1. DEFINITIONS
The following expressions shall have the following meanings:

1.1 Agreement: this agreement;

1.2 Budget Plan: a payment plan requiring the Subscriber to pay a service fee monthly in advance on or before the first day of each month via debit order, which amount includes the installation costs;

1.3 Cash Plan: a payment plan requiring the Subscriber to pay for the Unit and its installation on the date of installation, plus payment of a service fee monthly in advance on or before the first day of each month via debit order; depending on the package offered, service fees may be paid monthly or bundled, either annually or into a single upfront cash payment covering one or more years

1.4 CPA: the Consumer Protection Act 68 of 2008 (as amended from time to time);

1.5 Day: a business day (which excludes a public holiday, Saturday or Sunday);

1.6 DID: the driver identification device that may be used in conjunction with certain Units;

1.7 Emergency Contact: the person/s nominated by the Subscriber to be contacted in an emergency, should MIX be unable for any reason to reach the Subscriber;

1.8 Expiry Date: For Cash Plan, there is no Expiry Date and this Agreement can be cancelled with 20 days written notice; For Budget Plan, the Expiry Date is 36 (thirty six) months after commencement of this Agreement;

1.9 False Incident: an incident where the Vehicle is not stolen or hijacked;

1.10 Fitment Centre: a business which is approved by MIX for the purpose of installing and servicing Units;

1.11 Intermediary: a third party authorised to collect payment from the Subscriber on behalf of MIX;

1.12 MIX: MIX Telematics Africa Pty Ltd reg no. 2004/019797/07;

1.13 MIX Telematics Companies: MIX and MIX Telematics Limited with reg no 1995/013858/06;

1.14 Network: MIX's communications network supplier;

1.15 Other Protected Parties: MiX’s communications network supplier;

1.16 Party/ies: either MIX or the Subscriber, or both;

1.17 Polling: communication by the Unit, due to the following events (which list is not exhaustive):

1.17.1 the Unit providing its position (either automatically or after being requested);

1.17.2 the Unit creating any type of alarms;

1.17.3 any other events (e.g. ignition status) due to the configuration of the Unit;

1.18 Service: tracking and recovery of the Vehicle when stolen or hi-jacked and other ancillary services, if applicable and does not include reacting to a False Incident;

1.19 SAPS: the South African Police Service;

1.20 Subscriber: the party entering into this Agreement with MIX, who can be either:

1.20.1 a Consumer: a party who is defined as a “consumer” in terms of the CPA;

1.20.2 a Corporate Customer: a Juristic Person who’s asset value or annual turnover at the time of the conclusion of this Agreement, equals or exceeds the threshold determined by the CPA, thereby disqualifying them from the protection offered by the CPA;

1.20.3 an Individual: a natural person; or

1.20.4 a Juristic Person: a party who is defined as a “juristic person” in terms of the CPA, irrespective of their asset value or annual turnover;

Unit: vehicle tracking unit/units and associated components;

Vehicle: the vehicle covered in terms of this Agreement.

2. COMMENCEMENT AND DURATION
This Agreement and the Service shall commence on the date that the Unit is installed and the Unit details downloaded successfully on the relevant MIX software and shall continue until terminated in terms of this Agreement.

SUBSCRIBER’S OBLIGATIONS AND ACKNOWLEDGEMENTS

THE SUBSCRIBER AGREES:
That MIX does not guarantee the safety of the Subscriber or that of any occupants in the Vehicle;
That there are instances where a Vehicle cannot be recovered due to, amongst others, the Service or a non-communicating Unit and the Subscriber acknowledges this fact, therefore agreeing that MIX will not be held liable if the Vehicle is not recovered;
That MIX is hereby authorised to track and/or recover the Vehicle and agrees that MIX shall not be liable for any damage to the Vehicle caused for any reason other than the result of a proven Unit defect;
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;
To avoid reporting False Incidents or raising false alarms (which false alarms could be raised by, amongst others, contravening clause 3.11 and clause 3.13);
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 MIX’s control and the fact that MIX does not make any representation to the contrary, MIX shall not be liable for any loss or damage arising as a result thereof. Subject strictly and at all times to such claims as the Subscriber may have against the Network under the CPA from time to time, 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;
That MIX will not accept any alterations made to this Agreement by the Subscriber;
To notify MIX as soon as practicable after the theft of the Vehicle;
To, in circumstances where MIX has reason to believe that a False Incident has been reported, provide MIX with the relevant case number obtained from the SAPS;
To ensure that the Unit is working after installation, after repairs, and to test the Unit at least every 30 (thirty) days;
Not to operate the Vehicle or allow the Vehicle to be operated without the DID (if applicable) being in the Vehicle. Failure to comply could incur additional costs referred to in 5.2.1;
That by leaving the DID (if applicable) in the Vehicle when the Vehicle is not being operated, the early warning feature of the Unit is being bypassed, which makes it impossible for MIX to deliver the Service to the best of its abilities. As such, the Subscriber indemnifies MIX against any loss, injury, death, claim, loss of profit or any other damage suffered as a result of the Subscriber bypassing the early warning feature; Not to modify, disconnect or tamper with the Unit and only use the Service for its intended purpose;
I, the undersigned, hereby confirm that I have read and understood MiX’s terms and conditions and agree thereto.
I, also acknowledge that the fact, nature and effect of all the clauses that pertain to risk or liability and to the nature and limitations of the Unit and the Service, as indicated above in bold, have been drawn to my attention and that I have had adequate opportunity to read and comprehend the terms and conditions and that I understand and hereby agree thereto.

Signature

Name in print

Signed for and on behalf of the Subscriber (who warrants his / her authority hereto)
STANDARD TERMS AND CONDITIONS

5.2 Possible additional costs

5.2.1 Should an act or omission by the Subscriber result in excessive false alarms, MiX may charge R30 (thirty rand) per false alarm responded to telephonically by MiX, which amount may be recovered via the Subscriber’s debit order.

5.2.2 Should MiX, 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. This cost is typically about R5,000.00 (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).

5.2.3 MiX may charge the Subscriber a reasonable fee should the Subscriber require testing more frequently than once per week. Such fee may be recovered via the Subscriber's debit order.

5.2.4 If MiX provides the Service in spite of the Subscriber’s failure to pay monies owing to MiX, the Subscriber shall be liable for the cost of providing the Service. Should this result in the recovery of the Vehicle, MiX shall be entitled to retain the Vehicle until the Subscriber has met all its outstanding obligations.

5.2.5 If, before the Expiry Date, the Subscriber cancels this Agreement or MiX cancels the Agreement due to the Subscriber being in breach:

5.2.5.1 if the Subscriber is a Juristic Person, the Juristic Person shall be liable for the sum of the service fees due up to the Expiry Date;

5.2.5.2 if the Subscriber is an Individual, the Individual shall be liable for a reasonable cancellation penalty, subject to the maximum as determined by the CPA.

5.2.6 The Subscriber will bear the cost of transferring a Unit from one Vehicle to another, the cost being payable to the Fitment Centre.

5.2.7 Should any act or omission by the Subscriber result in excessive Polling by the Unit, MiX will charge the Subscriber for the actual costs MiX incurred as a result of such Polling.

5.2.8 Certain features that may be offered, depending on the type of Unit (for example crash alert and roadside assistance), have limitations and should those limitations be exceeded, the Subscriber will be invoiced for the additional cost.

5.2.9 In the event where the Vehicle is not mobile for any period of time due to any reason (for example: the Vehicle was involved in an accident, the Vehicle is not being used, etc.) 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 obligations (financial and other) in terms of this Agreement.

6. TERMINATION

6.1 Either Party may terminate this Agreement by giving the other (20) twenty Days written notice, however, should such termination occur before the Expiry Date, the fees mentioned in 5.2.5 will be payable by the Subscriber to MiX.

6.2 If the Subscriber is an Individual on a Budget Plan, MiX will send the Individual notification, as per the CPA, of the pending Expiry Date before the Expiry Date. Since this Agreement is directly linked to personal safety and may be a prerequisite of the Individual’s insurance agreement, this Agreement will notification, requested MiX to either terminate the Agreement continue on a month-to-month basis after the Expiry Date, or until the Individual has, in writing, in response to the Agreement to the renewal of the Agreement for a further fixed term. This clause 6.2 only applies to Individuals and not to Juristic Persons.

The Subscriber is entitled to cancel this Agreement, in writing, seven (seven) Days after the day on which this Agreement was concluded or the Unit was installed (whichever is the later) if:

6.3.1 this Agreement is an electronic transaction as contemplated in the Electronic Communications and Transactions Act, 2002; or

6.3.2 the Subscriber, being a Consumer, entered into this Agreement as a result of direct marketing (as defined in the CPA).

If the event mentioned in 6.3 occurs, the Subscriber:

6.4.1 at its own cost, needs to take the Vehicle to a Fitment Centre for the Unit to be removed; and

6.4.2 will be liable for the payment of the initial installation and the removal of the Unit (as mentioned in 6.4.1).

OWNERSHIP OF THE UNIT

Under the Budget Plan, MiX retains ownership of the Unit and may, at their sole discretion, should the Agreement be terminated before the Expiry Date, exercise one or both of the following options:

7.1.1 Remove the Unit from the Subscriber’s expense for which the Subscriber shall allow access to the Vehicle;

7.1.2 Charge a fee as per 5.2.5.1 for a Juristic Person or 5.2.5.2 for an Individual.

WARRANTY OF THE UNIT

If, after the relevant inspection of the Unit and/or the Vehicle by MiX or a Fitment Centre, a Corporate Customer’s Unit is found, in the sole discretion of MiX, to be defective during the first 12 (twelve) months after installation, MiX will:

8.1.1 during the first 6 (six) months after installation, at the Corporate Customer’s choice:

8.1.1.1 repair or replace the Unit free of charge, in which case the Corporate Customer needs to make their Vehicle available to MiX or a Fitment Centre;

8.1.1.2 refund the Corporate Customer the price paid for the Unit if this Agreement is a Cash Plan, which refund will not include any service fees and in which case the Corporate Customer needs to make their Vehicle available to MiX or a Fitment Centre, at their own cost in order for the Unit to be removed, at MiX’s cost, and only after said Unit has been returned to MiX, will the Corporate Customer qualify for the refund mentioned in this 8.1.1.2;

8.1.2 during the first 7 (seven) to 12 (twelve) months after installation, at MiX’s sole discretion, repair or replace the Unit free of charge, in which case the Corporate Customer needs to make their Vehicle available to MiX or a Fitment Centre.

If, after the relevant inspection of the Unit and/or the Vehicle by MiX or a Fitment Centre, a Corporate Customer’s Unit is found, in the sole discretion of MiX, to be defective during the first 12 (twelve) months after installation, MiX will, at their sole discretion repair or replace the Unit free of charge, in which case the Corporate Customer needs to make their Vehicle available to MiX or a Fitment Centre.

If, after a Subscriber’s Unit has been repaired or replaced (whether the Unit was in warranty or out of warranty) and the repaired or replaced Unit, after the relevant inspection of the Unit and/or the Vehicle by MiX or a Fitment Centre, is found, in the sole discretion of MiX, to be defective during the first 3 (three) months after installation, MiX will, at their sole discretion repair or replace the Unit free of charge, in which case the Corporate Customer needs to make their Vehicle available to MiX or a Fitment Centre.

I, the undersigned, hereby confirm that I have read and understood MiX’s terms and conditions and agree thereto.

I, also acknowledge that the fact, nature and effect of all the clauses that pertain to risk or liability and to the nature and limitations of the Unit and the Service, as indicated above in bold, have been drawn to my attention and that I have had adequate opportunity to read and comprehend the terms and conditions and that I understand and hereby agree thereto.

Signature

Name in print

Signed for and on behalf of the Subscriber (who warrants his / her authority hereto)
9. LIMITATION OF LIABILITY AND INDEMNIFICATION

9.1 If the Subscriber is:

9.1.1 A Consumer, the Consumer agrees that MIX Telematics Companies and Other Protected Parties shall not (under any circumstances) be liable for any damages or loss, including consequential loss arising out of death, bodily injury, loss of health, illness or trauma suffered by the Subscriber or the loss, destruction of or damage to any property belonging to the Subscriber (collectively “damages”) including arising due to the negligence of MIX or any Other Protected Parties, unless MIX was grossly negligent.

9.1.2 A Consumer, the Consumer indemnifies each of the MIX Telematics Companies and the Other Protected Parties against any claim for damages brought by any person, including in respect of negligence, unless MIX was grossly negligent.

9.1.3 A Corporate Customer, the Corporate Customer agrees that MIX Telematics Companies and Other Protected Parties shall not (under any circumstances) be liable for any damages or damages suffered by a third party, including arising due to the negligence of MIX or any Other Protected Parties, unless MIX was grossly negligent.

9.1.4 A Corporate Customer, the Corporate Customer indemnifies each of the MIX Telematics Companies and Other Protected Parties against any claim for damages brought by any person, including in respect of negligence, unless MIX was grossly negligent.

9.2 The Subscriber acknowledges that the Service and any additional features offered, depending on the Unit (which includes but is not limited to: logbook and the optional accident response service known as crash alert), are subject to limitations outside MIX’s control. This includes, but is not limited to, the quality and availability of the Network services, no or weak GPS signal, Unit failure and logistical difficulties. The Subscriber indemnifies MIX Telematics Companies to this extent.

9.3 The Subscriber acknowledges that the Fitment Centre is not an agent of MIX and is independently operated and MIX will not be held liable for any misrepresentation, act or omission by the Fitment Centre, save for those representations, which MIX verified and the Subscriber indemnifies and holds MIX harmless against all claims or losses arising directly or indirectly from any action by the Fitment Centre.

10. SUSPENSION

10.1 MIX shall be entitled to suspend the Service if:

10.1.1 the Network is no longer available or of no practical use;

10.1.2 an event beyond MIX’s control makes it impossible to render the Service; and/or

10.1.3 the Subscriber is in breach of any obligation towards MIX.

10.2 MIX shall be entitled to disable any feature of the Unit, without reducing the service fee, if the Subscriber fails to minimise false alarms associated with that feature.

11. BREACH

11.1 If either Party:

11.1.1 fails to pay any amount due in terms of this Agreement; or

11.1.2 abuse the Service; or

11.1.3 commits any breach of their warranties and/or representations and/or undertakings in terms of this Agreement; or

11.1.4 defaults on any obligation in terms of this Agreement.

11.2 Then either Party shall be entitled to, without prejudice of any of its rights, including the right to claim damages:

11.2.1 Cancel this Agreement 20 (twenty) Days after providing notice thereof and act in terms of clauses 5.2.5 and 7; or

11.2.2 Enforce this Agreement by legal action, which costs will be for the account of the defaulting Party and be either collection fees or legal fees at attorney-client rates, or both.

INFORMATION CONSENT

The Subscriber authorises MIX to use its information to:

12.1.1 Provide the Service;

12.1.2 Assess its ability to meet its obligations under this Agreement;

12.1.3 Share with a credit bureau;

12.1.4 Protect MIX’s interest.

MIX undertakes to protect said information.

If this Agreement is the result of an insurance company or an insurance broker referral, then the Subscriber agrees that MIX may, as soon as reasonably possible after the installation of the Unit, provide that insurance company or insurance broker with notification of said installation. The Subscriber acknowledges that this notification will contain certain relevant Subscriber information necessary to indicate that the Unit was successfully installed into the Vehicle.

GENERAL

This Agreement reflects the full agreement between the Parties and any amendments or cancellation must be in writing and signed by the Parties. No inducements given shall constitute a waiver of any rights.

If any part of this Agreement is invalid, the balance remains enforceable.

This Agreement is governed by the laws of the Republic of South Africa.

The Subscriber warrants that it has legal capacity and authority to conclude this Agreement.

MIX shall be entitled to cede all or any of its rights and/or obligations in terms of this Agreement without the Subscriber’s consent.

If the Subscriber wishes to cede any of its rights and/or obligations in terms of this Agreement, it must obtain MIX’s prior written consent which MIX shall not withhold without reasonable cause.

The Subscriber’s address for all purposes relating to this Agreement is as follows:

Physical address: Matrix Corner, Howick Close, Waterfall Park, Midrand, 1685. Fax no: (011) 654-8122 Tel no: (011) 654-8000 Addresses may be changed by giving the other Party written notice of the new physical address or facsimile number, both of which must be within the Republic of South Africa.

Any notice must be in writing and notices to MIX should be marked for the attention of the Customer Care Manager.

The Subscriber agrees to electronic media, which includes but is not limited to e-mail, voice recorded telephone calls and SMS’s, for all communications, notifications and agreements between the Parties. The Subscriber accepts the risks associated with electronic communications and both Parties shall take reasonable steps to reduce these risks. The Subscriber may notify MIX, in writing that it would rather communicate by printed media, in which case the Subscriber accepts all the risks associated with sending communication via the postal service, including the risk of possible exposure of the Subscriber’s confidential information.

Any intellectual property rights, including but not limited to copyright and trademarks, relating to the Unit and the Service and/or the MIX website and/or the Agreement, shall vest in MIX and the Subscriber shall not have any rights thereto and as such will not reproduce, store, modify, adapt, publish, sell, distribute or in any other way unlawfully use, in any form and by any means, in whole or in part, the intellectual property of MIX.

I, the undersigned, hereby confirm that I have read and understood MIX’s terms and conditions and agree thereto.

I, also acknowledge that the fact, nature and effect of all the clauses that pertain to risk or liability and to the nature and limitations of the Unit and the Service, as indicated above, have been drawn to my attention and that I have had adequate opportunity to read and comprehend the terms and conditions and that I understand and hereby agree thereto.

Signature

Name in print

Signed for and on behalf of the Subscriber (who warrants his / her authority hereto)