

Terms and Conditions for FitPlan.com Premium Services

Last Updated: September 1, 2020

Version: 2020.1

These Terms and Conditions for FitPlan.com Premium Services (these “**Terms**”) are an agreement between you and Garmin Services, Inc. or its applicable affiliate (collectively, “**Garmin**”). Garmin is sometimes referred to in these Terms as “we,” “us” or “our”. These Terms set forth the terms and conditions governing your subscription to and use of the various Premium Services offered by Garmin on FitPlan.com and related websites (the “**Premium Services**”), including but not limited to Dot Com Call Signs, eAPIS, FitLogic, FitPlan Manager and Runway Analysis.

PLEASE READ THESE TERMS CAREFULLY BEFORE USING OR SUBSCRIBING TO ANY PREMIUM SERVICES. By using or subscribing to any Premium Services, you signify your agreement to these Terms. If you do not agree to these Terms, you may not use or subscribe to any Premium Services.

NOTHING IN THESE TERMS IS INTENDED TO REDUCE YOUR MANDATORY CONSUMER RIGHTS UNDER THE LAWS OF YOUR LOCAL JURISDICTION. IF THERE IS A CONFLICT BETWEEN YOUR MANDATORY CONSUMER RIGHTS AND THESE TERMS, YOUR MANDATORY CONSUMER RIGHTS UNDER THE LAWS OF YOUR LOCAL JURISDICTION WILL PREVAIL.

1. Premium Services and Plans

- 1.1. Garmin offers several Premium Services. Information regarding the various subscription plans offered by Garmin is posted in connection with the applicable Premium Service.
- 1.2. **The term of your subscription to a Premium Service starts when you first sign up for the Premium Service. If you select to have your subscription automatically renew, your subscription will automatically renew until you terminate your subscription as provided in these Terms. Unless Garmin notifies you otherwise, the duration of each renewal term will be the same duration as the original term.**
- 1.3. The Premium Services are for your own personal use. You may not sell, rent, lease or otherwise charge for the Premium Services or any information or services associated with or derived from the Premium Services without Garmin's written permission. You may not use the Premium Services for the provision of outsourcing, service bureau or similar services to third parties.
- 1.4. The Premium Services may be provided to you on behalf of Garmin by certain affiliates and third-party service providers of Garmin. You acknowledge that these affiliates and third-party services providers are entitled to provide the Premium Services to you.
- 1.5. Your use of a Premium Service with tracking or position reporting features must be in compliance with applicable laws and regulations. You are responsible for ensuring compliance with any such requirements and regulations, including, without limitation, obtaining the consent of all applicable individuals.
- 1.6. If you are under the applicable age of majority in your local jurisdiction, you must have the permission of your parent or guardian to agree to these Terms and use the Premium Services.

2. Cancellation

- 2.1. To cancel your subscription to a Premium Service, you must submit a request to support@FitPlan.com. Your request must include the FitPlan.com username, email address associated with your Garmin account and the billing address used for your subscription plan. Failure to submit the proper information can delay the implementation of your cancellation request.
- 2.2. Notwithstanding anything in these Terms to the contrary, Garmin will provide you prior notice of any material changes to these Terms. If Garmin makes material changes to these Terms or the Premium Services that have a material adverse impact on your use of the Premium Services, you may cancel your subscription and Garmin will provide you with a pro-rata refund of any amounts already paid by you. In order to cancel your subscription, you must submit a cancellation request as described in Section 2.1 above, specify that you are terminating your subscription following a material change to these Terms or the Premium Services, and describe the material change in question.
- 2.3. If you are in breach of these Terms, or if you act in any manner which clearly shows you do not intend to, or are unable to, comply with these Terms, Garmin may terminate your subscription and discontinue the provision of some or all Premium Services to you at any time without notice or liability to you (except where prior notice is required under applicable laws, standards and codes). Garmin may also terminate these Terms if required to do so by any governmental regulatory body and/or law.

- 2.4. Unless otherwise agreed in writing by Garmin, if you cancel your subscription to any Premium Service, your cancellation will take effect at the end of the then-current subscription term. You must cease using Premium Service immediately once the cancellation of your subscription to that Premium Service takes effect.

3. Fees and Payment

- 3.1. Unless otherwise agreed in writing by Garmin, all fees for Premium Services must be paid in advance. Payments for Premium Services are non-refundable and any unused Premium Services may not be transferred to a third-party account.
- 3.2. Subject to applicable law, if your bill is not paid within 10 days after the due date, you will be charged a late fee of (i) 1.5% per month or (ii) the maximum legal rate, whichever is lower. This late fee is applicable to the unpaid balance as of the due date and will be billed on subsequent invoices and statements. Garmin may suspend any or all of your Premium Services in the event of late payment in accordance with any applicable standards or codes. If it does so, Garmin may charge a reactivation fee.
- 3.3. Unless stated otherwise by Garmin, the published price for the Premium Services does not include all sales, value added, usage, excise, ad valorem, goods and services, harmonized sales, property or any other taxes now or hereafter imposed, directly or indirectly, by any governmental authority or agency. You are required to pay these taxes not already collected for you by Garmin and these taxes may be added to the final price charged to you in your bill.
- 3.4. The published price for the Premium Services also may not include certain applicable surcharges and/or fees associated with the Premium Services. These surcharges and/or fees may be added to your bill by Garmin in accordance with all applicable laws, standards and codes. Garmin also reserves the right to charge your Payment Method immediately with respect to any use-based surcharges and/or fees related to certain Premium Service features that you may request, including but not limited to APIS Premium Services for Mexico.
- 3.5. Unless otherwise agreed in writing by Garmin, following your initial payment, Garmin will bill your Payment Method at the time of renewal of your Premium Service subscription. This bill must be paid in the currency specified when you subscribe.
- 3.6. Garmin may offer promotions from time to time that may affect pricing and that are governed by terms and conditions separate from these Terms. If there is a conflict between the terms for a promotion and these Terms, the promotion terms will govern. You agree to the terms of the promotion, including any time limitations, and you agree to provide your Payment Method information for any additional services and to extend the Premium Services beyond the promotional period. If you use a promotion code for your purchase, you certify that you qualify for the applicable promotion.

4. Payment Method; Collection

- 4.1. Unless stated otherwise by Garmin, use of the Premium Services requires a current, valid, accepted method of payment, such as a credit card or payment via an account with a third party (a "**Payment Method**"), and is subject to credit approval by Garmin. Garmin may seek authorization of your Payment Method prior to your first activation/purchase to validate that you can charge the applicable fees to access the Premium Services. By authorizing Garmin to charge your Payment Method for the fees associated with your subscription, you are authorizing Garmin to automatically continue charging that Payment Method (or any replacement Payment Method if the original Payment Method is renewed, lost, stolen, or changed for any reason by the issuer, and the issuer informs Garmin of the new replacement Payment Method account) for all fees or charges associated with your subscription, including any renewal fees as described below. You authorize the Payment Method issuer to pay any amounts described herein and authorize Garmin, or any other company that acts as a billing agent for Garmin, to continue to attempt to charge all sums described herein to your Payment Method account until such amounts are paid in full.
- 4.2. The first time your Payment Method fails, Garmin will notify you via an email message sent to your last known email address. If your Payment Method continues to fail, a second notice will be sent 7 days later, followed by a final notice 14 days after the first notice. If the problem is not rectified 30 days after the first notice, your subscription to any Premium Services will be terminated.
- 4.3. Garmin's termination of your subscription will not relieve you of any otherwise applicable fees that may be due. Additionally, Payment Method failure will result in late payment fees and, if you wish to reactivate your subscription, a reactivation fee. Until all applicable payments and fees have been paid in full, you will not be able to sign up for any new Premium Services.
- 4.4. BY AUTHORIZING GARMIN TO CHARGE YOUR PAYMENT METHOD, YOU REPRESENT THAT YOU ARE THE AUTHORIZED OWNER OR USER OF YOUR PAYMENT METHOD AND THAT YOU ARE A RESPONSIBLE

PARTY FOR THAT PAYMENT METHOD. YOU GRANT GARMIN ACCESS TO AND THE RIGHT TO (A) REVIEW THE INFORMATION IN, AND YOUR REFERENCES SUBMITTED WHEN YOU SUBSCRIBE, (B) OBTAIN YOUR CREDIT REPORTS AND CREDIT HISTORY (IF THIS IS PERMITTED BY THE LAW OF YOUR LOCAL JURISDICTION), AND/OR (C) OBTAIN ALL OTHER RELEVANT INFORMATION AND MATERIALS THAT GARMIN REASONABLY BELIEVES IS DESIRABLE FOR THE PURPOSE OF IDENTIFYING YOUR FINANCIAL STATUS AND CREDITWORTHINESS. FURTHER, YOU AUTHORIZE GARMIN TO CHARGE YOUR PAYMENT METHOD IN ORDER TO RENEW YOUR SERVICE PRIOR TO THE START OF EVERY BILLING TERM, UP UNTIL SUCH TIME THAT YOU CANCEL THE SERVICE IN ACCORDANCE WITH THESE TERMS.

- 4.5. Subject to applicable law, you agree to pay Garmin for all collection costs, including without limitation the standard fees of any collection agency, reasonable attorney and legal fees, and any other costs incurred by Garmin in exercising any of its rights under these Terms.

5. User Account; Websites; Content

- 5.1. Use of the Premium Services requires you to create an account. You agree to provide, maintain and update true, accurate, current and complete information about yourself and (if applicable) your aircraft as prompted by our registration processes (the "**Registration Data**"). You agree not to impersonate any person or entity or misrepresent your identity or affiliation with any person or entity, including using another person's username, password or other account information, or another person's name, likeness, voice, image or photograph. You also agree to notify us promptly at garminsecurity@garmin.com of any unauthorized use of your username, password, other account information, or any other breach of security that you become aware of involving or relating to any Premium Services.
- 5.2. Garmin may suspend or terminate your account and your ability to use any paid or unpaid service for failure to comply with these Terms or applicable website terms of use.
- 5.3. You are and will remain solely responsible for any content that you create, transmit or display using the Premium Services ("**User Content**") and for the consequences of your actions by doing so. You will be solely liable for any damage resulting from any infringement of copyrights, proprietary rights, or any other harm resulting from your User Content. You retain copyright and any other rights you already hold in User Content which you create, transmit or display. You acknowledge and agree that by creating, posting or displaying any such User Content, you give Garmin a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute any such User Content. Furthermore, you agree that this license includes a right for Garmin to make such User Content available to other companies, organizations or individuals as required for the provision of Premium Services.
- 5.4. Your use of any Garmin website is governed by the terms and conditions of use contained on each such website. Your installation or use of any downloadable software provided by Garmin is governed by the end-user license agreement delivered with such software.
- 5.5. The Premium Services may include applications developed by third-parties. Garmin is not responsible for and makes no representations or warranties regarding the content or functionality of these third-party applications or the privacy practices of such third-party developers. If you decide to download and use any of these third-party applications, then you do so at your own risk.

6. Garmin's Liability

- 6.1. Garmin makes no representations or warranties about the accuracy, reliability, completeness, or timeliness of the Premium Services or about the results to be obtained from using the Premium Services. Any use of the Premium Services is at your own risk. Changes are periodically made to Premium Services and may be made at any time. Some Premium Services (or portions thereof) may be provided by third parties and Garmin will not be held responsible for any such Premium Services (or portions thereof) provided by third parties.
- 6.2. TO THE MAXIMUM EXTENT ALLOWABLE UNDER APPLICABLE LAW, GARMIN DOES NOT WARRANT THAT THE PREMIUM SERVICES WILL OPERATE ERROR-FREE OR THAT THE PREMIUM SERVICES ARE FREE OF COMPUTER VIRUSES OR OTHER HARMFUL GOODS. IF YOUR USE OF THE PREMIUM SERVICES RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT OR LOSS OF PROFITS OR DATA, GARMIN WILL NOT BE RESPONSIBLE FOR THOSE COSTS.
- 6.3. TO THE MAXIMUM EXTENT ALLOWABLE UNDER APPLICABLE LAW, THE PREMIUM SERVICES ARE PROVIDED ON AN 'AS IS' BASIS WITHOUT ANY WARRANTIES OF ANY KIND. GARMIN, TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIMS ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OF PROPRIETARY OR THIRD PARTY RIGHTS, AND THE WARRANTY OF FITNESS FOR PARTICULAR PURPOSE.
- 6.4. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AND TO THE MAXIMUM EXTENT ALLOWABLE

UNDER APPLICABLE LAW, GARMIN DOES NOT WARRANT THAT TAKEOFF AND LANDING WEIGHTS PROVIDED VIA THE PREMIUM SERVICES ARE ACTUAL MAXIMUM TAKEOFF AND LANDING WEIGHTS OR THAT LANDING DISTANCES PROVIDED VIA THE PREMIUM SERVICES ARE ACTUAL LANDING DISTANCES. You are solely responsible for assuring that no material discrepancy exists between the flight manual for your aircraft and any data provided via the Premium Services. If a discrepancy exists, the flight manual for your aircraft shall supersede the data provided via the Premium Services.

- 6.5. Advice and statements made by Garmin personnel, such as statements with respect to international handling and overflight fees, are not, and are not intended to, constitute legal or tax advice. You should contact your attorney to obtain advice with respect to any particular legal or tax matter.

7. Disclaimer of Damages

- 7.1. Your use of the Premium Services is at your own risk. If you are dissatisfied with the Premium Services or with these Terms, your sole remedy is to discontinue use of the Premium Services.
- 7.2. GARMIN AND ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS AND SUPPLIERS, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS HEREBY EXPRESSLY EXCLUDE LIABILITY FOR ANY DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, INCIDENTAL, EXEMPLARY, AND CONSEQUENTIAL DAMAGES, LOSS OF OR DAMAGE TO ANY AIRCRAFT, LOST PROFITS, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION) RESULTING FROM THE USE OR INABILITY TO USE THE PREMIUM SERVICES (INCLUDING ANY DELAY IN PROVIDING OR FAILURE TO PROVIDE THE PREMIUM SERVICES), WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT GARMIN IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU, IN WHICH CASE SUCH EXCLUSION OR LIMITATION APPLIES TO THE MAXIMUM EXTENT ALLOWABLE UNDER THE APPLICABLE LAW. In New Jersey, this disclaimer of damages does not apply to intentional or reckless acts or gross negligence on the part of Garmin.

8. Indemnification

- 8.1. To the maximum extent permitted by law, you agree to indemnify, defend and hold harmless Garmin and its affiliates, licensors, service providers and suppliers and 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 unauthorized use of the Premium Services and any associated software.

9. Governing Law

- 9.1. All legal issues arising from or related to the use of the Premium Services will be construed in accordance with and determined by the laws of the State of Kansas, without respect to its conflict of laws principles. By using or subscribing to the Premium Services, you agree that the exclusive forum for any claims or causes of action arising out of your use of the Premium Services is the United States District Court for the District of Kansas, or any Kansas state court sitting in Johnson County. You hereby irrevocably waive, to the fullest extent permitted by law, any objection which you may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.
- 9.2. The United Nations Convention on the International Sale of Goods is specifically excluded from application to these Terms.

10. General

- 10.1. Access or use of the Premium Services in locations outside of the United States is done on your own initiative. You are solely responsible for compliance with local laws, if and to the extent local laws are applicable. Access to the Premium Services which, in whole or in part, is illegal or penalized is prohibited. You may not use or otherwise export or re-export the Premium Services except as authorized by United States law and the laws of the jurisdiction(s) in which the Premium Services are obtained. You represent and warrant that you are not (a) located in any country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, or (b) listed on any U.S. Government list of prohibited or restricted parties including the Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Persons List or Entity List. You also agree that you will not use the Premium Services for any purposes prohibited by United States law. Additionally, you will not export or re-export the Premium Services (a) into (or to a national or resident of) any country to which the United States has embargoed goods; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's restricted lists.

- 10.2. These Terms and any applicable website terms of use, constitute the entire agreement between you and Garmin with respect to the subject matter hereof. Any headings are provided for convenience only.
- 10.3. The failure of Garmin to exercise or enforce any right under these Terms shall not constitute a waiver of such right. All rights and remedies granted to Garmin are cumulative and not alternate. If any provision of these Terms is found invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining terms and conditions of these Terms, 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 these Terms, including payment obligations, disclaimer of warranty, rights of indemnity and limitation of liability, shall survive such termination.
- 10.4. You may not assign these Terms or any of your rights or obligations hereunder, but Garmin may assign these Terms and any of its rights and obligations hereunder. These Terms inures to the benefit of and is binding on the parties' respective successors and permitted assigns.

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