

1. DEFINITIONS

- 1.1 "Agreement" means collectively the Rental Agreement, the corresponding terms and conditions set out herein; the New Client: Company Information Sheet document; and every Device Profile Loading Information document duly completed and signed by the Lessee.
- 1.2 "Commencement Date" means the first date of the Duration of the Agreement, set out on the first page of each Device Profile Loading Information document, duly signed and completed by the Lessee.
- 1.3 "Duration of Agreement" means the entire rental period of 24 months, starting on the Commencement Date and ending on the Expiry Date.
- 1.4 "Equipment" means one or more Active Track sets or FPX10 devices, or any part thereof, rented by the Lessor to the Lessee.
- 1.5 "Expiry Date" means the final day of the Duration of the Agreement, being the day preceding the second anniversary of the Commencement Date.
- 1.6 "Monthly Rental Fee" means the recurring monthly rental fee, calculated by multiplying the monthly cost of a single Active Track set, or FPX10 device, as the case may be, as set out in the Rental Agreement, by the number of Active Track sets and/or FPX10 devices rented by the Lessor to the Lessee.
- 1.7 "Party" means either the Lessor or Lessee, as the context may indicate, while "Parties" means both the Lessor and Lessee.
- 1.8 "Person" includes both natural and juristic persons.

2. RENEWAL

Unless either Party gives the other Party notice in writing, not later than three months before the Expiry Date, the Agreement will automatically be deemed to have been renewed on a month-to-month basis on the same terms as set out herein. This month-to-month arrangement will be subject to termination by either Party giving the other Party one month's written notice.

3. PAYMENT

- 3.1 If the Lessee fails to pay any Monthly Rental Fee, any damages or any other amount payable under the Agreement on the due date thereof, interest will accrue on any such arrear amounts at a compound rate of two-and-a-half per cent per month from the date on which payment is due until the date of payment, both days inclusive, without prejudice to any other rights which the Lessor may have arising from such default.
- 3.2 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.
- 3.3 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.

4. THE EQUIPMENT

- 4.1 The Equipment will remain the property of the Lessor, and nothing in the Agreement will be construed as conferring on the Lessee any right to, or interest in, the Equipment other than the right to the use and enjoyment thereof for the duration of the Agreement.
- 4.2 The Lessee will continue to pay and be liable for the Monthly Rental Fee, notwithstanding any cause or condition which may result in the Equipment becoming unusable or being temporarily out of order - provided, however, that the Lessor restores the Equipment to working order within a reasonable time after having received written notification from the Lessee that the Equipment is out of order. If the Lessor fails to restore the out of order Equipment within a reasonable period after having received written notification to do so, the Lessee's obligation to pay the current Monthly Rental Fee will be suspended until such time as the Equipment is restored to working order. Save as aforesaid, the Lessee will have no further claims or remedies against the Lessor by reason of the Equipment not having been restored to working order within a reasonable time.

5. OBLIGATIONS OF THE PARTIES

The Lessee will:

- 5.1 keep the Equipment in its possession and/or not make the Equipment available for use by another person, or at a location other than that set out in the Agreement, without the prior written consent of the Lessor;
- 5.2 not use the Equipment for any illegal purpose, or in any illegal manner or otherwise, which may render a claim invalid under the Lessor's insurance policy;
- 5.3 keep the Equipment free from claims by third parties, and attachment; and not alienate, transfer or encumber the Equipment or allow any lien to arise in respect thereof;
- 5.4 only use the Equipment for the purpose for which it is installed and intended and shall at all times use the Equipment, or ensure that it is used, with due care and shall not attempt to sell, mortgage, let, cede, assign, lease or lose possession of the Equipment;
- 5.5 allow the Lessor/its agents/servants/or contractors at any reasonable time to inspect the Equipment and to carry out repairs, maintenance, servicing, removals and/or alterations as the Lessor/its agents/servants/contractors, in its sole discretion, deems necessary; and
- 5.6 not itself or permit any person, other than those persons referred to in 5.5 above, to interfere, adjust, re-adjust, repair or in any way tamper with the Equipment, other than in the normal use and/or operation of the Equipment.
- 5.7 return the Equipment in its original condition, fair wear and tear excepted, to the Lessor on termination of the Agreement, or the Expiry Date, whichever occurs first.

The Lessor will:

- 5.8 Furnish the Lessee with the Equipment, as per the Lessee's requirements set out in the Agreement; and
- 5.9 Provide the Lessee with beneficial use and enjoyment of the Equipment.

6. CESSION AND DELEGATION

- 6.1 The Lessor has the right to cede and transfer to any person (hereinafter referred to as "the cessionary") any of its rights under the Agreement, including ownership of the Equipment. In such an event, the cessionary will bear and exercise the ceded obligations and rights, while the Lessee will continue to perform in terms of the Agreement, but in favour of the cessionary, from the date of receipt of a notice of cession.
- 6.2 The Lessee does not have the right to cede or delegate any of its rights or obligations under the Agreement without the Lessor's prior written consent.

7. INSURANCE

- 7.1 The Lessor 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 upon every successful claim.
- 7.2 The Lessor will furnish the Lessee with a copy of the insurance policy, referred to in 7.1 above, on request.
- 7.3 If the loss/or 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 Lessor'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 could include the cost of shipping the Equipment to its Polish manufacturer for repair. 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 of 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 obliged 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 invoiced 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 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's Premises within two business days of either termination of the Agreement, or the Expiry Date, whichever occurs first.

9. BREACH

- 9.1 The Lessee 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 it by the Lessor, 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 Lessor 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 Lessor 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 *domicilia citandi et executandi* for all purposes under the Agreement their physical addresses, email addresses and telefax 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 Lessor'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, 32 of 1994. This clause is for the benefit of the Lessor only, and will not limit the Lessor's right to bring 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 other obligations and/or for the recovery of damages owed by the Lessee to the Lessor in terms of the Agreement, the Lessee will be liable for all legal costs incurred by the Lessor on the scale as between attorney and own client, as well as collection commission and tracing agents' fees.

- 11.6 The Agreement comprises the entire agreement by and between the Parties. No purported variation, alteration, novation or cancellation of the Agreement, or any of its clauses (including this clause), 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 an estoppel against any Party in respect of its rights under the Agreement, nor will it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with the terms of the Agreement.

- 11.8 The Lessor 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.

Name:
Designation:
Who warrants that he/she is duly authorised to sign on behalf of **Active Track (Pty) Ltd.**

Name:
Designation:
Who warrants that he/she is duly authorised to sign on behalf of the **Lessee.**