



Intelq Terms

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1. Introduction

These are the general terms of our relationship with you. They cover any transactions where we provide services to you. Under these terms:

- **we** are the service provider – Intelq Business Solutions (Pty) (Registration number: 2020/271027/07), also known as Intelq; and
- **you** are the customer – someone who uses our services.

No one likes service providers who throw legal jargon in their customers' faces to try and wash their hands of all wrongdoing – that's not fair. We try our best to tell you where our responsibility ends and yours begins in a clear, concise and understandable way. For this reason, we've written these terms in plain language. Please contact us if anything doesn't make sense or you want us to explain it better.

A proposal is a separate document or form that contains the commercial terms of each specific transaction and incorporates these terms.

2. Agreement

2.1. **Composition.** The agreement consists of these terms and any proposals or any other specific terms applicable to the services.

2.2. **Definitions.** In the agreement:

administrator means an authorised user in your employ who is authorised to provision, manage, and administer certain services;

business day means any day other than a Saturday, Sunday, or holiday (including a public or bank holiday) in the jurisdiction where we are organised;

business hours means our normal business hours on business days;

controller means the person or organization that determines the purpose ('why') and means ('how') of processing personal data alone or in conjunction with others, although it is more important that they determine why to process the personal information than how, and those related to it;

critical bug means any bug, problem, error or difficulty experienced with the operation of the software as a service that threatens your ability to generate revenue, and includes the software as a service or a web application being down or the system not being accessible;

credentials means a unique username and password that has been assigned to an authorised user;

day means a day counted from midnight to midnight, including all days of the month, Saturdays, Sundays and public holidays;

enhancement means any minor change to the software as a service that:

- does not require any extensive business requirements analysis, functional specification, or wire framing; and
- has nominal total development time;

non-critical bug means any bug, problem, error, or difficulty experienced with the operation of the software as a service that does not threaten your ability to generate revenue;

processor means the person or organization who processes the personal information on behalf of the data controller in terms of a written contract or mandate without coming under their direct authority;

project means any scoped project to make changes to the software as a service;

response time means the time elapsed from receiving the support request, to identify the problem or in the case of third party fault the specific cause or likely cause (it does not include the time to fix the problem as this will depend on the cause of the problem itself);

services means analytics and insights, and any other ancillary services, if applicable;

sign means the handwritten signature or an electronic signature that the parties agree to use, of each of the parties' duly authorised representatives;

software as a service URL means the website address at the domain as may be designated by us in writing from time to time that provides you and your authorised users with access to the software as a service;

specifications means the specifications (which may be in the form of a proposal, wireframe, project initiation document, functional specification, or technical specification) of the software as a service;

support means ad hoc support (including troubleshooting, research, fault-finding, diagnosis, improving) which could result in a configuration change, service restart, or performing end-user actions on your behalf;

time to fix means the time taken to fix the problem or provide the support requested, which excludes time that elapses while we wait for a response from you;

we, us or our means the service provider;

writing means the reproduction of information or data in physical form or any mode of reproducing information or data in electronic form that the parties agree to use, but excludes information or data in the form of email; and

you or your means the customer, its owners and all of its direct or indirect subsidiaries and affiliates. It includes the customer's officers, agents, employees, co-branders, and associates where the terms limit or exclude their liability.

2.3. Interpretation. The following rules apply to the interpretation of the agreement:

- **reference headings** – clause and subclause headings are for reference only and do not affect interpretation;
- **non-exhaustive lists** – whenever a clause lists specific examples or items following a listing word, such as 'including', 'includes', 'excluding', or 'excludes', they will not limit its scope;
- **undefined words or phrases** – all words or phrases that the agreement does not define have their ordinary English meanings;
- **references to enactments** – references to any enactment include it as re-enacted, amended, or extended;
- **references to people** – references to a person includes a natural and juristic person;
- **references to parties** – references to a party includes their successors or permitted assigns;
- **number of days** – when any number of days is prescribed, the first day will be excluded and the last day included;
- **no interpretation against the draftsman** – the rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply; and
- **time calculations** – the parties will use GMT+2 to calculate any times.

2.4. Departure. These terms apply to all our customers and are not open to negotiation for reasons of consistency.

2.5. Conflict. If there is a conflict of meaning between these terms and any word or phrase in a proposal or other specific terms, the meaning in the proposal or specific terms will prevail in respect of the relevant services.

3. Commencement

3.1. When these terms start. These terms start whenever you accept them by:

- **doing so explicitly** – such as by checking a checkbox saying that you do or agreeing to a proposal that incorporates them by reference;
- **using the services in any way** – such as by accessing them; or
- exercising any rights granted to you under the agreement; and

continue until terminated.

4. Renewal

4.1. Automatic renewal. If a proposal involves a subscription, the agreement will continue automatically from the end of the initial term or subsequent automatic renewal period for an automatic renewal period of one calendar month.

4.2. Renewal termination. Either party may only terminate the agreement after the initial term and by giving the other party at least one calendar month's prior written notice.

5. Proposals

5.1. Receiving proposals. You accept our proposals whenever you:

- order the services from us;
- order them through the website or application; or
- otherwise start using them.

These accepted proposals are offers to us to buy our services.

- 5.2. **Capacity and authority.** You promise that you have the legal capacity and authority to enter into the agreement.
- 5.3. **Invitation to do business.** Marketing is merely an invitation to do business and we only conclude the agreement when we actually provide the services to you. This happens when we accept your offer.
- 5.4. **Cancellations.** We may cancel any proposal, but we will provide a pro rata refund for any money paid for future services not yet provided in relation to that particular proposal if we do.
- 5.5. **Time and place.** We conclude the agreement when we accept the proposal and where we are domiciled when we do.
- 5.6. **Separate agreements.** Each proposal is a separate agreement, but you are deemed to have breached all of them if you breach one of them.

6. The services in general

- 6.1. **Scope.** We will provide the standard services and additional services where applicable, to you at the service fee for the duration of this agreement. These terms will accommodate the fluid nature of your business in that:
- they will remain in force irrespective of changes to the number of vehicles you own or drivers you employ or contract and for which you require the services to be rendered;
 - despite the fact that only one agreement has been executed by the parties, a separate agreement on the terms and conditions set out in this agreement will come into force and effect for each individual service package and the additional services associated with it which you subscribe for.
- 6.2. **Breach.** We may suspend or cancel your right at our discretion if you breach the agreement.

7. Our software as a service obligations

- 7.1. **Grant of right.** We grant you a worldwide, non-exclusive, non-transferable and revocable right to use the software as a service for the duration of this agreement, subject to the following limitations:
- **duration of agreement** – you may only use the services for the duration of the agreement;
 - **limited to terms** – you may only use the services according to these terms;
 - **non-exclusive** – we may allow anyone else to use the services;
 - **non-transferable** – you may not transfer the right to anyone else;
 - **specified purposes** – you may only use the services for the specified purposes that we've communicated to you in writing from time to time; and
 - **other limitations** – any other limitations agreed between the parties in writing.
- 7.2. **Access.** We will notify you of the software as a service URL, through which your authorised users can access the software as a service, in writing from time to time.
- 7.3. **Authorised use.** We will provide our software as a service to any of your authorised users directly who have agreed to the end-user licence or other relevant agreement through the software as a service on a non-exclusive basis where we may also provide it to anyone else.
- 7.4. **Availability.** We will make the software as a service available at all times, subject to reasonable downtime for planned and emergency maintenance.
- 7.5. **Maintenance.** We will perform scheduled maintenance on the software as a service outside of business hours on business days or outside of business days from time to time. Maintenance may interrupt the software as a service. We may need to perform emergency maintenance in certain circumstances.
- 7.6. **Hosting.** We will host the software as a service on a server that someone controls on our behalf at a remote location.
- 7.7. **Backups.** We will back up all data stored in the data repositories available through the software as a service and test those backups in accordance with our backup policies.
- 7.8. **Disaster recovery.** We will maintain a disaster recovery plan that is tested annually and related services. In the event of a disaster, we will implement the disaster recovery plan and:
- replicate the software as a service as soon as possible with the most recent backup date; and
 - restore the software as a service with a recovery time objective of 24 hours and a recovery point objective of 24 hours.
- 7.9. **Information accuracy.** While we take reasonably practicable steps to ensure that the any information you or a third party submits to us on your behalf, such as data coming from a telematics unit in a vehicle, is accurate, we are not liable for the accuracy of that information and accept no responsibility for any decisions you make on the basis of that information, to the extent that applicable law allows.
- ## 8. Your software as a service obligations
- 8.1. **Authorised user list.** You are responsible for ensuring that the list of authorised users who are able to use the software as a service is always up to date.

- 8.2. **Access necessities.** You are responsible for getting and maintaining any equipment, software, infrastructure, or ancillary services necessary to connect to, access, or otherwise use the software as a service. For example:
- **equipment** – such as modems, servers, or other hardware;
 - **software** – such as operating systems;
 - **infrastructure** – such as networking equipment or web servers; and
 - **ancillary services** – such agreements with ISPs for the provision of Internet access.

- 8.3. **Authorised user instructions.** Each authorised user is responsible and liable for activities that occur under their account. You authorise us to act on any instruction given by an authorised user, even if it transpires that someone else has defrauded both of us, unless you have notified us in writing prior to us acting on a fraudulent instruction. We are not liable for any loss or damage suffered by you attributable to an authorised user's failure to maintain the confidentiality of their credentials.

- 8.4. **Expertise.** You must at all times employ sufficient personnel who:
- are skilled in and knowledgeable about your systems; and
 - have the necessary technical expertise to use the software as a service.

If you do not have sufficient personnel with the required knowledge or expertise to use the software as a service, you must send personnel on training with us to teach them the necessary skills.

9. Online services

- 9.1. **Basis.** We provide the online services to you on the following basis:

- you give us permission to monitor how you use them for security and stability purposes; and
- you agree that our records are undisputed evidence of the services provided to you.

- 9.2. **Access conditions.** We will only provide online service access to you or your authorised users (where you are a juristic person) on the conditions that you or each one of them will:

- accurately provide us with any information that we ask for on registration or account creation;
- create or have the necessary credentials (such as a username and password) assigned to them on registration or account creation;
- look after their credentials and not give them to anyone else;
- not interfere with or introduce any malicious software into the online services or otherwise misuse them;
- be responsible for any activity that happens under their account, even if someone else was actually acting under their credentials;
- have the necessary infrastructure, equipment and software to access the online services;
- abide by the agreement and any policies that we communicate to them in writing; and
- any other conditions agreed between the parties in writing.

- 9.3. **Availability.** We will do our best to make the online services available at all times, however we cannot guarantee that they will always be available. We may make them unavailable for scheduled and emergency maintenance.

- 9.4. **Restrictions.** You will not:

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

10. Your data

- 10.1. **Definition.** Your data is any data belonging to you or your service provider or your customer that:

- you or your service provider or your customer (or any third party on your behalf) provide to us; or
- we generate, process, or supply to you or your service provider or your customer in providing the services;

which may or may not include personal data, but excludes any derived data that we create for our own purposes or which is proprietary or confidential to us or our third party contractors.

- 10.2. **You own it.** You own all your data, but give us a right to use it to provide the services when you provide us with access to it.

- 10.3. **We do not own it.** We do not own any of your data. However, we do own our derived data. Your data does not include any derived data that we create. Derived data is any of our own data that we create from your data, such as through analytics, aggregation, de-identification, or anonymisation.

- 10.4. **Responsibility.** We take the protection of your data very seriously and will always do our best to protect it, including our best to:

- comply with all relevant laws that affect your data, including data protection, retention and destruction laws;
- comply with any of your policies or procedures relating to your data that you communicate to us timeously in writing;
- have due regard to leading industry information security management codes of practice, where appropriate;
- not sell, dispose of or encumber any of your data or try to do any of those things;
- be able to identify any of your data separately from any other data under our control; and
- not disclose any personal data from your data, other than in terms of the agreement.

- 10.5. Subcontracting.** Subcontracting involves engaging a consultant or subcontractor outside our organisation to do work as part of providing the services. We may subcontract work involving your data, provided that:
- we do so only through a written agreement with the consultant or subcontractor; and
 - we remain fully liable for any processing of your data under the agreement by our consultant or subcontractor.
- 10.6. Location.** Your data will remain wherever we place it initially, unless we have to transfer it to another country to comply with our obligations to you. You consent to us transferring it to our group of companies, associated companies, service providers or agents who may be located in other countries for the purpose of providing the services to the extent that applicable law allows. We will otherwise ask for and get your consent before doing so to the extent that applicable law requires.
- 11. Our data**
- We may use our derived data together with analytics software and other technologies to optimise our offering to you and other customers.
- 12. Confidential information**
- 12.1. Definition.** Confidential information is any information that the parties share with one another in terms of this agreement with the intention that the other party should keep it secret, such as personal data, business records or customer details.
- 12.2. Responsibilities.** Each party will keep any confidential information it receives from the other party under the agreement confidential and the receiving party will:
- protect the other party's interests;
 - only use it to comply with their responsibilities under the agreement;
 - only give it to their employees, contractors or agents that need it (and only as much as they need);
 - use reasonable security procedures to make sure their employees, contractors or agents keep it confidential;
 - get promises of confidentiality from those employees, contractors or agents who need access to the information;
 - not reveal the information to anyone else; and
 - not use it for any purpose other than under this agreement.
- 12.3. End of agreement.** The parties will destroy or give back to the other party if required by applicable law, all confidential information of the other that they have at the end of the agreement, unless:
- it is lawfully in the public domain;
 - someone else (a third party) who is allowed to reveal it gives it to them; or
 - someone gives it to them to comply with a court order or other legal duty.
- 12.4. Indemnity.** Each party indemnifies the other against any loss or damage that the other may suffer because of a breach of this clause by a party or its employees or agents.
- 12.5. Survival.** This clause about confidential information is separate from the rest of this agreement and remains valid for five years after the end of this agreement.
- 13. Data protection**
- 13.1. Purpose.** This section clarifies the relationship between the parties in terms of applicable data protection laws, which includes any relevant data protection laws together with any national implementing laws and other related laws agreed between the parties in writing from time to time.
- 13.2. Application.** This section applies to any personal data that we process on your behalf. Personal data means any information about a living human being or existing organisation (as applicable data protection laws require), provided that someone is capable of identifying them from that information.
- 13.3. Processing instructions.** We may only process the personal data:
- on your documented instructions; and
 - to the extent that providing the services related to the processing activities requires us to.
- 13.4. Measure guarantees.** We guarantee that we will implement appropriate technical and organisational measures to:
- meet applicable data protection laws' requirements; and
 - protect the data subject's rights.
- 13.5. Data security.** We will implement appropriate technical and organisational security measures to make sure that the level of security is appropriate to the risks to the personal data in terms of applicable data protection laws, taking into account the:
- state of the art (being the most recent level of development of technology of security measures at that particular time);
 - implementation costs;
 - processing nature, scope, context and purposes; and
 - varying risks to people's rights and freedoms in terms of likelihood and severity.
- 13.6. Treat personal data as confidential.** We will treat all personal data as confidential.
- 13.7. Inform personnel of confidentiality.** We will inform all our employees, consultants, agents, approved subprocessors or other personnel engaged in processing the personal data of its confidential nature.

13.8. **Authorised persons confidentiality.** We will make sure that our personnel authorised to process the personal data have committed themselves to confidentiality, such as by:

- signing an appropriate confidentiality agreement; or
- being otherwise bound to a duty of confidentiality;

or are under an appropriate statutory obligation of confidentiality.

14. Incident response

14.1. **Incident notification.** We will notify you after becoming aware of a personal data incident without undue delay, provided that the incident has a material impact on the personal data processing that we are doing on your behalf.

14.2. **Incident scope.** A personal data incident means:

- a complaint or a request regarding the exercise of a data subject's rights under applicable data protection laws;
- an investigation into or personal data seizure by government officials, or a specific indication that such an investigation or seizure is imminent;
- any unauthorized, accidental or otherwise unlawful personal data processing;
- any breach of security or confidentiality in terms of this agreement leading to confirmed or possible risks to the personal data; or
- where implementing an instruction received from controller would violate applicable laws to which controller or processor are subject, in the opinion of processor.

14.3. **Incident notification requirements.** Any incident notification will contain the following information to assist you in fulfilling your obligations under applicable data protection laws:

- a description of the nature of the incident, including where possible the categories and approximate number of data subjects and personal data records concerned;
- the name and contact details of our contact point where controller can obtain more information;
- a description of the likely consequences of the incident; and
- a description of the measures we have taken or propose to take to address the incident including, measures to mitigate its possible adverse effects where appropriate.

15. Intellectual property

15.1. **Ownership.** We or our third party licensors own all proprietary rights in any intellectual property that is part of our services and we or they may prosecute you for any violations of those rights.

15.2. **Our technology.** Our technology is anything that we have or acquire rights in and may use to perform our obligations under the agreement.

15.3. **Retention of rights.** We own all intellectual property rights in our technology and you may not use those rights without our permission. You do not acquire any rights in our technology if we use it to provide services to you.

15.4. **Our trademarks.** Our trademarks are our property and you may not use them without our permission. All other trademarks are their respective owners' property.

15.5. **Restrictions.** You may not change, hire out, reverse engineer or copy the services.

15.6. **Your intellectual property.** You grant us a non-exclusive and royalty-free licence to use any of your trademarks and copyright works which you deliver to us for the purposes of providing the services. We may not use them for any other purpose without your prior written permission. The licence expires automatically when the agreement ends. You retain all rights in your trademarks and copyright works despite this licence.

16. Non-solicitation

You will not employ or contract with any of our employees, consultants or other personnel for the duration of this agreement and for 24 calendar months after its termination.

17. Fees and payment

17.1. **Payment.** You will pay us the fees and any other charges relating to the services rendered by us to you as more fully described in the proposal, on the due date. You may not withhold payment of any amount due to us for any reason.

17.2. **Late payments.** Additional charges agreed between the parties in writing apply to any payment we receive after the due date and you must pay them to us on demand. We may stop providing any services until you have paid all amounts due.

17.3. **Interest.** Overdue amounts on any outstanding invoice will bear interest for our benefit from its due date until you pay it at whichever rate is higher between:

- 2% above the prime (or prime lending) rate; or
- 15%.

Interest will be payable on a claim for damages from when the damages were suffered.

17.4. **Appropriation.** We may use any money you pay us to settle your indebtedness under the agreement, despite any particular

reason you may have paid it to us.

17.5. Certificate. We may appoint an accountant to sign a certificate that will be proof of the amount due by you and the date on which it is payable.

17.6. Tax. All fees exclude any tax (unless indicated otherwise). You will be liable to pay applicable taxes in addition to the fees.

17.7. Payment profile. We may provide any registered credit bureau with information about your payment of amounts.

18. Feedback

18.1. Introduction. We value your feedback about the software as a service. It helps us improve it for you and our other customers. Feedback means any comments or suggestions that you send us or post on a website that we control related to the software as a service.

18.2. No obligation to you. We are not obliged to compensate or credit you for your feedback in any way unless we have a written agreement with you to do so.

18.3. Your obligations to us. When you submit your feedback to us, you:

- grant us a worldwide, perpetual, non-exclusive, royalty-free, sublicensable licence to use, reproduce and, modify your feedback for any purpose related to the software as a service;
- agree to deliver all documents and perform all actions necessary to ensure that our rights to use, reproduce, and modify your feedback are effective and enforceable; and
- give up any claim that our use, reproduction, or modification of your feedback violates any of your rights, including your intellectual property rights or your moral rights (the rights not to have your work distorted and to be credited for your work).

18.4. Submission. You can submit any feedback to us by email or through any of our other feedback channels.

18.5. May or may not take action. We will consider your feedback and may or may not decide to act on it in our absolute discretion in terms of our roadmap for the software as a service.

19. Specification amendments

19.1. Procedure. If a party, at any stage, requires any amendment to the specifications, it will submit a written change request to the other party, setting out:

- the nature of the desired changes;
- the reason for the changes; and
- the effect of the changes on the software as a service.

19.2. Format. If the proposal is made by:

- you, we will investigate the likely impact of any proposed changes upon the software as a service, the fees payable, and will provide you with a written response; or
- us, we will detail the likely impact of any proposed changes upon the software as a service in the change note.

20. Support

20.1. Help desk. We will provide a help desk during business hours for support requests from your personnel or authorised users.

20.2. Process. Your personnel or authorised users must submit support requests by phone or email using the following process:

- submit the initial request to the help desk – they will record and diagnose the request (which involves thoroughly researching the problem and collecting all relevant details from your personnel or authorised users), resolve user errors, and handle information requests; and
- escalate to your [support-escalation-resource-designation] as necessary – such as if the problem is urgent.

20.3. Contacts. You must submit support requests in terms of the process to the contacts specified in the following table:

Contact	Name	Phone	Email
Help desk	[help-desk-contact]	[help-desk-phone]	[help-desk-email]
[Support-escalation-resource-designation]	[escalation-resource-contact]	[escalation-resource-phone]	[escalation-resource-email]

20.4. Resolution. Once a support request has been resolved, our relevant contact will inform the person who submitted the request. The person who submitted the request will inform us whether the correction was satisfactory or not within a reasonable period afterwards (having regard to when the problem could reasonably be detected again). If no notice is received, then our relevant contact will follow up with the person who submitted the request to check whether the problem has been corrected to satisfaction. If our relevant contact is unable to contact the person who submitted the request, the problem will be deemed to have been corrected to satisfaction.

21. Support levels

21.1. Support services. We will provide the following support services in relation to the software as a service:

- providing any advice over the phone or by email that you may reasonably require related to the use of the software as a

service;

- routinely upgrading the software as a service;
- making sure that sufficient qualified personnel are available during support hours to respond to reasonable queries in regard to the operation of the software as a service; and
- consulting with you from time to time in respect of suggested enhancements of the software as a service.

21.2. Categories of support request. Our categories of support request are based on the impact a problem will likely have on your reputation according to your operations as a whole in the context of your business. We will abide by the response times and times to fix for the categories of support request specified in the following table:

Category	Description	Response time	Time to fix
Critical	The problem poses significant danger to your reputation and the consequences of not having it fixed quickly are dire. Includes a critical bug.	2 hours	24 hours
Medium	The problem poses some danger to your reputation and the consequences of not having it fixed quickly are moderate.	24 hours	5 working days
Minor	The problem poses little danger to your reputation and the consequences of not having it fixed quickly are minimal. Includes an update, support, and non-critical bugs.	48 hours	10 working days

22. Excluded services

22.1. On-site support excluded. The support services do not include any site visits by our technical or training personnel at your premises. This exclusion does not apply to any visits by our non-technical or non-training personnel, such as face-to-face visits from [support-escalation-resource-designations] at your premises. We may charge additional fees for site visits by our technical or training personnel on the following basis:

- we will invoice you for the relevant technical or training personnel's hourly fees as agreed between the parties in writing;
- we will invoice you for road travel at Automobile Association rates with the source location being our offices;
- we will invoice you for air travel at an Economy Class travel rate, with the source location being the airport closest to our offices;
- we will invoice you for hotel accommodation at the rate of a three star hotel; and
- we will invoice you for meals the at 'Out of Town' allowance rates as outlined by the Department of Labour.

22.2. Time and materials. We may charge you additional fees on a time and materials basis for time that we, in our reasonable opinion, spend in relation to the following:

- data restoration or re-establishment or other assistance required by you that do not result from inherent errors in the software as a service; or
- providing services to you in circumstances where any person reasonably skilled and competent in the software as a service would have judged your request to have been unnecessary.

Additional services. If you require excluded or additional services, the parties will follow the procedure set out in this agreement. Any excluded or additional services will be provided under a separate agreement. These services will be quoted and billed for separately under a separate agreement.

23. Our warranties

23.1. Service warranties. We warrant that we will:

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

23.2. General warranties. We warrant further that we:

- have the legal right and authority to perform our obligations under the agreement; and
- will not intentionally introduce any malicious software into your systems.

24. Disclaimer of warranties

24.1. Disclaimer. You use the services at your own risk and we disclaim all other warranties to the extent allowed by applicable law. We are not liable for any defect that you or a third party causes.

24.2. Exclusion of liability. Despite our warranties, we are not liable for any defects that your negligence, failure to follow our instructions or misuse causes.

25. Your warranties

25.1. Agreement warranties. You warrant that:

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

25.2. Indemnity. You indemnify us against any claim for damages by any third party resulting from a breach of your warranties, including all legal costs. Legal costs means the costs that a lawyer may recover from their client for their disbursements and professional services if permissible under applicable law.

26. Limitation of liability

- 26.1. **Direct damages limited.** We are not liable for any direct damages, to the extent that applicable law allows. Where we are liable in terms of applicable law, we will only be liable up to an amount equal to the fees that you have already paid us in the preceding calendar month.
- 26.2. **Indirect damages excluded.** We are not liable for any other damages or losses that the services may cause you.
- 26.3. **Your default.** We are not liable for any damage or loss that your breach, misrepresentation or mistake causes.
- 26.4. **Not liable for data analytics and insights decisions.** You acknowledge that you will use the data analytics and insights obtained through the services for your own purposes and we are not liable for any consequences that occur as a result of your decisions, to the extent that applicable law allows.
- 26.5. **Survival.** This clause about limitation of liability is separate from the rest of this agreement and remains valid after the end of this agreement to the extent allowed by applicable law.

27. Breach and termination

27.1. **Breach.** If either party

- does not fix a breach within seven days of receiving written notice from the other party;
- breaches the agreement materially twice or more in six months;
- is bankrupt or has some legal disability;
- takes steps to close or is closed down (such as becoming insolvent, entering sequestration or undergoing business rescue);
- makes any settlement or arrangement with their creditors; or
- fails to pay a court order against themselves for a significant amount within 21 days;

then the other party may:

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

28. Suspension of service

28.1. **Immediate suspension.** We may immediately suspend your right to use the services if:

- any network operator that you, a third-party telematics company, a financial institution, a service provider or an original equipment manufacturer depends on to provide us with data so that we can render the standard services and additional services is unable to render such services to us;
- you, any telematics company, any financial institution, any service provider or any original equipment manufacturer that enables us to provide the standard services and additional services is unable to render such services to us;
- we have reason to believe that the standard services and additional services are used in a fraudulent manner;
- you try to gain unauthorised access to them;
- we decide that your use poses a security threat to us or another user other than you;
- we believe you are using them for an illegal purpose or in way that infringes a third party's rights;
- you fail to make any full or partial payments due in terms of the agreement;
- you infringe the intellectual property or conduct yourself in a manner which is prejudicial to the intellectual property;
- for any other reason that we determine is reasonable within our exclusive discretion.

In the event of the network operator and telematics company referred to above being unable to render such services to us then you will try your best to find an alternative supplier of services.

28.2. **Preservation of data (suspension).** In the event that we suspend your access to any services, we will not take any action to intentionally erase any of your data in our possession during the period of suspension and the fees will continue to accrue.

29. Termination

29.1. **Termination for good cause.** We may need to terminate the agreement immediately if we:

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

If we need to terminate, we will give you as much notice as reasonably possible in writing.

29.2. **Termination for convenience.** We may terminate the agreement or a specific proposal on at least one calendar month's written notice to you.

29.3. **Duties on termination.** We will stop providing the services, you will no longer be able to access them and we may erase your data on termination, cancellation, or expiry of the agreement.

30. Effect of termination

- 30.1. Acceleration.** All amounts due to us for the services become due and payable on termination, cancellation or expiry of the agreement.
- 30.2. Assistance.** We may provide you with post termination assistance (such as data retrieval) subject to additional fees and conditions.
- 30.3. No expectation.** The agreement does not create any expectation of continued service, agreement renewal or any further agreement between the parties.

31. General

- 31.1. Governing law.** South African law governs this agreement.
- 31.2. Mediation.** If negotiation fails, the parties must refer the dispute to mediation under AFSA's rules. AFSA means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead).
- 31.3. Arbitration.** If mediation fails, the parties must refer the dispute within 15 business days to arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. The arbitration will be held in English in Johannesburg. The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 business days after the referral, the Secretariat of AFSA will appoint the arbitrator.
- 31.4. Jurisdiction.** You consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings that we may bring against you in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to our right to institute any action in any other court having jurisdiction.
- 31.5. Resolving disputes.** Either party may inform the other in writing if there is a dispute. The parties must first try to negotiate to end the dispute, then enter into mediation if negotiation fails and finally go to arbitration if mediation fails. If they go to arbitration, they will agree in writing on a recognised and appropriate forum for arbitration that is accessible to both parties.
- 31.6. Notices and domicile.** The parties will send all notices to each others' email addresses and choose their respective street addresses as their service addresses for all legal documents. Our email and street addresses are available on our website, while you provide your email and street addresses to us when concluding the agreement. The parties may change either address on 14 calendar days written notice to the other.
- 31.7. Beyond human control.** Neither party is responsible for breach of the agreement caused by circumstances beyond human control, but the other party may cancel the agreement on written notice to the other if the circumstances persist for more than 30 calendar days.
- 31.8. Assignment.** You may not assign the agreement to anyone. We may assign it to any successor or purchaser of our business or some of our assets.
- 31.9. Relationship.** The agreement does not create an employment relationship between the parties.
- 31.10. Entire agreement.** The agreement is the entire agreement between the parties on the subject.
- 31.11. Changes.** We will notify you of any changes to the agreement by email. Those changes will only apply to future proposals for our services. If you do not agree with the changes, you must stop using the services. If you continue to use the services following notification of a change, the changed terms will apply to you and you will be deemed to have accepted them.
- 31.12. Waiver.** Any favour we may allow you will not affect any of our rights against you.
- 31.13. Severability.** Any term that is invalid, unenforceable or illegal may be removed from the agreement without affecting the rest of it.