

**SUBSCRIBER AGREEMENT:  
STANDARD TERMS AND CONDITIONS**

**1. PREAMBLE**

- 1.1 WHEREAS Tracetec is the operator of an identification system for the purpose of tracking, tracing and recovery of lost and / or stolen assets, a fleet management system for fleet management purposes only and an early warning system;
- 1.2 AND WHEREAS the Subscriber wishes to enter into an agreement with Tracetec for the rendering of the services specified in this agreement to the Subscriber in respect of the Subscribers' own assets or the assets of a third party(s);
- 1.3 AND WHEREAS Tracetec is willing to enter into an agreement with the Subscriber for the services to the Subscriber as aforesaid;
- 1.4 NOW THEREFORE the parties agree as follows:

**2. INTERPRETATION AND DEFINITIONS**

2.1 The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof. Unless a contrary intention clearly appears –

2.1.1 words importing –

2.1.1.1 any one gender include the other two genders;

2.1.1.2 the singular shall include the plural and *vice versa*; and

2.1.1.3 natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;

2.1.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –

2.1.2.1 “asset” means any movable property (including a vehicle), or movable property which loses its identity as such when it becomes part of immovable property when affixed to such immovable property, and which asset is described in a certificate;

2.1.2.2 “abuse of the Tracetec Service” includes, but is not limited to, the intentional raising of false alarms, instructions to Tracetec to recover an asset due to commercial causes such as non-payment, contractual default and the granting of judgements;

2.1.2.3 “approved installer” means a Mobile Fitter, Fitment Centre or Dealership who is specifically authorised by Tracetec to install tags or other units in assets in terms of an agreement with Tracetec or an employee of Tracetec who is authorised to install tags and / or other units in the asset;

2.1.2.4 “Bordereaux” means the person or entity, if applicable, who acts as the agent of the Corporate Client or Subscriber, whichever the case may be, for the rendering of Tracetec’s services to the Subscriber, and which person or entity signed a Bordereaux Agreement with Tracetec for the rendering of the Tracetec’s services to the Subscriber;

2.1.2.5 “Bordereaux agreement” means the agreement entered into between Tracetec and the Bordereaux, if applicable, which stipulates the terms and conditions upon which



Tracetec shall render its services to the Subscriber upon payment of consideration by the Bordereaux to Tracetec;

- 2.1.2.6 “business day” means every Monday to Friday, excluding a public holiday;
- 2.1.2.7 “cancellation form” means Tracetec’s standard cancellation form which stipulates that the asset shall no longer be covered by the services within the time period stipulated in this agreement, and which form has to be duly completed and signed by the Subscriber;
- 2.1.2.8 “certificate” means the standard certificate containing all the necessary details of the asset covered by the Tracetec Service, fleet management service or early warning service, whichever the case may be, and the details of the owner of the asset duly completed and signed by the Subscriber;
- 2.1.2.9 “commencement date” means the date on which Tracetec accepts this agreement in writing by signing it, notwithstanding the fact that Tracetec does not inform the Subscriber of its acceptance;
- 2.1.2.10 “Corporate Client” means the person or entity who acts as an agent for the Subscriber, if applicable, for the rendering of Tracetec’s services to the Subscriber, and which person or entity entered into a Corporate Client agreement with Tracetec for the rendering of Tracetec’s services to the Subscriber. It is specifically recorded herein that the Subscriber may be a Corporate Client;
- 2.1.2.11 “Corporate Client agreement” means the agreement entered into between Tracetec and the Corporate Client, if applicable, which stipulates the terms and conditions upon which Tracetec shall render its services to the Subscriber upon payment of consideration by the Corporate Client or the Bordereaux to Tracetec, whichever is applicable;
- 2.1.2.12 “direct marketing” means direct marketing as defined in the Consumer Protection Act 68 of 2008, namely to approach the Subscriber, either in person, by mail or by electronic communication, for the direct or indirect purpose of promoting or offering to supply, in the ordinary course of its business, Tracetec’s services to the Subscriber;
- 2.1.2.13 “expiry date” means the date on which the initial period expires;
- 2.1.2.14 “early warning service” means the acting by Tracetec upon signals received from the early warning unit by contacting the Subscriber and / or sending a response team to the asset as stipulated in clause 13 of this agreement;
- 2.1.2.15 “early warning unit” means a device (connected harness) connected to the electronics of the asset, which device is designed for the purpose of sending a signal to the Tracetec Control Centre when the electronics of the asset are being tampered with;
- 2.1.2.16 “extended period” means the indefinite period for which this agreement is automatically renewed after the initial period in the event that the Subscriber has not cancelled this agreement with effect from the expiry date as contemplated in clause 4.5 of this agreement;
- 2.1.2.17 “fleet management unit” means a normal unit or a mobile unit manufactured for the purpose of tracking or tracing an asset via the internet;



- 2.1.2.18 “fleet management service” means the system which enables the Subscriber unlimited access to the designated Tracetec web site by means of which the Subscriber will be able to track and monitor its asset, communication with the authorised user of the asset, receipt of an e-mail from Tracetec in the event that the asset has no battery power and data storage of the asset’s movements for the last 30 (thirty) days;
- 2.1.2.19 “Force majeure” means any and all acts, events, causes or circumstances that are beyond the reasonable control of Tracetec, including but not limited to any act of God, fire, theft, explosion, lightning, electrical storm, war, riot, revolution, strike or other industrial action, adverse governmental action, earthquake, tidal wave, essential supply difficulties (including, without limitation, any cessation or interruption (whether planned or not) of the supply of electricity or water and political turmoil;
- 2.1.2.20 “issue of payment instructions” means the issuing instructions by Tracetec to its own bank to draw amounts due in terms of the debit order authorisation against the bank account of the Subscriber;
- 2.1.2.21 “inappropriate activation of the tag” means the raising of a false alarm by the Subscriber or its duly authorised representative, *i.e.* notifying Tracetec of a theft, hijack, personal emergency and the like in the event that such theft, hijack, personal emergency or the like has not actually occurred, and whether or not such raising of a false alarm is intentional or not;
- 2.1.2.22 “initial period” means the fixed period stipulated in the transaction schedule, or in the event that the Subscriber has not signed a transaction schedule, the period stipulated in the certificate;
- 2.1.2.23 “mobile fleet management unit” means a portable tracking device (extended battery 55 hours) by means of which the Subscriber will be able to track the movement of its asset via the internet provided that the portable tracking device is in the said asset;
- 2.1.2.24 “normal fleet management unit” means a device (connected harness) to be installed in the Subscriber’s asset by means of which device the Subscriber will be able to track the movement of its asset via the internet.
- 2.1.2.25 “Subscriber” means the person or entity described as such in the certificate.
- 2.1.2.26 “service” or “services” means the Tracetec service, fleet management service and / or early warning service;
- 2.1.2.27 “owner” means the owner of an asset described as such in the relevant certificate;
- 2.1.2.28 “parties” means the parties to this agreement, namely Tracetec, the Subscriber;
- 2.1.2.29 “personal emergency” means any personal emergency in which the owner or authorised user of the asset may be involved in, including, but not limited to the following, namely: an accident, hi-jacking, armed robbery, an attempted suicide or loss of life;
- 2.1.2.30 “subscription fee” means the subscription fee payable by the Subscriber to Tracetec as consideration for the rendering by Tracetec of its services to the Subscriber;
- 2.1.2.31 “tag” means a device designed by or on behalf of Tracetec for the tracking, tracing or recovery of an asset, which device is activated when installed in an asset;



- 2.1.2.32 “third party” means any party who is not a party to this agreement;
- 2.1.2.33 “this agreement” means this Subscriber Agreement entered into between the parties read with the certificate or transaction schedule, whichever is applicable;
- 2.1.2.34 “Tracetec” means Tracetec (Pty) Ltd, Registration Number 2001/021821/07, a limited liability company, duly registered and incorporated in terms of the laws of South Africa, or its cessionary(ies) or assignee(s);
- 2.1.2.35 “Tracetec Control Centre” means the centre where signals from the tag(s) are monitored and, if applicable, acted upon by sending a response team to the relevant asset(s);
- 2.1.2.36 “Tracetec infrastructure” means the network of receiving beacons installed in the Republic of South Africa for the purpose of tracking, tracing and recovering of lost and / or stolen assets;
- 2.1.2.37 “Tracetec Service” means the tracking, tracing and / or recovery, or the attempted tracking, tracing and /or recovery of the lost and / or stolen asset specified in the certificate within the Republic of South Africa where the Tracetec infrastructure is available. The Tracetec Service does not include the repossession of assets due to commercial causes other than theft or hijacking, such as for example non-payment, contractual default or the granting of judgements;
- 2.1.2.38 “transaction schedule” means the transaction schedule which forms part of the Corporate Client agreement;
- 2.1.2.39 “unit” means a tag, fleet management unit or an early warning unit;
- 2.1.2.40 “vehicle” includes all types of vehicles including cars, trucks, jet skis, marine craft, off road vehicle, trailers, bikes, quads and the like;
- 2.2 When any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first day and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the first business day following the said Saturday, Sunday or public holiday.
- 2.3 The rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply.
- 2.4 Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 2.5 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 2.6 Expressions defined in this agreement shall bear the same meanings in schedules or annexures to this agreement which do not themselves contain their own conflicting definitions;
- 2.7 Schedules, appendices or annexures to this agreement shall be deemed to be incorporated in and form part of this agreement;
- 2.8 Where any term is defined within the context of any particular clause in this agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all



purposes in terms of this agreement, notwithstanding that that term has not been defined in this interpretation clause;

- 2.9 The *eiusdem generis* rule shall not apply to this agreement and whenever the term "including" is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that term;
- 2.10 The expiration or termination of this agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 2.11 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;

### 3. APPOINTMENT AND AUTHORITY

- 3.1 The Subscriber appoints Tracetec to render to the Subscriber (whether for the benefit of the Subscriber or for the benefit of a third party in agreement with the Subscriber) its services upon the terms and conditions specified in this agreement in respect of the asset in respect of which the Subscriber signed a valid certificate, which appointment Tracetec accepts.
- 3.2 In the event that the Subscriber entered into an agreement with a Bordereaux or Corporate Client in terms of which agreement the said Bordereaux or Corporate Client acts as the Subscriber's agent for the rendering of Tracetec's services, then the Subscriber agrees to be bound by the terms of the Bordereaux Agreement or Corporate Client Agreement as far as it applies to the Subscriber.

### 4. COMMENCEMENT AND DURATION

- 4.1 In the event that this agreement is entered into:
  - 4.1.1 for a fixed period as indicated in the transaction schedule of certificate, whichever the case may be, this agreement shall commence on the commencement date and shall continue for the initial period; or
  - 4.1.2 an indefinite period, then this agreement shall commence on the commencement date and shall continue for an indefinite period thereafter.
- 4.2 It is specifically recorded herein that Tracetec shall not be under any obligation to inform the Subscriber, of its acceptance of this agreement.
- 4.3 Tracetec shall inform the Subscriber within a period of 80 to 40 business days before the expiry date:
  - 4.3.1 that this agreement shall expire on the expiry date and that it shall continue for an indefinite period after the expiry date, unless the Subscriber notifies Tracetec in writing at least 20 (twenty) business days before the expiry date that it cancels this agreement with effect from the expiry date; and
  - 4.3.2 of any material changes to this agreement during the extended period.
- 4.4 In the event that the Subscriber wishes to cancel this agreement during the initial period with effect from the expiry date, it shall inform Tracetec of its intention to do so by giving written notice to Tracetec at least 20 (twenty) business days before the expiry date by signing a valid cancellation form in respect of the asset which forms the subject matter of this agreement and by providing Tracetec with the signed cancellation certificate.



4.5 In the event that the Subscriber does not give notice to Tracetec of its intention to cancel this agreement with effect from the expiry date, as stipulated in clause 4.4 of this agreement, this agreement shall automatically be renewed after the initial period for an indefinite period on a month to month basis after the expiry date.

4.6 it is specifically recorded herein that, in the event of a dispute regarding cancellation of Tracetec's services in respect of the Subscriber's asset, the Subscriber is responsible to provide Tracetec with proof of notice of cancellation as stipulated in clauses 4.4 and 5.1 as well as with proof of confirmation by Tracetec that it shall process the said cancellation. The Subscriber indemnifies Tracetec against any losses and / or damages which the Subscriber may suffer as a result of the Subscriber's failure to provide Tracetec with the necessary proof as aforesaid and / or as a result the Subscriber's failure to ensure that it has received a confirmation from Tracetec as aforesaid.

## 5. TERMINATION AND COOLING OFF PERIOD

5.1 Either party shall be entitled to cancel this agreement by giving 20 (twenty) business days written notice to the other party. In the event that the Subscriber cancels this agreement, it shall do so by signing a valid cancellation form in respect of the asset which forms the subject matter of this agreement and by providing Tracetec with the signed cancellation form.

5.2 In the event, however, that the Subscriber cancels this agreement during the initial period, Tracetec shall be entitled to charge the Subscriber with a maximum penalty, which penalty shall be calculated as follows: the number of months outstanding from the cancellation date to the expiry date multiplied by the monthly subscription fee. The penalty charged shall not be inconsistent with the Consumer Protection Act 68 of 2008.

5.3 Upon receipt of the signed cancellation form as stipulated in clause 5.1 of this agreement, Tracetec shall cease to render the Tracetec Service, fleet management service or early warning service, whichever the case may be, to the Subscriber within a period of 20 (twenty) business days after the receipt of the cancellation form, or such shorter period as the Subscriber may require, provided that:

5.3.1 the tag, fleet management unit or early warning unit has been de-activated by Tracetec; and

5.3.2 the Subscriber shall remain liable to Tracetec for the payment of the subscription fees until a period of 20 (twenty) business days have lapsed since the delivery of the cancellation form to Tracetec.

5.4 In the event that the Subscriber entered into this agreement as a result of direct marketing by Tracetec, then the Subscriber shall have the right to terminate this agreement with immediate effect by giving written notice to Tracetec within a period of 5 (five) business days after the Commencement date, in which event the Subscriber shall not be held liable for any penalties.

## 6. CONDITIONS FOR THE RENDERING OF SERVICES

6.1 Tracetec shall only be required to render its services, subject to clause 6.2 hereof, upon:

6.1.1 receipt of a valid certificate properly completed to the satisfaction of Tracetec and signed by the Subscriber; and

6.1.2 proper installation of the tag, fleet management unit and / or early warning unit, whichever the case may be, in the asset by an approved Installer, provided the said



tag, fleet management unit or early warning unit, is programmed, enabled, loaded onto the Tracetec system and functioning to its manufacturer's specification.

6.2 It is specifically recorded that Tracetec shall render the following services to the Subscriber, namely:

6.2.1 the Tracetec Service in the event that a tag is properly installed in the asset in accordance with the standards set by Tracetec;

6.2.2 the fleet management service in the event that a normal fleet management unit is properly installed in the asset in accordance with the standards set by Tracetec or in the event that a mobile fleet management unit is located in the asset; and

6.2.3 the early warning service in the event that an early warning unit is properly installed in the asset in accordance with the standards set by Tracetec.

6.3 Only approved tags, fleet management units and / or early warning units may be used for purposes of this agreement and the rendering of Tracetecs services.

6.4 It is specifically recorded herein that:

6.4.1 this agreement does not provide for the supply, programming (encoding) and enabling of the tag, fleet management unit or early warning unit; and

6.4.2 In the event that the approved installer, attending to the installation of the unit in the Subscriber's asset, is an employee of Tracetec, then the Subscriber shall be liable to pay the installation costs directly to Tracetec, which installation costs Tracetec may recover from the Subscriber by issuing a payment instruction for the recovery thereof on the commencement date or as soon thereafter as Tracetec deems fit.

6.5 It is further specifically recorded herein that this agreement is subject to any other agreement in terms of which the Subscriber purchases a tag, fleet management unit or early warning unit from Tracetec (hereinafter referred to as a "purchase agreement"). Should the said purchase agreement be cancelled, this agreement shall be cancelled automatically.

## 7. WARRANTY

7.1 The Subscriber acknowledges that the tag, fleet management unit or early warning unit was sold to the Subscriber or to the owner by an approved Installer and not by Tracetec.

7.2 In the event, however, that the Subscriber or owner obtained the tag, fleet management unit and / or early warning unit directly from Tracetec, then Tracetec warrants:

7.2.1 the said tag to the Subscriber or owner for a period of 3 (three) years from its enablement against any mechanical failures;

7.2.2 the said fleet management unit to the Subscriber or owner for a period of 1 (one) year from its enablement against any mechanical failures; and / or

7.2.3 the said early warning unit to the Subscriber or owner for a period of 1 (one) year from its enablement against any mechanical failures;

in which event Tracetec will repair the tag or replace it with a new tag free of charge to the Subscriber or the owner. The Subscriber shall decline the return of the faulty tag, fleet management unit or early warning unit or parts thereof after its removal from the asset in the event of the replacement or the repair thereof.



- 7.3 The Subscriber shall not abuse, damage, tamper with, handle or interfere with the tag, fleet management unit and / or early warning unit or allow any other third party to do so. The Subscriber shall only allow an approved installer to handle the tag, fleet management unit or early warning unit which handling includes the removal, repair or replacement thereof.
- 7.4 The warranty in clause 7.2 of this agreement will be void in the event that the tag, fleet management unit and / or early warning unit has been or is being subjected to misuse or abuse by anyone other than Tracetec or an approved Installer.
- 7.5 Tracetec does not make any express, tacit or implied warranties regarding the tag, fleet management unit or early warning unit or the installation thereof to the Subscriber other than the warranties provided for in this clause 7. In particular Tracetec does not warrant the workmanship of the approved Installer when the said approved Installer attends to the installation thereof.
- 7.6 It is specifically recorded herein that nothing in this clause 7 shall be construed so as to exclude any warranties prescribed by the Consumer Protection Act, No. 68 of 2008.

## 8. TESTING OF THE TAG, FLEET MANAGEMENT UNIT OR EARLY WARNING UNIT

- 8.1 The Subscriber or the owner may request any approved Installer or Tracetec Control Centre to test the tag, fleet management unit or early warning unit provided that:

8.1.1 The Subscriber or the owner shall be entitled to 2 (two) free tests per tag, fleet management unit or early warning unit per annum from the approved Installer who attended to the installation thereof in its asset; and

8.1.2 the Subscriber or the owner shall be liable to pay the said approved Installer's or Tracetec's costs for testing of the unit in the event that:

8.1.2.1 the Subscriber or the owner requires more than 2 (two) tests per tag, fleet management unit or early warning unit per annum;

8.1.2.2 the Subscriber or the owner requests an approved Installer who did not attend to the installation thereof, to test the said tag, fleet management unit or early warning unit; or

8.1.2.3 the Subscriber or the owner requests the Tracetec Control Centre to test the unit, provided that the approved installer who initially installed the unit was not an employee of Tracetec at the time of installation;

and

8.1.2 In the event that the asset was involved in an accident or the asset was structurally modified, the Subscriber or the owner, shall attend to the testing of the tag, fleet management unit and / or early warning unit installed to the said asset within a period of 7 (seven) days after the accident or structural modification.

- 8.2 It is specifically recorded herein that the testing of the tag, fleet management unit and / or early warning unit shall be the sole responsibility of the Subscriber or the owner.

## 9. FURNISHING OF INFORMATION

- 9.1 The Subscriber:

9.1.1 shall notify Tracetec in writing of any changes in the information in the transaction schedule or the certificate, whichever the case may be; and



- 9.1.2 indemnifies Tracetec against any damages and / or losses as a result of Tracetec's inability to render the services due to the Subscriber's failure to notify Tracetec of such changes; and
- 9.1.3 Indemnifies Tracetec against any resulting losses, damage, liabilities or expenses incurred by Tracetec (other than as a result of any malicious, intentional, fraudulent, reckless or grossly negligent act of Tracetec) due to the failure of the Subscriber to notify Tracetec of such changes.

**10. INDEMNITIES**

- 10.1 The Subscriber indemnifies Tracetec against all losses or damages which Tracetec, the Subscriber, the owner or an third party may suffer as a result of:
  - 10.1.1 the unintentional or inappropriate activation of the tag on the Tracetec system by the Subscriber, the owner or any other third party, which losses or damages include, but is not limited to, wrongful arrests by Tracetec, its employees or contractors, or wrongful arrests by the South African Police Services, as a result of the unintentional or inappropriate activation of the tag and / or early warning unit on the Tracetec system. Nothing in this clause 10.1 shall be construed to mean that the Subscriber is under any obligation to indemnify or compensate Tracetec in respect of any malicious, intentional, fraudulent, reckless or grossly negligent activation of the tag by a person for whose conduct the Subscriber is not responsible in law;
  - 10.1.2 an installation of a tag, fleet management unit or early warning unit done by an approved installer in the event that the said installation do not comply with the standards set by Tracetec;
  - 10.1.3 failure of Tracetec's infrastructure, a GSM failure in the event that the service depends on GSM methodology or a network failure of Tracetec or the Subscriber's internet service provider;
  - 10.1.4 any breach or non-performance of any of Tracetec's obligations under this agreement;
  - 10.1.5 any negligent act or omission by Tracetec, its employees, contractors or assignees;
  - 10.1.6 any damage caused to the asset as a result of Tracetec's tracking, tracing or recovery or attempted tracking, tracing or recovery of the asset;
  - 10.1.7 the event that the tag's frequency and /or the fleet management unit and / or the early warning unit interferes with any other device/s installed in the asset;
  - 10.1.8 Tracetec recovering a vehicle or asset without the permission or against the wishes of the Subscriber, owner or an authorised user of an asset as a result of a possible personal emergency;
  - 10.1.9 Tracetec not being able to recover an asset after having received a call requesting Tracetec to recover an asset due to personal emergency; or
  - 10.1.10 any loss of life of the owner or authorised user due to an attempt to recover the asset subsequent to an attempted suicide.
- 10.2 The Subscriber shall under no circumstances:
  - 10.2.1 Represent that it is part of Tracetec or represents that it acts as an agent on behalf of Tracetec;



- 10.2.2 Make any false misrepresentations about Tracetec;
- 10.2.3 Make any false misrepresentations about Tracetec, Tracetec's ability to recover lost and / or stolen assets, Tracetec's infrastructure or the tag; or
- 10.2.4 Bind Tracetec to any obligation other than those provided for in this agreement.
- 10.3 The Subscriber acknowledges that:
  - 10.3.1 the services are only available in the areas in the Republic of South Africa where Tracetec has an infrastructure;
  - 10.3.2 Tracetec's services are intended to reduce the risk of loss of the Vehicle or asset, but do not eliminate that risk;
  - 10.3.3 the approved installer attending to the installation of the units in assets do not act as Tracetec's agent. Neither does Tracetec have any control over the management of the said approved installer or the installation process followed by the said approved installer. Due to the aforesaid, Tracetec does not guarantee any recoveries as it has no guarantee from the approved installer that the unit(s) have been installed in the asset in accordance with Tracetec's specifications.
- 10.4 The Subscriber acknowledges that Tracetec notified the Subscriber of the indemnities given to Tracetec stipulated in clause 1.2 on the reverse side of the certificate and of the indemnities given to Tracetec in clauses 4.6, 9.1, 10, 12.3, 13.10 and 16.1.2 of this agreement in a conspicuous manner before the signing of the certificate and that the Subscriber was afforded an adequate opportunity to receive and comprehend the said notice.

## 11. SUBSCRIPTION FEES

- 11.1 The Subscriber shall pay to Tracetec the monthly subscription fees specified in the certificate or Corporate Client Agreement, whichever is applicable, monthly in advance, on or before the 25th (twenty fifth) day of each month or such earlier date specified in the debit order authorisation, provided that:
  - 11.1.1 the first monthly subscription fee, or the proportional part thereof, whichever the case may be, shall be paid upon the conclusion of this agreement.
- 11.2 Tracetec shall be entitled to increase the monthly subscription fee by giving 30 (thirty) days written notice to the Subscriber.
- 11.3 In the event that the Subscriber pays any costs to a Bordereaux or Corporate Client in terms of an agreement with the said Bordereaux or Subscriber, the Subscriber shall, after the termination of its agreement with the Bordereaux or Corporate Client for any reason whatsoever, cease to make payments to the Bordereaux and pay subscription fees to Tracetec from the date of the said termination. The amount of the subscription fees shall be determined by Tracetec.
- 11.4 In the event that the Subscriber completed the debit order authorisation on the certificate:
  - 11.4.1 Tracetec shall be entitled to issue the first payment instruction for the monthly subscription fees or portion thereof, whichever the case may be, on the commencement date and thereafter regularly on the 25th (twenty fifth) day of each subsequent month or such earlier date specified in the debit order authorisation;
  - 11.4.2 In the event that the date of the payment instruction falls on a weekend or public holiday, Tracetec shall issue the payment instruction on the following business day;



- 11.4.3 In the event that Tracetec does not issue a payment instruction on the following business day as stipulated in clause 11.4.2 of this agreement, then Tracetec shall be entitled to issue subsequent payment instructions until the Subscriber has met its obligations in terms of this agreement;
- 11.4.4 Tracetec shall continue to issue payment instructions in terms of this agreement until a period of 20 (twenty) business days after the Subscriber gives written notice to Tracetec that it cancels its debit order authorisation;
- 11.4.5 In the event that the Subscriber cancels its debit order authorisation as stipulated in clause 11.4.4, the Subscriber does not *per se* cancel this agreement;
- 11.4.6 In the event that the Subscriber cancels its debit order authorisation as envisaged in clause 11.4.4 without cancelling this agreement, Tracetec shall cease issuing payment instructions from the date on which the notice period has lapsed, but the Subscriber shall remain liable towards Tracetec for all subscription fees in terms of this agreement;
- 11.4.7 All payment instructions issued by Tracetec shall be treated by the Subscriber and its bank as if the said payment instructions have been issued by the Subscriber personally;
- 11.4.8 In the event that Tracetec issues payment instructions for the recovery of the Subscriber's subscription fees in terms of the debit order authorisation, then the Subscriber shall not be entitled to re-claim from Tracetec such subscription fees, provided the said subscription fees are due, owing and payable in terms of this agreement.

## 12. SUSPENSION OF SERVICE

- 12.1 In the event that the Subscriber fails to pay any amount due to Tracetec in terms of this agreement on the date when the said payment becomes due, owing and payable, then Tracetec shall be entitled, without limiting any other rights which it may have, to suspend its obligation to render its services to the Subscriber or owner.
- 12.2 Tracetec shall also be entitled to suspend its obligation to render its services to the Subscriber or owner in the event that the Subscriber purchased a tag, fleet management unit or early warning unit directly from Tracetec in terms of a purchase agreement and has failed to pay any portion of the purchase price thereof to Tracetec on the date when the said payment becomes due, owing and payable.
- 12.3 The Subscriber acknowledges that, in the event that the Subscriber entered into an agreement with a Bordereaux or Corporate Client in terms of which agreement the Subscriber pays to the Bordereaux or Corporate Client any costs and / or fees in respect of the services, then Tracetec shall be entitled to suspend its obligation to render its services to the Subscriber in the event that the Bordereaux or Corporate Client fails to pay any amount due to Tracetec in terms of the Bordereaux agreement or Corporate Client agreement. The Subscriber indemnifies Tracetec against any losses or damages which it may suffer as a result thereof.
- 12.4 In the event that Tracetec suspends its obligation to render its services as aforesaid, Tracetec shall not be under any obligation to render its services to the Subscriber until 24 hours after receipt of payment of:
- 12.4.1 all overdue amount(s) under this agreement; and



12.4.2 a deposit in the amount of not less than R10 000,00 in the event of an alleged theft or hi-jacking to cover the actual expenses incurred by Tracetec in respect of the investigation, response and / or recovery or attempted recovery, irrespective of whether Tracetec succeeded in recovering the asset or not. Tracetec shall, however, be entitled to require the Subscriber to pay a deposit in excess of R10 000,00 should Tracetec be of the opinion that the estimated costs as aforesaid, exceed R10 000,00. In the event that the said expenses are less than R10 000,00, Tracetec shall refund the balance of the deposit not utilised for the said expenses to the Subscriber. However, should the said expenses exceed the amount of the deposit, Tracetec shall be entitled to recover the excess amount from the Subscriber. Any certificate by Tracetec stipulating the amount of the actual expenses, as aforesaid, shall be *prima facie* proof of the said expenses incurred.

12.5 In the event of any payments made by the Subscriber in terms of clause 12.4.1 or 12.4.2 of this agreement, then the Subscriber shall provide Tracetec with proof of payment by faxing it to (011) 388 2466 or by e-mailing it to [stolen@tracetec.net](mailto:stolen@tracetec.net) before Tracetec shall be required to respond.

### 13. VALIDATION PROCESS

13.1 The validation process stipulated in this clause 13 does not apply in the event that only a fleet management unit is enabled on the Tracetec system in terms of this agreement.

13.2 In the event that an asset has been lost, stolen or hijacked, then the Subscriber, owner or a third party duly authorised thereto by the Subscriber or owner shall contact the Tracetec Control Centre at 0861 786 536 or 0861 STOLEN to report the alleged theft, hijacking or armed robbery, whereafter a validation process will be followed by Tracetec.

13.3 Once it is established that the person contacting the Tracetec Control Centre is the Subscriber, owner or its duly authorised representative, Tracetec shall attend to the requested tracking and / or recovery, provided that, in the event of theft, hijacking, armed robbery, etc. the person who contacted the Tracetec Control Centre shall provide Tracetec with a police case number by informing Tracetec telephonically by contacting the Tracetec Control Centre, by sending a fax to the Tracetec Control Centre at (011) 388 2466 or by sending an e-mail to [stolen@tracetec.net](mailto:stolen@tracetec.net).

13.4 In the event that the said person is unable to provide Tracetec with a police case number due to the urgency of the tracking and / or recovery, and / or due to the fact that the Subscriber, owner or an authorised user of the asset is in danger, or in the event that Tracetec is unable to get hold of the Subscriber or its duly authorised agent telephonically subsequent to a signal received from the early warning unit, then Tracetec shall not insist on a police case number, but it shall obtain the South African Police Service's assistance by contacting the South African Police Services itself.

13.5 In the event that the Tracetec Control Centre has received a signal from the early warning unit, then Tracetec shall contact the Subscriber to inform the Subscriber that it has received a signal as aforesaid and enquire from the Subscriber whether there may be an explanation for the said signal. A validation process shall be followed by Tracetec to verify the identity of the Subscriber, owner or its duly authorised agent.

13.6 In the event that the Subscriber, owner or its duly authorised agent is unaware of any reason why the early warning unit sent a signal to the Tracetec Control Centre, Tracetec shall conduct an investigation by sending a response team to the asset.

13.7 The purpose of the validation process is to ensure that no unauthorised third party shall instruct Tracetec to attend to the tracking and / or recovery of the asset and to protect the owner or authorised user of the asset's privacy. Tracetec shall therefore also be entitled to



require the Subscriber or authorised representative to provide it with the correct password provided to Tracetec for the purpose of the validation process.

- 13.8 It is specifically recorded herein that Tracetec shall not be under any obligation to attend to the tracking and / or recovery of an asset in the event that an unauthorised third party contacts the Tracetec Control Centre and requests Tracetec to attend to a tracking and / or recovery of the said asset.
- 13.9 Tracetec shall be entitled to amend its contact details stipulated in clauses 13.2 and 13.3 of this agreement by giving written notice thereof to the Subscriber and such amendment shall be valid with immediate effect.
- 13.10 In the event that the personal details of the Subscriber, owner or their authorised representatives change, the Subscriber shall inform Tracetec of such change by giving written notice to Tracetec. Any written notice contemplated in this clause 13.10 shall be valid within a period of 7 (seven) days after notification.
- 13.11 The Subscriber or owner shall be entitled to remove the name of one of its authorised representatives and to replace it with the name of another authorised representative. The Subscriber or owner shall also be entitled to add any number of authorised representatives to the list provided for the details of authorised representatives by Tracetec.
- 13.12 The Subscriber agreement shall not disclose the personal details described below for the purpose of the validation process to any third party.
- 13.13 The Subscriber indemnifies Tracetec against all damages and losses which the Subscriber, owner or the authorised user thereof may suffer as a result of any unauthorised third party providing the Tracetec Control Centre with the personal details for the purpose of the validation process stipulated in this clause 13.
- 13.14 In the case of personal emergency or in the event that the Tracetec Control Centre receives a signal from the early warning unit, if applicable, then Tracetec has the discretion to dispense with the validation process.

#### **14. ABUSE OF THE TRACETEC SERVICE, INAPPROPRIATE ACTIVATION OF THE TAG, TAMPERING WITH THE ELECTRONICS OF THE ASSET AND PENALTIES**

- 14.1 This clause 14 shall only apply in the event that a tag and / or early warning system is installed in the asset.
- 14.2 The Subscriber or owner shall not abuse the Tracetec Service. Neither shall the Subscriber or owner tamper with the electronics of the asset which causes the early warning unit to send a signal to the Tracetec Control Centre.
- 14.3 In the event that the Tracetec Control Centre dispatches a response team in terms of this agreement and it subsequently turns out that the Subscriber, owner or any third party abused the Tracetec Service by contacting the Tracetec Control Centre without any danger to the life and / or safety of the Subscriber, owner or the authorised user of the asset, that there was no case of personal emergency, that the asset was not lost or stolen, that there was an inappropriate activation of the tag or that the Subscriber, owner or any third party tampered with the electronics of the asset or the early warning unit then Tracetec may, in its sole and unfettered discretion, levy a penalty of not less than R2 500,00 (Two Thousand Five Hundred Rand) in respect of the said dispatch, which penalty shall be paid to Tracetec by the Subscriber on demand and which penalty may be recovered by Tracetec via the Subscriber's debit order. In addition to the said penalty, Tracetec shall also be entitled to recover from the Subscriber all its expenses incurred in respect of the said dispatch, which expenses shall likewise be payable by the Subscriber to Tracetec on demand.



14.4 Tracetec shall be entitled to unilaterally increase the amount of the penalty as contemplated in clause 14.3 by giving 7 (seven) days written notice to the Subscriber.

**15. FORCE MAJEURE**

15.1 Tracetec shall be relieved from its obligations under this Agreement for the duration of the force majeure and shall not be in breach of this Agreement nor otherwise liable to the Subscriber as a result of any inability to perform in accordance with this Agreement or as a result of any delay or failure in the performance of any of its obligations in terms of this Agreement if and to the extent that such inability, delay or failure is caused by Force Majeure, provided that:

15.1.1 Tracetec must notify the Subscriber in writing of the event of Force Majeure if it renders performance under this Agreement by Tracetec impossible; and

15.1.2 The Subscriber may terminate this Agreement by giving written notice to Tracetec to that effect if Tracetec's inability to perform in accordance with this Agreement as a result of that event of Force Majeure continues for an uninterrupted period of more than 6 (Six) months.

**16. APPLICATION OF THE CONSUMER PROTECTION ACT**

16.1 The Subscriber:

16.1.1 warrants that it shall comply with the provisions of the Consumer Protection Act 68 of 2008 in as far as it applies to the Subscriber; and

16.1.2 indemnifies Tracetec against any damages due to its failure to comply with the Consumer Protection Act as aforesaid.

16.2 The provisions of the Consumer Protection Act, No. 68 of 2008, shall apply to this agreement as if specifically incorporated herein.

**17. CESSION AND ASSIGNMENT**

17.1 The Subscriber shall not cede and/or assign any of its rights and/or obligations in terms of this agreement to a third party without the prior written consent of Tracetec.

**18. GOOD FAITH**

18.1 The parties shall, at all times, display good faith to each other in all their dealings, in terms of or relating to this agreement and in any other matters which may affect their rights in terms of this agreement. This implies, without limiting the generality of the a foregoing, that they will:

18.1.1 at all times act reasonably, honestly and in good faith; and

18.1.2 perform their obligations arising from this agreement diligently and with reasonable care;

**19. DOMICILIUM CITANDI ET EXECUTANDI**

19.1 Tracetec chooses the following address as its *domicilium citandi et executandi*, namely:

19.1.1 Physical address: **Unit 1A, Lifestyle Riverfront Office Park, Bosbok Rd, Boskruin**

19.1.2 Fax number: **011 388 1341**



- 19.1.3 E-mail address: **info@tracetec.net**
- 19.2 The Subscriber chooses the following address as its *domicilium citandi et executandi*, namely: its physical address, fax number and / or e-mail address stipulated in the transaction schedule or certificate, whichever the case may be.
- 19.3 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax or e-mail.
- 19.4 Any party may by notice to any other party change the address chosen as its *domicilium citandi et executandi vis-à-vis* that party to another address in the Republic of South Africa or its telefax number or e-mail address, provided that the change shall become effective *vis-à-vis* that addressee on with immediate effect.
- 19.5 Any notice to a party –
- 19.5.1 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
- 19.5.2 sent by telefax or e-mail to its chosen telefax number or e-mail address stipulated in clauses 19.1 and 19.2 shall be deemed to have been received on the date of despatch (unless the contrary is proved); or
- 19.5.3 sent by pre-paid registered mail to its physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the 7<sup>th</sup> (seventh) day after it was sent.
- 19.6 All notices by a party to this agreement or the deliveries of documents or invoices in terms of this agreement shall be done by sending it to the other party's *domicilium citandi et executandi*.
- 19.7 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.
- 19.8 It is specifically recorded herein that, in the event that a Bordereaux acts as the Subscriber's agent for the rendering of Tracetec's services, then:
- 19.8.1 any notice in terms of this agreement by Tracetec to the Bordereaux shall be deemed to have been received by the Subscriber; and
- 19.8.2 any notice given by the Bordereaux to Tracetec in terms of this agreement shall be deemed to have been given by the Subscriber.

## 20. BREACH OF CONTRACT

- 20.1 In the event that any party to this agreement ("the defaulting party") breaches any one of the terms of this agreement, then the other party ("the aggrieved party") shall give notice to the defaulting party to rectify the breach within a period of 20 (twenty) business days from receipt of such notice.
- 20.2 Should the defaulting party fail to rectify such breach within a period of 20 (twenty) business days from receipt of such notice, the aggrieved party shall be entitled (without limiting its rights) to either:



- 20.2.1 Cancel this agreement, with or without a claim for damages; or
- 20.2.2 To claim specific performance, with or without a claim for damages.

**21. JURISDICTION OF THE MAGISTRATES COURT**

- 21.1 The Subscriber agrees to the jurisdiction of the Magistrates Court having jurisdiction over any dispute arising from this agreement, irrespective of the amount of the claim.
- 21.2 Notwithstanding clause 21.1 above, Tracetec shall have the right to institute legal proceedings in any competent court or forum having jurisdiction over any dispute arising from this agreement.

**22. COSTS**

- 22.1 All legal costs (including costs on the scale as between attorney and own client), charges and disbursements incurred by any party in successfully enforcing any of the provisions of this agreement or in collecting or endeavouring to collect all or any amounts payable to it hereunder, shall be for the account of the other party and shall be payable on demand.

**23. SEVERABILITY**

- 23.1 Any provision in this agreement which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this agreement, without invalidating the remaining provisions of this agreement.

**24. GENERAL**

- 24.1 This agreement constitutes the whole agreement between the parties relating to the subject matter hereof.
- 24.2 Save for the provisions of clauses and 24.3 hereof, no amendment or consensual cancellation of this agreement or any provision or term hereof and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this agreement shall be binding unless recorded in a written document signed by the parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 24.3 Tracetec shall be entitled from time to time to amend the terms of this agreement by giving notice to the Subscriber in writing and the Subscriber shall be bound by such amended terms. For the purpose of this clause 24.3, it is specifically recorded that publication of the amended terms and conditions of this agreement shall be regarded as sufficient notice to the Subscriber.
- 24.4 No extension of time or waiver or relaxation of any of the provisions or terms of this agreement shall operate as an *estoppel* against any party in respect of its rights under this agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this agreement.
- 24.5 To the extent permissible by law no party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

