

# SUBSCRIBER AGREEMENT FOR ALTECH NETSTAR INDIVIDUAL SUBSCRIBER

## 1 CONTRACT

1.1 The Subscriber requires certain vehicle tracking Equipment and Netstar Services from Netstar, and Netstar has agreed to provide the vehicle tracking Equipment and Netstar Services to the Subscriber.

1.2 This Contract sets out the terms which will apply to the vehicle tracking Equipment and Netstar Services provided by Netstar to the Subscriber, regardless whether this Contract has been signed by the Subscriber.

## 2 DEFINITIONS AND INTERPRETATION

2.1 The words and phrases stated below will be used throughout the Contract. When reading the Contract, the word or phrase must be given the meaning set out next to it.

"*Application Schedule*" means the form which sets out the identity of the Subscriber, details of the Netstar Service which will be provided by Netstar, the identity of the Vehicle for which the Netstar Service will be provided and the fees payable for the Netstar Service;

"*Business Day*" means Monday to Friday, excluding weekends, being Saturday and Sunday and excluding a public holiday as defined under the Public Holiday Act, 36 of 1994;

"*Contract*" means this agreement, the Application Schedule, the Netstar User Manual and related literature and where applicable, any addendum to this agreement;

"*Effective Date*" means the date when the Equipment is installed into the Vehicle;

"*Equipment*" means the Netstar tracking unit, and SIM card (if any) installed in the Vehicle Equipment used to provide the Netstar Service and which is sold or rented to the Subscriber under this Contract;

"*GSM Network*" means the Global Systems for Mobile Communications Network, which is a wireless communications network over which the GSM Service is provided by Netstar, where applicable;

"*GSM Service*" means the services provided by Netstar in terms of the Contract using the GSM Network;

"*Information*" means any information relating to the Subscriber which has been provided to Netstar by the Subscriber as well as any information transmitted by the Equipment, which includes but is not limited to the location of the Vehicle, the driving behaviour of the Subscriber and if the Vehicle is involved in an accident;

"*Initial Period*" means the period of the Contract, as stated under the Application Schedule;

"*Netstar*" means Altech Netstar (Proprietary) Limited, a South African company bearing registration number 1992/001223/07 with its registered office at Block O, Central Park Offices, Midrand, and includes its employees, agents and contractors as well as any and all of its business divisions including but not limited to Altech Netstar Fleet Solutions;

"*Netstar Control Centre*" means the Netstar centre where signals from the Equipment can be monitored and acted upon by Netstar;

"*Netstar Fitment Centre*" means an independent entity that has been authorised and approved by Netstar to install the Equipment on Netstar's behalf into the Vehicle in terms of the Application Schedule;

"*Netstar Service*" means the Equipment and various services provided by Netstar in terms of the Contract which includes the response, tracking and an attempt to recover any reported or suspected stolen or hijacked Vehicle;

"*Netstar User Manual*" means the user guide, training materials and related documents provided to the Subscriber, which states how the Netstar Service operates;

"*Network Service Provider*" means the service provider who provides the GSM Network;

"*Parties*" means both the Subscriber and Netstar collectively and "*Party*" means either the Subscriber or Netstar;

"*Subscriber*" means the Party to whom this Contract applies, whose details are more specifically set out in the Application Schedule;

"*Territory*" means the countries in Southern Africa stated in the Netstar User Manual where the Netstar Service is available, which may be amended at Netstar's sole discretion from time to time by written notice to the Consumer;

"*VAT*" means value added tax as levied from time to time in terms of the Value Added Tax Act, 89 of 1991;

"*Vehicle*" means the vehicle stated in the Application Schedule or any addendum for which the Netstar Service will be provided;

"*Voice-logged Contract*" means an oral Contract concluded telephonically by the Subscriber with Netstar for the Netstar Service to which the terms and conditions of this Contract apply.

2.2 The provisions of this Contract will take precedence over any conflicting provision found under the Netstar User Manual, Application Schedule or any other applicable document which may be provided to the Subscriber from time to time.

2.3 Words referring to the single form will include the plural form and words referring to one gender will include the other gender.

## 3 AGREEMENT TO PROVIDE THE NETSTAR SERVICE

3.1 The Subscriber has agreed to contract with Netstar for the Netstar Service and Netstar has agreed to provide the Netstar Service to the Subscriber on the terms set out in this Contract.

3.2 Where the Subscriber has entered into a Voice-logged Contract, the Subscriber agrees that the terms of this Contract will apply in all respects to the Netstar Service which the Subscriber telephonically requested and which Netstar agreed to provide to the Subscriber.

## 4 DURATION OF THE CONTRACT

4.1 The duration of the Contract will be for the Initial Period, commencing on the Effective Date, unless terminated earlier by either of the Parties, as permitted in terms of this Contract.

4.2 On expiry of the Initial Period, and provided that the Subscriber has not confirmed that the Contract will terminate on the expiration of the Initial Period, the Contract will continue on an indefinite basis, and either Party will have the right to terminate the Contract on 1 (one) calendar months written notice to the other.

4.3 Where the Equipment is purchased by the Subscriber, there will be no Initial Period applicable and either Party will have the right to terminate the Contract at any time upon 20 (twenty) Business Days written notice to the other.

## 5 SUBSTITUTE VEHICLES AND ADDITIONAL VEHICLES

5.1 The Subscriber may at any time add on a vehicle or substitute another vehicle for the Vehicle in respect of which the Netstar Service is being provided, in the manner directed by Netstar.

5.2 Where a Vehicle has been added or substituted for another Vehicle, the Subscriber will be liable to Netstar any additional fees relating to the Netstar Service, including the costs of removal and or installation of the Equipment as the case may be and authorises Netstar to increase the amount of any debit order stated under the Application Schedule accordingly, which increase will be effective from the date of installation of the Equipment in the new or substituted Vehicle.

5.3 The terms set out in this Contract will apply in all respects to the Netstar Service in respect of any new or substituted Vehicle.

## 6 THE NETSTAR SERVICE, EQUIPMENT AND WARRANTIES

6.1 Netstar will provide the Subscriber with the Netstar Service for the duration of the Contract, provided that the Subscriber complies with its obligations under the Contract.

6.2 On conclusion of the Contract, the Subscriber will present the Vehicle for the installation of the Equipment at a Netstar Fitment Centre or alternatively at such place as pre-arranged with Netstar.

6.3 Netstar will only be obliged to provide the Netstar Service for Equipment which has been provided and installed in the Vehicle by a Netstar Fitment Centre or by Netstar.

6.4 Although the Contract will commence on the Effective Date, the Subscriber accepts that the Netstar Service cannot be provided by Netstar or used by the Subscriber unless the Equipment is properly installed in the Vehicle, is programmed, enabled and is functioning according to Netstar's specification.

6.5 If the Equipment is purchased from Netstar, ownership and risk of any loss or damage, in the Equipment will pass to the Subscriber on the Effective Date.

6.6 If the Equipment is rented from Netstar, ownership in the Equipment will stay with Netstar but the risk of loss or damage in the Equipment will pass to the Subscriber on the Effective Date.

6.7 In the case of a GSM Service the Subscriber will as soon as possible but within 48 (forty eight) hours notify Netstar and the Police, of any loss, damage or theft of the SIM card.

6.8 Netstar warrants that the Equipment will be free of defects in workmanship, design and materials for the full duration of the Initial Period and where the Equipment is purchased for cash by the Subscriber the Equipment will carry a 12 (twelve) month warranty from the Effective Date.

6.9 The Subscriber agrees not to alter or modify the Equipment under any circumstances. If the Equipment is tampered with, altered, modified, misused or is damaged as a result of a collision, water or any other cause beyond Netstar's control, including fair wear and tear, then the warranty set out under clause 6.8 will not apply and Netstar will have not have any obligation to repair or replace the Equipment or provide the Netstar Service, or refund to the Subscriber any amounts claimed by the Subscriber, in respect of any warranty, damages or contractual claim.

6.10 Any maintenance or repairs which are required in terms of the Netstar warranty will be carried out by a Netstar Fitment Centre at no cost to the Subscriber.

6.11 The Subscriber must ensure that the Equipment is working properly at all times and is free from any malfunction by testing the Equipment as stated in clause 6.12 and in the Netstar User Manual.

6.12 THE SUBSCRIBER MUST HAVE THE EQUIPMENT TESTED BY THE NETSTAR CONTROL CENTRE, AT LEAST EVERY 6 (SIX) MONTHS AND IF THE VEHICLE HAS BEEN INVOLVED IN AN ACCIDENT, HAS UNDERGONE REPAIRS OR A MECHANICAL SERVICE OR PANEL BEATING. Testing must be done by prior arrangement with Netstar and is at no cost to the Subscriber subject to a maximum of 5 (five) free tests per year. Any additional tests will be at the Subscriber's own cost and expense as per Netstar's standard rates applicable from time to time and available on request.

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- 6.13 NETSTAR WILL BE RELIEVED OF ITS OBLIGATION TO PROVIDE THE NETSTAR SERVICE AT ANY TIME THAT THE EQUIPMENT IS NOT FUNCTIONING PROPERLY.
- 6.14 Where the Equipment is not functioning properly, whether under warranty or not, and the Subscriber has failed to have the Equipment tested as per its obligation under clause 6.12 or 6.13 or has not made any attempt to have the Equipment repaired by a Netstar Fitment Centre, the Subscriber will still be liable to pay the Netstar Service fee.
- 6.15 The Subscriber will notify the Netstar Control Centre immediately should the Equipment be accidentally activated. The Subscriber accepts responsibility for all consequences of any accidental activation of the Equipment, which may include a response by the police or response teams and a subsequent wrongful arrest of the Subscriber or any third party. THE SUBSCRIBER AGREES TO HOLD NETSTAR HARMLESS FROM, AND INDEMNIFIES NETSTAR AGAINST ANY CLAIMS FOR DAMAGES THAT MAY BE BROUGHT BY ANY PARTY AS A RESULT OF ANY ACCIDENTAL ACTIVATION OF THE EQUIPMENT.
- 6.16 The Subscriber agrees to use the Equipment and the Netstar Service in accordance with the Netstar User Manual and other literature provided by Netstar from time to time.
- 6.17 Subject to clause 7.6, the Netstar Service will be provided in the Territory. Netstar is not obliged to render the Netstar Service outside the Territory.
- 6.18 It is recorded that Netstar may at any time change the Network Service Provider who provides the GSM Service or use facilities other than a GSM Service to provide the Netstar Service provided that Netstar's obligations to the Subscriber as provided under the Contract will not be affected.
- 7 NETSTAR SERVICE FEES**
- 7.1 The fees for the Netstar Services will include the following:
- 7.1.1 where the Equipment is purchased by the Subscriber, the once off purchase price for the Equipment;
- 7.1.2 where the Equipment is rented by the Subscriber, the monthly rental fee in respect of the Equipment;
- 7.1.3 an installation fee for installing the Equipment in the Vehicle;
- 7.1.4 the monthly service fee for the Netstar Service;
- 7.1.5 international roaming charges, where activated; and
- 7.1.6 where a Vehicle has been added on or substituted for the existing Vehicle, a fee for installation or removal of the Equipment as the case may be.
- 7.2 Where the Effective Date does not fall on the first day of the month, the Subscriber will pay a pro-rata amount for the Netstar Service in respect of that month, calculated on a daily basis from the Effective Date and the Subscriber will not be billed for the period prior to the Effective Date.
- 7.3 Notwithstanding anything to the contrary in this clause, the fees stated in clause 7.1 as applicable, for the first 2 (two) months of the Contract (pro rata where applicable) will be paid on the Effective Date, in the manner directed by Netstar.
- 7.4 Where the Subscriber has elected to subscribe for the GSM Service, which is provided over the Network Service Provider's network, the Subscriber will, in addition pay a fee for the GSM Service, in accordance with the tariff package set out under the Application Schedule as well as the costs of SMS messages, voice calls, data messages, and any other related expenses, notwithstanding that the SIM card may, through no fault of the Subscriber, have been lost and fraudulently used by a third party.
- 7.5 The fees will be set out in a monthly VAT invoice which will be provided to the Subscriber on a monthly basis.
- 7.6 Should the Subscriber require an international roaming service, and the Netstar Service is provided to the Subscriber outside the borders of the Republic of South Africa but within the Territory, the Subscriber will be responsible for all and any charges which may be charged by the Network Service Provider, in respect of the international roaming service at standard rates, applicable from time to time.
- 7.7 WHERE AN INTERNATIONAL ROAMING SERVICE IS ACTIVATED AS STATED IN CLAUSE 7.6, THE SUBSCRIBER HOLDS NETSTAR HARMLESS FROM ANY LIABILITY FOR ANY COSTS AND CHARGES WHICH MAY BE INCURRED IN RESPECT OF THE INTERNATIONAL ROAMING SERVICE AND AGREES THAT IT WILL BE LIABLE FOR ANY CLAIM BROUGHT AGAINST NETSTAR BY THE NETWORK SERVICE PROVIDER, IN RESPECT OF SUCH FEES.
- 7.8 International roaming charges will be billed in arrears and the Subscriber acknowledges and accepts that Netstar is dependent on the Network Service Provider for the billing information and that billing may therefore be delayed due to delays by the Network Service Provider, beyond the control of Netstar.
- 7.9 Subject to clause 7.8, all fees will be paid by way of debit order in favour of Netstar free of bank charges or in any other manner approved by Netstar, monthly in advance on or before the 7th (seventh) day of each calendar month or such date as specified in the debit order authorization contained in the Application Schedule.
- 7.10 Should any debit order be returned unpaid or dishonoured for any reason, the Subscriber authorises Netstar to submit additional debit orders as may be necessary for the full outstanding balance including any arrear amounts.
- 7.11 Netstar will have the right to increase the Netstar Service fee and charges on an annual basis, provided that such increase is reasonable and that it provides the Subscriber with at least 1 (one) month's prior written notice of such increase in which event the Subscriber will be entitled to cancel this Contract as permitted in terms of clause 8.
- 7.12 If, as a result of a signal from the Equipment, or at the Subscriber's request, Netstar renders any service not required of it in terms of this Contract, the Subscriber agrees that it will pay Netstar an amount determined in accordance with Netstar's standard fees applicable from time to time, for such service rendered.
- 7.13 The Subscriber will not be allowed to withhold payment of any fees or other amounts due to Netstar where the Equipment is not functioning properly for any reason. Where this is the case, the Subscriber must immediately inform Netstar and make the necessary arrangements with Netstar for the Equipment to be repaired by a Netstar Fitment Centre.
- 7.14 If the Subscriber fails to pay to Netstar any amount owing in terms of this Contract, Netstar will have the right to suspend the Netstar Services and will give the Subscriber 20 (twenty) Business Days to make payment of all outstanding amounts. Should Netstar not receive payment as requested in the notice, Netstar will have the right to terminate the Contract and hand the outstanding account to an attorney or debt collector for recovery.
- 7.15 During any period of suspension or disconnection, Netstar reserves the right to refuse to release the SIM card to the Subscriber or to any other Party.
- 7.16 Where the Subscriber's insurance company or employer pays the Netstar Service fees to Netstar on behalf of the Subscriber, THE SUBSCRIBER AUTHORISES NETSTAR IN THE EVENT OF ANY DEFAULT OF PAYMENT, CANCELLATION OF THE INSURANCE POLICY OR TERMINATION OF EMPLOYMENT CONTRACT, TO DEBIT THE SUBSCRIBER'S BANK ACCOUNT DIRECTLY WITH THE MONTHLY NETSTAR SERVICE FEES AT THE NORMAL RETAIL RATE.
- 8 RIGHT TO TERMINATE PRIOR TO EXPIRY OF THE INITIAL PERIOD**
- 8.1 The Subscriber may elect to cancel the Contract at any time for any reason including where the Vehicle is sold or written off in an accident subject to clause 8.2.
- 8.2 Where the Subscriber elects to cancel the Contract, the Subscriber may do so upon 20 (twenty) Business Days written notice to Netstar and where such notice has been provided by the Subscriber prior to the Initial Period, the Subscriber must pay a reasonable cancellation fee together with any other amounts due and payable in terms of this Contract to Netstar.
- 9 FURNISHING INFORMATION AND NOTICES**
- 9.1 The Subscriber confirms that all information which it has provided to Netstar under the Contract is true and accurate and can be relied on by Netstar.
- 9.2 In the event of an emergency, the Subscriber agrees that it or its appointed contact person, whose details are set out under the Application Schedule, may be contacted.
- 9.3 If there is any change to the information set out under the Contract, the Subscriber will notify Netstar immediately in writing of the change. Where the Subscriber fails to give Netstar written notice of any changes then the Subscriber agrees to hold Netstar harmless should Netstar rely or act upon the former and outdated information.
- 9.4 Where Netstar is required to notify the Subscriber or its contact person of any fact, notice and document relating to or in connection with this Contract, Netstar will communicate such message or notice using any form of electronic communication of its choice, including communication sent by fax, SMS, email or phone as Netstar deems appropriate and the Subscriber agrees that communication can be given in such a manner.
- 9.5 Where Netstar cannot reach the Subscriber or its contact person at the details supplied by Subscriber, Netstar will be excused and legally relieved of the duty to provide such notice.
- 9.6 Where legal notice is to be served, in terms of the Contract on the Subscriber, the Subscriber chooses its address for service of all legal notices and documents in connection with this Contract (domicilium citandi et executandi) at its physical address as set forth in the Application Schedule.
- 9.7 Where legal notice is to be served, in terms of the Contract on Netstar, Netstar chooses its respective address for service of all legal notices and documents in connection with this Contract (domicilium citandi et executandi) at the following physical addresses: Central Park Offices, Block O, 16th Road, Randjespark, Extension 5, Midrand.
- 9.8 Either Party may change its address, by written notice to the other Party provided that any new address selected by it will be a physical address, and such changes will only be effective upon receipt of notice in writing by the other Party.
- 9.9 The Subscriber acknowledges that Netstar is obligated to ascertain the Subscriber's credit worthiness as per the provisions of the National Credit Act, 34 of 2005. The Subscriber expressly gives Netstar permission to:
- 9.9.1 access from any duly registered credit bureau, the Subscriber's personal information concerning financial risk and payment habits ("payment profile") to process the Subscriber's application for the Netstar Service; and

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- 9.9.2 share or disclose information about the Subscriber's payment profile to credit bureau.
- 9.10 Where the Subscriber has authorised a third party which is also a business partner of Netstar such as the Subscriber's insurance company, emergency response company or any other third party to receive Information from Netstar, then to the extent of such authorisation, THE SUBSCRIBER EXPRESSLY CONSENTS TO NETSTAR PROVIDING INFORMATION TO SUCH PARTY AND WILL HOLD NETSTAR HARMLESS FROM ANY LOSS OR DAMAGE RESULTING FROM SUCH DISCLOSURE.
- 9.11 In the case of any GSM Service, the Subscriber acknowledges that it is under a duty to provide Netstar with certain mandatory information in accordance with the Regulation of Interception of Communications and Provision of Communication Related Information Act, 48 of 2008 ("RICA") and undertakes to cooperate with Netstar prior to the activation of the GSM Service, in respect of the provision of all the required documentation and information, FAILING WHICH IT WILL HOLD NETSTAR HARMLESS AGAINST ANY LOSS OR DAMAGE RESULTING FROM SUCH FAILURE.

**10 EXCLUSION OF LIABILITY**

- 10.1 The Subscriber accepts that the Netstar Service is intended to reduce the risk of loss if the Subscriber's Vehicle is stolen or hijacked, but that recovery of the Vehicle is not guaranteed.
- 10.2 UNLESS PROHIBITED BY LAW, THE SUBSCRIBER AGREES TO HOLD NETSTAR HARMLESS FOR ANY LOSS OR DAMAGE CAUSED TO THE SUBSCRIBER ARISING FROM THE NETSTAR SERVICE, AND OR NETSTAR NOT BEING ABLE TO PERFORM THE NETSTAR SERVICE FOR ANY REASON, INCLUDING NETSTAR'S NEGLIGENCE, OR DUE TO ANY MALFUNCTION OF THE EQUIPMENT AND OR THE NETWORK.

**11 FORCE MAJEURE**

If Netstar is prevented or restricted in any way from carrying out all or any of its obligations under this Contract by reason of force majeure (an event or circumstance beyond the control of the Parties, such as a war, strike, riot, crime, or an "act of God" such as flooding or an earthquake which prevents one or both Parties from performing their obligations under the Contract), then Netstar will be relieved of its obligations to provide the Netstar Service during such period of force majeure, and Netstar will not be liable for any loss, damage, action or claim which may be brought by the Subscriber or by any other party in consequence of such delay or inability to perform.

**12 BREACH AND CONSEQUENCES**

- 12.1 If the Subscriber or its authorised agent, which includes an insurer, employer or bank:
  - 12.1.1 fails to pay any amount under this Contract on due date; or
  - 12.1.2 fails to carry out or perform any of its contractual obligations or breaches any term or condition of this Contract; or
  - 12.1.3 in Netstar's reasonable opinion raises false alarms or abuses the Netstar Service, (referred to as "the breach");
    - then Netstar may immediately suspend the Netstar Service and provide the Subscriber with a written notice requiring it to rectify the breach within 20 (twenty) Business Days of the date of such notice.
- 12.2 Where the Subscriber fails to rectify the breach within the 20 (twenty) Business Day period, Netstar will thereafter have the right to immediately terminate the Contract, without notice to the Subscriber, which termination shall be without prejudice to any rights which Netstar may then have in law, including:
  - 12.2.1 where the Initial Period of the Contract has not expired, the right to claim from the Subscriber an early termination fee reasonably calculated by Netstar;
  - 12.2.2 where the Initial Period of the Contract has not expired, the right to immediately remove and recover ownership and possession of the Equipment from the Vehicle, at the Subscriber's risk and expense;
  - 12.2.3 the right to demand from the Subscriber, all amounts payable, by the Subscriber to Netstar under the Contract; and
  - 12.2.4 the right to claim any other damages from the Subscriber, which it may have incurred in law in consequence of the Subscriber's breach.
- 12.3 Where Netstar breaches any material term of the Contract, the Subscriber has the right to send Netstar a written notice requiring Netstar to rectify the breach within 20 (twenty) Business Days of receipt of such notice.
- 12.4 Where Netstar fails to rectify the breach within the 20 (twenty) Business Day period, the Subscriber will thereafter have the right to immediately terminate the Contract, on written notice to Netstar which termination will be without prejudice to any rights which the Subscriber may have in law, including the right to claim damages from Netstar which it may have incurred in consequence of Netstar's breach.
- 12.5 Where the Subscriber cancels the Contract during the Initial Period in terms of clause 12.3, the Subscriber will still be liable to pay Netstar an early termination fee and Netstar will have the right to immediately remove and recover ownership and possession of the Equipment from the Vehicle.
- 12.6 Where Netstar has to remove the Equipment in terms of this clause, the Subscriber will do all such things as may be reasonably necessary to enable Netstar to uplift and collect the Equipment from the Vehicle.

- 12.7 Where Netstar has to use the services of a debt collector or attorney to successfully enforce any provisions of the Contract, then the Subscriber will bear the costs incurred by Netstar, including legal fees, on an attorney and client basis.

**13 GENERAL**

- 13.1 This Contract will be interpreted in accordance with the laws of the Republic of South Africa.
- 13.2 Should any provision of this Contract be declared unlawful whilst the Contract is in force, such provision will be deleted from the Contract and the remaining parts of the Contract will continue to operate.
- 13.3 No change or cancellation of this Contract will be of any force or effect unless such change or cancellation is agreed in writing and signed by both Parties.
- 13.4 Where one of the Parties does not act on a breach of the Contract by the other Party, failure to act will not result in that Party giving up its rights to act upon that breach or another breach, at a later stage.
- 13.5 The Subscriber will not be able to transfer, cede, delegate or assign its rights or obligations in terms of this Contract to another person without the prior written consent of Netstar, which consent will not unreasonably be withheld.
- 13.6 Netstar will be entitled to transfer, cede, delegate or assign its rights or obligations under this Contract provided that the Subscriber is not reasonably prejudiced in any manner.

I, the Subscriber confirm that I have read this Contract and that I fully understand the terms and conditions and effect of this Contract and that the terms will be binding on me from the Effective Date.

SIGNED by the Subscriber at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Signature

Full Names in Print