

## Terms and Conditions of Your Lexus Enform Telematics Service

Effective as of October 18<sup>th</sup>, 2017

Welcome to your Telematics Services, provided to you by Lexus, a division of Toyota Motor Sales, USA, Inc. ("Lexus"). These Terms and Conditions are a legal agreement between you and Lexus ("us", "our", and "we"). These Terms and Conditions are part of the Subscription Service Agreement (collectively, the "Agreement"). **You can contact us at any time by calling Lexus at 1-800-255-3987, by visiting [www.lexus.com/contact/](http://www.lexus.com/contact/) and selecting the "Email" button, or by writing to us at Lexus, Lexus Enform Customer Care, P.O. Box 259001, Plano, TX 75025-9001**

In this Agreement, when we use the words "Lexus Enform" "Lexus Enform Remote" or "Service(s)", we mean all the services we provide to you under your service plan ("Service Plan"). Unless otherwise stated, all terms used in these Terms and Conditions have the same meaning as set forth in the subscription service agreement.

**PLEASE READ THIS AGREEMENT BEFORE USING ANY SERVICE. It is your sole responsibility to make any of your passengers or drivers of your Vehicle aware of the data collection, use, sharing and retention terms of this Agreement.**

### 1. STARTING YOUR SERVICE

You can only get and use these Services by accepting this Agreement. To obtain these Services, your Vehicle must contain a factory installed Telematics System (the "System"). If you do not accept the Agreement, including these Terms and Conditions, please notify us immediately and we will cancel your Services. **Failure to cancel your Services within 15 days of enrollment for the Services will be deemed acceptance of the Agreement, even if you have not signed the Subscription Services Agreement.** In addition, **if you have not enrolled or signed the Subscription Services Agreement, you accept and agree to be bound by the Agreement at the point in time that you use the Services.** The included trial subscription is available for new vehicle purchases only, and begins on the purchase date of your new vehicle. The Agreement may be amended by us, without notice to you, in our sole discretion, from time to time. The most current Agreement is available on our website at [www.lexus.com](http://www.lexus.com).

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### 2. DURATION OF SERVICES

Your Services under this Agreement continue for as long as your Service Plan is in effect.

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### 3. PAYMENT FOR YOUR SERVICES

You are responsible to pay for your Services by credit or debit card or by paying your dealer directly.

**Automatic Renewal Conditions – Annual.** If you provide your credit or debit card number, and you choose to subscribe to a Service Plan with the Annual Payment Option, you authorize us to automatically renew your Service for a one-year or multi-year subscription indicated by you, beginning on the Scheduled Expiration Date, and annually thereafter, by charging the then current annual subscription fee to your account unless you cancel your subscription by calling us at 1-800-255-3987.

**Automatic Renewal Conditions – Monthly.** If you provide your credit or debit card number, and you choose to subscribe to a Service Plan with the Monthly Payment Option, you authorize us to automatically renew your Service for a one-month subscription beginning on the Scheduled Expiration Date and monthly thereafter according to the payment schedule set out herein, by charging the then current monthly subscription fee to your account, unless you cancel your subscription by calling us at 1-800-255-3987. If you choose the Monthly Payment Option, your Renewal Date will be on the same date of each subsequent month as the date of the month on which you entered your paid subscription. If your paid subscription enrollment date occurs on the 29<sup>th</sup>, 30<sup>th</sup> or 31<sup>st</sup> of a month, your first bill will pro-rate to the beginning of the next month (1-3 days later) and then your subscription will renew on the 1<sup>st</sup> of every month thereafter.

The annual or monthly authorization will remain in effect until you notify us otherwise. If you cancel your Service Plan, the refund policy described in Section 8 (below) will apply. Your credit or debit card information is maintained in a secure manner. If you pay your dealer directly, your dealer will remit your payment to us. You are responsible for paying directly to others (such as emergency service providers) all charges for services furnished by them that are not expressly covered under your Service Plan. You are not required to pay any amount for your services in excess of that which is stated in Section 5 and 6 of the Subscription Service Agreement for the Service Plan.

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### 4. TAXES AND OTHER CHARGES

You promise to pay all taxes, fees and surcharges set by the government and charged to you by us. We may not tell you in advance of changes to these items. The taxes, fee and surcharges will be added to the cost of your Service Plan.

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## 5. PAYMENT DISPUTES

The price of your Service Plan may change over time, and upon the Expiration Date of your Service Plan, we will use the rates then in effect for the applicable payment period for those charges. Except as prohibited by law, if you object to any fees or charges for Services billed by or through us, you must tell us in writing within 30 days of the date of the billing notice. If you fail to object within that time period, YOU WAIVE THE DISPUTE.

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## 6. YOUR RIGHT TO CANCEL; TRANSFER YOUR SERVICE

You can cancel your Service Plan at any time by calling us at 1-800-255-3987 and telling a Customer Care Agent you want to cancel your Service Plan. If you cancel your Service Plan we have the right to turn off your Services. The cancellation effective date is the date you notify us that you want to cancel your Service Plan. Once your Lexus Enform services are turned off, your Vehicle will not send any data to Lexus. Your device can be turned off immediately or it can take up to several days, depending on connectivity with your Vehicle. If you cancel your Service Plan, the refund policy described in Section 8 (below) will apply.

You cannot transfer your Service Plan to another vehicle. If you sell your Vehicle or terminate your lease during the term of the Service Plan, you must cancel your Services by contacting us by phone. If you sell your Vehicle or terminate your lease and do not notify us by phone, you will remain responsible for all charges for your Service Plan. The new owner of your Vehicle cannot assume the remaining period of Service under your Service Plan. There is no charge to cancel your Service Plan. We reserve the right to cancel your Service Plan once notified of the sale of your Vehicle, by you, Additional Subscribers, a dealer or new owner.

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## 7. OUR RIGHT TO CANCEL OR SUSPEND YOUR SERVICE

**WITHOUT CAUSE.** We may terminate your Service Plan without cause. If we terminate your Service Plan without cause, we will give you notice 30 days prior to the effective date of termination after which your account will be deactivated and your Services will terminate. This means that we can decide to cease providing the Services to you at any time and for any reason, even for reasons unrelated to you or your account with us. In such a case, we will refund any amounts you have paid in advance for a yearly or multiple year subscription.

**WITH CAUSE.** We may terminate your Service Plan without prior notice to you for any good cause. This means, for example, we can terminate your Service immediately if you breach any part of this Agreement, do not pay amounts that are due to us or one of our Third Party Service Providers as defined in Section 13, below, interfere with our efforts to provide Service, interfere with our business or if you use the Services for illegal or improper purposes. You do not have any right to have your Service reactivated, even if you cure any of these problems. We may, in our sole discretion, allow reactivation of your Service. We can suspend your Service for any reason or we could terminate it.

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## 8. REFUNDS TO YOU

If you purchased a paid Service Plan and it is cancelled for any reason, either by Lexus or by you, we will prorate the amount owed or to be refunded as of the date of cancellation, without any deductions. Any refund shall be processed immediately by us. If you provide us with your credit or debit card number, we will credit the amount of your refund to the card account you originally used to purchase the Service Plan. If either there is no valid credit or debit card number on file or the card number on file for your account is different from the card against which the purchase was originally made, we will send you a check to the address we have on file for you in the amount to be refunded via U.S. mail. There will be no prorated refund if you are paying for your Services on a month-to-month basis. Your services will continue until the end of the month in which you cancelled, and then the Service Plan will terminate.

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## 9. CHANGES BY YOU TO YOUR SERVICES

You are the only person who can request to activate your Service Plan. However, any Additional Subscriber(s), designated by you in the Subscription Service Agreement, can cancel or change your Service Plan by contacting us by phone or online through our website, if available.

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## 10. CHANGES BY US TO YOUR SERVICES

WE MAY CHANGE YOUR SERVICES AT ANYTIME AFTER GIVING 30 DAYS NOTICE TO YOU. After receiving any notice of a change in Services, you may cancel your Agreement or agree to the change. If you do not cancel your Agreement by contacting us within 30 days of the postmarked date of the notice you are agreeing to the change and it becomes part of this Agreement between you and us. You do not have any right in the wireless phone number assigned to your System. We can change the number at any time.

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## 11. DATA COLLECTION, USE, SHARING AND RETENTION OF YOUR VEHICLE LOCATION AND DRIVING DATA AND SERVICE CONNECT DATA

- a. **Data Collection.** On a regular and continuous basis your Vehicle may remotely transmit to Lexus:
  - i. **Latitude and longitude (“Location”);**

- ii. **Driving Behavior Data (“Driving Data”)** which includes the acceleration and speed at which your Vehicle is driven, travel direction, and use of the steering and braking functionality in your Vehicle;
- iii. **Vehicle Health Data** includes odometer, fuel level and/or oil life, Diagnostic Trouble Codes (DTC) and related data from the vehicle’s on-board diagnostic (OBD) system. Related data includes but is not limited to engine coolant temperature, fuel injection volume, and engine rotation per minute (RPM) and other data to assist in identifying issues and analyzing the performance of the vehicle. Vehicle Health Data measures your Vehicle’s performance and identifies service or maintenance events. We may collect such information either in person (such as during a service appointment) or via remote access.
  - a) **Hybrid Vehicles.** For hybrid vehicles, Vehicle Health Data includes hybrid battery data correlated to vehicle latitude and longitude;
- iv. **Multimedia Screen Data** includes the coordinates of how you utilize the screens in order to understand the features, functions and screen transitions you use the most.

This data transmission is linked to your Vehicle’s identification number (“VIN”). To determine if your vehicle transmits this data, call Lexus at 1-800-255-3987.

**b. Data Use.**

- i. **Vehicle Location and Driving Data** may be used by Lexus to deliver connected vehicle services to you, and for quality confirmation, data analysis, research, and product development.
- ii. **Vehicle Health Data and Multimedia Screen Data** may be used by Lexus for quality confirmation, data analysis, research, product development. If you opt-in to Service Connect, such data is also used to deliver Maintenance Notifications, Vehicle Alerts and Vehicle Health Reports and contact you.
  - Maintenance Notifications tell you when your Vehicle is due for a schedule maintenance event.
  - Vehicle Alerts tell you when your Vehicle reports a malfunction-related event.
  - Vehicle Health Reports contain vehicle maintenance and malfunction status that is derived from the Vehicle Health Data transmitted from your Vehicle to Lexus, and service campaign and safety recall information.

**c. Data Sharing.**

- i. **Vehicle Location, Driving and Health Data**, linked to your VIN and contact information, will be available to Lexus, its parent and commonly controlled affiliates and its business partners for the purposes described above under Data Use. We may also share the data with other third parties when required by law, legal process or litigation or for customer service purposes. Except as otherwise set forth in this Section, we will not share this data with our third party vendors or business partners for any other use unless we receive your prior express consent.
- ii. **If you opt-in to Service Connect**, your Vehicle Health Data, linked to your VIN and contact information, will be available to you, and **to your dealer for your dealer’s own use.**

If you opt-out of Service Connect, we will not share with you Maintenance Notifications, Vehicle Alerts or Vehicle Health Reports (VHR).

- d. **Data Retention.** Vehicle Location, Driving and Health Data, and Multimedia Screen Data are retained by Lexus for a period not to exceed 20 years from date of receipt by Lexus for the purposes described above under Data Use. These data sets may be retained for longer periods of time when required by law, legal process or litigation. In addition, you and your dealer will have access to your Vehicle’s last 12 monthly Vehicle Health Reports and your most current Vehicle Health Data.

**12. DATA COLLECTION, USE, SHARING AND RETENTION TO ELECTRONICALLY LOCATE YOUR VEHICLE**

Your System includes an electronic device that allows us to find your Vehicle under the following specific circumstances described in this Section. The electronic device records your Location at the point of signal initiation.

**Response Center Monitoring and Recording.** When utilizing the services outlined in sub-sections (a)-(d) below, from your Vehicle or any other source, the Response Center records your voice and that of your Vehicle’s occupants. Therefore, for yourself, your Vehicle’s occupants and anyone contacting us on your behalf, you consent to all such monitoring and recording. We may monitor and record conversations between our Response Center and you and/or your Vehicle’s occupants to deliver services to you and for quality assurance.

- a. **Automatic Collision Notification.** If the airbag sensor is tripped or there is a severe rear-end collision of your Vehicle, your Vehicle will send an electronic signal to our Response Center and record and transmit your Location, so that we can share your contact information and Location with emergency responders and provide assistance to you.
- b. **Emergency and Roadside Assistance.** You may call us 24 hours a day in the event of an emergency or the need for roadside assistance by pressing the SOS button in your Vehicle. If you press the SOS button, your Vehicle will send an electronic signal to our Response Center and record and transmit your Location so that we can share your contact information

and Location with third party responders and provide assistance to you. You may also speak with our Response Center by pressing the SOS button. Your Roadside Assistance includes emergency fluid delivery of up to 2 gallons of standard petroleum fuel or water, winching (so long as the Covered Vehicle is unable to proceed safely under its own power, either on the member's premises (garage or driveway) or any normally traveled, paved public street, highway or parking area), dead battery jump-start, tire changes using the vehicle's inflated spare, and towing to the nearest Lexus dealership. Additional mileage charges apply if the requested towing location is beyond the nearest Lexus dealership.

- c. **Stolen Vehicle Location.** Your Vehicle contains an electronic device that we can use in the event your Vehicle is stolen. If we receive the information we request including a police report, we can try to find your Vehicle.
- i. **Theft and Locating Missing Persons.** If your Vehicle is stolen or you are attempting to locate missing persons, we can try to locate your Vehicle and share that Location with local authorities. You must call us at the appropriate number provided in the first paragraph of these Terms and Conditions and provide us the information we request from you, which may include a police report to verify the report of theft or missing persons. We can work with local authorities to recover the vehicle utilizing the vehicle's GPS. We cannot guarantee we will find your Vehicle. If you do not provide us with the information we request, we have the right to refuse to locate your Vehicle. We are not required to try to find your Vehicle for the purpose of locating a person.
- ii. **Upon the Request of your Lienholder/Lessor, Toyota Motor Credit Corporation ("TMCC").** If your Lienholder/Lessor is TMCC and TMCC requests that we find your Vehicle because of (1) alleged fraud or (2) breach of your lease, retail installment contract or vehicle loan with TMCC, we can try to locate your Vehicle and share that Location with TMCC. TMCC will be required to contact us directly and provide us with the information we request to verify the fraud or breach of your lease, retail installment contract, or vehicle loan.

**Data Use.** Lexus may use the data described in this Section to provide services to you and for quality improvement, data analysis, research, product development.

**Data Sharing.** Lexus may also share the data, linked to your VIN, described in this Section, with its parent, affiliates, third party vendors and business partners for the purposes described in this Section. We may also share the data described in this Section as required by law, legal process, litigation or for customer service purposes. Except as otherwise set forth in this Section, we will not share the data described in this Section with our third-party vendors and business partners for any other use without notification to you, or as required by law, your consent.

**Data Retention.** For Automatic Collision Notification, Emergency Assistance Button, Roadside Assistance, Stolen Vehicle Locator and Destination Assist (see below), we retain the data for 4 years, unless we are required to retain for a longer period of time prescribed by law, legal process or litigation. If you speak with the Response Center from your Vehicle, you may be recorded. We may retain the recording for 2 years or a transcript of the recording for 4 years as required by law and to support requests from you and law enforcement.

- d. **Enform Destination Assist.** If you have navigation, your Vehicle is equipped with Enform Destination Assist service.

Destination Assist provides you with live-operator assistance to find destinations. While either parked or driving, you may connect to a Response Center Agent to ask for help finding local points of interest. When you press the Destination Assist button on your in-vehicle navigation unit, your Vehicle will send an electronic signal to the Response Center which identifies your Location to the Response Center Agent who answers your call. The Response Center Agent can send your destination of choice wirelessly to your Vehicle's navigation system.

- e. **Enform Remote Services.** Please contact your dealer or the Lexus Customer Assistance Center to confirm whether your Vehicle has Enform Remote Services.

#### **Enform Remote Applications Collection, Use, Transmission and Storage of Data.**

If your Vehicle is capable of Enform Remote, you must register for Enform Remote Services (the "Remote Services") by opting-in via your mobile device. Once you opt-in for the Remote Services, you may select the specific features you want to use, including but not limited to, remote door lock/unlock, remote engine start, Vehicle Finder and Guest Driver Monitor.

Once you've registered for the Remote Services and each time you turn your Vehicle off ("Ignition Off"), your Vehicle will automatically collect and transmit to Lexus specific information about your Vehicle, such as the Location, status of your powered doors, windows, trunk, hood, sunroof, hazard lights, odometer reading, oil life, trip A/B which can calculate fuel economy or measure the distance on each trip, and distance to empty. Lexus uses this information to deliver services to you. This same data is transmitted from Lexus to the Enform Remote Application for you to view when you remotely request "Real Time Status" of your Vehicle. Lexus will only store the Real Time Status and Location of your Vehicle from the last Ignition Off for the purpose of delivering your Vehicle's most recent information in support of the services.

Many local and state governments have adopted laws or ordinances that limit vehicle idling and impose penalties for noncompliance. When using the Remote Engine Start feature, you are responsible to understand and are legally obligated to

follow such idling laws. For example, if your local and state idling limit is less than the 10 minute idle time for the Remote Engine Start feature, use of this feature may result in your legal noncompliance for which you are solely responsible.

When you remotely request the Location of your Vehicle (utilizing the Vehicle Finder feature), Lexus will transmit to the Enform Remote Application a map pinpoint with address displaying the Location of your Vehicle from the last Ignition Off.

The Guest Driver Monitor feature will send information to Lexus and to the Enform Remote Application on your mobile device when a condition you set is exceeded. Examples of conditions you may set include, a defined speed limit, curfew, miles driven, travel range and ignition-on. Lexus only collects and stores Guest Driver Monitor data when a condition has been exceeded and Lexus transmits this data to you.

To learn more about the Enform Remote Application features, please go to [www.lexus.com/enform](http://www.lexus.com/enform) or download the Enform Remote Application and view the demo mode.

- f. **Enform Dynamic Navigation.** Certain vehicles with embedded navigation and GPS have an Enform Dynamic Navigation application. Please contact your dealer or the Lexus Customer Assistance Center to confirm whether your Vehicle has Dynamic Navigation.

**Dynamic Routes & Maps.** Lexus provides instant over-the-air map improvements to your vehicle mapping system. Your Location is not used to provide this Service.

**Dynamic POIs.** If you search for a point-of-interest ("POI"), your Location is transmitted to and used by Lexus to provide improved search results.

**Dynamic Commute.** You may opt-in to Dynamic Commute in your Vehicle's multimedia system and Lexus will collect and use, but will not share, your Vehicle's current Location, location history, vehicle direction and speed to provide predictive routes and driving times and directions. After opting-in, you may delete the Dynamic Commute application, or temporarily turn off data collection in the Settings screen of the Dynamic Commute application in your Vehicle's multimedia system.

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## 13. HOW OUR SERVICE WORKS, RESTRICTIONS, AND SYSTEM LIMITATIONS

- a. **How the Service Works**

Your Vehicle includes a digital communication module ("DCM") that receives Global Position System ("GPS") signals, and wireless network signals, to communicate with our network and response centers.
- b. **Coverage Limitation**

The Location of your Vehicle, particularly in remote or enclosed areas (examples: tunnels, mountain ranges, hills, buildings, underground parking), may affect the availability of services that can be provided. Some services may not be available in geographic areas not covered by our wireless service provider.
- c. **Service Availability**

Not all services are available on all vehicles or in all geographic locations. Equipment may vary depending upon your vehicle model and model year. For information on services available on your Vehicle, please review your Vehicle's owner's manual or consult your dealership.
- d. **Cross-Border Service Availability**

Services for vehicles manufactured for the United States may be limited, or not work, outside of the continental United States, Alaska and Hawaii. Services may not be renewed if your vehicle has left the continental United States, Alaska or Hawaii.
- e. **System Limitations**
  - i. Your Vehicle does not have the ability to receive calls and may only place calls to the Response Center;
  - ii. Your Vehicle must have a working electrical system, including adequate battery power for your System to operate;
  - iii. The routing data we provide to you is based on the most current map information available to us, but may be inaccurate or incomplete and may not include information about one-way roads, turn restrictions, construction projects, seasonal roads or new roads.
- f. **Services may not work, if:**
  - i. The hardware or software in your system has been modified or tampered with, or with devices plugged into the vehicle electrical system or diagnostic port;
  - ii. Your Vehicle is not compliant with government regulations and law;
  - iii. Your Vehicle is damaged in a way that restricts services, wireless communication, or GPS signals;
  - iv. Digital cellular telephone signals are terminated or restricted.
- g. **Services may fail, or be delayed, due to:**

Acts of nature, or forces or causes beyond our reasonable control, including but not limited to weather conditions and the results thereof, public utility failure, acts of war, government actions, terrorism, civil disturbances, wireless network congestion or system failures including internet, computer, telecommunication or other system failures.

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#### **14. THIRD PARTY SERVICE PROVIDERS AND BENEFICIARIES**

We work with many different companies, individuals and government entities to provide you with your Services. Specifically, we work with Cross Country Motor Club, Inc., to provide roadside assistance, Cellco Partnership, Inc., doing business as Verizon Wireless Inc. to provide Wi-Fi hotspot services and data connectivity to your vehicle, and Sirius XM Connected Vehicle Services Inc. (“Sirius XM CV”), to provide customer support and the other services that are a part of your System and Service Plan. In this Agreement “Third Party Service Provider” means any person, company or entity who provides any service, System or facilities in connection with your Services. We will use reasonable efforts to contact appropriate Third Party Service Providers for help when you ask for it or when the System in your Vehicle signals for it, but we cannot promise prompt responses from the Third Party Service Providers. Any Third Party Service Provider involved in delivering your Services are intended third-party beneficiaries of the protections of this Agreement, including but not limited to, Sirius XM CV and all direct and indirect subsidiaries of its parent company, Sirius XM Radio, Inc., and Cellco Partnership, Inc., doing business as Verizon Wireless Inc., our commercial mobile wireless third-party service provider (“Underlying Wireless Carrier”) and its affiliates. This Agreement does not give you any rights against any of the Underlying Wireless Carriers or other Third Party Service Providers. The disclaimers, warranties, limitations of liability and other protections of this Agreement extend to these third-party beneficiaries.

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#### **15. YOUR DUTIES AND RESPONSIBILITIES**

It is your responsibility to make sure your Vehicle and your System are working. You can always press the SOS button to confirm that your System is active. If the light next to the SOS buttons is red or off, this means that your System is not functioning properly or is inactive, and should be checked by a dealer.

YOU ARE SOLELY RESPONSIBLE FOR ANY USE OF THE SERVICES IN YOUR VEHICLE, EVEN IF YOU ARE NOT THE ONE USING IT, AND EVEN IF YOU LATER CLAIM THE USE WAS NOT AUTHORIZED. YOU ARE ALSO SOLELY RESPONSIBLE FOR THE SERVICES REQUESTED BY YOU, OR BY ANYONE USING YOUR VEHICLE. Neither we nor any Third Party Service Provider has any obligation to inquire about the authority of anyone using your Vehicle. Neither we nor any Third Party Service Provider has any obligation to inquire about the authority of anyone using your personally identifiable information that can be used to identify your account to request services for your Vehicle. If you or a driver of your Vehicle uses the Services or System to commit a crime or for another improper purpose, you will be responsible for any damages owed by us as a result of such use. You are entirely responsible for any transaction with anyone in connection with your use of the Services, and any use that you make of any information received from or through any Services. You act at your own risk.

When you use the Services, you promise:

- a. not to use the Emergency Assistance Button and Roadside Assistance except for actual emergencies and roadside assistance needs;
- b. not to use your Service for any fraudulent, unlawful, or abusive purpose, or in any way that interferes with our provision of Services to our other customers;
- c. not to abuse or do anything to damage our business operations, services, reputation, employees, facilities, or Third Party Service Providers of your Service;
- d. not to use any content you receive through the Services except as expressly authorized by us;
- e. not to resell, copy, store, reproduce, distribute, modify, display, publish, perform, transmit, broadcast, or create derivative works from any content you receive through your Service; and
- f. not to use any content you receive through your Service for commercial purposes.

If you do any of these things, you agree you will be responsible for any amount anyone else claims from us or our Third Party Service Providers, plus any expenses, resulting in whole or in part, from that use or your actions.

**VEHICLE INSURANCE. You are responsible for your Vehicle Insurance.** This Service does not provide your Vehicle Insurance. This Service is not an insurance product. The payments you make for your Service Plan are not related to the value of your Vehicle or any property in it, or the cost of any injury to or damages suffered by you or anyone else.

**PASSENGERS AND DRIVERS OF YOUR VEHICLE. You are responsible to inform any passenger or driver of your Vehicle that Location, Vehicle Driving Data, Vehicle Health Data and Multimedia Screen Data are collected and used by Lexus and shared with third parties as described in this Agreement.**

**SALE OR TRANSFER OF YOUR VEHICLE.** You are responsible to notify us of a sale or transfer of your Vehicle. If you do not notify us of a sale or transfer of your Vehicle, we may continue to send reports or other information about the vehicle or account to the primary subscriber's contact information currently on file with us. In such case, we are not responsible for any privacy related damages you may suffer.

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## **16. DATA PRIVACY AND SECURITY**

**DATA PRIVACY.** In this Agreement, we describe the data we collect, use, share, and retain about you and your Vehicle, including Vehicle Location and Driving Data and Vehicle Health Data. Please refer to Sections 11 and 12 for more details. You may also access the details related to collection, use, sharing and retention of your personal information, including your name, address and phone number and your Vehicle data at [www.toyota.com/privacyvts](http://www.toyota.com/privacyvts). Your name, address and phone number are retained for 4 years after expiration of your subscription, unless retained for a longer period of time by law, legal process or litigation.

**SECURITY OF INFORMATION COLLECTED.** We take information security seriously and continuously strive to protect your Personal Information and Vehicle Data by employing our industry's best practices through our formal security program. We designed the Connected Services technology in your Vehicle to resist security vulnerabilities. We employ layers of defense to drive strong safeguarding practices such as but not limited too; code and design reviews, regularly scheduled security testing, firewalls, intrusion detection systems, encryption.

When your Vehicle data is transmitted from your Vehicle to us, we use a dedicated private wireless network. In addition, your Vehicle is designed only to respond to commands from us and only for those available features we provide such as; door lock/unlock, remote engine start/stop and vehicle Location.

Please note, however, we cannot completely ensure or warrant the security of any information transmitted to us by you or your Vehicle. Your use of your Vehicle's Connected Services is at your own risk. You agree we will not be liable for any damages for any loss of privacy occurring in communication over such networks. You have the option to deactivate your Connected Services by contacting us. See the first paragraph of this Agreement for contact information.

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## **17. NO WARRANTIES ON INFORMATION OR SERVICES**

Warranties are special kinds of promises. Your Vehicle may have a limited warranty that includes your System. However, neither Toyota Motor Sales, USA, Inc. nor any third-party beneficiary makes ANY WARRANTIES, EXPRESS OR IMPLIED, about the Services (including the content or other information delivered to you as part of the Services), the wireless service used in connection with your System, including any warranty of merchantability or fitness for a particular purpose. ALL DATA AND INFORMATION IS PROVIDED TO YOU ON AN "AS IS" BASIS. This means we make no warranties in connection with the content quality, accuracy, timeliness, completeness, correctness, reliability, merchantability, or fitness for a particular purpose. All warranties with respect to the Services, the wireless service or any system used by a Third Party Service Provider are expressly disclaimed and excluded by this Agreement.

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## **18. LIMITATIONS OF LIABILITY, LIQUIDATED DAMAGES, AND INDEMNITY**

You and us are each waiving important rights.

### **Limitations of Liability by Us.**

We cannot recover from you (1) punitive damages, (2) treble, consequential, indirect, or special damages, or (3) attorney's fees.

WE WAIVE TO THE FULLEST EXTENT ALLOWED BY LAW ANY CLAIM FOR DAMAGES OTHER THAN DIRECT, COMPENSATORY DAMAGES AS LIMITED IN THIS AGREEMENT.

Neither we nor the Underlying Wireless Carrier, nor any Third Party Service Provider or beneficiary will be liable to you or any other party for consequential, indirect, incidental, special, or punitive damages (including without limitation lost profits) in connection with the Services or the System, even if we, the Underlying Wireless Carrier, or Third Party Service Provider or beneficiary is aware of the possibility of such damages. These limitations apply to all claims, including, without limitation, claims in contract and tort (such as negligence, product liability and strict liability). Some states do not allow the exclusion or limitation of incidental or consequential damages, so those particular limitations may not apply to you. If the Underlying Wireless Carrier terminates or restricts wireless service compatible with your vehicle, Services will not be available, under this circumstance, some or all of your service may be suspended or terminated without prior notice to you or without any liability to us, our third party service providers, the Underlying Wireless Carrier or any third party beneficiary.

If we, the Underlying Wireless Carrier, or any Third Party Service Provider or beneficiary are found liable to you for any reason you agree that the aggregate liability of all these parties to you for any claim is limited to the total amount paid by you for the Services. Neither us, the Underlying Wireless Carrier nor any Third Party Service Provider or beneficiary would have agreed to provide the Services to you if you did not agree to this limitation. This amount is the sole and exclusive liability of us, the Underlying Wireless Carrier and the Third Party Service Provider or beneficiary to you, and is payable as liquidated damages and not as a penalty. Except where prohibited by law, you may not bring any claim against us, the Underlying Wireless Carrier or any third-party beneficiary more than two (2) years after the claim arises. We do not have any liability for service interruptions of 24 hours or less. To receive service credit for longer interruptions, you must notify us within 60 days after the time when that service interruption started. Except for any credits provided voluntarily by us for a dropped call, or credits for interrupted service as described above, no one is liable to you for

dropped calls or interrupted service, or for problems caused by or contributed to by you, by any third party, by buildings, hills, tunnels, network congestion, weather, or any other things we or our Third Party Service Providers don't control.

### **Limitations of Liability by You**

For yourself and for anyone else claiming under you, you agree to release and discharge Toyota Motor Sales, USA, Inc. and its Third Party Service Providers, their parents, affiliates, and subsidiaries, and the respective officers, directors, and employees, and the Underlying Wireless Carrier and each third-party beneficiary from all claims, liabilities and losses in connection with the Services (including any monitoring or recording of your or your Vehicle's occupants' voice), including, but not limited to claims for personal injury or property damage arising from the total or partial failure of performance of the Services, even if caused by or based upon the negligence, gross negligence, strict products liability, Deceptive Trade Practices Act violations, bad faith, or breach of warranty of us or the malfunction of the System. YOU AGREE TO INDEMNIFY US, THE UNDERLYING WIRELESS CARRIER AND EACH THIRD-PARTY BENEFICIARY AGAINST ALL SUCH CLAIMS, LIABILITIES AND LOSSES BROUGHT BY THIRD PARTIES. You further agree that this release extends to any party claiming under you and that no insurance company will have any right of subrogation.

You agree that we do not have any liability for service interruptions of 24 hours or less.

YOU AGREE TO WAIVE TO THE FULLEST EXTENT ALLOWED BY LAW, ANY CLAIM FOR DAMAGES OTHER THAN DIRECT, COMPENSATORY DAMAGES AS LIMITED IN THIS AGREEMENT.

You agree that you have no contractual relationship whatsoever with our Underlying Wireless Carrier(s) and that you are not a third-party beneficiary of any agreement between us and our Underlying Wireless Carrier(s). In addition, you expressly agree that none of our Underlying Wireless Carrier(s) have any legal, equitable, or other liability of any kind to you. You waive any and all claims or demands for such liability.

Unless otherwise provided in this Agreement, you agree that your maximum liability to us under any theory (including but not limited to fraud, misrepresentation, breach of contract, personal injury, or products liability) is limited to any charges due and owing by you to us.

You agree that the limitations of liability and indemnities in this Agreement will survive even after the Agreement has ended. These limitations of liability apply not only to you, but to anyone using your Vehicle, to anyone making a claim on your behalf, and to any claims made by your family, employees, customers, or others arising out of or relating to your Services or System.

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## **19. HOW WE'LL RESOLVE DISPUTES BETWEEN US**

If you and we have a disagreement related to Services, we'll try to resolve it by talking with each other. If we can't resolve it that way, WE BOTH AGREE, TO THE FULLEST EXTENT PERMITTED BY LAW, TO USE ARBITRATION, NOT LAWSUITS (except for small claims court cases as described below) TO RESOLVE THE DISPUTE. Of course, either of us can always contact a government agency or regulatory authority for help, too. Here's how private arbitration will work:

You agree that, apart from any claim you may bring in small claims court, the sole and exclusive forum and remedy for any and all disputes and claims that cannot be resolved informally and that relate in any way to or arise out of your use of the Services or relating to this Agreement or any prior agreement for service with us or any of our affiliates, predecessors in interest, or Third Party Service Providers or any product or service provided under or in connection with this Agreement or such a prior agreement, or any advertising for such products or services, shall be final and binding arbitration, except to the extent that you have in any manner infringed upon or violated or threatened to infringe upon or violate any patent, copyright, trademark, trade secret, privacy or publicity rights, in which case you acknowledge that there is no adequate remedy at law and that injunctive or other appropriate relief may be sought by us and/or an applicable third party either in court or from an arbitrator. You and we acknowledge that this Agreement affects interstate commerce and that the Federal Arbitration Act and other federal arbitration law apply to arbitrations under this Agreement (despite any other choice of law provision). To the extent that the Federal Arbitration Act and federal arbitration law do not supply substantive law necessary for the resolution of any disputes or claims, the laws of the State of Texas shall apply, except that Texas laws concerning choice of law or conflicts shall not apply if they would cause the substantive law of another jurisdiction to apply. To the extent that the parties litigate any part of any dispute or claim in court, including, without limitation, obtaining provisional remedies in aid or arbitration, confirmation of an award, and judgment enforcement, the laws of the State of Texas shall apply, except that Texas laws concerning choice of law or conflict of laws shall not apply if they would cause the substantive law of another jurisdiction to apply.

For claims of \$10,000 or less, arbitration will be conducted by the American Arbitration Association ("AAA") in accordance with AAA's Consumer Arbitration Rules. We will waive our right to arbitrate any individual (as opposed to class) claim you bring or maintain in small claims court for so long as the matter remains an individual claim and remains in small claims court.

You can get rules and fee information from the AAA ([www.adr.org](http://www.adr.org)). You expressly waive the right to request or maintain any class arbitrations even if AAA procedures or rules would permit them (this is referred to below as the "Class Action Waiver"). In exchange for this, we'll pay (if you ask us in advance) for any filing fee charged you by AAA for one arbitration of any disputes between us, so long as you tried in good faith to resolve the disputes with us before filing for arbitration. If the arbitration proceeds past the filing, we'll also pay (if you ask us at the time) any further administrative and arbitrator fees you are later charged. An arbitrator can decide later whether to allocate the fees differently if there's an award. The arbitrator may award you any fees and charges that are necessary to ensure the enforceability of this arbitration provision.



There's no judge or jury in arbitration, and review is limited, but an arbitrator can award the same damages and relief, and must honor the same limitations in this Agreement as a court would. You and we agree to pay our own fees, costs, and expenses, including those for any attorneys, experts, and witnesses. You agree that any claim for or award of attorneys' fees, including any such claim or award pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code, is waived.

Any arbitration award made after completion of an arbitration is final and binding and may be confirmed in any court of competent jurisdiction, except that in the event the arbitrator's award for a party is \$0 or against a party is in excess of \$100,000, or includes an award of injunctive relief against a party, that party may request a new arbitration to be conducted by the selected arbitration organization by a three-arbitrator panel. An award and any judgment confirming it only applies to the arbitration in which it was awarded and can't be used in any other case except to enforce the award itself.

If a court or arbitrator determines that any part of this arbitration agreement other than the Class Action Waiver is not enforceable, the rest of this arbitration agreement shall be enforceable.

If for some reason these arbitration requirements don't apply, or a claim proceeds in small claims court, each of you and we waive to the fullest extent permitted by law any trial by jury. In no event shall any claim, action or proceeding by you related in any way to the Services, this Agreement, or any prior agreement, as described above, be instituted more than two (2) years after the claim or cause of action arose. This Agreement to arbitrate survives the end of the contractual relationship between us.

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## 20. MISCELLANEOUS

**THE LAW THAT GOVERNS OUR RELATIONSHIP.** To the fullest extent permitted by law, and except as explicitly provided otherwise, this Agreement and any disputes arising out of or relating to it will be governed by the laws of the State of Texas, except that Texas laws concerning choice of law or conflicts shall not apply if they would cause the substantive law of another jurisdiction to apply. Notwithstanding, Section 19 shall be governed by the Federal Arbitration Act and the laws of the State of Texas, as applicable, as set forth therein.

**FORCE MAJEURE.** Neither we, nor the Underlying Wireless Carrier and Third Party Service Providers will be responsible for the failure to provide Services to you if caused by any of the following: any act or omission (including interruption of cellular service) of any Third-Party Service Provider; system failures or shortages; damage to our-designated Response Center, any land or wireless communications networks or the GPS system; acts of nature, labor strikes or war; or any other act or event that is outside of our reasonable control. **UNDER ANY OF THESE CIRCUMSTANCES, WE MAY AT OUR OPTION SUSPEND OR TERMINATE ALL OR SOME OF THE SERVICES OR TERMINATE THIS AGREEMENT WITHOUT PRIOR NOTICE TO YOU AND WITHOUT ANY LIABILITY; MOREOVER, YOU WILL NOT BE ENTITLED TO A REFUND OR CREDIT.**

**HOW WE CAN COMMUNICATE WITH EACH OTHER.** Any written notice from you required by this Agreement will be considered given when we receive it at our address provided in the first paragraph of these Terms and Conditions. Any written notice from us required by this Agreement will be considered given when we send it to you by email to any email address you have provided to us, or two days after we mail it to you, based on the postmarked date, at the most current billing address we have on file for you. Any oral notices will be considered given when we call you or when you call us at the appropriate number provided in the first paragraph of these Terms and Conditions.

**WHO ELSE THIS AGREEMENT COVERS.** Our Third Party Service Providers and our affiliates are intended beneficiaries of this Agreement. **Your passengers and drivers of your Vehicle are covered by this Agreement.**

**OUR RELATIONSHIP WITH YOU.** No matter what else it says, this Agreement doesn't create any fiduciary relationships between you and us, or between you and Toyota Motor Sales, USA, Inc., its parents, affiliates, or any of the Third Party Service Providers. It doesn't create any relationship of principal and agent, partnership, or employer and employee, either.

**WE CAN ASSIGN THIS AGREEMENT.** We can assign this Agreement or your obligations to pay under it in whole or in part to anyone we choose. You can't assign this Agreement or your obligations to anyone else without our prior consent.

**THIS IS THE ENTIRE AGREEMENT.** This Agreement (these Terms and Conditions and any other documents, including any express consent from you, incorporated in them) is the entire Agreement between you and us. It supersedes all past or present agreements or representations between us, whether oral or written. If any part of this Agreement is considered invalid by a court or arbitrator, the rest of it will remain enforceable. Even after this Agreement has ended, its provisions will govern any disputes arising out of or relating to it (unless it's been replaced by a new agreement between us). It will also be binding on your heirs and successors and on our successors. No waiver of any part of this Agreement, or of any breach of it, in any one instance will require us to waive any other instance or breach. **IN SOME CIRCUMSTANCES WE MIGHT DECIDE TO PROVIDE YOU SERVICE VOLUNTARILY EVEN IF YOU WOULDN'T OTHERWISE QUALIFY. THIS WON'T BE A WAIVER OR REQUIRE US TO DO SO AGAIN. YOU AGREE WE WON'T BE LIABLE FOR ANYTHING RESULTING FROM OUR PROVISION OF SUCH SERVICE.**