



## Introduction

### 1. Definitions and Interpretation

In these terms of lease ('Agreement'), unless the context otherwise requires:

- 1.1. Agreement means this **TRACKME NZ Ltd** agreement and other schedules and attachments incorporated by reference.
- 1.2. 'you' and 'your' refers to the user and/or 'lessee' or the 'purchaser' of any of the products and/or equipment.
- 1.3. Business day means a day other than a Saturday or Sunday, or a statutory public holiday in the city in which the customer address is located.
- 1.4. Business hours mean the hours of 8.30a.m. to 5.00p.m on a Business day.
- 1.5. CCCFA means Credit Contracts and Consumer Finance Act 2003.
- 1.6. CGA means the Consumer Guarantees Act 1993.
- 1.7. Commencement date means the date on which the term of this Agreement commences as shown in the schedule.
- 1.8. Default interest rate refers to the penalty interest rate for lease payments paid late, charged at 5% more than the implicit interest rate used to calculate original lease payments.
- 1.9. Equipment means the equipment, including any software and accessories (goods, chattels or collateral) described in the equipment schedule.
- 1.10. Lease payment means the regular payments due under this Agreement and shown in the schedule.
- 1.11. Overdue amounts means any payments or other amounts payable under this agreement which are not paid on the due date for payment.
- 1.12. PPSA means the Personal Property Securities Act 1999.
- 1.13. Leased equipment means existing used equipment which **TRACKME NZ Ltd** has agreed to lease and listed in appendix ii attached to this lease agreement.
- 1.14. **TRACKME NZ Ltd** can also include **SPOT NZ Ltd**.
- 1.15. Service provider means the party servicing the equipment, supplying the wholesale satellite connection or services, and including any of their agents or employees.
- 1.16. Term (in months) means the primary term of this agreement, expressed in months, shown in the schedule appendix i
- 1.17. The headings set out merely give an indication of the consent of the terms and conditions to which they are included only for the purposes of assisting reading the agreement. They do not affect the meaning of the terms and conditions themselves.

### 2. Supply to the User

- 2.1. **TRACKME NZ Ltd** shall supply to the user the equipment in accordance with the Agreement.
- 2.2. In the event of the equipment being faulty **TRACKME NZ Ltd** will replace the equipment upon notification, provided the user has used the equipment as set out in clause 6.

### 3. Entire Agreement, Assignment, Change of Name

- 3.1. This Agreement constitutes the entire Agreement between the parties and no alteration, amendment, prior representation, statement, condition, warranty, waiver, release, or discharge not contained in this Agreement shall be binding on a party unless recorded in writing and signed by the Managing Director of **TRACKME NZ Ltd** and by the user.
- 3.2. **TRACKME NZ Ltd** may at law or in equity assign all or any of its rights title and interest in the equipment and in or under this Agreement to any party at any time.
- 3.3. The User's rights and obligations under this Agreement may not be assigned to any other party. A change in the effective management or control of the user (whether direct or indirect) will be deemed to be an assignment.
- 3.4. The user shall notify **TRACKME NZ Ltd** of any change of name at least 5 days before such change of name comes to effect.

### 4. Default interest, Payments, Payment method, Set-off, Taxes

- 4.1. **TRACKME NZ Ltd** and the service provider reserve the right to charge, at their sole discretion, (and without affecting any other rights **TRACKME NZ Ltd** may have against the user) default interest for late payment of any lease payment at the default interest rate.



- 4.2. The user acknowledges that lease payments are payable 2 months in advance commencing on the date of this lease and thereafter, a 1 month payment, on the same date each month during the Term.
  - 4.3. All lease payments will be paid by “direct credit/debit” to the bank account of **TRACKME NZ Ltd** at the ANZ Bank. And the user will authorise such lease payments, upon signing this Agreement.
  - 4.4. The users obligation to pay the amounts due under the Agreement in full and on the due date is unconditional and is not subject to any reduction, set-off, defence, rebate or counterclaim for any reason whatsoever.
  - 4.5. No failure by **TRACKME NZ Ltd** to insist on payment in strict accordance with clause 4.3. shall operate as a waiver of its rights in relation to the user’s obligation to pay under this Agreement and any such failure shall not constitute a deferral of a payment obligation for the purposes of section 6 of the CCCFA.
  - 4.6. The user agrees that each of **TRACKME NZ Ltd** and the service provider may apply and set off any monies which may be use from **TRACKME NZ Ltd** and/or service provider (as the case may be) on any account whatsoever.
  - 4.7. The user shall pay all GST plus other taxes or imports charged in connection with this Agreement.
5. **Guarantee**
- 5.1. In consideration of **TRACKME NZ Ltd**, at the request of the Guarantor(s), entering into this Agreement with the User, the Guarantor(s) irrevocably and unconditionally guarantor(s), jointly and severally if more than one, the due and faithful performance of the user’s payment and the other obligations under this Agreement.
  - 5.2. If the user fails to meet any of its payment obligations under this Agreement, the Guarantor(s) will, on demand, immediately pay such payments to **TRACKME NZ Ltd**. The liability of the Guarantor(s) will constitute a principal obligation of the Guarantor(s), and the Guarantor(s) will not be released from any liability under this Agreement.
    - 5.2.1. By any allowance of time by **TRACKME NZ Ltd**: or
    - 5.2.2. By any delay or forbearance by **TRACKME NZ Ltd**, to the exercise its rights under this Agreement.
6. **Possession, Care and Use of the Equipment**
- 6.1. The user shall enjoy quiet possession and economic use of the equipment during the term, provided always that the user is not in default of any of the terms and conditions of this agreement.
  - 6.2. The user shall only use the equipment in the manner and for the purpose for which it was designed, always in accordance with the manufacturer’s instructions and shall keep the equipment in good order, repair and condition. **TRACKME NZ Ltd** reserves the right to inspect the equipment by prior Agreement with the user.
  - 6.3. The user shall use the equipment for the desired purpose and in compliance with all the applicable laws and regulations.
  - 6.4. The user shall not modify or alter the equipment, without prior written consent from **TRACKME NZ Ltd**.
  - 6.5. The user shall not, or shall not purport to, assign, sublet, bail, mortgage, pledge, grant a security interest in, sell, dispose of, or otherwise deal with the equipment to any third party.
  - 6.6. The user shall not part with possession of the equipment during the term (other than of the purpose of maintenance and repair).
  - 6.7. The user shall not permit the equipment to be affixed to any premises or land so that it becomes part thereof.
7. **Insurance, No Warranties, Indemnity, Liability**
- 7.1. Risk in equipment shall pass immediately to the user upon lease of the equipment, and the user will ensure that equipment with an insurer acceptable to **TRACKME NZ Ltd** for market value against loss or damage by fire, theft or other accident during the term and while in possession of the equipment, and will not do, or allow to be done, anything which may prejudice such insurance or any claims (s) thereunder.
  - 7.2. If required by **TRACKME NZ Ltd** the user will provide evidence of insurance to **TRACKME NZ Ltd** showing **TRACKME NZ Ltd** as owner of the equipment and first beneficiary under the insurance policy.
  - 7.3. The user agrees to immediately notify **TRACKME NZ Ltd** of any loss or damage to the equipment.
  - 7.4. The user agrees that in the event of a claim under the insurance policy, any monies paid out will be used first to repair or replace the equipment and such equipment will be deemed to be subject to



clause 9.1, which will continue for the remainder of the term. Any remaining monies will be paid to the user, provided always that any arrears of lease payments owed to **TRACKME NZ Ltd** are deducted first.

- 7.5. Neither **TRACKME NZ Ltd** or the service provider shall be responsible for any representation made by any person who may have introduced this transaction to the user.
- 7.6. Except as expressly stated in this Agreement, all warranties, whether express or implied by statute, common law, or otherwise, are excluded to the maximum extent permitted by law. Without limiting the foregoing, the user acknowledges that it is acquiring the equipment, (including software and accessories), for the purposes of business (as 'business' is defined in the CGA) and that the CGA does not apply to this agreement.
- 7.7. The user assumes all risks and liability for the equipment and for its use, operation, maintenance, repair and storage, and for injuries or deaths of person's damage to property howsoever arising from or incidental to such use, operation, maintenance, repair or storage. The user hereby indemnifies **TRACKME NZ Ltd** and its directors against any losses, claims, penalties, liabilities and expenses (including legal costs) howsoever arising or incurred because of or incidental to the equipment, its use, operation, maintenance, repair or storage.
- 7.8. Neither **TRACKME NZ Ltd** nor its directors, employees or agents, will be liable to the user in contract, tort (including negligence), equity, breach of statutory duty or otherwise from any loss (whether direct or indirect) of profits, business, anticipated savings, or for any indirect or consequential loss or damage suffered by the user in relation to this Agreement, whether or not in the contemplation of the parties at the time of entering into this agreement.
- 7.9. The maximum aggregate liability of **TRACKME NZ Ltd** to the user for all claims under or in connection with this agreement or in respect of the equipment, whether in contract, tort, (including negligence), equity, breach of statutory duty or otherwise shall not exceed the total amounts actually paid by the user to **TRACKME NZ Ltd** under this Agreement.
- 7.10. The maximum aggregate liability of the service provider to the user for all claims under or in connection with this Agreement or in respect of the equipment, whether in contract, tort, (including negligence), equity, breach of statutory duty or otherwise shall not exceed the total amounts actually paid by the user to the service provider under the Agreement.

## 8. Right to Purchase Equipment

- 8.1. At the end of the six month term of lease, the user has the option to purchase the equipment off **TRACKME NZ Ltd**. This will be done in a form of an Agreement, however in the event that the user chooses not to purchase the equipment, the user will still retain the right of two renewals each with a period of three months per term. In lieu of a specific change in agreement the contract will automatically roll over to the extension periods.

## 9. Security, Repossession, New Zealand Laws

- 9.1. During the term of lease, the equipment remains the property of **TRACKME NZ Ltd** and the user acknowledges that in signing this Agreement, the user grants **TRACKME NZ Ltd** a security interests in respect of the equipment, in accordance with section 17 of the PPSA and secures payment by the user to **TRACKME NZ Ltd** of all amounts due under this or any other Agreement.
- 9.2. The user acknowledges receipt of a copy of this Agreement and waves any right it may have to receive from **TRACKME NZ Ltd** a copy of a financing charge statement or verification statement that is registered, issued or received at any time in relation to this Agreement.
- 9.3. Without limiting any other remedy under this Agreement or otherwise at law, if the user is in breach of a material term of this Agreement, **TRACKME NZ Ltd** or its assigns or agent may demand that the user return its equipment or repossess the equipment. **TRACKME NZ Ltd** may enter upon user's premises, and use reasonable force to do so, to enable it to take possession of the equipment.
- 9.4. To the extent that Part 9 of the PPSA applies to enforcement of this agreement, the user agrees that nothing in section 114(1)(a), 117(1)(c), 133 and 134 applies to such enforcement. The user also waves any rights that it may have under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, 132, and 148 of the PPSA in any enforcement.
- 9.5. This Agreement is subject to and operates under the jurisdiction of the laws of New Zealand.

## 10. Termination and Consequences of Termination

- 10.1. Either **TRACKME NZ Ltd** or the user may terminate this Agreement if the other party breaches a material term in this Agreement and either the breach is incapable of remedy or the party in breach has failed to remedy the breach within 20 working days of receipt of written notification from the



other party(ies) requiring it to do so. For the purposes of this clause 10.1 the following will, without limitation, be deemed to be material breaches of this Agreement.

- 10.1.1. **TRACKME NZ Ltd** will be deemed to be in material breach if it fails to supply the equipment;
- 10.1.2. The user will be deemed to be in material breach if it fails to make any payments under this Agreement when due or it refuses to grant any security requested by **TRACKME NZ Ltd** or it fails to insure or maintain the equipment in accordance with this Agreement.
- 10.2. **TRACKME NZ Ltd** may also terminate this Agreement by written notice with immediate effect if the user is unable to pay its debts as they fall due, becomes insolvent, bankrupt or has proceedings commenced against it or passes a resolution for liquidation, has a receiver, liquidator, or statutory manager appointed over all or any substantial part of its assets or enters into or proposes any composition or arrangement with its creditors.
- 10.3. The user shall be entitled to terminate this agreement at any time during the term on providing **TRACKME NZ Ltd** with not less than 60 days written notice.
- 10.4. In the event of termination of this agreement other than pursuant to clauses 10.1(b), the user shall immediately return the equipment to **TRACKME NZ Ltd**, at the user's expense, in good order, repair and condition and forthwith pay the following amounts:
  - 10.4.1. all lease payments due and owing up to the date of termination including interest at the default interest rate on any overdue lease payments; plus
  - 10.4.2. all future lease payments that would otherwise become due over the remainder of the term, discounted for early payment by such amount as **TRACKME NZ Ltd** in its sole discretion determines; plus
  - 10.4.3. any and all costs and expenses that **TRACKME NZ Ltd** notifies the user it has incurred in relation to early termination of this agreement, including debt recovery costs, legal cost, repossession cost, repairing, storing and selling costs; and
  - 10.4.4. all GST or other taxes relating to payments to be made under clause 10.

## 11. Business Purpose Declaration

- 11.1. The user acknowledges and understands that by signing this Agreement, the user declares that the lease provided will be used primarily for business or investment purposes and not for personal, domestic or household purposes; and
- 11.2. The user understands and agrees that this Agreement will not be treated as a Consumer Credit Contract as defined in the CCCFA, and that as a result, the user's rights and obligations hereunder will not be regulated by the CCCFA.

## 12. General

- 12.1. Any notice required to be served hereunder by any party shall be deemed to have been properly served if:
  - 12.1.1. delivered or posted by prepaid letter addressed to the party at the address in this Agreement (or such other address as may be advised in writing), and any such service by post shall be deemed effective on the second day after the day on which the notice was posted; or
  - 12.1.2. delivered by email addressed to the party at the email address specified in the contact details or at an email address otherwise provided for the service of notices any such service shall be deemed to be effective at the time of receipt by the sender of confirmation of receipt of the email by the recipient.
  - 12.1.3. For the purposes of determining the Court at which any action relating to this Agreement shall be heard, any clause of action which may arise out of it shall be deemed to have arisen at the registered office of **TRACKME NZ Ltd**, with the intent that all legal proceedings upon or concerning this agreement shall be commenced and heard at the District Court or High Court (as the case may be) in Christchurch.
  - 12.1.4. If any provision of this Agreement is declared or adjudged to be invalid, void or unenforceable, such provision shall be severable, shall be deemed to be deleted from this agreement and shall not affect the validity, existence, legality or enforceability of the remaining provisions.

