

Austracker GPS Customer Agreement

This Agreement is between:

1. **Austracker GPS Pty Ltd** ACN 147 990 994 of Suite 1a, 45 Riversdale Road, Newtown, Victoria 3220 (**Austracker, we, us or our**)
2. The party specified as the customer in the Quotation (**Customer, you or your**)

Part A: Introduction

1. Interpretation

1.1 In this Agreement:

- (a) **Agreement** means this Austracker GPS Customer Agreement, together with the relevant Quotation.
- (b) **Austracker GPS Platform** means the website and online portal that is available at <http://www.austracker.com.au/Login.aspx> through which tracking devices can be viewed and managed.
- (c) **Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act* 2010 (Cth).
- (d) **Confidential Information** means any and all data and information of any nature and in any form (including electronic, magnetic and other intangible forms, whether capable of being read by human beings or not) concerning the operations, dealings, organisation, personnel, business strategies, customers, technology, Intellectual Property Rights, trade secrets or know-how of a person which is received by, disclosed to or discovered by the other party before, on or after the date of this Agreement under, in connection with or as a result of this Agreement or any action taken under this Agreement, but does not include information which:
 - (i) is or becomes part of the public domain through no act, failure to act or default of the Receiving Party or any person associated with, or who received that information from or as a consequence of disclosure by, the Receiving Party;
 - (ii) is disclosed to the Receiving Party by a third party lawfully in possession of such information and who is under obligation to maintain such information in confidence;
 - (iii) was in the Receiving Party's possession prior to receipt by, disclosure to or discovery by the Receiving Party; or
 - (iv) is developed independently by the Receiving Party without use of or reference to the other party's information.
- (e) **Corporations Act** means the *Corporations Act* 2001 (Cth).
- (f) **Delivery** has the meaning given to it in clause 4.1.
- (g) **Device Specifications** means the Manufacturer's written specifications for the GPS Device, a copy of which will be provided by us to you on request.
- (h) **Disclosing Party** means the party to whom Confidential Information belongs or relates.

- (i) **Dispatch** means the date when the GPS Device leaves Austracker's premises for Delivery to the Supply Address .
- (j) **End User** means those employees, agents and contractors whom the Customer authorises to access and use the Services.
- (k) **Fees** means the fees specified in the Quotation (or as otherwise varied in accordance with this Agreement) for the Services and sale or rental of the GPS Device, and includes the Rental Fee.
- (l) **GPS Data** means the GPS data that is generated by the GPS Device.
- (m) **GPS Device** means the hardware, ancillary cables and equipment, and software comprising the global position system that is supplied by Austracker to the Customer under this Agreement.
- (n) **Hosting Services** means the collection of GPS Data and storage of the GPS Data by Austracker in accordance with clause 15.
- (o) **Intellectual Property Rights** means all present and future intellectual and industrial property rights conferred by statute, at civil, common law or in equity and wherever existing, including:
 - (i) patents, designs, copyright, rights in circuit layouts, database rights, trade marks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
 - (ii) any application or right to apply for registration of any of the rights in paragraph (a);
 - (iii) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
 - (iv) all renewals and extensions of these rights.
- (p) **Insolvency Event** means, in respect of a party, any one or more of the following events or circumstances:
 - (i) a winding up, dissolution, liquidation, provisional liquidation, administration or bankruptcy;
 - (ii) having a receiver, receiver and manager, administrator or liquidator (whether provisional or otherwise) or analogous person, appointed to it or any of its property;
 - (iii) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provision of the Corporations Act or any other Law;
 - (iv) seeking protection from its creditors under any Law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors; or
 - (v) any analogous event or circumstance to those described in paragraphs (i) to (iv) under any Law,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other party.

- (q) **Law** means:
- (i) principles of law or equity established by decisions of courts;
 - (ii) statutes, regulations or by-laws of the Commonwealth, a State, a Territory or a government agency; and
 - (iii) requirements and approvals (including conditions) of the Commonwealth, a State, a Territory or a Government Agency that have the force of law.
- (r) **Licence** has the meaning given to it in clause 12.1.
- (s) **Manufacturer** means CalAmp Wireless Networks Corp.
- (t) **Payment Date** means the date for payment of the Rental Fee, as specified in the Quotation.
- (u) **Platform Specification** means the written information about the functional and technical operation of the Austracker GPS Platform that is provided by Austracker to you.
- (v) **PPSA** means *Personal Property Securities Act 2009 (Cth)*.
- (w) **Quotation** means the Austracker quotation that has been provided by Austracker and accepted by you.
- (x) **Receiving Party** means the party to whom Confidential Information is disclosed or who possesses or otherwise acquires Confidential Information belonging or relating to a Disclosing Party.
- (y) **Rental Arrangement** has the meaning given to it in clause 12.1.
- (z) **Rental Fee** means the fee for the Rental Arrangement specified in the Quotation (or as otherwise varied in accordance with this Agreement).
- (aa) **Rental Period** means a period of 1 month (commencing on the Start Date) or as otherwise specified in the Quotation.
- (bb) **Services** means:
- (i) granting the right to access the Austracker GPS Platform subject to the terms of the Licence;
 - (ii) Delivery of the GPS Device;
 - (iii) if specified in a Quotation, installation of the GPS Device in the Tracker Location; and
 - (iv) the Hosting Services.
- (cc) **Start Date** means the date from which the applicable Services will be provided, which will be advised to you and will depend on stock availability.

- (dd) **Supply Address** means the address specified in the Quotation where the GPS Device will be delivered to, or as otherwise agreed.
- (ee) **System Requirements** means:
 - (i) Internet Explorer 8.1 or above;
 - (ii) Mozilla Firefox: the current, latest version or one of the previous 3 versions;
 - (iii) Google Chrome: the current, latest version or one of the 3 previous versions;
or
 - (iv) Opera: the current, latest version or one of the 2 previous versions.
- (ff) **Term** has the meaning given in clause 2.1.
- (gg) **Third Party Licensor** means those third parties who have granted to Austracker the right to sublicense certain rights in and to the Third Party Software.
- (hh) **Third Party Software** means the software and data of a party other than Austracker, that is incorporated into the Austracker GPS Platform or GPS Device.
- (ii) **Third Party Software Terms** means a Third Party Licensor's terms and conditions for use of Third Party Software.
- (jj) **Tracker Location** means the location where a GPS Device will be installed, as advised by you to us.
- (kk) **Virus** means any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware, network, telecommunications service, equipment or any other thing, service or device.

1.2 In this Agreement, unless the context requires otherwise:

- (a) the headings are used for convenience only and do not affect the interpretation of the Agreement;
- (b) a reference to a document includes the document as modified from time to time and any document replacing it;
- (c) a reference to a party is to a party to this Agreement and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (d) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (e) the word "person" includes a natural person, partnership, body corporate, association, governmental or local authority, agency and any body or entity whether incorporated or not;
- (f) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (g) a reference to a thing includes a part of that thing;

- (h) a reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (i) wherever "include", "for example" or any form of those words or similar expressions is used, it must be construed as if it were followed by "(without being limited to)";
- (j) money amounts are stated in Australian currency unless otherwise specified; and
- (k) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (defunct body), means the agency or body which performs most closely the functions of the defunct body.

2. Term of Agreement

- 2.1 This Agreement has effect on and from the Start Date and continues unless terminated earlier in accordance with this Agreement (**Term**).

Part B: Austracker GPS Equipment

3. Introduction

- 3.1 Part B of this Agreement applies to the GPS Devices identified in the Quotation.

4. Delivery

- 4.1 Austracker (or our agents or contractors) will deliver the GPS Devices to you at the Supply Address (**Delivery**), which must be an address within Australia.

5. Terms of Purchase

- 5.1 If the Quotation specifies you will purchase the GPS Device, the terms of this clause 5 apply.
- 5.2 Title in the GPS Device passes to you upon on the latest of:
 - (a) Delivery; and
 - (b) payment to us in full by you for the GPS Device.
- 5.3 Risk of loss or damage to the GPS Device passes to you on Dispatch. You are responsible for all loss or damage incurred to the GPS Device during Delivery.

6. Rental Terms

- 6.1 If you have elected in the Quotation to rent or licence the GPS Device, the terms of this clause 6 apply (**Rental Arrangement**).
- 6.2 Austracker agrees to grant to you and you agree to accept from Austracker a licence to use the GPS Device during the Rental Period on the terms set out in this clause 6.
- 6.3 You:
 - (a) acknowledge that you have no proprietary interest in the GPS Device and have only a right to use the GPS Device under the terms of this Agreement as bailee;

- (b) acknowledge that at all times the title and property in the GPS Device will remain vested in Austracker;
- (c) must not part with possession of the GPS Device without Austracker's prior written consent (such consent to be given or withheld in Austracker's sole discretion); and
- (d) must not assign, transfer, give another person an interest in or create any form of security over this Agreement or the GPS Device, or authorise anyone else to do so, without Austracker's prior written consent (such consent to be given or withheld in Austracker's sole discretion).

6.4 You must:

- (a) use the GPS Device only for the purposes for which it is designed;
- (b) ensure that the GPS Device is used, serviced and maintained in accordance with Austracker's instructions and recommendations, together with any other reasonable requirements of Austracker;
- (c) promptly give Austracker any information that it requests in relation to the GPS Device during the Rental Period;
- (d) take proper care of the GPS Device and keep it in good working order and repair (fair wear and tear excepted) during the Rental Period;
- (e) not allow a lien to be created over the GPS Device;
- (f) make appropriate arrangements to ensure safety with respect to the use, handling, storage and/or transport of the GPS Device;
- (g) protect Austracker's interests in the GPS Device;
- (h) comply with all laws relating to the GPS Device and its operation and use; and
- (i) if any GPS Device is capable of registration, register that item and keep it registered on the Personal Property Securities Register in accordance with the PPSA as directed by Austracker.

6.5 You must do everything necessary to protect the rights of Austracker in the GPS Device during the Rental Period including, without limitation:

- (a) making clear to others, where ownership of the GPS Device is relevant, that Austracker owns the GPS Device; and
- (b) immediately informing Austracker if you become aware of anyone seizing, attempting to seize, interfering or attempting to interfere with the GPS Device.

6.6 Without the prior written consent of Austracker, you must not create or allow to come into existence, or agree to create or allow to come into existence, any encumbrance over, or which otherwise affects, the GPS Device.

6.7 You must ensure that (unless Austracker's prior written consent is obtained, with such consent to be given or withheld in Austracker's sole discretion):

- (a) the GPS Device is not exposed to a risk of loss, damage or detention;
- (b) the GPS Device is not sold, transferred, sub-leased or otherwise disposed of;

- (c) the GPS Device remains at all times in your sole possession and control;
- (d) the interest of Austracker in the GPS Device is not prejudiced and Austracker is not exposed to any liability in respect of or in connection with the GPS Device;
- (e) the GPS Device remains free from distress, execution or other legal process affecting title to, or possession of, the GPS Device;
- (f) no replacement, alteration, modification or addition is made to the GPS Device (or any part of the GPS Device) which could mean that the GPS Device is no longer readily identifiable as Austracker's or which may lead to a material reduction in the value, utility or remaining useful life of the GPS Device; and
- (g) the credit of Austracker is not pledged in respect of any maintenance or repair work undertaken on the GPS Device.

6.8 If you breach any provision of this clause 6, then:

- (a) Austracker (or any agent of Austracker) may enter the relevant site or any other premises where the GPS Device is located and do all things necessary to retake possession of the GPS Device without liability for trespass or any resulting damage;
- (b) you are liable for all costs associated with the exercise by Austracker of its rights under this clause 6.8, which costs are payable to Austracker on demand; and
- (c) you indemnify and must keep indemnified Austracker against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against Austracker or which Austracker may pay, sustain or incur as a direct or indirect result of the exercise by Austracker of its rights under this clause 6.8.

6.9 You must:

- (a) ensure the GPS Device is used and operated in a proper and skilful manner;
- (b) use the GPS Device at all times in the manner for which they were designed and in compliance with all laws, taking into account the age and fair wear and tear of the GPS Device and its anticipated useful life; and
- (c) notify Austracker immediately if you become aware of any damage or destruction of the GPS Device.

6.10 You warrant and represent that during the Term of the Agreement, you will at all times comply with all laws relating to the *Anti-Money Laundering and Counter Terrorism Financing Act (Cth) 2006*.

6.11 To the extent that any damage to the GPS Device is directly caused by Austracker during the Rental Period, Austracker must, at its cost:

- (a) repair the GPS Device; and
- (b) ensure that such repair is carried out:
 - (i) in a competent manner by suitably qualified personnel; and
 - (ii) in accordance with the recommendations of the manufacturer of the GPS Device.

- 6.12 You must inform Austracker in writing immediately if any part of the GPS Device is stolen, lost, damaged or destroyed during the Rental Period (**GPS Device Damage**).
- 6.13 You must, within 5 business days after the occurrence of any GPS Device Damage, pay to Austracker the full retail value of the GPS Device (plus GST) as notified by Austracker to you.
- 6.14 You must pay the Rental Fee to Austracker on each Payment Date during the Rental Period.
- 6.15 On the expiry of the Rental Period, the terms of this clause 6 will automatically renew and continue to apply for rolling terms of 1 month (**Further Terms**) until the earlier of:
- (a) the date on which this Agreement is terminated in accordance with its terms; or
 - (b) a party gives the other party at least 30 days' notice prior to the end of a given month of its intention not to renew the Rental for the following month.
- 6.16 You must not withhold any payment under this Agreement or make a deduction from a payment for any reason, including in the event that:
- (a) any GPS Device is damaged, does not operate, or is not in your possession;
 - (b) you claim to have a set-off, counterclaim or other right against Austracker or any other person; or
 - (c) you have incurred costs as a result of any act, matter, thing or default referable to the maintenance or servicing of the GPS Device.
- 6.17 Austracker may terminate the Rental Arrangement (without further notice to you):
- (a) immediately, in accordance with clause 23.2(a); or
 - (b) on 5 business days' notice, if Austracker is unable to continue to provide the GPS Device to you (in its sole and absolute discretion) for any reason (in which case, we will refund to you any part of the Rental Fee that has already been paid by you to Austracker that relates to a period after termination).
- 6.18 On termination of the Rental Arrangement, you must:
- (a) arrange for the GPS Device to be uninstalled in accordance with our written instructions (a copy of which will be provided to you on termination of the Rental Agreement);
 - (b) return the GPS Device to Austracker in good working order and repair (fair wear and tear excepted) to a place that we reasonably nominate (at your cost); and
 - (c) pay Austracker all arrears of the Rental Fee and any other payments or Rental Fee due up to and including the date of termination.

7. Personal Property and Securities Act

- 7.1 You acknowledge that we may register our interest in the GPS Device pursuant to section 12 of the *Personal Property Securities Act 2009 (Cth)* (**PPSA**) and you will not do anything to prevent us registering our interest in the GPS Device.
- 7.2 You agree to do all things and execute all deeds, instruments or other documents as may be necessary or desirable to give full effect to the provisions of the PPSA.

8. Product Warranty

8.1 Subject to the conditions set out in this clause 8 and clause 22, for 12 months from the date of Dispatch, the GPS Device is warranted:

- (a) to materially conform to the Device Specifications; and
- (b) to be free from material defects in material and workmanship.

8.2 Any:

- (a) storage; installation; use; maintenance; service; or repair of the GPS Device that is not in accordance with our written instructions; or
- (b) alteration, misuse, neglect, abuse or accident affecting the GPS Device,

may void the warranty offered under clause 8.1.

8.3 We, or our authorised representative, will repair, replace or re-supply the GPS Device at our discretion. We reserve the right to repair or replace your GPS Device with a new or equivalent device. In order to claim under this warranty against defects, you must call Austracker on 1-300-893-473 to discuss the defect. If Austracker at its sole discretion, determines that the defect may be repaired under the manufacturer's warranty referred to in clause 8.1, you will be sent a reply paid satchel and you must then send the GPS Device by mail using the reply paid satchel to the address below:

Austracker GPS Pty Ltd
Suite 1a, 45 Riversdale Road
Newtown, Victoria. 3220

All parts or faulty GPS Device that have been replaced or exchanged become our property.

8.4 All costs involved in claiming under this warranty against defects, excluding the cost of freight (to and from us) are your responsibility.

8.5 This warranty only applies to GPS Devices sold and distributed within Australia by Austracker.

8.6 This warranty is not transferable.

8.7 Without limiting clause 8.2, Austracker will not be liable to rectify any defect in the GPS Device if, in our reasonable opinion:

- (a) the GPS Device has been altered or modified without our written authorisation;
- (b) the GPS Device is not repaired by qualified persons or genuine or appropriate quality parts are not used in the repair process;
- (c) the defect is the result of or related to a failure by you to comply with any of your obligations under this Agreement;
- (d) normal wear and tear;
- (e) the defect is the result of or related to the use of the GPS Device other than in accordance with the instructions, operating manual or user guide supplied with the GPS Device under normal use and with reasonable care subject to all terms and conditions set out in this Agreement; or

- (f) defects or damages to the GPS Device from misuse, abnormal conditions or use, improper storage, use with incorrect voltage, exposure to moisture, oils, solvents or extreme environmental changes, neglect, rough handling, abuse, accident, improper installation or acts of God.

9. Installation and use of GPS Device

- 9.1 Unless a Quotation specifies that Austracker is to install a GPS Device, you will be required to self-install, or arrange the installation of (i.e. through an Auto Electrician) the GPS Device in accordance with relevant user manuals.
- 9.2 If a Quotation specifies that Austracker is to install a GPS Device, you authorise us (and our employees, agents and contractors) to install the GPS Device at the Tracker Location on your behalf. Austracker will not be responsible for moving the GPS Device to a different location after we have installed it at the Tracker Location. If the GPS Device is hard wired at the Tracker Location and you wish to move a GPS Device to a different location, you must do so at your cost.
- 9.3 You warrant that you have obtained all consents, approvals and permits necessary for either us or for you to install the GPS Device at the Tracker Location and that if we install the GPS Device at the Tracker Location, we will not breach any applicable Laws. You also warrant that you have obtained all consents, approvals and permits necessary for you to use the GPS Device. Austracker provides no warranty that recording and tracking using the GPS Device or the use of the GPS Data is permitted by any laws, including any laws in relation to surveillance and data privacy.
- 9.4 You indemnify and will keep indemnified Austracker and its related bodies corporate and their officers, employees and contractors (**Austracker Indemnified Parties**), against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against the Austracker Indemnified Parties or which they may pay, sustain or incur as a result of:
 - (a) Austracker's possession, processing, use or other handling of GPS Data, in accordance with this Agreement; and
 - (b) a breach by you of clause 9.3.
- 9.5 You will only use the GPS Device in accordance with the user manuals, documentation and specifications (including the Device Specifications). You agree that you will only remove a GPS Device from a location in accordance with our written instructions. If the GPS Device is removed from a location without following our instructions, it may be deemed to be damaged by you. All GPS Devices provided by us are approved for use with the Austracker GPS Platform.
- 9.6 You agree that you will not directly or indirectly introduce any viruses or other malicious codes to GPS Device, attempt to decompile, or reverse-engineer any part of GPS Device, collect, or attempt to collect, any personal information about other users of the GPS Device without their express permission or use GPS Device in any manner not permitted by this Agreement.

10. No Guarantee of Performance

- 10.1 Subject to the consumer guarantees provided for in consumer protection legislation (including the Australian Consumer Law), Austracker does not warrant that the GPS Device will be error free or will operate error free. The performance of GPS Device is subject to a number of variable factors, including, but not limited to the mobile internet connection available at any time to the GPS Device.

Part C: Services

11. Services

- 11.1 Subject to your payment of all applicable Fees, Austracker will supply the Services to you for the Term on and according to the terms of this Agreement.
- 11.2 Nothing in this Agreement is intended to nor shall it create an exclusive supply arrangement or prevent us from entering into similar agreements with third parties, or from using, selling or licensing materials, products or services which are the same or similar to those provided to you under this Agreement.
- 11.3 We shall provide the Services with reasonable skill and care using appropriately qualified and skilled personnel.
- 11.4 We will use our reasonable endeavours to provide the Services in accordance with any timeframes set out in the relevant Quotation, but do not guarantee that those timeframes will be met and we are without any liability to you if those timeframes are not met.
- 11.5 We warrant that the Austracker GPS Platform shall operate substantially in accordance with the Platform Specification, except that such warranty shall not apply to the extent that any of your systems used to access the Austracker GPS Platform are incompatible or do not comply with the System Requirements.
- 11.6 Subject to clause 11.7, we do not warrant that your use of the Austracker GPS Platform will be uninterrupted, error-free or free from Viruses.
- 11.7 We shall use commercially reasonable efforts to check the Austracker GPS Platform for the most commonly known Viruses on a regular basis using reasonable industry standard anti-virus software and shall implement and maintain security systems relating to the Austracker GPS Platform as we deem reasonable in accordance with good industry practice.
- 11.8 Customer acknowledges that Austracker may need to perform scheduled and unscheduled maintenance of the Austracker GPS Platform from time to time, and that this may interfere with the ability of the End Users to use the Services.
- 11.9 Austracker reserves the right to suspend the Services:
- (a) if you fail to pay any amount owing to Austracker in respect of a Service when due, and you fail to pay that amount within 10 Business Days of receiving notice of failure to pay from Austracker; or
 - (b) if you materially breach a term of this Agreement, and you fail to remedy that breach within 30 days of receipt of a written notice from Austracker requiring that breach to be remedied.

12. Licence to Austracker GPS Platform

- 12.1 Subject to the terms and conditions of this Agreement, Austracker grants to you, a non-exclusive, worldwide, non-transferable and non-sublicenseable licence to access and use and permit End Users (up to the maximum set out in a Quotation) to:
- (a) access and use Austracker GPS Platform to access your GPS Data during the Term; and
 - (b) generate, use and disclose the reports described in clause 12.3 (**Licence**).

- 12.2 Austracker GPS Platform will be made available on-line at such URL as we notify to you from time to time.
- 12.3 The Austracker GPS Platform allows you to generate certain standard reports that will include the GPS Data. If you require a custom report, or any variation to the standard reports available via the Austracker GPS Platform, we may be able to generate such reports. We will advise you of any fees that will apply to in order for us to generate the custom report at the time of your request.

13. Your use of the Austracker GPS Platform

- 13.1 You agree that you will not directly or indirectly introduce any viruses or other malicious codes to Austracker GPS Platform, attempt to decompile, or reverse-engineer any part of Austracker GPS Platform, collect, or attempt to collect, any personal information about other users of Austracker GPS Platform without their express permission or use Austracker GPS Platform in any manner not permitted by this Agreement.
- 13.2 You agree that you will only use the Austracker GPS Platform in accordance with the documentation that are provided to you with the Austracker GPS Platform and you will only access the Austracker GPS Platform via a system that meets the System Requirements.
- 13.3 Austracker will issue you with login IDs and passwords for each End User. You acknowledge and agree that the login IDs and passwords may be used solely to facilitate access to the Austracker GPS Platform by you and the End Users and that you will not, and will ensure the End Users do not, disclose any login ID or password details to any person who is not Customer or the End User to whom the login ID or password details relate.

14. Intellectual Property Ownership and Restrictions

- 14.1 The contents of the Austracker GPS Platform, including its "look and feel" (e.g. text, graphics, images, logos, and button icons), photographs, editorial content, notices, software (including HTML-based computer programs) and other material are protected under applicable laws protecting intellectual property. You will not remove, alter or conceal any proprietary rights notices incorporated in the Austracker GPS Platform. You will not reproduce or modify any part of the Austracker GPS Platform. We and our licensors own all right, title and interest, including all worldwide Intellectual Property Rights, in the Austracker GPS Platform.
- 14.2 We acknowledge and agree that all Intellectual Property Rights in the GPS Data will vest on creation in you.
- 14.3 You grant to Austracker a non-exclusive, non-transferable, royalty free licence, with no right of sub-licence, to use and disclose the GPS Data solely for the purposes of performing our obligations under this Agreement and in any manner legally requested by any law enforcement agency.

15. Availability of GPS Data

- 15.1 Austracker will store all GPS Data for a period of three months from the date of creation, and will make such GPS Data available to you and your End Users via the Austracker GPS Platform for a period of three months from the date of creation.
- 15.2 If you want to access GPS Data that is older than three months (**Old GPS Data**), you may request Austracker to provide you with a copy of the Old GPS Data. Austracker does not guarantee that any Old GPS Data will be available to you and, if it is available, Austracker may charge you a fee for accessing such Old GPS Data.

Part D: General

16. Third Party Software Terms

- 16.1 You acknowledge and agree that the Austracker GPS Platform and the GPS Device may include specified Third Party Software. If you are advised that the Austracker GPS Platform that is the subject of your Licence or the GPS Device, comprises any Third Party Software, you must comply with any relevant Third Party Software Terms advised to you.

17. Use of the GPS Device and Services

- 17.1 You confirm and agree that your use of the GPS Device and Services is not for personal, household or domestic purposes.

18. Fees

- 18.1 Upon acceptance of the Quotation by you, Austracker will issue you an invoice for the GPS Device and Services specified in the Quotation.
- 18.2 All invoices will be payable within 7 days of the date of such invoice and you shall pay such invoice in full using payment service providers such as IntegraPay, as set out in the invoice.
- 18.3 If you fail to pay the Fees in full on or before the due date for payment, we may charge you interest on the outstanding amount at the rate specified from time to time under section 2 of the *Penalty Interest Rates Act 1983* (Vic) on a daily basis from such due date until the date of payment whether before or after judgment, and compounded monthly. If you have a bona fide disagreement or dispute about any amount, you shall not delay paying the undisputed amounts and interest will only be payable on sums properly due to us.
- 18.4 On 1 January of each calendar year, Austracker will undertake a review of the Fees and may, on written notice to you, vary the amount of the Fees (**Fee Variation**), provided that the Fee Variation is no more than **[insert]** each year.

19. GST

- 19.1 Notwithstanding any other provision in this Agreement, if a Provider is or becomes liable to pay **GST** in connection with any Supply:
- (a) the Recipient must pay to the Provider, in addition to the Agreement Price, an additional amount equal to the amount of that **GST**;
 - (b) the Recipient must pay the Agreement Price plus the additional amount on account of GST within 7 days of the end of the month in which a tax invoice is received from the Provider for that Supply or as otherwise provided in this Agreement;
 - (c) if the GST payable in relation to a Supply made under or in connection with this Agreement varies from the additional amount paid or payable by the Recipient under paragraph 19.1(a) such that a further amount of GST is payable in relation to the Supply or a refund or credit of GST is obtained in relation to the Supply, then the Provider will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under paragraph 19.1(a). If an adjustment event occurs in relation to a Supply, the Provider must issue an adjustment note to the Recipient in relation to that Supply within 14 days after becoming aware of the adjustment; and
 - (d) where a party reimburses the other party for an expense or other amount incurred in connection with any wholly or partly creditable acquisition or any wholly or partly

creditable importation made by that other party, the amount reimbursed shall be net of any input tax credit claimable in respect of that acquisition or importation (as the case may be).

19.2 In this clause 19, all italicised and emboldened terms, have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) except that "**GST law**" includes any applicable rulings issued by the Commissioner of Taxation.

19.3 In addition:

- (a) **Agreement Price** means the *consideration* to be provided under this Agreement for the Supply (other than under this clause);
- (b) **Provider** means the party that provides the Supply to the Recipient and includes the *representative member* of the **GST Group** if the Provider is a member of a **GST Group**;
- (c) **Recipient** means the party that receives the Supply from the Provider; and
- (d) **Supply** means any *supply* to the Recipient by the Provider pursuant to this Agreement. However, if the **GST law** treats part of a *supply* as a separate *supply* for the purpose of determining whether **GST** is payable on that part of the *supply* or for the purpose of determining the tax period to which that part of the *supply* will be attributable, such part of the supply will be treated as a separate *supply* for the purposes of this clause.

19.4 Unless otherwise expressly stated, all prices or other sums payable to be provided under or in accordance with this Agreement are inclusive of GST.

20. Guarantee

20.1 If requested by Austracker, at the time of executing this Agreement, you must provide Austracker with a duly executed and stamped Guarantee from the company nominated as the Guarantor in the Quotation and substantially in the form provided to you by Austracker. The Guarantee must remain valid and enforceable during the Term of this Agreement.

20.2 You consent to Austracker obtaining at any time a credit report about you from a credit reporting agency and providing necessary details to that credit reporting agency about you for that purpose.

20.3 If Austracker wants to request a credit report in relation to any individual who may be nominated as a Guarantor in the Quotation, you must obtain all necessary consents from that individual to allow us to request the credit report in relation to that individual.

21. Confidentiality

21.1 Obligations of confidentiality

Subject to clauses 21.2 and 21.3, the Receiving Party must:

- (a) keep the Confidential Information confidential and not directly or indirectly disclose, divulge or communicate any Confidential Information to, or otherwise place any Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;
- (b) take all reasonable steps to secure and keep secure all Confidential Information coming into its possession or control;

- (c) only use the Confidential Information for the purposes of performing, and to the extent necessary to perform, its obligations under this Agreement;
- (d) not memorise, modify, reverse engineer or make copies, notes or records of the Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under this Agreement; and
- (e) take all reasonable steps to ensure that any person to whom the Receiving Party is permitted to disclose Confidential Information under clause 15.3 complies at all times with the terms of this clause 15 as if that person were a Receiving Party.

21.2 Exceptions

The obligations of confidentiality under clause 21.1 do not apply to any disclosure of Confidential Information by the Receiving Party that is necessary to comply with any court order, Law, or the applicable rules of any financial market (as defined in the Corporations Act) if, to the extent practicable and as soon as reasonably possible, the Receiving Party:

- (a) notifies the Disclosing Party of the proposed disclosure;
- (b) consults with the Disclosing Party as to its content; and
- (c) uses reasonable endeavours to comply with any reasonable request by the Disclosing Party concerning the proposed disclosure.

21.3 Authorised disclosure

- (a) A Receiving Party may disclose Confidential Information to any employee, agent, contractor, officer, professional adviser, banker, auditor or other consultant of the Receiving Party (each a Recipient) only if the disclosure is made to the Recipient strictly on a "need to know basis" and, prior to the disclosure:
 - (i) the Receiving Party notifies the Recipient of the confidential nature of the Confidential Information to be disclosed; and
 - (ii) the Recipient undertakes to the Receiving Party (for the benefit of the Disclosing Party) to be bound by the obligations in this clause 15 as if the Recipient were a Receiving Party in relation to the Confidential Information to be disclosed to the Recipient.
- (b) The Receiving Party is liable for any breach of this clause 15 by a Recipient as if the Recipient were a Receiving Party in relation to the Confidential Information disclosed to the Recipient.

21.4 Return or destruction of Confidential Information

Immediately on the written request of the Disclosing Party or on the expiry or termination of this Agreement for any reason, a Receiving Party must:

- (a) cease the use of all Confidential Information of or relating to the Disclosing Party;
- (b) deliver to the Disclosing Party all documents and other materials in its possession or control containing, recording or constituting that Confidential Information or, at the option of the Disclosing Party, destroy, and certify to the Disclosing Party that it has destroyed, those documents and materials; and

- (c) for Confidential Information stored electronically, permanently delete that Confidential Information from all electronic media on which it is stored, so that it cannot be restored.

22. Exclusion of Warranties and Liability

- 22.1 Subject to clause 6, this clause 22 sets out the entire financial liability of the parties (including liability for the acts or omissions of its employees, agents, consultants and subcontractors).
- 22.2 Nothing in these Terms shall exclude or limit either party's liability to the other for:
 - (a) death or personal injury resulting from that party's negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any other liability which cannot be excluded or limited by applicable law.
- 22.3 Subject to clause 22.2, Austracker will not be liable to you for any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data (including GPS Data), loss of reputation or loss of revenue (irrespective of whether the loss or damage is caused by or relates to breach of contract, tort (including negligence), statute or otherwise) arising in connection with use of the GPS Device or Austracker GPS Platform.
- 22.4 Subject to clauses 22.2 and 22.5, our aggregate liability to you in respect of all claims arising out of or in connection with the Service or our obligations under these Terms (whether in tort (including negligence), breach of contract, breach of statutory duty or otherwise) shall be limited in aggregate to the Fees (excluding GST) paid by you to us under this Agreement in the 12 months prior to the date the claim arose.
- 22.5 Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on you by the Australian Consumer Law or any other applicable law that cannot be excluded, restricted or modified by agreement.
- 22.6 To the fullest extent permitted by law, the liability of Austracker for a breach of a non-excludable guarantee referred to in clause 22.5 is limited, at Austracker's option, to:
 - (a) in the case of goods supplied or offered by us, any one or more of the following:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; or
 - (b) in the case of services supplied or offered by us:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

23. Termination

23.1 Either party may terminate this Agreement by giving the other party 30 days prior written notice.

23.2 Austracker may immediately terminate this Agreement, by giving you written notice:

- (a) if you fail to pay any amount owing to Austracker in respect of a Service when due, and you fail to pay that amount within 10 Business Days of receiving notice of failure to pay from Austracker;
- (b) if you materially breach a term of this Agreement, and the breach is not capable of remedy;
- (c) if you materially breach a term of this Agreement, the breach is capable of remedy, but Customer fails to remedy that breach within thirty (30) days of receipt of a written notice from Austracker requiring that breach to be remedied;
- (d) if you are the subject of an Insolvency Event;
- (e) if Austracker reasonably suspects that you or an End User is using a Service in breach of any applicable Law, and you fail to remedy that breach within five (5) days of receipt of a written notice from Austracker requiring that breach to be remedied;
- (f) if you assign or otherwise deal with your rights under the Agreement without Austracker's prior written consent; or
- (g) if you resell or resupply a Service in breach of the Agreement.

23.3 If the Agreement, is terminated for any reason, subject to clause 23.4:

- (a) Austracker will stop providing the terminated Services to Customer and Customer will no longer have the right to use the terminated Services after the date of termination;
- (b) Customer must immediately return to Austracker any licensed GPS Device;
- (c) subject to clause 23.3(d), each party must delete or return to the other all Confidential Information of the other party which is in its custody possession or control, that relate to the terminated Services or have been disclosed or discovered by a party as a result of the terminated Services; and
- (d) Austracker will maintain a copy of the GPS Data in accordance with clause 15.1, after which time it may delete all GPS Data.

23.4 Despite any other provision in this Agreement, this clause 23 and clauses 9.3, 9.4, 10.1, 15.1, 21, 22 and 24, survive the termination of this Agreement.

24. Other things you should know

24.1 Each obligation imposed on a party by this Agreement in favour of another is a separate obligation.

24.2 This Agreement contains the entire understanding between the Parties concerning the subject matter of this Agreement and supersedes all prior communications between the Parties.

- 24.3 A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Agreement.
- 24.4 A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of that power or right.
- 24.5 A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement.
- 24.6 A waiver of a breach does not operate as a waiver of any other breach.
- 24.7 Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction:
- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
 - (b) be severed from this Agreement in any other case,
- without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.
- 24.8 This Agreement binds and benefits the Parties and their respective successors and permitted assigns.
- 24.9 The Customer cannot assign, novate or otherwise transfer the benefit of this Agreement without the prior written consent of Austracker.
- 24.10 This Agreement is governed by and must be construed in accordance with the Laws in force in Victoria, Australia.
- 24.11 The parties submit to the exclusive jurisdiction of the courts of the State of Victoria and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.
- 24.12 Unless this Agreement expressly provides otherwise:
- (a) each indemnity in this Agreement survives the expiry or termination of this Agreement; and
 - (b) a party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given.
- 24.13 Each party is an independent contractor and, unless this Agreement expressly provides otherwise, has no authority to bind or commit the other party.
- 24.14 Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.