



# TERMS AND CONDITIONS

This is your *agreement* with us for the *services* we offer. Your **Tracker agreement** is made up of four parts:

1. The *application*
2. The terms and conditions
3. The terms of use for the *Tracker website* and *Tracker mobile applications* (if you use the website or mobile *application*)
4. The *Tracker privacy policy*

Please make sure that you agree only after you have read and understood all the parts of the agreement. **The terms and conditions in boxes have important consequences for you.** Words in *italics* are defined on page 1.

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## A. Definitions

In the table below, the words and phrases in the left column have the meanings given in the right column. Defined terms are in *italics* in the agreement. There are guidelines to interpreting the *agreement* at the end of these terms and conditions.

<i>Affiliate</i>	means any member of <i>Tracker's</i> group of companies, including any holding company of <i>Tracker</i> , any subsidiary of <i>Tracker</i> and any subsidiary of <i>Tracker's</i> holding company. The terms 'group of companies', 'holding company' and 'subsidiary' have the meanings given to them in the Companies Act, 71 of 2008.
<i>Application</i>	means the application to install the <i>unit</i> and to receive the <i>services</i> , and if the <i>unit</i> is already installed, to receive the <i>services</i> , which you or your authorised insurer or broker or dealer on your behalf made by phone, online or by filling in a form.
<i>Breach</i>	means either to break <i>legal responsibility</i> under the <i>agreement</i> or a <i>legal responsibility</i> that has been broken.
<i>Damages</i>	means the amount of money claimed by someone or ordered to be paid to someone as compensation for a <i>loss</i> that they suffer.
<i>Early cancellation costs</i>	means the fees payable by you for ending a 36-month contract before the end of its 36-month term.
<i>Fee</i>	means the monthly fee that you pay to us for the <i>Service</i> .
<i>Installation fee</i>	means the upfront fee that you pay to us if you do not enter into a 36-month <i>agreement</i> .
<i>Legal responsibility</i>	means a duty imposed on someone to do something whether imposed by the law or created by <i>agreement</i> . <i>Legally responsible</i> has a corresponding meaning.
<i>Loss</i>	means the disadvantage a person suffers because of an event beyond anyone's control (for example earthquake or flood) or the action or failure to act on the part of any person. It includes physical <i>loss</i> (for example, death, personal injury, or damage to property) and financial <i>loss</i> (for example, expenses, penalties, <i>loss</i> of income or <i>loss</i> of profits, and legal fees).
<i>Police/SAPS</i>	means the South African Police Service (SAPS) and includes any member, employee, servant or agent of SAPS.
<i>Risk</i>	means being exposed to harm or the possibility of harm, including: a) the <i>loss</i> or theft of, or physical damage to, any property; b) the financial <i>loss</i> someone might suffer.
<i>Services</i>	means both of the following: a) the <i>services</i> of <i>Tracker</i> that you chose in your <i>application</i> ; b) information and <i>services</i> on the <i>Tracker website</i> and any <i>Tracker mobile applications</i> .
<i>Supplier</i>	means any person or entity that is involved in providing <i>services</i> to us.
<i>Telematics</i>	means global positioning technology that involves sending digital information over long distances using wireless forms of communication.
<i>Terms of use of the Tracker website and Tracker mobile applications</i>	means the terms and conditions for using: a) the <i>Tracker website</i> and <i>Tracker mobile applications</i> (as amended from time to time); b) the website of <i>any suppliers</i> to access and use any of the <i>services</i> .
<i>Tracker</i>	means Tracker Connect (Pty) Ltd, 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.
<i>Tracker privacy policy</i>	means the privacy policy on the <i>Tracker website</i> accessible at <a href="http://www.tracker.co.za/legal/privacy-policy">www.tracker.co.za/legal/privacy-policy</a> .
<i>Tracker website</i>	means the website at the address <a href="http://www.tracker.co.za">www.tracker.co.za</a> .
<i>Unit</i>	means the positioning and/or communications equipment that we use to track the location of the <i>vehicle</i> and provide the other <i>services</i> . Certain <i>units</i> include a SIM card that provides <i>telematics</i> . Any reference to a <i>unit</i> shall include a reference to any accessories or peripherals used with the <i>unit</i> .
<i>Vehicle</i>	means the motor <i>vehicle</i> specified on the <i>application</i> .
<i>Warrant, warranty</i>	means to make a promise that we are entitled to rely on. A <i>warranty</i> means a promise that the party receiving it is entitled to rely on.

## B. Introducing the agreement

### 1 Who the agreement is between (parties)

The parties to the *agreement* are:

- a) *Tracker*, referred to as 'we', 'us' and 'our' in this document;
- b) the customer named on the *application*, referred to as 'you' and 'your' in this document.

## 2 When the agreement starts

The agreement starts when we record the unit installed in the vehicle against your name on the Tracker system. This may take up to 72 (seventy two) hours. Until we record the unit on the Tracker system against your name, we will not be able to locate your vehicle in the event that it is stolen or hijacked.

If a unit is not yet installed in your vehicle at the time that you buy it, you must not allow the unit to be installed in the vehicle if you do not agree to the agreement.

## 3 When the agreement ends

Your application shows whether you chose a month-to-month agreement or a 36-month agreement.

### 3.1 The month-to-month agreement

If you have a month-to-month agreement, the agreement continues indefinitely until either you or we end it in terms of section B4 or L1 of the agreement.

### 3.2 The 36-month agreement

If you have a 36-month agreement, the agreement continues for 36 months unless:

- either you or we end it in terms of section B4 or L2 of the agreement; or
- it is extended in terms of section F5.2.

At the end of the 36 months, the agreement will continue indefinitely until either you or we end it by giving one calendar month's written notice.

## 4 If you change your mind (cooling-off) - direct marketing only

You have the right to change your mind if you entered into the agreement as a result of direct marketing but if you allow the unit to be installed in the vehicle within the cooling-off period, you give up your right to end the agreement in this time period as the unit is then attached to the vehicle.

If you did not enter into the agreement as a result of direct marketing, you do not have a cooling-off right.

## C. The tracking unit

The unit is the positioning and/or communications equipment that we use to track the location of the vehicle and provide other services.

### 1 Installing the unit at an agreed time and place

You can either:

- take the vehicle to one of our fitment centres; or
- arrange with us for a technician to install the unit at an address you choose.

If you arrange with us for a technician to install the unit at an address you choose:

- there might be a call-out fee. Please ask us about the fee before you ask for a technician to come to you.
- once we have agreed the time and place to install the unit, you must make the vehicle available at the agreed time and place. If you do not make the vehicle available at the agreed time and place, you will be charged a no-show fee.
- the place for the installation must be safe and be out of the view of third parties. Our technician has the right to refuse to install the unit if they believe the place is not safe.

### 2 Warranty for defective units

#### 2.1 Warranty period to fix or replace defective units

If the unit was installed on or before 31 December 2017, the unit has a warranty of 12 months starting from the date that we install it. If the unit was installed on or after 1 January 2018, the unit has a life-time warranty. (We refer to this as the warranty period.)

#### 2.2 When the warranty applies

The warranty covers repairs to the unit if it stops working properly because of defective parts, workmanship or design. We will fix or replace the unit at no cost to you.

#### 2.3 When the warranty does not apply

The warranty does not apply in any of the following circumstances:

- Anyone tampered with or changed the unit or the way it was installed;
- Someone that we did not authorise repaired or tried to repair the unit or the way it was installed;
- The problem was caused by damage from water;
- The problem was caused by abuse of the unit;
- The problem was caused by a collision (for example, a car accident);
- If the defect in the unit was not caused by us, or by the manufacturer, importer, distributor or retailer;
- If the defect happened or was reported to us after the 12-month warranty period ended, if applicable.

If the warranty does not apply, you accept that you are legally responsible for the costs of having a unit repaired or replaced. We charge standard rates for repairs. You should contact us for a quote before asking us to repair or replace a unit.

### 3 If the unit or its installation affects the operation of or damages the vehicle

We fix problems that the unit or its installation causes to the vehicle or the operation of the vehicle at our own cost but only if all five of the following conditions are met:

- The unit or installation damages or causes a problem to the vehicle or how it works. We have the right to appoint an expert at our cost to investigate the problem;
- The unit or its installation has not been changed, tampered with or repaired by anyone who does not have our authority;
- There has not been abuse of the unit;
- There has not been damage by water to the unit;
- The problem was not caused by a collision (for example, a car accident).

If you report a fault in the unit to us and we have agreed the time and place to send a technician, you must make the vehicle available at the agreed time and place. If you do not make the vehicle available at the agreed time and place, you will be charged a no-show fee.

If you report a fault in the unit to us and ask us to send a technician, and the technician reports that the problem is not due to the unit or its installation, you are legally responsible to pay the costs of the technician. This includes any call-out fees and other costs. At the time of reporting the fault, you can ask us for the costs and fees that will apply at the time.

If we damage your vehicle during installation of the unit, we have the right to inspect the damage and if we agree that the damage was caused during the installation, we have the right to fix such damage through a Tracker appointed supplier. If you choose a different supplier, you will be liable for any additional costs.

## D. The services

### 1 The services we provide

We provide the following services:

- The services of Tracker that you chose in your application and that you pay for;
- Information and services on the Tracker website ([www.tracker.co.za](http://www.tracker.co.za)) and any Tracker mobile applications.

### 2 You must use the services for valid and legal reasons only

You must use the services for valid and legal reasons only. An example of a reason that is not valid is activating the unit for theft or hijacking when there is no genuine theft or hijacking.

You accept that neither we nor our suppliers or affiliates are legally responsible to you if you use the services for invalid or illegal reasons. This means you do not have the right to claim against any one or more of us for loss or damages that you or anyone else suffers as a result of using the services for invalid or illegal reasons.

If you use the services for invalid or illegal reasons, you will be committing a breach of the agreement.

We then have the right to take steps against you as set out in section L4 below, 'Ending the agreement for breach'.

### 3 No guarantee that we will locate the stolen or hijacked vehicle

We will do our best to locate or recover the stolen or hijacked vehicle, but we do not guarantee that we will be able to locate or recover the vehicle.

If we are unable to locate or recover the vehicle, the agreement will end in the month after the month in which the vehicle was stolen or hijacked.

You accept that:

- we do not guarantee that we can locate or recover the vehicle;
- we are not legally responsible for any loss or damages you suffer if we are unable to locate the vehicle.

### 4 We do not track the vehicle outside South Africa

Outside South Africa, we can only identify the general location of the vehicle in areas where there is adequate GPS, GSM and UMTS (2G and 3G) network coverage or radio frequency network coverage (depending on the kind of network that the unit needs to operate).

#### 4.1 Telematics unit owners should activate roaming 5 working days before leaving South Africa

Telematics unit owners who want to use some of our services outside South Africa, should call our contact centre at least 5 working days before the vehicle leaves South Africa to activate international roaming. There are extra charges for international roaming that will be charged to you. We do not offer the services of recovering a vehicle outside South Africa.

By using the vehicle outside South Africa, you accept that:

- we will not be able to find the exact location of or track or recover the vehicle outside South Africa;
- the services may not be available outside South Africa.

You accept that we are not legally responsible for any loss or damages you suffer if either:

- we are unable to recover the vehicle outside South Africa; or
- the services are unavailable to you outside South Africa.

You use the services and the vehicle outside South Africa knowing and accepting these risks.

### 5 When the services might be interrupted or delayed

We will do our best to maintain the availability of the services to you. However, the services might be interrupted or delayed in any of the following circumstances:

- A technical failure outside our control. This includes the unavailability, interruption or suspension of any radio or communications networks or other services that we use or rely on to provide the services;
- If the radio or communications network or a service provider that we use does not make the network or services available to us, or if they stop operating;
- If we have informed you by SMS or another way that there is a fault with the unit or that we cannot receive a signal from the unit, and you have not yet delivered the vehicle to us to check and repair (or replace) the unit;
- If a government or regulatory authority requires us to change or stop the services;
- If there are other circumstances beyond our control, for example fire and flood;
- If there are strikes or other industrial action.

This interruption or delay might apply to all or part of the services.



If we interrupt or delay the *services* in any of the above circumstances, we do not have any *legal responsibility* to you. You accept that:

- a) we will not be able to locate the *vehicle* if it is stolen or hijacked;
- b) you are not entitled to any refund of any *fees*;
- c) you must continue to pay the *fees*.

### 5.1 If we cannot restore availability

We will do our best to restore any interruption to the *services* and to shorten any delay.

If there is an interruption or delay to the *services* because of the circumstances referred to above, and we cannot restore availability within 30 days, we will notify you in writing. You then have the right to end the *agreement* (see section L).

### 6 It is your responsibility to understand how your *unit* works, what *services* you pay for and to ensure that your *unit* is working

It is your responsibility to understand how your *unit* works, what *services* you pay for and to make sure that your *unit* is in working order. You can get information on this on the *Tracker website* or by calling us on 0860 60 50 40.

## E. Fees and charges

### 1 Payment for the service

How you pay for the *service* depends on the type of *agreement* you have chosen.

#### 1.1 If you have the 36-month agreement

Use this table only if you have a 36-month *agreement*.  
If you have a 36-month contract, you do not pay the *installation fee*.

Name of Charge	How much you must pay	When you must pay
<i>fee/s</i>	Refer to your <i>application</i> for the amount. The first month's <i>fee</i> will be pro-rated from the date the <i>unit</i> is installed in the <i>vehicle</i> .	<b>Monthly:</b> You pay in advance. We will debit your bank account with the <i>fee</i> at the end of the previous month or on the first day of the month for which you have to pay.
<i>Early cancellation costs</i>	You pay a fair, fixed amount if you cancel in the first year, second year or third year of the <i>agreement</i> .	Last debit order date or date of last payment to us after cancelling

#### 1.2 If you have a month-to-month agreement

Use this table only if you have a month-to-month *agreement*.  
If you do not have a 36-month *agreement* but a month-to-month *agreement*, you have to pay the *installation fee*.

Name of Charge	How much you must pay	When you must pay
<i>installation fee</i>	Refer to your <i>application</i> for the amount.	<b>Upfront:</b> You must pay the <i>installation fee</i> upfront.
<i>fee/s</i>	Refer to your <i>application</i> for the amount. The first month's <i>fee</i> will be pro-rated from the date the <i>unit</i> is installed in the <i>vehicle</i> .	<b>Monthly:</b> You pay in advance for the <i>Service</i> . We will debit your bank account with the <i>fee</i> at the end of the previous month or on the first day of the month for which you have to pay.

### 2 Charges for specific items

Name of charge	When it applies
A no-show charge	If you do not show up or if the <i>vehicle</i> is not available at the agreed time and place for installation or repair of the <i>unit</i> or accessory or peripherals
A re-installation or removal charge	If we have to re-install or remove a <i>unit</i> we are not <i>legally responsible</i> for the cost
Call-out/Service request (SR) charge	If a <i>unit</i> is damaged or defective where the fault or damage occurs after the <i>warranty</i> period, or was not caused by <i>Tracker</i> or by the manufacturer, importer, distributor or retailer of the <i>unit</i> . If you choose not to take the <i>vehicle</i> to a <i>Tracker</i> fitment centre, and ask for a technician to come to you at a time and place that you choose, an additional charge will be payable.
Test charge	You have to test the <i>unit</i> regularly. Please refer to the <i>Tracker website</i> for more information on how and where to test the <i>unit</i> . If you take your <i>vehicle</i> to a <i>Tracker</i> approved fitment centre to have the <i>unit</i> tested, you need to pay the fitment centre a test charge
False alarm charge	If we receive more than 3 false movement alerts in a calendar month, a false alarm charge will be recovered from you for every subsequent false movement alert in that month.
Verification charge	If we believe, at our sole discretion, that you or your <i>vehicle</i> may be at risk and we cannot get hold of you or your authorised person/s to verify your safety and/or the safety of your <i>vehicle</i> , we will be entitled to a verification charge to cover our costs
International roaming and tele-communications charges (these only apply if you have activated roaming – see section D4)	You are <i>legally responsible</i> for the international roaming and telecommunications charges that we incur in providing the <i>services</i> to you. Some of these international roaming and telecommunication charges may be incurred while the <i>vehicle</i> is in South Africa but near a border with another country.  This is because network coverage can overlap. The charges might only reflect on your account three months after we incur them.

These charges are calculated at our standard rate at the time. We have the right to increase these charges when we choose to. To find out what the rates are at any time, you can call our contact centre on 0860 60 50 40.

You give us permission to collect these charges from your bank account. See section F for how to pay.

### 3 Increases to fees

We increase the *fees* and charges on 1 October every year. The annual increase will not be higher than 10% unless the most recent Consumer Price Index in the last completed calendar year is higher than 10%. In that case, the increase will be the most recent Consumer Price Index.

The Consumer Price Index is the index published by Statistics South Africa of the yearly change in prices consumers pay for retail goods and other items. The index is used to measure the rate of inflation in South Africa.

If you are paying discounted monthly *fees* as shown in section E4 below, you will receive a higher annual increase.

We will notify you in writing 30 days before any increases.

### 4 Discounts on fees are for a limited time only

If you are paying discounted monthly *fees* because of the relationship between us and your insurance company or other third party, or because of a special offer, the annual increase to our *fees* is not limited to 10% or the Consumer Price Index. (See section E3 above.)

The discount will stop in either of the following circumstances:

- a) The *vehicle* is no longer insured by that insurance company, even if you move to another insurance company that we have a similar relationship with;
- b) The relationship between us and the insurance company or third party ends.

You accept that if the discount stops, you will get a higher annual increase, unless we agree differently in writing. If you have the 36-month contract and you choose to end the *agreement* at this time, you must pay *early cancellation costs*.

## F. Invoices and how to pay

### 1 Receiving invoices

You can choose to receive your monthly invoices by email or you can get a copy of your invoice by logging on to the *Tracker website*.

#### You must pay by debit order

You must give us the correct details of the bank account from which we must deduct the payment. You must also tell us if your banking details change.

- a) If the debit order is returned unpaid, we have the right to try to collect the money until we are paid by using a method we choose;
- b) If no date is given in your *application*, we will collect the money from your bank account on any day of the month that we choose.

### 2 You must make sure we have updated bank details

You must give us the correct details of the bank account from which we must deduct the payment. You must also tell us if your banking details change.

### 3 You agree that we can ask other parties for your bank details

You agree that we have the right to request and obtain your bank details from your insurance company or from any other party that has the right to have them.

The use of your bank details will be according to the *Tracker privacy policy*.

### 4 If an insurance company pays us on your behalf

#### 4.1 The payments remain your legal responsibility

You accept that if we allow an insurance company (or another entity) to pay the *fee* or any other amounts on your behalf, it is still your *legal responsibility* to ensure that we are paid according to this *agreement*.

You accept that if we do not receive payment by the due date, we have the right to deduct any due amounts from your bank account by using a method we choose.

#### 4.2 When the insurance policy ends

You accept that you are *legally responsible* to continue paying us even if the *vehicle* is no longer insured by the insurance company or if the insurance policy ends. We have the right to deduct any amounts due from your bank account.

You accept that we are not *legally responsible* for any charges or *loss* or *damages* that you might suffer because we did not receive the monthly *fee* on time or at all.

### 5 If we do not receive your payment in time

#### 5.1 We have the right to suspend the services

It is your *legal responsibility* to ensure that there is enough money in your bank account to pay us.

We have the right to suspend the *services* if you do not pay your *fees*. We will start providing the *services* again as soon as reasonably possible after we receive confirmation from our bank that you have paid the amount due to us by that date. It will take up to seven business days to restore the *services*.

You accept that if the *services* are suspended because you have not paid the *fees*:

- a) we will not provide the *services* (including recovery of a stolen or hijacked *vehicle*);
- b) we are not *legally responsible* for any *loss* or *damages* you suffer from the *services* being suspended; and
- c) payment of arrears will not result in *services* being re-instated if suspended.



## 5.2 You must pay additional amounts

If we do not receive payment on time, you agree to pay the following amounts on demand:

- a) Legal costs on an attorney-and-own-client scale, related to the demand and recovery of the outstanding or overdue amounts;
- b) Other collection charges and commissions that we incur in recovering any outstanding or overdue amounts. These include bank charges if a debit order is returned unpaid or only partly paid; and
- c) Any costs associated with re-instating your account if the *services* were suspended.

You accept that you are *legally responsible* to pay us these additional amounts and we have claims against you if:

- a) you do not pay us on time or at all;
- b) you do not have enough money in your bank account to pay us;
- c) you give us the wrong bank details;
- d) you do not tell us about changes to your bank details on time or at all;
- e) you do not tell us that your bank has stopped payment; or
- f) you stop the payment.

We may also be able to end the *agreement* and claim additional amounts from you if any of these things happen.

If you have a 36-month *agreement* and you do not pay your monthly instalment in any one or more months then we have the right to extend the 36-month period by one month for each month that you do not pay.

## 6 It is your responsibility to check your invoices

We will do our best to ensure that the amount that we deduct from your bank account is according to the *agreement*. However, you also have a *legal responsibility* to check your invoices and bank statements. If you believe that you have been charged an incorrect *fee*, you must tell us immediately but no later than 12 months from the transaction date. We will refund the amount only if you show us proof that the amount charged to you was not according to the *agreement* or any other payment arrangement that you hold with us.

If you can prove that the *fee* was wrongly charged, we will refund it. You accept that it is your *legal responsibility* to check your invoices and bank account regularly. For this reason, you accept that the most we will refund you is for a maximum of the last 12 months of incorrect charges.

## G. If the vehicle is stolen or hijacked

### 1 What you must do

#### 1.1 If the vehicle is stolen or hijacked

You must do all of the following:

- a) Phone us on 0800 13 23 23. We will talk you through the procedure for stolen or hijacked *vehicles* (known as the activation procedure).
- b) Give us the information we ask for to make sure that your request is valid, legal or made by a person who is authorised to report the theft or hijacking to us and initiate the recovery process.
- c) Give us the assistance that we ask for to locate the *vehicle*.
- d) Follow all our instructions.
- e) Immediately report the theft or hijacking to the *police*.

#### 1.2 After the vehicle is found

- a) We will tell you if we find the *vehicle*.
- b) You must tell us if you or the *police* find the *vehicle* before we do.
- c) It is your *legal responsibility* to arrange for the *vehicle* to be returned to you once the *vehicle* has been processed by the *police*, whether by making arrangements with the *police* or otherwise. You accept that it is not our *legal responsibility* to return the *vehicle* to you.

### 2 When we will not try to locate the vehicle

We are not required to try to locate the *vehicle* in any of these circumstances:

- a) If you or the person authorised to report the theft or hijacking to us does not follow the correct activation procedure;
- b) If we are not reasonably satisfied with the responses to our questions when you ask us to locate the *vehicle*;
- c) If the *vehicle* is stolen or hijacked outside South Africa;
- d) While the *vehicle* is outside South Africa;
- e) If the *Services* are suspended because you did not pay us;
- f) If the *agreement* has ended.

Because we are not required to locate the *vehicle* in the circumstances set out above, you accept that we are not *legally responsible* for any *loss* or *damages* you suffer because we do not try to locate the *vehicle*.

### 3 The police act in an official capacity only

When the *police* are involved in locating a stolen or hijacked *vehicle*, they are acting in their official capacity. Although we and the *police* may co-operate with each other to locate a stolen or hijacked *vehicle*, they are not our representatives or employees.

You accept that we are not *legally responsible* for:

- a) the acts or failures to act of the *police*, including any intentional or negligent acts or failures to act;
- b) any *loss* or *damages* that you suffer because of the acts or failures to act of the *police*, including any intentional or negligent acts or failures to act.

## H. If a person is missing

### 1 What you must do

#### 1.1 If a person is missing

You must do all of the following:

- a) Immediately report the missing person to the *police*.
- b) Phone us on 0800 13 23 23. We will talk you through the procedure for reporting a missing person (known as the activation procedure).
- c) Give us the information we ask for to make sure that your request is valid, legal or made by a person who is authorised to report the missing person to us and initiate the process.
- d) Give us the assistance that we ask for.
- e) Follow all our instructions.

#### 1.2 After the missing person or vehicle is found

- a) We will tell you if we find the missing person or *vehicle*.
- b) You must tell us if you or the *police* find the missing person or *vehicle* before we do.
- c) It is your *legal responsibility* to arrange for the missing person or *vehicle* to be returned to you.

### 2 When we will not try to locate the missing person

We will not try to locate the missing person in any of these circumstances:

- a) If we are not reasonably satisfied with the responses to our questions when you ask us to locate the missing person;
- b) If the person reported missing is outside South Africa;
- c) If any of the *services* are suspended;
- d) If the *agreement* has ended.

Because we are not required to locate the *vehicle* or try and find a missing person in the circumstances set out above, you accept that we are not *legally responsible* for any *loss* or *damages* you suffer because we do not try to locate the missing person or *vehicle*.

## I. About personal and other information

This section contains terms and conditions relating to the following information:

- a) Personal information, usage data, driver behaviour information, anonymised data and any other information we get from the *unit* installed in your *vehicle*;
- b) Credit information;
- c) Intellectual property;
- d) *Tracker* materials

Any words in italics that are not defined in the definition section of this document are defined on the *Tracker website*.

### 1 Personal information, usage data, driver behaviour information and anonymised data

The *Tracker privacy policy* is published on the *Tracker website*. It governs the way we and our *suppliers* use and share your personal information, usage data, driver behaviour information, anonymised data and any other data we get from the *unit* installed in your *vehicle*. (Explanations of these terms can be found in the *Tracker privacy policy*.)

The *Tracker privacy policy* forms a part of the *agreement*.

You *warrant* that the information that you give to us is true. You accept that we have the right to treat the statements you make as true. This means that you cannot later claim that the statements you made are not true.

#### 1.1 You warrant that you accept the Tracker privacy policy

You *warrant* that you have read, understood and agree to the *Tracker privacy policy*.

You accept that by agreeing to the *Tracker privacy policy* you are giving up some of your rights to privacy and giving us the rights to use your personal information according to the *Tracker privacy policy*. You accept that you do not have the right to take action against us for any *loss* or *damages* you suffer from us processing your personal information according to the *Tracker privacy policy*.

#### 1.2 You warrant that you can give us personal information

You *warrant* that:

- a) you are properly authorised and allowed to give us personal information;
- b) you will tell us in writing or by phone on 0860 60 50 40 when there is any change or update to any of your personal information or, if you are representing someone else in the *agreement*, the personal information of the person who you represent.



By giving this *warranty*, you accept that we may have claims against you for *loss* or *damages* that we suffer if you do not have authority to give us your personal information and a third party brings a claim against us because we used your personal information.

### 1.3 You warrant that information you give is true and correct

You *warrant* that all information, including *personal information* that you or somebody representing you gives to us is true and correct.

### 1.4 You warrant that you have consent for us to process information

If you enter the *agreement* on behalf of another person or juristic (legal) entity, you *warrant* that you have received the relevant consent for us to process personal information, usage data, driver behaviour information, anonymised data and any other data we get from the *unit* installed in your *vehicle* according to the *Tracker privacy policy*. This includes the owner and driver of the *vehicle*. Examples of a juristic entity include a company, a trust and a partnership.

### 1.5 You warrant that you have informed those with the right to know

You *warrant* that you have informed all people or entities who have the right to be informed (including the owner and driver or drivers of the *vehicle*) about:

- a) the installation of the *unit* in the *vehicle*;
- b) your *agreement* with us for the *services*;
- c) your confirmation that we may process your personal information, usage data, driver behaviour information and anonymised data according to the *agreement*.

You accept that if any of the statements above are not true, we have claims against you for *loss* or *damages* we might suffer because we relied on your *warranties*. Our claims could include amounts and *damages* that we must pay to other people because these statements are, in fact, not true. For example, if the owner or driver of the *vehicle* claims against us for *loss* or *damages* because they did not give permission for a *unit* to be installed in the *vehicle* where their permission was required, you will have to pay us the amounts of these claims.

## 2 Credit information

You agree that as far as the law allows:

- a) we have the right to carry out a credit enquiry with any registered credit bureau;
- b) we have the right to share your details with any registered credit bureau. This includes your personal information and payment history.
- c) the credit bureau as well as the credit provider that obtains your information from the credit bureau has the right to share your details for any purpose allowed by the National Credit Act, no. 34 of 2005.

## 3 Intellectual property rights

### 3.1 Meaning and scope of intellectual property in the agreement

The intellectual property in the *agreement* includes all content and information related to the *unit*, the *services*, the *Tracker website*, the *Tracker mobile application* or given by us in any form whatsoever (for example, correspondence). Intellectual property in the *agreement* also includes the following:

- a) All products and goods, including any materials that might be placed in the *unit* or be used together with the *unit*. For telematics *units*, this includes the SIM card that comes with the *unit* and information that is or can be derived from the SIM card;
- b) Data, information, databases, compilations of data, usage data (as defined in the *Tracker privacy policy*);
- c) Computer programs and software, software documentation, firmware, interfaces (including API interfaces), hardware, servers, computers, platforms, computer code, tools;
- d) Designs, circuit designs, algorithms, specifications;
- e) Trade names, logos, trademarks;
- f) Icons, links, graphics, photographic images;
- g) Sound clips, music, sound and television broadcasts;
- h) Text, literature, reports, plans, notes, files, diagrams, manuals, templates, schematics, correspondence, records, published editions;
- i) Derivative works, authored works;
- j) Modules, components;
- k) Methodologies, policies, procedures, techniques, models, configurations, protocols, routines;
- l) Improvements to any of the above items.

### 3.2 We own or have the right to use the intellectual property

We own or have the right to use the intellectual property. This includes intellectual property that we have licensed from a third party, that we license, or that we give right of use for to our *suppliers* so that they are able to provide the *services*.

We remain the owner or licensee of the intellectual property. This includes the SIM card that is used in the *unit*, where applicable.

### 3.3 You do not have or acquire any intellectual property rights

You do not have or acquire any intellectual property rights during the *agreement* or after it ends except for those intellectual property rights we expressly give to you in the *agreement*. You do not have the right to use the intellectual property in a way we do not expressly allow in the *agreement*.

### 3.4 We have the right to improve the intellectual property

We have the right to change the intellectual property without giving you notice.

## J. Embedded Value-added services

From time to time, we may provide value-added *services*. We have the right to change, remove or add these value-added *services* whenever we choose to after notifying you.

We do not have a *legal responsibility* to provide any value-added *services*. Adding, removing or replacing value-added *services* does not constitute a change to the *agreement* according to section K.

You do not have the right to end the *agreement* because we add, remove or change a value-added service during your *agreement* with us. We are not *legally responsible* to you for any *loss* or *damages* you suffer because of these changes.

The value-added *services* may be provided by third-party *suppliers* that we contract with. We have the right to change these *suppliers* whenever we choose to. Changing a *supplier* does not constitute a change to the *agreement* according to section K.

You do not have the right to end the *agreement* because we change a *supplier*. We are not *legally responsible* to you for any *loss* or *damages* you suffer because we change a *supplier*.

There might be conditions and limits that apply to the value-added *services*, for example, costs that apply. These are set out on the *Tracker website*.

## K. Changes to the agreement

### 1 We have the right to make changes to the agreement

We have the right to make changes to the *agreement* from time to time. We will tell you about the changes at least 40 calendar days before the changes come into effect if such changes impact on your rights. We have the right to inform you of changes in a shorter period in any of the following circumstances:

- a) If the change is required by law;
- b) If it is reasonable to give less than 40 calendar days' notice, having regard to the nature or content of the change.

## L. Ending the agreement

### 1 If you have a month-to-month agreement

You have the right to end the *agreement* by giving us one calendar month notice. A calendar month is from the first day of a month to the last day of a month. This means we must receive your notice on or before the first day of the month to end the *agreement* at the end of that month.

### 2 If you have a 36-month agreement

The *agreement* does not automatically end on the last day of the 36 months from the start date. If you want to end the *agreement* before the end of its 36-month term, you can do so by giving us one calendar month notice to end. You will be *legally responsible* to pay early *cancellation costs*. If you do not cancel the *agreement* at the end of the 36 months, the *agreement* will continue until you give us a calendar month notice. A calendar month is from the first day of a month to the last day of a month. This means we must receive your notice on or before the first day of the month to end the *agreement* at the end of that month.

### 3 If the vehicle is sold, stolen/hijacked, written off or repossessed

The *agreement* does not end automatically if you sell the *vehicle* or if there is theft, *loss* or *damage* to the *unit* or the *vehicle* that it is fitted to. If the *vehicle* is stolen/hijacked, written off or repossessed, you must tell us immediately. If you sell the *vehicle*, you must tell us at least three days before you hand the *vehicle* over to the new owner.

Until the *agreement* is cancelled in the way allowed in this section, you accept that you remain *legally responsible* for all *fees* for the remainder of the *agreement*. For this reason, we recommend that you insure the *unit*. You can ask us for a suitable *Tracker* product to assist you with this.

### 3.1 If you sell the vehicle (36-month agreement)

If you sell the *vehicle* before the end of the *agreement*, you can transfer the *agreement* to your next vehicle. If you choose to do this, we will need certain information from you (for example, details of your next vehicle and the date of purchase). We may remove the *unit* from the *vehicle* and install it into your next *vehicle* or we may install a new *unit* in the new *vehicle*. There is a charge for removing the *unit* and/or installing a new *unit* in your next *vehicle*. Before you ask to transfer the *agreement*, please ask us what charge applies at the time.

If you sell the *vehicle* before the end of the *agreement*, you can choose to end the *agreement* (early *cancellations costs* apply), or you can continue to pay the *monthly fee* until the end of the contract period.

### 3.2 If the vehicle is stolen or hijacked

If the *vehicle* is stolen or hijacked and recovered (even if not by us), the *agreement* will continue.

If the *vehicle* is stolen or hijacked and not recovered, the *agreement* will end at the end of the month after the month in which the *vehicle* was stolen or hijacked, and early *cancellation costs* will not apply.

### 3.3 If the vehicle is a write-off

If the *vehicle* is a write-off, you must tell us. The *agreement* will end and you will have to pay early *cancellation costs*.

For this reason, we recommend that you insure the *unit*. You can ask us for a suitable *Tracker* product to assist you with this.

### 3.4 If the vehicle is repossessed

If you can no longer finance the *vehicle* and it is repossessed by the financing company, you can cancel the *agreement*. If you have a 36-month contract, you will have to pay early *cancellation costs*. If we ask, you must give us proof that the *vehicle* has been *repossessed*.



For this reason, we recommend that you insure the *unit*. You can ask us for a suitable *Tracker* product to assist you with this.

If you end the *agreement* because the *vehicle* is sold, stolen or hijacked and recovered, written off or repossessed, you accept that you are *legally responsible* to pay *early cancellation costs*.

#### 4 If you breach the agreement

##### 4.1 When we can end the agreement immediately

We have the right to end the *agreement* immediately if you do any one or more of the following:

- You do not have the consent of the owner of the *vehicle* to enter into the *agreement* and to use the *services* for the *vehicle*;
- You do not get consent or make the required disclosures to the owner or driver of the *vehicle*, as required in section 1 to use the *services*;
- You use the *services* in any way or for any purpose that is invalid or illegal;
- You report the *vehicle* as stolen or hijacked when you know that it is not stolen or hijacked, or should reasonably have known that it is not stolen or hijacked.

If we are entitled to end the *agreement* immediately, we do not need to give you time to comply and correct your *breach*.

##### 4.2 When we will give you time to correct your breach

If you *breach* any term of the *agreement* or break any of your *warranties* for reasons other than those given above, you must correct your *breach* within 14 business days after we have notified you of the *breach*.

If we end the *agreement* immediately or you do not correct your *breach* within 14 business days, you accept that we have the right to do any one or more of the following:

- Suspend the *services*;
- End the *agreement*;
- Claim from you any amounts you still owe to us, including the *fees* that you would have had to pay if the *agreement* had continued until its original end date. You must pay these amounts immediately that we demand them.

##### 4.3 Other rights if you breach the agreement

These rights do not affect any other rights we might have in the *agreement* or in law. If the *breach* by you is not a material *breach*, we will only exercise our rights in sections L4.1 and L4.2 where it is reasonable for us to do so.

##### 4.4 Your legal responsibility if you breach the agreement

If you *breach* the *agreement*, you *agree*:

- to pay us and our *affiliates* and *suppliers* the value of all *loss* or *damages* that we or our *affiliates* or *suppliers* suffer as a result of you *breaching* the *agreement*;
- to pay us and our *affiliates* and *suppliers* the value of all *loss* or *damages* we suffer from claims that are brought against us or our *affiliates* or *suppliers* as a result of you *breaching* the *agreement*;
- to pay all legal costs reasonably incurred by us on the scale as between attorney-and-own-client if we have to take legal steps against you;
- to pay collection costs reasonably incurred by us while trying to collect any amounts that you owe to us.

If you *breach* the *agreement* (which includes breaking your *warranties* or undertakings), you accept that you are required to take on the *legal responsibility* for *loss* and *damages* that we or our *affiliates* or *suppliers* might suffer or be required to pay.

You accept that this might also lead to us having claims against you and to you being *legally responsible* to us for extra amounts, including any costs or *damages* we must pay to our *affiliates* or *suppliers*.

You accept that you are also *legally responsible* to pay:

- any legal costs that we pay to our lawyers. These costs are calculated at a much higher rate than the courts normally apply;
- any amounts that we pay in trying to collect or get you to pay money that you owe to us.

#### 5 If we breach the agreement

If we *breach* any term of the *agreement*, you must give us 14 business days to correct the *breach*. If we do not correct the *breach* within that time, you have the right to cancel the *agreement*. You must give us 20 business days' notice after the 14-day period ends.

If we *breach* the *agreement*, we will pay the following when you ask us to:

- Legal costs on an attorney-and-client scale related to our *breach*;
- Other collection charges and commissions incurred by you related to our *breach*.

### M. Sending notices under the agreement

#### 1 Address where we agree to accept notices, including legal notices

Any notices you send to us under the *agreement*, including legal notices (for example, a letter of demand), must be delivered to us at any one of the following addresses:

##### By hand or post

Tracker Connect (Pty) Ltd  
Stonemill Office Park  
340 Republic Road  
Darrenwood 2194

##### By email

info@tracker.co.za;

(These addresses are known in law as *domicilium citandi et executandi*.)

For any questions, concerns or complaints, you can contact us at the Contact Centre on 0860 60 50 40.

To update or change your bank details or any of the information that you gave us in your *application*, you can contact us by:

- phoning the contact centre on 0860 60 50 40;
- emailing us at: info@tracker.co.za;
- logging into your account on the *Tracker website* and updating the information in the way we request on the *Tracker website*.

Please note that only you personally have the right to update or change your bank details or any of the information that you gave us in your *application*.

#### 2 Address where you agree to accept notices, including legal notices

Any notices we send to you under the *agreement*, including legal notices (for example, a letter of demand), will be delivered to you at the address you gave on the *application* or any later address you have given us proper notice about. If you chose email as your preferred method of communication on the *application*, you agree that we may deliver notices, including legal notices, to your email address. (This address is known in law as *domicilium citandi et executandi*.)

You must tell us about any change of address on the *Tracker website* or through the contact centre on 0860 60 50 40. If you change address but you do not tell us on the *Tracker website* or through the contact centre, you agree that you will accept notices, including legal notices, at the address you gave to us in your *application*.

#### 3 Time periods for notices, including legal notices

For both parties, any notice delivered under the *agreement* is treated as being received:

- on the date of delivery, if delivered by hand to the physical address;
- 10 days after posting, if sent by ordinary mail to a postal address;
- on the first business day after sending an email;
- at 9am on the first business day after sending an SMS to your cell phone number.

When we treat a notice as if you have received it by a certain date and time, it means we do not have to prove that you did receive it then. If you claim that you did not receive the notice by that date and time, then you will have to prove it.

#### 4 Notices by SMS or email

We have the right to send you notices about the following issues by SMS or email:

- Confirmation of your entering into this *agreement*;
- Increases to *fees*;
- Defective *units* or *units* that are not reporting;
- Not receiving your payments in time or at all;
- Notices that we intend to suspend the *services* to you.

You choose your preferred contact method (SMS or email or both) in your *application*. Unless a particular paragraph says differently, we will send all communications and notices to you by your preferred contact method. If we cannot contact you by your preferred contact method, we have the right to decide to use another contact method.

### N. Our legal responsibility to you is limited

As far as the law and sections C3 and D5 allow, we are not *legally responsible* for:

- any *loss* or *damages* that you might suffer where there is any delay, suspension or interruption in the *services* because of any of the events or circumstances referred to in section D5;
- any *loss* or *damages* that you might suffer because of our, our *suppliers'* or our *affiliate's* negligence. This excludes gross negligence or wilful misconduct. Gross negligence is a serious lack of care in performing a legal duty owed to you under the *agreement*. Wilful misconduct is deliberately doing something that should not be done or deliberately not doing something that should be done, knowing that someone might suffer *loss* or *damages* as a result;
- any delay, breakdown, failure or *loss* that you might suffer because of a defect or deficiency in the intellectual property;
- any failure, delay or interruption in your use of the *Tracker service* or the *Tracker website*, including:
  - system and server crashes;
  - system errors;
  - computer malfunctions;
  - unit* or software faults;
  - security *breaches*;
  - theft;
  - incompatibility issues;
  - fire, flood, any other event referred to as an "Act of God";
  - war, civil disturbances;
  - international restrictions, embargoes;
  - any lost, corrupted or undelivered data or information, regardless of the cause;
  - any *loss* of profits, business or revenue that you suffer;
  - any indirect *loss* or indirect *damages* that you suffer.

You accept that there are certain types of *loss* or *damages* that you may suffer that you cannot claim from us at all. This includes the *loss* and *damages* listed in this clause above, and *loss* or *damages* that result from any of the events listed in this clause above.

You use the *services* and the *unit* knowing and accepting these *risks*.



## O. Indemnity

As far as the law allows, you agree to reimburse us, our *affiliates* and our *suppliers* against any *loss* we or they may suffer from a claim brought against any one or more of us, where the claim results from:

- a) your *breach* of your *legal responsibilities* under the *agreement*;
- b) your use of the intellectual property;
- c) any deliberate or unlawful act that you commit or failure to act.

The *legal responsibilities* set out in this section N will survive the end of the *agreement*.

You accept that this clause requires you to take on risk and *legal responsibility* for claims, *loss* and *damages* that we, our *affiliates* and our *suppliers* might suffer. We are not *legally responsible* to you or anyone else for any claims made against us, our *affiliates* or our *suppliers*.

You accept that this clause may also lead to us, our *affiliates* or our *suppliers*, having claims against you and to you being *legally responsible* to us for additional amounts, including for any costs or *damages* we, our *affiliates* or *suppliers* are required to pay.

## P. The right to sub-contract *services* and administration

We have the right to sub-contract to our *affiliates* or *suppliers*:

- a) some or all of the *services*;
- b) any of the operational, technical and administrative activities we perform to carry out the *agreement*.

Any *agreement* to sub-contract does not release us from our *legal responsibility* to you under the *agreement*.

## Q. Transfer of rights and *legal responsibilities*

We have the right to at any time transfer all or some of our rights in terms of the *agreement* to any third party without your permission. This transfer of rights is known as a cession. We will write to you to inform you of any cession we intend to make. We do not have to inform you if we cede the rights to any of our *affiliates* or to any sub-contractors we appoint.

As far as the law allows, we have the right to transfer all or some of our *legal responsibilities* under the *agreement* to any third party without your permission. This transfer of *legal responsibilities* is known as a delegation. We will write to you to inform you of any delegation we intend to make. We do not have to inform you if we delegate the *legal responsibilities* to any of our *affiliates* or to any sub-contractors we appoint.

## R. Neither you nor we give up rights

If you do not enforce or exercise your rights in the *agreement*, this does not mean that you have given up these rights. You have the right to enforce the rights in the *agreement* at any time.

If we do not enforce or exercise our rights you have against us in terms of the *agreement*, this does not mean that we have given up these rights. We have the right to enforce the rights in the *agreement* at any time.

## S. Each provision is separate

Each provision in the *agreement* is separate. Parts of a provision are also separate. If any provision or part of a provision is or becomes illegal, invalid or unenforceable for any reason, it must be treated as if it had not been included in these terms and conditions. This does not make the rest of the provisions illegal, invalid or unenforceable.

## T. South African law applies

These terms and conditions are governed by and must be interpreted under the laws of the Republic of South Africa. This applies even if one or both of the following apply:

- a) You do not live in the Republic of South Africa;
- b) You agreed to these terms and conditions outside the Republic of South Africa.

## U. Guidelines to interpreting the *agreement*

### 1.1 Headings

Headings are aids to reading and understanding. They are not terms or conditions themselves. Headings do not limit or extend the meaning or application of the terms or conditions.

### 1.2 Singular and plural

Words in the singular include the plural. Words in the plural include the singular.

### 1.3 Forms of words

Words used in one form have their corresponding meaning when used in another form. For example, to claim, claiming, claimed.

### 1.4 The word including

The word 'including' must be interpreted as introducing an example list and not limiting the list or excluding additions to it.

### 1.5 General words are not limited

Where there is a list of specific things that belong together to describe a general word or phrase, the general word or phrase can have other meanings and can include other things. The general word or phrase must not be interpreted to only apply to those specific things or things similar to those specific things.

### 1.6 Calculating days

Where a number of days is given, the days must be counted to exclude the first day and include the last day.

### 1.7 Reference to laws

When there is reference to a law or to a section of a law, we mean that law or section of that law as amended, repealed or replaced.

### 1.8 Text in boxes

Text in boxes is intended to bring your attention to parts of the *agreement* that have important legal consequences for you. They explain the fact, nature and effect of terms and conditions that limit or exclude our *legal responsibility* to you, and terms and conditions where you take on *legal responsibility* or risk. The text in boxes does not limit the meaning or application of the *agreement*.