

TERMS AND CONDITIONS

1. INTERPRETATION

In this agreement:

- 1.1 Clause headings are for convenience and shall not be used in the interpretation of this agreement.
- 1.2 Unless the context clearly indicates a contrary intention, an expression which denotes any gender includes the other genders, a natural person includes an artificial person and vice versa, the singular includes the plural and vice versa and the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:
 - 1.2.1 "**Agreement**" means these terms and conditions, including the application form attached to these terms and conditions, as well as any other annexure from time to time incorporated by reference to this agreement.
 - 1.2.2 "**Authorised users**" means those who may be authorised by the Customer to obtain all services and products offered by FleetCam (Pty)Ltd.
 - 1.2.3 "**CPA**" means the Consumer Protection Act No 68 of 2008.
 - 1.2.4 "**Commencement date**" means the date of installation or supply of the product, which date shall be determined by the date on the installation certificate or supply invoice confirming installation or supply of the product.
 - 1.2.5 "**Customer**" means the person and/or company whose full details are set out in the application form to which these terms and conditions are attached.
 - 1.2.6 "**Fixed period**" means a period of 36 (THIRTY SIX) months calculated from the commencement date.
 - 1.2.7 "**GSM Service**" means the service rendered by a cellular service provider for transmitting data from the product to an authorised user's cell phone or computer
 - 1.2.8 "**GPRS**" means General Packet Radio Service.
 - 1.2.9 "**Installation certificate**" means the certificate issued by our installer certifying that the product has been successfully installed in your vehicle.
 - 1.2.10 "**Product**" means our full range of products to be installed in your or any authorised user's vehicle.
 - 1.2.11 "**Service**" means the services detailed in application form attached.
 - 1.2.12 "**Service Provider**" means FleetCam (Pty)Ltd (Registration Number 2016/058888/07) or anyone of its subsidiaries to which these terms and conditions are annexed, which subsidiary shall be the contracting party as the Service Provider, to this agreement.
 - 1.2.13 "**SMS**" means Short Message Service.
 - 1.2.14 "**Subscription charge**" means the monthly amount (inclusive of VAT) payable by you in advance for the service as set out on the application form to which these terms and conditions are attached.
 - 1.2.15 "**Territory**" means the Republic of South Africa.
 - 1.2.16 "**Us/We/Our/Ourselves**" means the Service Provider.
 - 1.2.17 "**User manual**" means the user manual in respect of the product to be installed in terms of this agreement.
 - 1.2.18 "**VAT**" means Value Added Tax payable in terms of the Value Added Tax Act No 39 of 1991 (as amended).
 - 1.2.19 "**Vehicle**" means the vehicle in which the product will be installed and for which the particular service will be provided.
 - 1.2.20 "**You**" means the Customer.

2. DURATION

- 2.1 The following clause 2.1.1 shall only be applicable to Customers who are natural persons:
 - 2.1.1 This agreement shall commence on the commencement date and shall continue for a fixed period of 36 (THIRTY SIX) months from the commencement date. On the expiry of the fixed period, this agreement will be automatically continued on a month-to-month basis, subject to any material changes of which we will give you notice in writing 40 (FOURTY) days before the expiry of the fixed period (save for Rental Options which subscription charges shall remain fixed), unless you expressly:
 - (a) Direct us to terminate the agreement on the expiry of the fixed period; or
 - (b) You agree to enter into a new agreement for a further fixed period of 36 (THIRTY SIX) months, subject to new terms and conditions and subscription charges.
- 2.2 The following clauses 2.2.1 and 2.2.2 shall only be applicable to Customers who are natural persons:
 - 2.2.1 In the event that you wish to cancel the agreement before the expiry of the fixed period, you must give us 20 (TWENTY) business days' notice of such cancellation and you shall be liable to us for:
 - (a) Any amounts owed to us by you in terms of the agreement up to the date of termination; and
 - (b) A reasonable cancellation penalty with respect to goods and services provided to you by ourselves in contemplation of the agreement lasting for its intended fixed period, which cancellation penalty shall be calculated by us in accordance with the applicable legislation and of which cancellation penalty we shall notify you.
 - 2.2.2 Any amounts due in terms of clause 2.2.1(a) and 2.2.1(b) shall become due and payable in full, free of any deductions or set-off, on expiration of the 20 (TWENTY) business days' notice given to us by you.
- 2.3 The following clause 2.3.1 shall only be applicable to Customers who are juristic persons:
 - 2.3.1 The agreement shall commence on the date of installation of the product and shall endure for a fixed period of 36 (THIRTY SIX) months from the installation date, whereafter it shall continue indefinitely in accordance with these terms and conditions unless and until it is terminated by either party on the giving of 3 (THREE) months written notice to the other party, alternatively, you electing to enter into a new agreement for a further fixed period of 36 (THIRTY SIX) months, subject to new terms and conditions and subscription charges.

3. SUBSCRIPTION CHARGES

- 3.1 You must pay the monthly subscription charges to us in advance, by way of direct bank debit order, as specifically consented to by you in the application form, alternatively by mutual agreement EFT (Electronic Funds Transfer) into our bank account, FNB, account number 62593254601, branch code 252445.
- 3.2 Any amounts which you do not pay when you should have, shall become payable as set out in clause 13 hereunder.
- 3.3 In the event that someone else is paying your subscription charges, the obligation will still be on you to ensure that the payment of the subscription charges is paid on time. Your subscription charges will not be limited because someone else is paying it for you and if that other person fails to pay your subscription charges, you will have to pay it yourself.
- 3.4 You agree that the amount contained in a Tax Invoice issued by us shall immediately be due and payable by you, free of any conditions, 50% in cash prior to installation and the balance on installation.
- 3.5 No extension of time for payment of subscription charges, or any other amounts due to us shall be binding unless we agreed to it in writing.
- 3.6 You may not withhold payment of any amount due to us in terms of this contract for any reason whatsoever and no extension of time for payment of any amount shall be binding unless agreed to in writing by us.
- 3.7 You are not entitled to set off any amount which we may owe you against any amount you owe us.

- 3.8 You agree that a certificate issued and signed by any of our Directors, Managers or our duly appointed Auditors, who may change from time to time, shall be sufficient proof of your indebtedness on the date when such certificate is issued. The authority of our Directors, Managers or Auditors will also not have to be proved.
- 3.9 Any printout of computer evidence tendered by us shall be admissible evidence and you will not be able to object to us using this as evidence purely on the grounds that such evidence is computer evidence or that the requirements of the Electron Communications and Transactions Act 25 of 2002 have not been met.
4. **LIMITATION OF LIABILITY, ACKNOWLEDGMENT BY THE CUSTOMER**
 - 4.1 Insofar as we supply and/or installed the products, you are notified of the fact that these products, and/or services provided may result in damage to your vehicles and/or system failure of the vehicle/s electronic components.
 - 4.2 We shall take every care to ensure that all reasonable efforts are made regarding the product and the service, but such product and service can be affected by factors outside our control. We therefore do not provide any warranty, nor do we accept any liability arising in respect of any failure in the provision of the service arising from any negligence on our part or any damage, including any loss of profits, business or revenue, or any consequential loss suffered by you as a result of any failure of the product.
 - 4.3 Whilst every care will be taken by ourselves in the installation of the product, no liability shall be assumed of any nature whatsoever by us in respect of there being any damage to the vehicle as a result of such installation of the product in the vehicle, prior to or after installation, unless noted on the installation certificate. It is further, recorded that the indemnity referred to herein relates to any damage, of whatsoever nature, arising from the services rendered by us, being patrimonial damages and/or personal injury.
 - 4.4 Insofar as we may be deemed to be a supplier of the products used in the operation thereof we are exempted from liability in relation to any damage to property and/or economic loss that you may suffer as a result of any failure and/or defect in the goods and/or services provided.
 - 4.5 If you have selected the immobilization option, you acknowledge that neither ourselves, our subsidiaries or affiliates accepts or shall have liability of whatever nature, irrespective of how it arose, in respect of any claim, damages, loss or expense which may occur directly or indirectly as a result of the immobilisation function functioning, not functioning or malfunctioning.
 - 4.6 It is recorded that you have been notified of the fact that clauses 4.1 to 4.5 limits our risk and/or constitutes an assumption of risk and/or liability by you and that the content of these clauses were drawn to your attention. It is further, recorded that you were afforded an opportunity to consider these notifications, that you considered it and that you were still prepared to conclude the agreement with us subject to these conditions. You therefore agree to the provisions and/or notices contained in clause 4.1 to 4.6.
5. **CUSTOMER RESPONSIBILITY**
 - 5.1 It is your responsibility to inform your vehicle's manufacturer of the fitment of the product if the vehicle manufacturer requires such notification, in order not to invalidate an manufacturer warranty.
 - 5.2 You undertake not to tamper or remove the product during the period of this agreement in order not to invalidate the warranties of the product provided in this agreement.
 - 5.3 You undertake not to permit any modification or attachments to be made to the product in order not to invalidate the warranties provided on the product in this agreement.
 - 5.4 You undertake to notify us of any alteration and/or modification made to your vehicle in which the product is installed if such alteration and/or modification to the vehicle in any way affects the manner in which the vehicle is identified, including, but not limited to change of registration number, change of colour of the vehicle, change of any relevant vehicle component number, change of vehicle manufacturer's logo, etc.
 - 5.5 For the duration of this agreement you agree not to permit any third party other than us to maintain, service or repair the product.
6. **SERVICE PROVIDER RESPONSIBILITY**
 - 6.1 The following clause 6.1 shall only be applicable to Customers that are natural persons or juristic persons whose asset value or annual turnover at the commencement date, is below the threshold value determined by the Minister in terms of Section 6 of the CPA:
 - 6.1.1 You are obliged to notify us, in writing, of any defects in the quality of the product provided by us at any time during the fixed 36 month period, then we shall:
 - (a) Repair any defect or replace the unit where the product is found to be defective due to faulty components, workmanship or design on condition that the repair is to be done at one of our branches or Authorised Fitment Centres; or
 - (b) Refund you the price paid for the Product supplied, having regard to the extent of the failure, provided that you notified us of the defect within 6 (SIX) months from the commencement date.
 - 6.2 The following clause 6.2.1 shall only be applicable to Customers who are juristic persons whose asset value or annual turnover at the commencement date, equals or exceeds the threshold value determined by the Minister in terms of Section 6 of the CPA:
 - 6.2.1 We shall be responsible for the repair and/or replacement, in our sole discretion, of the product, or any parts thereof at no charge to you during the full 36 (THIRTY SIX) months from the date of installation where the product is found to be defective due to faulty components, workmanship or design, on condition that the repair is to be done at one of our branches or Authorised Fitment Centres and provided that your account is not in arrears at the relevant time.
 - 6.3 Should it be necessary that any repair and/or replacement of the product be conducted at a location other than at one of our branches or Authorised Fitment Centres, you will have to pay us a call-out fee, in respect of the time and travelling costs incurred by us due to the aforesaid event. We shall give you a quotation in respect of these costs which must be accepted by you before any repairs are attended to by us.
 - 6.4 The following is specifically excluded from the repair/replacement service referred to in clause 6.1 and clause 6.2:
 - 6.4.1 all repairs or maintenance or service necessitated by any damage caused to the product outside our direct control and scope of influence, including but not limited to;
 - 6.4.1.1 any Act of God or circumstance beyond our control;
 - 6.4.1.2 all damage caused by a faulty or spurious electrical supply;
 - 6.4.1.3 all damage caused as the direct or indirect result of any act of tampering, vandalism or malicious damage howsoever caused;
 - 6.4.1.4 all damage caused as a result of a vehicle accident;
 - 6.4.1.5 all damage caused by fire, theft, or flood;
 - 6.4.1.6 all damage caused as a direct or indirect result of civil or political disturbance or any like event;
 - 6.4.1.7 all damage caused by any act of any third party;
 - 6.4.1.8 any damage caused as a result of the ingress of any fluid penetrating the product, applicable;
 - 6.4.1.9 any stoppage, limitation, engine control, engine shut down or similar event resulting from the incorrect operation of the product, as defined by the Company;
 - 6.4.1.10 the removal and/or de-installation or any similar action requiring, removal, re-installation and/or re-location of the product as required or requested by the Client;

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- 6.4.1.11 Repair and recovery of the server data due to any abnormal occurrence causing such damage or loss of data.
- 6.4.1.12 Where the product has not been operated or maintained in accordance with our instructions and/or user manual.
- 6.4.1.13 Repairs, de-installations or modifications that have been made by persons other than us.
- 7. SUSPENSION AND TERMINATION OF SERVICE**
- We may, at any time, and without incurring any liability whatsoever, suspend the service either in whole or in part in the event of any one or more or all of the following occurring:
- 7.1 technical failure of the GSM network and/or its reporting structures, modifications and/or maintenance to the GSM network by the GSM service provider and/or
- 7.2 due to any Government and/or regulatory authority requirement and/or
- 7.3 the GSM provider ceasing to make the network available to us or if the network stops working for any reason whatsoever and/or
- 7.4 you default in terms of the operation instructions provided in the user manual or fail to make any payment on the due date thereof; and/or
- 7.5 we are prevented from rendering the service due to circumstances beyond our control and/or due to unexpected events; and/or
- 7.6 any cancellation of the contract by either us or you after the initial period of the contract; and/or
- 7.7 automatically and without prior notice to you, without any liability on our part, in the event that you utilize the service in any manner which we, in our sole discretion, deem to be inappropriate, and you hereby indemnify and hold us harmless against any claim that may arise against us as a result of such improper use of the service; and/or
- 7.8 automatically, further, if you or the authorized user misuses the system, and/or
- 7.9 if your vehicle is reduced to a state for any reason whatsoever, permanently dysfunctional, but not limited to, irreparable mechanical breakdown of the vehicle and irreparable damage caused to the vehicle in an accident.
- 8. ADDITIONAL CHARGES**
- 8.1 You will be liable for all additional charges in respect of the de/re-installation of the product, any false alarms, incident reports, etc. as listed in our price list, which is available on request.
- 8.2 You acknowledge that the services provided by us does not include an international roaming facility. Accordingly, in this regard we shall not be liable for any losses or damages suffered by yourself as a result of you taking the vehicle out of the country.
- 8.3 In the event that repairs and/or services are affected and/or products delivered, you may be held liable for charges additional to the standard warranty terms and conditions if you were duly informed of such additional charges and, after being informed of such charges, authorise the work to continue and/or products to be installed. For purposes hereof it will be deemed that you authorised the work to be proceeded with and/or products installed if you, or anybody representing you, signed our job card and/or any other document presented for signature upon the rendering of services and/or installation of products. We shall provide you with an invoice in respect of these costs upon completion of the work effected in accordance with the job card and/or any other document as presented to you, which invoice shall be payable by yourself within 30 (THIRTY) days of issue thereof.
- 8.4 You will be entitled to request the number of reports, the number of transmit SMS's and have a maximum data transfer per month as set out in the contract or user manual as the case may be. Any usage in excess of the allowable amount per month will be charged as per our standard rates for such excess. You will also be liable for any additional monthly charges incurred on account of SMS/GPRS transmissions in the event of you or any authorised user activating the message forwarding function to a mobile phone.
- 8.5 Installations are to be performed at our branches or approved fitment centres. Where on site installations are agreed upon, a call out charge and travelling in excess of a 60km round trip will be charged at the published rates of the Automobile Association. Installations of the product are to be performed during normal office hours, Monday to Friday 08:00 to 17:00. Any arrangements after these hours will be charged for as overtime as an additional charge to you.
- 8.6 You may be entitled to an agreed number of SMS/ GPRS's/Data per month in order to obtain information. In the event that you exceed the allowable monthly usage, you will be charged for such extra usage.
- 8.7 All voice calls made on this contract are excluded. You will be charged for all voice calls made on the sim cards used on these contracts as additional charges.
- 8.8 All additional charges shall be payable by you in terms of our standard rates for any goods and services rendered and charged by us to our usual customers.
- 9. CESSION AND DELEGATION**
- You may not delegate, cede and/or in any other way deal with the product and/or this contract without our prior written approval.
- 10. OPERATION IN TERRITORY**
- You acknowledge that the product will only function in the territory where a GSM network of the GSM service provider is available and obtaining a signal in the area where the vehicle is being operated.
- 11. OWNERSHIP**
- 11.1 If we supply the sim card then ownership in the connected GSM subscription and the Sim card shall always vest in ourselves and/or the GSM service provider.
- 11.2 Ownership in all products sold to you shall remain our property, until such time as paid for in full.
- 11.3 With regards to the rental options selected by the Customer, ownership shall remain with the selected finance provider unless otherwise agreed to in writing by the parties and nothing in this agreement shall be construed as conferring any right, title or interest in the product on you at any stage before or after the initial 36 (THIRTY SIX) months, unless otherwise agreed upon between the parties.
- 12. GENERAL**
- 12.1 This document contains the entire agreement between the parties and neither of them shall be bound by any undertakings, representations, warranties, promises and the like not provided herein and no alteration or addition to this agreement shall be valid unless agreed to by both us and you, it must be reduced to writing and signed by you and a duly authorized representative of ours.
- 12.2 Any document shall be deemed duly presented to and accepted by you (i) within 5 (FIVE) days of prepaid registered mail to your address as selected by you in writing in the application form, (ii) within 48 (FOURTY EIGHT) hours of being faxed to any of your fax numbers, or (iii) on being delivered by hand to you or any director, member or owner of you or (iv) within 48 (FOURTY EIGHT) hours if sent by overnight courier, or (v) within 7 (SEVEN) days of being sent by surface mail, or (vi) within 24 (TWENTY FOUR) hours of being e-mailed to any e-mail address provided by yourself.
- 12.3 You have chosen the address as set out in the application form to which these terms and conditions are attached as the address at which you shall accept any notice, legal process or any like document and furthermore, any document delivered or served at this address or sent to this address shall be deemed to have been received and accepted by you. Should you, for any reason whatsoever, no longer accept any notices, legal processes or any like documents at this address, you will have to notify us of such fact in writing and provide us with a new address at which you will forthwith accept delivery and/or service of such documents, provided further that the address as set out in the face

- of this document shall remain your chosen address until such time as you have satisfactorily provided a new address to us, which address may not be a postal address.
- 12.4 You consent to the storage and use by ourselves of the personal information that you have provided to us for establishing your credit rating. You consent to us disclosing this information to credit control companies, banks and other institutions involved in rating your credit. You agree that we will not be held liable for disclosure of any of this information in good faith to third parties and that no further specific consent needs to be obtained for the transfer of such information to a specific third party.
- 12.5 Any order on purchase of the product is subject to cancellation by us due to acts of God or any circumstance beyond our control, including (without restricting this clause to these instances) inability to secure labour, power, materials or supplies, war, civil disturbance, riot, state of emergency, strike, lock out, or other labour disputes, fire, flood, drought or legislation.
- 12.6 Any order on purchase of the product is also subject to cancellation by us if you breach any material term of this Agreement or make any attempt of compromise, liquidation, sequestration, termination or judgment or apply, in terms Section 129 of the Companies Act 2008, for business rescue proceedings.
- 12.7 Each provision of this agreement is severable from the other provisions. Should a specific provision of this agreement be found to be invalid or unenforceable for any reason whatsoever, the other provisions and clauses of this agreement shall nevertheless remain binding and continue to be of full force and effect upon the parties.
- 12.8 In terms of Section 45 of the Magistrate's Court Act, No 32 of 1944, you hereby consent to the jurisdiction of the Magistrate's Court having jurisdiction in terms of Section 28 of the said Act, in respect of any action to be instituted against you by us in terms of this agreement. You agree, however, that it shall be entirely within our discretion whether to proceed with a legal action or steps in such Magistrate's Court or in any other superior Court having jurisdiction.
- 13. BREACH**
- In the event that you fail to pay any amount due in terms of this Agreement, or are in breach of any other term of this Agreement and after having received notice thereof from ourselves, and thereafter failing to remedy the breach within 7 (SEVEN) days thereof then and in that event we shall be entitled:
- 13.1 to immediately institute action against you, and to claim the full balance outstanding in respect of any amount with which your account is in arrears as at the date of such breach and furthermore, the balance outstanding in respect of any uncompleted portion of the initial period of 36 (THIRTY SIX) months, or
- 13.2 to cancel the Agreement and immediately terminate the services and take possession of any goods delivered to you and claim any damages suffered. These remedies are without prejudice to any other right we may be entitled to in terms of this Agreement, or in Law.
- 14. SOFTWARE**
- If your choice of product includes software, we shall install and maintain our standard software for one client user, unless chosen differently on this document. This software is downloadable from our website at no additional cost to yourself. In addition, we will provide training for one software user. All software is licensed by us and the use of all this software is regulated by our software license agreement, available on written request from us. Any additional software installation will be quoted for separately.
- 15. COOLING OFF**
- 15.1 If you are a natural person or juristic persons whose asset value or annual turnover at the commencement date, is below the threshold value determined by the Minister in terms of Section 6 of the CPA, you may cancel this agreement in the event of this agreement arising from any direct marketing as envisaged in the CPA, without furnishing any reasons or incurring any penalty, by giving us notice in writing within 5 (FIVE) days after the later date on which:
- (a) this agreement was signed; or
- (b) the product was installed in your vehicle,
- whereafter we will return any payment received from you within 15 (FIFTEEN) days of receiving your aforesaid cancellation notice if the product was not installed in your vehicle or within 15 (FIFTEEN) days of de-installing the product from your vehicle in the event of it being installed in your vehicle.
- 16. INSPECTION OF GOODS**
- You have agreed to purchase the goods and/or have it installed solely on the basis of the description thereof and it is recorded that these goods, in all material respects and characteristics, correspond to the description and/or sample thereof.
- 17. INSURANCE OF UNIT**
- 17.1 You are herewith notified that it shall remain your responsibility to ensure that the product is comprehensively insured at all times, against theft, damage or any other loss not covered under maintenance provided for in terms of this agreement.
- 18. CREDIT ASSESSMENT**
- 18.1 You acknowledge that we have taken steps to assess:
- 18.1.1 that you generally understand and appreciate the costs and risks associated with this contract;
- 18.1.2 your debt repayment history;
- 18.1.3 your existing financial means, prospects and obligations;
- 18.2 We have, pursuant to the information supplied and representations made by yourself, in connection with the matters set out in this agreement, satisfied ourselves that you are capable of performing your financial obligations in terms of this agreement and that you understand and appreciate the costs and risks associated therewith.
- 18.3 You acknowledge that we have entered into this contract with you on the strength of the financial representations made by you.
- 19. SURETYSHIP**
- By my signature hereto, I hereby jointly and severally bind myself to the company (the person on whose behalf I sign as surety and as co-principal debtor in solidum with each of the other of us and I acknowledge that I can be held liable for the due and punctual payment and performance by the company or person on whose behalf I sign, in favour of the service provider of all debts and obligations of whatsoever nature and howsoever arising, including the payment to the service provider of all and any amounts which may at any time be owing to it by the company or other person from whatsoever cause arising. As part of my liability in terms hereof, I bind myself as aforesaid to pay the amount of all costs, charges and expenses of whatsoever nature including, but without derogating from the generality of the foregoing, legal costs, as well as tracing fees and collection commission which the service provider may incur in securing or endeavouring to secure the fulfilment by the customer of any of the obligations the customer may have hereunder. This suretyship shall remain in full force and effect and binding upon me, notwithstanding that it may not have been signed by all of us and notwithstanding any exceptions or order of excussion, division, cession of action and all and any exceptions which could or might be pleaded to any claim by the service provider against me with the meaning, force and effect of which I declare myself to be fully acquainted. I furthermore agree that the service provider shall be entitled to institute action against me in any court. As further security for discharge of the customer's indebtedness, I hereby cede, assign, transfer and make over unto and in favour of the service provider, as security for any such debt, my title and interest to claim payment of all and any amounts which are now or may in the future become owing to me by the customer from any cause of indebtedness of whatsoever nature and howsoever arising.

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