

MIX TELEMATICS (MIX) FLEET TERMS AND CONDITIONS

TERMS AND CONDITIONS

1. The terms and conditions set out herein are the Minimum terms that the Customer must adhere to receive the Service. The Customer agrees to be bound by the Minimum terms in addition to the full terms (Master Service Agreement). The Master Service Agreement can be found at zalignfleet.mixtelematics.com. Herein after the Minimum terms and the Master Service agreement shall be referred to as "the agreement"
2. In the event of a conflict the terms of the Master Service Agreement shall prevail.

MINIMUM TERM

3. Minimum Term means the minimum term for the provision of the Services, being a period of thirty-six (36) months for Bundled Services or a period as stipulated in the relevant Service Schedule B for other Services, calculated from the Billing Start Date in respect of each piece of Equipment.

TERM AND STATUS

4. This agreement shall become effective on the Signature Date and shall continue indefinitely or until terminated until terminated or upon termination of all or the last Service Schedule/s.

SALE OF EQUIPMENT

5. If the customer purchased Equipment costs incurred outside the warranty period is for the account of the customer.
6. Ownership shall pass to the Customer if/when the Equipment is paid in full.
7. Risk of loss or damage shall pass when the purchased equipment was commissioned.

BUNDLED EQUIPMENT

8. Right, title and ownership to Bundled Equipment shall always remain with Mix.
9. Risk of loss or damage shall pass when the Bundled Equipment is commissioned.
10. Upon termination of the agreement or any Service Schedule the customer shall return the bundled equipment.

WARRANTY

11. MiX does not warrant that the Service or Equipment is free from any defects or error.
12. Gives no warranty as to the quality, performance, or fitness for any particular purpose of the Services or any part thereof.

DAMAGE AND LOSS

13. If Equipment is lost, hijacked, stolen or damaged or the customer sells or relinquishes control over the asset the customer remains liable to perform all its obligations terms of the agreement and or Service Schedule.

SERVICES

14. MiX shall be entitled to suspend delivery of all or any Services without incurring any liability, loss or damage to the customer if the Network Operator on whom MiX depends to provide services, fails to provide such services to MiX, if the Equipment was lost, stolen or removed or hi-jacked or the asset was sold before removal of the Equipment. In these instances, the customer shall continue to pay for the services.

RECOVERY SERVICE

15. In the event of theft or hijacking Mix shall use its reasonable endeavours to track and recover the asset.
16. MiX Telematics shall have no obligation to track and recover such asset should the Customer be in default of any of its obligations.
17. The Customer will be held liable for all direct costs as incurred by MiX in respect of False Incidents, which costs will be payable on demand.
18. Should the Customer insist on air support in the tracking and recovery of the asset, all direct costs incurred in that respect will be for the Customer's account and payable to MiX on demand (these costs will vary, depending on the time of day, time of year, weather conditions and helicopter required to be used).

INTELLECTUAL PROPERTY

19. The customer acknowledges that all the intellectual property used in connection with the Services remain the sole and exclusive property of MiX.
20. The Customer shall not reverse engineer, adapt, modify, or alter the Software.

INSTALLATION

21. Unless expressly agreed to the contrary, the Parties shall seek to agree a time and place for the commencement of the installation of the Equipment.
22. If the asset is subsequently modified after installation and that modification results in the Equipment being tampered with or moved by an unauthorised technician, this will be regarded as a breach by the Customer and MiX shall not be held responsible or liable by the Customer for any claim, damage and/or loss to an asset or if the Equipment or Services are not able to be rendered to the Customer. The Customer shall also be liable to MiX.

TRANSFER OF EQUIPMENT

23. If the Customer requires the equipment to be transferred to another asset MiX shall perform such removal and transfer and the Customer shall, upon demand, pay the relevant costs.

PRICE AND PAYMENT

24. All payments shall be free of any deduction or set-off and exclusive of VAT.
25. Customer shall be invoiced monthly in advance and fees are payable monthly in advance.
26. The service fee shall increase annually at a rate as agreed to between the parties

USE AND MAINTENANCE

27. Equipment may only be used for the purpose of receiving the service and may not be altered, tampered, or modified.
28. Maintenance shall only be carried out by a Mix Employee or Service partner.
29. If the Customer fails to make the Equipment available for maintenance MiX shall not be responsible for any claim, damage and/or loss to the Equipment or the asset.

INSURANCE

30. The customer shall self-insure or if it is Bundled Equipment insure and keep it insured for as long as it receives the Services.

DATA PROTECTION

31. The parties shall enter into a data protection agreement known as the MiX Telematics Notice that shall govern the use and sharing of personal information and any other information obtained.

LIMITATION OF LIABILITY

32. The total liability of either party arising from this agreement whether in contract or in delict shall be limited to direct damages and to a sum no greater than the aggregate of the Service fees received by MiX in 12 (the twelve months) preceding the date of the notification of the claim.
33. MiX shall have no obligation or liability for any claim, action, suit, or demand that arises because of –
- modifications of or additions to the Software by any party other than MiX; and
- use of the software in combination with any Software, equipment, products, material or processes not authorized by MiX;
34. The Customer indemnifies Mix against any claim of infringement of any Intellectual Property right to the extent that such infringement or alleged infringement is because of the use of the Software contrary to this agreement.

FORCE MAJEURE

35. If MiX is prevented or delayed from carrying out its obligations because of a force majeure event MiX shall be released from its obligations for as long as the force majeure event persists.
36. Promptly upon becoming aware of the force majeure event MiX shall give notice to the customer in writing estimating (if it is practical to do so) the approximate duration of such suspension. The estimate shall not be binding.
37. Should the force majeure event persist for a continuous period of 60 days either party shall have the right to cancel the Agreement.

DISPUTE

Any dispute between the parties shall be resolved by negotiation within 30 days of the matter being raised.

38. If the dispute cannot be resolved the matter it shall be referred to arbitration in accordance with the rules of the Arbitration Foundation of SA
- the seat of the arbitration shall be Johannesburg SA
- the number of arbitrators shall be one
39. In respect of any dispute which is not to be referred to arbitration, the Parties agree that the courts of Johannesburg, South Africa shall have jurisdiction to settle any dispute or claim that arises out of, or in connection with, this agreement or its subject matter or formation (including non-contractual disputes or claims) but this shall not prevent either Party from enforcing any judgement in any other court of competent jurisdiction.
40. If legal action is taken for the recovery of any amounts due the Customer shall be liable for all legal costs an attorney and own client scale and expenses.
41. The provisions of this clause shall not preclude any party from obtaining interim relief pending the decision of the arbitrator.

ANTI- CORRUPTION

42. Each party warrants that at time of entering into the agreement and for the subsistence of the agreement that its owners, partners, shareholders, agents, consultants, subcontractors, director or officers have not themselves whether by act or omission engaged in any practice or conduct that does or is likely to constitute an offence of bribery or corruption under U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act and the South African Prevention of Combatting of Corrupt Activities Act.

EXPORT CONTROL AND SANCTIONS

43. MiX Telematics shall not have any obligation to deliver the Services, the Equipment and/or the Software under this agreement or perform any other obligations under this agreement or under any Service Schedule if such performance is or might be hindered by, or be unlawful under the applicable export laws and regulations of the national authorities, the European Community, the United States of America (USA) or of any other relevant country.

BREACH

44. Should either Party materially breaches any provision of this Agreement or any Service Schedule and fail to remedy such breach within fourteen (14) days after receiving written notice requiring such remedy, then the other Party shall be entitled, without prejudice to its other rights in law, including any right to claim damages, to immediately terminate this agreement and or any or all the Service Schedules.

TERMINATION

45. Either Party may terminate this Agreement by giving the other Party not less than three (3) months' prior written notice that this agreement will terminate upon the expiry or termination of the last Service Schedule to expire or be terminated in accordance with its terms.

GENERAL

46. No failure or delay by a Party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
47. This agreement, and any documents referred to in it constitutes the whole agreement between the Parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement
48. Each Party warrants to the other Party that, in entering into this agreement it does not rely on any statement, representation, assurance or warranty of any person (whether a Party to this agreement or not) other than as expressly set out in this agreement and any documents referred to in it.
49. This agreement may be executed in two (2) counterparts and each such counterpart shall be deemed an original hereof.
50. No addition to, variation, novation or agreed cancellation of any provision of this agreement shall be binding upon the Parties, unless reduced to writing and signed by or on behalf of the Parties.
51. No rule of construction shall be applied to the disadvantage of a Party to this Agreement because that Party was responsible for or participated in the preparation of this Agreement or any part of it.
52. If there is a conflict between the terms of this Agreement or any other documents referred to in it, the terms of this agreement shall prevail unless expressly stipulated otherwise.