

TERMS AND CONDITIONS: INCLUDING RECOVERY

1. DEFINITIONS

In this agreement, unless inconsistent with the context, the following words shall have the meanings assigned to them hereunder-

- 1.1. "agreement" – this agreement read with the Subscriber agreement and schedule of vehicles;
- 1.2. "transaction schedule" – the preceding portion of this agreement which identifies the Subscriber and Baytrac and in which provision is made for other particulars and terms applicable to this agreement to be completed
- 1.3. "Subscriber" – the contracting party as described in the preceding transaction schedule;
- 1.4. "vehicle schedule" – the annexure which identifies the vehicles that are subject to this agreement;
- 1.5. "the fitment centre" – the fitment centre, duly approved and/or recommended by Baytrac for the installation of the Baytrac equipment, or Baytrac if it installs the Baytrac equipment itself;
- 1.6. "Baytrac" – Mylonite Investments cc t/a Baytrac;
- 1.7. "Baytrac equipment" or "the unit" – the equipment specified in the transaction schedule;
- 1.8. "contact person" – the Subscriber's contact person(s) referred to in the transaction
- 1.9. "Baytrac services" or the "service" – the Baytrac services as per the agreement;
- 1.10. "territory" – South Africa excluding such areas or situations where the vehicles and/or the Baytrac equipment is not capable of or otherwise prevented from sending and receiving signals;
- 1.11. "vehicle/s" – the vehicle/s referred to in the vehicle schedule;
- 1.12. "commencement date" – the date of signature of this agreement by the Subscriber;
- 1.13. "Service Provider" – the operator of the communications network utilised by Baytrac from time to time, to enable it to provide the services referred to in this agreement;
- 1.14. "Incident" – a bone fide request after the theft or hijacking of a vehicle resulting in Baytrac initiating a recovery;
- 1.15. "False Incident" – an incident where the Vehicle is not stolen or hijacked;
- 1.16. "Fleet" – all of the Vehicles subject to the terms of this Agreement;
- 1.17. Unless inconsistent with the context words relating to any gender shall include the other genders, words relating to the singular shall include the plural and vice versa and words relating to natural persons shall include association of persons having corporate status by statute or common law.

2. DURATION OF CONTRACT

- 2.1. Subject to the provisions of this agreement, this agreement shall take effect on the commencement date and shall continue for the period specified in the transaction schedule.
- 2.2. Either party may terminate this agreement by three (3) months written notice given to the other party, provided that, subject to clause 9, no such notice shall be given for the period referred to in the transaction schedule.
- 2.3. Should the Subscriber terminate this agreement otherwise than envisaged in clause 2.2, or stop paying for any reason whatsoever, then Baytrac shall be entitled alternatively to claiming damages, to claim from the Subscriber as a genuine pre-estimate of the damages suffered by Baytrac, an amount equal to the total monthly rental and other monthly charges due, for the unexpired period of this agreement. The said amount shall be paid to Baytrac within seven (7) days of the date of such termination or the date on which the Subscriber fell in arrears.

3. APPOINTMENT AND HIRE

- 3.1. The Subscriber hereby appoints Baytrac to provide the Baytrac services to the Subscriber in the territory and Baytrac agrees to do so upon the terms and conditions set out in this agreement.
- 3.2. Save in the event that the Baytrac equipment is purchased outright by the Subscriber, the Subscriber hereby hires the Baytrac equipment from Baytrac with effect from the commencement date for the individual pieces of Baytrac equipment set out in the transaction schedule on the terms and conditions set out in this agreement.
- 3.3. Insofar as it is necessary to enable Baytrac to provide the Baytrac Services, the Subscriber hereby authorises Baytrac to take control of and/or drive and/or otherwise secure the vehicles.

4. THE INSTALLATION AND OPERATION OF EQUIPMENT

- 4.1. The Baytrac services cannot be rendered unless the Baytrac equipment is properly installed in the vehicle/s by an approved fitment centre and such Baytrac equipment is programmed, enabled and functioning in accordance with Baytrac's specifications.
- 4.2. Notwithstanding anything to the contrary contained in this agreement, Baytrac shall be relieved of its obligation under this agreement during any period in which the Baytrac equipment is not functioning arising out of or in connection with the Subscriber not complying with its obligations in terms of or breaching the terms of this agreement.

5. OBLIGATIONS OF THE SUBSCRIBER

- 5.1. The Subscriber shall not alter or modify or otherwise interfere with the Baytrac equipment or any part thereof in any way whatsoever. The Subscriber shall keep the Baytrac equipment free of any lien or hypothec and not sell, donate or pledge or in any other manner encumber or dispose of same.
- 5.2. The Subscriber shall be obliged to allow Baytrac access to the Baytrac equipment and/or vehicle/s for the purpose of routine maintenance.
- 5.3. The Subscriber hereby acknowledges that Baytrac shall not be responsible for any loss or damage or expense suffered by the Subscriber or any third party resulting from any use of the Baytrac equipment and/or the Baytrac services.
- 5.4. The Subscriber hereby acknowledges his responsibility to arrange insurance of the Baytrac equipment at its full value.
- 5.5. The Subscriber will avoid reporting false incidents or raising false alarms.
- 5.6. The Subscriber agrees to notify Baytrac as soon as possible after the theft of the Vehicle;
- 5.7. The Subscriber agrees to, in circumstances where Baytrac has reason to believe that a false incident has been reported, provide Baytrac with the relevant case number obtained from the SAPS;
- 5.8. The Subscriber agrees to ensure that the unit is working after installation, after repairs, and to test the unit at least every 30 (thirty) days by calling the dedicated interactive voice response telephone system and following the prompts
- 5.9. The Subscriber will not modify or tamper with the unit and only use the service for its intended purpose.

6. RENTAL AND OTHER MONTHLY CHARGES

- 6.1. The Subscriber shall pay the rental and other monthly charges set out in the transaction schedule, free of demand, deduction or set off of any nature, free of exchange, bank costs and other charges monthly in advance to Baytrac. The first monthly rental and other monthly charges shall be payable on the commencement date and thereafter on or before the day specified in the transaction schedule by way of debit order authorisation on the Subscriber's bank account referred to in the transaction schedule, or if Baytrac consents in writing, in accordance with such other terms. If the commencement date falls on a day other than the first of a month, the first monthly rental and other monthly charges shall be an amount equal to a proportionate share of the monthly rental and other monthly charges in the ratio which the monthly rental and other monthly charges bear to the number of days calculated from the commencement date to the end of the relevant month.
- 6.2. The monthly rental and other monthly charges shall escalate annually as set out in the transaction schedule.
- 6.3. In the event of the Baytrac equipment being hired by the Subscriber, neither the Subscriber, nor any person on the Subscriber's behalf, shall during the course of this agreement, or upon its termination, acquire ownership of the Baytrac equipment and ownership thereof shall remain with Baytrac. Upon termination of this agreement the Subscriber shall be obliged to take the vehicles with the Baytrac equipment installed in them to a fitment centre for removal within 7 (seven) days of termination. The Subscriber shall pay all the costs incurred or associated with such removal.
- 6.4. In the event the Subscriber fails to take the vehicles to the fitment centre for removal of the Baytrac equipment, the Subscriber shall continue to pay the rentals and other monthly charges whilst it is in possession of the Baytrac equipment, as if the agreement was not terminated.
- 6.5. If Baytrac cancels this agreement due to default by the Subscriber and the Subscriber disputes Baytrac's rights to do so, the Subscriber shall nevertheless continue to pay the rentals and other monthly charges whilst it remains in possession of the Baytrac equipment and Baytrac shall be entitled to accept such payments without prejudice to the claim for cancellation then in dispute.

7. FEES AND CHARGES

- 7.1. The Subscriber shall be responsible for a reconnection fee as determined by Baytrac from time to time, plus Value Added Tax, in the event of the reinstatement of any Baytrac services previously suspended by Baytrac in accordance with the provisions of clause 9 below.
- 7.2. Payment of all costs and fees in terms of this agreement shall be made by the Subscriber without demand, deduction or set off of any nature, free of exchange, bank costs and other charges. Payment of any additional costs shall be made within seven (7) days of receipt by the Subscriber of an invoice in respect of same from Baytrac.
- 7.3. The Subscriber shall be responsible for all legal costs incurred by Baytrac arising out of a breach of this agreement on an "attorney and own client" basis.
- 7.4. The Subscriber shall effect all payments in terms of or arising from this agreement in such manner as determined from time to time by Baytrac. The Subscriber shall at all times ensure that Baytrac is advised of a bank account from which it may withdraw amounts due by the Subscriber under this agreement.
- 7.5. For as long as this agreement remains in force the Subscriber shall not be entitled to withhold payment of any amounts due to Baytrac hereunder for any reason whatsoever.

- 7.6. Baytrac shall be entitled, in its sole discretion, to appropriate or allocate any payments received from or on behalf of the Subscriber to any indebtedness of the Subscriber to Baytrac from whatsoever cause arising.
- 7.7. Baytrac will act on an incident without charging a fee until the number of incidents exceed 5% (five percent) of the number of vehicles in the fleet, calculated over a rolling 12 (twelve) month period. Thereafter Baytrac may charge the Subscriber a fee per incident. If the Fleet consists of less than 21 (twenty one) vehicles, Baytrac will act on 1 (one) Incident during such 12 (twelve) month period without charging a fee. The fee per Incident is typically about R5,000.00 (five thousand rand) but may vary depending on the difficulty of the operation.
- 7.8. Should any act or omission by the Subscriber result in excessive requests for a recovery of a Vehicle involved in a False Incident, Baytrac may charge R30 (thirty rand) per False Incident responded to telephonically by Baytrac, which amount may be recovered via the Subscriber's debit order.
- 7.9. Should Baytrac, in their sole discretion, act in accordance with a request from the Subscriber or the Emergency Contact to recover the Vehicle, in the event where the Vehicle was involved in a False Incident, the Subscriber accepts liability for any consequences of such False Incident, including the cost associated with a recovery. The cost is typically about R5,000 (five thousand rand) per attempted recovery and may be recovered via the Subscriber's debit order (irrespective of whether the recovery was successful or not).
- 7.10. In the event where the Vehicle is not mobile for any period of time due to any reason and whether or not the Unit has been damaged as a result thereof, this Agreement is still valid and the Subscriber needs to comply with all his obligations (financial and other) in terms of this Agreement.
- 8. EXCLUSION OF LIABILITY**
- 8.1. The Subscriber acknowledges and agrees that notwithstanding anything to the contrary contained in this agreement –
- 8.1.1. the Baytrac services are intended to reduce the risk of loss but not of eliminating such risk;
- 8.1.2. Baytrac shall not be liable for any loss or damage of whatsoever nature (whether direct or consequential) or expenses or cost of any nature whatsoever which may be suffered by the Subscriber or any third party in consequence of, or attributable directly or indirectly to, any act or omission by Baytrac or any failure by Baytrac to provide the Baytrac services pursuant to this agreement, notwithstanding any negligence on the part of Baytrac and/or its employees and/or its agents; or directly or indirectly arising pursuant to or in connection with the provision of services to Baytrac or the Subscriber by any wireless telephone network operator ("the Service Provider") or which makes such wireless telephone network services ("the Network Services") available to Subscribers or arising out of or in connection with any system down time or delay, malfunction or breakdown of equipment or the Network Services or unavailability of the Network Services, or the activation, deactivation, suspension, cancellation or reactivation of any SIM card by the Service Provider, or the reliance on any information received from the Service Provider via the Network Services.
- 8.1.3. The Subscriber hereby indemnifies and holds Baytrac harmless against all claims of whatsoever nature including all claims for loss, damage, expenses and costs, which may be brought against Baytrac by any person arising directly or indirectly or in connection with any act or omission by Baytrac in providing the Baytrac services or otherwise, notwithstanding any negligence on the part of Baytrac and/or its employees and/or its agents, or arising directly or indirectly or in connection with any act or omission by the Service Provider, Baytrac's or the Subscriber's use or accessing of the Network Services, or the reliance on information provided by the Service Provider.
- 8.2. The Subscriber agrees:
- 8.2.1. That Baytrac does not guarantee the safety of the Subscriber of that of any occupants in the Vehicle;
- 8.2.2. That there are instances where a Vehicle cannot be recovered due to, amongst others, a non-communicating unit and the Subscriber acknowledges this fact, therefore agreeing that Baytrac will not be held liable if the Vehicle is not recovered;
- 8.2.3. That Baytrac is hereby authorised to recover the Vehicle and agrees that Baytrac shall not be liable for any damage to the Vehicle caused for any reason;
- 8.2.4. That since the recovery teams are armed, the recovery service could, due to its nature, pose a risk and could result in personal injury, death or damage to property
- 8.2.5. That the unit's functioning, and as a result, the service, is dependent on the Network and its availability and as such the Subscriber agrees that the Unit might not be communicating and the service might as a result not be available for certain undeterminable periods of time within certain undeterminable locations. Due to the fact that this is beyond Baytrac's control and the fact that Baytrac does not make any representation to the contrary, Baytrac shall not be liable for any loss or damage arising as a result thereof. The Network is not a party to this Agreement
- and as such shall not be liable for any loss or damage arising from this Agreement;
- 8.3. The Subscriber accepts full responsibility to contact Baytrac and give a Fitment Centre the opportunity to inspect a possible non-communicating unit as soon as reasonably possible.
- 8.4. The Subscriber will ensure that Baytrac at all times has accurate and up-to-date information about the Subscriber and the Vehicle.
- 8.5. Baytrac is hereby authorised to disclose Subscriber information deemed necessary by Baytrac to the Emergency Contact when it is in the Subscriber's best interest.
- 9. BREACH**
- If the Subscriber:
- 9.1. breaches any term or condition of this agreement; or
- 9.2. if in the sole opinion of Baytrac raises a false alarm or abuses the Baytrac services;
- Baytrac may notwithstanding anything to the contrary contained herein, immediately suspend its obligations under this agreement without notice, and/or cancel this agreement without notice and without any liability to the Subscriber. Any such suspension or cancellation shall be without prejudice any other rights which Baytrac may then have against the Subscriber at law. Upon termination of this agreement for whatsoever reason all amounts payable by the Subscriber to Baytrac shall immediately become due and payable.
- 10. CERTIFICATE OF INDEBTEDNESS**
- A certificate signed by any director or manager for the time being of Baytrac (whose appointment need not be proved) in respect of any indebtedness of the Subscriber to Baytrac under the agreement or otherwise or in respect of any other fact shall be prima facie evidence of the Subscriber's indebtedness to Baytrac.
- 11. INSTALLATION INTO NEW VEHICLES**
- The Subscriber shall not transfer the Baytrac equipment to new vehicles without Baytrac's prior written consent. If Baytrac gives its prior written consent, the Subscriber shall ensure that the Baytrac equipment is removed from the vehicles and installed in the new vehicles by the fitment centre. The Subscriber shall pay all the fitment centre's charges for such removal and installation and advise Baytrac immediately of the details of the new vehicles.
- 12. WARRANTY**
- It is recorded that the Baytrac equipment has a warranty of 12 months and the workmanship in installing the equipment, where Baytrac is the fitment centre, is warranted for 3 months.
- 13. FORCE MAJEURE**
- 13.1. Subject to the following provisions of this clause, neither party shall be responsible to the other for its failure to perform or any delay in performing any obligation under this agreement in the event and to the extent that such failure or delay is caused by force majeure.
- 13.2. For the purposes of this agreement, force majeure shall mean any circumstance which :
- 13.2.1. is beyond the reasonable control of the party giving notice of force majeure ("the affected party") and for which it is not responsible; and
- 13.2.2. is not a circumstance which the affected party could, by the exercise of a standard of care and skill which could reasonably be expected of that party, have avoided.
- 13.3. Subject to the above, force majeure includes but is not limited to war (whether declared or not), terrorism, revolution, invasion, insurrection, riot, civil, commotion, mob violence, sabotage, blockade, embargo, boycott, the exercise of military or usurped power, fire, explosion, theft, storm, flood, drought, wind, lightning, or other adverse weather condition, epidemic, quarantine, accident, breakdown of machinery or facilities, strike, lockout or labour dispute, acts or restraints of government imposition, or restrictions of or embargoes on imports or exports.
- 14. GENERAL**
- 14.1. This agreement contains all of the express provisions agreed upon by the parties with regard to the subject matter hereof. No agreement varying, adding to, deleting from or cancelling this agreement and no waiver of any right under this agreement shall be effective unless reduced to writing and signed by or on behalf of the parties.
- 14.2. No relaxation by a party of any of its rights in terms of this agreement at any time shall prejudice or be a waiver of its rights (unless it is a written waiver in terms of the previous clause) and it shall be entitled to exercise its rights thereafter as if such relaxation had not taken place.
- 14.3. The Subscriber shall not be entitled to cede or delegate its rights or obligations in terms of this agreement without the prior written consent of Baytrac. If the Baytrac equipment is rented or hired, the Subscriber agrees that should Baytrac cede all or any of its rights in terms of this agreement or transfer ownership of the Baytrac equipment to any third party, it shall hold the goods on behalf of the cessionary and transferee.
- 14.4. 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.

- 14.5. When any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day is not a business day (a business day being a day other than a Saturday, Sunday or public holiday in the Republic of South Africa) in which case the last day shall be the next succeeding business day.
- 14.6. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 14.7. 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.

15. DOMICILIA AND NOTICES

- 15.1. The parties choose as their domicilia citandi et executandi for all purposes under this agreement, whether in respect of court processes, notices or other documents or communications of whatsoever nature, the following addresses:
 - 15.1.1. Baytrac : 19 5th Avenue, Walmer, Port Elizabeth
 - 15.1.2. Subscriber : As set out in the transaction schedule
- 15.2. Any notice required or permitted to be given in terms of this agreement shall be valid and effective only if in writing.
- 15.3. Any party may by notice to any other party change the physical address chosen as its domicilium citandi et executandi
- 15.4. Any notice to a party:-
 - 15.4.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its domicilium citandi et executandi shall be deemed to have been received on the 7th business day after posting (unless the contrary is proved); or
 - 15.4.2. delivered by hand to a responsible person during ordinary business hours at its domicilium citandi et executandi shall be deemed to have been received on the day of delivery.
 - 15.4.3. 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 to its chosen domicilium citandi et executandi.