

UKHOZI TRACKER (PTY) LTD TERMS AND CONDITIONS

(PRIVATE AND CONFIDENTIAL)

INTRODUCTION

- I. The following provisions shall apply to the interpretation of this Agreement :
 - a. The headnotes to this agreement and to the individual paragraphs are for references purposes only, and shall not govern the interpretation of any of the clauses of this agreement, or of any of the provisions contained herein;
 - b. The preamble, shall form part of this agreement;
 - c. In this agreement, unless the contrary intention appears from this context:
 - i. Words signifying the one gender shall include the other gender;
 - ii. Words signifying the singular shall mean and include the plural and vice versa;
 - iii. Reference to natural persons shall mean and include reference to artificial persons and vice versa;
- II. The headings appearing in this Agreement are for reference purposes only and shall not affect the interpretation hereof;
- III. When any number of days are prescribed in this contract, the number shall be established exclusively of the first and inclusively of the last day; unless the last day falls on a Saturday, Sunday, or proclaimed public holiday (in the Republic of South Africa), in which event the last day shall be the next succeeding day which is not such a Saturday, Sunday or Public holiday. Any reference to a "day" shall mean any day other than a Saturday, Sunday or Public holiday in the Republic of South Africa;
- IV. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- V. Unless the context clearly indicates otherwise, words and expressions defined in this agreement shall bear the same meaning in any schedules or annexures to this agreement, which do not contain their own definitions;
- VI. The rule of interpretation that an Agreement will be interpreted against the party responsible for the drafting and any similar rules of interpretation shall not apply to this Agreement and the parties hereby waive any rights they have to rely on such rule;
- VII. Each term or condition of this contract is severable and in the event that any one or more of the term and/or conditions is found to be unenforceable, then the remaining terms and conditions shall remain valid and enforceable.
- VIII. The Service Provider Contract schedule (to which these Terms and Conditions are attached), the Terms and Conditions herein, the Service Option and the Vehicle Details all form part of this agreement.
- IX. If any conflict arises in respect of the provisions contained in these terms and conditions, the Service Option and the Service Provider Contract Schedule, the Provisions contained in the Service Provider Agreement Schedule shall take precedence.
- X. This agreement shall be binding and enforceable by and against the estates, heirs, executors, administrators, trustees, assigns or liquidators of the Parties as fully and effectively as if they had signed this Agreement in the first instance and reference to any party shall be deemed to include such Party's executors, heirs, administrators, trustee, assigns or liquidators, as the case may be.
- XI. The termination or expiry of this Agreement shall not affect those provisions of this Agreement which of necessity must continue to have effect after such expiry or termination notwithstanding that the clauses themselves do not expressly provide for this.

DEFINITIONS

The following expressions in this Agreement bear the meaning assigned to them below and cognate expressions bear corresponding meaning:

- a. "Agreement" and "Service Provider" – shall mean the Service Provider Contract Schedule, these Terms and Conditions, the Service Orders (of which there may be one or more).
- b. "Service Order" – shall mean the document/s entitled "Service Order" signed by both the Service Provider and the Client from time to time and attached to the Service Provider Agreement Schedule.
- c. "Client" – shall mean the party described in Clause 2 of the Service Provider Contract Schedule.
- d. "Service Provider" – shall mean the party described in clause 1 of the Service Provider Contract Schedule.
- e. "Service" – shall mean the service to be provided by the Service Provider to the Client and as described in clause 5.1 of these Terms and Conditions read together with the Service Order.
- f. "Service Period" – shall mean the service period stipulated in the service order/s in respect of the vehicle/s referred to therein.
- g. "Commencement Date" – shall mean the commencement date stipulated in the Service Order/s in respect of the vehicle/s referred to therein.
- h. "Termination date" – shall mean the termination date stipulated in the Service Order/s in respect of vehicle/s referred to therein.
- i. "Termination Notice" – shall mean the notice period stipulated in the Service Order/s in respect of the Vehicle/s referred to therein.
- j. "Service Fee" – shall mean, subject to clause 3.2 hereof, the monthly service fee plus VAT stipulated in the Service Order/s in respect of the vehicle/s referred to therein.
- k. "Service Deposit" – shall mean the Service deposit stipulated in the Service Order/s in respect of the Vehicle/s referred to therein.
- l. "GPS" – shall mean Global Positioning System
- m. "Vehicle details" – shall mean vehicle details contained in the service order/s
- n. "Vehicle" – shall mean the vehicle detailed in the service orders.

1. APPOINTMENT

The client hereby appoints the Service Provider to provide the Service on the terms and conditions set out in this Service Provider Contract.

2. SERVICE PERIOD

The Service Provider shall provide the Service from the Commencement Date until the Termination Date, subject to the right of either party to terminate this Service Provider Contract in terms of clauses of these Terms and Conditions.

3. SERVICE FEE

- 3.1 The Service Fee shall be payable by the client to the Service Provider in respect of the Service.
- 3.2 The Service Fee shall escalate in accordance with the Consumer Price Index on each anniversary of the Commencement Date.
- 3.3 The client shall, in addition to the Service Fee payable, be obliged to pay VAT thereon at the statutory rate.
- 3.4 The client shall pay the Service Fee plus VAT thereon:
 - 3.4.1 for the first calendar month of this Agreement, on or before the Commencement Date.
 - 3.4.2 thereafter monthly in advance on the first day of each calendar month thereafter until the Service Provider Contract is terminated, provided that, should the commencement date not fall on the first day of the month, the client will not be liable to pay the full month's service fee for that month but instead it will be liable to pay the *pro rata* amount of the service for the remainder of the month.

Initials

- 3.5 All service fees and VAT payable by client in terms of this Service Provider Contract shall be made without deduction or demand and free of any exchange or set off whatsoever.
- 3.6 The payments of the service fee and any other payments by the client to the service provider in terms of this contract shall be paid to such account as might be nominated by written notice by the service provider from time to time or as provided for in this contract and the client shall sign a duly completed debit order form in respect of all payments and other amounts owing to the service provider in terms of this contract
- 4. OPTION TO RENEW**
- 4.1 Should the client not be in breach of its obligations in terms of this contract, the client shall have the option to renew this Service Provider Contract for further periods of 1(one) year each on all the terms and conditions of this contract.
- 4.2 The option to renew the Service Provider Agreement shall be exercised by notice in writing delivered to the service provider by no later than 3(three) months prior to the anniversary of the commencement date failing which the client's right of renewal shall lapse.
- 5. THE SERVICE**
- 5.1 Subject to the service order, the service provider shall supply and fit the vehicle with a tracking device ("the tracking device") that will enable the service provider and the client to monitor the whereabouts of the vehicle within the areas described in clause 5.3 of these terms and conditions ("the service").
- 5.2 The tracking device is a monitoring tool to assist in location or the whereabouts of any vehicle fitted with the device.
- 5.3 The service is only applicable in those areas where there is a sufficient cellular telephone signal and network available to render the tracking device fully operational.
- 6. TRACKING DEVICE AND INTERRUPTION TO NETWORK AND GPS**
- The client accepts and agrees that:-
- 6.1 The tracking device is not operational in those areas where there is insufficient cellular telephone signal or network.
- 6.2 The reliability and effectiveness of the tracking device and the service is reliant on services supplied by network and GPS service providers, the efficient and effective functioning of which are beyond the control of the service provider.
- 6.3 The tracking device may not function if it is modified, tampered with or damaged.
- 7. LOSS, DESTRUCTION OR DAMAGE TO THE TRACKING DEVICE**
- 7.1 The client shall, be responsible for any loss or destruction of or damage to the tracking device once it is fitted to the vehicle and the client shall take all reasonable steps to protect the tracking device from any damage, loss, modification or tampering of any kind. Subject to clause 7.2 of these terms and conditions, the tracking device may only be repaired by the service provider or its duly authorised agent which repairs shall be carried out at the clients cost.
- 7.2 In the event that a faulty tracking device is proved by the client to have been fitted by the service provider onto the client's vehicle, the service provider may, in its sole and absolute discretion, either replace or repair the tracking device at its costs.
- 8. THEFT, LOSS, DAMAGE AND RECOVERY OF VEHICLE**
- Client accepts and agrees that, whilst the service is intended to enable the tracking of the vehicle (subject to the terms and conditions of this contract), the service provider in no way warrants or guarantees the following:
- 8.1 That the Vehicle will not be lost, stolen, damaged or destroyed, or;
- 8.2 The return or recovery of the vehicle after it has been lost or stolen.
- 9. CONSUMER PROTECTION ACT**
- The client warrants that it is a consumer as provided for in section 5(2)(b) of the Consumer Protection Act No. 68 of 2008 and that the Consumer Protection Act therefore has limited application to this Service Provider Contract.
- 10. EXCLUSION OF CLAIMS AND RIGHT TO WITHHOLD SERVICE FEES**
- The client shall, save as specifically provided for in this contract, not be entitled to cancel this Contract or withhold or defer payment of the service fee or to a remission of the service fee for any reason whatsoever.
- 11. SERVICE DEPOSIT**
- 11.1 The client shall, on signature of this Contract, pay to the service provider the total amount of the service deposit, which deposit is to be held for the service period together with any renewal periods by the service provider or an interest-bearing account.
- 11.2 Upon termination of this agreement and the return of the tracking device and ancillary equipment to the service provider the client shall not be entitled to receive any interest that has accrued on the service deposit, the Service Provider shall however also be entitled to any administration fees charged by any entity at which an interest-bearing account might be held (by the Service Provider).
- 11.3 If there is a dispute between the service provider and the client regarding whether there is an amount or amounts owing by the client to the service provider, the service provider may not utilize the service deposit until such time as the dispute has been resolved on terms of this agreement and then only if the client is found to owe the amount claimed by the service provider. The client shall likewise have no claim to any refund until such time as any dispute between the parties has been resolved in terms of this agreement.
- 11.4 Should it be found following the resolution of any dispute as contemplated in this clause that the client owes the service provider any amount, the service provider shall have the right to use the whole or any portion of the service deposit towards payment of the amount due provided if the whole or any portion of the service deposit is so applied:
- 11.5 The service provider shall notify the client thereof in writing; and
- 11.6 The client shall immediately reinstate the service deposit to its original amount.
- 12. TERMINATION**
- 12.1 Subject to clauses 14.4 and 15 of these terms and conditions, should either the client or the service provider wish to terminate this service provider agreement prior to the expiry of the service period or any renewal thereof, the party wishing to terminate shall provide the other party with termination notice in writing.
- 12.2 On termination of this service provider agreement, for whatever reason, the client shall allow the service provider unlimited access to the client vehicle within 48 hours of receiving a written request to this effect, for the purpose of removing the tracking device from the vehicle, it being recorded that the tracking device is and shall remain the property of the service provider.
- 13. SERVICE PROVIDER'S LIABILITY**

- 13.1.1. The service provider shall only be liable for any loss, theft or damage to the customer's vehicle which is caused through the service provider's gross negligence and only up to a maximum amount of R10 000.00 per claim.
- 13.1.2. Besides the service provider's liability in terms of clause 13.1 of these terms and conditions, the client shall have no other claim against the service provider arising out of this agreement.
- 13.1.3. Notwithstanding anything to the contrary contained in this service provider agreement, neither party shall have a claim against the other for indirect or consequential losses or damages.
- 13.1.4. The client indemnifies the service provider against any other claim howsoever arising out of this service provider contract.

14. FORCE MAJEURE

- 14.1.1. The term *force majeure* in this agreement will include: fire, explosion, flood, riot, war, terrorist attack, accident, act of God, embargo, legislation, regulation or directive having the force of law, civil commotion, non-availability of network or global positioning system coverage, unrest or disturbance, non-availability of electricity, non-availability or shortage of fuel, strikes, labour disputes, lock-out or any other cause resulting in the impossibility of performance in terms of this agreement which is beyond the control of a party whether similar or dissimilar to the causes described above.
- 14.1.2. If either party, despite its reasonable efforts, is prevented or hindered directly or indirectly by *force majeure* from performing its obligations in terms of this agreement (other than the obligation to make monetary payment), the party so affected (hereinafter referred to as "the affected party") shall be relieved of having to perform its obligations in terms of this agreement (other than the agreement to make monetary payment) as a direct result of the *force majeure* subject to the provisions of the clause 14.4 of this agreement.
- 14.1.3. During the period that *force majeure* exists and only to the extent that the affected party is prevented or hindered from performing its obligations in terms of this agreement, the affected party will not be liable for any loss or damage which the other party (hereinafter referred to as the "unaffected part") may suffer as a result of the *force majeure* provided that reasonable written notice must be given by the affected party to the unaffected party. The written notice must provide the unaffected party with the details of circumstances giving rise to the non-performance as well as estimate of the period of time for which it may endure.
- 14.1.4. If the *force majeure* is of such a nature that it will result in the affected party being unable to perform its obligations in terms of this agreement or should exit for a period of 30(thirty) days or more, either party shall be entitled, despite any provision to the contrary contained in this agreement, to provide 7 (seven) days written notice to the other party of its intention to terminate this agreement. Neither party will have any claim for damages arising out of the premature termination of this agreement in such circumstances.

15. BREACH

- 15.1.1. Should either party be in breach of any of such party's obligations in terms of this agreement and have failed to remedy such breach at the end of a period of 7 (seven) days after delivery by the aggrieved party to the defaulting party of a notice in writing requiring the defaulting party to remedy such breach, then the aggrieved party shall be entitled, without further notice to the defaulting party and without prejudice to any other right or remedy which may be available to the aggrieved party in terms of hereof or at law :
- 15.1.2. To cancel this agreement forthwith and to claim and recover from the defaulting party such damages as the aggrieved party shall have sustained in consequence of such default, breach and/or cancellation.
- 15.1.3. To institute action for specific performance of the provisions of this service provider agreement and/or cancellation.
- 15.1.4. Should the service provider institute action against client for payment in terms of this service provider agreement, it shall be entitled to claim legal costs on an Attorney and own Client scale.
- 15.1.5. Notwithstanding anything to the contrary contained in this service provider contract, should there be an application for the provisional or final liquidation of the client, or should the client cease to conduct its business, or should the client fail to pay any amount due, the service provider can cease rendering the service without further notice to the client.

16. NOTICES AND DOMICILIUM

- 16.1.1. The parties choose as their domicilium citandi et executandi their respective addresses, e-mail addresses or telephone facsimile numbers set out on the service provider contract schedule, for all purposes arising out of or in connection with this contract and at which addresses or numbers all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.
- 16.1.2. Any notice which is given by a party to the other at the stated domicilium address, the telephone facsimile number or email address shall be deemed to have been duly given:
- 16.1.3. If hand delivered; on the day on which hand delivery takes place, either by handing such notice to such party or by placing/affixing it in a prominent place such at such party's stated domicilium;
- 16.1.4. Where sent by telephone facsimile to the party's stated fax number in the service provider agreement Schedule; on the day on which the telephone facsimile is actually sent, which date shall be established by reference to the aforesaid facsimile machine's activity report used to send such facsimile notice;
- 16.1.5. Where sent via electronic mail to the party's e-mail address on the service provider agreement schedule; on the day on which the e-mail was actually sent, a copy of which shall be printed and kept on file.
- 16.2 A party shall be entitled to change the addresses referred to in Clause 16.1 of these terms provided that any addresses selected shall be situated in the Republic of South Africa and any such change shall only become effective on receipt of notice in writing by the other party of such change.
- 16.3 Notwithstanding anything to the contrary contained in this service provider agreement, a written notice or communication actually received by one of the parties from the other by way of hand delivery shall be adequate written notice of communication to such party.

17. DISPUTE RESOLUTION

- 17.1.1. Any dispute, other than where urgent relief is sought, arising out of this service provider contract including, but not limited to:
- 17.1.2. Any dispute or difficulty arising in connection with the interpretation, application and/or effect of any of the terms or conditions contained in this agreement and/or arising out of the termination or cancellation of this agreement, or
- 17.1.3. Any calculation or question to be agreed between the parties and in respect of which no agreement can be reached (hereinafter also included in the term "the dispute"); shall, unless resolved between the parties to the dispute, be referred to an Arbitrator nominated by both the parties;
- 17.2. Should the parties fail to agree on the nomination of an Arbitrator within a period of 3 (three) business days of the dispute being declared, either party may refer the dispute to the Chairperson of the Pietermaritzburg Bar of Advocates (or his/her successor in title) who shall appoint an independent practising Advocate who has being practising for a minimum period of 5(five) years to act as the Arbitrator.
- 17.3. The Chairman shall appoint the Arbitrator within 7(seven days) of the dispute being referred to him.

- 17.4. Either party may declare a dispute and refer the dispute for Arbitration.
- 17.5. Once the dispute is referred to the Arbitrator, the Arbitrator shall stipulate on his sole and absolute discretion, the procedure and manner to be followed on order for him to arrive at his decision on the dispute.
- 17.6. The hearing of the dispute will take place in Pietermaritzburg.
- 17.7. The Arbitrator shall arrive at a decision within 14 (fourteen) business days of the hearing of the dispute and his findings shall be furnished in writing.
- 17.8. The provisions of this clause constitute an irrevocable consent by the parties to any proceedings in terms hereof and none of the parties to a dispute shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by the provisions of this clause.
- 17.9. The Arbitrator shall be empowered to make any order about costs.
- 17.10. If any party is of the opinion that legal grounds exist for taking the Arbitrator's decision on review or on appeal, that party shall have 7 (seven) business days from the date of receipt of the Arbitrators written decision within which to notify the other party in writing of its intentions to take the award on review or on appeal.
- 17.11. Any review or appeal proceedings shall be instituted within 30 (thirty) business days of the giving of such notice as contemplated in clause 17.10
- 17.12. The Chairperson of the Pietermaritzburg Bar of Advocates shall appoint 3(three) practising Advocates, one of which will be a Senior Counsel Advocate who has been a senior Counsel Advocate for a minimum of 5 (five) years to form a tribunal ("the tribunal"). The Senior Counsel shall act as the Chairperson of the Tribunal. The provisions of sub-clause 17.5 to 17.9 of this contract shall apply *mutatis mutandis* to any appeal or review of the referee's decision.
- 17.13. The tribunal's decision shall be final and binding on the parties to the dispute. The Arbitrator's decision if not taken on appeal or review to the tribunal shall be final and binding on the parties.
- 17.14. Nothing hereunder shall prevent a party from approaching a court with competent jurisdiction for urgent relief.

18. AMENDMENT

- 18.1. In the event that the service provider requires any amendment of the agreement, during the course of the agreement, for any reason whatsoever, the service provider shall provide the client with written notice of the proposed amendment ("Amendment Notice") and the date on which the proposed amendment will become effective, subject to the provisions of clauses 18.2 and 18.3; on receipt of the amendment notice the client may object to the proposed amendment by delivering written objection to the service provider, within 30(thirty) days calculated from the date on which it receives the amendment notice.
- 18.2. Should the client object to the proposed amendment contained in the amendment notice, the proposed amendment shall lapse, but the service provider may in that case elect to terminate the agreement. Should the service provider elect to terminate the agreement, it shall notify the client within 30(thirty) days (calculated from the date on which the client receives the service provider's written objection), by delivering a termination notice ("termination notice") to the client. The service provider shall stipulate in the termination notice, the date on which the agreement shall terminate ("early termination date"). The agreement shall continue to be full force and effect up to and including the early termination date, after which date, the agreement will be of no further force or effect. Neither party shall have a claim against the other arising out of the termination.
- 18.3. Should the client fail or neglect to deliver a written objection to the service provider within 30 (thirty) day period referred to in clause 18.2, the proposed amendment will be deemed to have been accepted by the client and shall be of full force and effect from the date stipulated in the amendment notice.

19. GENERAL

- 19.1. This service provider contract constitutes the sole record of the agreement between the parties in relation to its subject matter.
- 19.2. Neither party may rely on or be bound by any representation warranty or promise that is not recorded in this service provider contract.
- 19.3. Subject to clause 18, no addition to, waiver, variation, novation or agreed cancellation of this agreement shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties.
- 19.4. No indulgence which a party might grant to another party shall constitute a waiver of any of the rights of the grantor unless reduced to writing and signed by both parties.
- 19.5. Each party shall be responsible for its own legal costs incidental to the negotiation and execution of this service provider contract.
- 19.6. This service provider contract supersedes and cancels all prior agreements relating to the subject matter of this service provider contract.
- 19.7. Neither party may sign or cede any of its rights or obligations in terms of this service provider agreement without the other party's written consent which consent should not unreasonably withheld.
- 19.8. Each party acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all the provisions of this contract and that it has either taken such independent legal or other advice or dispensed with the necessity of doing so.
- 19.9. Each person signing this service provider contract on behalf of the parties warrants that he has the full power, authority and legal right to execute this agreement.

Signed at _____ on this _____ day of _____ 20_____

Signature _____ ID /Company Reg NO: _____

Witness 1 _____ Service Provider Signature _____