

TERMS AND CONDITIONS

1. CONTRACT

- 1.1. Baytrac has agreed to provide Baytrac services and vehicle tracking equipment to the Subscriber.
- 1.2. The Subscriber has requested to make use of Baytrac's services and tracking equipment subject to the terms and conditions set out herein and to remunerate Baytrac for its services and to make use of Baytrac's equipment.
- 1.3. This contract sets out the terms and conditions which will apply to the vehicle tracking equipment, Baytrac and services provided by Baytrac to the Subscriber, regardless whether this agreement has been signed by the Subscriber or not.
- 1.4. This contract will be read together with the Subscriber Application Form and any appendices attached hereto.

2. DEFINITIONS AND INTERPRETATIONS

- 2.1. The words and phrases stated below will be used throughout the agreement. When reading the agreement, the word or phrase must be given the meaning set out next to it.
- 2.2. Words relating to any gender shall include the other genders and words relating to the singular shall include the plural. Words relating to natural persons shall include juristic persons having corporate status by either statute or the common law.
- 2.3. The provisions of the agreement will take precedence over any conflicting provision found under the Baytrac User Manual, Subscriber Application Form or any other applicable document which may be provided to the Subscriber from time to time.

"Subscriber Application Form" means the form which precedes this agreement and that sets out the identity of the Subscriber, details of the Baytrac Service which will be provided by Baytrac and the fees payable for the Baytrac Service;

"Business Day" means Monday to Friday, excluding weekends, being Saturday and Sunday and excluding a public holiday as defined under the Public Holiday Act. 36 of 1994;

"Contract" means this agreement, the Subscriber Application Form, any Baytrac literature and any addendum to this agreement;

"Effective Date" means the date when the subscriber signs this agreement or the date when the equipment is installed into the subscriber's vehicle, whichever occurs first.

"Equipment" means Baytrac equipment which is specified in the subscriber application form;

"Service Provider" means 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;

"Baytrac Services" means the rental of the tracking unit (where applicable), hosting of the tracking unit on the Baytrac server, access to the Baytrac server for fleet management monitored by the Subscriber and provision of a data sim card. Baytrac Services will also include but not be limited to the response, tracking and an attempt to recover any reported or suspected stolen or lost vehicle;

"Information" means any information relating to the Subscriber which has been provided to Baytrac by the Subscriber as well as any information transmitted by the equipment, which includes but is not limited to the location of the vehicle, the driving behaviour of the Subscriber and if the vehicle is involved in an accident;

"Initial period" means the period of this agreement, as stated on the Subscriber Application Form;

"Baytrac" means Baytrac (Pty) Ltd t/a Baytrac, a South African company bearing registration number 2013/209064/07 and includes its employees, agents and contractors;

"The fitment centre" means a centre duly approved and / or recommended by Baytrac for the installation of the equipment or Baytrac if it installs the equipment itself;

"Baytrac User Manual" means the user guide, training materials and related documents provided to the Subscriber, which states how the Baytrac service operates;

"Parties" means both the Subscriber and Baytrac collectively and "Party" means either the Subscriber or Baytrac;

"Subscriber" means the party who applies to make use of Baytrac's services and whose details are more specifically set out in the Subscriber Application Form;

"Territory" means South Africa excluding such areas or situations where the vehicles and / or the Baytrac equipment is not capable of or is prevented from sending and receiving signals. The territory may be amended with the sole discretion of Baytrac from time to time by giving written notice to the Subscriber;

"VAT" means value added tax as levied from time to time in terms of the Value Added Tax Act, 89 of 1991;

"Vehicle" means the vehicle/s stated in the Vehicle Schedule or any addendum for which the Baytrac service will be provided;

"Voice-logged Contract" means any oral contract concluded telephonically by the Subscriber with Baytrac for the Baytrac Service to which the terms and conditions of this Contract apply;

"SVR" means Stolen Vehicle Recovery;

"Contact Person" means the person that has been stated as such by the Subscriber in the Subscriber Application Form that precedes this agreement;

"Vehicle Schedule" means the addendum that identifies the vehicles which is subject to this agreement;

"GSM Network" means the Global Systems for Mobile Communications Network which is a wireless communications network over which the GSM Service is provided by Baytrac where applicable.

"GSM Service" Means the services provided Baytrac in terms of the agreement using the GSM Network.

3. DURATION OF THE CONTRACT

- 3.1. The duration of the contract will be the initial period and will commence on the effective date.
- 3.2. Either party shall be entitled to terminate this agreement by giving 1 (one) calendar months written notice to the other party.
- 3.3. Upon the expiry of the initial period, this agreement will continue for an indefinite period of time unless either of the parties confirmed in writing that the agreement will terminate on the expiration of the initial period.
- 3.4. In the event that the agreement does continue for an indefinite period as stated in 3.3 above, either party will have the right to

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terminate this agreement upon one (1) calendar months written notice to the other.

- 3.5. In the event that the Subscriber purchases equipment from Baytrac, there will be no initial period and either party will have the right to terminate this agreement at any time upon 20 (twenty) business days written notice to the other party.

4. THE BAYTRAC SERVICE

- 4.1. A fitment centre shall install the unit/s into the subscriber's vehicle/s.
- 4.2. The fleet management services provided by Baytrac to the subscriber are dependent on and limited to the product selected by the client. The subscriber will be provided with a username and password for 24 hour access to the monitoring and reporting system.
- 4.3. User support will be provided during business hours by means of a telephonic or email support desk.
- 4.4. Save for the event that the Subscriber purchases the equipment from Baytrac, the Subscriber hereby hires the equipment from Baytrac with effect from the commencement date as set out in the Subscriber Application Form on the terms and conditions set out in this agreement.
- 4.5. 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.
- 4.6. Where the subscriber has selected a unit with the SVR the following shall apply:
- 4.6.1. Baytrac undertakes to be available at its outsourced 24/7 control room to each notification of a loss and to do all that it reasonably can to recover the vehicle. If Baytrac is obliged to deliver the vehicle to a relevant authority after recovering it, it will do so.
- 4.6.2. The recovery will, unless agreed otherwise in writing between the parties, be rendered free of additional charges within the territory.
- 4.6.3. Baytrac does not guarantee that the SVR will lead to a recovery of a lost or stolen vehicle.**
- 4.6.4. The Subscriber acknowledges that the SVR is intended to reduce the risk of loss but will not eliminate such risk.**
- 4.6.5. The Subscriber hereby accepts responsibility for any false alarm given to Baytrac and hereby acknowledges that such false alarm may lead to Baytrac or the authorities responding to it and making a wrongful arrest. The Subscriber will thus be liable to pay all costs and any expenses that Baytrac might incur and further indemnifies Baytrac against all claims or damages arising out of a false alarm.
- 4.6.6. The Subscriber shall immediately or as soon as is reasonably possible, notify Baytrac of any false alarm recovery requests.
- 4.7. The Subscriber accepts responsibility for making all necessary and reasonable enquiries as to the suitability for the purpose of the unit and the main features of the unit.
- 4.8. The Subscriber may at any time add on a vehicle or substitute another vehicle for the vehicle in respect of which the Baytrac service is being provided, in the manner directed by Baytrac.
- 4.9. Where a vehicle has been added or substituted for another vehicle, the Subscriber will be liable to Baytrac for any additional

fees relating to the Baytrac service, including the costs of removal and all installation of the equipment as the case may be and authorises Baytrac to increase the amount of any debit order stated under the Subscriber Application Form accordingly, which increase will be effective from the date of installation of the equipment in the new or substituted vehicle.

- 4.10. The terms set out in this agreement will apply in all respects to the Baytrac Service in respect of any new or substituted Vehicle.

- 4.11. The Subscriber acknowledges that the Baytrac service cannot be provided and that the equipment cannot be used by the Subscriber until such time as the equipment is properly installed into the vehicle, is programmed, enabled and functioning.

5. THE INSTALLATION, OPERATION AND WARRANTIES OF EQUIPMENT

- 5.1. When the Subscriber purchases equipment from Baytrac, ownership and the risk of loss or damage in the equipment will pass to the Subscriber on the effective date.
- 5.2. When the Subscriber rents equipment from Baytrac, ownership will stay with Baytrac but the risk of loss or damage in the equipment will pass to the Subscriber on the effective date.
- 5.3. In the event that the Subscriber makes use of the GSM service, the Subscriber undertakes to notify Baytrac and the SAPS as soon as practically possible but within 48 (forty eight) hours of any loss, damage or theft of the SIM card.
- 5.4. Where the equipment is purchased by the Subscriber, Baytrac warrants that the equipment will be free of defects in workmanship for a 12 (twelve) months period with effect from the effective date.
- 5.5. Where the subscriber rents the equipment, Baytrac warrants that the equipment will be free of defects in workmanship for the full duration of the initial period.
- 5.6. The Subscriber undertakes to use the equipment in the manner advised by Baytrac and to not, in any manner, remove, alter or tamper with the equipment. The warranties stated in 5.4 and 5.5 is applicable subject to the Subscriber complying with this undertaking.
- 5.7. If the equipment is damaged as a result of any cause beyond the control of Baytrac which will include but not be limited to a collision, water damage and fair wear and tear then the warranties set out under clauses 5.4 and 5.5 will not apply and Baytrac will not have any obligation to repair or replace the equipment or to provide the Baytrac service, or refund the Subscriber with any amounts claimed by the Subscriber, in respect of any warranty, damages or contractual claim.**
- 5.8. Any maintenance or repairs which are required in terms of the Baytrac warranty will be carried out by a Baytrac Fitment Centre at no cost to the Subscriber.
- 5.9. It is the duty of the subscriber to ensure that the equipment is working properly at all times and is free from any malfunction by self-testing on the fleet management software provided, reporting any fault to Baytrac and making the vehicle available if a repair is necessary.**
- 5.10. In the event that the vehicle has been involved in an accident, has undergone repairs or a mechanical service or panel beating the Subscriber undertakes to test the tracking unit on the fleet management software provided as soon as possible thereafter, report any fault to Baytrac and make the vehicle available if a repair is necessary.
- 5.11. Baytrac will be relieved of its contractual obligation to provide the Baytrac service at any time that the equipment is not functioning properly.**

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5.12. Where the equipment is not functioning properly, whether under warranty or not, and the Subscriber has failed to have the Equipment tested as per its obligation under clauses 5.9 and 5.10 or has not made any attempt to have the equipment repaired by a Baytrac Fitment Centre, the Subscriber will still be liable to pay the Baytrac Service fee

5.13. Baytrac reserves its rights to change the Network Service Provider who provides the GSM Service or use facilities other than a GSM Service to provide the Baytrac service, provided that Baytrac's obligations to the Subscriber as provided under this agreement will not be affected.

6. GENERAL OBLIGATIONS OF THE SUBSCRIBER

6.1. It is the duty of the subscriber to ensure that all information provided on the Subscriber Application Form is complete and correct.

6.2. The Subscriber shall immediately or as soon as practically possible, notify Baytrac in writing to any changes to the information on the Subscriber Application Form or other information furnished to Baytrac by or on behalf of the Subscriber.

6.3. Where the Subscriber fails to give Baytrac written notice of any changes then the Subscriber agrees to hold Baytrac harmless should Baytrac rely or act upon the former and outdated information.

6.4. In the event of an emergency, the Subscriber agrees that it or its appointed contact person, whose details are set out under the Subscriber Application Form, may be contacted.

6.5. The Subscriber shall not use the Baytrac service or equipment to carry out unlawful activities and Baytrac is under no obligation to ensure that the service complies with all laws regarding the intended use by the Subscriber.

6.6. The Subscriber hereby acknowledges its responsibility to arrange insurance of the Baytrac equipment at its full replacement value.

6.7. In the event that cross-border tracking is required, the Subscriber undertakes to advise Baytrac of this requirement in advance, and to pay any additional costs associated with the cross-border service.

7. SUBSCRIBER INFORMATION

7.1. The Subscriber acknowledges that Baytrac is obliged to ascertain the Subscriber's credit worthiness as per the provisions of the National Credit Act, 34 of 2005. The Subscriber expressly gives Baytrac permission to:

7.1.1. access from any duly registered credit bureau, the Subscriber's personal information concerning financial risk and payment habits ("payment profile") to process the Subscriber's application for the Baytrac Service; and

7.1.2. share and disclose information about the Subscriber's payment profile to any duly registered credit bureau.

7.2. Where the Subscriber has authorised a third party which is also a business partner of Baytrac such as the Subscriber's insurance company, emergency response company or any other third party to receive information from Baytrac, then to the extent of such authorisation, the Subscriber expressly consents to Baytrac providing information to such party and will not hold Baytrac liable for any loss or damage resulting from such disclosure.

7.3. In the case of any GSM Service, the Subscriber acknowledges that it is under a duty to provide Baytrac with certain mandatory information in accordance with the Regulation of Interception of

Communications and Provision of Communication Related Information Act, 48 of 2008 ("RICA") and undertakes to cooperate with Baytrac prior to the activation of the GSM Service, in respect of the provision of all the required documentation and information, failing which, Baytrac will not be held liable for any loss or damage resulting from such failure.

8. RENTAL AND OTHER MONTHLY CHARGES

8.1. 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.

8.2. 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. 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.

8.3. The monthly rental and other monthly charges shall escalate annually as set out in the transaction schedule.

8.4. In the event that the Subscriber hires Baytrac equipment, neither the Subscriber nor any other person on the Subscribers 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.

8.5. Upon the 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 costs incurred or associated with such removal.

8.6. It is the responsibility of the Subscriber to inform Baytrac if the vehicle is written off in an accident or prior to the sale of the vehicle and to make the vehicle available for the removal of the rented Baytrac equipment.

8.7. In the event that the rented Baytrac Equipment is damaged or lost for any reason, the Subscriber shall be obliged to pay the full replacement value of the equipment as calculated at the time of the loss or damage.

8.8. In the event that the Subscriber fails to take the vehicles to the fitment centre for the removal of the Baytrac equipment, the subscriber shall continue to pay the rentals and other monthly charges whilst it is in possession of Baytrac equipment, as if the agreement was not terminated.

8.9. 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.

9. ADDITIONAL FEES AND CHARGES

9.1. The Subscriber shall be responsible for a reconnection fee as determined by Baytrac from time to time plus VAT, in the event of the reinstatement of any Baytrac services previously suspended by Baytrac in accordance with the provisions of clause 11 below.

9.2. Payment of additional costs (other than the payments and costs in terms of this agreement) shall be made within 7 (seven) days

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of receipt by the Subscriber of an invoice in respect of same from Baytrac.

- 9.3. The Subscriber shall be liable to pay all legal costs incurred by Baytrac arising out of a breach of this agreement on an "attorneys and own client" basis.
- 9.4. 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.
- 9.5. 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.
- 9.6. If the SIM card is removed from the Baytrac device and used for any other purpose, the Subscriber will be held liable for the SIM costs incurred.
- 9.7. In the event that a fault is reported to Baytrac which is not due to the equipment or Baytrac's workmanship, the subscriber will be liable for the costs incurred for dispatching a technician as well as a diagnostic fee upon receipt of Baytrac's feedback report on the fault.

10. DISCLAIMER

10.1. Baytrac 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.

10.2. In addition to any other indemnities contained in this agreement, Baytrac will not be liable for any loss or damage of whatsoever nature caused to the subscriber or a third party consequent to any act or omission by Baytrac, its employees or agents notwithstanding any negligence on the part of Baytrac, its employees or agents provided that Baytrac, its employees or agents was not grossly negligent.

10.3. The Subscriber acknowledges and agrees that notwithstanding anything to the contrary contained in this agreement that the Baytrac services are intended to reduce the risk of loss and not to eliminate such risk.

10.4. The Subscriber accepts that the Baytrac Service is intended to reduce the risk of loss if the Subscriber's vehicle is stolen or hijacked, but that recovery of the vehicle is not guaranteed.

10.5. Unless prohibited by law, the subscriber agrees to hold Baytrac harmless for any loss or damage caused to the subscriber arising from the Baytrac service, and / or Baytrac not being able to perform the Baytrac service for any reason, including Baytrac's negligence or due to any malfunction of the equipment and or the network.

11. BREACH

- 11.1. If the Subscriber breaches any term or condition of this agreement, fails to make any payment or in the sole opinion of Baytrac raises a false alarm or abuses the Baytrac service then Baytrac may immediately suspend its service and provide the subscriber with written notice requiring it to rectify the breach within 20 (twenty) business days of the date of such notice.
- 11.2. Where the subscriber fails to rectify the breach within the period stated in 11.1 above, Baytrac will have the right to immediately terminate the contract, without notice to the Subscriber. This termination shall be without prejudice to any rights which Baytrac may have in law including:

- 11.2.1. where the Initial Period of the Contract has not expired, the right to claim from the Subscriber an early termination fee reasonably calculated by Baytrac;
- 11.2.2. where the Initial Period of the Contract has not expired, the right to immediately remove and recover ownership and possession of the Equipment from the vehicle, at the Subscriber's risk and expense;
- 11.2.3. the right to demand from the Subscriber, all amounts payable, by the Subscriber to Baytrac under the Contract; and
- 11.2.4. the right to claim any other damages from the Subscriber, which it may have incurred in law in consequence of the Subscriber's breach.

11.3. Where Baytrac breaches any material terms of the Contract, the Subscriber has the right to send Baytrac a written notice requiring Baytrac to rectify the breach within 20 (twenty) Business Days of receipt of such notice.

11.4. Where Baytrac fails to rectify the breach within the 20 (twenty) business day period, the Subscriber will thereafter have the right to immediately terminate the Contract, on written notice to Baytrac.

11.5. Where the Subscriber cancels the Contract during the Initial Period in terms of clause 11.3, the Subscriber will still be liable to pay Baytrac an early termination fee and Baytrac will have to immediately remove and recover ownership and possession of the equipment from the vehicle.

12. CERTIFICATE OF INDEBTEDNESS

12.1.A certificate signed by any director of Baytrac (whose appointment need not be proved) in respect of any indebtedness of the Subscriber to Baytrac shall be *prima facie* evidence of the Subscriber's indebtedness to Baytrac.

13. FORCE MAJEURE

13.1. If either party is prevented or restricted in any way from carrying out all or any of its obligations under this agreement by reason of *Force Majeure* then that party will be relieved of its obligations during such period of *Force Majeure*, and will not be liable for any loss or damage suffered by the other party.

13.2. *Force Majeure*, for the purposes of this agreement shall mean:

- 13.2.1. any circumstance which 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.
- 13.2.3. Subject to the above, force majeure shall include but not be limited to wars, strikes, riots, crimes and "acts of God" such as earthquakes and floods.

14. DOMICILIA AND NOTICES

14.1. Where legal notice is to be served, in terms of this agreement on the Subscriber, the Subscriber chooses its address for service of all legal notices and documents in connection with this agreement (*domicillium citandi et executandi*) at its physical address as set forth in the Subscriber Application Form.

14.2. Where legal notice is to be served, in terms of this agreement on Baytrac, it chooses its respective address for service of all legal notices and documents in connection with this agreement (*domicillium citandi et executandi*) at the following addresses: **Shop 10, Block D, Figtree Park, Springfield, Port Elizabeth, 6070.**

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