



## GPS System License and Service Agreement

This GPS System License and Service Agreement ("Agreement") is between GPSI Leasing II – Accord, LLC with offices at 1074 North Orange Avenue, Sarasota, Florida, 34236 (including its assigns, "GPSI") and City of Ankeny (the "Customer").

WHEREAS, Customer owns and/operates the following 18 hole golf course(s) (the "Golf Course"): Otter Creek Golf Course located at 1410 NE 36<sup>th</sup> St., Ankeny, IA 50021 utilizing 72 Club Car Precedent golf carts (the "Golf Carts"); and

WHEREAS, Customer rented the Visage GPS-enabled wireless golf course management system (the "System") under the terms and conditions of the Agreement between Advantage Financial Service, LLC and Customer dated March 6, 2015 (the "Advantage Agreement"); and

Whereas, the Advantage Agreement comes to term in March of 2019 and, upon completion of term, GPSI assumes all rights and title to the System; and

Whereas, Customer desires to continue use of the System as currently installed and GPSI has offered to provide use of the System under the terms and conditions of this Agreement.

NOW THEREFORE, the parties agree as follows:

1. Term. The term of this Agreement (including any extensions hereto, the "Term") shall commence on the April 1, 2019 and run until December 31, 2022.
2. Payments. For the Term of this Agreement and any extensions hereto, Customer shall pay a monthly license and maintenance fee in the amount of Two Thousand Three hundred seventy six U.S. Dollars (US\$2,376.00) per month plus applicable taxes. All payments made under this Agreement shall be net to GPSI.
3. Ownership. GPSI is the owner and has title to the System. The only right, title or interest Customer shall have in the System shall be under the terms of this Agreement. This is a use of personal property and Customer agrees to do everything necessary or reasonably requested by GPSI to ensure that the System shall be considered and remain personal property. Customer shall, at its own expense, keep the System free and clear of all liens, charges, claims and other encumbrances. GPSI may encumber, sell, lease, or otherwise finance the System, although such actions will not relieve GPSI of its obligations under this Agreement. Customer agrees to execute and deliver from time to time as requested any document necessary or desirable to evidence GPSI's or its assigns ownership of and all rights to the System. GPSI or its assigns may, upon notice to Customer, enter onto Customer's property and remove the System following the termination of this Agreement or at any other time authorized by this Agreement or by law. Without limiting the generality of the foregoing, to secure Customer's payments under this Agreement, Customer agrees to give GPSI a security interest in the System and all additions, attachments, updates, accessories and substitutions to it. Customer agrees to any assignment of that security interest.
4. Taxes. Customer shall pay all taxes, tax pass along, assessments, and any sales, use, personal property, privilege, value-added taxes, import duties, excise taxes and import brokerage fees incurred in connection with the System or otherwise with respect to this Agreement.
5. Software License. Customer understands that GPSI does not sell its software. For the Term, GPSI grants Customer a nontransferable, non-exclusive license to use the software only in conjunction with the System and only as expressly authorized in this Agreement. "System Software" means standard system software included with the System provided to Customer. Customer shall (i) hold System Software in confidence and not disclose it to anyone other than its employees and consultants who require disclosure in connection with Customer's use of the System and who are subject to confidentiality obligations in substance at least as strict as these, (ii) not print, copy, modify, translate, alter, reverse compile, decompile or reverse engineer System Software, (iii) not remove any GPSI copyright, trademark or other proprietary notice from System Software and shall reproduce all such notices on copies made by Customer, and (iv) not transfer System Software or assign any license or rights regarding the System Software.
6. Force Majeure. GPSI shall not be liable for any interruption in service, delay in the delivery, or disruption of performance of any GPSI or the System resulting from any cause beyond its reasonable control or caused by acts of God, acts of Customer, acts of civil or military authorities, fires, strikes, floods, epidemics, governmental rules or regulations, war, riot, delays in transportation, or shortages.
7. Maintenance Service. GPSI shall provide maintenance service based on the Service Terms and Conditions, set forth in Exhibit A, for a period beginning with the Effective Date and ending with the conclusion of the Term. To facilitate service, Customer agrees to provide (a) Access to all areas of the site where equipment is to be installed; (b) unrestricted broadband Internet connection for the duration of this Agreement for System installation for monitoring and maintenance



service; and (c) battery power to the Golf Car-mounted units at all times, and Customer agrees to allow power to be drawn from the Golf Course irrigation system (or other power sources) to supply radio repeater stations if required. Customer shall designate one employee to act as the liaison between GPSI and Customer ("Customer Rep"). Customer Rep is responsible for facilitating all Customer obligations as required under this Agreement.

8. Customer Responsibilities. Customer hereby agrees to the following responsibilities as a part of this Agreement:

8.1. Customer agrees to store safely and properly secure the System indoors in a reasonably safe area protected from the weather when not in use. At all times, Customer shall use and operate the System in a careful manner, in compliance of all applicable laws and in compliance of any maintenance or operating manuals and instructions provided by GPSI. Customer shall not use or operate the System in a manner that may subject it to depreciation above the normal depreciation associated with its specified use. Customer acknowledges and agrees that it will not allow any repairs to the System or the replacement of System parts to be done by any person except GPSI or technicians authorized by GPSI. Customer shall not make any additions, subtractions or alterations affecting the System without the written consent of GPSI. Customer shall use reasonable efforts not to permit any System to be abused by an employee, vandalized by any third party, permit the removal of any plate or markings put on the System by GPSI, or attach anything to or remove anything from the System.

8.2. Customer shall not install software unauthorized by GPSI on the System.

8.3. Customer assumes responsibility for all risk of loss to the System and all of its components from the time any of the components arrive at the Customer's premises. Customer shall procure property loss and general public liability insurance covering the equipment and its use and shall name GPSI and its assigns as additional named insured and any loss payee. Customer shall provide GPSI with certificates or other evidence of insurance, acceptable to GPSI, before this Agreement Term begins. Even if the System is damaged, lost or stolen Customer shall fulfill all of its obligations hereunder.

8.4. Customer will execute and cause third-parties to execute any leasehold or other waivers regarding the attachment of the System components to any car, maintenance vehicle, or other attachment to real or personal property on the premises.

8.5. At the termination of this Agreement, in case of default, if not extended, or otherwise modified, Customer agrees to provide GPSI with reasonable access to Customer's facility for the de-installation and removal of the System. Prior to GPSI's removal of the System, Customer shall be responsible for repair or replacement of any damaged or missing System components, if caused by Customer's misuse, abuse and/or negligence. GPSI will use normal care in the de-installation and removal of the equipment, which will be performed so as not to unduly disrupt the operations of the golf course.

9. General

9.1. Assignment. Customer acknowledges that GPSI may assign to a successor all or any part of its right, title and interest in this Agreement, and hereby consents to such assignments provided such assignee assumes all obligations of GPSI under this Agreement. In case of such assignment, Customer agrees to continue to perform all of its obligations under this Agreement.

9.2. Events of Default and Remedies. In the event that the Customer violates any provision of this Agreement and GPSI believes the System or any property or rights of GPSI to be threatened, GPSI may immediately disable the System. In addition, in the event that Customer violates any provision of this Agreement and such violation continues for a period of at least twenty (20) days after notice in writing of such default from GPSI, Customer shall be deemed to be in default and GPSI may (at its sole election) remove or disable the System, pursue such other and further remedies as it may have at law or in equity, or any combination of the foregoing.

9.3. Notice. All notices required, permitted or given in accordance with the provisions of this Agreement shall be in writing, and either hand-delivered or delivered by recognized overnight courier to the offices listed in the first paragraph of this Agreement or such other address as either party may designate by notice as specified in this section.

9.4. Provided that the System is maintained properly pursuant to Customer's obligations under this Agreement, GPSI warrants that the installed System will provide distance measurements within established performance parameters pertaining to System components when the System is operated under conditions that are typically encountered on a golf course, specifically but without limitation: clear access to satellites and reasonably clear weather with temperatures between 32°F and 120°F. Customer acknowledges that GPS-produced distances are subject to a margin of error. Customer further acknowledges that terrain and topography affect the margin of error on a particular GPS receiver and that the margin of error may be increased under certain topographical conditions. WARRANTIES CONTAINED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE GOVERNING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE LIMITED WARRANTY PROVISIONS SHALL BE GPSI'S



SOLE LIABILITY WITH REGARD TO GPSI SYSTEM. GPSI SHALL, IN NO EVENT, BE LIABLE FOR DAMAGES, FOR LOSS OF PROFIT, GOODWILL, OR OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGE SUFFERED BY CUSTOMER OR ITS CUSTOMERS AS A RESULT OF THE USE OF THE SYSTEM SERVICED UNDER THIS AGREEMENT, EVEN IF DAMAGES COULD HAVE BEEN FORESEEN AND WHETHER OR NOT GPSI HAS BEEN APPRISED BY CUSTOMER OR ITS CUSTOMERS FOR THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER'S EXCLUSIVE REMEDY UNDER THE WARRANTY PROVISIONS SHALL BE LIMITED TO, AT GPSI'S OPTION, REPAIR, PERFORMANCE, ADJUSTMENT AND/OR REPLACEMENT, OR ANY COMBINATION THEREOF IN AN AMOUNT NOT TO EXCEED THE COST OF SERVICES PROVIDED, AS REASONABLY DETERMINED BY GPSI, PROVIDED, HOWEVER, THAT GPSI HAS RECEIVED WRITTEN NOTICE OF ANY SUCH WARRANTY CLAIM, SPECIFYING THE NATURE THEREOF, WITHIN THE APPLICABLE WARRANTY PERIOD. THESE WARRANTIES ARE MADE ONLY TO CUSTOMER AND ARE NOT TRANSFERABLE TO ANY OTHER PERSON OR ENTITY. ALL WARRANTY CLAIMS MUST BE MADE BY AN AUTHORIZED REPRESENTATIVE OR AGENT OF CUSTOMER. EXCEPT AS OTHERWISE PROVIDED HEREIN, GPSI SHALL NOT BE LIABLE TO CUSTOMER, OR ANY OTHER PERSON OR ENTITY, FOR ANY CLAIM OR DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM THE FURNISHING OF MATERIAL AND SERVICE SOLD HEREUNDER UPON WHICH ANY CLAIM OF WARRANTY LIABILITY IS BASED.

9.5. General. This Agreement, together with the exhibits and schedules referred to in it, constitutes the entire agreement between the parties pertaining to the within subject matter and supersedes any prior understandings or oral or written. This Agreement may not be varied, modified, or amended except in writing signed by the parties. Waiver by either party of any breach or violation or default of any provision of this Agreement will not operate as a waiver of such provision or of any subsequent breach or violation or any default. The failure or refusal of any party to exercise any right or remedy shall not be deemed to be a waiver or abandonment of any right or remedy. If any term of this Agreement is for any reason invalid or unenforceable, the rest of the Agreement remains fully valid and enforceable. The headings in the Agreement are for convenience of reference only and do not constitute a part of it. The headings do not affect its interpretation. This Agreement shall be governed by and construed in accordance with the procedural and substantive laws of the State of Delaware. This Agreement may be executed by facsimile and/or electronic signature. The parties agree that this Agreement was fully negotiated by the parties; therefore, no provision of this Agreement shall be interpreted against any party because such party or its legal representative drafted such provision. All work performed by GPSI in connection with the services to be performed under this Agreement shall be performed by GPSI as an independent contractor and not as the agent of Customer. GPSI may subcontract any or all of the work to be performed under this Agreement but shall retain full responsibility for the work so subcontracted.

9.6. Effective Date. The Effective Date of this Agreement shall be the date when the last of either GPSI or Customer executes this Agreement, as set forth herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

GPSI Leasing II - Accord, LLC

City of Ankeny

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## EXHIBIT A

### Service Plan Terms and Conditions

#### 1. Scope of Service

1.1. Defective Components. GPSI shall provide maintenance service as provided for in paragraph 2.3 and 2.4, at its expense, to repair, modify or replace System components, as necessary that are defective in workmanship ("Service"). GPSI does not warrant that the operation of the System shall be uninterrupted or completely error-free.

1.2. Exclusions. Service shall not include: (1) maintenance, repair or replacement of parts damaged or failing to operate due to acts of God, including without limit storms, atmospheric disturbances, lightning, fire, hail, and flood; acts of government, including war; catastrophes, accident, neglect, misuse, failure of satellites, failure of electrical power, fault or negligence of Customer, causes external to the System or from any other cause beyond the control of GPSI; (2) service and repair of accessories, attachments, or any other devices not specifically listed herein; (3) changes, modifications or alterations in or to the System required due to new construction or changes to the golf course or facilities; (4) graphical changes after acceptance of the System, (5) software damage caused by unauthorized use.

#### 2. Customer Responsibilities

2.1. Problem Notification. Customer agrees to promptly notify GPSI Customer Support in the event of any System or component failure and provide diagnostic assistance to support GPSI's maintenance service efforts.

2.2. To Contact Customer Support. Customer shall have reasonable access to GPSI Customer Support during business hours. GPSI Customer Support provides user support, troubleshooting, and diagnostic assistance and is Customer's point of contact for reporting system problems or requesting GPSI service.

a. For all routine requests and status inquiries, contact Customer Support via email to support@gpsindustries.com.

b. To report emergency or critical system issues contact Customer Support by calling GPSI's toll free Customer Support line at 888-575-2901.

2.3. Component Replacement. Customer agrees to perform the task of changing out replacement components provided by GPSI. Customer will be billed for repair or replacement of returned components that have been damaged due to causes not covered by the Service Plan as described in paragraph 1.2.

2.4. RMA request for defective components. A Return Materials Authorization number (RMA) is required for the return of any defective component. To obtain an RMA, Customer must contact the Customer Support center at 888-575-2901. If Customer Support determines that the component must be returned for repair, Customer Support will issue an RMA. Customer is then responsible for properly following procedures for returning components as instructed by Customer Support. Any request for special handling such as expedited repair, overnight return delivery, or non-business day delivery may be subject to additional charges billable to Customer. Customer agrees to pay for shipment of components returned to GPSI. GPSI agrees to pay for return shipment to Customer.

#### 3. Definition of Service Plan Elements

3.1. Remote Diagnostics. GPSI accesses the course equipment via the Internet to perform system diagnostics, remote health monitoring or specific troubleshooting procedures to detect, identify or correct failures.

3.2. Software Updates and Enhancements. GPSI shall provide software maintenance for the System Software. Software maintenance provides for bug fixes, patches, corrections, updates and enhancements as available. Software upgrades do not include new software features or hardware product offerings that are sold separately.

3.3. On-site Service. If a problem cannot be resolved through telephone support or by shipping a replacement component, GPSI may dispatch a technician to Customer's site to address the problem. On-site services including labor, materials, and reasonable travel expenses are chargeable for site visits that result from out-of-scope problems.

3.4. Fleet Change Out. A golf car fleet replacement may require on-site assistance by a GPSI representative or additional cart mounting hardware or both. On-site services for fleet replacements are chargeable according to the rates listed in Exhibit B. GPSI REQUIRES 90 DAYS PRIOR NOTICE FOR ANY FLEET REPLACEMENT SERVICES.

## EXHIBIT B

### Pricing of Additional Services

Services not covered under Service Terms and Conditions (Exhibit A) or that may be requested from time to time are available according to the prices and terms below. All prices and terms for additional services are subject to change.

<b>Description</b>	<b>Prices</b>
Graphical Changes	US\$65 / half hour
Mapping Changes	US\$65 / half hour plus travel and expenses at reasonable cost
On-site service for items not covered under Service (due to external causes or at customer's requests for additional services)	US\$400 per half day on site plus \$40 per hour travel time to and from site plus travel and expenses at reasonable cost; plus any applicable material charges.
Repair of GPS unit for damage not covered under Service	<p>Level 1: \$100 - Damage to exterior plastic housing. Does not include damage to the touch screen or LCD display,</p> <p>Level 2: \$200 - Broken or cracked touch screen or LCD display,</p> <p>Level 3: Complete loss including water damage or damage to internal components.</p> <p>Replace with refurbished VDU \$600 Replace with new VDU \$950</p>
Fleet Replacement Like-to-Like car changeover ( i.e. Yamaha electric to Yamaha electric which requires no additional or replacement mounting hardware), Customer may selection option a or b (90 days advance notice required):	
a- By Customer (2-3 people) + 1 GPSi employee	US\$20/unit plus travel and expenses at reasonable cost
b- By GPSi (2-3 people) on-site	US\$42/unit plus travel and expenses at reasonable cost
Fleet Replacement different type cars; (90 days advance notice required):	Quoted on case by case basis

**Payment Terms for Additional Services:** For orders up to US\$1,500, GPSi will provide services upon receipt and confirmation of the order. Payment will be due upon delivery of services. For orders of US\$1,500 or more, GPSi requires a purchase order number or an advance deposit payment equal to 50% of the order price with the final payment due upon delivery of services. GPSi at its sole discretion reserves the right to hold orders for accounts that have outstanding payables beyond terms. Scheduling of services depends on material lead-times and the backlog of service orders at the time of order confirmation.



## AUTOMATIC PAYMENT PLAN

### Electronic Funds Transfer (EFT) Enrollment

EFT enrollment is required according to the payment terms of the Agreement. Please complete the information below and return this form along with a voided check.

**Authorization:**

Customer hereby authorizes GPS Industries, LLC ("GPSI") to deduct all payments when due under this Agreement, according to the terms and conditions of the Agreement from the account listed below by electronic funds transfer for the Term of the Agreement.

Authorized Signer's Name	
Name on Bank Account	
Transaction Date	1 <sup>st</sup> Day of Month
Amount of Rent	\$ _____ (Applicable tax will be added to this amount)
Bank Account Number	
Routing Number	
Complete Name of Bank	
Mailing Address of Bank	
Date and Signature	

Date

Bank Signature of Depositor

(Required for banks located outside the US)	
SWIFT CODE	

If you wish to have this completed form returned to you as confirmation of this enrollment, please provide the following:

Name: \_\_\_\_\_

Fax Number: \_\_\_\_\_

THIS INFORMATION TO BE COMPLETED BY GPSI

EFT payments will begin with the payment due on \_\_\_\_\_.