

Autotoll GPS Service

Autotoll GPS Vehicle Signal Monitoring Service Terms And Conditions

1. **Interpretation**

- (a) In these Terms and Conditions the following words and phrases unless the context require otherwise shall have the meanings set out below:
- (i) "Agreement" means the agreement between the Customer and ATL for the supply of the GPS System and the Services as set out in the Subscription Order, quotation and these Terms and Conditions as amended from time to time;
 - (ii) "ATL" means Autotoll Limited and its successor and assignee;
 - (iii) "Authorised Service Centres" means the service centres authorised from time to time by ATL for the purpose of maintaining, repairing, installation or removing the GSP System;
 - (iv) "Customer" means the party who has signed and submitted the Subscription Order to ATL;
 - (v) "Deposit" means the deposit to be paid by the Customer as referred to in clause 4(e);
 - (vi) "GPRS" means General Packet Radio Service;
 - (vii) "GPS System" means the system consisting of the hardware and software installed in the Vehicle or provided to the Customer for the purpose of providing the Services, including but not limited to a central unit, various sensors, and/or immobiliser, panic button (fixed and handheld), etc;
 - (viii) "Monthly Service Fee" means the monthly service fee payable by the Customer to ATL;
 - (ix) "Parties" means collectively the Customer and ATL and a "Party" means anyone of them;
 - (x) "Relevant Date" means the date the signed Subscription Order is submitted to and accepted by ATL;
 - (xi) "Services" means the services to be supplied to the Customer as referred to in clause 8 and such other additional services as ATL may agree to supply to the Customer as specified in the Agreement;
 - (xii) "Subscription Order" means the subscription order signed by the Customer to which these Terms and Conditions are attached;
 - (xiii) "Subscription Period" means the period during which ATL shall provide the Services to the Customer;
 - (xiv) "Vehicle" means the vehicle, vessel or machinery as set out in the Subscription Order or such other vehicle, vessel or machinery on which the GPS System is installed from time to time with the consent of ATL;
 - (xv) "Warranty" means the warranty on the GPS System as set out in paragraph 5(a).
- (b) In these Terms and Conditions, the words "subsidiary" and "holding company" shall have the same meaning as attributable to them in Section 2 of the Companies Ordinance.
- (c) The headings in these Terms and Conditions are for convenience only and shall not affect its interpretation.

- (d) Words denoting the singular number only shall include the plural and the masculine gender shall include the feminine and neuter and vice versa.

2. **Application**

- (a) These Terms and Conditions set out the provisions on which ATL shall supply the GPS System and the Services to the Customer.
- (b) These Terms and Conditions supersede all other agreements and arrangements between ATL and the Customer concerning the supply of the GPS System and the Services except those expressly agreed by the Parties to override the provisions herein contained.
- (c) This Agreement shall take effect upon the acceptance of the Subscription Order by ATL.

3. **Sale of the GPS System**

- (a) The provisions in this clause 3 shall be applicable in the event that the Customer chooses to purchase the GPS System from ATL.
- (b) The Customer shall pay for the price of the GPS System as set out in the Subscription Order upon the signing of the Subscription Order.
- (c) Title in the GPS System shall pass to the Customer upon completion of physical installation by an Authorized Service centre.

4. **Rental of the GPS System**

- (a) The provisions in this clause 4 shall apply in the event the Customer chooses to rent the GPS System from ATL.
- (b) The Monthly Service Fee payable by the Customer shall include the fee payable for the rental of the GPS System.
- (c) The ownership of the GPS System remains in ATL at all times and the Customer shall not take any action which may affect ATL's ownership of such and shall handle the GPS System with reasonable care while it is installed in the Vehicle.
- (d) Within 7 days from the termination of the Subscription Period, the Customer shall allow the GPS System to be removed from the Vehicle and shall at the same time return other parts of the GPS System which is not installed on the Vehicle to the Authorised Service Centre.
- (e) The Customer shall pay the Deposit in the amount as set out in the Subscription Order to secure the return of the GPS System at the end of the Subscription Period and for the purpose as set out in clause 4(f).
- (f) Without prejudice to any other right ATL may have, ATL may use the Deposit to set off any loss or damage which ATL may suffer as a result of the loss or damages of the GPS System or any amount which may be due from the Customer to ATL.
- (g) In the event any deduction is made by ATL from the Deposit pursuant to clause 4(f) during the continuation of the Subscription Period, the Customer shall forthwith make up the shortfall upon notice from ATL.
- (h) Upon the termination of the Subscription Period and within 30 days after the GPS System has been removed and returned to ATL to the satisfaction of ATL, ATL shall return the Deposit or the balance thereof to the Customer without interest.

- (i) The Customer shall not sell the Vehicle without notice to ATL and shall allow ATL to remove the GPS System from the Vehicle prior to the sale.

5. **Warranty**

- (a) Subject to clause 5(b), ATL will warrant that the GPS System shall be free from defect in material and workmanship for a period of 12 months from the Relevant Date.
- (b) The Warranty shall cease to have effect upon the termination of the Agreement for whatever reason or in the event that
 - (i) the GPS System has been tampered with or serviced by person not authorised by ATL;
 - (ii) the GPS System has not been used in accordance with the instructions of ATL.
- (c) In the event there is valid claim by the Customer under the Warranty, ATL shall, at its option, either replace or repair the relevant component of the GPS System at the Authorised Service Centre which shall be the Customer's sole remedy.
- (d) The Warranty does not cover the vehicle remote controller battery (if equipped) installed in the GPS System and does not cover the costs of any repair to be carried out outside of the Authorised Service Centres other than in case
 - (i) the Vehicle has been immobilised as a result of defect in material or workmanship of the GPS System;
 - (ii) due to the nature of the Vehicles, it is not practical to bring the Vehicle to an Authorised Service Centre.
- (e) The Warranty is the sole warranty from ATL to Customer and no other warranty in relation to the GPS System or the Service, including but not limited to any warranty on merchantability or fitness for purposes is given or is deemed to have been given by ATL to the Customer other than any warranty implied by law and which cannot be excluded.
- (f) The Warranty is not assignable and shall not apply to the new owner of the Vehicle or the GPS System.

6. **Installation and Removal of the GPS System**

- (a) Unless otherwise waived by ATL, the installation and removal of the GPS System on the Vehicle shall be at the costs of the Customer at the rate of ATL as published from time to time.
- (b) For Vehicle which can attend an Authorised Service Centre, all installation and removal shall take place at an Authorised Service Centre and for Vehicle which due to its nature is impractical to attend an Authorised Service Centre, the installation and removal of the GPS System shall be done at the location of the Vehicle.
- (c) The actual date, time and the location for the installation or removal of the GPS System from the Vehicle shall be designated by ATL after consultation with the Customer and shall be notified to the Customer.
- (d) In the event the Vehicle is not available for installation or removal of the GPS System at the location, date or time designated by ATL referred to in clause 6(c), the Customer shall be liable to pay to ATL an administration fee of HKD 1,000 to compensate ATL for its cost in preparing for the installation.

- (e) As part of the GPS System, ATL shall install in the Vehicle a data-only cellular SIM Card by means of which messages from the GPS System is to be transmitted to ATL.

7. **The Subscription Period**

- (a) The Subscription Period shall commence upon the installation of the GPS System on the Vehicle / on the Relevant Date and shall continue until this Agreement is terminated under law or in accordance with the provisions of these Terms and Conditions.
- (b) ATL may without notice to the Customer suspend the Subscription Period in the event the Customer fails to pay any amount payable under this Agreement or is otherwise in breach of its obligations under these Terms and Conditions.
- (c) In the event that the Subscription Period is suspended, ATL may at its sole discretion revive the Subscription Period if all amounts outstanding to ATL from the Customer are paid in full within 30 days of the suspension and/or the breach of these Terms and Conditions by the Customer is remedied by the Customer within 7 days from the notice from ATL informing the Customer about the breach provided that ATL shall be entitled to charge an administration fee which it may specify from time to time for reconnecting the Services.
- (d) The Subscription Period shall be deemed to have been suspended in the event the GPS System is out of service for whatever reason, including but not limited to the period when the GPS System or the Vehicle is under repair, the GPS System is being moved from one Vehicle to another, etc.

8. **The Services**

- (a) At all times during the Subscription Period :-
 - (i) when the GPS System is in armed mode, ATL shall monitor the signal emitted from the GPS System on the Vehicle for any signal that any sensor installed as part of the GPS System is triggered or the alarm system installed by the Customer in the Vehicle (not forming part of the GPS System) has been triggered and in the event such signal is received, ATL shall inform the Customer and/or party nominated by the Customer in the manner as set out in the Subscription Order; and
 - (ii) ATL shall track the location of the Vehicle within the area covered by ATL from time to time and provide such information to the Customer in its website to which the Customer shall have access

and such other additional services which ATL may agree to supply to Customer as referred to in the Agreement which shall be provided to the Customer subject to such additional terms and conditions ATL may prescribe from time to time.

- (b) The Customer hereby acknowledges that the Services rely on
 - (i) the GPRS network of ATL's service provider;
 - (ii) the GSM communication network of ATL's service provider;
 - (iii) the operation of the GPS System; and
 - (iv) various system of the Vehicle which is connected to the GPS System.
- (c) The Customer further acknowledges and accepts that ATL will not be able to provide the Services in the event
 - (i) the GPRS network of its service provider is not available or not performing

for whatever reason;

- (ii) the GSM communication network of ATL's service provider is not available or not performing for whatever reason;
- (iii) the GPS System is not in working order for whatever reason;
- (iv) the Vehicle or part thereof which is connection with the GPS System is not available or not performing for whatever reason

and ATL shall not be liable to the Customer for any failure or delay in its provision of any of the Services other than any failure caused directly by the wilful default or negligence of ATL.

- (d) In particular but without prejudice to the generality of the foregoing, the Customer hereby agrees and acknowledge that
 - (i) the Services is simply a monitoring service and tracking services which may assist the recovery of the Vehicle in case of theft or emergency; and
 - (ii) ATL does not guarantee the recovery of the Vehicle or any content therein in case of lost or theft.

9. **Repair and Maintenance**

- (a) Subject to clause 5(a) and 6(b), all maintenance, repair, installation and removal of the GPS System, shall be carried out at an Authorised Service Centre during the service hours of the Authorised Service Centre as published from time to time.
- (b) All repair and maintenance of the GPS System other than those pursuant to a valid claim under the Warranty shall be at the cost of the Customer at the rate as published by ATL from time to time.
- (c) Unless otherwise waived by ATL and subject to clauses 5(a) and 6(b), ATL shall be entitled to charge for performing any maintenance, repair, installation and removal of the GPS System outside of the Authorised Service Centre at the rate as published by ATL from time to time.
- (d) All towing services and other services for the recovery of the Vehicle for whatever reason shall be for the account of the Customer absolutely.

10. **Access to website**

- (a) In connection with the provision of the Services, ATL shall provide the Customer with an username and a password or other codes or devices to gain access to restricted areas of the website of ATL and the Customer agrees and confirms that the content contained in such restricted area is confidential to ATL, and is provided to the Customer for its own use only and the Customer undertakes to keep the information and content confidential.
- (b) The Customer hereby undertakes that it shall not disclose the username, password, code or device provided by ATL to any third party or to allow third party to access the restricted area of ATL's website.
- (c) The Customer acknowledges that ATL may need to maintain its website from time to time and ATL shall not be liable to the Customer in the event that the website is not available for whatever reason.

11. **Monthly Service Fee**

- (a) In consideration of the obligations of ATL in this Agreement, the Customer shall pay to ATL the sum set out as the Monthly Service Fee in the Subscription Order

on the terms as set out therein.

- (b) The Monthly Service Fee shall include the amount which ATL may need to pay its service providers for the GSM communication network and the GRPS network and the SMS messages levy of ATL's service provider.
- (c) ATL shall be entitled to increase the Monthly Service Fee from time to time by given not less than one month's notice in writing to the Customer and such increase shall be effective upon the expiration of such notice.
- (d) The Monthly Service Fee shall not be refundable to the Customer in case of
 - (i) the suspension of the Subscription Period for whatever reason;
 - (ii) termination of this Agreement by the Customer other than as a result of breach on the part of ATL.

12. **Customer's Obligations**

- (a) During the continuation of this Agreement, the Customer shall:
 - (i) make the Vehicle available at an Authorized Service Centre or at the designated location upon request from ATL at a mutually convenient time for inspection or maintenance;
 - (ii) subject to clause 4(j) where relevant, inform ATL within 24 hours of the sale or transfer of ownership of the Vehicle;
 - (iii) refrain from tampering with GPS System or any part thereof in any way;
 - (iv) inform ATL within 24 hours of any change in the Customer Information and Vehicle Information as provided in the Subscription Order;
 - (v) forthwith report any error or malfunction of the GPS System to ATL; and
 - (vi) maintain the Vehicle or parts connected to the GPS System to the specification provided by ATL from time to time.
- (b) In the event of the theft of the Vehicle, the Customer shall forthwith report the theft to both the Police and ATL at once and shall refrain from announcing or publicizing or informing any member of the press or any broadcast medium of the existence of the GPS unit in the Vehicle for at least forty eight (48) hours after the time of the theft.

13. **Limitation of Liability**

- (a) To the extent permitted by law, ATL shall not be liable to the Customer for any loss or damage which the Customer may suffer, including but not limited to any loss of the Vehicle or its contents other than those caused by the wilful default or gross negligent of ATL under this Agreement.
- (b) To the extent allowed by the law, the maximum liability of ATL to the Customer under this Agreement shall be limited to the aggregated Monthly Service Fee received by ATL from the Customer since the beginning of the Subscription Period.
- (c) ATL shall under no circumstances be liable for any indirect or consequential loss or damage or loss of profit of the Customer.
- (d) ATL shall not be liable for any loss or damages of whatever nature which any third party may suffer as a result of this Agreement.
- (e) ATL shall under no circumstances be liable to the Customer for any loss or damage as a result of any failure on the part of the GPRS network service provider or GSM communication network service provider.

14. **Termination**

- (a) Unless the Customer has agreed to subscribe for the Service for a fixed period in which case the Customer cannot terminate this Agreement prior to the expiration of such fixed term, either Party may terminate this Agreement by giving not less than one month's written notice to the other Party and this Agreement shall terminate upon the expiration of such notice.
- (b) Without prejudice to any other right ATL may have under this Agreement or under law, ATL may by notice to the Customer terminate this Agreement forthwith without notice or compensation to the Customer in the event:-
 - (i) there has been a breach of this Agreement on the part of the Customer which the Customer fails to remedy within a period of 7 days after notice of such breach has been given to the Customer;
 - (ii) the Customer enters into bankruptcy or liquidation (other than for the purpose of reconstruction or amalgamation where the new or reconstructed company offers to and in fact does enter into a contract with ATL on the same terms and conditions as this Agreement before such liquidation) or passes any resolution for winding up (whether voluntary or compulsory) or has any petition for winding up presented against it or has any execution levied against it which remains unsatisfied after seven (7) days or enters into any compromise with its creditors;
 - (iii) the Customer fails to comply with any statutory demand or is insolvent according to the laws of Hong Kong or any other jurisdiction whether in Hong Kong or elsewhere;
 - (iv) the Customer ceases or threatens to cease to carry on its business or transfers or threatens to transfer its business and assets out of Hong Kong;
 - (v) the Customer disposes or threatens to dispose of a substantial part of its assets.
- (c) Termination of this Agreement shall be without prejudice to any other right or remedy one Party may have against the other or the rights and liabilities of the Parties incurred prior to such termination.
- (d) Termination shall be without prejudice to any provision hereof which is expressed to survive termination or due to its nature ought to have survived termination including but not limited to clauses 4, 13, 14, 18 19 and 20.

15. **Use of Data**

- (a) The Customer further acknowledges, consents and authorises ATL to collect, compile and use data and other information in relation to the Customer from time to time (including but not limited to the information contained in or supplied in connection with the Subscription Order, information relating to the use of the GPS System or the Service by the Customer) for the following purposes:
 - (i) the daily operation of the Services;
 - (ii) conducting credit checks on the Customer;
 - (iii) handling and following up Customer's enquiries, suggestions, complaints and suspected suspicious transactions;
 - (iv) conducting service surveys to better understand the characteristics of the Customer;
 - (v) better tailoring products and services to the needs of the Customer

and/or the type of information presented to the Customer;

- (vi) designing products and services for use by the Customer and other customers;
- (vii) as a source of information and data for transport and other services in general;
- (viii) assessing the eligibility of the Customer to apply for other services offered or to be offered by ATL;
- (ix) prevention or detection of crime;
- (x) compiling of information or data relating to traffic and transportation for supply to ATL's other client or client of its subsidiary, its holding company or other subsidiary of its holding company (provided that any personal data (as defined in the Personal Data (Privacy) Ordinance) of the Customer if any shall not be included in the data or information to be disclosed to any third party);
- (xi) meeting the requirements to make disclosure under the requirements of any law binding on ATL; and
- (xii) matters relating to or in connection with any of the foregoing.

16. **Notices**

- (a) Each notice, demand or other communication given or made under this Agreement shall be in writing and delivered or sent to the relevant Party at its address or fax number or email address set out in the Subscription Order as amended from time to time.
- (b) Any notice, demand or other communication so addressed to the relevant Party shall be deemed to have been delivered
 - (i) if given or made by personal delivery of a letter, when delivered to the relevant address;
 - (ii) if given or made by a letter delivered by post, forty eight (48) hours after posting;
 - (iii) if given or made by fax, when dispatched;
 - (iv) if given or made by e-mail when dispatched on condition that the relevant message appears in the sender's send log with properties disclosing an appropriate routing and such message was not stated by the system operator to have been undeliverable.

17. **Force Majeure**

Neither ATL nor the Customer shall be liable to the other for failure or delay in the performance of any of its or their respective obligations under these Terms and Conditions for the time and to the extent such failure or delay is caused by riot, civil commotion, war, hostilities between nations, governmental law, order or regulation, embargoes, action by any Government or any agency thereof, act of God, storm, fire, accident, strike, sabotage, explosion, or other similar or different contingencies beyond the reasonable control of the relevant Party.

18. **Indemnity**

- (a) Without prejudice to any other indemnity from the Customer to ATL under any other agreement, the Customer shall keep ATL its officers and employees indemnified and shall hold them harmless at all times from and against any and

all damage, loss, costs, expenses, liability or claims arising from or as a result of:-

- (i) the use or performance of the GPS System or Service;
 - (ii) any breach of any provision of these Terms and Conditions on the part of the Customer; and
- (b) In the event ATL has reasonably incurred any legal or collection fees or other expenses for the purposes of demanding, collecting or recovering any sum payable hereunder from the Customer, or for other remedies resulting from the breach or non-compliance of any provisions of these Terms and Conditions, in addition to any right ATL may have under law, the Customer shall fully reimburse ATL for all such legal fees, and any other fees and expenses incurred in that connection.

19. **Miscellaneous**

- (a) The time specified herein and in the Agreement for the performance of any obligation by either Party shall be of the essence of this Agreement.
- (b) If any of these Terms and Conditions is or become invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions of these Terms and Conditions shall not in any way be affected or impaired and such remaining provisions shall remain in full force and effect.
- (c) Any failure of either Party hereto to enforce at any time or for any period of time any of the provisions of these Terms and Conditions shall not be construed as a waiver of such provisions or of the right of such Party thereafter to enforce each and every such provision.
- (d) This Agreement constitutes the whole agreement of the Parties in relation to its subject-matters.
- (e) ATL may use and publish the media recovery story in relation to the Customer or any part thereof in its marketing and promotional materials provided that the name and/or vehicle number used in any such publication shall be fictitious so as to protect the identity and privacy of the Customer unless the Customer agrees otherwise.
- (f) ATL may from time to time amend the terms of these Terms and Conditions, and determine or change fees or charges payable under or in connection with this Agreement by giving not less than one month's notice to the Customer and the Customer shall be deemed to have knowledge of and shall be bound by such upon the expiration of the notice if the same shall have been displayed in a conspicuous place at the Service Centre or drawn to the attention of the Customer in such other manner as ATL thinks fit including but not limited to posting the same at the website of ATL.
- (g) The Customer hereby agrees that ATL shall be entitled to assign all benefits and liabilities under this Agreement to its wholly owned subsidiary by giving notice in writing to the Customer and the Customer shall sign all relevant documents which ATL may reasonably required to give effect to such assignment.
- (h) The rights and liabilities of the Customer cannot be assigned to any third party without consent from ATL which consent shall be granted or withheld at the sole discretion of ATL.
- (i) The English version of these Terms and Conditions shall prevail wherever there is any discrepancy between the English and Chinese versions.

20. **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of Hong Kong. The parties submit to the non-exclusive jurisdiction of the courts of Hong Kong.