5. ENSURE that the Equipment is free from claims by third parties, and attachment; and not alienate, mortgage, let, cede, assign, lease or lose possession of the Equipment; and

5.2. not use the Equipment for any illegal purpose, or in any illegal manner or otherwise,

3. Every payment to be made by the Lessee to the Lessor in terms of the Agreement will be paid in

3.3. same manner as set out herein; the

1.6 Monthly Rental Fee means the recurring, monthly rental fee, calculated by multiplying the monthly cost of a single Active Track set, or PXK10 device, as the case may be, as set out in the Rental Agreement, by the number of Active Track sets and/or PXK10 devices rented by the Lessee to the Lessor.

6. CESSION AND DELEGATION

6.1. The Lessor has the right to cede and transfer to any person, or at a location other than that set out in the Agreement, without the prior written consent of the Lessee.

6.2. The Monthly Rental Fee is subject to an annual escalation which automatically comes into effect on the anniversary of the Commencement Date. The Monthly Rental Fee will escalate by the CPI, percentage, published by Statistics South Africa, in force on the anniversary date.

6.3. Every payment to be made by the Lessee to the Lessor in terms of the Agreement will be paid in cash - free of exchange, deduction or set-off - via debit order or electronic funds transfer into any banking account, or at any address, specified by the Lessor in writing, on receipt of an invoice.

5.1. The Lessee will:

7. Equipment

7.1. The Lessee will take out an insurance policy in respect of the Equipment and continue to make the monthly payments in terms thereof, for the duration of the Agreement. The Lessee will be liable to pay an excess of R500.00 ex VAT on every successful claim.

7.2. The Lessee will furnish the Lessee with a copy of the insurance policy, referred to in 7.1 above, on request.

7.3. If the Lessee’s damage to the Equipment is not covered by the aforementioned insurance policy, the Lessee will be liable for the repair costs, or, if repair is not possible, as per the opinion of the Lessee’s technical division, the Lessee will be liable for the replacement value of the Equipment which has been damaged/or lost. Depending on the nature of repair required, the repair costs and/or replacement values will become immediately due and payable on presentation of an invoice therefor.

7.4. The Lessee must notify the Lessor immediately in writing of any loss or damage to the Equipment, and accepts responsibility for such loss or damage, subject to 7.3 above.

8. TERMINATION

8.1. The Lessee will not be entitled to terminate the Agreement whether wholly or in part prior to the Expiry Date, unless

8.1.1. The Lessor consents to early termination, in which case the Lessee will be liable to pay to the Lessor a cancellation fee in a sum equivalent to the Monthly Rental Fee. In these circumstances, termination becomes effective on the date that the Lessor consents thereto.

8.1.2. The Lessee is a security services company, and the site/s to which the Equipment has been deployed, is cancelled by the end-user. In these circumstances, the Lessee will provide the equivalent notice period as it was afforded by the end-user, to the Lessor, together with proof of cancellation of the site/s. The Lessee will be liable for the duration of the notice period.

8.2. If the Lessee terminates the Agreement without the Lessor’s consent, the Lessee will be liable for the full outstanding sum of the Agreement, being the number of months remaining until the Expiry Date, multiplied by the Monthly Rental Fee. In this case, termination becomes effective on the date that the Lessee expressly, or tacitly, terminates the Agreement.

8.3. The Lessor may terminate the Agreement prior to the Expiry Date, for any reason, by giving the Lessee 30 calendar days’ notice thereof. In these circumstances, the Lessee will not institute any proceedings, or any claim against the Lessor for any loss or damages suffered as a result of the termination of the Agreement.

8.4. The Lessee will return the Equipment in its original condition, fair wear and tear excepted, to the Lessor, within two business days of either termination of the Agreement, or the Expiry Date, whichever occurs first.

9. BREACH

9.1. The Lessor will be in breach of the Agreement if it fails to:

9.1.1. Make any payment in terms of the Agreement;

9.1.2. Comply with any other provision of the Agreement;

9.1.3. Satisfy any judgment for the payment of money obtained against the Lessee, within 7 (seven) business days of such judgment; and/or

9.1.4. Disclose negative information or provides false information during negotiations leading up to the conclusion of the Agreement, or in the Agreement itself.

9.2. In the event of any breach of the Agreement, the Lessee may, in addition to any other remedies that it may have in terms of the Agreement or in common law:

9.2.1. Without notice, terminate the Agreement and demand that the Lessee returns the Equipment to the Lessor’s premises with immediate effect;

9.2.2. Claim the full outstanding sum of the Agreement, being the number of months remaining until the Expiry Date, multiplied by the Monthly Rental Fee; and/or

9.2.3. Institute a claim for damages against the Lessee.

10. INDEMNITY & LIABILITY

10.1. The Lessee will defend, indemnify and hold harmless the Lessor against all liability, loss, damage, claims, costs and expenses arising from:

10.1.1. The nature of the Equipment, except and only to the extent that such liability, loss, damage, claims, cost or expense is caused by the Lessor’s gross negligence;

10.1.2. Any breach of obligation by the Lessee; and/or

10.1.3. The negligence, in any degree, of the Lessee.

10.2. Notwithstanding anything to the contrary contained in the Agreement, the Lessee will not be held responsible for any consequential damage or loss arising by reason of any defect or fault in the Equipment from any cause whatsoever.

11. MISCELLANEOUS

11.1. Any notice under the Agreement will be given in writing to the other Party and delivered by hand or sent via telefax or email. The Parties appoint as their respective domiciles/citadels of execution/stations for all purposes under the Agreement their physical addresses, email addresses and tel/fax numbers stipulated in the Agreement.

11.2. A certificate signed by a manager of the Lessor (proof of his/her appointment or position not necessary) will be sufficient proof of any amount owed by the Lessee to the Lessor in terms of the Agreement, for purposes of obtaining judgment against it – including provisional sentence and summary judgment.

11.3. The Agreement, and any claim or dispute arising out of or in connection therewith, will be subject to South African law.

11.4. The Parties agree that any legal action or proceedings arising out of or in connection with the Agreement may, at the Lessee’s sole discretion, be brought in the Johannesburg Magistrate’s Court, and the Lessee irrevocably submits to the non-exclusive jurisdiction of such court, as well as to the jurisdiction of the Magistrate’s Court in terms of section 45 of the Magistrate’s Court Act No. 32 of 1994. This clause is for the benefit of the Lessee only, and will not limit the Lessor’s right to legal proceedings against the Lessee in any other court of competent jurisdiction or concurrently in more than one jurisdiction.

11.5. The Lessee agrees that in the event of the Lessor instituting legal proceedings against it to recover amounts due in terms of the Agreement, for breach of the Agreement, for enforcement of any of its obligations and/or for the recovery of any amount due by the Lessee to the Lessor, the Lessee will be liable for all legal costs incurred by the Lessor on the instruction as between attorney and client, as well as collection commission and tracing agent’s fees.

11.6. The Agreement comprises the entire agreement between the Parties. No purported variation, alteration, novation or cancelation of the Agreement, or any of its clauses (including the rights and obligations hereunder), will be of any force or effect unless it is recorded in writing and signed by duly authorised representatives of both Parties.

11.7. No extension of time or waiver or relaxation of any of the terms of the Agreement will operate as preclusion against any Party in respect of its rights under the Agreement, nor will it operate so as to prejudice such Party thereafter from exercising its rights strictly in accordance with the terms of the Agreement.

11.8. The Lessee reserves the right to amend these terms and conditions from time to time entirely at its own discretion and without notice to you. Any and all amendments will be published on www.activetrack.co.za and effective on the date of publication thereof.

11.9. The Lessee accepts the terms of the Agreement and acknowledges that a copy thereof has been provided to its duly authorised representative.