

# MYPANIC TERMS AND CONDITIONS

## Definitions

**“Agreement”** shall mean terms and conditions together with the MiX Telematics Privacy Notice will form the agreement between Customer and MiX Telematics Africa (Pty) Ltd and/or MiX Telematics Enterprise SA (Pty) Ltd and amendments

**“Authorised User”** means the customer and those who may be authorised by the Customer to use the Service

**“Customer”** means the subscriber to the Service

**“False Incident”** means any incident where it subsequently transpires that the Service were not required and may include, but is not limited to instances where:

- the customer is unable to contact the user, or the location of the Authorised User is unknown to you;
- either MiX Telematics or the Emergency Contact is unable to contact the customer or authorised user; and
- unauthorised use or misuse of the Service on the App

**“Emergency Contact”** means the person(s) nominated by the Authorised User to be contacted in an emergency

**“Emergency Responders”** mean emergency response service which may include but not limited to private armed responders and/or private emergency medical service, police, ambulance, other medical Service, fire and rescue

**“MyPanicApp” (the “App”)** means the online application software that is provided by or connected with Emergency Responders that you install or download from an online application store and access via mobile device, including any smartphone and/or tablet device

**“MiX Telematics Companies”** means MiX Telematics Africa Pty Ltd (“MiX Telematics”) (with registration number 2004/019797/07) and or MiX Telematics Enterprise (Reg No. 2008/008530/07)

**“Personal information”** means information relating to the Customer/Authorised User as defined in the Protection of Personal Information Act 4 of 2013

**“POPIA”** means the Protection of Personal Information Act 4 of 2013 and its regulations as amended from time to time

**“Service”** means the emergency response service

**“Singular”** shall be deemed to include the plural and vice versa



## Contractual Relationship

1. The access and use of the Service constitutes the Customers and/or Authorised User's agreement to be bound by Agreement.
2. These Terms expressly supersede prior agreements or arrangements with you. MiX Telematics may immediately terminate any Service with respect or generally cease offering or deny access to the Service or any portion thereof, at any time for any reason.
3. MiX Telematics may amend the terms and conditions related to the Service from time to time. Amendments will be effective upon MiX Telematics' posting of such updated Terms at this App or the Matrix website. The continued access or use of the Service shall constitute your agreement to be bound by the Terms, as amended.

## Service Offering

4. MiX Telematics offers the Service which constitute a technology platform that enables the Customer/ Authorised User of the MyPanic mobile applications or websites provided as part of the Service (each, an "Application") to request security service via MiX Telematics by using the Service you provide permission to trace your mobile devices to your current location and to gain access to the property upon which your device is located. Unless otherwise agreed by MiX Telematics in a separate written agreement with you, the Service is made available solely for your personal, non-commercial use.
5. You acknowledge that MiX Telematics does not provide security service or function as a security provider and that all such security service is provided by independent third-party contractors who are not employed by mix telematics or any of its affiliates.
6. Third party's security providers are used to fulfil the service requested through the App. The third party is bound to perform the service under agreements entered into with MiX Telematics.

## South African Police Service (SAPS)

7. The Service is no substitute for SAPS. The App facilitates the request by linking the User with an Emergency Responder. Please note that the application does not serve a replacement for the offering provided by the South African Police Service via the 10111 contact number. Should the User be outside a mobile signal coverage area and/or in an area with no Emergency Responders they will not be able to request assistance.


## Fair Usage

8. The Customer/Authorised User is not bound by a fair use policy however MiX Telematic reserves the right to change or cancel this service. This will also be applicable in terms of false or misusing of this service.

## USER ACCOUNTS

9. The Customer shall be responsible for ensuring that the user access to the App.
10. To use the Service, the Customer/ Authorised User must register for and maintain an active personal user service account ("Account"). Account registration requires you to submit to MiX Telematics certain personal information amongst other things your mobile phone number.



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11. The Customer/Authorised user agrees to maintain accurate, complete, and up-to-date information about the Account. The failure to maintain accurate, complete, and up-to-date Account information, including having an invalid or expired payment method on file, may result in your inability to access and use the Service or termination of the Agreement.
  12. The Customer/Authorised User is responsible for all activity that occurs under the Account and agrees to always maintain the security of the Account. Unless otherwise permitted by MiX Telematics in writing, the Customer may only use the Account on one device at a time.
  13. If the Account information is incorrect and communication with the Customer/Authorised User is not possible, MiX Telematics will not be held liable for not rendering, delay or hindrance to delivering the Service.
  14. The Customer/Authorised User is responsible for ensuring they have the required equipment and software to access the App with your device and ensure that the App access details are kept secure. The Customer/ Authorised User accept full responsibility for activities that occur under your access details and/or password and accept responsibility for sharing access details and credentials.
  15. By using the App, the Customer/ Authorised User agrees to refrain from (a) selecting a name, mobile phone number, or email address of another person with the intent to impersonate that person; (b) utilising another person's personal information such as name, mobile phone number, or email address without proper prior authorisation from that person (c) using a name in violation of the intellectual property rights of another person.


## **USER REQUIREMENTS AND CONDUCT**

16. The Customer/Authorised User may not assign or otherwise transfer your Account to any other person or entity. The Customer/Authorised User agrees to comply with all applicable laws when using the Service, and you may only use the Service for lawful purposes. In certain instances, you may be asked to provide proof of identity to access or use the Service, and you agree that you may be denied access to or use of the Service if you refuse to provide proof of identity.
17. By creating an Account, the Customer/Authorised User agrees that MiX Telematics may send you informational text (SMS) messages as part of the normal business operation. You cannot unsubscribe from receiving informational and service-related messages or updates. Should the user disable Push Notifications for the App, the user will not be able to receive update notifications during an incident unless the App is open.

## **Profile Related User provided content**

18. MiX Telematics may in its sole discretion, permit the Customer/Authorised User from time to time to submit, upload, publish or otherwise make available to MiX Telematics' through the Service textual, and/or visual content and information, including commentary and feedback related to the Service and initiation of support requests, ("User Content").
19. Any User Content provided remains your property. However, by providing User Content to MiX Telematics, you grant MiX Telematics a worldwide, perpetual, irrevocable, transferable, royalty-free license, with the right to sublicense, to use, copy, modify, create derivative works of, distribute, publicly display, publicly perform, and otherwise exploit in any manner such User Content in all formats and distribution channels now known or hereafter devised (including in connection with the Service and MiX Telematics business and on third party sites and Service), without further notice to or consent from you, and without the requirement of payment to you or any other person or entity.



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20. You represent and warrant that: (i) you either are the sole and exclusive owner of all User Content or you have all rights, licenses, consents and releases necessary to grant MiX Telematics the license to the User Content as set forth above; and (ii) neither the User Content nor your submission, uploading, publishing or otherwise making available of such User Content nor MiX Telematics use of the User Content as permitted herein will infringe, misappropriate or violate a third party's intellectual property or proprietary rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.
21. You agree to not provide User Content that is defamatory, libellous, hateful, violent, obscene, pornographic, unlawful, or otherwise offensive, as determined by MiX Telematics' in its sole discretion, whether such material may be protected by law. MiX Telematics may, but shall not be obligated to, review, monitor, or remove User Content, at MiX Telematics' sole discretion and at any time and for any reason, without notice to you.






## Intellectual Property

22. The Customer/Authorised User acknowledges that all intellectual property rights in the software applications used for the provision of the Service and any further releases and/or updates shall belong to the MiX Telematics and the User shall have no rights in or to the software applications used for the provision of the Service other than the right to use it in accordance with these Terms of Use.

## Payment

23. Subscription fees are payable monthly in advance for the duration of the subscription period and will be debited to your account on the selected date(s) for collection and you specifically consent to a direct bank debit order.
24. No refunds will be allowed on monthly payments.
25. Access will be given to use the App only on receipt of the monthly payment.
26. Out of terms usage could result in additional payments related to specific requests which will automatically be deducted after the service has been rendered. Any queries related to billing can be directed to [Debtors@mixtelematics.com](mailto:Debtors@mixtelematics.com)
27. Any obligations for payment of the fees for will remain unaffected by the disconnection.
28. All amounts due and payable in terms hereof shall be paid free of exchange and without deduction or set-off, by way of a direct Debit Order in favour of MiX Telematics (drawn against a bank account nominated by you).
29. MiX Telematics will be entitled and authorised to draw all amounts payable in terms of the Agreement from the account nominated.
30. The Debit Order will commence on the Effective Date and will continue and not be revoked until termination of this Agreement or until all amounts due and owing to us have been fully and finally discharged We will be entitled to facilitate collection of amounts owing via the NAEDO system (track your account for sufficient funds).
31. If the Customer/Authorised User pay any amount on the due date for payment MiX Telematics may, without prejudice to any of our other rights and remedies: collect the arrear amounts via Debit Order, additional to the monthly Service Fee, from your account unless you have an agreed structured repayment plan with MiX Telematics.
32. Should we use an intermediary to collect amounts due to MiX Telematics, you grant consent that your personal information (including name, ID number, account number and any other relevant information necessary) be used in this regard.
33. The Customer/Authorised User may elect to cancel the request for Service at any time prior to such third-party arrival, in which case you may be charged a cancellation fee.




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34. If the Customer/Authorised User elects to prematurely terminate the Agreement the Customer/Authorised User shall remain liable for the unexpired term of the Original Product Agreement. A 30-day calendar month cancellation notice will be required on the MyPanic value added service.

### **Disclaimers and Indemnity**

35. The Service is provided “as is” and “as available.”
36. MiX Telematics makes no representation, warranty, or guarantee regarding the reliability, timeliness, quality, suitability, or availability of the Service or that the Service will be uninterrupted or error-free.
37. MiX Telematics does not guarantee the quality, suitability, or ability of third-party providers.
38. The Customer/Authorised User agrees that the entire risk of loss, damage or injury arising out of the use of the Service, remains solely with you.
39. The Customer/Authorised User agrees to indemnify and hold MiX Telematics and its officers, directors, employees, and agents harmless from any and all claims, demands, losses, liabilities, and expenses (including attorneys’ fees) arising out of or in connection with: (i) your breach or violation of any of these Terms; or (ii) the use of the Service.
40. MiX Telematics makes no warranty that Emergency Responders will be available all the time or in certain locations and that there may be a delay in providing the Service. Therefore, MiX Telematics will not be liable for any lack of response that may arise.
41. Due to the currently available technology, the provision and use of the Service may be subject to certain restrictions and inaccuracies which are beyond the MiX Telematics control. In individual cases there may be discrepancies between the data displayed on the App and that in the Emergency Responder’s domain. This applies to the availability of the mobile data connection provided by mobile phone companies, the mobile network, GPS location service via a global navigation satellite system and Internet access.
42. The Service is therefore geographically limited to the transmission and reception areas of the transmission stations operated by the relevant mobile phone companies. The unavailability of the mobile network can in some cases mean that individual Service are not available because the necessary data transfer cannot take place.
43. Accordingly, MiX Telematics does not guarantee the availability of the Service. The Service may also be adversely impacted by atmospheric conditions and topographical features or obstacles (e.g., bridges, tunnels, buildings). The same applies to the GPS coordinates determined based on global navigation satellite systems. Other disruptions, such as network overload, power outages and loadshedding may restrict use of the Internet.
44. Disruptions may also be caused by force majeure events including but not limited to pandemic, strikes, lockouts or court orders, or result from technical or other measures (e.g., repairs, maintenance, software updates, enhancements) which need to be carried out on the systems of MiX Telematics or on those of upstream or downstream service providers of MiX Telematics, or network operators which are necessary in order to ensure that the Service is properly provided or improved.

### **Limitation of liability**



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45. MiX Telematics shall not be liable for indirect, special, or consequential damages, including lost profits, lost data, personal injury, or property damage related to, in connection with, or otherwise resulting from any use of the Service.
  46. In no event shall MiX Telematics total liability in connection with the Service for all damages, losses and causes of action whether in contract shall be limited to the sum no greater than the aggregate of the fees received by MiX Telematics in the 12(twelve) preceding months the date of the notification of any claim.
  47. The Service may be used to request armed response, but you agree that MiX Telematics has no responsibility or liability related to the armed response other than as expressly set forth in these terms.

### **Governing law and arbitration**

48. Except as otherwise set forth in these terms, these terms shall be exclusively governed by and construed in accordance with the laws of South Africa.
49. Without prejudice to your rights in law, you must first approach MiX Telematics with any complaint or dispute and afford us an opportunity to resolve a complaint before you approach any other relevant authority, court or other dispute resolution body or refer the matter to Arbitration as contemplated below.


50. Complaints must be directed to [mypanic@mixtelematics.com](mailto:mypanic@mixtelematics.com). The complaint should include the following:
  - your name and surname;
  - your account number;
  - the date on which the complaint arose; and
  - a brief description of what gave rise to the complaint.

In the event of a billing complaint please email [Debtors@mixtelematics.com](mailto:Debtors@mixtelematics.com). The complaint should also include the following:

- a copy of the bill concerned or the particulars thereof, e.g. account number;
  - the reason for the dispute;
  - the amount in dispute; and
  - supporting information or documentation, if any.
51. The Customer/Authorised User may approach any other relevant authority, court or dispute resolution body or refer the matter to Arbitration as set below, for resolution of the dispute, should you not be satisfied with the proposed resolution of the dispute by us.
  52. Any dispute may be referred to arbitration and finally resolved in accordance with the rules of the Arbitration Foundation of South Africa. Such arbitration shall be held in Johannesburg and conducted in the English language before one arbitrator appointed in accordance with the said rules. This agreement to arbitrate shall be enforceable in, and judgement upon any award may be entered in any court of any country having appropriate jurisdiction. A dispute shall be deemed to have arisen when either MiX Telematics or you notify the other of us in writing to that effect.
  53. The arbitrator shall have the power to give default judgement if either of MiX Telematics or you fail to make submissions on due date and/or fails to appear at the arbitration.
  54. The provisions set out above shall not prevent either of MiX Telematics or you from approaching any court of competent jurisdiction to obtain interim or other relief in cases of urgency.

### **Data Protection**




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55. MiX Telematics aims to take reasonable technical and organisational measures in safeguarding your personal information from undue destruction, loss, misuse, or any other unauthorised alterations and amendments. However, we cannot guarantee the security or integrity of any information you transmit on the App, and you agree that you do this at your own risk.
  56. The Customer/Authorised User warrant that you are properly authorised and allowed to give us your Personal Information, and, if you enter into this agreement on behalf of another person or juristic entity, you warrant that you are properly authorised and allowed to give us consent to process the Personal Information, details and/or other information we obtain, in accordance with this agreement and the MiX Telematics Privacy Notice. This includes the consent of the Emergency Contact, the Authorised User.
  57. You further warrant that you have informed all people or entities who have the right to be informed (including the Emergency Contact and Authorised User about your agreement with us for the provision of the Service; and your confirmation that we may process the Personal Information, details and/or other information we obtain, in accordance with this agreement and the MiX Telematics Privacy Notice.
  58. Further details concerning personal information processing, data protection and data security can be found in the MiX Telematics Privacy Notice <https://www.matrix.co.za/docs/privacy-notice.pdf>
  59. If you receive an unsolicited e-mail, phishing, spoofing and other cybercrime related attempts that appears to be from MiX Telematics that requests you to provide personal and/or financial information or requests or prompts to verify or confirm MiX Telematics information by clicking on a link or links, the electronic communication may be initiated by a malicious actor. MiX Telematics cannot be held responsible for any consequences resulting from the response provided to any malicious electronic communication.
  60. MiX Telematics have or may have to enter into arrangements with its business partners and third - party suppliers in order provide the Service. As a result of these arrangements, we may be required to share your personal information with them.
  61. If a third party request us for any of your personal information, we will only share the personal information with them if (a) you have already provided consent for the disclosure of the personal information to that third party; (b) we have a legitimate basis, legal or contractual duty to provide the personal information; or (c) under any exclusions as stipulated in POPIA.

## General

62. You may not assign or transfer your rights and obligation in terms of the Agreement in whole or in part without MiX Telematics prior written approval.
63. MiX Telematics may without prior written consent and/or notice to the customer cede, assign and transfer any of its rights and interest in the agreement or transfer the Agreement, in whole or in part.
64. If any provision of these Terms is held to be illegal, invalid, or unenforceable, in whole or in part, under any law, such provision or part thereof shall to that extent be deemed not to form part of these Terms but the legality, validity and enforceability of the other provisions in these Terms shall not be affected.
65. In that event, the parties shall replace the illegal, invalid, or unenforceable provision or part thereof with a provision or part thereof that is legal, valid, and enforceable and that has, to the greatest extent possible, a similar effect as the illegal, invalid or unenforceable provision or part thereof, given the contents and purpose of these Terms.







66. These terms constitute the entire agreement and understanding of the parties with respect to its subject matter and replaces and supersedes all prior or contemporaneous agreements or undertakings regarding such subject matter.

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