



# THE TERMS AND CONDITIONS

## 1. DEFINITIONS

1.1.	"Activation"	means the enabling of a SIM card and/or Network Services by Mtrack for use by the Client in accordance with the terms and conditions of this Agreement;
1.2.	"Agreement Commencement Date"	shall mean the date upon which the last party signs this Main Agreement;
1.3.	"Charges"	means all and any charges related to or associated with the installation, maintenance, service of the Terminal Equipment and/or in respect of the provision of Network Services and/or any other Mtrack services howsoever described by Mtrack that Mtrack may render to the Client from time to time, as detailed in its Price List and/or the written proposal submitted to the Client and/or as determined by Mtrack in its sole discretion;
1.5.	"Client"	shall mean the party whose particulars appear at clause 1 of the Schedule and who has subscribed to Mtrack to make use of the Terminal Equipment and/or the Network Services and/or other services related to the Main Agreement;
1.4.	"GPRS"	shall mean General Packet Radio Service;
1.5.	"GPS"	shall mean Global Positioning System;
1.6.	"GSM"	shall mean Global System for Mobile Communications as defined in the European Standards Institute structure of specifications;
1.7.	"Hardware"	shall mean the MtrackFleet Tracking unit or any future version of tracking unit with whatever brand name, plus other accessories related to the Mtrack product range. This includes but is not limited to sensors, batteries, remote controls and Mtrack Remote Monitor;
1.8.	"Initial Rental Period"	shall mean a period of 36 (thirty six) successive months, with each piece of Terminal Equipment having its own Initial Rental Period;
1.9.	"Initial Service Period"	shall mean a period of 24 (twenty four) successive months, on each piece of Terminal Equipment to which Mtrack activates and renders a tracking service, with each one of the respective Terminal Equipment therefore having its own Initial Subscriber Period;
1.10.	"Installation"	shall mean the setting up, fitting, fixing, putting in place, installing of one or more of Mtrack's Terminal Equipment in a vehicle or other movable or fixed object, of either the Clients or other third party on the Client's special instance and request;
1.11.	"Main Agreement"	shall mean this Agreement, including any and all annexures hereto and any and all parts thereto. The Main Agreement shall be interpreted as a separate and divisible transactions for each piece of Terminal Equipment supplied and/or delivered and/or in possession of the Client or any third party on request of the Client and /or for each Terminal Equipment which Mtrack provides maintenance and/or a service, each transaction capable of standing on its own;
1.12.	"Month"	shall mean a period which commences at 00h00 on a particular day (determined by Mtrack from time to time) of a calendar month and shall endure until 23h59 on the day preceding such day of the following calendar month;
1.13.	"MSISDN"	shall mean the Mobile Station International Client Directory Number (otherwise known as the mobile telephone number) programmed into each SIM Card or the number assigned to the Terminal Equipment for identification by Mtrack;
1.14.	"Mtrack"	shall mean South African Electronic Tracking Systems Limited trading as Mtrack with Registration Number 2002/024534/06 and shall include all and any duly authorised agents, representatives, employees and consultants as appointed by Mtrack from time to time, as well as any cessionary and/or new owner of Mtrack;
1.15.	"Mtrack's Premises"	means the offices of Mtrack situated at 31A Nicol Road, Bedfordview, Johannesburg, but specifically excludes the branch offices of Mtrack and the offices of any agent or intermediaries acting on behalf of Mtrack or any other party related and/or connected to Mtrack;
1.16.	"Network"	means a telecommunication system, including but not limited to, a cellular telephone system, a satellite telephone system, a fixed line telephone system and or any combination of the latter operated by the Operator;
1.17.	"Network Services"	means the Telecommunications Network Services, including but not limited to GSM, GPRS, GPS, PSTN, ISDN, Immarsat, VSAT, Internet and other Value Added Services, made accessible to the Client by Mtrack in terms of this Main Agreement, and includes "value added services" being secondary services designated as such by Mtrack and which are part of the Network Services except that they may be provided only to Clients under certain package options to the exclusion of other Clients, or may be provided at an additional charge and may be introduced or withdrawn by Mtrack at its sole discretion at any time;
1.18.	"Operator"	shall mean any licensed Mobile Network Operator which has granted Mtrack the right directly or indirectly through a service provider to make Network Services available to the Client;
1.19.	"Order"	shall mean a written Order placed by the Client to Mtrack, for the provision and/or installation of Terminal Equipment and/or use of the Network Services and/or Vehicle Recovery Services in accordance with the Main Agreement, if accepted by Mtrack;
1.20.	"Package Options"	shall mean any one of the tariff plans under which the Network Services are made accessible to the client, which tariff plans are set out in the Price List and/or written proposal and vary in relation to, inter alia, the rate of Usage Charges, the Value-Added Services included, and other variables as determined by Mtrack from time to time – but subject to the requirements, conditions and/or approvals of the Operator, where applicable;
1.21.	"Parties"	shall mean collectively, Mtrack and the Client;
1.22.	"Price List"	shall mean the schedule on which the charges levied by Mtrack are recorded, as amended from time to time, which Price List is available on request from Mtrack and/or the schedule and/or proposal on which the charges levied by Mtrack are recorded and amended from time to time. Should the latter not be presented to the Client in the form of a written proposal, a copy of the Price List applicable at the time shall be made available to the Client on request;
1.23.	"Prime Rate"	shall mean Mtrack's banker's published prime annual lending overdraft rate of interest from time to time compounded monthly in arrears. In the case of a dispute as to the rate so payable the rate shall be certified by any manager or assistant manager of any branch of the said bank, which certificate shall be conclusive proof

- of the said interest rate applicable at any given time and be final and binding on the Parties;
- 1.24. "Renewal Period" shall mean for a period of 12 (twelve) successive months commencing on the day immediately following the expiration of the Initial Rental Period and/or Initial Service Period;
- 1.25. "Rental" shall mean the monthly amount due, owing and payable by the Client to Mtrack for the use of the Terminal Equipment which forms part of the Charges;
- 1.26. "Rental Commencement Date" shall commence from the date of delivery and/or installation of each respective Terminal Equipment;
- 1.27. "Service Commencement Date" shall commence on the respective service activation dates of each one of the various Terminal Equipment;
- 1.28. "Software" shall mean any system software related to or associated with the Terminal Equipment and/or the Network Services provided to the Client by Mtrack in accordance with the provisions of this Main Agreement at any given time;
- 1.29. "SIM Card" shall mean a Client Identity Module incorporating an ICC and MSISDN which, when activated or supplied by Mtrack, provides a Client using compatible Terminal Equipment with access to the Network Services;
- 1.30. "Terminal Equipment" shall mean any Terminal Equipment including, but not limited to, GSM/GPRS SIM Card, Network Terminal Equipment, the MtrackFleet Tracking unit or any future version of tracking unit with whatever brand name, plus other accessories related to the Mtrack product range, including but not limited to batteries, sensors, remote controls and/or Mtrack Remote Monitor thereto utilised by the Client to communicate and send and/or receive messages and information conveyed by the Network, tracking Terminal Equipment, peripheral devices, computer Terminal Equipment and/or computer software or part thereof serviced by Mtrack;
- 1.31. "Terminal Equipment and Services Schedule" shall mean the schedule at clause 10 of the Main Agreement on which all Terminal Equipment and Services of Mtrack is recorded. Mtrack's invoice shall also be deemed to be a Terminal Equipment and Services Schedule in the absence of a formal schedule having been drawn in terms of this Agreement.
- 1.32. "Service Provider" shall mean an entity who is entitled to offer and provide cellular services to third parties;
- 1.33. "Units" shall mean the MtrackFleet tracking unit or any future version of tracking unit with whatever brand name;
- 1.34. "Value Added Services" shall mean the MtrackFleet software, all reporting functionality and all monitoring and recovery functionality;
- 1.35. "Vehicle Recovery Charges" shall mean all and any charges payable by the Client to Mtrack in respect of the services rendered by Mtrack or Mtrack's authorised agent for purposes of recovering the Client's motor vehicle/asset if lost or stolen at any given time, as more fully detailed and recorded overleaf, which charges are subject to change at Mtrack's sole discretion at any time;
- 1.36. "Vehicle Recovery Services" Shall mean the recovery services rendered by Mtrack or its agent from time to time to the Client in order to locate and recover the Client's motor vehicle/asset in circumstances where same has been lost or stolen by third parties;
- 1.37. "Written Proposal" shall mean a written or verbal proposal as formulated by Mtrack and presented to the Client, which upon acceptance by the Client shall be deemed to constitute a written and/or verbal offer to Mtrack to contract with Mtrack on terms and conditions as set out in this Main Agreement, which Mtrack may then at its sole discretion accept or reject without the need to provide further reasons to the Client. Any acceptance of such proposal by Mtrack shall always be subject to the terms and conditions of this Main Agreement being applicable thereto, irrespective of whether or not such Main Agreement has been signed by the parties hereto.
- 1.38. Words importing natural persons shall include a reference to any company, close corporation, partnership, business, concern, undertaking, enterprise or any other instance having a legal personality.
- 1.39. Words importing the masculine shall include a reference to the feminine and other genders.
- 1.40. Words importing the singular shall include a reference to the plural and *vice versa*.
- 1.41. Unless repugnant to the context or unless defined specifically therein, words and phrases in any annexure to this Main Agreement shall bear the same meaning, or substantially the same meaning (as their context may require) as are assigned to them in this Main Agreement.
- 1.42. All annexure(s) to this Main Agreement shall be deemed to have been incorporated herein and shall form an integral part hereof.
- 1.43. A reference to a party in a document includes that party's successors and permitted assigns.
- 1.44. Any reference to an enactment is to that enactment as at the Signature Date hereof and as amended or re-enacted.
- 1.45. Where the day on or by which anything is to be done is not a business day, it shall be done on or by the first business day thereafter.
- 1.46. When any number of days is prescribed in this Main Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, and shall include Saturdays, Sundays and public holidays.
- 1.47. A reference to 'business' day means any day other than a Saturday, Sunday or official public holiday in South Africa.
- 1.48. A reference to a document includes an amendment or supplement to, or replacement or novation of that document.
- 1.49. The captions appearing in this Main Agreement are for reference purposes only and shall not affect the interpretation hereof.
- 1.50. If any provision is a definition and is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition (or such other clause) effect shall be given to it as if it were a substantive provision in the body of the Main Agreement.
- 1.51. Where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail.
- 1.52. Should the day for payment of any amount due in terms of the Main Agreement fall on a day that is not a business day then the due date shall be the immediately succeeding business day.
- 1.53. The *contra proferentum* rule will not be applicable to the interpretation of this Main Agreement.

## 2.PREAMBLE

- 2.1 Wherein Mtrack as the Client's preferred asset tracking and recovery solution provider provides Terminal Equipment, the installation and/or delivery and/or supply and/or rental of Terminal Equipment and/or services and/or maintenance of the Terminal Equipment, to the Client on the Client's special instance and request and for a prescribed monthly amount payable to Mtrack by the Client.

## 3.MTRACK'S MONTHLY SERVICES

- 3.1 Mtrack's monthly services shall mean any Network Service, Tracking Service, Recovery Service, Value added Service and or any other type of service provided and or maintained by Mtrack to the Client.
- 3.2 Mtrack services provided to the Client shall be for a minimum required Initial Service Period of 24 (twenty four) successive months, for each piece of Terminal Equipment to which Mtrack activates and renders a Network Service.
- 3.3 The Network Service shall commence on the respective service activation dates of each one of the various supplied and/or delivered Terminal Equipment, with each one of the respective Terminal Equipment therefore having its own Initial Service Period which shall continue for such Initial Service Period, and thereafter continue automatically for unlimited number of Renewal Periods unless terminated by either party in accordance with the termination clause and subject to the reasonable penalties imposed for premature termination.
- 3.4 If any Terminal Equipment and/or Network Service is supplied to the Client and activated at any time subsequent to the execution of this Agreement, then the supply and usage of that Terminal Equipment and/or SIM Card and/or Network Services and the services associated with such usage shall be governed by the terms and conditions of this Agreement, irrespective of whether or not the Terminal Equipment and/or Network Services have been recorded on the Terminal Equipment Schedule.
- 3.5 Mtrack shall utilise its best endeavours to promptly comply with any supply, installation and/or requirements recorded in the Order, but shall not be liable to the Client in the event that such supply and/or installation is delayed or cancelled, for whatsoever reason.
- 3.6 All risk in and to any piece of Terminal Equipment supplied and delivered by Mtrack to the Client shall pass to the Client on supply and/or delivery thereof.
- 3.7 If a SIM Card or piece of Terminal Equipment containing a SIM Card is lost, stolen or damaged, the Client shall immediately notify Mtrack in writing and until such notification has been received by Mtrack, the Client shall remain liable for all costs and charges pertaining to such Terminal Equipment and/or SIM Card. Once Mtrack has received the said notification, Mtrack shall as soon as reasonably possible, issue to the Client a replacement piece of Terminal Equipment and/or SIM Card, and may in its discretion, require the Client to effect payment of Mtrack's charge in respect of the cost of issuing, delivering and/or installing such replacement as recorded in the Price List applicable at such time. Such loss, theft or damage and/or the issue of a replacement Terminal Equipment and/or SIM card and/or the allocation of a new MSISDN for any reason, shall in no way be deemed to constitute a termination of this Agreement which shall continue to be of full force and effect.

3.8 The Client hereby warrants and undertakes in favour of Mtrack that the Client:

- 15.8.1 shall not use nor allow the Network Services to be used for any improper, immoral or unlawful purpose, nor in any way which may cause injury or damage to persons or property or an impairment or interruption to the Network Services;
- 15.8.2 shall only use Terminal Equipment approved by Mtrack, and comply with all relevant legislation and regulations imposed by any competent authority and all directives issued by Mtrack relating to the use of Terminal Equipment, Network Services and SIM Cards;
- 15.8.3 Recognises that no right, title or interest in the software, the MSISDN or the ICC contained in each SIM Card issued to Client, vests with the Client;
- 15.8.4 Shall not, nor permit any third party to reverse engineer, decompile, modify or tamper with the software, the hardware, the MSISDN, or the ICC contained in, or pertaining to any SIM Card or Terminal Equipment.

3.9 The availability of Value Added Services, whether for free or in circumstances where a subscription fee is charged, is subject to the discretion of Mtrack and may be charged for or withdrawn at any time by Mtrack in its sole discretion. In the event that Mtrack withdraws any Value Added Services for which a subscription fee is charged, no further subscription fee will be charged for the period after the withdrawal of the Value Added Service concerned. Where the Client subscribes to a Package Option that includes provision of Value Added Services free of charge, Mtrack shall be entitled, in its sole discretion and without notice of the Client, to vary, discontinue or substitute such Value Added Services without reducing any of the Monthly Service Charges or providing any refund to the Client, unless Mtrack in its sole discretion, decides to do so.

3.10 Notwithstanding its Activation, the SIM Card shall be barred from making calls (international calls and international roaming) to and from any place outside the national boundaries and will only be unbarred for a specific period on written request by the Client submitted to Mtrack at least 5 (five) working days before the specified date of unbarring and in the form as may be prescribed by Mtrack from time to time. Mtrack shall only agree to the unbarring in the event that it has an Agreement in place with the Operator/Service Provider in any given area/territory, however irrespective thereof, Mtrack reserves the right to refuse to unbar the SIM Card as contemplated herein without furnishing reasons therefore and may in its discretion require the Client to first provide a security deposit in the amount determined by Mtrack in its sole discretion before the SIM Card is unbarred.

3.11 Upon a Client ordering additional Terminal Equipment subsequent to the signing of this Agreement, the new Mtrack Invoice and/or installation certificate will serve as proof of delivery and/or installation of these new units and this Agreement will apply equally to all new additional units as if the Agreement was signed specifically for these additional units.

#### 4. THE EMERGENCY RECOVERY SERVICE

- 4.1 The Mtrack service is to track and, if required, recover the Client's assets when stolen.
- 4.2 In the event that the Client selected the Emergency Recovery Service option provided in Clause 8 of this agreement, these terms and conditions will apply.
- 4.3 If the Client or a third party reports the theft of the Client's asset to Mtrack, Mtrack will endeavour to locate and recover the asset.
- 4.4 Mtrack does not warrant that it will locate and/or recover the Client's asset(s) but will endeavour to do so. Mtrack shall not be liable to the Client in the event the asset(s) is not located and/or recovered.
- 4.5 The recovery service is only available within an area with Network coverage within the Republic of South Africa.
- 4.6 The Client agrees that Mtrack may recover the asset and Mtrack shall not be liable for any damage to the asset and/or any other damage of whatsoever nature.
- 4.7 Upon recovery, Mtrack will act to secure the asset and then make it available to be claimed by the Client. However, if required by the South African Police Service or any other authority, Mtrack will hand the asset over to such authority.
- 4.8 Mtrack shall not supply any emergency recovery service if the Client is in default of any of the Client's obligations to Mtrack.
- 4.9 The Mtrack emergency recovery services depend on the quality and availability of the Network Services and global positioning information, which may be affected by factors beyond Mtrack's control. Mtrack will be unable to provide emergency recovery services in the event that the Terminal Equipment is faulty and/or operational.
- 4.10 The first two hours of vehicle emergency recovery are free; thereafter an amount of R575.00 (five hundred and seventy five rand) per hour will be charged by Mtrack to the Client. Mtrack shall not be compelled to handover the recovered asset to the Client until such time as all recovery fees have been paid to Mtrack and for this the Client hereby pledges its asset/s as security for its debt in favour of Mtrack.

#### 5. CALL DATA RECORDS

- 5.1 The Client hereby authorises Mtrack to download and analyse the call data records of the MSISDN lines, which the Client is lawfully entitled to use, in terms of an Agreement, which the Client has entered into with a GSM Service Provider or Network Operator. The Client hereby authorises Mtrack to request the service of downloading the call data records from the GSM Service Provider or Network Operator. This authorisation does not in any way over-ride or replaces the terms and conditions.

#### 6. SALE OF TERMINAL EQUIPMENT

- 6.1 In the event that the Client purchases the Terminal Equipment from Mtrack then the sale of the Terminal Equipment by Mtrack to the Client at a subsidised price as set out in the Terminal Equipment Schedule shall be subject to the following terms and conditions, namely:
  - 6.1.1 In the event of termination of the Agreement, within the initial period, for whatsoever reason, Mtrack shall have the right to claim from the Client an amount of up to R2,900.00 (Two Thousand Nine Hundred Rand) being the amount by which each piece of Terminal Equipment was subsidised by Mtrack at the time of sale of the Terminal Equipment by Mtrack to the Client and the Client shall be obliged to effect payment to Mtrack of the amount so claimed on demand; Provided that if the Client fails to effect the payment so claimed by Mtrack, Mtrack shall have the right, at its sole discretion to insist that the Client return the Terminal Equipment to Mtrack in good working order, and shall not be entitled to receive any refund therefore whatsoever;
  - 6.1.2 Mtrack retains ownership in and to each piece of Terminal Equipment supplied and delivered by Mtrack to the Client until payment of all amounts payable to Mtrack in respect of same has been effected in full, and, if the purchase price of a piece of Terminal Equipment has been subsidised, until the expiration of the Initial Period or the amount equal to the amount by which the Terminal Equipment has been subsidised has been paid by the Client to Mtrack;
  - 6.1.3 All risk in and to each piece of Terminal Equipment supplied and/or delivered by Mtrack to the Client shall pass to the Client on delivery.
  - 6.1.4 Mtrack's obligations in terms of any warranties pertaining to each piece of Terminal Equipment shall be limited to the warranty provided by the manufacturer of the Terminal Equipment, tracking Terminal Equipment, peripheral device, computer or software developer as the case may be.
  - 6.1.5 Should the Client, upon purchase of the Terminal Equipment, discover any fault or defect in the Terminal Equipment, the Client shall within 10 (ten) days of purchase return the Terminal Equipment to Mtrack in the same condition as it was purchased, and Mtrack shall, replace the damaged/faulty Terminal Equipment.
  - 6.1.6 The Terminal Equipment sold and supplied to the Client is subject to a 12 (twelve) month manufacturers carry in warranty in accordance with which the Terminal Equipment shall be repaired and/or replaced by the Terminal Equipment manufacturer within a reasonable period of time once same has been returned by the Client to Mtrack;
  - 6.1.7 Mtrack shall not be liable to the Client in the event that the manufacturer fails and/or neglects and/or refuses to repair and/or replace the Terminal Equipment.
  - 6.1.8 Below clauses 17.5 to 17.15 shall also apply to the sale of Terminal Equipment from Mtrack to the Client, as if specifically repeated herein.

#### 7. RENTAL OF TERMINAL EQUIPMENT

- 7.1. In the event that the Client rents the Terminal Equipment, it is recorded that the Terminal Equipment has been or will be purchased by Mtrack from a Supplier of such Terminal Equipment, and that Mtrack purchases the Terminal Equipment at the Client's specific instance and request and solely for the purpose of renting the Terminal Equipment to the Client in terms of this Agreement.
- 7.2. The Client shall, upon taking delivery of the Terminal Equipment from Mtrack, sign Mtrack's delivery note and shall procure that a copy of the delivery note is given, without delay, to Mtrack. By signing the said delivery note, the Client confirms that it has inspected the Terminal Equipment and has satisfied itself in regard thereto and agrees that the Rental payments shall commence immediately on delivery and not on installation.
- 7.3. The rental of the Terminal Equipment provided by Mtrack to the Client will be for a fixed Initial Rental Period of 36 (thirty six) successive months, for each piece of Terminal Equipment supplied and/or delivered.
- 7.4. The Initial Rental Period shall commence on the respective supply and/or delivery dates of each one of the Terminal Equipment, with each one of the respective Terminal Equipment therefore having its own Initial Rental Period which shall continue for such Initial Rental Period, and thereafter continue automatically for unlimited number of Renewal Periods unless terminated by either party in accordance with the termination clause and subject to the reasonable penalties imposed for premature termination.
- 7.5. If any Terminal Equipment is supplied to the Client at any time subsequent to the execution of this Agreement, then the supply and usage of that Terminal Equipment shall be governed by the terms and conditions of this Agreement, irrespective of whether or not the Terminal Equipment has been recorded on the Terminal Equipment Schedule and each one of the supplied Terminal Equipment shall also have its own Initial Rental Period.
- 7.6. The Client shall utilize the Terminal Equipment in a proper, appropriate and reasonable manner and shall be responsible for the safety and security of the Terminal Equipment during the duration of this Agreement and any renewal hereof.
- 7.7. The Client shall at all times keep the Terminal Equipment in its possession and under its control and it shall, at its own expense, ensure that the Terminal Equipment is properly maintained in good working order throughout the duration of this Agreement.
- 7.8. The Terminal Equipment shall be operated at the Client's cost and shall be used only by properly trained individuals who the Client shall procure comply with the specifications, instructions and recommendations of Mtrack for the use and operation of the Terminal

Equipment for the duration of the agreement. Similarly, the Client shall be obliged to ensure that any servicing or maintenance of the Terminal Equipment is undertaken in accordance with any applicable specifications, instructions and recommendations of Mtrack.

- 7.9. The Client shall keep the Terminal Equipment free from attachment, hypothec or other legal charge or process and shall not part with possession of Terminal Equipment to any third party without the prior written consent of Mtrack for the duration of this agreement.
- 7.10. The Client may not materially alter or modify the Terminal Equipment without the prior written consent of Mtrack for the duration of this agreement.
- 7.11. The Client shall at all reasonable times permit Mtrack and/or its representatives reasonable access to the Terminal Equipment for the duration of this agreement.
- 7.12. Mtrack's installation team will repair or replace faulty Terminal Equipment on site.
- 7.13. All battery replacements need to be done by Mtrack technicians.
- 7.14. The Client shall be responsible for complying with any legislation, regulations or bylaw pertaining to the use of the Terminal Equipment for the duration of this agreement.
- 7.15. The Client acknowledges that the goods are movable, are intended to remain movable and shall under no circumstances accede to any immovable property.
- 7.16. On termination of this Agreement, the Client shall return the Terminal Equipment to Mtrack (or its cessionary, as the case may be) in good repair and working order, fair wear and tear expected within 48 (forty eight) hours of termination of this agreement.
- 7.17. Ownership in and to the Terminal Equipment shall at all times vest in Mtrack and nothing in this Agreement shall be construed as conferring ownership of the Terminal Equipment on to the Client. The Client acknowledges that ownership in and to the Terminal Equipment shall not pass to it in consequence of the payment of the Rental amounts due under this Agreement.
- 7.18. On expiry of the rental Agreement, the Client shall have the option of purchasing the Terminal Equipment at a reasonable cost as determined by Mtrack. This is conditional on all payments having been made on time, or any quoted settlement figure having been paid. Any late payment will result in cancellation of this concession.
- 7.19. If the Client leases the premises at which the Terminal Equipment frequents, the Client shall give written notice to the relevant Landlord to the effect that the Terminal Equipment is owned by Mtrack.

## 8.CHARGES

- 8.1. In consideration for the supply and/or Installation and/or Rental and/or sale of Terminal Equipment and/or international roaming and/or the provision of Mtrack Services of whatever nature supplied by Mtrack to the Client, the Client shall effect payment to Mtrack of the applicable Charges and Vehicle Recovery Charges, as detailed in the Schedule and/or the Invoice and whether or not the Terminal Equipment and/or Mtrack Services and/or Vehicle Recovery Services have been, or are being utilised by the Client.
- 8.2. All prices and charges set out in this Agreement and any Price List are exclusive of Value Added Tax and any other applicable tax or duty, the liability for which shall vest with the Client.
- 8.3. With effect from the respective Rental Commencement Date(s) and/or and Service Commencement Date(s), any and all Charges due and payable to Mtrack by the Client shall be paid monthly in advance and in full within 5 (five) days of date of Mtrack's invoice and thereafter on or before the first day of each following month.
- 8.4. Unless otherwise agreed in writing between the parties, payment of the Charges shall be effected pursuant to the debit order authorization provided for in the Schedule herein. It shall be the responsibility of the Client to ensure that its banker's requirements in respect of the debit authorization are complied with and, to the extent that if alternative and additional authorization are required in order to implement the debit order, the Client undertakes to procure diligent compliance therewith in order to give effect to the terms of this Agreement. A returned debit order fee of R200 (two hundred rand) is charged, plus interest on the outstanding amount from due date until the date that payment is made and if payment is made via cheque, an amount of R105 (one hundred and five rand) will be charged to cover bank fees.
- 8.5. Without in any way limiting any of the rights of Mtrack, if any Charges due in terms of this Agreement are not paid timeously, interest shall accrue thereon at a rate of 12% (twelve percent) per month, as from due date to date of final payment thereof.
- 8.6. The Charges payable in terms of this Agreement shall escalate annually with effect from the anniversary of the Rental Commencement date and/or Service Commencement dates at an escalation rate of 8% (eight percent) per annum.
- 8.7. Should the Prime Rate or VAT Rate be increased at any time above the Rate ruling at the date upon which this Agreement is concluded, Mtrack shall be entitled, at any time thereafter to increase the Charges specified so as to maintain the same margin in relation to the Prime or VAT Rate which existed at the date of signature of this Agreement.
- 8.8. Mtrack may change the terms and conditions of this Agreement, at its sole discretion, as a result of changes in laws and regulations affecting the terms and conditions of the license issued to the Operator, which may in turn change the terms and conditions of any Agreement with the Operator on which Mtrack is dependant, Mtrack shall notify the Client of any changes as contemplated herein in writing, however the Client's consent in this regard is not required.

- 8.9. Mtrack may at any time on reasonable written notice to the Client vary its invoicing and payment procedures and requirements.

- 8.10. In the event that Mtrack requires payment for the services provided to the Client to be made by debit order, the Client will commit a breach of this Agreement if the Client:

- 8.10.1 Cancels such debit order without the written consent of Mtrack;

- 8.10.2 Changes his banking details upon which the debit order relies, without giving Mtrack prior notification of such change and providing Mtrack with the Client's new banking details; The Client hereby authorises Mtrack to debit any bank account held by the Client for the costs owed by the Client to Mtrack in terms of this Agreement.

- 8.11. Invoices and/or monthly statements ("bill") shall be sent by Mtrack to the Client at the address supplied by the Client in the Schedule of the Agreement. It shall be the duty of the Client to check the invoices and/or bill in order to ensure that the contents thereof are correct. Unless a query is raised in respect of the contents of an invoice and/or bill within 3 (three) days from the date of receipt thereof, the contents thereof shall be deemed to be correct.

- 8.12. Any migration from one Package Option to another shall for the duration of this Agreement be subject to Mtrack's approval in its sole discretion and Mtrack shall be entitled to levy fees for migrations, subject to such fees not exceeding the amounts approved or fixed by the responsible Operator from time to time.

- 8.13. Where a Package Option includes free units ("Inclusive minutes, SMSs etc"):

- 8.13.1 No usage charges will be payable for the inclusive units;

- 8.13.2 Inclusive units must be used during a period of a Month, Inclusive units cannot be accumulated for use after the end of a Month and unused units will therefore be forfeited;

- 8.13.3 Mtrack shall, in its sole discretion, determine the commencement date of the Month during which the inclusive units may be utilised;

- 8.13.4 Where the Client subscribes to the Package Option with weekend only inclusive units, the Inclusive units may only be utilised on the weekend between midnight on Friday and midnight on Sunday;

- 8.14. Subject to any contrary provisions of the Mtrack Price List from time to time.

- 8.15. The Client shall immediately notify Mtrack of any Monitoring Request accidentally or unintentionally generated (false alarm). The Client accepts liability for the consequences of any false alarm, acknowledging that such false alarm may lead to the relevant authorities or Mtrack responding thereto and making wrongful arrests. Accordingly, the Client undertakes to repay all costs incurred by Mtrack (at Mtrack's then applicable standard rates), and hereby indemnifies the Service Provider against all claims or damages, arising out of a false alarm.

- 8.16. A certificate signed by any Manager of Mtrack which specifying the amount due and/or owing by the Client in terms of or arising out of this Agreement shall be sufficient proof thereof.

- 8.17. The Client shall not be entitled, for whatever cause and howsoever arising, to withhold any payment to Mtrack, or to apply set-off to any amount that the Consignee may allege is owing to it by Mtrack in terms of the Agreement.

## 9.SUSPENSION

- 9.1. Mtrack may at any time, without notice to the Client and in any manner whatsoever, suspend the Client's access to the Network Services and/or Vehicle Recovery Services in the event that:

- 9.1.1. Any modification, maintenance or remedial work is required to be undertaken pertaining in any manner whatsoever, to the Network Services and/or the Network and/or the Vehicle Recovery Services;

- 9.1.2. the Client fails to perform any of his obligations, or breaches any terms of this Agreement (in which event Mtrack may also suspend the Client's use of the Terminal Equipment and/or Network Services and/or Vehicle Recovery Services);

- 9.1.3. The Client at any time exceeds the credit limit which Mtrack in its absolute discretion shall set and notify the Client of, from time to time.

- 9.2. Mtrack reserves the right to require the Client to effect payment of any applicable Reconnection Charges pursuant to the restoration of Network services and/or Vehicle Recovery Services suspended.

- 9.3. In the event that the Client's access to the Network Services is suspended, the Client shall still be liable for the Monthly Service Charges during such period of suspension.

## 10.INSURANCE

- 10.1 The Client shall insure the Terminal Equipment for the duration of this Agreement with a registered insurer, on a comprehensive basis for the replacement value of the Terminal Equipment plus VAT, under an appropriate policy of insurance. The Client shall also ensure that Mtrack's interests in respect of the Terminal Equipment are endorsed on the said policy and shall at all times comply with all the terms and conditions of such policy.

- 10.2 It shall be the responsibility of the Client to obtain and familiarise himself with the terms and conditions of the insurance policy available.



- 10.3 It shall be the responsibility of the Client to ensure that the premiums are paid timeously and in full, subject to any terms and conditions, which may be applicable under the relevant policy.
- 10.4 The Client shall present an insurance certificate to the above effect, to Mtrack on written demand.
- 10.5 If the Client fails to comply with the provisions of this clause, Mtrack may, but shall not be obliged, to obtain such insurance for and on behalf of the Client and the Client shall, upon demand, reimburse Mtrack the amount of premiums paid by Mtrack on its behalf. Failure by the Client to timeously Mtrack will entitle the Mtrack to terminate this Main Agreement and claim damages from the Client.
- 10.6 The Client shall notify Mtrack immediately in writing if the Terminal Equipment or any part thereof is lost, stolen or damaged and shall do all that is necessary for the successful submission of a claim to the relevant insurer.
- 10.7 If any of the Terminal Equipment is lost or stolen and not recovered within a period of 14 (fourteen) days after such loss or theft or, in Mtrack's full discretion, is damaged beyond repair, this Agreement shall terminate forthwith in respect of such Terminal Equipment, provided that such Terminal Equipment may, at Mtrack's election, be replaced in which event this Agreement shall be deemed to apply, mutually, to such replacement Terminal Equipment as though it were the original Terminal Equipment under this Agreement.
- 10.8 The Client shall be held liable for the full replacement costs of the Terminal Equipment or the shortfall of the costs of the replacement of the Terminal Equipment once the insurance payment has been made to Mtrack.

#### 11. BREACH

- 11.1. The Client agrees and acknowledges that in the event the Client breaches any of the terms and/or conditions herein by way of the following:
- 11.1.1. the Client failing to pay any amount due and payable on due date;
- 11.1.2. the Client suffering any civil judgment taken or entered against it;
- 11.1.3. the Client causing a notice to surrender its estate to be published in terms of the Insolvency Act or purporting to surrender its estate;
- 11.1.4. the Client being a natural person becomes deceased;
- 11.1.5. the Client being provisionally or finally liquidated or sequestered, or placed under provisional or final judicial management, or subjected to business rescue or contemplating any of the aforementioned, as the case may be;
- 11.1.6. the Client breaching any provision of this agreement.
- then and in that event, all amounts owing by the Client to Mtrack under all agreements for the supply of Terminal Equipment and/or services shall become immediately due, owing and payable irrespective of the date when the Terminal Equipment were purchased, supplied or services rendered.
- 11.2. Mtrack shall, in addition to any other remedies which it may have at law, be entitled to take the action as set out below:
- 11.2.1. suspend further deliveries and/or services to the Client;
- 11.2.2. claim specific performance;
- 11.2.3. cancel this agreement;
- 11.2.4. collect or recover from the Client any Terminal Equipment supplied by it under this agreement, without the need of a Court order authorising the collection. In this regard the Client hereby irrevocably authorises Mtrack to enter upon the Client's premises to take possession of such Terminal Equipment.
- 11.2.5. In the event of the Client obstructing Mtrack from removing its goods, necessitating the obtaining of a Court Order, Mtrack shall be entitled to obtain an award of costs against the Client on a scale as between attorney and client.
- 11.2.6. Immediately claim all outstanding Rental and Service Charges from the Client along with interest thereon at a rate of 12% (twelve percent) per annum from due date to date of final payment and legal costs on a scale as between attorney and client.
- 11.2.7. immediately claim all outstanding Rental and Services Charges from the Client which, was it not for the premature termination and/or breach would have been due and payable by the Client to Mtrack in respect of the remainder of the Initial Rental Period and/or Initial Service Period and/or Renewal Period of this Agreement.

#### 12. DEED OF SURETY

- 12.1. The representative and surety whom signed the Main Agreement by his/her name next to his/her signature thereto and or the surety listed herein by his/her name at clause 6 of the Schedule confirms that this surety clause was specifically brought to his/her attention and agrees that by effecting his/her signature to this Main Agreement he/she understands the meaning and consequences this clause may have on him/her.

The Surety hereby binds him/herself, as surety and co-principal Client, to and in favour of:

#### SOUTH AFRICAN ELECTRONIC TRACKING SYSTEMS LIMITED T/A MTRACK (2002/024534/06) (hereinafter referred to as "Mtrack")

for the payment on demand of all sums of money which the:

#### The Clients as listed in Clause 6 of the Schedule, With Identity/Registration Number as listed in Clause 6 of the Schedule. (hereinafter referred to as the "the Client")

may now and from time to time hereafter owe or be indebted to Mtrack, from whatsoever cause arising, together with any interest and/or any other charges and costs (including attorney and client costs) which the Client may be or may become liable from time to time to pay Mtrack, whether such indebtedness be incurred by the Client solely or jointly or in partnership with any other person or persons, company or companies, and for the due and punctual performance of all obligations of the Client in connection with the Agreement entered into between Mtrack and Client.

I/We jointly and severally agree that:

This suretyship shall apply to, cover and secure Mtrack's respective successors in title, orders or assigns.

It shall always be in the discretion of Mtrack to determine the extent, nature and duration of the facilities (if any) to be allowed to the Client.

Mtrack shall be at liberty to release securities for the Client, or to extend any leniency or extension of time, or compound or make other arrangements with, the Client or me/us or any of us, or any other surety or sureties for the Client, and no such action on the part of Mtrack shall affect or in any way be construed or operate as a waiver or abandonment of any of Mtrack's rights or claims against me/us or any of us hereunder.

All acknowledgements of indebtedness and admissions by the Client shall be binding on me/us.

In the event of the insolvency, liquidation, sequestration, assignment or placing under business rescue of the estate/s of the Client, or in the event of a compromise between the Client and any creditors of the Client:

- 12.2. I/We undertake not to prove a claim against the Clients' estate or any amount I/we may be called upon to pay under this suretyship, until all amounts (including interests and costs) due by the Client to Mtrack have been paid in full;
- 12.3. I/We hereby agree that notwithstanding any part payment by or on behalf of me/us or any of us, to Mtrack, I/we shall have no right to any cession of action in respect of such part payment, and shall not be entitled to take any action against the Client or against any other surety for the Client respect thereof, unless and until the indebtedness of the Client to Mtrack shall have been discharged in full;
- 12.4. I/We agree that any dividend received from the Client by Mtrack in respect of Mtrack's claims against the Client shall be appropriated in the first instance to the payment of that part (if any) of the Client's indebtedness to Mtrack which is not covered by this suretyship;
- 12.5. No dividends or payments which Mtrack will receive from the Client or any other surety or sureties or from me/us or any of us, shall prejudice Mtrack's right to recover from me/us or the other or others of us, to the full extent of this suretyship, any sum which, after the receipt of such dividends or payments, will remain owing to Mtrack by the Client, but nothing herein contained will be deemed to limit the provisions of Clause 13 hereafter;
- 12.6. Notwithstanding any payments received by Mtrack from me/us or any of us hereunder Mtrack shall be entitled to prove against the estate of the Client for the full amount of the indebtedness of the Client, at the date of insolvency, liquidation, assignment, business rescue or compromise, as the case may be.
- 12.7. Mtrack shall have the right to appropriate any moneys received by Mtrack from me hereunder, to such indebtedness of the Client to Mtrack as Mtrack shall decide.
- 12.8. Without prejudice to anything hereinbefore contained, this suretyship shall apply to and cover Mtrack in respect of claims which Mtrack may have acquired or in the future may acquire against the Client from any party whomsoever or whatsoever and including any renewal of Agreement for which this suretyship is concluded, but not in any way detracting from the general liability aforesaid.
- 12.9. This suretyship shall remain of full force as continuing covering security, notwithstanding any intermediate settlement of or fluctuations in the indebtedness of the Client to Mtrack for the time being, and notwithstanding the death or legal disability of any of us, until Mtrack will have agreed in writing to cancel this suretyship.
- 12.10. This suretyship shall be in addition and without prejudice to any other suretyship/s or security/ies now or at any time hereafter held by Mtrack in respect of any of the liabilities or obligations of the Client to Mtrack.
- 12.11. Should Mtrack cede Mtrack's claim/s against the Client to any third party/ies, then this suretyship shall be deemed to have been given by me to such cessionary/ies, who shall be entitled to exercise all rights in terms of this deed of suretyship as if such cessionary/ies were Mtrack.
- 12.12. The amount of the Client indebtedness and of me/us hereunder to Mtrack at any time and the fact that the due date of payment of the whole, or as the case may be, portion of such amount has arrived, shall be determined and proved by a certificate signed by a member, company secretary, credit manager or internal accountant of Mtrack or of the agent of Mtrack.

- 12.13. A certificate in terms of this clause shall be binding on me/us, prima facie (factually apparent) proof of the amount of the Client's and therefore subsequently my indebtedness hereunder; and valid as a liquid document against me in any competent court for the purpose of obtaining provisional sentence or judgments against me thereon.
- 12.14. At the option of Mtrack any claim against me/us, arising hereunder; may be brought in any Magistrates Court having jurisdiction, notwithstanding that the amount of the claim may exceed the jurisdiction of the said Magistrate's Court.
- 12.15. Should I/we at any time in defending any action based on this suretyship, allege that no money was paid over by Mtrack; and/or there is no reason or cause for the obligations of the Client; and/or errors have been made in the calculation of the amount claimed, then the onus of proving such a defence will rest on me.
- 12.16. I/We renounces the benefits of:
- 12.17. excession – by renouncing this benefit, I understand that Mtrack becomes entitled to sue me/us for the full amount owing under this suretyship without first proceeding against the Client;
- 12.18. division – by renouncing this benefit, I understand that where there is more than one surety for the Client obligations, Mtrack will be entitled to sue each such surety for the full amount owing under this suretyship and not only for a Pro Rata share;
- 12.19. cession of action – by renouncing this benefit I/we understand that Mtrack becomes entitled to sue me/us without first ceding Mtrack's right of action against the Client to me/us.
- 12.20. In as much as any signatory hereto is a company or a close corporation, then such company or close corporation does hereby warrant and represent to Mtrack that it is duly empowered by its Memorandum of Association or founding statement, as the case may be, to enter into this suretyship, and that it has a material interest in securing the indebtedness covered by this suretyship, which is entered into for its direct or indirect benefit. The person signing this suretyship on behalf of any company or close corporation shall be deemed by virtue of such signature to be party to the foregoing warranties and representation in his/her personal capacity jointly and severally, and jointly and severally with the said company or close corporation and shall further be deemed to warrant and represent to Mtrack that such person is duly authorised to execute this suretyship on behalf of such company or close corporation.
- 12.21. I choose as my domicilium citandi et executandi (place at which all notices and legal notices may be served) for all purposes herein at the address/es set out at clause if the Schedule to the Main Agreement against my name and all notices addressed to me shall be sent by prepaid registered post to my respective address/es specified and shall be deemed to have been delivered to me 3 (three) days after such posting thereof.
- 12.22. As security for the due payment by me of all liabilities to Mtrack arising under this suretyship, and for the due performance of all my other obligations arising hereunder; I hereby cede, assign transfer and make over to Mtrack all my right, title and interest in and to all claims of whatsoever nature and howsoever arising which I may now or in the future have against the Client. I/we undertake to do all such things as are necessary, whenever requested so to do by Mtrack to enable Mtrack to prove any such claim against the Client for the amount/s so ceded to Mtrack to enable Mtrack to calculate the exact amount of such claim/s and without limiting the generality of the aforesaid, I undertake to make available to Mtrack upon being requested to do so, all such books, documents and other vouchers as reflected or prove any portion of my said claim/s hereby ceded.
- 12.23. By my signature hereunder and or at clause 6 of the Main Agreement's Schedule, I bind myself as surety and co-principal debtor in terms of this suretyship irrespective of whether any other person/s or company or close corporation referred in this suretyship as surety and co-principal Client sign/s this document.
- 12.24. Without derogating from any of the provisions of this suretyship, my liability shall include all damages which Mtrack may suffer as a result of the cancellation of the Main Agreement between Mtrack and Client, including any termination of such Main Agreement which takes place pursuant to the provisions of sections 37(1) or (2) of the Insolvency Act No.24 of 1936, as amended.
- 12.25. In the event of Mtrack ever having to instruct its attorneys in order to enforce any of Mtrack's rights against me/us in the terms of this suretyship then I/we agree to pay all costs so incurred including legal fees on an attorney client basis, tracing fees and collection commission.
- 13.4. A certificate signed by a manager or director of Mtrack (whose authority need not be proved) shall on the mere production thereof serve as prima facie proof of the indebtedness of the Client to Mtrack.
- 13.5. The Client shall pay all legal costs on an attorney and client scale, tracing agent's fees and collection commission which Mtrack may incur in taking any steps pursuant to any breach or enforcement of these terms and conditions by Mtrack.
- 13.6. The Client shall be liable to pay interest accrued on any amount due, owing and payable to Mtrack at a rate of 12% (twelve percent) per annum from due date to date of payment in full.
- 14.
- 14.1. Without detracting from any of the other provisions of this Agreement, Mtrack shall not be liable to the Client for any loss, damage and/or harm suffered by the Client from any cause whatsoever arising, whether same is direct, indirect and/or consequential, in the event that:
- 14.1.1. Mtrack fails for any reason whatsoever to supply and/or deliver and/or provide installation of any Terminal Equipment, either on the required date, or at all, and/or;
- 14.1.2. The Network Services are interrupted, suspended or terminated, for whatsoever reason and/or;
- 14.1.3. Mtrack fails to suspend the provision of the Network Services to the Client in terms of an arrangement between Mtrack and the Client has specifically requested Mtrack to do so in order to limit the Usage Charges; and/or;
- 14.1.4. Any negligent act or omission on the part of Mtrack, its employees and/or its agents caused such loss or damage.
- 14.1.5. The Terminal Equipment becomes faulty.
- 14.2. In no event shall Mtrack be liable to the Client for any indirect, direct, incidental, consequential, special or exemplary damages, including without limitation, business interruption, loss of or unauthorized access to information, damages for loss of profits, incurred by the other party arising out of the services provided under this Main Agreement, even if such party has been advised of the possibility of such damages. In no event will Mtrack's liability on any claim, loss or liability arising out of or connected with this Main Agreement exceed the amounts already paid by the Client to Mtrack the 3 months period immediately preceding the event giving rise to such claim or action by consignee.

#### 15.WARRANTY CLAUSE

- 15.1. Mtrack gives no warranty, express or implied, and disclaims all liability to the Client in connection with Mtrack's performance or goods, or the Client's use of the goods supplied and in no event will Mtrack be liable for special, indirect, direct or consequential damages, including but not limited to loss of profits.
- 15.2. Any advice or opinion given by Mtrack is for the Client's benefit only and Mtrack accepts no responsibility for any damage incurred as a result of the reliance thereon and the Client confirms this applicable indemnity.
- 15.3. Mtrack's obligations in terms of any warranties pertaining to each piece of Terminal Equipment shall be limited to the warranty provided by the manufacturer of the Terminal Equipment, peripheral device, computer or software as the case may be.
- 15.4. The Terminal Equipment supplied to the Client is subject to a 12 (twelve) month manufacturers carry-in warranty in accordance with which the Terminal Equipment shall be repaired and/or replaced by the Terminal Equipment manufacturer within a reasonable period of time once same has been returned by the Client to Mtrack.

#### 16.INDEMNITY

- 16.1. The client hereby undertakes and warrants to hold Mtrack harmless and indemnify Mtrack from any suit, liability, claim, action, loss arising from any incident relating to the Client's self-administration of the Mtrack Rental Equipment and/or Mtrack Services, which includes, but is not limited to the following:
- 16.1.1. The Client makes use of the ETS Track2Find website facility in order to track, monitor, activate, deactivate, and configure its Mtrack units from time to time and the client hereby certifies that he understands the potential implications of doing same without the assistance of ETS. These include, but are not limited to:
- 16.1.1.1. Configuring a more frequent reporting cycle, resulting in additional smses being sent and received by the device;
- 16.1.1.2. Activating a device causing it to go into alarm resulting in an increase in smses;
- 16.1.1.3. Neglecting to deactivate a device once it has gone into alarm, resulting in the continued sending and receiving of smses, battery life being compromised;
- 16.1.1.4. Having inadequate systems in place to ensure timeous activation of a unit, resulting in time going by which results in an unsuccessful recovery;
- 16.1.1.5. Having inadequate systems in place to ensure that the client database is up to date at all times, particularly with respect to the

Mtrack MUA number and the asset registration number matching at all times;

- 16.1.2. The Client changes its Mtrack units' batteries itself, which potential implications of same includes, but are not limited to:
- 16.1.2.1. The Mtrack unit suffering component damage, blown circuits, total failure, reduced signal strength, reduced battery life during or after the process;
- 16.1.2.2. The Mtrack unit stops reporting either during normal conditions or during an emergency, resulting in the unit being unable to be tracked or recovered;
- 16.1.2.3. The location and/or fixing of the unit/bracket after the battery change in such a manner as to cause the unit to fall off and be lost and/or be found and destroyed, removed or otherwise be incapacitated.
- 16.1.3. The client installs/maintains the Mtrack units/sockets itself, which potential implications of same includes, but are not limited to:
- 16.1.3.1. The location and/or fixing of the device/bracket in such a manner as to be inaccessible for future maintenance, to reduce or eliminate the signal strength of the device, cause the device to fall off and lost, be destroyed, removed or otherwise be incapacitated;
- 16.1.3.2. Failure of the device or poor battery performance due to incorrect/substandard maintenance performed.
- 16.2. The client further hereby certifies that it understands the financial implications of incurring additional SMS costs and undertakes to pay any such amounts promptly to ETS.
- 16.3. The client warrants that a printed invoice detailing the additional smses incurred each month will be sufficient proof of such expenditure.
- 16.4. Any security equipment provided to the client by ETS (ex: Security Socket) remains the property of ETS. The security and safe keeping of this equipment remains the responsibility of the client and is to be treated as highly confidential.
- 16.5. Should the security around the above mentioned equipment be compromised in any way, the client is to provide a full report / notification of the incident in writing to ETS within 24 hours of such incident.

#### 17. INFORMATION AND CREDIT CONSENT

- 17.1. The Client hereby authorises Mtrack to disclose the Client's Name, address, and personal details to any party, whenever it is reasonably necessary for Mtrack to properly perform its functions or protect its interests, or for the purpose of enabling the Operator to provide emergency Network Services to the Client, or directory or repair services and information to Network users generally.
- 17.2. The Client hereby specifically agrees and authorises Mtrack to enquire and request the Client's credit record, with any credit reference agency/bureau and or any other party as it sees fit, to verify the information provided to it in the Schedule to this Agreement and furthermore to ascertain the Client's credit worthiness.
- 17.3. The Client authorises Mtrack to provide credit reference agencies with regular updates regarding the Client's payment record, including the Client's failure to meet agreed terms and conditions.
- 17.4. The Client agrees to credit reference agencies making available its records and details to other potential credit grantors. Mtrack may provide the Client's information to any person/establishment whom, in Mtrack's opinion, needs it to carry out any of Mtrack's rights or duties in terms of the Agreement or any law pertaining its products and or services.

#### 18. ADDRESSES AND NOTICES

- 18.1. The Client chooses the address as set out in at clause 1 as its *domicilium citandi et executandi*, for the valid service of any and all proceedings and notices, for any purpose, arising out of, or in connection with, the relationship between itself and the Mtrack, as regulated by this agreement.
- 18.2. Mtrack chooses as its *domicilium citandi et executandi* the address as set out in the definitions clause hereof under Mtrack Premises.
- 18.3. Any notice given in terms of this agreements shall be in writing and shall be deemed to have been duly received by the addressee on date of delivery if by hand delivery. If sent by prepaid registered post, it shall be deemed received on the 8<sup>th</sup> day following the posting thereof. The Client confirms and accepts transmission by facsimile or email as valid and that receipt shall be deemed 1 (one) day after dispatch of the notice, and a positive fax report or email "delivery receipt" shall constitute agreed valid and adequate service and shall be deemed in absolute compliance with the Act.
- 18.4. A party may at any time change its *domicilium* by notice in writing, provided that the new *domicilium* is in the Republic of South Africa and consists of, or includes, a physical address at which process can be served.

#### 19. GENERAL

- 19.1. This Main Agreement shall be binding upon the Parties hereto, their heirs, administrators, executors, and successors-in-title or permitted assigns.

- 19.2. The signatories to this Main Agreement warrant their authority to bind the Parties and themselves personally to this Main Agreement.
- 19.3. This contract represents the entire agreement between Mtrack and the Client, including the Suretyship agreement and shall govern all future contractual relationships between the parties and shall also be applicable to all nominated debts which the Client may owe to Mtrack prior to the Customer's signature hereto, being an amendment and replacement to any previous stipulated agreement.
- 19.4. The Client hereby renounces the benefits of the legal exceptions, "*non causa debiti*" (no cause for the existence of the debt), "*errore calculi*" (calculation error), "*Revision of Accounts*", "*no value received*", "*cedendarum actionum*" (cession of action) the *de duobus vel pluribus reis debendi* and the *ordinis seu excussionis et divisionis* and the Distributor acknowledges and declares itself to be fully acquainted with the full meaning of such benefits and of the effect of it renouncing such benefits.
- 19.5. No amendment and/or alteration and/or variation and/or addition and/or cancellation of these terms and conditions, whether consensual or unilateral shall be of any force and effect, unless reduced to writing and signed by Mtrack.
- 19.6. No warranties, representations or guarantees have been made by Mtrack, or on its behalf, which may have induced Mtrack to sign this document.
- 19.7. No relaxation or indulgence which Mtrack may give at any time in regard to the carrying out of the Client's obligations in terms of any contract shall prejudice Mtrack or be deemed to be waiver of any of Mtrack's rights in terms of any contract.
- 19.8. The Client shall not cede its rights nor assign its obligations acquired in terms of this agreement without the written consent of Mtrack.
- 19.9. Mtrack shall at any time, in its sole discretion, be entitled to cede all or any of its rights in terms of this agreement, including all terms and conditions and sureties, to any third party without prior notice to the Client.
- 19.10. Each of the terms herein shall be a separate and divisible term and if any such term becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms, nor the contract as a whole.
- 19.11. Subject to the foregoing provisions of this Agreement, the Mtrack Services made accessible by Mtrack to the Client and the sale of Terminal Equipment and/or rental of Terminal Equipment under this Agreement and the provision of Vehicle Recovery Services, shall constitute separate and divisible Agreements and transactions for each piece of Terminal Equipment and/or service provided, with each one capable of standing on its own.

#### 20. DECLARATION

- 20.1. I have read, understood and agree to bind the Client and myself to the terms and conditions as stated in this Agreement and declare that all the information provided herein are true and correct, and that I sign in my personal capacity as well as in my duly authorized official capacity on behalf of the Client.