

STANDARD TERMS AND CONDITIONS IoT DEVICE AND PLATFORM SUBSCRIPTION



1. INTERPRETATION

- 1.1 In this Agreement
- 1.1.2 clause headings are for convenience only and are not to be used in its interpretation.
- 1.1.3 unless the context indicates a contrary intention an expression which denotes:
 - 1.1.3.1 any gender includes the other genders;
 - 1.1.3.2 a natural person includes a juristic person and vice versa;
 - 1.1.3.3 the singular includes the plural and vice versa.
- 1.2 In this Agreement the following expressions bear the meanings assigned to them hereunder and cognate expressions bear corresponding meanings:
 - 1.2.1 **"Agreement"** means the Order together with these standard terms and conditions. In case of conflict, this standard terms and conditions shall prevail;
 - 1.2.2 **"Business Partner"** means a third party supplier with whom the Supplier has entered into an appropriate agreement to co-operate in the development, supply and operation of the Device, Platform and/or other service components as may be relevant;
 - 1.2.3 **"Customer"** means that party whose particulars appears in Section A of this Agreement;
 - 1.2.4 **"Commencement Date"** means the date of delivery, installation or activation of the particular Service, whichever is later;
 - 1.2.5 **"Customer Data"** means (i) all data pertaining to the Customer, or its end users processed for the purposes of using the Service or facilitating the Customer's use of the Service; (ii) the data inputted by the Customer or data pushed by the Device to the Platform or pulled by the Platform from the Device on the Customer's behalf, for the purpose of using the Service or facilitating the Customer's use of the Service; and includes (without limitation) Personal Information;
 - 1.2.6 **"Device"** means any combination of the following elements: (i) the monitoring or sensing device consisting of amongst others the relevant loggers, probes, sensors, meters and cameras together with all embedded software; (ii) communications devices (as may be relevant) together with all embedded software; and (iii) peripherals consisting of amongst others antennas, transformers and housing; all of which as more particularly described in the Documentation, and specified in the Order;
 - 1.2.7 **"Documentation"** means the documentation in respect of the Device and Service, including relevant technical and functional specifications, service levels, user instructions, terms of use, privacy policy and so forth made available online on www.xlink.co.za, the website used to access the Platform, or such other web address as notified from time to time;
 - 1.2.8 **"Elected Package Option"** means the package option chosen by the Customer as indicated in Section E of this Agreement;
 - 1.2.9 **"Expiry Date"** means two months after receipt of a notice of termination contemplated in clause 2.2;
 - 1.2.10 **"Initial Period"** shall be the minimum period for which the Services hereunder may be subscribed to under this Agreement as specified in 2.1 below;
 - 1.2.11 **"Order"** means an Order placed by a Customer to the Supplier, by the completion of the Service contract form, acceptance of the quotation and/or signature of a proposal, as may be applicable;
 - 1.2.12 **"Personal Information"** has the meaning ascribed to it in the Protection of Personal Information Act, 4 of 2013 ("POPI"), and any applicable law in South Africa and/or any other jurisdiction where the Service is provided and/or used;
 - 1.2.13 **"Platform"** means the particular platform enabling remote monitoring by the Customer, operated by the Supplier and/or Business Partner;
 - 1.2.14 **"Service"** means any combination of the following elements: (i) procurement, supply, delivery and installation of the Device by the Supplier to the Customer; or (ii) the rental of the Device by the Supplier to the Customer and (iii) the maintenance and support services to be provided in respect of the Service; and (iv) the subscription service under this Agreement via the Platform or other website notified to the Customer from time to time; and (v) the electronic communication service enabling communication between the Device and the Platform (if relevant); as more particularly described in the Documentation in accordance with the Elected Package Option as more fully described in the Order;
 - 1.2.15 **"Supplier"** shall refer to XLink Communications (Pty) Ltd (Registration No: 200400047807), with registered offices at Unit 4, Burnside Island Office Park, 410 Jan Smuts Avenue, Craighall, Johannesburg;
 - 1.2.16 **"Warranty"** means the warranty terms and conditions pertaining to the particular Device as specified by the manufacturer and/or distributor and recorded in the Documentation.
 - 1.2.17 **"Warranty Period"** means the period of 12 (twelve) months following activation of the Device or such other period as specified by the particular manufacturer and/or distributor and recorded in the Documentation
- 1.3 Words and expressions defined in any clause shall for the purposes of that clause, bear the meaning assigned to such words and expressions in such clause.
- 1.4 This Agreement shall operate as a severable and distinct agreement in respect of each Order executed in terms hereof.
- 1.5 The Customer acknowledges that the Supplier provides the Service in association with Business Partners and any reference to a right, system, process of, or decision or action taken by the Supplier shall by reference include any right, system, process of, or decision or action taken by such Business Partner as may be appropriate.

2. COMMENCEMENT, DURATION AND TERMINATION:

- 2.1 This Agreement shall commence on the Commencement Date and shall, subject to clause 12, continue for an Initial Period of a minimum of 24 (twenty-four) months or such longer period as may be indicated in the Order.
- 2.2 After expiry of the initial period contemplated in clause 2.1 either party may terminate this Agreement by giving no less than 2 (two) months' written notice of its intention to so terminate.
- 2.3 Failure to terminate this Agreement per 2.2 above shall result in an automatic renewal of the Agreement on a month to month basis or such longer period as may be specified in the Order, on the same terms and conditions.

3. SERVICE

- 3.1 If the Elected Package Option includes the purchase of the Device by the Customer, the Supplier shall procure and deliver the Device on behalf of the Customer on the conditions set out herein.
- 3.2 The Supplier shall be entitled to conduct a pre-installation site visit in order to determine the appropriate Device necessitated by the Customer's existing installation, in which case the Supplier shall prepare a quotation, for acceptance by the Customer within a period of 30 (thirty) days.
- 3.3 The Supplier shall procure and deliver all Devices on behalf of the Customer upon acceptance of the quotation and/or receipt of the deposit (if applicable). The Customer acknowledges that the timely acceptance of the quote and/or payment of the deposit will impact the lead time and could negatively affect the Commencement Date.
- 3.4 After installation of the Devices, the Supplier's representative shall perform the acceptance testing on behalf of the Customer and signature by the Customer of the job card shall be deemed positive acceptance testing confirming that the Device conforms with the Documentation.
- 3.5 Subscription to the Service in accordance with terms and conditions of this Agreement shall afford the Customer a non-exclusive, non-transferable right to use the Service and, if the Elected Package Option includes the rental of the Device, the use and enjoyment of such Device, subject to the provisions specified in the Documentation.
- 3.6 The Service is provided subject to the Documentation and the Customer shall at all times be bound to the provisions specified therein.

4. SUPPLY:

- 4.1 The Supplier shall utilise its best endeavours to promptly comply with all delivery, installation and/or activation requirements recorded in the Order, but shall not be liable to the Customer in the event that such

- 4.2 delivery, installation and/or Activation is delayed or cancelled, for whatsoever reason. All risk in and to the Device and/or SIM Card supplied and delivered by the Supplier to the Customer shall pass to the Customer on delivery. The Customer shall take out and maintain adequate all risk insurance in the Device as well as public liability insurance pertaining to the use of the Device and/or Service, and shall ensure that the Supplier's interest therein is duly noted in the Policy. The Customer shall provide the Supplier with proof thereof upon request.

- 4.3 The Supplier may be required to suspend the Service to Customers from time to time because of technical failure or maintenance to the Platform, Access Point Names (APNs) or other disruptions to the electronic communications network or due to the acts or omissions of third parties outside the control of the Supplier. Customers may not cancel Agreements because of the suspended Service and billing shall remain intact.

5. CHARGES:

- 5.1 In consideration of the provision of the Service, the Customer shall effect payment of the charges as detailed in Section E of this Agreement, whether or not the Services are being utilised by the Customer.
- 5.2 The Supplier may increase its charges annually in line with the CPIX index and reserves the right to adjust its charges after expiry of the Initial Period and such increased charges will be communicated to the Customer in writing.
- 5.3 The Supplier may introduce new and/or additional charges from time to time and such additional charges will be communicated in writing to Customers before being levied. Should the Customer not accept such additional charges, the Customer may, notwithstanding clause 2.1, elect to cancel this Agreement on 2 (two) months' written notice.
- 5.4 The Customer shall be liable for any charges incurred as a result of the Customer's abuse, misuse or unauthorised use of the Service and/or any damage incurred as a result of the Customer's failure to comply with any provision contained in the Agreement and/or Documentation, as well as for any charges incurred as a result of the loss or theft of the SIM Card and/or Device.

6. PAYMENT

- 6.1 The Supplier shall be entitled to require payment of any site inspection charges and/or deposit applicable to the purchase of any Device, by the Customer in advance if so specified in the Order.
- 6.2 The first payment in respect of all other charges shall be due and payable upon delivery, installation or activation of the Service. The first payment shall include the installation charge (if applicable) and the pro rata apportionment of the monthly charges. Thereafter all payments shall be made in a single monthly installment without any deductions whatsoever on the first working day of each and every month until Expiry Date, by way of debit order payment and according to the debit order authorisation contained in Section C of this Agreement. Payment shall be made into the account that the Supplier may from time to time in writing direct.
- 6.3 Monthly charges shall be invoiced and payable monthly in advance and all other charges shall be payable on demand.
- 6.4 Invoices and statements will be emailed or faxed to Customers.
- 6.5 The Supplier reserves the right to suspend its Service if amounts due are not paid within 10 (ten) days of invoice date.
- 6.6 The Supplier shall charge interest at the prime lending rate as quoted by First Rand Bank of South Africa Limited, on all overdue amounts owing by the Customer.
- 6.7 The Customer agrees that the Supplier may perform credit control checks as it deems necessary at a credit bureau of its choice. The Customer acknowledges and agrees that any information regarding the Customer's creditworthiness, defaults in payments to the Supplier and details of how the Customer has conducted the account with the Supplier may be disclosed to any other creditor and/or to one or more credit information bureau. The Customer indemnifies the Supplier in respect of any claim whatsoever or howsoever arising, including third party claims, from the Supplier exercising these rights.
- 6.8 All payments due to the Supplier shall be in respect of the full invoice amount, and shall not be reduced or off-set by any taxes and/or levies due as a result of a requirement by any government (which shall include, but not be limited to, any Value Added Tax, importation tax, withholding tax and general sales tax) and all these taxes and/or levies, shall be paid by the Customer without dispute.
- 6.9 A certificate under the hand of any director or manager for the time being of the Supplier (whose appointment need not be proved) as to any amount due and owing by the Customer hereunder shall constitute prima facie evidence of the matters herein stated for the purposes of provisional sentence or summary judgment proceedings or for any other purpose.

7. MAINTENANCE

- 7.1 Defective Devices shall for the duration of the Warranty Period, be repaired or replaced at the Supplier's sole discretion, subject to the Warranty. If the Service includes the rental of the Device, the Supplier shall, at its sole discretion, repair or replace Devices that are faulty due to fair wear and tear and which is not attributable to any act of omission on the side of the Customer. If the Supplier supplies the SIM Card in terms of this Agreement, defective SIM Cards will be replaced.
- 7.2 Any maintenance or support falling outside the scope of the Warranty and/or Warranty Period or attributable to any act of omission of the Customer (including but not limited to damage caused by insects, rodents or liquids or caused by the Customer's abuse, misuse or negligence) shall be subject to payment of the Supplier's quoted service charges.
- 7.3 The Customer shall be liable for callout charges if unwilling to co-operate with the telephonic support provided by the helpdesk.

- 7.4 If the Device and/or Service fails to operate satisfactory for any reason, the Customer shall give notification thereof to the Supplier by way of telephonic communication to be directed to the help desk of the Supplier, and shall thereafter be confirmed by the Customer by telefax or e-mail. The help desk will upon receipt of such communication use its best endeavors to respond in terms of service levels specified in the Documentation, provided that the response time in dealing with such a complaint shall be within a reasonable time after receipt of such notice and having regard to the urgency and nature of the incident and physical location of the Device.

8. DELIVERY INSTALLATION AND COMMISSIONING OF THE SERVICE

- 8.1 The Customer shall, at its own cost and expense, ensure that the premises (which include the installation areas, electrical outlets, connection requirements and access ways) are suitable for the installation, passage and electrical connection and appropriate electrical supply of the Device when delivered for installation and thereafter.
- 8.2 The installation of the Device shall be effected by the Supplier or a person/s duly authorised by the Supplier and the Customer shall ensure that access to the premises is provided.

9. CUSTOMER OBLIGATIONS

- 9.1 The Customer hereby warrants and undertakes in favour of the Supplier that it:
 - 9.1.1 shall keep a secure password for the use of the Service and shall prevent any unauthorised access to, or use of, the Service and, in the event of any such unauthorised access or use, shall promptly notify the Supplier;
 - 9.1.2 shall not use or allow the Service to be used for any application which may, in the event of a malfunction, cause death, personal injury or substantial damage to property and undertakes that it shall indemnify, keep indemnified and hold the Supplier harmless against any loss, damage, cost, expense of liability in respect of such use;
 - 9.1.3 shall not use or allow the Service to be used for any improper, immoral or unlawful purpose, nor in any way which may cause an impairment or interruption to the Service;
 - 9.1.4 shall only use the Device and/or SIM Card installed and delivered by the Supplier to gain access to the Service, and shall comply with all relevant instructions or directives regarding the use of the Service, Device and/or SIM Card as well as any legislation and regulations imposed by any other competent authority;
 - 9.1.5 recognises that no right, title or interest in the software used in the Service and/or embedded in the Device and/or, if the Device is rented, in the Device, vests in the Customer;

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9.1.6 shall not and shall not permit any third party to attempt to copy, modify, duplicate, create derivative works from, frame, mirror, re-publish, download, display, transmit, or distribute all or any portion of the software, Service and/or Documentation in any form or media or by any means;

9.1.7 shall not and shall not permit any third party to reverse compile, reverse engineer, decompile, disassemble, repair, modify or tamper with the Device, software utilised in the Device and/or Service, or attempt to do so.

9.2 The Customer shall -

9.2.1 at all times keep the Device and/or SIM Card in its possession or under its control and take reasonable care to protect it from loss or damage and shall not allow the Device and/or SIM Card to be removed from the premises in which it was installed;

9.2.2 only allow competent and authorised persons to operate the Device at the Customer's expense and only for the purposes and the manner in which it was designed and/or intended;

9.2.3 permit the Supplier to inspect and examine the Device at all reasonable times and arrange for the Supplier to be admitted to the premises for this purpose;

9.2.4 not allow any removal or obliteration of identification marks or serial numbers in and/or on the SIM Card or Device; and

9.2.5 timely notify the Supplier of any changes (including expansions or alterations) to the premises or installation which may impact on the Service and the Customer acknowledges and agrees that such change may necessitate a site visit, at the relevant charge, to enable the Supplier to assess whether any changes to the Service is required as a consequence of such changes.

10. DATA PRIVACY AND PROTECTION

10.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility of the legality, reliability, integrity, accuracy and quality of the Customer Data.

10.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier.

10.3 The Customer shall ensure that its use of the Service and its treatment of Customer Data complies with all applicable laws, rules, regulations and orders.

10.4 The Customer expressly warrants and undertakes that it shall at all times comply with any contractual terms and conditions or legal requirements applicable to the use of location based services and hereby indemnify and hold the Supplier harmless against any damages, losses, liabilities, settlements and expenses of whatsoever nature howsoever arising whether in delict, contract or statute.

11. LOSS, DAMAGE OR DESTRUCTION OF THE DEVICE AND/OR SIM CARD

11.1 In the event that the Service is not available to the Customer due to loss, theft or damage to the SIM Card or Device, the Customer shall continue to be liable for all charges in respect of this Agreement.

11.2 If the Supplier supplies a SIM Card and/or Device for rental in terms of this Agreement and such SIM Card or Device is stolen, the Customer shall immediately notify the South African Police Service and the Supplier shall, subject to clause 4.2, only be liable for replacement thereof on presentation of the case number and only if the theft was accompanied by violent or forced entry.

11.3 Should the Customer, following loss, damage or destruction of the Device and/or SIM Card, elect not to continue to receive the Services under this Agreement, the cancellation terms of clause 2.3 shall automatically apply.

12. BREACH

12.1 The Customer shall be in breach of this Agreement, should:

12.1.1 the Customer default in the payment of any monthly charges or any other sum payable hereunder; or

12.1.2 the Customer allow any judgment which might be taken against it to remain unsatisfied or not appealed for 5 (five) business days; or

12.1.3 the Customer be sequestered or commit any act of insolvency or call a meeting of creditors or make any arrangement or composition with its creditors or in the event of it being wound-up voluntarily or compulsory or be placed under judicial management, or have a receiver appointed over its assets; or

12.1.4 the Customer's property be attached under any writ of execution or legal process issued against any Customer or under any attachment; or

12.1.5 the Customer commit any act or thing which may prejudice the Supplier's rights under this Agreement including but not limited to any use of the Service in a manner that may pose a business, technological or legal risk to the Supplier or any other users of the Platform; or

12.1.6 the Customer commit or suffer or permit the commission of any material breach of any of the provisions of this Agreement or any Documentation, or despite warning, so persistently breaches the provisions thereof so as to evidence an intention not to be bound by the terms hereof; or

12.1.7 the Customer fails to obtain the Supplier's consent regarding any change of premises; or

12.1.8 the Customer cancels the debit order referred to in clause 6 or change its banking details upon which the debit order relies, without the prior written consent of the Supplier; or

12.1.9 the Customer elects to terminate this Agreement without cause prior to the expiry of the Initial Period.

12.2 In any of the aforesaid events the Supplier, without prejudice to the Supplier's other rights under this Agreement or at common law, and notwithstanding any previous waiver or anything to the contrary herein contained, shall be entitled but not obliged and without further notice forthwith: -

12.2.1 to suspend the Customers access to the Service; and/or

12.2.2 to cancel this Agreement and to recover from the Customer the full balance of charges under the Agreement and any other sums payable by the Customer hereunder to date of such cancellation together with, as pre-estimated liquidated damages, the future charges which could have fallen due in terms of this Agreement from the date of termination until the earliest possible Expiry Date and any other damages.

12.3 On termination of the Agreement, the Supplier shall disconnect the SIM Card and/or Device from the Service and the Customer shall be required to return the SIM Card and/or Device rented to the Customer in terms of this Agreement, within 7 (seven) days to the Supplier's registered office at the Customer's sole risk and expense, failing which the Supplier may elect to collect the SIM Card and/or Device and the Customer shall be liable for payment of the collection charge, and shall further, upon demand, pay the Supplier all amounts due under this Agreement at the date of such termination, and if the SIM Card and/or Device is not recoverable for whatsoever reason, the replacement cost thereof.

12.4 Either party shall be liable to pay the other on demand all legal and other expenses incurred by a party in successfully enforcing its rights under this Agreement, including (but not limited to) collection, commission, tracing fees and other legal expenses, on the scale as between attorney and own client, whether action is instituted or not.

13. LIMITATION OF LIABILITY

13.1 The Supplier accepts no responsibility for any losses whatsoever caused through the use of the Service, the Supplier shall not be held liable for any losses resulting therefrom and the Customer shall indemnify and hold the Supplier harmless against any loss, damage, cost, expense of liability in respect thereof. More specifically the Supplier will not be liable to the Customer or any third party:

13.1.1 for any loss or damage arising directly or indirectly as a result of abuse, misuse or unauthorised use of the Service which shall include any use contrary to the provisions of this Agreement or Documentation or its intended purpose;

13.1.2 any delays, delivery failures, or any other loss or damage resulting from the transfer of data over the Platform or electronic communications network;

13.1.3 for any loss of revenue, business contracts, anticipated savings, or profits or for any indirect or consequential loss whatsoever for any reason including, but not limited to, unavailability of the Service due to a network malfunction, Platform malfunction or defective SIM Card, Device and/or Service;

13.1.4 for any delays or failure to perform if such delay is caused by circumstances beyond its control including fire, flood or other catastrophe or by reason of strike, lockouts, labour disputes or mechanical or electrical breakdown.

13.2 Neither party shall be held liable for any indirect, special or consequential losses (including loss of profit), injury, damage, fines, taxes or other fiscal charges, penalties and claims of any nature whatsoever howsoever arising including but not limited to losses or damages arising out of or relating to the Supplier's performance or the performance of a Business Partner or third party supplier of services or a component of the services, or the failure to perform under this Agreement.

13.3 In no event shall either party's liability towards the other exceed the value of the subscription costs paid by the Customer in the previous 12 (twelve) months under this Agreement.

14. CESSION AND ASSIGNMENT

14.1 No part of this Agreement may be ceded, assigned, transferred or made over by the Customer without having secured the prior written consent of the Supplier, which consent shall not be unreasonably withheld.

14.2 The Supplier shall be entitled to cede, assign, transfer or make over all or any of its rights or obligations in terms of this Agreement or any part thereof, without notice to the Customer.

15. ENTIRE AGREEMENT

15.1 This Agreement constitutes the whole of the Agreement between the parties hereto relating to the subject matter hereof, and save as otherwise provided hereto no waiver, amendment, alteration, addition, variation or consequential cancellation shall be of any force or effect unless reduced to writing and signed by the parties hereto.

15.2 Notwithstanding anything contained to the contrary in this Agreement, the Supplier shall be entitled, in its reasonable discretion, to amend this Agreement from time to time (prospectively and not retroactively), on 7 (seven) days written notice to the Customer. Such changes may include but not be limited to consequential changes necessitated by a change in the contractual terms and conditions between the Supplier and the Business Partner.

16. GENERAL:

16.1 Notwithstanding anything to the contrary, the Supplier does not warrant that the Service is fit for purpose or will be uninterrupted, error-free or completely secure. The selection of the device and the manner of installation thereof shall at all times be based on the assessment by the Customer of its requirements and the Customer acknowledges and agrees that it does not and shall not rely on any information supplied or recommendations made by the Provider relating thereto. The parties agree that no other conditions, warranties or representations whether oral or written, and whether express or implied, whether by statute or otherwise shall apply hereto.

16.2 The Service may not be used for any application which may, in the event of malfunction, cause death, personal injury or substantial damage to property and the Supplier shall have no liability in instances thereof.

16.3 The Supplier shall be entitled at any time and with immediate effect to temporarily or permanently suspend the Service, or part thereof and/or terminate this Agreement, in all cases without liability in the event that any license, permission or authorisation necessary for the operation of the Service is revoked or temporarily or permanently suspended, or in the event of any act or omission of third parties (outside the control of the Supplier).

16.4 This Agreement shall in all respects be governed by and construed in accordance with the laws of the Republic of South Africa, and all disputes, actions and other matters in connection therewith shall be determined in accordance with such law.

17. WARRANTY TO REPRESENT

17.1 The signatory of this Agreement warrants that he is duly authorised to represent the Customer in concluding an Agreement with the Supplier in terms whereof the Company has acquired the Service subject to the terms and conditions contained herein.

18. SURETY BY DIRECTORS OF A COMPANY (PUBLIC OR PRIVATE) OR MEMBERS OF A CLOSED CORPORATION

18.1 Where the Customer is a company or close corporation, the person signing the Agreement hereby binds him/herself as surety for and co-principal debtor jointly and severally with the Customer to the Supplier for the due and punctual payment by the Customer of all its obligations to the Supplier whether presently due, owing and payable, or becoming due owing and payable in the future for all outstanding monies owed to the Supplier in the event that the Customer fails, for whatever reason, to pay any the outstanding charges and agrees that this Agreement will apply in the same way to him/her.

| | |
|---------------------------------------------|-----------------|
| SIGNATURE OF SURETY AND CO-PRINCIPAL DEBTOR | |
| FULL NAME | IDENTITY NUMBER |
| DATE | |

The above terms and conditions read, understood and accepted.

| | |
|-------------------------------------------------------------|-------------|
| SIGNATURE OF THE DULY AUTHORISED REPRESENTATIVE OF CUSTOMER | |
| FULL NAME OF REPRESENTATIVE | DESIGNATION |
| FULL LEGAL NAME OF CUSTOMER | |
| REGISTRATION NUMBER OF CUSTOMER | DATE |