



**MASTER TERMS AND CONDITIONS FOR THE PROVISION OF  
TRACKER PRODUCTS AND SERVICES TO BUSINESS USERS**

**1. RECORDAL**

- 1.1 Tracker currently provides the Services in the Territory (save as provided in 6.7.2).
- 1.2 The Client wishes to receive the Services from Tracker and Tracker wishes to provide the Services to the Client on the terms and conditions set out in this document.
- 1.3 The Parties accordingly enter into an Agreement on the terms and conditions set out herein.

**2. DEFINITIONS AND INTERPRETATION**

- 2.1 In this Agreement, the following words and expressions shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and cognate words and expressions shall bear corresponding meanings:
  - 2.1.1 "Affiliate" means any member of Tracker's group of companies, including any entity or person that is a subsidiary or holding company of Tracker or which is a subsidiary of Tracker's holding company;
  - 2.1.2 "Anonymised Data" means Personal Information and Usage Data in a form which does not identify any particular living natural person or any existing juristic person, and from which the identity of a particular living natural person or existing juristic person cannot be determined;
  - 2.1.3 "Agreement" means the Application and this document titled '*Master terms and conditions for the provision of Tracker products and services*' as amended from time to time in the way set out in this document. For purposes of each Order accepted by Tracker, a reference to this "Agreement", means that Order incorporating the terms of the Application and this document titled '*Master terms and conditions for the provision of Tracker products and services*';
  - 2.1.4 "Agreement Commencement Date" means the date of installation of the first Unit pursuant to the first Order subject to clause 4.2;
  - 2.1.5 "Application" means the document titled '*Business Application for the provision of Tracker products and services*' Signed by or on behalf of the Client, and the annexures to that document;
  - 2.1.6 "Authorised User" means a person identified in the Application as an 'Authorised User' and, from time to time after the completion of the Application, such other persons as notified by the Client in Writing to Tracker in the manner required by Tracker, and who is authorised to

perform the task/s as indicated in the Application Form or as notified by the Client in Writing to Tracker in the manner required by Tracker;

- 2.1.7 "Business Rescue" shall be as defined in section 128(1)(b) of the Companies Act;
- 2.1.8 "Companies Act" means the Companies Act, 71 of 2008;
- 2.1.9 "Claim" means a claim, action, demand, suit or proceeding;
- 2.1.10 "Client" means the entity described as the "Client" on the Application;
- 2.1.11 "Commissioned" means the activation of a Unit by Tracker such that the Unit is actively transmitting signals to Tracker on Tracker's communications network;
- 2.1.12 "Confidential Information" means *inter alia*, Corporate Information (all and any information, whether or not recorded in documentary form or on computer disk or tape, relating to the business, business methods, corporate plans, management systems, finances, customer details, maturing new business opportunities or research and development projects of the Disclosing Party), Data (any and all data relating to customers, telematics data and any other data that may from its nature be deemed confidential); Intellectual Property Information (all intellectual property pertaining to all software, firmware, algorithms, trademarks, patents, design rights, copyrights, trade names, trade secrets, proprietary information, technology, rights and licenses, proprietary rights and processes, whether registered or not, know-how, research and development in progress and any and all other intellectual property, including, without limitation, all things authored, discovered, developed, made, perfected, improved, designed, engineered, devised, acquired, produced, conceived and first reckoned to practice by the disclosing party as a result of or in connection with its business), Marketing Information (all and any information, whether recorded in documentary form or on computer disk or tape, relating to the marketing of any past, present or future product or service including, without limitation, targets and statistics, market share statistics, marketing surveys and plans, market research reports, advertising and promotional material, the names, addresses, telephone numbers, contact names and identities of customers (existing and future), the nature of its business operations and requirements) and other information, whether or not recorded in documentary form or on computer disk or tape, to which attaches an equivalent level of confidentiality, and any other information which is identified as confidential and not specifically included herein;
- 2.1.13 "Fees" means all fees, charges (including Subscription Charges), expenses, costs, duties, taxes, disbursements, commissions, levies and other amounts;
- 2.1.14 "Force Majeure" has the meaning assigned to it in clause 22;
- 2.1.15 "Financially Distressed" shall be as defined in terms of section 128(1)(f) of the Companies Act, and "Financial Distress" shall have a corresponding meaning;



- 2.1.16 "Improvements" means, in relation to any Materials, all new or enhanced functionality, changes, modifications, improvements, developments, customisations, or adaptations; and "Improve" shall have a corresponding meaning;
- 2.1.17 "Indemnified Parties" means Tracker, its Affiliates, and the Third Party Business Partners. An "Indemnified Party" shall mean any of them;
- 2.1.18 "Intellectual Property Rights" includes all current and future intellectual property rights of any kind whatsoever and however embodied which may subsist or be capable of protection wherever in the world, including (without limitation) patents, trademarks, present and future rights of copyright, rights in and to designs, rights in and to inventions, topography rights, rights in and to trade secrets, rights in and to: trade names, business names, domain names and logos, the right to keep information confidential and private, rights in and to know-how, rights in and to databases (including rights of extraction), and all rights and forms of protection of a similar nature or having equivalent effect to any of them which may subsist or be capable of protection as at the Agreement Commencement Date or thereafter wherever in the world, whether or not any of these is registered and including applications for any such rights or registration thereof and any goodwill related to or arising from such rights;
- 2.1.19 "Laws" means all laws, regulations, by-laws, rules, directives, orders and other requirements of any government or any government agency, body or authority, including any regulator or court;
- 2.1.20 "LEA" means law enforcement agencies other than the Police, including but not limited to the South African Defence Force, the Metro Police Departments and the National and Provincial Traffic Departments and includes any member, employee, servant or agent of the LEA;
- 2.1.21 "Loss" means liability, loss, expenses, fines, costs, penalties and damages (including legal fees on an attorney and own client scale as published in the Government Gazette from time-to-time in accordance with the provisions of the Rules Board for Courts of Law Act, 107 of 10);
- 2.1.22 "Materials" means all products, goods, software, software documentation, documentation, literature, materials, tools, data, information, databases, modules, components, compilations of data, methodologies, processes, policies, procedures, techniques, models, configurations, protocols, routines, interfaces (including API interfaces), reports, plans, notes, files, diagrams, manuals, templates, schematics, correspondence, designs, circuit designs, algorithms, specifications, records, equipment, hardware, servers, computers, platforms, computer code, derivative works, and works of authorship, and irrespective of the form and format of the foregoing and whether tangible or intangible, and any Improvements from time to time;
- 2.1.23 "Network Service Provider" means the relevant provider of cellular telecommunications network services and connections thereto;
- 2.1.24 "Order" means (i) in clauses 4 and 5, a request by the Client for a particular Service to be provided in respect of a particular Vehicle/s, as set out in a Vehicle Schedule which has been completed and Signed by the Client and delivered to Tracker; and (ii) in all provisions of this Agreement other than in clauses 4 and 5, a request by the Client for a particular Service to be provided in respect of a particular Vehicle/s, as set out in a Vehicle Schedule which has been completed and Signed by the Client and delivered to Tracker and which has also been accepted by Tracker in the manner set out in clause 4;
- 2.1.25 "Order Commencement Date" means, in respect of each Order that is accepted by Tracker, the date that Tracker notifies the Client that the Unit has been Commissioned in accordance with clause 4.2. Where there is more than one Vehicle specified in an Order that is accepted by Tracker, then the Order Commencement Date shall be the earliest date on which Tracker notifies the Client that a Unit has been Commissioned for a Vehicle that is specified in that Order;
- 2.1.26 "Parties" means Tracker and the Client collectively, and "Party" shall refer to either of them, as the case may be;
- 2.1.27 "Personal Information" means information relating to any person, including but not limited to: (i) information relating to the race, gender, sex, marital status, national, ethnic or social origin, colour, age, disability, language and birth of the person; (ii) information relating to the education or the medical, financial, criminal or employment history of the person; (iii) information relating to the financial affairs of the person; (iv) card details and transactional data; (v) any identifying number, symbol, e-mail address, physical address, telephone number or other particular assignment to the person; (vi) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; (vii) the views or opinions of another individual about the person; (viii) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person; and (ix) any other information which may be treated or defined as "personal information" in terms of any applicable Laws;
- 2.1.28 "Police" means the South African Police Service as contemplated in the South African Police Service Act 68 of 1995 (as amended from time to time) and includes any member of the



- South African Police Service as contemplated in that Act as well as any employee, servant or agent of the South African Police Service;
- 2.1.29 "Privacy Policy" means the privacy policy of Tracker, accessible at [www.tracker.co.za/support/legal-and-compliance/privacy-policy](http://www.tracker.co.za/support/legal-and-compliance/privacy-policy) as may be amended by Tracker from time to time;
- 2.1.30 "Process" means collect, receive, record, organise, collate, store, develop, update, modify, retrieve, alter, consult, use, disseminate or perform any other act or action, including any other act or action which may be treated or defined as "process" or "processing" in terms of any applicable Laws. The word "Processed" shall have a corresponding meaning;
- 2.1.31 "Services" means the services set out in Annexure "B" to the Application;
- 2.1.32 "Signed" shall bear the meaning ascribed to it in Section 13 of the Electronic Communications and Transactions Act, 25 of 2002 (as amended).
- 2.1.33 "Subscription Charge" means the monthly fee payable by the Client to Tracker for the Services in respect of each Order, set out in Annexure "A" to the Application, as varied in accordance with the further provisions of this Agreement;
- 2.1.34 "Territory" means the Republic of South Africa;
- 2.1.35 "Third Party Business Partner/s" means Tracker's suppliers, agents, representatives and service providers and third parties that are involved in the provision of the Services;
- 2.1.36 "Tracker" means Tracker Connect Proprietary Limited, Registration No. 2011/003946/07, a private company registered in the Republic of South Africa with its business address situated at Stonemill Office Park, 340 Republic Road, Darrenwood; 2194;
- 2.1.37 "Tracker Materials" means any and all (i) Materials that are owned or acquired by Tracker before or after the Agreement Commencement Date; (ii) Materials that are licensed to Tracker by a third party, and (iii) Materials that are used by Tracker or the Third Party Business Partner in providing the Services. The Tracker Materials shall include the SIM Card, software, middleware and firmware that may be included or placed in the Unit or used together with the Unit;
- 2.1.38 "Tracker Website" means the website at the address [www.tracker.co.za](http://www.tracker.co.za);
- 2.1.39 "Unit" means the equipment which Tracker requires to be installed in a vehicle and used to provide the Services;
- 2.1.40 "Usage Data" means information which is Processed during the course of providing the Services, or in the Client using the Services or the Tracker Website, or through the use, operation and functioning of the Unit or the Vehicle detailed in an Order;
- 2.1.41 "VAT" means Value Added Tax charged and levied in terms of the Value Added Tax Act No 89 of 1989, as amended from time to time, at the prevailing rate, and any other indirect tax additionally imposed; and
- 2.1.42 "Vehicle/s" means any motor vehicle or other movable article, including mobile generators;
- 2.1.43 "Vehicle Schedule" means the form annexed to the Application which is required to be completed and Signed by the Client and sent to Tracker as part of each new or additional Order;
- 2.1.44 "Website Use Terms" means the terms and conditions of use of the Tracker Website (as amended by Tracker from time to time) which are accessible at the following link: [www.tracker.co.za/support/legal-and-compliance/terms-of-use](http://www.tracker.co.za/support/legal-and-compliance/terms-of-use) and, to the extent that the Client utilises the website of any Third Party Business Partners when using the Services, the website terms and conditions which appear on the website of such Third Party Business Partners.
- 2.1.45 "Writing" and "Written" shall bear the meaning ascribed to it in Section 12 of the Electronic Communications and Transactions Act, 25 of 2002 (as amended).
- 2.2 In this Agreement, clause headings are inserted for convenience only and shall not be used to interpret this Agreement, and unless stated otherwise or inconsistent with the context, the following rules of interpretation will apply:
- 2.2.1 references to a statute or statutory provision include any subordinate legislation made from time to time under that statute or provision and include that statute or provision as amended, modified or re-enacted from time to time;
- 2.2.2 words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;
- 2.2.3 references to a "person", "entity", "third party" or "party" shall include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons and their successors-in-title;



- 2.2.4 if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 2.2.5 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement;
- 2.2.6 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;
- 2.2.7 where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by no later than the next succeeding Business Day;
- 2.2.8 to the extent allowed by law, the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *eiusdem generis* rule) shall not apply, and whenever the word "include", "includes" or "including" is used, this shall mean "include but not limited to", "includes but is not limited to" and "including but not limited to" respectively;
- 2.2.9 the terms "holding company", "subsidiary" and "group of companies" shall bear the meanings assigned to them in the Companies Act, 71 of 2008, as amended from time to time;
- 2.2.10 in the event of any conflict or inconsistency between this document, the Application, or an Order, then this document will prevail over the Application and the Order to the extent of such conflict or inconsistency;
- 2.2.11 to the extent allowed by law, the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of this Agreement (i.e. the *contra proferentem* rule), shall not apply; and
- 2.2.12 the expiration or termination of this Agreement or an Order shall not affect such of the provisions of this Agreement or such Order which are expressly provided to operate after any such expiration or termination, or which implicitly or of necessity must continue to have effect after such expiration or termination, despite that the relevant provisions themselves do not provide for this.

### 3. DURATION

- 3.1 Subject to 3.3, this Agreement will be deemed to have commenced on the Agreement Commencement Date and will continue indefinitely until terminated by either Party in Writing to the other.
- 3.2 Subject to earlier termination in accordance with the further provisions of this Agreement, in respect of each Order, each Order in respect of Services to be provided off telematics Units shall commence on the Order Commencement Date and:
  - 3.2.1 if the Client elects in the applicable Vehicle Schedule for the paid installation option to apply to the Order, the Order will continue indefinitely until it is terminated by either Party upon 1 (one) calendar month's written notice of termination;
  - 3.2.2 if the Client elects in the applicable Vehicle Schedule for the pre-paid fitment option to apply to the Order, the Order will continue for the period so pre-paid, where after it will continue indefinitely until it is terminated by either Party upon 1 (one) calendar month's written notice of termination;
  - 3.2.3 if the Client elects in the applicable Vehicle Schedule for the free fitment option to apply to the Order, the Order will continue for a period of 36 months from the Order Commencement Date, where after it will continue indefinitely until terminated by either Party upon 1 (one) calendar month's written notice of termination. If the Order is cancelled prior to the expiry of the initial 36 months, the Client will be liable for the value of the outstanding contract period, as liquidated damages.
- 3.3 Subject to earlier termination in accordance with the further provisions of this Agreement, in respect of each Order, each Order in respect of Services to be provided off camera Units shall commence on the Order Commencement Date and continue indefinitely until it is terminated by either Party upon 1 (one) calendar month's written notice of termination.
- 3.4 Any termination or expiry of this Agreement shall not result in the termination of any Orders currently in force, except to the extent that such Orders are terminated pursuant to the terms of this Agreement or to the extent this Agreement provides otherwise. The termination or expiry of an Order shall not result in the termination of any other Orders currently in force, except to the extent that such Orders are terminated pursuant to the terms of this Agreement.



#### 4. ORDERS

- 4.1 From time to time during the term of this Agreement, the Client may submit an Order to Tracker for Services in relation to one or more Vehicles by completing and signing a Vehicle Schedule for such Vehicles and providing the Vehicle Schedule to Tracker. The submission of an Order to Tracker, or the receipt of an Order by Tracker, does not mean that the Order has been accepted by Tracker and Tracker may choose to reject or accept the Order.
- 4.2 Where Tracker accepts an Order, Tracker will Commission a Unit that is or will be installed in one of the Vehicles listed in the Vehicle Schedule applicable to such Order and will notify the Client when the Unit has been Commissioned. Until Tracker Commissions the Unit and notifies the Client of such Commissioning, Tracker will not have any obligations to deliver the Services requested in the Order or any other obligations arising as a result of that Order. Tracker may notify the Client that a Unit has been Commissioned by way of SMS or e-mail sent to an Authorised User.
- 4.3 An Order must be submitted to Tracker by e-mail addressed to [corporates@tracker.co.za](mailto:corporates@tracker.co.za), or such other e-mail address which Tracker may notify the Client of from time to time.
- 4.4 Each Order:
- 4.4.1 which is accepted by Tracker shall constitute a separate agreement between the Parties and shall be separate and independent to any other Orders;
- 4.4.2 shall be subject to the terms and conditions of this Agreement and the terms and conditions of this Agreement shall, unless otherwise stated or where inconsistent with the context, be deemed to be incorporated in each Order.
- 4.5 In each Vehicle Schedule, the Client will be required to select which of the Services are to be provided in relation to each Vehicle specified in the applicable Vehicle Schedule and, subject to 6.3, Tracker will only provide the selected Services in relation to the relevant Vehicle.
- 4.6 Terms and conditions contained in any document issued or provided by the Client shall not apply and shall not be binding on Tracker.

#### 5. INSTALLATION OF UNITS

##### 5.1 Telematics Units

Given the fact that Tracker requires the use of a Unit in order to render the Services, if Tracker receives an Order from the Client and accepts the Order, subject to the further provisions of

this clause 5, Tracker shall install a Unit (the ownership of which will remain with Tracker) in the applicable Vehicles set out in the Vehicle Schedule forming part of the Order, within a reasonable period after Tracker receives the completed and Signed Order from the Client.

##### 5.2 Camera Units

5.3 Given the fact that Tracker requires the use of a Unit in order to render the Services, if Tracker receives an Order from the Client and accepts the Order, subject to the further provisions of this clause 5, Tracker shall install a Unit in the applicable Vehicles set out in the Vehicle Schedule forming part of the Order, within a reasonable period after Tracker receives the completed and Signed Order from the Client. Certain Vehicles may not be compatible with the Unit and may require an inspection by Tracker prior to the installation of the Unit. To the extent that Tracker determines that a Vehicle is not compatible with the Unit, then Tracker may reject the applicable Order and may refuse to install the Unit in that Vehicle resulting in it being unable to render the Services.

5.4 The Client must make the Vehicle available to Tracker for installation of the Unit at the scheduled time, failing which the Client will be liable for a call-out fee. The Vehicle must also be made available at a suitable location which Tracker reasonably believes to be safe and where there is limited opportunity for third parties to witness the installation of the Unit, failing which Tracker may require the Client to deliver the Vehicle to one of Tracker's fitment centres at which installation of the Unit can occur.

5.5 To the extent allowed by law and subject to clause 15, if the manufacturer of the vehicle or a suitable expert in the make and model of that Vehicle as may be agreed by the Parties (which agreement shall not be unreasonably withheld), determines that the installation by Tracker of the Unit or the Unit itself has materially adversely affected the operation of the vehicle or caused damage to the Vehicle, Tracker shall rectify the problem at its own cost, provided that the Unit or its installation has not been tampered with, modified and/or repaired by persons not authorised to do so by Tracker, or has otherwise been subject to water damage or misuse.

5.6 In the event that a fault is reported to Tracker which fault is not due to the Unit and/or Tracker workmanship, the Client will be liable for the costs incurred for dispatching a technician, as well as a diagnostic fee, upon receipt of Tracker's feedback report on the fault. Such costs and diagnostic fee will be calculated in accordance with Tracker's then prevailing standard pricing.

#### 6. PROVISION OF THE SERVICES

6.1 Subject to clause 6.2, the Services shall commence, in respect of each Order, on the Order Commencement Date.



- 6.2 Where there is more than one Vehicle specified in an Order that is accepted by Tracker, then Tracker will only provide the Services applicable to a particular Vehicle after Tracker has both installed and Commissioned a Unit in the relevant Vehicle.
- 6.3 Tracker shall not be required to provide any Services relating to any Vehicles in which a Unit has not been both installed and Commissioned by Tracker. Where a Unit installed in a Vehicle ceases to be Commissioned, Tracker's obligations to provide any Services in relation to that Vehicle will also cease.
- 6.4 The Services and Materials may include software owned by and licensed to Tracker by Third Party Business Partners, the use of which is subject to certain terms and conditions which terms and conditions are available at [www.tracker.co.za](http://www.tracker.co.za). These terms and conditions form part of this Agreement and the Client indemnifies Tracker in accordance with the provisions of 15.2 in the event of a breach thereof by the Client or its Authorised Users or anyone for which the Client is vicariously liable.
- 6.5 Subject to clause 22, Tracker shall use its reasonable commercial endeavours to maintain the availability of the Services to the Client in the Territory.

#### **Stolen Vehicle Recovery (if applicable)**

- 6.6 If the Vehicle is stolen in the Territory during the term of the applicable Order, Tracker shall use its best endeavours to locate the Vehicle provided that the Service subscribed to by the Client includes the location of stolen or hi-jacked vehicles, and provided further that:-
- 6.6.1 Tracker shall notify the Client once any stolen vehicle has been located, but it shall be the sole responsibility of the Client to report any recovery of the stolen Vehicle by the Client to the Police and Tracker as soon as possible;
- 6.6.2 Tracker does not undertake or warrant that the Services, or any part thereof, will lead to the location or recovery of the stolen vehicle;
- 6.6.3 The Client shall be responsible to make the necessary arrangements with the Police for the return of a Vehicle, unless otherwise agreed between the Parties;
- 6.6.4 Except as set out in clause 6.7, Tracker shall not be liable to render any Services outside the Territory.
- 6.7 Where the Client activates international roaming for the Service, Tracker will endeavour to provide the Services outside of the Territory, provided that:

- 6.7.1 the Client must activate international roaming at least 48 (forty-eight) hours prior to and while the relevant Vehicle is still within the borders of the Republic of South Africa, by contacting Tracker at 0860 60 50 40 and following Tracker's instructions;
- 6.7.2 such Services will be limited to only identifying the general location of the Vehicle outside the Territory;
- 6.7.3 the Client will be liable for any and all telecommunications and international roaming costs incurred, which costs may be allocated to the Client's account and included in the Fees at any time up to 3 months after such costs are incurred. The Client further acknowledges that telecommunications and international roaming costs can be incurred while the Vehicle is outside the Territory and also while the vehicle is near the borders of the Territory but still within the Territory;
- 6.7.4 if a stolen or lost Vehicle has been recovered outside the Territory, the Client will be liable for any and all costs and Fees incurred in returning the Vehicle to the Client. Where such costs and Fees are incurred by Tracker, such costs and Fees can be allocated to the Client's account at any time up to 3 months after such costs and Fees are incurred by Tracker; and
- 6.7.5 the Services may only be provided for so long as the Vehicle is located in geographic areas where there is adequate network coverage or radio frequency network coverage, depending on which kind of network the particular Unit installed in the vehicle requires to operate.
- 6.8 For purposes of clarity, the Client acknowledges that certain Units do not operate off a SIM but are dependent on a radio frequency network.
- 6.9 Where the Client requests Tracker to locate any Vehicle that is reported stolen, the Client acknowledges and agrees that it and an Authorised User:
- 6.9.1 must answer such questions as Tracker may ask for purposes of assessing whether the request is legitimate or is properly authorised or for security purposes. The Client agrees that Tracker may refuse or decline to locate a Vehicle where Tracker is not satisfied with the responses to its questions;
- 6.9.2 must follow the instructions given by Tracker and provide such assistance as may be requested by Tracker, for purposes of locating the Vehicle or assisting in the location of the Vehicle.
- 6.10 Each Authorised User will be deemed to have full power and authority to represent the Client and to make all decisions and provide all information, directions and instructions for and on





behalf of the Client. Without limiting the foregoing, Tracker will be entitled to send notifications and communications for the Client to the Authorised Users and the Authorised Users will, subject to the further provisions of this Agreement, be entitled on behalf of the Client to access the Website, confirm the de-installation and re-installation of Units, notify Tracker of any updates, changes in ownership, lost or stolen Vehicles, and changes to banking details.

## 7. SALE OF VEHICLE

- 7.1 If the Client sells the Vehicle to a third party, the Client may request the buyer of the Vehicle to take over the Order pertaining to the Vehicle, and to enter into an Agreement with Tracker.
- 7.2 Subject to clause 7.3, if Tracker agrees to the transfer of the Order from the Client to the buyer, the Client undertakes to provide Tracker with the contact details of the buyer and the following procedures will apply:
- 7.2.1 the Client must contact Tracker on 0860 60 50 40 in order to arrange the transfer of the Order to the buyer;
- 7.2.2 the buyer must enter into such agreements with Tracker as Tracker may require in order to transfer the Order to the buyer;
- 7.2.3 after the buyer signs the documentation required by Tracker from the time that the change of ownership has been completed on the Tracker system and confirmation of this sent to both the Client and the buyer, the buyer will be treated as having substituted the Client with regards to the Vehicle and the applicable Order shall terminate and be replaced by the separate agreement between Tracker and the buyer.
- 7.3 For purposes of clarity and until such time as Tracker gives the Client the notification in clause 7.2.3, the Order shall not automatically terminate in the event of the sale of the Vehicle to a third party buyer, and the Client shall remain liable for the payment of all Fees (including Subscription Charges) for the remainder of the applicable Order to which the Unit or Vehicle applies, alternatively the Client may cancel the contract in accordance with the terms and conditions herein.
- 7.4 If the Client sells the Vehicle to a third party and wishes to transfer his existing contract to a new or another Vehicle, the Client has to notify Tracker in order for Tracker to transfer the contract and install a new Unit against payment of the prevailing Fee, alternatively the Client may cancel the contract in accordance with the terms and conditions herein.

## 8. PRICING

- 8.1 In consideration for the Services to be rendered by Tracker to the Client in terms of each Order, the Client shall pay the Fees to Tracker. To the extent that the Fees are not specified in the Application, then the then standard rates and Fees applied by Tracker in respect of such Services at the time that the Fees are charged, will apply.
- 8.2 The Fees payable by the Client in terms of existing Orders may be increased by Tracker and Tracker will do so no more than once in each calendar year. Tracker will notify the Client of any increases by giving no less than 30 (thirty) days' prior written notice of such increases. Such increases and adjusted Fees will be applicable to all existing Orders after the increase becomes effective.
- 8.3 In addition to its right in clause 8.2 to increase the Fees on existing Orders, Tracker shall be entitled to increase the Fees and its standard rates and Fees at any time. Tracker will give the Client 30 (thirty) days' written notice of such increases. Such increases and adjusted rates and Fees will be applicable to all Orders which come into existence after the increase becomes effective.

## 9. PAYMENT AND INVOICING

- 9.1 Tracker shall invoice the Client for the Fees and shall ensure that its tax invoices comply with Section 20(4) of the Value Added Tax Act.
- 9.2 Tracker will raise invoices on a monthly basis, provided that Tracker is entitled to include any Fees omitted from a particular invoice in any subsequent invoice.
- 9.3 Subscription Charges for the Services are payable monthly in advance.
- 9.4 In addition, and without prejudice to the further rights and remedies of Tracker in this Agreement or in law:
- 9.4.1 Tracker shall be entitled to charge the Client any or all of the following:
- 9.4.1.1 interest on all overdue or unpaid amounts, which interest shall be applied at the rate of 2% above the prime lending rate of First National Bank Limited;
- 9.4.1.2 legal costs, on an attorney and client scale, related to the demand and recovery of the outstanding or overdue amounts; and



- 9.4.1.3 other collection charges and commissions incurred by Tracker in recovering any outstanding or overdue amounts.
- 9.4.2 the Client shall be obliged to pay Tracker all charges and amounts referred to in clause 9.4.1, which charges and amounts shall be payable on demand; and
- 9.4.3 insofar as the law allows, irrespective of whether the Client has elected to pay by debit order, Tracker is entitled to deduct and recover all amounts which are payable to it and which are not paid on the due date, from the Client's bank account detailed in the Application or any other bank account nominated by the Client from time to time. The Client hereby irrevocably authorises Tracker to make such deductions and recover such amounts from its bank account in the same way as if a debit order authorisation had been Signed by the Client.
- 9.5 If an Order commences during a particular month:
- 9.5.1 the Fees for the Services payable for the relevant month will be charged on a pro-rata basis and may be recovered and invoiced in a subsequent month. The Client will be required to pay these amounts when invoiced by Tracker; and
- 9.5.2 all other Fees incurred in the relevant month may be recovered and invoiced in a subsequent month. The Client will be required to pay these amounts when invoiced by Tracker.
- 9.6 Where more than one Vehicle is listed in a Vehicle Schedule relating to an Order, the monthly Subscription Charges for the Services payable for each Vehicle shall be charged from the date of Commissioning by Tracker of the Unit in the Vehicle. If Commissioning occurs during the course of a particular month, the provisions of 9.5 will apply.
- 9.7 Where the Client does not make payment by way of debit order pursuant to 9.8 all payments by the Client to Tracker must be made into the following bank account:
- |              |   |                            |
|--------------|---|----------------------------|
| Account Name | : | Tracker Connect Corporate  |
| Bank         | : | First National Bank Cresta |
| Account No.  | : | 58860026261                |
| Branch Code  | : | 255005                     |
| Reference:   | : | Contract Number            |
- 9.8 If the Client elects to pay via debit order on the Application, the Client authorises Tracker to debit the monthly Fees and all other amounts payable to Tracker from the bank account specified in the Application, as may be amended by the Client from time to time.

- 9.9 Tracker may from time to time change the banking details referred to in clause 9.7 and shall notify the Client thereof in advance, or simultaneously with the delivery of any invoice.
- 9.10 The Client shall be liable for payment of Value Added Tax.
- 9.11 The Client accepts that should Tracker allow a third party or company to pay the Fee or any other amounts on its behalf, it remains the legal responsibility of the Client to ensure that Tracker is paid timeously in accordance with this Agreement.
- 9.12 Tracker shall use its reasonable commercial endeavours to ensure that invoices and payment amounts are correct. However, there is a responsibility on the Client to ensure that invoices and bank statements are in order. In the event that an incorrect fee had been charged, the Client has to inform Tracker thereof immediately, but no later than 12 (twelve) months from date thereof. Tracker will not entertain claims for incorrect billing or payments made for periods in excess of 12 (twelve) months and will only refund such claims if the Client can prove that the amount charged was not according to the agreement or any other payment arrangement between the Client and Tracker. For purposes of clarity, the most Tracker will refund the Client is for a maximum of 12 (twelve) months' incorrect charges.

## 10. THE POLICE OR OTHER LEA

- 10.1 The Police or other LEA may assist Tracker in providing a portion of the Services (more specifically, the location of hi-jacked or stolen vehicles in the Territory) and Tracker may provide the Police or other LEA with a Tracker Vehicle Location Unit (the "Tracker VLU") for this purpose. However, the Police or other LEA are not obliged to use the Tracker VLU, and their use of the Tracker VLU will vary with and will be subject to personnel and logistical constraints on the Police or other LEA and prevailing circumstances from time to time. The Police or other LEA use the Tracker VLU in their sole and absolute discretion for the location of vehicles and are under no obligation to Tracker or the Client in this respect.
- 10.2 The Client acknowledges that nothing contained in this Agreement imposes upon the Police or other LEA any legal duty of care or obligation in relation to policing duties which is greater than or different from that which is owed to the general public at large, nor does this Agreement record or imply any undertaking on the part of the Police or other LEA in regard to any Service provided by Tracker.
- 10.3 Where the Police or other LEA are involved in assisting Tracker with the provision of the Services, the Client acknowledges and agrees that the Police or other LEA will at all times be acting in their official capacity and that the Police or other LEA will not be treated as, or deemed to be, the representatives, employees, agents, contractors or service providers of Tracker.





10.4 The Client further acknowledges and agrees that Tracker will not be held liable or responsible for the acts or omissions of the Police or other LEA, including any intentional or negligent acts or omissions.

## 11. WARRANTIES

### 11.1 Telematics Units

In respect of telematics Units, Tracker shall, at its sole discretion, either repair or replace a Unit free of charge if the Unit becomes inoperative or develops faults by reason of defective components, workmanship or design, for the duration of the Order. This undertaking is not applicable if the Unit or its installation has been tampered with, modified, repaired (except by persons authorised by Tracker) or has otherwise been subject to water damage, misuse or a collision.

### 11.2 Camera Units

In respect of camera Units, Tracker shall, at its sole discretion, either repair or replace a Unit free of charge if the Unit becomes inoperative or develops faults by reason of defective components, workmanship or design for a period of 12 (twelve) months from the date of installation. This undertaking is not applicable if the Unit or its installation has been tampered with, modified, repaired (except by persons authorised by Tracker) or has otherwise been subject to water damage, misuse or a collision.

11.3 Tracker undertakes to the Client that the Services shall be rendered in a professional manner with such diligence and skill as may be reasonably expected of Tracker having regard to the nature of the Services. The Client shall be responsible for contacting Tracker to report a faulty Unit and arranging for Tracker to investigate the fault and either fix the fault or replace the Unit, subject to clauses 11.1 and 11.2. Until Tracker investigates and fixes the fault or replaces the Unit, Tracker shall not be obliged to render any Services to the extent that it is prevented from doing so because of such fault and the Client will remain obliged to pay all Fees, including the Subscription Charges.

11.4 Save for the undertakings as set out in this clause 11, Tracker provides the Materials and the Services "as is" without warranties of any kind, including without limitation any warranties of merchantability, fitness for purpose or non-infringement of intellectual property rights.

## 12. PERSONAL INFORMATION AND PRIVACY

12.1 The Client acknowledges and agrees that Tracker and its Third Party Business Partners will require certain information, including Personal Information, in order to provide the Services

and perform their obligations in this Agreement. The Client undertakes to provide such information to Tracker and its Third Party Business Partners when it is requested.

12.2 Tracker will use and Process Personal Information in accordance with the Protection of Personal Information Act, No 4 of 2013 and its Privacy Policy. The Client agrees to the Privacy Policy and agrees that Tracker may use and Process Personal Information in accordance with the Privacy Policy.

12.3 The Client acknowledges and agrees that Tracker and certain of its Third Party Business Partners will Process various Usage Data. This Usage Data will be Processed during the course of providing the Services, or in the Client using the Services or the Tracker Website, or through the use, operation and functioning of the Unit or the Vehicle detailed in an Order.

12.4 The Client warrants and agrees that:

12.4.1 it has read and understood the Privacy Policy;

12.4.2 all Personal Information which the Client provides or makes available to Tracker ("Client Personal Information") is complete, up to date and accurate;

12.4.3 the Client is duly authorised and permitted to provide and make the Client Personal Information available to Tracker;

12.4.4 Tracker is entitled to use and Process the Client Personal Information in the way set out in the Privacy Policy and in this Agreement, including for purposes of Processing the Usage Data and the Anonymised Data;

12.4.5 it shall promptly notify Tracker in Writing or by contacting Tracker at 0860 60 50 40, whenever there is any change or update to any of the Client Personal information; and

12.4.6 all rights, title and interests in and to the Anonymised Data which is Processed by or on behalf of Tracker will be the property of Tracker and Tracker may deal with Anonymised Data in any way it wishes (including selling or licensing Anonymised Data). Tracker is entitled to create and publish analyses, databases and reports containing Anonymised Data, whether for commercial gain or as a public service, and the Client disclaims and waives any rights, title or interest in or to the Anonymised Data or to such analyses, databases and reports.



### 13. WARRANTIES AND UNDERTAKINGS BY THE CLIENT

- 13.1 The Client warrants and undertakes that the information supplied in the Application (including Vehicle information) and each Order is true and correct and hereby undertakes to update the said information as soon as any changes occur.
- 13.2 The Client warrants that it has examined solutions similar to Tracker's and is satisfied that the Services are suitable for the Client's purposes. The Client is not relying on any warranty, representation or undertaking given by or on behalf of Tracker (written or otherwise) other than as contained in this Agreement.
- 13.3 The Client warrants that it is the registered owner or duly authorised user of the Vehicle.
- 13.4 To the extent that the Client is not the authorised user or driver, or is not the owner of a Vehicle detailed in an Order, the Client represents and warrants that it has obtained all consents from, and made all required disclosures to, all relevant people or entities (including the owner of the Vehicle):
- 13.4.1 relating to the installation of the Unit in the Vehicle;
  - 13.4.2 for the Services to be provided by Tracker in respect of that Vehicle; and
  - 13.4.3 for Tracker to use and Process Personal Information, Usage Data and Anonymised Data in accordance with the Privacy Policy and this Agreement.

### 14. SUSPENSION AND TERMINATION OF SERVICE

- 14.1 Tracker may, without incurring any liability, at any time and from time to time, interrupt or suspend the Services in whole or in part if:
- 14.1.1 a technical failure affects the provision of the Services, including any unavailability, interruption or suspension of any radio or communications networks or services utilised by Tracker to provide any of the Services or on which Tracker is reliant;
  - 14.1.2 the provider of any of the radio or communications networks or services in the Territory utilised by Tracker to provide any of the Services, or on which Tracker is reliant, ceases to make such networks or services available or ceases to trade;
  - 14.1.3 such interruption or suspension is caused directly or indirectly by any circumstances outside of Tracker's control, including an "act of God" or any event referred to in clause 22;

14.1.4 there are strikes or other industrial action; or

14.1.5 changes to, suspension or termination of the Services are required by any governmental or regulatory authority.

14.2 Tracker shall use commercially reasonable endeavours to restore any interruption in the Services. In the event that the suspension of the Service as a result of the above is incapable of being restored within a period of 40 (forty) days, Tracker shall notify the Client thereof in Writing upon which the Orders in respect of which the Services are interrupted or suspended may be terminated by the Client immediately in Writing to Tracker.

14.3 In addition, and without prejudice to the further rights and remedies of Tracker in this Agreement or in law, should the Client be in default of payment of any Fees, Tracker shall be entitled to suspend the Services in respect of any or all Orders until such time as payment is received in full, alternatively Tracker may terminate this Agreement and/or any Order as provided for in clause 19.

14.4 During the period that the Services are suspended for any reason, the Client shall not be entitled to any refund or abatement of any Fees or amounts and all Fees and other amounts (including the Subscription Charge) will remain payable.

### 15. LIMITATION OF LIABILITY AND INDEMNITY

#### 15.1 Liability

15.1.1 To the fullest extent permitted by law and subject to clauses 15.1.2, 15.1.3 and 33, the cumulative maximum liability of Tracker to the Client, whether in contract or delict or otherwise (including negligence) for all breaches of this Agreement or any Order/s and all other events, acts, Claims, omissions and causes of action, relating to or arising directly or indirectly from this Agreement or any Order/s, shall be limited in the aggregate to the total value of the Fees paid or payable to Tracker in terms of this Agreement in the 12 months preceding the event that gave rise thereto.

15.1.2 To the fullest extent permitted by law, Tracker shall not be liable to the Client for any Claim or any Loss suffered by the Client or any third party as a result of:

15.1.2.1 any delay, defect, or other failure in the provision of the Services, or in any radio, communications or cellular telecommunications networks in the Territory;



- 15.1.2.2 any delay, breakdown, failure or Loss that the Client may suffer (including to the Client's other programs and equipment) as a consequence of any defect or deficiency in the Tracker Materials;
- 15.1.2.3 any failure, delay or interruption in the Client's use of the Tracker Website or its use by Authorised Users, including without limitation: system and server crashes, computer malfunctions, Unit or software faults, system errors, security breaches, theft, incompatibility issues, fire, flood, civil disturbance, international restrictions, embargoes, war or any other event commonly referred to as an "Act of God" or referred to in 22;
- 15.1.2.4 any lost, corrupted or undelivered data or information, regardless of the cause; or
- 15.1.2.5 any negligence on the part of Tracker or any of the Third Party Business Partners, except for gross negligence or wilful misconduct on the part of Tracker.
- 15.1.3 Notwithstanding anything to the contrary contained in this clause 15 and subject to clauses 15.1.4 and 33, neither Party will be liable for damages in respect of loss of business, profits, revenue, data, use or other economic advantage or for any indirect, special, exemplary or consequential Losses incurred by the other Party or any third party, arising out of or relating to this Agreement or an Order. If a Loss arises out of or in connection with any Claim which is the subject of an indemnity given by a Party in this Agreement, such a Loss will be treated as a direct Loss.
- 15.1.4 Clause 15.1.3 shall not apply to or limit or exclude the obligation of the Client to pay all Fees and other amounts (including the Subscription Charges) which it is required to pay in terms of this Agreement.

## 15.2 Indemnity

- 15.2.1 The Client irrevocably agrees to indemnify and hold harmless the Indemnified Parties, and to keep the Indemnified Parties indemnified and held harmless, from and against all Loss arising out of or in connection with any Claim made or instituted against any of the Indemnified Parties for the infringement or misappropriation of any rights (including Intellectual Property Rights), where such Claim arises in relation to, or as a result of:
  - 15.2.1.1 a breach of the warranties or undertakings by the Client or an Authorised User pursuant to clauses 12 or 13 of the Agreement;
  - 15.2.1.2 a breach of applicable Third Party Business Partners terms and conditions;
  - 15.2.1.3 improper use by the Client or an Authorised User of any of the Services;

- 15.2.1.4 the Client or an Authorised User's use of the Tracker Materials;
- 15.2.1.5 any breach by the Client of its obligations under this Agreement;
- 15.2.1.6 the provision of false, incomplete or inaccurate information by or on behalf of the Client or an Authorised User; or
- 15.2.1.7 any wilful or unlawful act or omission of the Client or an Authorised User.
- 15.3 The obligations set forth in this clause 15 shall survive the termination or expiry of this Agreement or an Order.

## 16. OWNERSHIP AND RISK

- 16.1 Tracker shall retain ownership or licensed rights of the telematics Unit, SIM Card, software, middleware and firmware that may be included or placed in the telematics Unit or used together with the Unit.
- 16.2 Ownership of the camera Unit will vest in the Client upon full payment of the purchase price, save for the SIM Card, software, middleware and firmware that may be included or placed in the camera Unit or used together with the camera Unit.
- 16.3 The Client shall be responsible for all damage to a Unit except if a Unit becomes inoperative or develops faults by reason of defective components, workmanship or design, subject to clause 11. The Client is entitled to insure against this risk.

## 17. CONFIDENTIALITY

- 17.1 Except as otherwise provided herein or in the Privacy Policy, each Party hereby undertakes to the other:-
  - 17.1.1 to keep confidential all Confidential Information (written or oral) that it shall have obtained or received because of the discussions leading up to or entering into or performance of this Agreement;
  - 17.1.2 not without the other's written consent, to disclose the Confidential Information in whole or in part to any other person save those of its employees, agents and representatives involved in the implementation of this Agreement and who have a need to know. In addition to the foregoing, Tracker shall be entitled to share Confidential Information with the Police or other LEA to the extent that the Police or other LEA are involved in assisting Tracker with providing the Services; and



- 17.1.3 to use the Confidential Information solely in connection with the implementation of this Agreement and not for its own or the benefit of any third party.
- 17.2 The provisions of clause 17.1 shall not apply to the whole or any part of the Confidential Information to the extent that it is:
  - 17.2.1 already in the other's possession other than because of a breach of this clause; or
  - 17.2.2 independently developed by one Party prior to the execution of this Agreement; or
  - 17.2.3 in the public domain through no fault of the receiving Party; or
  - 17.2.4 required by law or by any regulatory or governmental authority within the Territory.
- 17.3 Each Party hereby undertakes to the other to make all relevant employees, agents and sub-contractors aware of the confidentiality of the Confidential Information.
- 17.4 The obligations set forth in this clause shall survive the termination of this Agreement or an Order for a period of 2 (two) years following termination of this Agreement.

## 18. INTELLECTUAL PROPERTY AND USE OF THE TRACKER WEBSITE

- 18.1 The Client acknowledges that certain aspects of the Services are provided or accessible through the use of the Tracker Website. The use of the Tracker Website and the provision and use of any part of the Services through the Tracker Website is subject to the Website Use Terms and the Client will be required to comply with the Website Use Terms.
- 18.2 The Client acknowledges that all right, title and interest, including Intellectual Property Rights, in and to the Tracker Materials vest in Tracker and/or its licensors, and that it has no claim of any nature thereto. The Client shall not at any time during or after termination or cancellation of this Agreement dispute the validity or enforceability of such rights, title or interest or cause to be done any act or thing contesting or in any way impairing or intending to impair any part of that right, title and interest in and to the Tracker Materials.
- 18.3 The Client agrees not to directly or indirectly:
  - 18.3.1 reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Tracker Materials;
  - 18.3.2 Improve the Tracker Materials;

- 18.3.3 translate, or create derivative works based on the Tracker Materials;
- 18.3.4 rent, lease, distribute, sell, re-sell, assign, or otherwise transfer rights, title or interest to the Tracker Materials;
- 18.3.5 use the Tracker Materials for timesharing or service bureau purposes or otherwise for the benefit of a third party; or
- 18.3.6 remove any proprietary notices or labels on the Tracker Materials.
- 18.4 Tracker may Improve the Tracker Materials at any time without notice, subject to the understanding that this will not adversely affect Services rendered to the Client.
- 18.5 The Client agrees not to publish or disclose to third parties any evaluation of the Tracker Materials without Tracker's prior written consent.

## 19. TERMINATION AND BREACH

### 19.1 Termination of the Agreement or an Order by the Client

The Client shall be entitled to terminate an Order immediately on written notice to Tracker if Tracker is in material breach of any of its material obligations under the Order and Tracker has failed to remedy that breach within 14 days after receiving Written notice from the Client requiring it to remedy that breach, provided that the Client shall not be entitled to terminate the Order unless the breach cannot be adequately compensated by the payment of damages.

Tracker shall be in default if:

- 19.1.1.1 Tracker commits an act of insolvency as defined in the Insolvency Act 24 of 1936, or, being a corporate body, commits an act which would be such an act of insolvency if committed by a natural person;
- 19.1.1.2 Tracker becomes insolvent or is declared bankrupt or takes steps to place itself or is placed in provisional or final liquidation or under provisional or final receivership or judicial management or administration, or enters into or attempts to enter into any scheme similar to or in the nature of a composition, compromise or scheme of arrangement, release or novation with any or all of its creditors;
- 19.1.1.3 Tracker takes steps to de-register itself or is de-registered;



19.1.1.4 Tracker ceases trading or conducting business in the ordinary course thereof; or

19.1.1.5 Tracker breaches any warranty given by it in an Order or this Agreement.

## 19.2 Termination of the Agreement or an Order by Tracker

19.2.1 The Client shall be in default if:

19.2.1.1 the Client commits an act of insolvency as defined in the Insolvency Act 24 of 1936, or, being a corporate body, commits an act which would be such an act of insolvency if committed by a natural person;

19.2.1.2 the Client becomes insolvent or is declared bankrupt or takes steps to place itself or is placed in provisional or final liquidation or under provisional or final receivership or judicial management or administration, or enters into or attempts to enter into any scheme similar to or in the nature of a composition, compromise or scheme of arrangement, release or novation with any or all of its creditors;

19.2.1.3 the Client is in breach of any of its obligations under an Order or this Agreement and either that breach is incapable of remedy or the Client has failed to remedy that breach within 14 days (or such shorter period as may be reasonable in the circumstances) after receiving written notice requiring it to remedy that breach;

19.2.1.4 the Client commits a fourth or subsequent breach of any of its obligations under an Order or this Agreement and which is the same or similar to a previous breach in respect of which the Client has previously been given notice by Tracker requiring it to remedy that previous breach;

19.2.1.5 the Client takes steps to de-register itself or is de-registered;

19.2.1.6 Tracker becomes aware (i) that the Client is Financially Distressed; or (ii) that the Client is contemplating, considering, discusses or agrees to any Business Rescue of the Client or proposes to do any of these things; or (iii) that any person is proposing to take, or taking, any step to apply to court or actually applies to court for the Business Rescue of the Client;

19.2.1.7 the Client ceases trading or conducting business in the ordinary course thereof;

19.2.1.8 the Client breaches any warranty given by it in an Order or this Agreement;

19.2.1.9 Tracker terminates this Agreement pursuant to this clause 19; or

19.2.1.10 any Order is terminated by Tracker or the Client pursuant to the provisions of this clause 19.

19.2.2 If the Client is in default, and in addition and without prejudice to Tracker's further rights and remedies in this Agreement or in law, Tracker may:

19.2.2.1 terminate any or all Orders;

19.2.2.2 terminate this Agreement;

19.2.2.3 terminate any or all Orders in part by removing one or more Vehicles which are the subject of an Order; or

19.2.2.4 terminate the provision of Services in relation to any or all Vehicles which may be the subject of any or all Orders.

19.3 Should either Party terminate an Order (in whole or part) or any Services under an Order, the Parties agree that all other Orders shall continue in full force and effect and the termination of an Order (in whole or part) or any Services under an Order, shall not affect or terminate any other Orders pursuant to this Agreement.

19.4 Should Tracker terminate an Order (in whole or part), or any Services under an Order, or the Agreement pursuant to this clause 19, Tracker shall be entitled to charge and the Client shall be required to pay Tracker the balance of the Subscription Charges which would have been payable under such Orders or this Agreement had such termination not occurred.

19.5 Should the Client terminate an Order (in whole or part), or any Services under an Order, or the Agreement pursuant to this clause 19, the Client shall not be liable to pay Tracker the balance of the Subscription Charges which would have been payable in accordance with the terms of such Orders or this Agreement had such termination not occurred.

19.6 Any termination of this Agreement or an Order (in whole or part), or any Services under an Order, by either Party in terms hereof shall be without prejudice to any Claim such Party may have in respect of any prior breach by the defaulting Party of the provisions of this Agreement.

19.7 The Parties undertake in good faith that in the event of termination of this Agreement for any cause whatsoever they will use all commercially reasonable endeavours to end their business relationship in an amicable way.

19.8 This Agreement or an Order shall not terminate automatically in the event of the loss, theft or damage to the Unit or to the Vehicle that it is fitted to. The Client shall remain liable for the



payment of all Fees (including Subscription Charges) for the remainder of the applicable Order to which the Unit or Vehicle applies. Without limiting or derogating from the foregoing:

- 19.8.1 If the Vehicle detailed in an Order is damaged or written off in an accident, the Client must notify Tracker and, if requested by the Client, then Tracker may transfer the contract to the new Vehicle and the Client will be liable for the prevailing Fee;
- 19.8.2 If the Vehicle is sold to a third party buyer ("the buyer"), the Order pertaining to the Vehicle is not transferred to the buyer and/or the buyer does not enter into this Agreement with Tracker, then the Client remains liable for payment of all the Fees for the remainder of the applicable Order;
- 19.8.3 If a Unit has been destroyed, at the request of the Client Tracker may in its discretion and at its election install a new Unit in the relevant Vehicle.

## 20. SUB-CONTRACTING

- 20.1 Tracker reserves the right in its sole discretion to sub-contract various components of the Services or of the operational, technical and administrative activities and functions utilised by it in the conduct of its operations, to its Affiliates or Third Party Business Partners.
- 20.2 Any appointment of sub-contractors shall not relieve Tracker from any liability or obligations under this Agreement.

## 21. DISPUTE RESOLUTION

- 21.1 If a dispute or difference arises out of this Agreement, the Parties shall use their best efforts to negotiate and settle amicably such dispute or difference. If after 20 business days of it arising any such dispute or difference cannot be settled amicably through ordinary negotiations by the appropriate representatives of the Parties (the dispute having been escalated to suitably senior management of each Party), the dispute or difference may be referred by either Party by notice in Writing to the other Party specifying the nature of the dispute or difference and the point at issue to either a technical advisor appointed by the manufacturer of the Vehicle in question (Adjudicator), who shall act as an expert and not as an arbitrator, or alternatively to the Arbitration Foundation of Southern Africa ("AFSA") to be adjudicated by an arbitrator or arbitrators appointed by AFSA in accordance with the expedited rules of AFSA, whose decision shall be final and binding on the Parties, save for manifest errors, and subject to clause 21.4.

- 21.2 The costs of appointing and retaining the Adjudicator or arbitrator and any replacement appointed under this clause shall be borne equally between the Parties. All arbitration proceedings shall be held at a venue in Johannesburg.
- 21.3 The Parties may agree that performance of the Services shall continue during the adjudication by the Adjudicator/arbitrator of the dispute or difference, and such performance may include the execution (or not) of any part of the Services which is subject to dispute.
- 21.4 If a Party objects to the decision of the Adjudicator/arbitrator as provided in clause 21.1, such Party shall inform the other Party within 60 (sixty) days of the Adjudicator/arbitrator's decision. The adjudication process set out in this clause 21 shall be without prejudice to the rights and remedies available to either Party under this Agreement or at law.
- 21.5 This clause shall not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 21.6 The commencement of legal proceedings shall not prevent further initiatives by either Party to settle the dispute or difference.

## 22. FORCE MAJEURE

If either Party is prevented from carrying out its obligations (but excluding any payment obligations) as a result of an act of God, strikes, fire, riot, war, pandemic, epidemic, embargoes, international restrictions, any order of any international authority or court, any requirements of any authority or other competent local authority, foreign exchange restrictions, interruptions in electricity supply, interruptions in the applicable communications network or any other circumstances whatsoever which are not within the reasonable control of such Party, such Party will be deemed to have been released from its obligations (but excluding its payment obligations) to perform under this Agreement or an Order to the extent that for so long as it is so prevented from performing and only to such extent, this Agreement or the Order (as applicable) will be deemed to have been suspended for the period concerned, provided that written notice of such inability to perform shall be given in Writing by such Party to the other within 5 business days of such Force Majeure having commenced. The Party claiming Force Majeure shall give notice to the other Party as soon as the Force Majeure event ceases. Should the Force Majeure continue for a period of more than 90 (ninety) days, then either Party shall be entitled forthwith to terminate this Agreement by giving written notice to the other Party to that effect, without incurring any penalty.

## 23. DOMICILIUM AND NOTICES

- 23.1 The Parties elect the following addresses as their respective *domicilium citandi et executandi*:





Tracker at: Stonemill Office Park, 340 Republic Road, Darrenwood  
P O Box 2492, Cresta, 2118 / Fax No.: 011 215 8900  
e-mail: [info@tracker.co.za](mailto:info@tracker.co.za)  
Marked for the attention of: Head: Business Solutions

The Client at: any of the contact details set out in the Application Form.

23.2 The notice shall be deemed to have been duly given:

23.2.1 on delivery, if delivered to the other Party's physical address between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if delivered outside such hours);

23.2.2 on despatch, if sent to the Party's then email address between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if despatched outside such hours);

23.2.3 at the time the notice would otherwise be deemed to have been given, unless the addressor is aware that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

23.3 A Party may change that Party's address or email address for this purpose by notice in Writing to the other Party, such change to be effective only on and with effect from the 7<sup>th</sup> Business Day after the giving of such notice.

23.4 Notwithstanding anything to the contrary herein contained, a Written notice or communication actually received by a Party shall be an adequate Written notice or communication to that Party notwithstanding that it was not sent to or delivered at that Party's chosen address/es.

23.5 The following notices must be sent by e-mail and be delivered by hand to the relevant physical address forming part of the addressee's *domicilium citandi et executandi*:

23.5.1 notices given in terms of any of clauses 19, 21 and 22.

23.6 Tracker shall be entitled to send communications and notices regarding the following issues to the Client's appointed Authorised Users by way of SMS or e-mail only:

23.6.1.1 Increases to the Fees;

23.6.1.2 Faulty Units or Units not reporting;

23.6.1.3 Non-payments; and

23.6.1.4 Suspension.

#### 24. NON-WAIVER

No waiver by a Party of any breach, failure or default in performance by the other Party, and no failure, refusal or neglect by a Party to exercise any right hereunder or to insist upon strict compliance with or performance of the other Party's obligations under this Agreement, shall constitute a waiver of the provisions of this Agreement and a Party may at any time require strict compliance with the provisions of this Agreement.

#### 25. RELAXATION

No indulgence, leniency or extension of a right, which either of the Parties may have in terms of this Agreement, and which either Party ("the grantor") may grant or show to the other Party, shall in any way prejudice the grantor, or preclude the grantor from exercising any of the rights that it has derived from this Agreement, or be construed as a waiver by the grantor of that right.

#### 26. GOVERNING LAW AND JURISDICTION

This Agreement is exclusively governed by and construed in accordance with the laws of the Republic of South Africa and is subject to the jurisdiction of the courts of the Republic of South Africa.

#### 27. SEVERABILITY

27.1 Each of the provisions of this Agreement, and each part of any provision, is separate and separable from the others.

27.2 To the extent that any provision of this Agreement or any part of a provision of this Agreement ("severed provision or part") is, becomes or is declared by a court of competent jurisdiction or other competent authority to be unlawful, invalid or unenforceable for any reason or in any jurisdiction, then it will, to the extent that it is unlawful, invalid or unenforceable, be severed from this Agreement and treated as if it had not been written, without invalidating or affecting the enforceability of the remaining provisions of this Agreement or affecting the validity or enforceability of the remainder of such provision or the remainder of this Agreement.

27.3 The Parties will, however, enter into negotiations in good faith for a period of 30 days if any Party notifies the other to commence such negotiations ("Negotiation Period") to determine whether an alternative provision or part of a provision can be formulated and incorporated by agreement into this Agreement to achieve the same objectives as the severed provision or



part but without being unlawful, invalid or unenforceable. The Parties undertake to apply all reasonable speed and co-operation in achieving this result. If the Parties fail to reach this result within the Negotiation Period, and Tracker determines that the absence of the severed provision or part materially adversely affects or is reasonably likely to materially adversely affect its rights under this Agreement or an Order, Tracker shall be entitled, on 30 days written notice to the Client (or such longer period as Tracker may determine) to suspend all or parts of the Services or terminate this Agreement or any or all Orders.

## 28. ASSIGNMENT, CESSION AND DELEGATION

- 28.1 Unless specifically regulated in terms of this Agreement, the Client is not entitled to cede, delegate, assign or in any other manner dispose of any of its rights or obligations in terms of this Agreement, without the prior written consent of Tracker, which consent shall not unreasonably be withheld or delayed.
- 28.2 Tracker shall be entitled to cede, delegate and/or assign any or all of its rights or obligations in terms of this Agreement without restriction and without the Client's consent.

## 29. LEGAL COSTS

- 29.1 Each Party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of this Agreement.
- 29.2 All legal fees, costs, charges and disbursements on a scale as between attorney and client incurred by either Party in enforcing any of the provisions of this Agreement, tracing the Client and/or in collecting or endeavouring to collect all or any amounts payable by the Client to Tracker in terms of this Agreement or otherwise, and all collection commissions, fees and charges of a like nature, will be for the account of the defaulting party and will be payable forthwith on demand.

## 30. HEALTH AND SAFETY

- 30.1 Tracker shall observe and comply as far as reasonably possible with health and safety standards set forth in any applicable legislation;
- 30.2 Without prejudice to the generality of the above Tracker shall ensure that it gives priority to safety in the execution of the Services in order to protect life, health, property and the environment.

## 31. RELATIONSHIP

Save as expressly provided in this Agreement, nothing contained in this Agreement shall create any relationship of partnership, joint venture or agency between the Parties and neither Party shall hold itself out as the partner or agent of, or a being in a joint venture with, the other.

## 32. THIRD PARTY BENEFICIARIES

- 32.1 Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (i.e. a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person. For the avoidance of doubt:
- 32.1.1 the provisions of clause 15 are also expressed for the benefit of the Indemnified Parties;
- 32.1.2 the Indemnified Parties shall be entitled to accept the benefits of this Agreement and the rights granted to them in this Agreement at any time and without notifying or informing the Client of such acceptance. The Indemnified Parties will not, however, be entitled to enforce the provisions of this Agreement or institute any action pursuant to, or arising from, this Agreement against the Client, without obtaining the consent of Tracker;
- 32.1.3 Tracker and the Client may by agreement vary or amend this Agreement without obtaining the consent of the other Indemnified Parties, notwithstanding that any such variation or amendment may relate to any rights or benefits conferred on the Indemnified Parties. Furthermore, Tracker shall be entitled to terminate this Agreement or any Orders, enforce the provisions of this Agreement and exercise any rights, powers and remedies in this Agreement, in equity or in law without obtaining the consent of any of the Indemnified Parties and notwithstanding that any of the foregoing may relate to any rights or benefits conferred on any Indemnified Parties.

## 33. CONSUMER PROTECTION ACT

- 33.1 If this Agreement and/or any goods or services provided by Tracker is regulated by or subject to the Consumer Protection Act, 2008 (the "CPA"), it is not intended that any provision of this Agreement contravenes any provision of the CPA. All provisions of this Agreement must be treated as being qualified, to the extent necessary, to ensure that the provisions of the CPA are complied with.
- 33.2 It is the responsibility of the Client to show that this Agreement and/or any goods or services provided by Tracker to the Client is regulated by or subject to the CPA, as provided in Section 5 thereof.



#### 34. **WHOLE AGREEMENT**

- 34.1 This Agreement constitutes the whole agreement between the Parties and supersedes all prior verbal or written agreements or understandings or representations by or between the Parties regarding the subject matter of this Agreement, and the Parties will not be entitled to rely, in any dispute regarding this Agreement, on any terms, conditions or representations not expressly contained in this Agreement, save as provided in 34.2.
- 34.2 The Client acknowledges and agrees that Tracker may from time to time amend and/or incorporate certain provisions in this Agreement to provide for changing legislation, additional products and/or Services or business practices.
- 34.3 Neither Party to this Agreement has given any warranty or made any representation to the other Party, other than any warranty or representation expressly set out herein.