

## **STANDARD TERMS AND CONDITIONS**

### **1. Preamble:**

- 1.1. The Subscriber has entered into an agreement for the leasing of a vehicle safety unit.
- 1.2. The Service Provider has agreed to lease the aforesaid unit to the Subscriber.

### **NOW THEREFORE IT IS AGREED AS FOLLOWS:**

### **2. Interpretation**

2.1. The headings in this document are used for ease of reference only and will have no bearing on the interpretation of the terms of this agreement. Such headings shall not be deemed to govern or affect the scope, meaning or intent of the provisions of this agreement or any part of it; nor shall such headings be given any legal effect.

### **3. Definitions:**

- 3.1. "Additional Charges" means additional charges as listed in the additional charges price list that is available on request. These charges include but are not limited to charges in respect of the call-out fees, cancellation costs, de/reinstallation of the unit, no-show costs, repairs to the unit not covered by the warranty.
- 3.2. "Agreement" means these terms and conditions, including the details form attached to these terms and conditions, as well as any other annexure incorporated by reference to this agreement.
- 3.3. "Authorised users" means those who may be authorised by the Subscriber to be notified of any emergencies in respect of the vehicle by us.
- 3.4. "Commencement date" means the date of signing of the contract.
- 3.5. "Data" means the quantities, characters, or symbols on which operations are performed by a computer, which may be stored and transmitted in the form of electrical signals.
- 3.6. "Duration" means the period as specified in the contract that being twenty-four (24) months, calculated from the commencement date.
- 3.7. "EKCO" means the application which we use to notify you of any updates.
- 3.8. "GPRS" means General Packet Radio Service.
- 3.9. "GSM" means the service rendered by a cellular service provider for transmitting location and speed data from the product to an authorised user's cell phone.
- 3.10. "Installation certificate" means the certificate issued by our technician certifying that the product has been successfully installed in your vehicle.
- 3.11. "No-Show" means failing to adhere to the date in which the vehicle safety unit is to be installed by our technicians.
- 3.12. "Service Provider" means Kairos Technology Solutions (Pty) Ltd.
- 3.13. "Service" means the services detailed in the price list provided to you and on our official website.
- 3.14. "Subscriber" means the person and/or company whose full details are set out in the form to which these terms and conditions are attached.
- 3.15. "Subscription fees" means the monthly amount (inclusive of VAT) payable by the subscriber in advance for the service as set out in the details form to which these terms and conditions are attached.
- 3.16. "Territory" means the Republic of South Africa.
- In this Agreement the following terms and expressions shall have the meanings ascribed to them hereunder unless the context specifically required otherwise.
- 3.17. "Us/We/Ourselves" means the Service Provider.
- 3.18. "VAT" means Value Added Tax payable in terms of the Value Added Tax Act No 39 of 1991 (as amended).
- 3.19. "Vehicle Safety Unit" means the device which we use to perform our services.
- 3.20. "Vehicle" means the vehicle in which the unit will be installed and for which the particular service will be provided.
- 3.21. "Website" means [www.kairostechnology.co.za](http://www.kairostechnology.co.za)
- 3.22. "You" means the Subscriber.

4. Duration: 4.1. This agreement shall commence on the commencement date and shall continue for a period of twenty-four (24) months.

4.2. One month before the expiry date of the duration of the agreement, we shall notify you, in writing, or in any other recordable form, of the impending expiry date of the lease agreement.

4.3. The following options will be available:

- a) You may direct us to terminate the agreement on the expiration of the agreement;
- b) You may agree to enter into a new agreement for a further twenty-four (24) month period subject to new terms and conditions and subscription fees.

### **5. Subscription fees:**

5.1. Subscription fees will be debited monthly by way of a direct bank debit order as contained in terms of the authorisation form.

5.2. Should there be any arrears in terms of the agreement, authorization is hereby granted to the service provider to collect any outstanding amounts via direct debit order.

5.3. Any amounts which you fail to pay within the prescribed period of time will either be force debited should you consent to our request or debited the following month in addition with the usual prescribed subscription fee.

5.4. You accept that if any other individual or company is to pay your subscription fees, it is still your legal responsibility to ensure that we are paid according to this agreement.

5.5. Any Tax Invoice issued by us shall become immediately payable without being subject to any conditions.

5.6. You may not withhold payment of any amount that is due in terms of this agreement for any reason whatsoever.

6. Receiving invoices: 6.1. Invoices will be sent monthly by email upon request.

6.2. You must notify us if your banking details change.

6.3. You consent that we have the right to request and obtain your bank details from your insurance company or from any other party that has the right to have the banking details.

## **7. Additional Charges:**

- 7.1. You will be liable for any additional charges in respect of the removal or re-installation of any vehicle security unit;
- 7.2. You will also be liable for additional charges in respect of any repairs of the unit should the warranty not be applicable;
- 7.3. There will be a "No-Show" cancellation cost of Six Hundred Rand (R600.00) should you fail to adhere to the date in which the vehicle security unit is to be installed by our technicians (Should you need to reschedule, kindly notify us twenty-four (24) hours in advance)
- 7.4. All additional charges will become immediately payable once the requisite Tax Invoice has been sent to you. The rates are obtainable from our website or upon a written request to us.

## **8. Suretyship:**

- 8.1. Any individual or company who signs as surety in terms of this agreement shall hereby jointly and severally bind themselves to the company or person on whose behalf they sign as surety and as co-principal debtor.
- 8.2. The surety signatory acknowledge that they can be held liable for any outstanding fees whose behalf they sign.
- 8.3. As part of their liability in terms hereof, they bind themselves as aforesaid to pay any outstanding fees.
- 8.4. This suretyship shall remain in full force and effect and binding upon the surety signatory for the entire duration of this agreement until it is cancelled.

## **9. The Vehicle Safety Unit:**

- 9.1. Can monitor remote jamming interference through radio wave frequencies which will send a notification through "EKCO".
- 9.2. Can monitor whether there is a possible break-in through vibration sensors which will send a notification through "EKCO".
- 9.3. Can monitor whenever the vehicle is locked and unlocked which will send a notification through "EKCO".
- 9.4. Will send notifications to any authorised users in the event that there is any emergency.

## **10. Installation of Vehicle Safety Unit:**

- 10.1. The unit will be installed by technicians of Kairos Technology Solutions (Pty) Ltd at a cost to the service provider.
- 10.2. A date, time and place will be communicated to you approximately three (3) to four (4) days before the installation.
- 10.3. Once we have agreed the time and place to install the unit, you must make the vehicle available at the agreed time and place. If you do not make the vehicle available at the agreed time and place, you will be charged a no-show fee.
- 10.4. Under no circumstances will the unit be installed if there is any individual present.

## **11. Inspection of Unit:**

- 11.1. The technician will go through the hardware and software components with you and you will be required to sign a disclaimer;
- 11.2. Should there be any defects, you must notify us immediately.
- 11.3. If you report a fault in the unit to us and we have agreed the time and place to send a technician, you must make the vehicle available at the agreed time and place. If you do not make the vehicle available at the agreed time and place, you will be charged a no-show fee.
- 11.4. If you report a fault in the unit to us and ask us to send a technician, and the technician reports that the problem is not due to the unit or its installation, you are legally responsible to pay the costs of the technician. This includes any call-out fees and other costs. At the time of reporting the fault, you can ask us for the costs and fees that will apply at the time.

## **12. Software:**

- 12.1. You will have to download the "EKCO" Application from either Google Play store or the iOS App Store. You must "Allow Permissions to receive Push Notifications", if you do not allow, there will be no Push Notifications that will be received, and we will not be able to provide our services.
- 12.2. Should there be no notification arising which indicates "Allow Permissions to receive Push Notifications", you will need to adjust your mobile settings in respect of the application to "Allow Push Notifications".
- 12.3. We shall install and maintain our standard online software for one subscription user. All software is licensed by us and the use of all the software is regulated by our software license agreement, available on written request.

## **13. Warranty:**

- 13.1. The warranty will be valid for a period of twenty-four (24) months in terms of the agreement. We shall be responsible for the repair and/or replacement, in our sole discretion, of the unit, or any parts thereof at no charge to you during the first twenty-four (24) months from the date of installation where the product is found to be defective due to faulty components, workmanship or design, on condition that the repair is to be done by our technicians; provided that your account is not in arrears at the relevant time.
- 13.2. The warranty will lapse in following circumstances and an additional cost will be required in order to repair or replace the unit:
  - a) Any Act of God or circumstance beyond our control;
  - b) All damage caused by a faulty or spurious electrical supply;
  - c) All damage caused as the direct or indirect result of any act of tampering, vandalism or malicious damage howsoever caused;
  - d) All damage caused as a result of a vehicle accident;
  - e) All damage caused by fire, theft, or flood;
  - f) All damage caused as a direct or indirect result of civil or political disturbance or any like event;
  - g) All damage caused by any act of any third party;
  - h) Any damage caused as a result of the ingress of any fluid penetrating the unit;
  - i) Repairs, de-installations or modifications that have been made by persons other than us.
- 13.3. If the warranty does not apply, you accept that you are legally responsible for the additional costs of having a unit repaired or replaced.

## **14. Operational Environment:**

- 14.1. This unit will only function in the territory where a GSM network of the GSM service provider is available and obtaining a signal in the area where the vehicle is being operated.
- 14.2. This unit is optimized in areas with high cell frequency and connectivity.
- 14.3. You acknowledge that the services provided by us do not include an international roaming facility. This means that your vehicle cannot be monitored by us should you take the vehicle out of South Africa. Accordingly, in this regard we shall not be liable for any losses or damages suffered by yourself as a result of you taking the vehicle out of the country.

## **15. Disruption of services:**

- 15.1. At any time without incurring any liability whatsoever, our services may be disrupted due to the following:
  - a) technical failure of the GSM network, its reporting structures, modifications and/or maintenance to the GSM network by the GSM service provider and/or due to any Government and/or regulatory authority requirement;
  - b) The GSM provider ceasing to make the network available to us or if the network stops working for any reason whatsoever;
  - c) We are prevented from rendering the service due to circumstances beyond our control and/or due to unexpected events; and/or
  - d) If your vehicle is reduced to a state for any reason whatsoever, permanently dysfunctional, but not limited to, irreparable mechanical breakdown of the vehicle and irreparable damage caused to the vehicle in an accident.

e) Low network areas, loadshedding and natural disasters.

#### **16. Credit Assessment:**

16.1. You acknowledge and agree that we have taken steps to assess:

- a) That you generally understand and appreciate the costs and risks associated with this contract;
- b) Your debt repayment history;
- c) Your existing financial means, prospects and obligations;
- d) We have, pursuant to the information supplied and representations made by yourself, and in connection with the matters set out in this agreement, satisfied ourselves that you are capable of performing your financial obligations in terms of this agreement and that you understand and appreciate the costs and risks associated therewith.
- e) You acknowledge that we have entered into this agreement with you on the strength of the financial representations made by you.

#### **17. Consent Regarding the processing of personal information:**

17.1. By signing this contract, you consent to the following:

- a) The collection of your personal information by us or for us by a third party for purposes of performing our obligations in terms of this agreement and complying with any other legal obligation imposed on us;
  - b) You consent to the storage and use by ourselves of the personal information that you have provided to us for establishing your credit rating. You consent to carrying out a credit enquiry with any registered credit bureau. You consent to us disclosing your personal information including your payment history to credit control companies, banks and other institutions involved in rating your credit. You agree that we will not be held liable for disclosure of any of this information in good faith to third parties and that no further specific consent needs to be obtained for the transfer of such information to a specific third party.
  - c) To process the details document, agreement and supporting documentation as provided by yourself.
  - d) To provide the services as contained in the agreement.
  - e) Should you refuse to consent, Kairos Technology Solutions (Pty) Ltd retains the right to refuse to further process the contract and no further performance in terms of the contract.
- 17.2. The Subscriber acknowledges that Kairos Technology Solutions will have access to and Process Personal Information for the duration of the agreement. The service, including access to the provision of the Vehicle Data to the Subscriber shall terminate upon termination of the Contract.

17.3. Kairos Technology Solutions will delete the Personal Information within a reasonable period of time following termination of the agreement except where required retention of the Personal Information is required by law in which case Kairos Technology Solutions will retain such Personal Information in accordance with applicable legislation.

#### **18. Your Responsibility:**

- 18.1. To ensure that all subscription fees and required fees are up to date;
- 18.2. It is your responsibility to inform your vehicle's manufacturer of the fitment of the product if the vehicle manufacturer requires such notification, in order not to invalidate any manufacturer warranty.
- 18.3. When this contract is terminated or lapses, you will provide us access to your vehicle for removal of the unit. If you don't give us access, you will be liable to us for an amount equivalent to the cost of the unit.
- 18.4. You undertake not to tamper or remove the unit during the period of this agreement, in order not to invalidate the warranties of the unit provided in this agreement.
- 18.5. You undertake not to permit any modification or alterations to be made to the unit in order not to invalidate the warranties provided on the product in this agreement.
- 18.6. You undertake to notify us of any alteration and/or modification made to your vehicle in which the product is installed if such alteration and/or modification to the vehicle in any way which has an impact on the way the vehicle is identified, including, but not limited to, change of registration number, change of colour of the vehicle, change of any relevant vehicle component number, change of vehicle manufacturer's logo, etc.
- 18.7. For the duration of this agreement, you agree not to permit any third party other than ourselves to maintain, service or repair the unit.

#### **19. Our Responsibility:**

- 19.1. To provide you with our services in terms of this agreement;
- 19.2. Ensure that the software/application used is maintained and updated;
- 19.3. To install the unit properly.

#### **20. Ownership:**

- 20.1. Ownership of the Vehicle Safety Unit and the Sim card shall always vest in ourselves and the GSM service provider.
- 20.2. All products leased to you shall remain our property.

#### **21. Intellectual property rights:**

- 21.1. The intellectual property in the agreement includes all content and information related to the Vehicle Safety Unit, the services, the Kairos Technology Solutions (Pty) Ltd website, the "EKCO" mobile application or given by us in any form whatsoever (for example, correspondence).
- 21.2. Intellectual property in the agreement also includes the following:
  - a) All products, including any materials that might be placed in the unit or be used together with the unit. For telematics units, this includes the SIM card that comes with the unit and information that is or can be derived from the SIM card;
  - b) Data, information, databases, compilations of data, usage data;
  - c) Computer programs and software, software documentation, firmware, interfaces (including API interfaces), hardware, servers, computers, platforms, computer code, tools;
  - d) Designs, circuit designs, algorithms, specifications;
  - e) Trade names, logos, trademarks;
  - f) Icons, links, graphics, photographic images;
  - g) Sound clips, music, sound and television broadcasts;
  - h) Text, literature, reports, plans, notes, files, diagrams, manuals, templates, schematics, correspondence, records, published editions;
  - i) Derivative works, authored works;
  - j) Modules, components;
  - k) Methodologies, policies, procedures, techniques, models, configurations, protocols, routines;
  - l) Improvements to any of the above items
- 21.3. We own and have the right to use the intellectual property. This includes intellectual property that we have licensed from a third party, that we license, or that we give right of use for to our suppliers so that they are able to provide the services. We remain the owner or licensee of the intellectual property. This includes the SIM card that is used in the unit, where applicable.
- 21.4. You do not have or acquire any intellectual property rights during the agreement or after it ends.
- 21.5. We have the right to improve the intellectual property and we have the right to change the intellectual property without giving you notice.

## **22. Cession:**

22.1. You may not cede this agreement or any rights, interest or obligations arising in terms of the agreement whatsoever.

## **23. Cancellation:**

23.1. Should you wish to cancel the agreement before the lapse of the duration, you must give us one (1) months' notice of such cancellation and you shall be liable to us for:

- a) Any amounts that is payable in terms of the agreement up to the date of termination;
  - b) A reasonable cancellation penalty in respect of services provided to you, which cancellation penalty shall be calculated by considering various factors such as the length remaining in terms of the remaining prescribed period;
  - c) A reasonable fee will also be charged for the removal of the vehicle security unit.
- 23.2. All cancellation costs will become immediately payable once the requisite Tax Invoice has been sent to you.

## **24. Suspension of agreement and services:**

24.1. We reserve the right to suspend this agreement in terms of the following:

- a) Should you breach any of your responsibilities as contained in terms of paragraph eighteen (18);
  - b) Should you fail to pay your subscription fees or fail to pay any amount that is due in terms of this agreement;
  - c) Should the contract lapse after the prescribed duration period and you fail to either renew or cancel the contract.
- 24.2. We reserve the right to suspend our services should you fail to pay your subscription fees. Our services will commence again, as soon as reasonably possible after we receive confirmation from our bank that you have paid all outstanding amounts. It will take up to seven business days to restore the services.
- 24.3. You accept that if our services are suspended due to your failure to pay your subscription fees:

- a) We will not provide our services in terms of this agreement nor be obligated to comply with our responsibilities;
- b) We are not legally responsible for any loss or damages you suffer from our services being suspended.

## **25. Limitation of liability:**

25.1. Insofar as we supply and/or install the unit and/or SIM card, you are notified of the fact that these unit, SIM cards and/or services provided may result in damage to your vehicles and/or system failure of the vehicle/s electronic components.

25.2. We shall take every care to ensure that all reasonable efforts are made regarding the unit and our service, but such unit and service can be affected by factors outside our control. We therefore do not accept any liability arising in respect of any failure in the provision of the service arising from any negligence on our part or any damage, including any loss of profits, business or revenue, or any consequential loss suffered by you as a result of any failure of the unit.

25.3. Whilst every care will be taken by ourselves in the installation of the unit, no liability shall be assumed of any nature whatsoever by us in respect of there being any damage to the vehicle as a result of such installation of the unit in the vehicle, prior to or after installation, unless noted on the installation certificate. It is further, recorded that the disclaimer referred to herein relates to any damage, of whatsoever nature, arising from the services rendered by us, being patrimonial damages and/or personal injury.

25.4. Insofar as we may be deemed to be a supplier of the products and/or SIM cards used in the operation thereof we are exempted from liability in relation to any damage to property and/or economic loss that you may suffer as a result of any failure and/or defect in the unit and/or services provided.

## **26. Breach:**

26.1. In the event that you fail to pay any amount due in terms of this agreement, or are in breach of any other term of this contract and after having received notice thereof from ourselves, and thereafter failing to remedy the breach within seven (7) days thereof; we shall be entitled:

- a) To immediately institute legal proceedings against you, and to claim the full balance outstanding in respect of any amount with which your account is in arrears as at the date of such breach. Furthermore, the balance outstanding in respect of any uncompleted portion of the initial duration, or
- b) To cancel the agreement and immediately terminate our services and take possession of the unit delivered to you and claim any damages suffered. These remedies are without prejudice to any other right we may be entitled to in terms of this agreement, or in Law.
- c) Any order for purchase of the unit is also subject to cancellation by us if you breach any material term of this Agreement or make any attempt of compromise, liquidation, sequestration, termination or judgment or apply, in terms Section 129 of the Companies Act 2008, for business rescue proceedings.
- d) You will be liable for the legal costs on an attorney-and-own-client scale, related to the demand and recovery of the outstanding or overdue amounts, other collection charges and commissions that we incur in recovering any outstanding or overdue amounts. These include bank charges if a debit order is returned unpaid or only partly paid.

## **27. Domicilium citandi et executandi:**

27.1. The Parties choose their addresses as set out on in the details form of this agreement to serve as their addresses for service and delivery of any documents for all purposes of the contract, which includes the giving of notice and the serving of documents or process.

27.2. Any notice given in terms of the agreement which is:

- a) Delivered by hand during normal business hours for service and delivery of legal documents shall be deemed to have been received at the time of delivery;
  - b) Posted by prepaid registered post to the addresses for service and delivery of legal documents shall be deemed to have been received by the Service Provider or Client on the seventh (7th) day after the day of its posting;
  - c) Communicated by facsimile or e-mail, shall be deemed to have been received by the Service Provider or Client on received confirmation of the successful transmission thereof.
- 27.3. Where, in terms of this agreement any communication is required to be in writing, the term "writing" shall include communications by telex, facsimile or e-mail. Communications by telex, facsimile or e-mail shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee on the day of transmission provided that transmission occurred during business hours.

27.4. Should you, for any reason whatsoever, no longer accept any notices, legal processes or any like documents at this address, you will have to notify us of such fact in writing and provide us with a new address at which you will forthwith accept delivery and/or service of such documents.

27.5. Furthermore, that the address as set out in the details form shall remain your chosen address until such time as you have satisfactorily provided a new address to us, which address may not be a postal address.

## **28. Jurisdiction:**

28.1. In terms of Section 45 of the Magistrate's Court Act, No. 32 of 1944, you hereby consent to the jurisdiction of the Magistrate's Court having jurisdiction in terms of Section 28 of the said Act, in respect of any action to be instituted against you by us in terms of this agreement. You agree, however, that it shall be entirely within our discretion whether to proceed with any legal action or steps in such Magistrate's Court or in any other superior Court having jurisdiction.

28.2. All legal fees incurred by us in enforcing the provisions of this agreement by way of Court proceedings shall be on an attorney and own client scale.

**29. Procedure if vehicle is stolen or hijacked:**

29.1. You must do the following:

- a) Immediately report the theft or hijacking to your associated Tracking Company and the police.
- b) Notify us within forty-eight hours of the incident.
- c) Give us the information we ask for to make sure that your request is valid, legal or made by a person who is authorised to report the theft or hijacking to us.
- d) Follow all our instructions.

I, the Subscriber confirm that I have read this Contract and that I fully understand the terms and conditions and effect of this Contract and that the terms will be binding on me from the Commencement Date.

**Signed by the subscriber at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_**

\_\_\_\_\_  
**Subscriber (Full name and Signature)**