

Master Service Agreement

Made and entered into between Access Track (Pty) Ltd, Registration No. 2013/236447/07 and “the Client” as detailed in the Service Order.

1. STANDARD TERMS AND CONDITIONS

- 1.1 **This agreement.** Access Track provides to the Client services and software specified in this Agreement, which consists of these Standard Terms and Conditions and the applicable Service Order, which incorporates these Standard Terms and Conditions.
- 1.2 **Priority of this agreement.** These terms and conditions shall supersede any other terms and conditions previously agreed upon by the Client and Access Track and in the event of any dispute between the Parties to this Agreement, the Parties agree that these terms and conditions shall prevail.
- 1.3 **Variations.** These terms and conditions may not be amended or varied by either party, unless such variation is:
- In respect of the Client communicated by the Client to Access Track and Access Track agrees in writing thereto signed by a duly authorised person on behalf of Access Track.
 - In respect of Access Track by written notification to the Client and the Client agrees in writing thereto signed by a duly authorised person on behalf of the Client giving 30 days’ notice of an amendment to the terms and conditions of this Agreement.
- 1.4 **Definitions.** The following definitions apply to this Agreement:
- **business day** means any day other than a Saturday, Sunday, or holiday (including a public or bank holiday) in the jurisdiction where Access Track are organised;
 - **business hours** means Access Track’s normal business hours on business days;
 - **day** means a day counted from midnight to midnight, including all days of the month, Saturdays, Sundays, and public holidays;
 - **fees** means the fees, charges, or price the Client will pay to Access Track in respect of goods or services Access Track provide under Service Orders;
 - **goods** means any goods Access Track provide to the Client, under Service Orders;
 - **services** means any services Access Track or related persons provide to the Client, under Service Orders;
 - **sign** means the handwritten signature or an electronic signature that the parties agree to use, of each of the parties’ duly authorised representatives;
 - **tax** means any tax (including value added tax, income taxes, pay-as-the Client-earn tax or other taxes levied in any jurisdiction), duty, tariff, rate, levy, or any other governmental charge or expense payable; and
 - **writing** means the reproduction of information or data in physical form or any mode of reproducing information or data in electronic form that the parties agree to use, but excludes information or data in the form of email.
- 1.5 **Interpretations.** The following rules apply to the interpretation of the Agreement:
- reference headings – clause and subclause headings are for reference only and do not affect interpretation;
 - non-exhaustive lists – whenever a clause lists specific examples or items following a listing word, such as ‘including’, ‘includes’, ‘excluding’, or ‘excludes’, they will not limit its scope;
 - undefined words or phrases – all words or phrases that the Agreement does not define have their ordinary English meanings;

- enactment references – references to any enactment include it as re-enacted, amended, or extended;
- person references – references to a person includes a natural and juristic person;
- party references – references to a party includes their successors or permitted assigns;
- number of days – when any number of days is prescribed, the first day will be excluded and the last day included;
- no interpretation against the draftsman – the rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply; and
- time calculations – the parties will use GMT +2 to calculate any times.

1.6 **Conflict.** If there is a conflict of meaning between these terms and any word or phrase in a Service Order or other specific terms, the meaning in the Service Order or specific terms will prevail in respect of the relevant goods or services.

2. PERIOD OF AGREEMENT

2.1 **Start.** These terms start whenever Access Track have signed the Agreement and the Client accept these terms by:

- doing so explicitly – such as by checking a checkbox saying that the Client do or agreeing to a Service Order that incorporates them by reference;
- using the goods or services in any way – such as by accessing them; or
- exercising any rights granted to the Client under the Agreement;

and continue until terminated.

2.2 **Monthly renewal.** This Agreement shall be for a period detailed in the Service Order. After the initial period this Agreement will automatically continue on a month-to-month basis subject to any changes which Access Track has notified the Client of unless Access Track or the Client terminate it on at least 1 (one) month's written notice.

3. ORDERS

3.1 **Placing orders.** The Client place Service Orders with Access Track whenever the Client orders or start using the goods or services with Access Track directly or through the website or application. These Service Orders are offers to Access Track to buy Access Track's goods or services.

3.2 **Capacity and authority.** The Client promise that the Client has the legal capacity and authority to enter into the Agreement.

3.3 **Invitation to do business.** Marketing is merely an invitation to do business and Access Track only conclude the Agreement when Access Track actually provides the goods or services to the Client. This happens when Access Track accepts the Client's offer.

3.4 **Cancellations.** Access Track may cancel any Service Order, but Access Track will refund any money the Client has paid in relation to that particular Service Order if Access Track does.

3.5 **Time and place.** Access Track conclude the Agreement when Access Track accept the Service Order and where Access Track are domiciled when Access Track do.

3.6 **Separate agreements.** Each Service Order is a separate agreement, but the Client is deemed to have breached all of them if the Client breaches one of them.

4. GOODS

4.1 **Supply.** Where applicable, Access Track sell or rent the goods to the Client who purchase or hire the goods on the terms of the relevant Service Order, which are incorporated into this Agreement. Access Track will provide the Client with the goods and related user documentation described in the Service Order, in the manner and on the date described in the Service Order. Access Track will deliver the goods to the Client at the premises described in the Service Order. The Client must check the goods on delivery and sign a receipt acknowledging that the Client is in possession of the goods and that they are in good working order.

- 4.2 **Risk, ownership and insurance.** All risk of loss or damage to the goods will pass to the Client upon delivery. Where the Service Order specifies the sale of goods, ownership of the goods will only pass to the Client upon full payment of the fees. Where the Client rents the goods, the Client must insure the goods for their full replacement cost (and indicate Access Track as an additional insured) from the date of acceptance of the Service Order until the goods are returned to Access Track by the Client.
- 4.3 **Exclusion of liability.** Notwithstanding any warranties given by Access Track, Access Track will not be liable to the Client (or any third party) for any damages caused by or related to any failure or delay in the delivery of the goods, or if the Client or any third party:
- make modifications to the goods without Access Track's written approval;
 - uses on the goods any attachments, features or devices that are not supplied by Access Track or approved by Access Track in writing;
 - in the case of software, use any version other than the current version of the correct operating system or software on the goods; or
 - misuse or abuse the goods.
- 4.4 **Software.** Unless otherwise stated, the license for any software is contained in the EULA or the relevant Service Order. The Client will be required to agree to the EULA or relevant Service Order prior to use of the software. The applicable EULA or Service Order, which takes precedence, governs the use of the software. If the Client does not agree to the EULA, the Client must stop using the goods and return the software. If the Client uses the software (or take any other action that is described in the packaging or software as constituting the Client's consent to the EULA or relevant Service Order), then the Client agrees to the EULA or Service Order unless otherwise allowed in the documentation accompanying the software or applicable law.
- 4.5 **Resale and exports.** If the Client wish to resell or export any goods, the Client must obtain all required consents or licenses under all applicable laws and regulations that may affect or regulate such resale or export.

5. RENTAL GOODS

- 5.1 **Application.** This clause applies only where the Client rent goods from Access Track under a Service Order.
- 5.2 **Rental fee in advance.** The monthly hardware rental is chargeable in advance and shall be debited to the Client's account in advance.
- 5.3 **Ownership.** Access Track will at all times be and remain the owner of the goods (and all associated intellectual property rights). The Client may not sell, rent or otherwise encumber the goods in any way without Access Track's written consent. Where the goods are installed, the Client agrees that they are movable and will not accede to any property.
- 5.4 **Installation.** Where the goods require installation, the Client must obtain the required permission for the installation of the goods on the premises. Only Access Track or Access Track's authorised agents may install the goods. The Client must, at the Client's own cost, ensure that the premises are in a suitable condition for installation of the goods. Installation will be deemed to be completed on written notice by Access Track that goods have been properly installed.
- 5.5 **Location.** The Client will keep the goods at the premises described in the Service Order, unless otherwise agreed between the parties. The Client will inform Access Track immediately if the goods are to be moved to another address or put in another party's possession. If the Client does not own the premise where the goods will be kept or installed, the Client will notify the premises' owner or lessor (and their successors) in writing of Access Track's ownership in the goods.
- 5.6 **The Client's responsibilities.** The Client must:
- take reasonable care in the use of the goods;
 - only allow properly trained persons to operate the goods;
 - keep the goods in the Client's possession and under the Client's control on the premises, and not directly or indirectly allow the goods to be removed or kept outside the premises, without Access Track's prior written consent.

- not alter or modify the goods or allow third parties to alter or modify the goods without Access Track's prior written consent (noting that any part or accessory added to the goods without Access Track's prior written consent, will become Access Track's property without any compensation); and
 - at reasonable times after being notified by Access Track, allow Access Track or Access Track's representatives to inspect the goods.
- 5.7 **Credit enquiries.** The Client agrees that Access Track may make enquiries about the Client's credit record with any credit reference agency and any other relevant party. Access Track may also provide credit reference agencies with regular updates, including how the Client manages the Client's accounts.
- 5.8 **Access Track's election.** If the goods (including replacement goods) or any part thereof are lost, stolen or damaged, the Client must immediately notify Access Track and the insurer in writing, and Access Track may elect to:
- immediately terminate the Agreement relating to such goods; or
 - at the Client's cost, repair the goods or replace them with goods which in Access Track's reasonable discretion are of similar nature and condition to the original goods.
- 5.9 **Termination.** If this Agreement is terminated because of the loss, theft or damaging of the goods, the proceeds of any claim under the insurance policy will be paid to Access Track or will be credited against the balance of rentals that remain unpaid in respect of the goods lost, stolen or damaged immediately prior to termination of this Agreement. The Client will remain liable for any outstanding rentals and the aggregate of the rentals which would have been payable had the Agreement continued until expiry of the rental period, that may remain unpaid after the crediting of the proceeds of the insurance claim and such rentals will be paid on demand to Access Track.
- 5.10 **Recovery.** The Client will have no claim or defence against Access Track if all costs in respect of the replacement or repair of the goods are not recovered in full or at all from the insurer. The Client will pay any excess that may be payable in terms of an insurance policy issued.
- 5.11 **Early termination.** The Client may terminate this Agreement before the initial period has elapsed on at least one month's written notice at which time the balance of the monthly hardware rental payments, as defined in the Service Order, for the remainder of the initial period will become immediately due and payable to Access Track unless otherwise agreed to in writing between Access Track and the Client. Access Track may terminate this Rental Agreement before the initial period has elapsed on at least one month's written notice at which time the Client will be released from both the monthly hardware rental and monthly service fee, as defined in the Service Order.

6. SERVICES

- 6.1 **Fees.** Our service fee schedule is available at www.accesstrack.co.za/legal/Service_Fees.pdf
- 6.2 **Supply.** Access Track provide the services to the Client on the terms of the relevant Service Order, which are incorporated into this Agreement. Access Track grants the Client the right to use the services, in the form of the relevant goods and associated software, subject to the following conditions and limitations:
- permission – the Client give Access Track permission to monitor how the Client use them for security and stability purposes;
 - records – the Client agree that Access Track's records are undisputed evidence of the services provided to the Client;
 - duration of agreement – the Client may only use the services for the duration of the Agreement;
 - limited to terms – the Client may only use the services according to these terms;
 - non-exclusive – Access Track may allow anyone else to use the services;
 - non-transferable – the Client may not transfer the right to anyone else;
 - specified purposes – the Client may only use the services for purposes expressly permitted by Access Track as communicated to the Client in writing from time to time;
 - breach – Access Track may suspend or cancel the Client's right if the Client breach the Agreement.
- 6.3 **Service fee in advance.** The monthly service fee is chargeable in advance and shall be debited to the Client's account in advance.

- 6.4 **Software access conditions.** Access Track will only provide online software access to the Client or the Client's authorised users (where the Client is a juristic person) on the conditions that the Client or each one of them will:
- accurately provide Access Track with any information that Access Track ask for on registration or account creation;
 - create or have the necessary credentials (such as a username and password) assigned to them on registration or account creation;
 - look after their credentials and not give them to anyone else;
 - not interfere with or introduce any malicious software into the services or otherwise misuse them;
 - be responsible for any activity that happens under their account, even if someone else was actually acting under their credentials;
 - have the necessary infrastructure, equipment, and software to access the services; and
 - abide by this Agreement and any policies that Access Track communicate to them in writing.
- 6.5 **Availability.** Access Track will do its best to make the services available at all times, however Access Track cannot guarantee that they will always be available. Access Track may make them unavailable for scheduled and emergency maintenance.
- 6.6 **Configuration document.** Access Track will provide the Client with a configuration document for the specific configuration of the services, which the Client must complete and return to Access Track. Where the Client does not do so, and appoints or uses a third party security provider to use or manage the use of the services on the Client's behalf, the Client must ensure that such third party security provider has the requisite authority to complete the configuration document on the Client's behalf. The Client hereby authorizes Access Track to rely on the configuration document completed by such third party security provider, even where such requisite authority is lacking, and indemnifies Access Track for any claims arising out of such reliance.
- 6.7 **Monthly service fee.** The monthly service fee includes and is limited to the following services:
- Access for all devices rented or purchased to Access Track's cloud-based information management system.
 - Access to Access Track's web-based management and reporting portal.
 - Access to Access Track's mobile applications,
 - System and feature upgrades published by Access Track from time to time.
 - Management of information retention according to the retention period defined by the Client in the Configuration Document.
 - Storage and backup of captured information subject to the retention period defined by the Client in the Configuration Document until termination of this Agreement at which time all data will be destroyed.
 - SIM card with mobile data for each of the devices rented or purchased by the Client.
 - Sufficient mobile data for normal operation of the device per month as determined by Access Track from time to time.
 - Reasonable telephonic and e-mail support.
 - On-site service responses if the site is within a 75 km radius from Access Track's offices.
 - Faulty device exchange.
- 6.8 **Mobile data.** Access Track shall monitor the data usage of the SIM card and will advise the Client if data abuse is detected. The cost of additional data usage that result from abuse will be debited to the Client's account at the prevailing rate charged by the cellular network provider to Access Track. Any costs arising from the removal, abuse or misuse of the SIM card provided with each device will be debited to the Client's account.
- 6.9 **Mobile coverage.** The Client acknowledges that the system is dependent upon good quality mobile data (LTE) coverage at the location of use. Access Track endeavours to ensure the integrity of all information transmitted and stored but shall not be liable for:
- corrupt or missing information;

- any consequence flowing from weak cellular network coverage; or
 - temporary or long-term interruption in the provision of such service.
- 6.10 **Training.** If training is provided, the Client shall nominate a suitable site manager who will be responsible for integration of the hardware and software between Access Track and the Client and who will be responsible for training and monitoring of security personnel that operate the equipment. The Client shall ensure that the site manager is available for implementation training at a time and in a manner to be determined by Access Track.
- 6.11 **On-site implementation training.** 1 Hour on-site training is provided with each of the devices purchased if the site is within Access Track's service coverage area.
- 6.12 **Additional on-site training.** Additional on-site training may at the sole discretion of Access Track be given to additional operators of the devices purchased by the Client at Access Track's standard hourly service and travel rates, for which the Client will first be quoted.

7. SUPPORT AND REPAIRS

- 7.1 **Support services included.** The Client shall report any defects in the hardware as soon as is reasonably possible to Access Track. The monthly service fee includes the following support services:
- reasonable telephonic and email support which shall be provided to the nominated technical contact only;
 - free on-site service responses if the site is within a 75 km radius from Access Track's offices; and
 - billable on-site service responses if the site is outside of a 75 km radius from Access Track's offices, in line with our service fee schedule, for which the Client will first be quoted.
- 7.2 **Response times.** Access Track will provide the support services at the following response times:
- Telephonic and email support, within 4 hours.
 - Server availability, within 4 hours, and with a 98 percent up time.
 - On-site response and device exchange within a 75 km radius from Access Track's offices, within the next business day.
- 7.3 **Non-system issues.** Non-system related technical assistance such as user error, client environmental problems (rain, heat, power surges) as well as abuse or misuse of hardware will be charged for in line with our service fee schedule, excluding the cost of hardware or parts.
- 7.4 **Device lifetime.** Access Track will continue to provide support and maintenance and allow connection of the latest two generations of scanner devices, based on the Android OS version present on these devices. A new generation of scanner devices is typically introduced every 2 years.
- 7.5 **Cost to repair or replace.** The Client shall be liable for the cost of replacement or repair of any damages to the equipment that is in the opinion of Access Track caused by accident, abuse, misuse or by not properly caring for the equipment and any such costs shall be debited to the Client. This includes the scanner exchange service detailed below. Access Track will quote for any repairs that have to be affected.
- 7.6 **No third party repairs.** The Client shall not be entitled to use the services of a third party to repair or replace equipment supplied by Access Track.
- 7.7 **Scanner exchange.** The scanner exchange service (subject to the exclusions contained in this Agreement) provides the Client with a swap out scanner at no additional cost including free collection, delivery and configuration. Any exchange shall be provided for a maximum period of 14 days where after the Client shall be debited a daily rental fee of R100.00 plus VAT save and except in circumstances where the delay in repair or replacement of the scanner is due to Access Track or its suppliers.

8. OUR SOFTWARE OBLIGATIONS

- 8.1 **Grant of right.** Access Track grant the Client and the Client's authorised users a worldwide, non-exclusive, non-transferable and revocable right to use the software for the duration of the Agreement.

- 8.2 **Authorised use.** Access Track will provide Access Track's software to any of the Client's authorised users directly who have agreed to the end-user licence or other relevant agreement through the software on a non-exclusive basis where Access Track may also provide it to anyone else.
- 8.3 **Availability.** Access Track will make the software available at all times, subject to reasonable downtime for planned and emergency maintenance.
- 8.4 **Maintenance.** Access Track will perform scheduled maintenance on the software outside of business hours on business days or outside of business days from time to time. Maintenance may interrupt the software. Access Track may need to perform emergency maintenance in certain circumstances.
- 8.5 **Hosting.** Access Track will host the software on a server that Access Track controls or someone controls on Access Track's behalf at Access Track's premises or at a remote location.
- 8.6 **Backups.** Access Track will back up all data stored in the data repositories available through the software and test those backups in accordance with Access Track's backup policies.
- 8.7 **Disaster recovery.** Access Track will maintain a disaster recovery plan that is tested annually. In the event of a disaster, Access Track will implement the disaster recovery plan and:
- replicate the software as soon as possible with the most recent backup date; and
 - restore the software with a recovery time objective of 24 hours and a recovery point objective of 24 hours.

9. YOUR SOFTWARE OBLIGATIONS

- 9.1 **Authorised users.** The Client is responsible for ensuring that the list of authorised users who are able to use the software is always up to date. The Client is responsible for ensuring that the Client's authorised users adhere to their obligations under these specific terms.
- 9.2 **Access necessities.** The Client is responsible for getting and maintaining any equipment, software, infrastructure, or ancillary services necessary to connect to, access, or otherwise use the software. For example:
- equipment – such as modems, servers, or other hardware;
 - software – such as operating systems;
 - infrastructure – such as networking equipment or web servers; and
 - ancillary services – such agreements with ISPs for the provision of Internet access.
- 9.3 **Authorised user instructions.** Each authorised user is responsible and liable for activities that occur under their account. The Client authorise Access Track to act on any instruction given by an authorised user, even if it transpires that someone else has defrauded both of us, unless the Client have notified Access Track in writing prior to Access Track acting on a fraudulent instruction. Access Track are not liable for any loss or damage suffered by the Client attributable to an authorised user's failure to maintain the confidentiality of their credentials.
- 9.4 **Expertise.** The Client must at all times employ sufficient personnel who:
- are skilled in and knowledgeable about the Client's systems; and
 - have the necessary technical expertise to use the software.

If the Client does not have sufficient personnel with the required knowledge or expertise to use the software, the Client must send personnel on training with Access Track to teach them the necessary skills.

- 9.5 **Acceptable use of the software.** The Client and the Client's authorised users may not use, or help others to use, the software for any illegal or harmful purposes, or to interfere with the connections or security of networks, systems or other users, including:
- illegal content – including content that infringes the intellectual property rights of others, inciting or encouraging harm against others, or conducting or advertising illegal transactions;
 - fraudulent content – including offering, sharing or promoting false information relating to goods, services, or schemes, or otherwise misleading others in a way that is harmful or illegal;

- abusive content – including content that is defamatory or vulgar, infringes another’s right to privacy (such as their personal information), or is otherwise unreasonably or objectionable;
- destructive content – including content or software designed for the purpose of malicious damage to computers, systems, or data, or to control or otherwise access any of these things;
- unauthorized access – including accessing or attempting to access a network, system or user’s profile without permission;
- surveillance – including the surveillance of any data on a network, system or user’s profile without permission;
- intentional harm – including intentionally damaging the structure or efficient working of a network, system or user’s profile through physical or electronic means (such as Denial-of-Service attacks);
- spam – including sending or promoting unsolicited mass electronic communications without permission;
- data manipulation – including the malicious and fraudulent altering of any data on or sent by a network, system, or user’s profile without permission; or
- system manipulation – including the malicious and fraudulent alteration of a network, system, or user’s profile without permission.

The Client and the Client’s authorised users agree to notify Access Track of any breach of this section. Access Track may change the terms of this section detailing the acceptable use of the software at any time.

9.6 **Restrictions.** The Client and the Client’s authorised users will not:

- grant anyone direct access to the software other than as an authorised user, including by way of lease, download, software or as an application, bureau or on-demand software service provider or any other method; or
- use the software to provide a service to any third party similar to the software;
- unless agreed otherwise between the parties in writing.

10. CONFIDENTIAL INFORMATION

10.1 **Definition.** Confidential information is any information that the parties share with one another in terms of this Agreement with the intention that the other party should keep it secret, such as personal information, business records, or customer details.

10.2 **Responsibilities.** Each party will keep any confidential information it receives from the other party under the Agreement confidential and the receiving party will:

- protect the other party’s interests;
- only use it to comply with their responsibilities under the Agreement;
- only give it to their employees or agents that need it (and only as much as they need);
- use reasonable security procedures to make sure their employees or agents keep it confidential;
- get promises of confidentiality from those employees or agents who need access to the information;
- not reveal the information to anyone else; and
- not use it for any purpose other than under this Agreement.

10.3 **End of agreement.** The parties will give back to the other all confidential information of the other that they have at the end of the Agreement, unless:

- the other party agrees that they may destroy or retain it instead; or
- it is lawfully in the public domain;
- someone else who is allowed to reveal it gives it to them;
- someone gives it to them to comply with a court order or other legal duty.

- 10.4 **Indemnity.** Each party indemnifies the other against any loss or damage that the other may suffer because of a breach of this clause by a party or its employees or agents.
- 10.5 **Survival.** This clause is separate from the rest of this Agreement and survives the termination of this Agreement for a period of five years.

11. INTELLECTUAL PROPERTY

- 11.1 **Ownership.** Access Track or Access Track's third-party licensors own all proprietary rights in Access Track's goods or services and Access Track or they may prosecute the Client for any violations of those rights.
- 11.2 **Access Track's technology.** Access Track's technology is anything that Access Track have or acquire rights in and may use to perform Access Track's obligations under the Agreement.
- 11.3 **Retention of rights.** Access Track owns all intellectual property rights in Access Track's technology and the Client may not use those rights without Access Track's permission. The Client does not acquire any rights in Access Track's technology if Access Track use it to provide goods or services to the Client. Access Track own all intellectual property rights in any works that Access Track create during the course of this Agreement, including where the Client prompted or requested Access Track to create such works.
- 11.4 **Access Track's trademarks.** Access Track's trademarks are Access Track's property, and the Client may not use them without Access Track's permission. All other trademarks are their respective owners' property.
- 11.5 **Restrictions.** The Client may not change, hire out, reverse engineer, or copy the goods or services without Access Track's permission.
- 11.6 **The Client's intellectual property.** The Client grant Access Track a non-exclusive and royalty-free licence to use any of the Client's trademarks and copyright works which the Client deliver to Access Track for the purposes of providing the goods or services. Access Track may not use them for any other purpose without the Client's prior written permission. The licence expires automatically when the Agreement ends. The Client retains all rights in the Client's trademarks and copyright works despite this licence.
- 11.7 **Feedback.** Where the Client provides Access Track with any feedback (including comments or suggestions) regarding the goods or services, including software, Access Track are not obliged to compensate or credit the Client for such feedback in any way unless Access Track have a written agreement with the Client to do so. When the Client submits the Client's feedback to Access Track, the Client:
- grant Access Track a worldwide, perpetual, non-exclusive, royalty-free, sublicensable licence to use, reproduce and, modify the Client's feedback for any purpose related to the goods or services;
 - agree to deliver all documents and perform all actions necessary to ensure that Access Track's rights to use, reproduce, and modify the Client's feedback are effective and enforceable; and
 - give up any claim that Access Track's use, reproduction, or modification of the Client's feedback violates any of the Client's rights, including the Client's intellectual property rights or the Client's moral rights (the rights not to have the Client's work distorted and to be credited for the Client's work).
- 11.8 **Survival.** This clause is separate from and survives the termination of this Agreement.

12. NON-SOLICITATION

- 12.1 **Non-solicitation.** The Client will not contract with any of Access Track's personnel or third-party licensors, other than through Access Track, who were involved in providing goods or services under a Service Order for the duration of that Service Order or for 12 calendar months after its termination.
- 12.2 **Survival.** This clause is separate from and survives the termination of this Agreement.

13. PAYMENT

- 13.1 **Payment.** Any amount owing to Access Track is due for payment by the 7th of each month. The Client may not withhold payment of any amount due to Access Track for any reason.

- 13.2 **Payment systems.** Access Track may use payment systems owned and operated by third parties (payment system providers) for the collection of fees and other amounts payable by the Client in terms of this Agreement. As these payment system providers are third parties unrelated to Access Track, Access Track shall not be liable for any damage, loss whether consequential or otherwise and for any reason howsoever arising, as a consequence of the failure of the third party payment system provider to debit the Client's account and the client shall have no recourse against Access Track for any act or omission on the part of the third party payment system provider, nor against Access Track due to system interruption or termination.
- 13.3 **Suspension for non-payment.** Access Track reserves the right in the event that the monthly hardware rental fee or monthly service fee is not paid, or any other fee debited by Access Track is not paid, and provided such breach is not remedied within seven days of written notification to the Client thereof, to immediately terminate access to Access Track's applications and software and to suspend all services. In the event of suspension or termination of services due to non-payment by the Client, Access Track shall not be liable for any damage or loss arising out of the termination of such service, whether contractual, consequential, delictual or otherwise and the Client hereby indemnifies and holds Access Track harmless against any claim from itself or any third party arising out of the termination of the service Agreement.
- 13.4 **Late payments.** In the event that any amount is not paid on due date, Access Track shall email the billing contact indicating that services have been suspended and specifying the amount owing. Additional charges agreed between the parties in writing apply to any payment Access Track receive after the due date and the Client must pay them to Access Track on demand. Access Track may stop providing any goods or services until the Client have paid all amounts due.
- 13.5 **Interest.** Overdue amounts on any outstanding invoice will bear interest in Access Track's benefit from its due date until the Client pays it at whichever rate is higher between:
- 2% above the prime (or prime lending) rate; or
 - 15%.
- Interest will be payable on a claim for damages from when the damages were suffered.
- 13.6 **Appropriation.** Access Track may use any money the Client pay Access Track to settle the Client's indebtedness under this Agreement, despite any particular reason the Client may have paid it to Access Track.
- 13.7 **Certificate.** Access Track may appoint an accountant to sign a certificate that will be proof of the amount due by the Client and the date on which it is payable.
- 13.8 **Tax.** All fees exclude any tax (unless indicated otherwise). The Client will be liable to pay applicable taxes in addition to the fees.
- 13.9 **Reimburse costs.** If Access Track suspend the service or remove any goods supplied by Access Track due to non-payment, the Client will pay to Access Track the costs incurred by Access Track in remobilising Access Track's employees affected by the Agreement and recommencing the services or re-installing the removed goods.
- 13.10 **Acceptance.** If not queried within two business days, reports and invoices will be deemed to have been accepted by the Client. Time spent on queries is for each party's own account.
- 13.11 **Disputed invoices.** If the Client disputes an invoice, the Client must notify Access Track and provide Access Track with reasons within seven calendar days of invoice date. The Client may not withhold payment on any invoice that is not disputed, whether it relates to a disputed invoice or not. The Client must pay any disputed invoice immediately upon resolution of the dispute. The Client will bear any costs of the payment at a later date.
- 13.12 **Dispute fees.** The Client shall be liable for all legal fees including third party costs such as counsel, tracing fees and sheriff's fees on the attorney and own client scale.
- 13.13 **Survival.** This clause is separate from and survives the termination of this Agreement.

14. PROTECTION OF PERSONAL INFORMATION (POPI)

- 14.1 **Lawful basis.** The Client shall ensure that where information is collected from third parties, such information is collected with the consent of that third party, or another lawful basis.

- 14.2 **Indemnity.** The Client indemnifies Access Track in respect of all and any claims, howsoever arising from the collection of, misuse or improper use of information by the Client, its employees, representatives, agents, and other service providers, outside of the provisions of POPI.
- 14.3 **Operator.** Access Track undertakes as an operator as determined by POPI to manage and store all information in accordance with POPI.
- 14.4 **Definition.** The Client's data is any data belonging to the Client or the Client's customer that:
- the Client or the Client's customer (or any third party on the Client's behalf) provide to Access Track; or
 - Access Track generate, process, or supply to the Client or the Client's customer in providing the goods or services;
- but excludes any derived data that Access Track creates for Access Track's own purposes or which is proprietary or confidential to Access Track or Access Track's third party contractors.
- 14.5 **The Client owns it.** The Client owns all the Client's data, but give Access Track the right to use it to provide the goods or services when the Client provides Access Track with access to it.
- 14.6 **Access Track do not own it.** Access Track do not own any of the Client's data. However, Access Track do own Access Track's derived data. The Client's data does not include any derived data that Access Track creates for Access Track's own internal purposes. Derived data is any of Access Track's own data that Access Track creates from the Client's data, such as through aggregation, de-identification, or anonymisation.
- 14.7 **Responsibility.** Access Track takes the protection of the Client's data very seriously and will always do its best to protect it. Access Track's responsibility for the Client's data is limited to the terms of the **Data Processing Addendum** agreed between the parties, which is accessible on Access Track's Trust Centre at www.accesstrack.co.za/trust-centre, and is incorporated into this Agreement by this reference.
- 14.8 **Subcontracting.** Subcontracting involves engaging a subcontractor outside Access Track's organisation to do work as part of providing the goods or services. Access Track may subcontract work involving the Client's data, provided that Access Track:
- obtain the Client's written permission to do so beforehand;
 - notify the Client in writing of: (i) the purpose of sharing the Client's data with the subcontractor; and (ii) how Access Track have carried out due diligence on them;
 - do so only through a written agreement with the subcontractor which imposes the same obligations on them as are imposed on Access Track; and
 - remain fully liable for any processing of the Client's data under the Agreement by Access Track's subcontractor.
- 14.9 **Location.** The Client's data will remain wherever Access Track place it initially, unless Access Track have to transfer it to another country to comply with Access Track's obligations to the Client. The Client consent to Access Track transferring it to Access Track's group of companies, associated companies, service providers, or agents who may be located in other countries for the purpose of providing the goods or services.

15. WARRANTY

- 15.1 **Goods warranty.** All hardware supplied is supported by the manufacturers guarantee. The Client may in its discretion extend the normal warranty from one year to up to three years. The warranty includes repair of normal wear and tear of scanner buttons if the Client opts to extend the warranty. Items supplied such as device covers and charge cables are consumables not covered by the manufacturer's one year warranty or the extended warranty. To the extent legally possible, Access Track assign to the Client the benefit of any supplier warranties that a supplier may give to Access Track regarding the goods. The Client may not waive any of Access Track's rights as against the supplier.
- 15.2 **Repair after warranty expiry.** In the event that and at the sole discretion of Access Track, it is necessary to repair or replace equipment supplied after the warranty period has expired or where the equipment is in the opinion of Access Track abused or not properly cared for such costs shall be quoted to the Client and for which the Client must provide consent in writing before such repair or replacement will be affected. Insofar as the Client needs to provide

any consent for such additional charges by its signature of this Agreement it consents to Access Track debiting its account.

15.3 **Service warranties.** Access Track warrant that Access Track will:

- employ enough trained personnel with the knowledge and expertise to provide the goods or services;
- use reasonable efforts consistent with prevailing industry standards to maintain the services; and
- provide the goods or services in accordance with all applicable laws.

15.4 **General warranties.** Access Track warrant further that Access Track:

- has the legal right and authority to perform Access Track's obligations under the Agreement; and
- will not intentionally introduce any malicious software into the Client's systems.

15.5 **Disclaimer.** The Client uses the goods or services at the Client's own risk and Access Track disclaim all other warranties to the extent allowed by applicable law. Access Track are not liable for any defect that the Client cause or a third-party causes. Despite Access Track's warranties, Access Track are not liable for any defects that the Client's negligence, failure to follow Access Track's instructions, or misuse causes. This sub-clause is separate from and survives the termination of this Agreement.

15.6 **The Client's warranties.** The Client indemnifies Access Track against any claim for damages by any third party resulting from a breach of the Client's warranties, including all legal costs. This sub-clause is separate from and survives the termination of this Agreement. The Client warrant that:

- no one has induced the Client to enter into the Agreement by any prior representations, warranties, or guarantees; and
- the Client is not breaching any other agreement by entering into this Agreement.

16. LIMITATION OF LIABILITY

16.1 **Direct damages limited.** To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, Access Track's maximum liability to a the Client for direct damages for anything giving rise to any legal action will be an amount equal to the total fees already paid by the Client to Access Track in the 12 months preceding the claim, for the goods or services related to the claim. The aggregate amounts for all claims will not be greater than the maximum amount.

16.2 **Indirect damages excluded.** To the extent permitted by applicable law, in no event will Access Track (or Access Track's personnel) be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including loss of profits, loss of goodwill, damages relating to lost or damaged data or software, loss of use, damages relating to downtime or costs of substitute products) arising from this Agreement.

16.3 **The Client's default.** Access Track will not be liable for any loss or damage suffered by the Client arising out of or in connection with any breach of this Agreement by the Client or any act, misrepresentation, error or omission made by or on behalf of the Client or the Client's personnel.

16.4 **Other services.** Access Track are not liable for any other deliverable, including website, goods, or service provided by any third party, nor are Access Track liable for any claims arising due to third party software.

16.5 **Survival.** This clause is separate from and survives the termination of this Agreement.

17. BREACH AND TERMINATION

17.1 **Breach.** If either party

- does not fix a breach within seven days of receiving written notice from the other party;
- breaches the Agreement materially twice or more in six months;
- is bankrupt or has some legal disability;

- takes steps to or is closed down (such as becoming insolvent or entering sequestration);
- makes any settlement or arrangement with their creditors; or
- fails to pay a court order against themselves for a significant amount within 21 days;

then the other party may:

- make the party comply with the Agreement; or
- immediately cancel the Agreement in writing and claim damages from the other party, including fees already due.

17.2 **Suspension.** Access Track may immediately suspend the Client's or the Client's authorised users' right to use the goods or services if:

- the Client try to gain unauthorised access to them;
- the Client fail to pay any fees due to Access Track in terms of this Agreement on their due date;
- the Client or the Client's authorised users attempt a Denial-of-Service attack on any of the services;
- the Client or the Client's authorised users seek to hack or break any security mechanism on any of the services or access data outside of that which belongs to the Client's organisation;
- Access Track determine in Access Track's sole discretion that the Client's or the Client's authorised users' use of the services poses a security threat to Access Track, or to any other user of the services;
- the Client or the Client's authorised users otherwise use the services in a way that disrupts or threatens the services;
- Access Track determine, in Access Track's sole discretion, that there is evidence of fraud with respect to the Client's account;
- Access Track receives notice or otherwise determines, in Access Track's sole discretion, that the Client or the Client's authorised users may be using the services for any illegal purpose or in any way that breaches the law or infringes the rights of any third party;
- Access Track determines, in Access Track's sole discretion, that Access Track's provision of any of the services to the Client or the Client's authorised users is prohibited by applicable law, or has become impractical or infeasible for any legal or regulatory reason; or
- for any other reason that Access Track determine is reasonable within Access Track's exclusive discretion.

17.3 **Preservation of data (suspension).** In the event that Access Track suspends the Client's or the Client's authorised users' access to any services, Access Track will not take any action to intentionally erase any of the Client's data in Access Track's possession during the period of suspension and the fees will continue to accrue.

18. TERMINATION

18.1 **Termination for good cause.** Access Track may need to terminate the Agreement immediately if:

- Access Track discontinue or stop providing the goods or services;
- believe providing the goods or services could burden or pose a risk to Access Track;
- have to terminate to comply with a law; or
- determine that providing the goods or services has become impractical.

If Access Track needs to terminate, Access Track will give the Client as much notice as reasonably possible in writing.

18.2 **Termination for convenience.** Access Track may terminate the Agreement or a specific Service Order on at least 60 days written notice to the Client.

18.3 **Duties on termination.** Access Track will stop providing the goods or services, the Client will no longer be able to access them, and Access Track may erase the Client's data on termination, cancellation, or expiry of the Agreement.

19. EFFECT OF TERMINATION

- 19.1 **Acceleration.** All amounts due to Access Track for the goods or services become due and payable on termination, cancellation, or expiry of the Agreement. These amounts include the balance of the service fees for the initial period of the Agreement.
- 19.2 **Assistance.** Access Track may provide the Client with post termination assistance (such as data retrieval) subject to additional fees and conditions.
- 19.3 **No expectation.** The Agreement does not create any expectation of continued service, agreement renewal, or any further agreement between the parties.
- 19.4 **Survival.** This clause is separate from and survives the termination of this Agreement.

20. GENERAL

- 20.1 **Notices and domicile.** The parties will send all notices to each others' email addresses and choose their respective street addresses as their service addresses for all legal documents. Access Track's email and street addresses are available on Access Track's website, while the Client provide the Client's email and street addresses to Access Track in the Service Order when concluding the Agreement. The parties may change either address on 14 calendar days written notice to the other. Any notice to be given in terms hereof shall be given by delivery thereof by hand to the above address.
- 20.2 **Beyond human control.** Neither party is responsible for breach of the Agreement caused by circumstances beyond human control, but the other party may cancel the Agreement on written notice to the other if the circumstances persist for more than 60 calendar days.
- 20.3 **Assignment.** The Client may not assign the Agreement to anyone. Access Track may assign it to any successor or purchaser of Access Track's business or some of Access Track's assets.
- 20.4 **Relationship.** The Agreement does not create an employment or partnership relationship between the parties. Each party enters into the Agreement as an independent contractor.
- 20.5 **Entire agreement.** The Agreement is the entire agreement between the parties on the subject.
- 20.6 **Changes to any third-party software licence agreement.** Access Track will notify the Client of any changes to any third-party software licence terms by placing a notice in a prominent place on Access Track's website, or notifying the Client by email. The updated third-party software licence terms will be effective immediately and the Client will be deemed to have accepted them upon notification.
- 20.7 **Waiver.** Any favour Access Track may allow the Client will not affect any of Access Track's rights against the Client.
- 20.8 **Severability.** Any term that is invalid, unenforceable, or illegal may be removed from the Agreement without affecting the rest of it.
- 20.9 **Privacy notice.** The Client agree to the terms of Access Track's **Privacy Policy**, which is accessible on Access Track's Trust Centre at www.accesstrack.co.za/trust-centre website, and is incorporated into this Agreement by this reference.
- 20.10 **Publicity.** A party will not make any announcement or statement to the press about this Agreement, without first getting written permission from the other party.
- 20.11 **Governing law.** South African law governs this Agreement.
- 20.12 **Resolving disputes.** Either party may inform the other in writing if there is a dispute. The parties must first try to negotiate to end the dispute. If negotiation fails, the parties must refer the dispute to mediation under the rules of AFSA (the Arbitration Foundation of Southern Africa or its successor or body nominated in writing by it in its stead). If mediation fails, the parties must refer the dispute within 15 business days to arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. The arbitration will be held in English in Pretoria. The parties will agree to appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 business days after the referral, the Secretariat of AFSA will appoint the arbitrator. Nothing herein contained shall be deemed to prevent or prohibit a party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.

- 20.13 ***Jurisdiction.*** The Client consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings that Access Track may bring against the Client in connection with this Agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to Access Track's right to institute any action in any other court having jurisdiction.
- 20.14 ***Survival.*** The termination, cancellation, or expiry of this Agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.