

Retriever intends to rely upon the written terms set out here and on the reverse side of this document. If you require any changes, please make sure you ask for these to be put in writing. In that way, we can avoid any problems pertaining to what Retriever and you, the client, are expected to do.

SUBSCRIBER DETAILS

Title	Surname / Co. Name	First Name						
Physical Address					Code			
Chosen Address for Legal Service								
Postal Address					Code			
ID / Co. Reg. No.				Tel. No. (W)				
Cell No.			Tel. No. (H)			Fax No.		
Company VAT Reg.			E-mail					
Name of Employer			Preferred Communication Method	Post	SMS	E-mail	Fax	Other

RENEWAL FEES

PURCHASE AGREEMENT

Product	Annual Subscription Kshs		Kshs	incl. VAT	
Unit Cost Kshs	Kshs	incl. VAT			
Renewal Period:	12 months	24 months	36 months	48 months	

VEHICLE DETAILS (If more than 1 vehicle please use vehicle schedule as annexure)

Vehicle Reg. Number	Colour				
Make & Model	Passenger Vehicle			Commercial Vehicle	
Engine Number	Chassis Number				
Year of Manufacture	Value of Vehicle				
Ins. Broker	Insurer				

ALTERNATE CONTACT PERSON IN CASE OF EMERGENCY

First Name & Surname	Position / Relationship	Cell No.	Office No.	Home No.
1.				
2.				
3.				

DECLARATION

I have read, understood and agree to be bound by the terms and conditions of the Retriever Service Agreement on the reverse side.

Print Name: _____ Surname: _____

Authorised Signature: _____

Designation: _____ Date: _____

To be completed by the Retriever representative. I have verified and confirmed that all the information is complete.

Print name: _____ Signature: _____ Date: _____

RETRIEVER SERVICE AGREEMENT – Standard Terms & Conditions of Contract

1. Definitions/this/ the agreement – this sale and service agreement or rental and service agreement (as selected in the Application Form or as deemed in terms of 4.3), the Application Form and any appendices attached; “Application Form” – the face of this agreement and the vehicle schedules (if any) attached, containing, amongst others, the details of the Client and the vehicle/s; “the Client” – the party whose details appear on the Application Form and who will be bound by the terms of this agreement upon the Client’s signature of the Application Form and receipt of the Fee by Retriever Limited, as such there will be no contract between the parties and the documents will only be viewed as an offer made by Retriever Limited to the client until both the aforementioned conditions have been fulfilled; Unless the context otherwise requires, the expressions herein below shall have the meanings assigned to them herein below – “day; week; month – calendar day, week or month, respectively; “the Fee” – the collective fees for the rendering of the service, and Rent (if applicable), payable monthly or annually in advance by the Client to Retriever Limited, together with any other charges (specified on the Application Form and/or which Retriever Limited is entitled to levy) under this agreement. The Fee shall escalate at 10%, effective the month after each anniversary of the signature date; “loss” – the hi-jacking and/or theft of a vehicle, of which event the Client undertakes immediately to notify Retriever Limited; “initial period” – where this is a sale and service agreement, from and including the date of installation to 00:00 on the last day of the 3rd month thereafter; where this is a rental and service agreement, from and including the date of installation to 00:00 on the last day of the 36th month thereafter; “Installation Centre” – a Retriever Limited approved centre whose business includes the installation of Units; “install/installed/installation” – installation of a Unit by an Installation Centre or by Retriever Limited; “Manual” – the document that explains, amongst others, the specifications and usage requirements relating to the Unit, which document the Client warrants that the Client has read and understood; “Monitoring Message” – a message generated by a Unit (pursuant to, amongst others, a Monitoring Request) and providing information to Retriever Limited regarding the ignition status and/or position of a vehicle if and when applicable; “Monitoring Request” – any request made (whether deliberately or by mistake) regarding the ignition status and/or position of a vehicle; “Monitoring Service” – the provision of information of the vehicle’s ignition status and/or position; “the parties” – Retriever Limited and the Client; “party” – one of them; “Purchase Price” – where this is a sale and service agreement, the amount specified on and paid per the Application Form for the purchase of the Unit; “recover” – after notification to Retriever Limited of a loss, to secure, hold and deliver the vehicle to the Client or, at Retriever Limited’s discretion, to the relevant authorities; “recovery” – has the related meaning; “Rent” – where this is a rental and service agreement, the amount specified on the Application Form for the rental of the Unit, having been paid monthly or annually in advance to Retriever Limited up to the end of the initial period; “the service” – the recovery and Monitoring Service to be provided to the Client and performed by Retriever Limited, regarding the vehicle/s, in accordance with this agreement; “Service Provider” – Retriever Limited or an entity appointed by Retriever Limited to perform the services and to which this agreement will apply and be read with the necessary changes; “signature date” – the date upon which the last party signs this agreement; “the Territory” and any country where Retriever Limited has representation; “Unit – the electronic device and ancillary equipment approved by Retriever Limited, to be installed in a vehicle by an Installation Centre or by Retriever Limited; “vehicle” – any vehicle the details of which appear either on the Application Form or on any vehicle schedule attached, in which vehicle a Unit is installed and which vehicle is, or will become, the subject of this agreement.

2. The Service
2.1 Retriever Limited will respond to each notification of a loss and use its reasonable endeavours to effect a recovery. The Client authorises Retriever Limited to recover the vehicle and holds Retriever Limited harmless against any damage arising therefrom or at any time thereafter and/or whilst the vehicle is at any time in Retriever Limited’s possession. No risk in the vehicle shall, at any time, pass to Retriever Limited. The recovery will, save where otherwise provided, be rendered free of additional charge within the Territory.

2.2 The Client may use the Monitoring Service and will be liable to Retriever Limited for the fee for every fleet Monitoring Message generated as a result thereof (whether deliberately or by mistake), and the same will apply for any other monitoring service used by the client (if and when these might be or become available).

2.3 Due to the numerous variables involved, Retriever Limited does not guarantee that the service will lead to a recovery. The Client acknowledges that the service is intended to reduce the risk of loss, but will not eliminate such risk.

2.4 Retriever Limited provides its Clients with a free, 24-hour Unit testing service. However, the onus is on the Client to contact the Retriever Limited control centre for a Unit test to be initiated. The Client must take all reasonable steps to ensure that the Unit is in proper working order and must immediately report any Unit faults and/or failures to Retriever Limited.

3. Term This agreement shall continue for the initial period and, thereafter, indefinitely until either party terminates by giving the other 3 (three) months’ written notice thereof.

4. Fee
4.1 As consideration for Retriever Limited’s undertaking to provide the service, the Client shall pay Retriever Limited, the annual subscription, payable in advance, on production of an invoice.

4.2 If, as a result of a Monitoring Request, Retriever Limited renders any service not otherwise required of it in terms of this agreement, the Client shall pay Retriever Limited an amount determined in accordance with Retriever Limited’s then applicable standard rates for any such service rendered.

4.3 Where the Fee is, by direct or indirect agreement between the Client and any other person (“the intermediary”), agreed to be paid to Retriever Limited by the intermediary (in which event this agreement shall become a rental and service agreement) and the intermediary fails for any reason whatsoever, to pay the Fee, the Client undertakes forthwith to pay such Fee in any event within seven (7) days after notification by Retriever Limited.

5. Hardware & Warranty
5.1 Notwithstanding the provisions of clause 3 above, the parties agree that the service cannot be provided unless the Unit is installed in a vehicle and the Unit is programmed, enabled and functioning to its manufacturer’s specifications. The Client undertakes to use the Unit and the service strictly in accordance with the provisions of the Manual and/or other literature disseminated, from time to time, by Retriever Limited, provided always that in the event of a conflict between the provisions of this agreement and those of the said Manual or other literature, the provisions of the former will prevail. The Client undertakes and warrants to Retriever Limited that it shall not, either by itself/himself, in any way alter, or tamper with the Unit, and the Client shall indemnify Retriever Limited for any direct or indirect loss or liability arising from such tampering or alteration.

5.2 Subject to compliance with 5.1, the Unit (excluding consumables, such as backup batteries) and the installation thereof carries a 12-month warranty, fair wear and tear excepted. Any maintenance and/or repairs must be carried out at an Installation Centre or by a Retriever Limited accredited person. Retriever Limited gives no other warranty regarding the Unit or the service. All the implied terms and conditions contained in the Sale of Goods Act shall not apply to this agreement unless otherwise stated.

5.3 All risk of loss and damage in and to the Unit shall, from the date of installation, pass to the Client, but ownership of the Unit shall remain with Retriever Limited until payment therefor has been made in full and/or, if the Unit is rented, until the end of the initial period. If the Unit has not been paid for in full, or the Unit is rented, and this agreement is terminated in accordance with either clause 3 or 12, Retriever Limited may at its expense remove the Unit and the Client shall, within 5 days of receipt of any written or verbal request therefor, deliver the vehicle to an Installation Centre or make the vehicle available to Retriever Limited (at Retriever Limited’s sole discretion) for such removal.

6. False Alarms
The Client shall immediately notify Retriever Limited of any Monitoring Request accidentally or unintentionally generated (“false alarm”). The Client accepts liability for the consequences of any false alarm, acknowledging that such false alarm may lead to the relevant authorities or Retriever Limited responding thereto and making wrongful arrests. Accordingly, the Client undertakes to repay all costs incurred by Retriever Limited (at Retriever Limited’s then applicable standard rates), and hereby indemnifies the Service Provider against all claims or damages whatsoever, arising out of a false alarm.

7. Furnishing of Information
7.1 The Client warrants the correctness and accuracy of all the information on the Application Form or otherwise furnished by or on behalf of the Client to Retriever Limited.

7.2 The Client shall immediately notify Retriever Limited in writing of any changes in the information on the Application Form or furnished to Retriever Limited from time to time in accordance with the standard practice or procedures of Retriever Limited.

8. Insurance
8.1 If the Client rents the Unit, then the Client must insure the Unit (with a registered insurer of the Client’s choice under a separate insurance policy) against such risks of loss, damage, destruction or mechanical breakdown customarily insured for, for the duration of this agreement and in the interest of Retriever Limited, shall be noted in such insurance policy.

8.2 If any insurance policy referred to in 8.1 becomes invalid, for any reason whatsoever, or if the Client fails to produce proof of insurance or fails to pay same, Retriever Limited may (but is not obliged to) insure and keep the

Unit insured for at least its current market value for the remainder of this agreement, and the costs of such insurance shall be borne by the Client and will be payable upon demand in writing by Retriever Limited.

8.3 The Client hereby assigns and cedes to Retriever Limited, as security for the due performance of the Client’s obligations in terms of this agreement, all of the Client’s right, title and interest in and to any insurance policy effected in terms of this agreement and undertakes to deliver such policy to Retriever Limited on demand.

9. Client’s General Obligations
The Client must ensure that:

9.1 the Client keeps the Retriever Limited emergency numbers handy and contacts Retriever Limited as soon as possible after a loss;

9.2 if the Client becomes aware or is made aware by Retriever Limited that the Unit in a vehicle is not operational, the vehicle is immediately taken to an Installation Centre. If the Client fails to do so, Retriever Limited may, at its option, suspend the service;

9.3 the Client keeps false alarms to a minimum. Retriever Limited reserves the right to respond only once positive confirmation of a loss can be obtained; and

9.4 prior to conducting a test. Retriever Limited is notified to expect a test.

10. Exclusion of Liability
10.1 For the purposes of clause 10.2 all references to Retriever Limited shall include references to Retriever Limited’s employees, agents, sub-contractors, any independent contractors, the Service Provider, the Service Provider’s employees, agents and independent contractors, sub-contractors, employees and agents.

10.2 In addition to any other indemnities contained in this agreement, Retriever Limited shall not be liable for any loss or damage of whatsoever nature caused to the Client in consequence of any act or omission by Retriever Limited, notwithstanding any negligence on the part of Retriever Limited (except in the event of wilful neglect or fraud).

11. General
11.1 If Retriever Limited is directly or indirectly prevented or restricted from carrying out all or any of its obligations under this agreement by a cause beyond its control (including, without limitation, the failure by any person to provide a service to Retriever Limited or the failure of the Unit), then Retriever Limited shall be relieved of its obligations under this agreement during the period that such event continues, but only to the extent so prevented, and shall not be liable for any delay or failure in performance of its obligations hereunder. The existence of such event shall not preclude the Client from terminating this agreement in accordance with the provisions hereof.

11.2 This agreement sets out the entire agreement and understanding between the parties and supersedes all prior agreements, written or oral, in connection with the subject matter hereof.

11.3 No addition to variation or consensual cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.

11.4 No indulgence which any of the parties (“the grantor”) may grant to any other or others of them (“the grantee(s)”) shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee(s) which might have arisen in the past or which might arise in the future.

11.5 Words importing the singular shall include the plural and vice versa and words importing one gender shall include the other genders; any reference to an actual person shall include a body corporate, firm or association and vice versa.

11.6 In this agreement, the headings to the clauses are included for reference purposes only and will not in any way affect or govern the interpretation or construction of this agreement.

11.7 Where appropriate in this agreement, meanings ascribed to defined words and expressions will impose substantive obligations on the parties.

11.8 When any number of days or other period is prescribed for the doing of any act or for any other purpose, same will be calculated exclusively of the first and inclusively of the last day.

11.9 In the interpretation of this agreement, the contra proferentem rule of construction will not apply (this agreement being the product of negotiations between the parties) and this agreement will not be construed in favour of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this agreement.

11.10 Each party undertakes to do all such things, perform, take all such steps and procure the doing of all such things as may be necessary and requisite to give effect to the terms, conditions, obligations and import of this agreement read with its annexures.

11.11 If Retriever Limited instructs attorneys, or any third party, to take any action against the Client or the intermediary to enforce obligations under this agreement, the Client shall be liable for all costs incurred by Retriever Limited to Retriever Limited’s attorneys, calculated on the attorney and own client scale, collection commission of 10% of all amounts collected by the said attorneys and counsel’s fees as per brief. The Client shall be liable for such costs once Retriever Limited has instructed attorneys and incurred the costs, whether proceedings are actually instituted or not.

11.12 The nature and amount of any indebtedness of the Client to Retriever Limited shall at any time be determined and proved by a document purporting to have been signed by a manager or accountant for the time being of Retriever Limited, whose capacity or authority it shall not be necessary to prove, which certificate shall, upon the mere production thereof, be binding on the Client as prima facie proof of the contents of the document and of the fact that the amount stated therein is due and payable in any legal proceedings against the Client, and will be valid as a liquid document against the Client in any competent court.

11.13 If any provision of this agreement is rendered unlawful (retrospectively or otherwise), then only that unlawful provision shall be deemed to be modified to the extent, and in the manner, necessary to render it consistent with the enactment rendering it unlawful or, if such modification is impossible, be deemed to be severable from the remaining provisions hereof and pro non scripto. In either such event, notwithstanding anything to the contrary in this agreement, Retriever Limited and the Client respectively shall have all the rights conferred on them by the law rendering such provision unlawful.

11.14 The Client may not cede or delegate the Client’s rights or obligations in terms of this agreement without the prior written consent of Retriever Limited, which consent shall not unreasonably be withheld. Retriever Limited may, at any time and without the consent of the Client, cede or delegate Retriever Limited’s rights and/or obligations under this agreement.

11.15 The laws of the Republic of Kenya shall govern this agreement, and all disputes, actions and other matters in connection with this agreement shall be determined in accordance with such laws.

12. Default
12.1 If the Client (or the intermediary on the Client’s behalf) fails timely to pay any amount due in terms of this agreement or (in Retriever Limited’s reasonable opinion) the Client abuses or misuses the service, then, notwithstanding anything to the contrary in this agreement:

12.1.1 all amounts payable for the remaining term of this agreement will become immediately due and payable; and

12.1.2 Retriever Limited may, at its election, cancel this agreement forthwith or claim specific performance, without any prejudice to Retriever Limited’s right to claim damages.

12.2 The default by the Client of any of the Client’s obligations under this agreement will, for the duration of such default and at the option of Retriever Limited, suspend all of the obligations of Retriever Limited. If Retriever Limited provides the service while the Client is in default, then the Client is liable for (and hereby indemnifies Retriever Limited against) any costs thereby incurred. Retriever Limited may retain possession of any vehicle recovered by it until all payment obligations have been fulfilled.

Revision date: 3 January 2013

Consent Clause
1 a). I/We warrant that the information given in this application form is true and complete and authorize you to make any enquires necessary in connection with this application.

b). I hereby confirm that I have authorized the Retriever Limited to share my credit information/ access my credit profile and those of the directors/Guarantors for credit appraisal with licensed Credit Reference Bureaus (CRBs).

c). I further release the CRB and Retriever Limited and its officers, employees and agents from all claims, actions or proceedings of whatsoever nature and howsoever arising, suffered or incurred in connection with this sharing and access for the purpose afore stated.

d). I/we confirm that we have read and understood the standard trading terms and conditions (as amended time to time) and agree to bound by them. I/We agree that am/Are jointly/severally

liable for amount outstanding at any time in the account.

Signature: _____ Date: _____