimer of warranty, rights of indemnity and limitation of liability, shall survive such termination.

## Service Agreement and End User License Agreement

The Tracertrak service provided by Pivotel may become limited or temporarily unavailable without notice from time to time due to any number of reasons associated with managing a Satellite System. Further, this satellite-based service requires a clear line of sight between the Pivotel product and the satellite; therefore, the service is inherently subject to transmission and reception limitations. Further information regarding service coverage and potential interruptions can be found in the Terms of Service.

To the fullest extent permitted by law, your use of this product constitutes acceptance of the fact that Pivotel and its Service Providers, Suppliers, and affiliates, and their affiliates, respective employees, directors, officers, agents and suppliers, hereby expressly limit liability for any claims, damages, losses, costs and expenses incurred by you, however caused and even if such damages were reasonably foreseeable, to a total, maximum aggregate value not to exceed the amount of service fees paid by you. Further information concerning the limitations of liability for use of this product and service can be found in the Terms of Service available at [explore.delorme.com](http://explore.delorme.com).

### 1) NOTICE TO USER / ACCEPTANCE OF TERMS.

**PLEASE READ THESE LEGAL NOTICES CAREFULLY. BY USING YOUR PIVOTEL PRODUCT FOR THE TRACERTRAK SERVICE, YOU ACCEPT ALL TERMS AND CONDITIONS CONTAINED IN THESE DOCUMENTS, INCLUDING THOSE LEGAL AGREEMENTS AND TERMS AND CONDITIONS WHICH HAVE BEEN INCORPORATED BY REFERENCE. THIS INCLUDES, BUT IS NOT LIMITED TO, THE PIVOTEL LIMITED PRODUCT WARRANTY, THE TERMS OF SERVICE AND THE END USER LICENSE AGREEMENT (EULA) AND ANY AND ALL LIMITATIONS OF LIABILITY AND/OR DISCLAIMERS OF WARRANTY. YOU UNDERSTAND AND AGREE THAT YOU MUST BE AT LEAST EIGHTEEN (18) YEARS OF AGE TO SUBSCRIBE TO THE SERVICE. YOU UNDERSTAND AND AGREE THAT THESE LEGAL NOTICES ARE ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU. IF YOU DO NOT AGREE, DO NOT USE THE PIVOTEL PRODUCT AND PROMPTLY RETURN IT TO THE PLACE WHERE YOU OBTAINED IT.**

### 2) USE OF YOUR PIVOTEL PRODUCT.

**2.1 Familiarization with your Pivotel product.** You understand and agree that it is your responsibility to familiarize yourself with the operation of your Pivotel product, INREACH Smartphone Applications, including reading your User Manual. You agree that you will use the Pivotel product only in accordance with those instructions. It is also highly recommended that you review the Help available at [explore.delorme.com](http://explore.delorme.com) and practice properly using your Pivotel product by sending test messages and fixing your GPS coordinates as described.

**2.2 Coverage.** You may use your Pivotel product, INREACH Smartphone Applications, anywhere there is coverage (subject to the applicable restrictions due to local laws, licensing/certification requirements and regulations. For a complete list of the certifications applicable to your Pivotel product, please see the device User Manual.

**2.3 Important Tips.** Your Pivotel product needs a clear view of the sky to obtain a GPS signal and provide the most accurate location information. Orienting your Pivotel product so that the protruding antenna is oriented to the sky will improve performance, and you should keep your Pivotel product at least 12 inches away from other GPS devices and mobile phones. Please read your Quick Start Guide or User Manual and follow the instructions to pair your INREACH Smartphone Application with your Pivotel product.

**2.4 Message Schedule.** Redundancy is built into your Pivotel product to ensure more of your messages are transmitted. It is normal for some INREACH messages to be blocked by everyday conditions; the view of the sky is often blocked due to hills, buildings, or other obstructions. This is why InReach automatically retries messages until it receives a satellite acknowledgement. Placement of your INREACH unit can make a difference. Experiment with placement until you are familiar with the reliability of your operating environment.

**2.5 Synchronization of Data.** You acknowledge that it is your sole responsibility to ensure that you have followed the synchronization process outlined on [explore.delorme.com](http://explore.delorme.com) to export any updates and/or changes to your Registration Data, contact information, designated contacts, social connectivity settings, supported Service options and pre-programmed messages from your INREACH account to your INREACH Smartphone Application.

### **3) COPYRIGHTS, INTELLECTUAL PROPERTY, PATENTS AND DOCUMENTATION**

The Pivotal product and other devices and/or associated software and data, including geographic data, are protected by copyright, international treaties, and various patents. The documentation, including all documentation incorporated by reference herein, such as documentation provided or website information, is provided "AS IS" and "AS AVAILABLE" and without condition, endorsement, representation or warranty of any kind by Pivotal. Pivotal assumes no responsibility for any typographical, technical, or other inaccuracies, errors, or omissions in this documentation.

### **4) Embedded or Downloaded Software and Firmware End User License Agreement**

**PLEASE READ THIS END USER LICENSE AGREEMENT ("EULA") CAREFULLY. THIS EULA IS A LEGAL AGREEMENT BETWEEN YOU AND PIVOTEL. YOU UNDERSTAND AND AGREE THAT YOU MUST BE AT LEAST EIGHTEEN (18) YEARS OF AGE AND THAT THIS EULA IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. THIS EULA, AND AS MAY BE AMENDED, APPLIES TO THE USE OF ANY SOFTWARE, WHETHER PRE-INSTALLED ON A SMARTPHONE AND/OR THE PIVOTEL PRODUCT AND/OR DOWNLOADED TO YOUR COMPUTER, THAT MAY BE REQUIRED FOR THE USE OF THE PIVOTEL PRODUCT AND SERVICE ("SOFTWARE").**

**BY USING YOUR PIVOTEL PRODUCT AND/OR THE SERVICE, YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS EULA OR ANY APPLICABLE AMENDMENTS. USE OF THE PIVOTEL PRODUCT, USE OF THE SERVICE AND/OR PRESSING THE "I AGREE" BUTTON FOR A DOWNLOAD OF ANY UPDATES, UPGRADES OR SUPPLEMENTS IS CONSIDERED USE OF THE SOFTWARE. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, DO NOT USE THE SOFTWARE AND PROMPTLY RETURN THE UNUSED SOFTWARE, AS WELL AS THE HARDWARE TO THE PLACE WHERE YOU OBTAINED THEM.**

**4.1 Ownership and Grant of License.** The Smartphone Application, and Pivotal product utilize proprietary software, proprietary firmware and proprietary communication protocols in order to access the messaging functions and Service (collectively any such software, firmware and/or communication protocols required for use of the Pivotal product are referred to as the "Software"). This proprietary Software may be owned by a third party. This EULA grants a license ("License") that permits you to use the software as required for your Pivotal product and Service with an application installed on your Smartphone. This License is non-exclusive, non-sublicensable and non-transferable. This License is also subject to the limitations and conditions of this EULA and the Tracertrak Terms and Conditions, which govern the provision of the Service. All rights not specifically granted in this EULA are reserved by Pivotal or the respective third-party owner of such Software. You acknowledge and agree that Pivotal and/or third-parties own(s) all intellectual property rights, title, and interest in or, if applicable, licenses to the Software, including, but not limited to, all trademarks, copyrights, data, and content. All title and intellectual property rights in the Software may be protected by applicable copyright or other intellectual property laws and treaties. Your use of the Software is solely controlled by this EULA which cannot be changed except by a written agreement executed between you and Pivotal. The Software is licensed, not sold. If you are using the device in conjunction with a smart phone application, then your use is subject to any terms and conditions imposed upon by the terms of your agreement with your smart phone manufacturer or service provider.

**4.2 Other Restrictions on Use.** You agree that you will not remove or obscure any proprietary rights notices, copyright notices or trademarks associated with the Software. You agree that you will not copy, sell, license, distribute, transfer, modify, adapt, translate, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Software for any purpose. You agree that you will not attempt to circumvent or defeat the security or content usage rules contained in the Software and/or use the Software in violation of any law or third party rights.

**4.3 Software Changes and Updates.** You agree that Pivotel or third-party providers may make changes to the Software and associated Services in order to comply with applicable laws, to maintain or improve the Software and/or the Services or for other business reasons, without notice to you and without liability for any changes in your ability to use the Software, Pivotel product and/or Service, including compatibility issues, as a result of such changes. These updates may take the form of bug fixes, enhanced functions, new software modules and completely new versions. This License does not grant any rights to obtaining future upgrades, updates or supplements of the Software. If upgrades, updates or supplements of the Software are obtained, however, the use of such upgrades or updates is governed by this EULA and the amendments that may accompany them and may be subject to additional payments and conditions. Pivotel highly recommends that you ensure that both your Pivotel Product or Smartphone Application has the most recent software version available and that your Pivotel product has the most recent firmware version available and that these versions are compatible to each other. Pivotel reserves the right to mandate you to install the most recent Software version in order to obtain continued Service. Any such mandatory Software updates will be at no additional cost to you.

**4.4 Content License from You.** You agree that you are solely responsible for (and that Pivotel has no responsibility to you or to any third party for) any Content that you create, transmit or display while using the Software and/or the Service and for the consequences of your actions by doing so. You acknowledge that the InReach messages may include your location information. You retain copyright and any other rights you already hold in Content which you submit, post or display on or through, the Software and/or Service. You acknowledge and agree that by submitting, posting or displaying the content you give Pivotel a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute any Content which you submit, post or display on or through, the Software and/or Service. Furthermore, you agree that this license includes a right for Pivotel to make such Content available to other companies, organizations or individuals as required for the provision of Service, including any social connectivity sites designated by you.

Pivotel may also disclose such personal data as may be in the possession of Pivotel to third party service providers and/or competent legal authority in connection with your use of the SOS services associated with your service plan in order to assist in the effectuation of a rescue. In order to provide the Service, Pivotel may be required to transmit or distribute your content over various public networks and in various media. Pivotel may also be required to make changes to your Content if so required by the technical requirements of connecting networks, devices, services or media. Pivotel reserves the right to disclose personal and location data as well as remotely activate SOS features when notified by competent legal authority that a distress situation exists for the user.

**4.5 Third-Party Licenses and Content.** If, as part of your use of the Software and/or Service you download a piece of software, or purchase goods, which are provided by a third party then your use of these other services, software or goods may be subject to separate terms between you and the third-party provider. This third-party content may be protected by intellectual property rights which are owned by the third party. Any reference or links to any third-party content does not constitute its endorsement, sponsorship or recommendation by Pivotel or its licensors. Third-party product and service information are the sole responsibility of each individual third-party vendor. It is possible that you may find some third-party content offensive, indecent or objectionable, and that, in this respect, you use the Services at your own risk. Any opinions, advice, statements, services, offers, or other information or content expressed or made available by third parties are those of the respective authors and not of Pivotel. Pivotel neither endorses nor is responsible for the accuracy or reliability of any opinion, advice, information or statement by anyone other than authorized Pivotel employees acting in their official capacities. You understand and acknowledge that Pivotel is not responsible for and does not monitor third-party content for accuracy or reliability.

**4.6 Term and Termination.** The license commences upon your use of the Pivotel product and Service, or upon your downloading of any associated Software updates, and is effective until terminated by You or Pivotel in accordance with any the applicable service plan. You agree that we may terminate this EULA and the provision of associated Services to you at any time without notice or liability to you if you are in breach of this EULA or act in any manner which clearly shows you do not intend to, or are unable to, comply with the EULA. Pivotel may also terminate this EULA if required to do so by governmental regulatory body and/or law. In such event, you must cease using the Pivotel product and Service. All provisions relating to confidentiality, indemnity, proprietary rights, and non-disclosure shall survive the termination of this Agreement. All other rights and obligations of the parties shall cease upon termination including, but not limited to, all licenses granted hereunder.



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**4.12 Changes to the EULA.** Pivotal reserves the right to change the terms and conditions of this EULA at any time. You understand and agree that if you use the services after the date on which the terms or additional terms have changed, Pivotal will treat your use as acceptance of the updated terms or additional terms.

**4.13 Governing Law.** This EULA will be governed and construed in all respects by the laws of the State of New South Wales without regard to its conflict of laws and provisions.

**4.14 General.** This EULA constitutes the entire agreement between the Parties with respect to the subject matter. Any headings are provided for convenience only. The failure of Pivotel to exercise or enforce any right under this EULA shall not constitute a waiver of such right. All rights and remedies granted to Pivotel are cumulative and not alternate. If any provision of this EULA is found invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining terms and conditions of this EULA, and the parties shall substitute a valid provision that most nearly approximates the intent and economic effect of the invalid or unenforceable one.