



**SMARTRAK
STANDARD TERMS
VERSION 1.4**

STANDARD TERMS

1. DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS

In this Agreement unless the context otherwise requires:

“**Acceptance**” and “**Accepted**” in relation to any Deliverable means that the Customer has accepted the Deliverable in accordance with the Acceptance clause.

“**Agreement**” means this agreement, the Service and Supply Offer and Agreement and any Purchase Order and Variations.

“**Business Day**” means a day on which registered banks are open for business in New Zealand excluding Saturdays, Sundays and Auckland Anniversary Day. A business day shall be deemed to commence at 9:00 am and to terminate at 5:00 pm New Zealand time (standard time or summer time, as appropriate).

“**Customer**” means the Customer named in the Service and Supply Offer and Agreement.

“**Company**” means the Company named in the Service and Supply Offer and Agreement.

“**Deliverable**” means all or any of the hardware items described in Schedule 1 (Pricing) to the Service and Supply Offer and Agreement and the Requirements.

“**GST**” means Goods and Services Tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time.

“**Purchase Order**” means form specified for use by the Company from time to time for the ordering of products, support and services and which does not vary this Agreement but which forms part of this Agreement.

“**Requirements**” means the Goods and Services Specifications set out in the Service and Supply Offer and Agreement.

“**Services**” means Smartrak Fleet Management System information technology services described in Schedule 1 (Pricing) to the Service and Supply Offer and Agreement and the Requirements.

“**Service fee**” means the monthly charge for the Services.

“**Service and Supply Offer and Agreement**” means the agreement entered into with the Company recording the specific terms of Service and Supply.

“**Term**” means any period determined in accordance with the Service and Supply Offer and Agreement.

“**Variation**” means a Variation to this Agreement completed in accordance with the provisions of the Variations sub-clause and Schedule Two.

“**Warranty**” means the warranty set out in Schedule Three.

1.2. Interpretation

In this Agreement unless the context otherwise requires:

- (a) References to “**parties**” refer to parties to this Agreement and include successors and, in the case of the Company any assigns.
- (b) Reference to “**Customer**” and “**Company**” includes reference to their employees, agents, consultants and contractors.

- (c) Reference to “**persons**” includes reference to companies, partnerships, associations, trusts, Government Departments and Local Authorities.
- (d) Headings and emphasis are for convenience only and shall not affect interpretation.
- (e) Words importing the singular include the plural and vice versa and words importing a gender include any gender.
- (f) References to clauses and schedules are references to clauses of and schedules to this Agreement.
- (g) The schedules to this Agreement shall have the same effect as if set out in the body of this Agreement.
- (h) A covenant or agreement on the part of two or more persons binds them jointly and severally.
- (i) Where a party’s approval is required pursuant to any provision of this Agreement, that approval is not to be arbitrarily or unreasonably withheld or delayed.
- (j) All monetary amounts are stated **exclusive** of GST and in New Zealand dollars unless stated otherwise.
- (k) A reference to any statute includes a reference to any regulation, proclamation, ordinance or by-law made under that statute and extends to any statute, regulation, proclamation, ordinance or by-law varying, consolidating or replacing the same.
- (l) A reference to a document includes an amendment or supplement to, or replacement or notation of, that document.
- (m) Where the day on or by which anything is to be done is not a Business Day, that thing must be done on or by the following Business Day.
- (n) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

1.3. Governing Law and Jurisdiction

This Agreement is governed by the laws of the country where the goods and services are provided. In the case of any doubt the agreement shall be governed by the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand.

1.4. Severability

In the event that any one or more of the provisions contained in this Agreement is declared invalid by an order, decree or judgment of any Court of competent jurisdiction, this Agreement will be read as if such provision had not been inserted. Where this action results in undue hardship on either party or constitutes a substantial deviation from the general intent and purpose of the parties as reflected in this Agreement, a Variation rectifying such anticipated consequences will be entered into by the parties.

1.5. Entire Agreement

- (a) These standard terms and the Service and Supply Offer and Agreement constitute the entire agreement between the parties relating to the subject matter and replaces all prior agreements or undertakings whether oral or written.
- (b) Each party, except to the extent qualified herein, confirms that on entering into this Agreement it has not relied upon any statement, warranty or other representation made or information supplied by or on behalf of the other party.

1.6. Variations

This Agreement shall only be varied by the Customer completing a Variation as set out in Schedule Two.

1.7. Waiver

No right under this Agreement shall be deemed to be waived except by notice in writing signed by each party. A waiver will not prejudice rights in respect of any subsequent breach.

1.8. No Partnership

Nothing in this Agreement constitutes the parties as partners or as agents for each other. No party has any authority to bind the other or act on its behalf except to the extent expressly provided for in this Agreement.

1.9. Conflict of Contracts

Where there is a conflict between the description of Service and Supply Offer and Agreement and the Purchase Order, the description set out in the Purchase Order shall take precedence.

2. REPRESENTATIVES

2.1. The Customer shall appoint a competent person acceptable to the Company to be the Customer's Representative who shall be authorised to receive all communications and give and receive all directions and instructions under the Agreement, and, as such, be deemed to act on behalf of the Customer and have the requisite authority to bind the Customer.

2.2. The Customer's Representative shall be contactable by the Company at all times, including by telephone, mobile telephone, facsimile, pager or other suitable communication device.

3. COMMUNICATIONS

3.1. All day to day communications by the Customer with the Company shall be directed by the Customer to their designated Company's Account Manager.

3.2. The parties' Representatives shall attend meetings as reasonably requested by either parties' Representative to review and discuss any issues relating to the performance under the Agreement including any outstanding issues, performance feedback and informing on any Services improvements.

3.3. The Company shall provide reports to the Customer on the delivery of the Services and incorporating such information as requested by the Customer at such times and at such frequency as shall be stipulated in the Service and Supply Offer and Agreement.

3.4. Any party using the username and encrypted password of the Customer will be permitted to access the Services on behalf of the Customer.

4. TERM OF AGREEMENT

4.1. The Term of this Agreement shall commence on the commencement date set out in Service and Supply Offer and Agreement, and:

(a) Shall continue until acceptance of all Deliverables, or until all Services have been performed, subject to any rights of prior termination provided for in this Agreement; or

(b) If the Services are for a fixed term the Agreement shall terminate on the date set out in the Service and Supply Offer and Agreement.

4.2. If the Agreement is for a fixed term the parties shall be entitled to extend the Term for such periods as are agreed between the parties and recorded in a variation of, or a

replacement Service and Supply Offer and Agreement. If the Term is extended, reference to the Term of this Agreement shall include the extended Term.

5. THE COMPANY'S OBLIGATIONS

5.1. Quality and Compliance

The Company will provide the Services –

- (a) In accordance with the Service and Supply Offer and Agreement;
- (b) In a prompt and timely manner to meet the reasonable requirements of the Customer and in accordance with the Requirements and any other requirements specified in the Service and Supply Offer and Agreement;
- (c) Using the highest reasonable standard of skill, care and quality and employing techniques, methods, procedures and, where necessary, materials of a high quality and standard in accordance with best professional practice;
- (d) In compliance with all relevant territorial, local authority or government standards applicable in the country where the goods or services are provided.

The Customer acknowledges however that the system is reliant upon the availability and accuracy of data and telecommunications support provided by third parties, and accordingly the Company cannot warrant that any such data or support will be fault or error free, complete or up to date.

The Company will provide the Deliverables –

- (e) In accordance with the Service and Supply Offer and Agreement;
- (f) In a prompt and timely manner to meet the reasonable requirements of the Customer and in accordance with the Requirements and any other requirements specified in the Service and Supply Offer and Agreement;
- (g) Of a suitable standard for the use to which they are to be put under the Agreement and in accordance with the terms of the Warranty set out in Schedule Three.

5.2. Support

- (a) Support Services will be provided by the Company by trained software engineers, customer support account managers, technicians and third party providers (as required) to ensure that the Services continue to provide optimum performance in accordance with the Requirements.
- (b) In the event the Service fails, for any reason, the Company's support team will work with Customers, to return the Service to optimum performance in accordance with the Requirements within the timeframes described in Schedule One of these Standard Terms.
- (c) The Customer shall log incidents with the Company via the Company's website or via email, as soon as practicable after an incident occurs which will be logged in the Company's System and a unique incidence reference allocated.

6. CUSTOMER'S OBLIGATIONS

6.1. Payment

The Service is provided strictly on the basis that the Customer pays all costs and charges due under the Agreement and set out in the Service and Supply Offer and Agreement as varied from time to time. The Customer shall pay all monies payable to the Company under this Agreement by the due date.

6.2. Compliance

- (a) Comply with all relevant legislation including, by-laws and policies, the requirements of any statute or the requirements of any Government authority relating to the use and operation of the Services.
- (b) Comply with the Company's operating policies and guidelines for the operation and use of the Services as specified from time to time.
- (c) Not use the Services for any abusive, illegal or fraudulent purpose.

6.3. Health and Safety

The Customer shall, in using the Service, comply with all obligations, under the Health and Safety in Employment Act 1992 ("**the HSE Act**") and all regulations made under the HSE Act and all approved codes of practice under Section 20 of the HSE Act and shall generally comply with all relevant legislation, regulation, by-laws, policies and standards.

6.4. Care

The Customer shall maintain any products supplied by the Company for the provision of the Services in good working order and condition (excluding fair wear and tear) and ensure that such products are kept properly protected and secured from damage, tampering or theft.

6.5. Maintain connection and equipment

The Customer shall maintain all applications, hardware, telecommunications links and all other equipment and materials owned and used by the Customer and which is necessary for the provision of the Service, and in compliance with specifications issued by the Company from time to time.

6.6. Access

The Customer shall allow the Company's agents, employees, subcontractors and contractors access to any site or vehicle owned or occupied by the Customer in order to enable the Company to carry out any installation or work necessary for the provision of the Services. The Customer shall provide electricity and a clear, safe and uninterrupted work area for the purposes of such work. If due to any difficulties or any other reason whatsoever, the cost of installation is higher than what would have been reasonably anticipated by the Company at the time of providing any quotation for such works, the Customer shall in addition to the price pay such additional costs of installation. Where the Company sub-contracts installation of Deliverables to a sub-contractor the Company shall remain responsible for all acts and omissions of the sub-contractor.

6.7. Security

The Customer shall ensure that access to the system, and any passwords used to access the system, are used for a proper and lawful purpose, and access is restricted to authorised users. The Customer shall take all possible steps to prevent unauthorised access by unauthorised users and third parties. The Company shall not be liable for any loss, cost, damage or harm done whatsoever arising out of any unauthorised access, use or hacking of the system.

7. PROPERTY AND INTELLECTUAL PROPERTY RIGHTS

7.1. The Company's systems remain the exclusive property of the Company.

7.2. The Company acknowledges and agrees that all data which is provided by the Customer, or collected for the Customer as part of providing the Services, is the confidential information of the Customer. The Company will hold any data in the course of providing the Services, solely as an agent for the Customer and in accordance with the provisions of the Privacy Act 1993 and will not disclose any of the data (or any other confidential information of the Customer) without the Customer's prior written consent unless otherwise entitled to do so under this Agreement.

8. ACCEPTANCE

8.1. Where it is a precondition of entering into an Agreement that the Customer requires evidence that a Deliverable is capable of passing User Acceptance tests specified by the Customer, the Company will deliver the Deliverables to the Customer together with notification that the Deliverable is ready for testing. The parties will then perform the user Acceptance tests to determine whether the Deliverables meet the Requirements.

8.2. Notification

Once the Acceptance testing has been completed, the Customer will notify the Company whether the Deliverable has, in the Customer's reasonable opinion:

- (a) Passed its user Acceptance tests, so that it is Accepted; or
- (b) Failed its user Acceptance tests, when the Acceptance Failure and Rework sub-clause below will apply.

8.3. Acceptance Failure and Rework

Where the Customer notifies the Company in accordance with the Notification sub-clause above of a failure of a Deliverable to pass the User Acceptance tests, the Company will, at its cost, endeavour to correct the failures and re-submit the Deliverable to the Customer.

- 8.4. If, in the Customer's reasonable opinion, a Deliverable is not capable of passing its User Acceptance tests by its third delivery for testing, then the Customer may (without prejudice to any other remedy available to it) elect not to enter into an Agreement with the Company.

9. OWNERSHIP OF GOODS/EQUIPMENT

- 9.1. Any equipment purchased by the Customer from the Company shall remain the property of the Company until such time as it is paid for in full.
- 9.2. In addition the Customer agrees that the Company may supply to the Customer goods and equipment for the purpose of providing the Services. All such goods and equipment are and will at all times remain the property of the Company.
- 9.3. The Company shall be permitted at any time to enter upon any premises or vehicle in which any goods or equipment is stored or situate for the purpose of retaking possession of such goods or equipment, affecting any repairs or replacing damaged or worn goods or equipment.

10. LIMITATIONS

- 10.1. Supply of the Services is subject to limitations of coverage provided by Telecommunications Service Providers which means that Customers may not receive some or all of the Services in certain areas, in real time.
- 10.2. Systems upgrades and maintenance will be undertaken outside of normal working hours wherever possible. Normal working hours are between 8.00 a.m. and 5.00 p.m., Monday to Friday excluding Public Holidays. If it is necessary to stop or suspend services during business hours the Company will endeavour to inform Customers at least 5 working days in advance.
- 10.3. As the Services are being supplied for the purpose of a business the Company, to the extent required by law, expressly excludes all statutory warranties and guarantees implied or imposed in any statute.

10.4. Liquidated damages

- (a) If from time to time during the Term any response and resolution timeframe set out in Schedule One of these Standard Terms is not met by the Company, the Company will give the Customer a credit by way of liquidated damages for the relevant delay in accordance with the formula set out in Schedule One.
- (b) The Company is entitled to set off this credit from any payments due by the Customer under this Agreement.
- (c) The liability of the Company under this Agreement for failing to meet a service response and resolution timeframe set out in Schedule One is strictly limited to the imposition of these liquidated damages. The Customer acknowledges that the liquidated damages set out in this sub-clause represent a genuine pre-estimate of the minimum loss or cost that the Customer expects to suffer or incur in connection with the Company's failure and are therefore fair and reasonable.

- (d) This Liquidated Damages sub-clause does not apply if a failure is excused under the Force Majeure clause, or the failure is due to any breach, default or negligence on the part of the Customer.

10.5. The Customer shall not be entitled to claim any other damages, anticipatory profits or special (including multiple or punitive), incidental or consequential damages for any failure by the Company for failing to meet a service response and resolution timeframe set out in Schedule One.

11. ORDERING AND DELIVERY

11.1. All Services supplied under this Agreement must be against a Purchase Order, issued by the Customer on the form and in the format specified by the Company or else against the signed Service and Supply Offer and Agreement.

11.2. All order confirmations, and invoices must state the relevant Purchase Order number or Service and Supply Offer and Agreement reference.

12. PRICING

12.1. The price for the Services shall be as shown in the Service and Supply Offer and Agreement and is exclusive of GST.

12.2. If the price shown in the Service and Supply Offer and Agreement is identified as being reviewable, the sub-clause below shall apply.

12.3. Reviewable Price

- (a) The Company will on becoming aware of the need for a change in the price, notify the Customer's Representative of the changes in the cost of the Services to the Customer, and reason for and effect of the change in the Services price.
- (b) If the Customer disputes any change in the Services price, it shall notify the Company in writing of the reasons. The dispute shall then be resolved in accordance with the dispute resolution provisions of this Agreement.
- (c) Pending resolution the Customer shall pay any change in the Services price and the Company shall continue to perform the Services without interruption or delay.

13. PAYMENT

13.1. The Company will issue a tax invoice via email for the Service Fee monthly in advance and, if applicable, a tax invoice for any other costs payable under this, or any other Agreement. The Customer must pay any tax invoice by the 20th of the month. Interest will be charged on overdue invoices at the rate of 15% per annum from the date payment is due, until such date as payment is received by the Company. The Company shall also charge any reasonable expenses (including solicitor and own client costs) incurred in collecting any money owed to it or in exercising any of its other legal rights.

13.2. In addition to the rights in the preceding sub clause, if any invoice has not been paid within thirty (30) days of the due date for payment the Company shall be entitled to suspend or withhold access to the service until such time as payment of outstanding service fees has been received.

14. INTELLECTUAL PROPERTY RIGHTS

14.1. "Intellectual Property" includes but is not limited to copyright, concepts, designs, drawings, specifications, templates, plans, studies, reports, information, data, software, source code, technical data, the name used by the Company and common law rights and documentation, including all goodwill associated with any of them, collated, collected, prepared or created by the Company (or persons acting on behalf of the Company) in providing the Services and held in any medium, whether electronic or otherwise, and whether paid for by the Customer and forming part of the Services

(including, without limitation, the Deliverables) supplied under this Agreement, shall be owned by the Company.

14.2. The Company grants to the Customer, a licence to use the Intellectual Property to the extent reasonably required to enable the Customer to make use of the Services and as strictly provided under this Agreement, and for the term of this Agreement.

14.3. The Company warrants that the Customer's use of the Intellectual Property in accordance with clause 14.2 does not and shall not infringe the intellectual property rights of any third party.

14.4. The Company indemnifies the Customer in respect of any and all damages, claims, losses, liabilities, costs and expenses incurred or sustained by the Customer resulting from any actual or alleged infringement of any intellectual property rights of any third party arising out of or caused by the Customer's use of the Intellectual Property in accordance with clause 14.2.

15. FORCE MAJEURE

15.1. Neither party will be responsible for any act, omission or failure to fulfil its obligations under this Agreement if such act, omission or failure arises from any cause reasonably beyond its control ("**Force Majeure Event**") which includes floods, earthquakes and other acts of God, power grid outages, any fault or failure in the network supplying telecommunications services, and failure of the data hosting services, but excludes any industrial actions or business trading risk.

15.2. The party who cannot carry out its obligations under this Agreement must give the other party notice as soon as practicable of the cause and, insofar as it is known, the probable extent to which the party giving the notice will be unable to perform or will be delayed in performing its obligations under this Agreement.

15.3. On the issue of notice of a Force Majeure Event, the obligations of the party giving the notice will be suspended insofar as that party is prevented during the continuance of such cause to carry out its obligations under this Agreement.

15.4. The party giving notice which is affected by the Force Majeure Event must take all reasonable steps to mitigate the effects of, and eliminate, the intervening event and must resume performance of the supply of Services as promptly as possible.

15.5. Should the Force Majeure Event continue for a period exceeding twenty (20) Business Days, then the party being the recipient of the Force Majeure Event notice may cancel this Agreement by giving written notice to the other party.

16. CONFIDENTIALITY

16.1. The parties agree that any information pertaining to this Agreement, including prices, data, processes, discounts, price formula, reports and terms of any Agreement, remain strictly confidential and are not to be disclosed to any other party except in the circumstances where:

- (a) The information is already in the public domain (otherwise than by breach of this clause);
- (b) A party is required to release the information by any statutory or regulatory obligation, or by any judicial or arbitration process;
- (c) A party decides to utilise a debt collection agent to recover any money under this Agreement. In that situation, that party may disclose to the debt collection agency such information as it may reasonably require for the recovery of such money;
- (d) The other party has consented in writing to the disclosure of the information;

(e) The disclosure of information to an independent auditor as required in accordance with this Agreement.

16.2.The Customer will sign all necessary documents and do all things necessary immediately at the Company's request to establish and protect any of the Company's rights in the information outlined in the sub-clause above.

16.3.The Customer may not advertise or make any statements to the media in relation to this Agreement or the Services without the prior written consent from the Company.

17. ASSIGNMENT

17.1.Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party to be given in its discretion.

17.2.Any change in the legal or beneficial ownership of shares in the capital of the Customer, or any third party that either directly or indirectly has a shareholding in the Customer, or any change in the share structure of the Customer or of any parent shareholder, which results in a change in effective management or control of the Customer in the opinion of the Company, shall be deemed to be an assignment.

17.3.The Company may sub-contract this Agreement in part however the Company shall remain responsible for the acts and omissions of all subcontractors.

18. SUB-CONTRACTORS

18.1. The Company shall be entitled to sub-contract or delegate any of its rights or obligations under this Agreement without the prior written consent of the Customer to be given in its discretion.

19. TERMINATION

19.1. Either party may immediately cancel this Agreement, either entirely or in part, by written notice to the other party if the other party commits one or more of the following events of default:

- (a) The other party is, or becomes, unable to pay its debts when due;
- (b) The other party enters into, or resolves to enter into, any voluntary administration, compromise or assignment for the benefit of its creditors, or enters into, or resolves to enter into, a court-approved arrangement or a capital reorganisation or reconstruction or there is a change in the effective management or control of the Customer;
- (c) An application or order is made or a resolution passed for the winding up of the other party other than for the purpose of amalgamation or reconstruction approved by the Company;
- (d) A receiver, a receiver and manager, an official manager, a liquidator, a statutory manager, a trustee or an equivalent person is appointed over all or part of the other party's assets or undertaking;
- (e) The other party ceases to carry on its business in whole or in part (except in the circumstances of a Force Majeure Event);
- (f) There is, in the non-defaulting party's reasonable opinion, an irretrievable breakdown in relations between the Company and the Customer or a loss of confidence in the other party;
- (g) The other party commits a breach of this Agreement and fails, after receipt of written notice requesting remedy of the breach within a reasonable timeframe, to remedy that breach within that timeframe;
- (h) The Customer commits a material breach of this Agreement.

19.2. At our discretion, if the Customer terminates this Agreement prior to the expiry of the Term for any reason other than if the Company defaults the Customer may be required to pay the Company early termination charges being the Service Fee and any other fees you have agreed to pay under this Agreement to the end of the Term, together with any reasonable expenses (including solicitor and own client costs) the Company incurs in collecting any money owed by the Customer or in exercising any of the Company's other legal rights.

19.3. Termination of this Agreement shall be without prejudice to any rights or obligations accruing to the terminating party up to the date of termination. In the event of termination by the Company the Customer shall be liable for all monies payable to the Company up to the date of termination, including any additional costs incurred by the Company as a result of the Customer failing to comply with its obligations on termination.

20. CONSEQUENCES OF TERMINATION/EXPIRY

20.1. On termination or expiry of this Agreement:

- (a) The Customer will immediately deliver to the Company all documentation and property in its possession or control that belongs to the Company, including any SIM cards issued for any products supplied by the Company as part of the Services, in good working condition; and

- (b) Pay to the Company all monies owed to it under this Agreement up to the date of termination.

21. DISPUTE RESOLUTION

21.1. In the event of a dispute, disagreement or difference of opinion arising under the Agreement as to:

- (a) The meaning or application of any part of the Agreement; or
- (b) Any other matter touching or concerning the Agreement or the provision of the Services-

21.2. A party claiming that a dispute has arisen must give written notice to the other party, specifying the nature of the dispute. On receipt of such a notice, the parties shall endeavour to resolve the dispute amicably and expeditiously, with a view to achieving prompt resolution.

21.3. If the parties do not resolve the dispute within 10 Business Days of receipt of a notice given under the sub-clause above, a party may, by written notice to the other, refer the Dispute to arbitration in accordance with the Arbitration Act 1996 on the following terms:

- (a) A single arbitrator shall be appointed. If the parties fail to agree on an arbitrator, the President of the Arbitrators and Mediator Institute of New Zealand Incorporated shall appoint the arbitrator;
- (b) No person who has participated in an informal dispute resolution of the Dispute shall act as arbitrator;
- (c) The place of arbitration shall be Hamilton;
- (d) The arbitrator will proceed promptly to deliver an award. The parties shall co-operate fully with the arbitrator;
- (e) The arbitrator's decision in respect of findings of fact shall be final and binding, and the appeal rights under Clause 5 of the Second Schedule of the Arbitration Act 1996 are expressly excluded;
- (f) Each party shall bear its own costs in arbitration and (in the absence of an arbitrator's award to the contrary) shall pay the costs of the arbitrator in equal shares.

21.4. Pending the settlement of any Dispute, the parties shall continue to perform all their obligations under the Agreement except neither party shall be obliged to pay any money which is the subject of the Dispute.

21.5. Nothing in this clause shall operate that will:

- (a) Prevent a party who has a right to terminate this agreement immediately from doing so; or
- (b) Prevent a party from seeking immediate injunctive relief if the party would otherwise be entitled to do so.

22. PRIVACY

22.1. The Customer agrees to the Company obtaining, collecting and retaining information about the Customer including information about the Customer's use of the Services. This is to enable the Company to assess the credit status of the Customer, provide the Services to the Customer, maintain and improve the quality of the Services, and send necessary notices.

22.2. To maintain and improve the Services, the Company will monitor use by the Customer of the Services.

22.3. Subject to any rights which a Customer may have under the Privacy Act 1993, the Company will not be liable to the Customer, or to anyone else, for:

- (a) Any of the Customer's information or details coming into the hands of a third party arising out of the unlawful access to the information by that third party or dissemination of the information by the Customer.
- (b) Any disclosure the Company is required to make by law to a public sector agency.

23. NOTICES

All communications under this Agreement which are required to be in writing shall be sent by email to the address nominated by the Customer in writing in the Service and Supply Offer and Agreement or such other address as may be normally used by the Customer. Any notice required to be sent to the Company under this Agreement must be sent by way of email to the general manager at gm@smartrak.co.nz.

SCHEDULE ONE

Table 1 – Response and Resolution Timeframes

PRIORITY	DEFINITION	RESPONSE TIME (from the time a unique incident reference is allocated to you)	RESOLUTION TIME (from the time a unique incident reference is provided to you)	UPDATES	SLA TIMEFRAME
P1	A critical fault, resulting in the majority of users unable to use the Service	2 hours	24 hours	Every 4 hours	24/7
P2	Major fault resulting in multiple users unable to use the Service	5 hours	48 hours	Every 2 hours	24/7
P3	Repeated quality problems, intermittent faults or degraded service. No major Service impacts	1 Business Day	5 Business Days	1 Business Day	Business Hours
P4	No quality problems, intermittent faults or degraded services. No impact on service.	2 Business Days	7 Business Days	Upon completion	Business Hours

SPECIFIC PROVISIONS RELATING TO SERVICE AND FAULTS

1. We will, where possible, advise you of the cause of the incident and an estimated resolution time. We will notify you when any fault has been remedied.
2. In the event that we are unable to fix the fault within the stipulated resolution time in Table 1 above, we will only be liable by way of service credits.
3. If any of the following events occur, we are not liable for service credits if we are unable to fix the fault within the resolution time:
 - (a) you have not notified us of, or have delayed providing us with notification of the fault;
 - (b) you have not, or delayed providing necessary assistance or information that is reasonably necessary to restore the Service;
 - (c) there is planned maintenance of the Service or the equipment;
 - (d) we are not permitted or able to access your resource provided we have given you reasonable notice that access is required;
 - (e) the fault is caused by an event of Force Majeure in accordance with clause 15;

- (f) you cause or contribute to the fault, whether by damaging or tampering with the equipment or any product necessary for the operation of the Service;
- (g) you are in breach of any material obligations under this Agreement;
- (h) you are overdue in paying any costs due to us.

4. MAINTENANCE

- 4.1.** We will from time to time undertake planned maintenance on the System. We will endeavour to notify you five (5) Business Days before we undertake the work, of any planned maintenance that may affect your use of the System.
- 4.2.** We may from time to time have to undertake urgent work to prevent outages and faults. We will try to give you 30 minutes' notice before we undertake the work. However, we may not always be able to notify you. We will not be responsible for this.

5. SERVICE CREDITS

- 5.1.** The maximum service credit payable by us for failing to provide a resolution to your incident within the timeframes set out in Table 1 of this Schedule are set out in sub clauses 9(a) and 9(b) below. Service credits are only payable by way of credit on your account, not by cash payment or otherwise.
- 5.2.** If we do not meet our obligations under clause 6 of this Schedule we will apply a service credit to your account in the month following our failure.
- 5.3.** The maximum service credit payable by us for any one month is the amount (excluding GST) of the service fee payable by you in the month the failure occurs.
- 5.4.** The amount of the service credit will be calculated by reference to:
- (a) Resolution Times – P1 and P2 Incidents

Number of hours after intended Resolution Time stated in Table 1	Service Credit due (percentage of Service Fee)
1-10	1 day
11-16+	2 days

- (b) Resolution Times – P3 and P4 Incidents

Number of days after intended Resolution Time stated in Table 1	Service Credit due (percentage of Service Fee)
1	3 days
2-3	4 days
4+	5 days + or matching the relief for affected period

6. REVIEW OF SERVICE LEVELS

The Company may review any of the service levels set out in this Schedule. In the event the Company elects to change any of the service levels, it will notify you in advance.

**SCHEDULE TWO
(FORM OF VARIATION)**

AGREEMENT VARIATION NUMBER #			
Name of Company	Smartrak Ltd		
Date of Agreement	dd/mmmm/yyyy	Effective date of Variation	dd/mmmm/yyyy
Background			
Details of Variation			
Signatures	For the Customer		For the Company
	_____		_____
	Name:		Name:
	Position:		Position:
	Date: _____	Date: _____	

SCHEDULE THREE
(WARRANTY OF PRODUCTS)

The Company warrants all products purchased from the Company as being free from defects in material and workmanship for 12 months from the date of delivery to the Customer, provided such products are installed and/or operated in accordance with the Company's installation guidelines and relevant product specific user manual.

1. Precautionary Measures:

There are some precautionary measures that the Customer should take to ensure the longevity of electrical components supplied by the Company. These include:

- (a) The use of computer protective jumper leads between the vehicle and the power source, when jump starting a vehicle; and
- (b) The use of waterproof enclosures for units that are likely to be exposed to water/high moisture levels. Please request this enclosure at time of order.

2. Exceptions:

The Company's warranty does not cover improper installation, misuse, abuse or neglect on the part of the Customer/Customer's users including but not limited to:

- (a) The unit is damaged by any act, omission or misuse;
- (b) Antenna/aerial is damaged following successful install QA sign-off by customer;
- (c) Power has been removed from the unit;
- (d) The product is removed, taken apart, tampered with, altered or serviced by anyone other than a Company authorised installer;
- (e) Following vehicle maintenance/servicing, the GPS tracking unit is found to be interrupted.
- (f) A power surge has been generated as a result of a vehicle jump start or other equipment (e.g. welding on vehicle when the battery in the vehicle is not disconnected/reconnected).

The Company strongly recommends the Customer checks its vehicles after general vehicle maintenance is undertaken or the battery is charged or disconnected, to ensure GPS tracking has resumed.

3. Returns Management Process:

- 3.1.** Faulty units must be returned to the Company or its nominated agent at the Company's request, after removal by a Company authorised installer.
- 3.2.** Any costs for return will be at the Customer's expense via a reputable courier with proof of delivery.
- 3.3.** Before return, a Returned Materials Authorisation (RMA) reference number should be obtained from the Company and enclosed with the return. Should the failure be due to a component fault then the faulty component will be replaced and hardware item sent back to the Customer at the Company's expense. The failed component will not be returned to the Customer.
- 3.4.** Within this warranty the Company will repair or replace at its option defective parts at no charge, provided the product is returned freight paid. If this warranty clause is activated freight will be refunded.
- 3.5.** The Company's warranty is on a "return to base" model.
- 3.6.** If the Customer believes there is a fault with the unit (e.g. arising from installation), the Company will need to establish proof of cause and be given the opportunity to assess the vehicle before any repairs have been affected or costs incurred. If this does not happen, the Company will not be liable for any repairs undertaken.