

LOCATION BASED SERVICES AGREEMENT

Between

AFRIGIS PROPRIETARY LIMITED

("Company")

Company Registration Number	
Physical Address	
Postal Address	
Telephone Number	
Contact Person	
Email Address	
Signature <i>(who warrants that s/he is duly authorised to Sign)</i>	
Name	
Title	
Date	

And

Client

("Customer")

Company Registration Number	
Country of Domicile	
Physical Address	
Postal Address	
Telephone Number	
Contact Person	
Email Address	
Signature <i>(who warrants that s/he is duly authorised to Sign)</i>	
Name	
Title	
Date	

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1. INTRODUCTION

- 1.1. The Customer wishes to have the Services provided to it via the Company's web service.
- 1.2. The terms and conditions upon which the Company is prepared to provide the Services to the Customer, are set out below.

2. DEFINITIONS

- 2.1. "Active LBS Services" means those services that are initiated by a person lawfully utilising the Target, and in which LBS Information associated with the Target's location is sent by the Company to the Target (i.e. a request for LBS Information pertaining to the Target is made from the Target);
- 2.2. "Affiliate" means with respect to a Party to the Agreement, any other person that Controls, is Controlled by or is under common Control with that Party;
- 2.3. "AfriGIS Enterprise" means the collective software systems, user interfaces, databases and hardware that enables the provision of the Services and the use and unique storage of LBS Information;
- 2.4. "Agreement" means the provisions contained in this document including the schedules and annexures hereto;
- 2.5. "Authorised Site(s)" means a site indicated as such in the Particulars, if applicable;
- 2.6. "Business Day" means any day other than a Saturday, Sunday or a day on which banking institutions in the Republic of South Africa are customarily closed;
- 2.7. "Cancellation Fee" means the fee specified as such in the Particulars;
- 2.8. "Commencement Date" means the date on which the Services are first provided to the Customer;

- 2.9. "Company" means **AFRIGIS PROPRIETARY LIMITED**, a company duly registered and incorporated with limited liability in accordance with company laws of the Republic of South Africa with registration no. 1997/0067/16/07;
- 2.10. "Confidential Information" means all tangible and intangible information, in any format or material embodiment and relating to the Services, whether proprietary or not, which the Company has an interest in keeping confidential and which by its nature is or ought to be reasonably identifiable as confidential, and to which the Customer will gain access, whether in writing or in electronic form or pursuant to discussions between the Parties, or which may come to the Customer's knowledge through examination, testing, visual inspection or analysis, and which includes, without limitation the LBS Information;
- 2.11. "Consent" means express, written consent of the Consenter for the request for LBS Information on a Target to be provided to the Requestor or disclosed to another, for a specified Purpose;
- 2.12. "Consenter" means the person who has executed a cellular services contract with a Network Operator for the Target; or the person in lawful possession and control of the Target, as indicated by clauses 7.2, 7.3 and 7.4;
- 2.13. "Customer" means the person identified as such on the cover of this Agreement;
- 2.14. "Event of Force Majeure" means an event beyond the reasonable control of a Party, including an act of God, war, insurrection, earthquake, act of terrorism, storm, flood and any other event which the Party invoking this clause could not reasonably be expected to prevent or control, but shall exclude:
- 2.14.1. any event caused by the negligence of such Party or its Representatives or any failure to observe the standard of care and skill reasonably expected of that Party; and
- 2.14.2. strikes or illegal action by the workforce of a Party;
- 2.15. "Initial Period" means, if applicable, the period specified as such in the Particulars;

- 2.16. "Intellectual Property" means any creation of the mind which is capable of being protected by law from use by any other person, whether in terms of South African law or foreign intellectual property law, and any rights in such creation, including but not limited to patents, inventions, copyright, registered and unregistered designs, registered and unregistered trade marks, know-how, domain names, trade secrets and all other rights and interests of a similar nature in any part of the world, whether registerable or not, and all rights to apply therefor;
- 2.17. "Insolvency Event" means, in relation to a Party:
- 2.17.1. that Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or is deemed unable to pay its debts;
 - 2.17.2. that Party or any other person (save for the purposes of a solvent reorganisation or restructuring) takes any step, gives notice, commences proceedings or an appointment is made for or in connection with the winding up or administration of that Party, which is not terminated or discharged within 21 days;
 - 2.17.3. a distress, execution, sequestration, attachment, security enforcement or similar process in respect of all or substantially all of that Party's assets occurs and such process is not terminated or discharged within 21 days;
 - 2.17.4. that Party enters or seeks to enter into any arrangement with any one or more of its creditors; or
 - 2.17.5. if anything analogous to any of the events/circumstances described in clauses 2.17.1 to 2.17.4 above occurs in any jurisdiction in relation to that Party;
- 2.18. "IVR" means Interactive Voice Response;
- 2.19. "LBS Information" means information on, or associated with, the location of a Target;

- 2.20. "Losses" means losses, damages, costs, charges, expenses, penalties, interest and fines, including those arising as a result of claims, demands, actions, proceedings or suits by any person;
- 2.21. "Minimum Service Requests" means the number specified as such in the Particulars, which is the minimum number of requests for Services that must be made by the Customer per calendar month;
- 2.22. "Monthly Fee" means the amount specified as such in the Particulars;
- 2.23. "MSISDN" means Mobile Station International Subscriber Directory Number which is a number used to identify a mobile phone number internationally;
- 2.24. "Network Operator" means a licensed operator of a cellular network in South Africa, which allows the Company to have access to information associated with the position of MSISDN's on its network;
- 2.25. "Particulars" means the particulars relevant to this Agreement, which are set out in Schedule 1 hereto;
- 2.26. "Parties" means the Company and the Customer; and "Party" means the Company or the Customer, as the context indicates;
- 2.27. "Passive LBS Services" means those Services where LBS Information associated with the location of a Target is initiated by the Company on the basis of a subscription for the provision of such LBS Information to be provided (i.e. by subscribing for certain services, the Consenter has given consent for the location of the Target to be identified and or LBS Information associated with the Target to be communicated to others, as may be necessary for those services);
- 2.28. "Prime" is the rate of interest per annum at which the Company's South African bankers will lend from time to time to the Company on overdraft, which rate of interest shall be ascertained, for the purpose of the Agreement, without any further necessity for proof by a certificate issued by any branch manager of the banker (whose appointment it shall also not be necessary to prove);

- 2.29. "Product" means a product or service which the Customer provides to its clients and which is reliant on the provision of the Services by the Company;
- 2.30. "Purpose" means the purpose for which LBS Information is requested and/or disclosed to another person, as the case may be;
- 2.31. "Representative" means, in relation to a person:
- 2.31.1. a director, officer, agent or employee of that person; or
 - 2.31.2. a sub-contractor or consultant of that person or any other person acting for and on behalf of, or on instruction of that person;
- 2.32. "Requestor" means a person who is requesting LBS Information on the location of a Target;
- 2.33. "Security Requirements" means the regulatory and technical criteria required by law or stipulated by the Company in writing, from time to time, to communicate and/or deal in any way with LBS Information;
- 2.34. "Services" means location based services that use cellular network providers to identify the location of a mobile telephone or other communication devices;
- 2.35. "Services Fee" means the Transaction Fee and the Monthly Fee;
- 2.36. "Signature Date" means the date on which the last of the Parties signs this Agreement;
- 2.37. "Target" means a device associated with a MSISDN , who's location is to be identified through the provision of the Services;
- 2.38. "Termination Notice" means the period specified as such in the Particulars;
- 2.39. "Tracking LBS Services" means those services where LBS Information associated with the location of a Target is initiated by a Requestor and the Consenter consents to the disclosure of such LBS Information to the Requestor;
- 2.40. "Transaction Fee" means the amount specified as such in the Particulars;

- 2.41. “User” means any third party that may subscribe for and/or use or be provided with the Product by the Customer;
- 2.42. “WASPA” means the South African Wireless Application Service Providers’ Association, the industry body that presents various wireless application service providers, including the Company;
- 2.43. “WASPA Advertising Code” means the advertising rules governing the members of WASPA, drafted and published by WASPA, as updated by WASPA from time to time;
- 2.44. “WASP Agreement” means an agreement concluded or to be concluded between the Company and a third party provider of telecommunications services, including location based services; and
- 2.45. “WASPA Code of Conduct” means the code of conduct drafted and published by WASPA, as updated by WASPA from time to time.

3. INTERPRETATION

- 3.1. The headings to the clauses of the Agreement are for reference only and shall not affect the interpretation of the Agreement.
- 3.2. In the Agreement, unless the context clearly indicates the contrary, any reference to:
 - 3.2.1. The singular shall also include a reference to the plural and vice versa;
 - 3.2.2. Any one gender shall include a reference to the other gender;
 - 3.2.3. A person shall include a reference to a natural or juristic person.
- 3.3. Any schedules to the Instrument of Agreement or the Particulars shall form part of the Agreement and any reference to the Agreement shall include such schedules.

- 3.4. Notwithstanding the fact that they appear in a definition clause, any and all substantive provisions contained in the definition clause 2, shall be deemed to be incorporated in and form part of the Agreement.

4. COMMENCEMENT AND TERMINATION

- 4.1. The Agreement shall commence on the Commencement Date and shall endure for the Initial Period, if any. Thereafter, the Agreement shall remain in force until:
- 4.1.1. termination by the Customer on provision of written notice to the Company for the Termination Notice Period;
 - 4.1.2. termination by a Party in accordance with clause 16 (Breach and Termination);
 - 4.1.3. termination by the Company in accordance with clause 11.2 (Minimum Service Requests); or
 - 4.1.4. termination by a Party in accordance with clause 20 (Force Majeure).
- 4.2. Notwithstanding clause 4.1, the Customer may terminate the Agreement before the expiry of the Initial Period for convenience on provision of written notice to the Company for the Termination Notice Period, in which case the Customer will be liable for the Cancellation Fee, and such Cancellation Fee shall become immediately due and payable to the Company.
- 4.3. In the event that the Agreement expires, or is terminated/cancelled by either Party, or otherwise ceases to be of force or effect, the Customer's right to be provided with LBS Information shall immediately cease and the Company shall have no obligation to provide the Services to the Customer.

5. WASP AGREEMENT

- 5.1. The Customer acknowledges that the Company is bound by one or more WASP Agreements with various third party providers of telecommunications

services and that the Company's ability to provide the Services to the Customer are dependent on the ability of the Company to have certain services provided to it under the WASP Agreements.

- 5.2. The Company shall be entitled to amend and/or vary and/or supplement this Agreement on 7 (seven) days written notice to the Customer, and the Customer shall, unless it notifies the Company, in writing, of its objection to the variation of this Agreement within 7 (seven) days of receipt of such notice of variation, be deemed to have agreed to such variation and shall be bound thereby.

6. USE OF THE SERVICES BY THE CUSTOMER

- 6.1. The Company will provide the Services to the Customer at the Authorised Site(s), to enable the Customer to provide the Product to its clients. The Customer will not use the Services or the LBS Information for any purpose other than the purpose of providing the Product to its clients. The Customer will not use the Services at any site other than the Authorised Site(s). The Customer will not use the Services or the LBS Information for any fraudulent or *mala fide* purpose or for any improper, immoral or unlawful purpose.
- 6.2. The Customer will not communicate the LBS Information to any person, other than to a person in respect of which Consent has been obtained for such Purpose.
- 6.3. The Customer will ensure that its systems, processes and communication of LBS Information are appropriately secure to prevent any LBS Information from falling into the hands of an unauthorised person.
- 6.4. The Company shall be entitled, in its sole and absolute discretion (and by whatever means the Company may deem appropriate, including but not limited to, random testing) to conduct an audit to determine whether the Customer's systems, processes and communication meet the Security Requirements.
- 6.5. The Company shall be entitled, immediately and without notice, to suspend the Customer's right to request and be provided with, the Services, and

communicate and otherwise deal in the LBS Information, if in its sole and absolute discretion, the Customer's systems, processes and communications do not, in the sole opinion of the Company, meet the Security Requirements.

6.6. In the case where Services are accessed through an interface other than the AfriGIS Enterprise, or LBS Information is stored in the systems of the Customer, it shall:

6.6.1. Prior to being provided with the Services by the Company, the Customer will submit a certificate from a recognised auditing firm registered with the South African Institute of Chartered Accountants (SAICA) or Public Accountants and Auditors Board (PAAB), confirming that the Customer and its systems and processes comply with the Security Requirements.

6.6.2. The cost of the audit referred to in clause 6.6 above shall be for the Customer's account, and the Company shall be entitled to require the Customer to have similar audits carried out on its systems and processes at such intervals as the Company may direct. The production of an audit certificate as envisaged in clause 6.6 above shall not necessarily mean that the Customer's application to be provided with the Services will be approved by the Company.

6.6.3. In the event that the Customer in any manner prevents the Company from exercising its rights as detailed in clause 6.4 above, whether prior to or after the Services are first provided by the Company, then the Company shall be entitled to reject the Customer's application to utilise the LBS services or once commenced, to immediately and without notice, suspend or terminate the Customer's right to be provided with the Services.

6.7. In the event that the Company determines (as it in its sole and absolute discretion may do) that the Customer cannot or has not complied, or can no longer comply with the Security Requirements, then the Company may immediately and without notice reject the Customer's application to be

provided with the Services or once deployed, immediately and without notice suspend the Customer's right to be provided with the Services.

- 6.8. If the Customer wishes to be provided with the Services for any product/service that will be branded differently or marketed separately from the Product specified in the Particulars, it will make separate applications for the provision of the Services for such product/service that it desires to launch, which shall be considered by the Company separately.

7. CONSENT AND REGULATORY CRITERIA

- 7.1. When Passive LBS Services or Tracking Services are provided, the privacy of a natural person in lawful possession of a Target must be protected at all times, and neither the Customer or the Company is entitled to provide any LBS Information associated with a Target to any Requestor or to any third party, entity or application without the Consenter's Consent for the specific LBS Information in question, the Purpose of the request or disclosure and the specific third party recipient proposed to receive such LBS Information.
- 7.2. When Passive LBS Services or Tracking Services are provided and the Target is a **mobile device** directly in the lawful possession and under the lawful control, of a natural person, that person will be the Consenter and must give Consent for the specific LBS Information in question, the Purpose of the request or disclosure and the specific third party recipient proposed to receive such LBS Information.
- 7.3. When the Target is not a mobile device but it is directly in the lawful possession and under the lawful control, of a person, e.g. a point-of-sale device, the Consenter will be the person who has executed a cellular services contract with a Network Operator for the Target, and the Consenter must give Consent for the specific LBS Information in question, the Purpose of the request or disclosure and the specific third party recipient proposed to receive such LBS Information.
- 7.4. In instances where the Target is not directly in the lawful possession and under the lawful control, of a natural person, the Consenter will be the person who

has executed a cellular services contract with a Network Operator for the Target, and the Consenter must give Consent for the specific LBS Information in question, the Purpose of the request or disclosure and the specific third party recipient proposed to receive such LBS Information.

- 7.5. The Customer will ensure that its Users are aware that use of the Product will result in LBS Information being used by and disclosed to the Customer, solely for the specific Purpose for which the Consenter has provided his/her Consent.
- 7.6. The Customer will obtain the necessary Consent from the Consenter for each instance in which the Target is located by the Company and for each instance in which the LBS Information associated with that Target is disclosed to the Customer or to a third party, for the Purpose. Such Consent may be provided by a Consenter on subscription for the Product or on a case-by-case basis, at each time at which LBS Information associated with a Target is requested and/or disclosed to a third party.
- 7.7. Consent can be obtained from a Consenter electronically via a web-based interface, by Short Message Service (SMS), IVR, Unstructured Supplementary Service Data (USSD) or other means, provided that the identity of the Consenter must be successfully authenticated for such Consent to be valid.
- 7.8. The Consent obtained from the Consenter must be specific in that the Consenter must be informed of the specific LBS Information proposed to be obtained and/or disclosed to a recipient, the recipient to which the LBS Information is proposed to be disclosed and the purpose of the proposed disclosure.
- 7.9. Neither the Company nor the Customer will disclose LBS Information associated with a Target, to an anonymous Requestor, as the Consenter must have Consented to the Target being located by a specific Requestor for a specific Purpose. The identity of the Requestor must be authenticated by the Customer on each request for LBS Information.
- 7.10. Where Active LBS Services and Passive LBS Services are provided by the Company, discrete case-by-case Consent will be obtained from the Consenter

for the provision of LBS Information associated with that Target and the disclosure of such LBS Information to the Customer or a third party for the specific Purpose. In the case of certain emergency services (which display a combination of features of Active and Tracking Services) discrete Consent may be obtained by the Customer using an IVR system or a recorded voice consent.

- 7.11. Where Consent is obtained from a Consenter on subscription to a Product, then an “opt-out” reminder must be sent to the Consenter on a 30-day basis to enable the Consenter to withdraw such Consent.
- 7.12. The Consenter must be able to opt-out of having a Target located at any time that it wishes to do so. The Consenter is entitled to withdraw its Consent to the provision of LBS Information to the Customer or a third party or suspend such Consent for either a fixed or indefinite period and in these circumstances, the Company shall not be obliged to provide the Services to the Customer.
- 7.13. The Consenter is entitled to specify the precise times (such as the period of the day or day(s) of the week or month(s) or year) during which the Target can be located by the Customer. The Customer shall not (and shall ensure that its Representatives do not) request the Services in relation to a Target or LBS Information pertaining to a Target during any period outside the period for which Consent has been obtained from the Consenter.
- 7.14. Where Tracking Services are provided with regard to a Target, the Customer will invite the Consenter to register and to add Requestors who may be provided with LBS Information associated with the Target for a specified Purpose. In this instance, the Consenter shall be entitled to choose the period for which his/her Consent will remain valid and must be afforded an opportunity to renew his/her Consent periodically, provided that the maximum period for Consent to be valid shall be no longer than 30 days.

8. RECORD STORING

The Customer will ensure that all communication of the LBS Information between the Customer and the Company are properly recorded and stored for a minimum period of 5 (five) years.

9. ADVERTISING, MARKETING AND PROMOTION

- 9.1. The Customer shall be responsible at its own cost for all its own publicity and promotional material for the Products and shall at all times throughout the duration of this Agreement ensure that all publicity and/or promotional material issued by it or on its behalf in respect or in connection with the Services comply in all respects with the WASPA Code of Conduct and WASPA Advertising Rules.
- 9.2. The Customer will, on the reasonable written instructions of the Company withdraw the publication or procurement or dissemination, via any medium or in any form whatsoever, of any material or statement promoting, advertising, marketing, or referring directly or indirectly to the Company or the provision of the Services.
- 9.3. The WASP shall not be entitled to represent and/or advertise, promote or market the Product as a product or service of the Company, without the Company's prior written consent.

10. FEES AND PAYMENT

- 10.1. In consideration for the provision of the Services, the Customer will pay to the Company the Services Fee as stipulated in the Particulars.
- 10.2. The Customer shall adhere to the Company' technical and billing criteria and/or specifications as may be stipulated and amended by the Company from time to time, as well as such other criteria, including but not limited to advertising criteria, as determined by the Company from time to time.
- 10.3. The Services Fee will be paid by the Customer to the Company in arrears within 30 (thirty) days of issue of an invoice in respect thereof.

- 10.4. Payment of the Services Fee will be made in cash, in South African Rand, free of exchange, without deduction or demand and by electronic transfer to a bank account nominated by the Company.
- 10.5. The Company will be entitled to increase the Services Fee, provided that:
- 10.5.1. The Company will not increase the Services Fee on more than one occasion per calendar year and on such occasion, the Company will not increase the Services Fee by more than the larger of: (i) 15%; or (ii) the percentage increase passed on to it by the Network Operators; and
- 10.5.2. The Company will give the Customer not less than 30 (thirty) days' prior written notice of such increase.
- 10.6. The Company reserves the right to suspend the provision of the Services in the event that the Customer has not paid any Services Fee or instalment or part of the Services Fee by its due date.
- 10.7. All amounts which the Customer is required to pay to the Company in terms of the Agreement and which are not paid on due date will bear interest at Prime from the due date until the actual date on which payment is received by the Company.
- 10.8. The said interest will be calculated monthly in arrears of the due date of payment and will be compounded monthly.
- 10.9. The Company's right to charge interest on outstanding amounts will not detract from any other rights that the Company may have in terms of the Agreement.
- 10.10. The Services Fee will, unless the contrary is agreed between the Parties in writing, include the WASP bearer fees and tariff bands.

11. MINIMUM REQUESTS FOR SERVICES

- 11.1. The Customer will generate the Minimum Service Requests set out in the Particulars.

- 11.2. If the Customer fails to meet the Minimum Service Requests for any period, then the Company will be entitled, at its sole discretion, to terminate the Agreement on provision of 1 (one) month's written notice to the Customer.

12. ASSIGNMENT OF RIGHTS TO THIRD PARTIES

The Customer's rights as set out herein may not be ceded or assigned by the Customer to any third party, or exercised by, or through any third party.

13. INTELLECTUAL PROPERTY

- 13.1. The Customer recognises and agrees that the intellectual Property associated with the LBS Information and the Services and/or any result, reproduction, adaptation, modifications, and/or any other derivative material provided by the Company to the Customer are:

13.1.1. the exclusive intellectual property of the Company or third party licensors of the Company;

13.1.2. to be considered by the Customer as strictly confidential; and

13.1.3. provided to the Customer in the utmost confidence.

- 13.2. The Company warrants that it is lawfully entitled to provide the Services on the terms and conditions set out in the Agreement.

- 13.3. Neither Party will use or permit or procure the use of any names, devices, logos or trade marks, or any combination of such names, devices, logos, or trade marks which are proprietary to the other Party, whether or not such names, devices, logos or trademarks are registered or not, in any press release, press or public statement, information leaflet, advertisement or any other public document, without the prior written consent of the other Party.

14. CONFIDENTIALITY

- 14.1. The Customer will not sell, transfer, publish, disclose, display, or otherwise make available to third parties the Confidential Information of the Company, except as may expressly be authorised by the Company. The Customer

agrees to secure and protect the Confidential Information and to take appropriate action by written agreement with its employees, agents and/or sub-contractors with unlimited access to the Confidential Information to satisfy its obligations in terms of this Agreement.

14.2. The Customer will promptly notify the Company as soon as it becomes aware of any breach of the confidentiality obligations set out herein and shall furnish all assistance to the Company in connection with the investigation of the same. The Customer will use its best efforts to assist the Company in identifying and preventing any unauthorised use or disclosure of any portion of the Confidential Information.

14.3. The obligations and undertakings relating to confidentiality and non-disclosure, whether contained in this clause or elsewhere in this Agreement, will survive termination of this Agreement.

15. AUDIT

The Customer shall permit authorised representatives of the Company, at all reasonable times, to audit the Customer's use of the LBS Information at the Authorised Site to determine that the provisions of this Agreement are being faithfully performed. All costs associated with such audit shall be for the account of the Company except where a breach of this Agreement is identified, in which event the Customer shall be liable for the full cost of such audit.

16. DISCLAIMER OF WARRANTIES

16.1. The Customer acknowledges that LBS Information provided by the Company is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate or incomplete location information may lead to death, personal injury, property or environmental damage.

16.2. While the Company will take all reasonable steps to ensure that the transmission of LBS Information is secure, the Customer acknowledges that

such transmissions are unencrypted and that the Company does not warrant that “eavesdropping” will not occur.

- 16.3. The Services provided by the Company are provided on an “as is” basis, without warranty of any kind, whether express or implied.
- 16.4. All conditions, representations, warranties, terms and undertakings, express or implied, statutory or otherwise, in respect of the Services and the LBS Information are expressly excluded to the extent permissible by law.
- 16.5. The Company expressly disclaims and waives all warranties regarding or relating to the Services, including all warranties of merchantability, fitness for a particular purpose, performance and non-infringement of third party Intellectual Property.
- 16.6. The Company does not warrant and specifically disclaims any representations that the Services will meet the Customer’s or any User’s requirements; that the Services will be uninterrupted; or that the LBS Information will be error-free.

17. LIABILITY

- 17.1. Neither the Company nor any of its affiliate companies, agents, distributors, members, service providers, officers, agents, directors, employees, servants or the like, shall assume responsibility or be liable for any losses, costs, damages, expenses, claims (whether direct, indirect, special or consequential), or injuries or death, incurred or sustained by any person, whether arising directly or indirectly from the use or misuse by any person of the LBS Information, or the provision by the Company or failure by the Company to provide Services.
- 17.2. Without derogating from the generality of the foregoing, the Company will have no liability to the Customer or a third party with respect to loss of goodwill, profit or business or for any special, indirect or consequential loss or damage, whether in delict or in contract, even if it has been advised of the possibility of such damages.

- 17.3. To the extent that the Company's liability cannot be disclaimed in law, the Company's aggregate liability for Losses of the Customer, for any reason and upon any cause of action, will be limited to 50% (fifty per cent) of the aggregate Services Fees paid to the Company.
- 17.4. In the case where a Network Operator imposes a penalty on the Company or suspends the service due to the actions of the Customer, such Penalty, Legal cost and possible loss of revenue due to deactivation of the service will be passed on to the Customer.

18. THIRD PARTY WARRANTIES AND LIABILITY

- 18.1. The Customer warrants, at the Signature Date and at all times during the term of the Agreement, that:
- 18.1.1. No judgements have been recorded against said Customer.
- 18.1.2. the Customer has never been declared insolvent.
- 18.2. The Customer acknowledges that the accuracy of the location based service is determined by the density of the cell centroid which will vary from one cell to another. The Customer acknowledges that the Company cannot guarantee and shall not be responsible for the accuracy, correctness or completeness of the LBS Information. The Customer acknowledges and accepts that quality and coverage of the service provided by the Company shall be limited to that provided by the Network Operators and that the services may, from time to time, be adversely affected by physical features such as buildings and underpass, as well as atmospheric conditions and other causes of interference.
- 18.3. The Customer must ensure that no warranties with regard to the accuracy, correctness or completeness of the LBS Information or the Services are given to the Users and that any liability that the Company may have for Losses resulting from an act or omission of the Company, is disclaimed, to the full extent of the law, in its agreements with Users.

- 18.4. The Customer will include, in any agreement between the Customer and a User, a disclaimer of liability that is substantially of the following form:

*Neither **CLIENT NAME ("CLIENT")**, AFRIGIS (PTY) LIMITED ("AFRIGIS") or any of their affiliate companies, agents, distributors, members, officers, agents, directors, employees, servants or the like shall assume responsibility or be liable for any losses, costs, damages, expenses, claims (whether direct, indirect, special or consequential), or injuries or death, incurred or sustained by any person, whether arising directly or indirectly from the use or misuse by any person of, or the provision by **CLIENT** or AFRIGIS of, or failure by **CLIENT** or AFRIGIS to provide, the location based service.*

- 18.5. The Customer will ensure that a disclaimer substantially of the form set out in clause 18.4 appears on all advertising and promotional material of the Customer relating to the provision and use of the Product.

- 18.6. The Customer will include, in any agreement between the Customer and the Users, an acknowledgement and disclaimer of implied warranties, substantially of the following form:

*"You acknowledge that the accuracy of the location based service is determined by the density of the cell centroid which will vary from one cell to another. You acknowledge that neither **CLIENT NAME ("CLIENT")** nor AFRIGIS (PTY) LIMITED ("AFRIGIS") can guarantee and shall not be responsible for the accuracy, correctness or completeness of the location based information. You acknowledge and accept that quality and coverage of the service provided by **CLIENT** shall be limited to that provided by AFRIGIS or Network Operators or other service providers and that the services may, from time to time, be adversely affected by physical features such as buildings and underpass, as well as atmospheric conditions and other causes of interference."*

19. BREACH AND TERMINATION

- 19.1. If a Party:

- 19.1.1. materially breaches the Agreement and fails to remedy the breach within 30 (thirty) days of written notice to do so (such notice specifying the breach); or
- 19.1.2. becomes the subject of an Insolvency Event;
- 19.1.3. the Customer fails to pay the Services Fee on or before the date on which it becomes due and payable and fails to remedy such breach within 30 (thirty) days of written notice to do so;
- 19.1.4. the Customer sells or attempts to sell its business to a third party which agreement effects its ability to fulfil its obligations as set out in the Agreement;
- 19.1.5. the Customer commits any act or omission which can be construed by a third party that it purports to be the owner of the Intellectual Property pertaining to, associated with or embodied in, the LBS Information or the Services; or
- 19.1.6. the Customer furnishes the Company with misleading or false information which in any way effected the conclusion of the Agreement or relationship of the Parties during the term of the Agreement,

then that Party shall be in default which shall entitle the other Party to terminate the Agreement on written notice to that Party.

- 19.2. In the event that the Agreement expires, is terminated/cancelled by either Party, or otherwise ceases to be of force and effect for whatever reason:
 - 19.2.1. shall be without prejudice to any existing rights and/or claims that a Party may have against the other Party;
 - 19.2.2. all amounts payable by the Customer to the Company, shall become immediately due and payable; and

- 19.2.3. all rights and obligations of the Parties contained in the Agreement shall forthwith be terminated (save for those obligations of the Customer which specifically or by their nature survive the termination of the Agreement) and in particular, the Customer shall have no right to access or use the Software/Content, in any manner whatsoever, and the Company shall have no further obligations to provide the Customer with access to the Software/Content or provide the Support.
- 19.3. All provisions of the Agreement which, to give effect to the meaning, needs to survive its termination, shall remain in full force and effect after termination.

20. FORCE MAJEURE

- 20.1. Failure on the part of a Party to comply with any of the terms and conditions of the Agreement shall not give rise to any claim for damages or for termination or cancellation in so far as (i) such failure has arisen from an Event of Force Majeure and (ii) the Party invoking the provisions of this clause has: (i) taken all reasonable alternative measures with the object of carrying out its obligations and avoiding failure, and (b) taken all reasonable steps to remove the cause of such failure and to comply with its obligations under the Agreement with the minimum delay.
- 20.2. Such Party shall notify the other Party in writing as soon as reasonably possible of the circumstances constituting an Event of Force Majeure and giving rise to its failure to perform and shall thereafter further notify the other Party, as soon as reasonably possible, of the removal or cessation of such circumstances.
- 20.3. If an Event of Force Majeure continues for a period exceeding 30 (thirty) days, either Party shall be entitled to give one month's written notice of termination of the Agreement.

21. CHOSEN ADDRESSES

- 21.1. The Company chooses as its chosen addresses for all purposes under the Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the addresses set out on the cover of this Agreement.
- 21.2. The Customer chooses as its chosen address for all purposes under the Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the physical address set out on the cover of this Agreement.
- 21.3. Any notice or communication required or permitted to be given in terms of the Agreement shall be valid and effective only if in writing but it shall be competent to give notice by email (provided that there is no non-delivery message received).
- 21.4. Any Party may by notice to any other party change its chosen addresses to another addresses, provided that the change shall become effective *vis-à-vis* that addressee on the 5th (fifth) Business Day from the deemed receipt of the notice by the addressee.
- 21.5. Any notice to a Party:
- 21.5.1. delivered by hand to a responsible person during ordinary business hours at its chosen physical address shall be deemed to have been received on the day of delivery; or
- 21.5.2. sent by email to its chosen email address stipulated above, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).
- 21.6. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen addresses.

22. ARBITRATION

- 22.1. Any other dispute arising out of or in connection with the Agreement or the subject matter of the Agreement, shall be referred to arbitration as set out in this clause 22.
- 22.2. The Parties shall agree on the arbitrator who shall be an attorney or advocate on the panel of arbitrators of the Arbitration Foundation of Southern Africa (“**AFSA**”). If agreement is not reached within 10 Business Days after any Party calls in writing for such agreement, the arbitrator shall be an attorney or advocate nominated by the Registrar of AFSA for the time being.
- 22.3. The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment as arbitrator, and a copy shall be furnished to the other Parties who may, within 7 (seven) days, submit written comments on the request to the addressee of the request with a copy to the first Party.
- 22.4. The arbitration shall be held in Cape Town, South Africa, and the Parties shall endeavour to ensure that it is completed within 90 (ninety) days after notice requiring the claim to be referred to arbitration is given.
- 22.5. The arbitration shall be governed by the Arbitration Act, 1965, or any replacement Act and shall take place in accordance with the commercial arbitration rules of AFSA.
- 22.6. The arbitrator need not strictly observe the principles of law and may decide the matters submitted to him according to what he considers equitable in the circumstances.
- 22.7. Nothing contained in this clause 22 shall prohibit a party from approaching any court of competent jurisdiction for urgent interim relief.
- 22.8. The decision of the arbitrator shall, in the absence of fraud or manifest or clerical error, be final and binding upon the Parties. Any Party shall be entitled

to apply to a court of competent jurisdiction to have such decision made an order of court.

23. ASSIGNMENT

Neither Party shall cede, delegate or assign all or any of its rights and/or obligations in terms of the Agreement without the prior written consent of the other Party.

24. ENTIRE CONTRACT

The Agreement contains all the express provisions agreed to by the Parties with regard to the subject matter of the Agreement and the Parties waive the right to rely on any alleged express provision not contained in the Agreement.

25. NO REPRESENTATIONS

No Party may rely on any representation which allegedly induced that Party to enter into the Agreement, unless the representation is recorded in the Agreement, save that nothing in this clause shall limit a Party's liability for fraud or fraudulent misrepresentation.

26. VARIATION, CANCELLATION AND WAIVER

26.1. No waiver of any right under the Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

26.2. No amendment or variation of this Agreement by the Customer shall be effective unless reduced to writing and signed by or on behalf of the Company.

27. INDULGENCES

No relaxation or indulgence which may be granted by any Party to the other shall be construed as a waiver by any Party of any of that Party's rights arising out of the Agreement, nor shall it in any way prejudice that Party's rights or preclude that Party from exercising any of its rights in the future.

28. SEVERABILITY

If any undertaking is or becomes unenforceable for any reason, it shall be severable from, and not affect any of, the other undertakings or the rest of the Agreement.

29. APPLICABLE LAW

The Agreement shall be interpreted and implemented in accordance with the law of the Republic of South Africa.

30. RELATIONSHIP OF THE PARTIES

The Agreement does not authorise any Party to act as the agent of the other, nor does it create a partnership, joint venture or similar relationship between the Parties.