



# Standard Terms and conditions

Trekit365 Reg No:2017/009089/07

Please sign and return the form to trekit365

Email:sales@trekit365.co.za | Website:www.trekit365.co.za

## 1 Definitions

- 1.1 **“Agreement”** - The agreement concluded between the Client and Trekit365 in respect of the Product and/or Service contemplated in the Subscriber Application Form which agreement will be exclusively governed by these terms and conditions and the specific terms and features applicable to the relevant Product or Service.
- 1.2 **“Trekit365”** – Trekit365 and any entities appointed by Trekit365 to perform the Service and shall include references to the employees, agents, sub-contractors, service providers, suppliers and any independent contractors of Trekit365 or such appointed entities;
- 1.3 **“Client”** – The Party whose details appear on the Subscriber Application Form and who has signed after being requested to read these terms and conditions which will govern the relationship between the Parties;
- 1.4 **“Confidential Information”**- Information that is identified (orally or in writing) as confidential or of such a nature that a reasonable person would understand such information to be confidential;
- 1.5 **“Fee”** – The collective fees for providing the Service, and Rental (if applicable), specified on the Subscriber Application Form and payable monthly in advance by the Client to Trekit365, together with any other charges which Trekit365 is allowed to levy under this Agreement;
- 1.6 **“Installation Centre”** – A centre approved by Trekit365 for the installation of a fixed Unit;
- 1.7 **“Loss”** - The hi-jacking and/or theft of a Vehicle, in which event the Client is responsible to immediately notify Trekit365;
- 1.8 **“Product”** – the Unit and/or the value-added services selected by the Client on the Subscriber Application Form;
- 1.9 **“The Parties/Party”** – Trekit365 and the Client; either Trekit365 or the Client;
- 1.14 **“Rental”** – The amount specified as “Monthly Rental Subscription” on the Subscriber Application Form, for the rental of the Unit, payable monthly in advance to Trekit365 for the duration of the Term;
- 1.15 **“Roaming Costs”** – Any GSM costs incurred when the Unit transmits messages via a GSM network when located outside the Territory;
- 1.16 **“Service”** – means the provision by Trekit365 to the Client of Vehicle Tracking Services dependent on the Product selected by the Client on the Subscriber Application Form;
- 1.18.1 **“Platform”** - means the provision by Trekit365 to the Client of a real-time web-based system whereby the Client is able to position, monitor and obtain reports covering various aspects of driver and Vehicle performance. This Service only applies where a GPS Tracking Unit is installed and is limited to the Territory, except if the Product specifically incorporates international data roaming, in which case the roaming data service will be provided in specified countries;
- 1.17 **“Subscriber Application Form”** – This Agreement and any appendices attached;
- 1.18 **“Term”** –where the Client has selected the Rental option, from and including the date of installation to the last day of the Rental period stipulated in the Subscriber Application Form, which Rental period shall be deemed to be 36 (thirty-six) months from installation;
- 1.19 **“Territory”** – The Republic of South Africa;

4.2 On the expiry of the Term, it will automatically be continued on a month-to-month basis, subject to the notice periods in clause 3 and any material changes of which Trekit365 has given notice (in terms of clause 4.1.1) unless the Client:

- 4.2.1 directs Trekit365 to terminate the Agreement on the expiry date of the Term in terms of clause 3; or
- 4.2.2 agrees to a renewal of the Agreement for a further period.

## 5 Fee

5.1 The prices will be made available to the Client upon the Client’s request.

The Client shall pay Trekit365 the Fee for the Service as set out in the Subscriber Application Form as revised from time to time as per this clause 5, monthly in advance by debit order on the Client’s bank account.

In the event that the payment date as selected by the Client on the Subscriber Application Form does not fall on a Business Day, the Client hereby agrees that Trekit365 may debit the Client’s bank account on the preceding Business Day. Further, if there are insufficient funds in the nominated account to meet the obligation, you are entitled to track my account and re-present the instruction for payment as soon as sufficient funds are available in my account;

5.1 The Client shall pay Trekit365 for additional ad-hoc Services such as Roaming Costs within 30 (thirty) days of receipt of an invoice from Trekit365. The Client agrees such costs reflected on an invoice received from Trekit365 shall be considered a true reflection of the costs incurred by the Client and the Client shall not withhold payment for any reason whatsoever.

5.2 The first Fee and the Purchase Price, if applicable, shall be paid upon installation of the Unit.

5.3 Trekit365 will increase the Fee when necessary.

5.4 Trekit365 shall provide the Client with written notice of not more than 80 (eighty) days nor less than 40 (days) before each annual Fee increase stating the increased amount and the effective date.

5.5 The Client agrees that the proportion of the Fee which relates to foreign currency input costs may be subject to change, at Trekit365 discretion, based on the foreign exchange rate at any given time and/or any price changes effected by third party service providers. Accordingly, Trekit365 shall provide the Client with 30 (thirty) days written notice of any such changes in the Fee.

5.6 All amounts outstanding in terms of this Agreement shall bear interest from the due date until payment at the maximum rate permitted by law.

5.7 Where the Fee, by direct or indirect agreement between the Client and the Intermediary, is to be paid to Trekit365 by the Intermediary and the Intermediary fails to pay any Fee, the Client will be responsible to pay such Fee and, for the remainder of the Term, to pay by debit order in terms of clause 5.2 any outstanding Fee due and any future Fee due in terms of this Agreement. Fees for other services shall be charged for as per Trekit365 prices.

## 6 Hardware and Warranty

6.1 The Client will be responsible to use the Unit and the Service in the manner advised by Trekit365 and as reflected in Trekit365 manuals. The Client shall not, in any way remove, alter or tamper with the Unit.

6.2 Subject to the Client complying with clause 6.1, the Unit and the installation thereof carries a 12 (twelve) month warranty. Any maintenance and/or repairs must be carried out at an Installation Centre.

6.3 All risk of loss and damage in and to the Unit shall, from the date of installation, pass to the Client, but ownership of the Unit shall remain with Trekit365 until payment has been made in full. If the Unit has not been paid for in full and this Agreement is terminated in

Date:.....Initials.....

1.20 **“Vehicle”** – Any Vehicle or other asset of the Client which is the subject of this Agreement and in which a Unit is installed, the details of which appear either on the Subscriber Application Form or on any appendix attached.

## **2 The Service**

2.1 A Trekit365 Installation Centre shall install the Unit into the Clients Vehicle/s.

2.2 Where the Client has selected a Unit, the following shall apply:

2.2.1 Trekit365 will respond to each notification of a Loss and do all that it can to help recover the Vehicle. The Client authorises Trekit365 to help recover the Vehicle for the Client working with the SAPS. Additional charges might be added to recover the client vehicle. In the event that the Client requires a cross-border recovery, the Client will be responsible for the repatriation of the Vehicle and the cost thereof;

2.2.2 Trekit365 does not guarantee that our tracking system will lead to a recovery. The Client acknowledges that our tracking system is intended to reduce the risk of Loss, but will not eliminate such risk;

2.2.3 the Client shall, immediately or as soon as is practically possible, notify Trekit365 of any recovery request unintentionally generated (“false alarm”). The Client will be responsible for any false alarm and understands that such false alarm may lead to the relevant authorities or Trekit365 responding thereto and making wrongful arrests. Accordingly, the Client shall be responsible to repay all costs and any expense incurred by Trekit365, and hereby indemnifies Trekit365 against all claims or damages arising out of a false alarm.

## **3 Terms and Cancellation**

3.1 This Agreement shall continue for the Term.

3.2 The Client acknowledges that:

3.2.1 The individual payment instructions so authorised to be issued must be issued and delivered on the above-mentioned deduction day of each and every month commencing on the above-mentioned commencement date. In the event that the deduction day falls on a Sunday or recognized South African public holiday, the deduction day will automatically be the previous, or very next ordinary business day. Further, if there are insufficient funds in the nominated account to meet the obligation, Trekit365 is entitled to track my account and re-present the instruction for payment as soon as sufficient funds are available in my account.

3.2.2 Deductions occur monthly on or after the dates when the obligation in terms of the Agreement is due and the amount of each individual deduction may not be more or less than the obligation due.

3.2.3 The Client authorise Trekit365 to issue and deliver payment instructions to Trekit365’s banker for collection against the Client’s above-mentioned account at the Client’s above-mentioned bank (or any other bank or branch to which the Client may transfer their account) on condition that the sum of such deductions will never exceed obligations as agreed to in the Agreement, and commencing on the above-mentioned commencement date, and continuing until this Authority and Mandate is terminated by the Client according to the cancellation requirements in Terms and Cancellations.

3.2.4 The Client understands that the withdrawals hereby authorised will be processed through a computerized system provided by the South African Banks and also understands that details of each withdrawal will be printed the Client’s bank statement or on an accompanying voucher. Such must contain a number, which number must be included in the said deduction instruction and if provided to Trekit365, should enable Trekit365 to identify the Agreement. This number must be added to this form in the Reference Number portion before the issuing of any

accordance with clause 3 or clause 9, Trekit365 may at its expense remove the Unit and the Client shall, within 5 (five) days of receipt of any written or verbal request, deliver the Vehicle to an Installation Centre for such removal.

## **7 Furnishing of Information**

7.1 The Client confirms the completeness and accuracy of all the information on the Subscriber Application Form or otherwise furnished by or on behalf of the Client to The Tracker.

7.2 The Client shall immediately, or as soon as is practically possible notify Trekit365 in writing of any changes to the information on the Subscriber Application Form, or furnished to Trekit365 from time to time, by written notice to sales@trekit365.co.za, which information will be updated within 10 (ten) days of receipt by Trekit365.

7.3 The Client has selected the address referred to on the Subscriber Application Form as its selected legal address where all communications from Trekit365 and any legally required notices will be delivered for all purposes arising out of this Agreement, provided that the Client shall be entitled to change such legal service address, on written notice to Trekit365. Trekit365 will effect such change within 7 (seven) days of receipt by Trekit365 of such notice.

## **8 Client’s General Obligations**

8.1 It is the responsibility of the Client to contact Trekit365 for a Unit test to be carried out. The Client must take all reasonable steps to ensure that the Unit is in proper working order and must immediately or as soon as is practically possible report any Unit faults and/or failures to Trekit365 in order for Trekit365 to provide the Service.

8.2 The Client must ensure that Trekit365 emergency numbers (+27 21 801 2393 / +27 73 6168 371) are kept handy and contact Trekit365 as soon as possible after a Loss.

8.3 The Client holds exclusive responsibility, and Trekit365 shall have no liability, for ensuring that the Service complies with all laws regarding the intended use by the Client of the Service herein.

## **9 Default**

9.1 If the Client (or the Intermediary on the Client’s behalf), after 7 (seven) days written notice of default, fails to pay any amount due in terms of this Agreement or the Client abuses or misuses the Service, then, for the duration of such default, Trekit365 may suspend all of its obligations in terms of this Agreement. Trekit365 shall be entitled to recover arrear Fees by debiting the Client’s account with the outstanding amount or by any other legal action, and cancel the Agreement, charging a reasonable penalty fee for early cancellation.

## **11 Disclaimers**

11.1 Trekit365 makes no warranty that the Service will capture all events, that remote access and the GSM network will be continuous or uninterrupted, that the fleet management web based system will be error-free, or that any specific result or outcome will be achieved by utilizing the Service, or that the use of the Service by the Client will comply with all applicable laws.

## **12 Warranties and Representations**

12.1 The Client represents and warrants that:

12.1.1 it has the necessary right and authority to enter into this Agreement, is the lawful owner and/or possessor of the Vehicle, and is therefore permitted to allow Trekit365 to provide the Service herein;

12.1.2 in making such disclosure, the Client hereby indemnifies Trekit365 from any claim whatsoever which may arise from any third party against Trekit365 in the event that the Client has misrepresented its right and authority.

## **13 Exclusion of Liability**

13.1 In addition to any other indemnities contained in this Agreement, Trekit365 will not be liable for any loss or damage of whatsoever nature caused to the Client in consequence of any act or omission by Trekit365, notwithstanding any negligence on the part of Trekit365,

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payment instruction and communicated to the Client directly after having been completed by Trekit365.

3.2.5 The Client acknowledges that all payment instructions issued by Trekit365 shall be treated by the Client's above-mentioned bank as if the instructions had been issued by the Client personally.

3.2.6 The Client acknowledges that this authority may be ceded or assigned to a third party if the Agreement is also ceded or assigned to that third party, but in the absence of such assignment of the Agreement, this Authority and Mandate cannot be assigned to any third party.

3.3 The Client (if the Client is a natural person) may cancel this Agreement in writing or other recorded manner:

3.3.1 upon the expiry of the Term without penalty or charge, subject to the Client remaining liable to Trekit365 for any amounts owed in terms of the Agreement up to the date of cancellation; or

3.3.2 at any other time, by giving Trekit365 notice of 20 (twenty) Business Days, subject to the Client remaining liable to Trekit365 for any amounts owed in terms of the Agreement up to the date of cancellation and subject to **clause 3.5**;

3.4 The Client (if the client is a juristic person) may cancel this Agreement in writing or other recorded manner:

3.4.1 by giving Trekit365 notice of 1 (one) month upon expiry of the Term, subject to the Client remaining liable to Trekit365 for any amounts owed in terms of the Agreement up to the date of cancellation; or

3.4.2 at any other time, by giving Trekit365 notice of 1 (one) month, subject to the Client remaining liable to Trekit365 for any amounts owed in terms of the Agreement up to the date of cancellation and subject to **clause 3.5**.

3.4.3 **Trekit365 may impose a reasonable cancellation penalty, should the cancellation be before the end of the Term, in lieu of costs incurred with respect to the Service provided in contemplation of the Agreement enduring for its intended Term. Failure to pay the cancellation might lead to legal action against the client and also blacklisting.**

3.5 Trekit365 may cancel this Agreement 20 (twenty) Business Days after giving written notice to the Client of a material failure (i.e. non-payment or failure to comply with the obligations in terms of this Agreement) by the Client, unless the Client has rectified the failure within that time.

3.5.1 within 15 (fifteen) Business Days if no installation has been completed; or

3.5.2 within 15 (fifteen) Business Days after the return of the Unit to Trekit365 if installation has already taken place.

3.6 In the event that the Client finds the Unit defective or not of the standard described, the Client shall return the Vehicle to Trekit365 within 10 (ten) Business Days of fitment, at Trekit365 risk and expense, for Trekit365 to inspect the Unit installed in the Vehicle. Should the Unit be found to be defective, Trekit365 shall, at its discretion, replace the Unit or cancel the Agreement.

3.7 The Client agrees that although this Authority and Mandate may be cancelled by the Client, such cancellation will not cancel the Agreement.

#### **4 Renewal**

4.1 Trekit365 will notify the Client in writing or any other recordable form of the impending expiry date, including the notice of:

4.1.1 any material changes that will apply if the Agreement is to be renewed or which may apply beyond the expiry of the Term; and

4.1.2 any options available to the Client in terms of clause 4.2.

provided only that Trekit365 is entitled in law to contract out of such liability.

#### **14 General**

14.1 Trekit365 will make every reasonable effort to carry out its obligations under this Agreement, using commercially reasonable efforts conforming to generally accepted industry standards. Where Trekit365 is directly or indirectly prevented or restricted from carrying out all or any of its obligations under this Agreement by a cause beyond its control, then Trekit365 cannot be held responsible for delay or failure in performance in meeting its obligations.

14.2 For the duration of this Agreement and at all times after its termination, each Party and its employees and agents agree not to disclose any Confidential Information obtained from the other Party to any other person or entity.

14.3 The Client may not alter the terms of this Agreement without the written consent of Trekit365. Trekit365 reserves the right to amend these Terms and Conditions from time to time. Any new version of the Terms and Conditions will be displayed on the Trekit365 Website ([www.trekit365.co.za](http://www.trekit365.co.za)) together with the date on which it will become effective, which will never be less than 30 (thirty) days after the date on which it is first published. It is the Client's obligation to visit the Trekit365 Website on a regular basis in order to determine whether any amendments have been made and the effective date thereof.

14.4 Where any number of days or other period is given in this Agreement for the carrying out of the Service or obligations, the days will be calculated excluding the first day and including the last day.

14.5 In the event of Trekit365 taking legal action against the Client or the Intermediary for breach of payment under this Agreement, the Client shall be responsible for all costs (on a client and own attorney scale) allowable by the courts if an award is made in Trekit365's favour.

14.6 The nature and amount of any indebtedness of the Client to Trekit365 at any time shall be determined and proved by a document signed by a manager of Trekit365, whose capacity or authority it shall not be necessary to prove. Such certificate shall, upon the mere production thereof, be binding on the Client as prima facie proof that the amount stated therein is due and payable, and will prima facie be valid as a liquid document against the Client in any competent court. If the Client wishes to dispute such certificate or the effects thereof, the burden of proof rests on the Client.

14.7 Neither Party may cede or delegate the rights or obligations in terms of this Agreement without the prior written consent of the other Party, which consent shall not unreasonably be withheld.

14.8 Trekit365 will attempt to resolve any dispute quickly and efficiently. The Client may direct any complaint to the Consumer Commission. Should the Client not be satisfied with the complaint resolution, the Client may take action in a competent court.

14.9 The laws of the Republic of South Africa will apply to this Agreement and the relevant courts of the Republic of South Africa will have exclusive jurisdiction in relation to the Agreement.

14.10 The Client undertakes to provide Trekit365 with a 30 (thirty) day written notice in the event that the Client no longer wishes to receive correspondence regarding new Products and value-added services.

14.11 Once the client tracking account is suspended, the tracking system will automatically get suspended. Suspension happens to reduce losses to Trekit365.

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