

Autotoll GPS Service

Autotoll Service GPS Terms & Conditions

THIS SERVICES AGREEMENT is made between **AUTOTOLL LIMITED** (the "Company") and the Customer and sets out the terms and conditions on which the Company agrees to provide the Customer with the Autotoll GPS Service.

1. **Definitions**

1.1 In this Agreement unless the context otherwise requires the following words and expressions shall have the following meanings:-

"Additional Services" means such additional Services as agreed between the Company and the Customer pursuant to clause 3.2.

"Agreement" means this Services Agreement and the Application Form.

"Application Form" means the application form completed by the Customer pursuant to which the Customer has applied to the Company for the use of Autotoll GPS Service.

"autopay" means the direct debit of a bank account pursuant to an autopay authorisation instruction to the bank.

"Autotoll GPS Service" means the vehicle location and monitoring based services provided by the Company to the Customer in accordance with this Agreement by means of the On-board Unit for GPS location display on electronic maps as agreed and acknowledged by the Customer in the Application Form and includes the right to access the Services Portal and any Additional Services.

"Charges" means the amounts payable by the Customer to the Company for the provision of the Autotoll GPS Service as specified in writing by the Company and notified to the Customer.

"Customer" means the person who is registered owner of the Specified Vehicle, or the person nominated by such registered owner and the registered subscriber of the Autotoll GPS Service.

"Deposit" means the deposit (if any) paid pursuant to clauses 7.3(A) or 7.4 or as subsequently replaced or increased pursuant to clause 7.4 for the purposes of securing the return of the On-board Unit and the due performance and observance of the terms and conditions of this Agreement by the Customer.

"GPS" means global positioning system.

"Hong Kong" means the Hong Kong Special Administrative Region of the People's Republic of China.

"Minimum Period" has the meaning attributed to such term in clause 2.

"On-board Unit" means a device issued by the Company to the Customer for installation in a Specified Vehicle for the purpose of providing the Autotoll GPS Service and having the identification number and/or mark specified in the Application Form. Details of the components of the On-board Unit are specified in the Application Form but are subject to change or modification by the Company at any time without notice to the Customer.

"Service Centre" means the service centre of the Company as the Company may notify to the Customer from time to time.

"Service Portal" means the portal at <http://www.autotoll-gps.com.hk> set up by the Company, or the domain address as the Company may notify to the Customer from time to time.

“Specified Vehicle” means the vehicle in respect of which an On-board Unit is issued, details of which are set out in the Application Form.

“Unallocated On-board Unit” means a device designed for installation in vehicles for the purpose of providing the Services and owned and retained by the Company pending issue to applicants therefor.

1.2 In this Agreement, unless the context otherwise requires:-

- (A) references to clauses are to clauses of this Agreement;
- (B) words denoting one gender shall include all other genders;
- (C) words denoting the singular shall include the plural and vice versa; and
- (D) the word “person” includes a company.

2. **Commencement and Duration**

This Agreement shall commence on and with effect from the date the Application Form is accepted by the Company and shall continue in force until such date as shall be agreed in writing between the Company and the Customer (the “Minimum Period”) or until terminated under clause 10 and the Customer hereby confirms that he will comply with and use the Autotoll GPS Service in accordance with the terms and conditions of this Agreement.

3. **Provision of the Services**

- 3.1 In consideration of the payment of the Charges, the Company shall from the date notified to the Customer by the Company following commencement of the provision of the Autotoll GPS Service (which includes but is not limited to installation of the On-board Unit(s) in the Customer's Specified Vehicle(s) pursuant to clause 5) and until termination of this Agreement, provide Autotoll GPS Service.
- 3.2 The Company shall provide the Customer with such Additional Services at such charges as the Customer and the Service Provider may from time to time agree in writing.
- 3.3 In order to provide the Autotoll GPS Service, the Company shall and hereby grants to the Customer the right to use the On-board Unit(s) in accordance with the terms and conditions of this Agreement.
- 3.4 The Company hereby grants the Customer the right to access the Service Portal. The Customer will be strictly and solely responsible for any misuse of the Service Portal (which includes, but shall not be limited to, the hacking of and/or direct or indirect damages to the Service Portal) and shall keep the Company indemnified on the terms of clause 13.1.

4. **The Customer's Obligations and Warranties**

- 4.1 The Customer warrants that all the statements and information contained in or supplied in connection with the Application Form are true and accurate in all respects and any copy documents supplied in connection therewith are true copies of the originals and the Company hereby issues the On-board Unit(s) in reliance thereon.
- 4.2 The Customer acknowledges that:-
 - (A) The Company has not made, and to the fullest extent prosecuted by law the Company expressly disclaims, any representation or warranty, express or implied, relating to the On-board Unit or the electronic maps used in the provision of the Autotoll GPS Service (including without limitation any express or implied warranty as to merchantable quality or fitness for a particular purpose);

- (B) the electronic maps used in the provisions of the Autotoll GPS Service by the Company may not always be accurate due to construction of new roads, road closures, or similar circumstances, and other conditions are constantly changing and may cause inaccuracies in such electronic maps; because of this Autotoll GPS Service might not be able to generate a correct position of a Specified Vehicle, create a correct route or display correct information;
 - (C) the Customer has no intellectual property rights in the electronic maps used in the provision of the Autotoll GPS Service and nothing in this Agreement shall create any intellectual property right or interest for the Customer associated with such electronic maps; and
 - (D) each On-board Unit is and shall at all times be and remain the property of the Company and nothing in this Agreement shall create any intellectual property right or interest for the Customer associated with the Autotoll GPS Service or the On-board Unit.
- 4.3 The Customer agrees that the Customer's employees and the Customer's authorized persons have the right to access the Service Portal and it shall make its best endeavours to keep, and to procure its employees, and authorized persons to keep, any log-in identification information and passwords to the Service Portal in strictest confidence and shall not use such in any way directly or indirectly to procure a commercial advantage over, or in any manner detrimental to the Company.

5. **The On-board Unit**

- 5.1 The Customer authorises the Company to install the On-board Unit in order for the Company to provide the Autotoll GPS Service and agrees to indemnify the Company from any damage that is made to the Specified Vehicle for such installation pursuant to clause 13.1(C)
- 5.2 If an On-board Unit fails or is defective in any respect other than by reason of abuse or improper use, the Customer shall attend at the Service Centre in order for the Company to repair or, if the Company in its sole discretion sees fit, to install a replacement On-board Unit.
- 5.3 The Customer agrees that:-
- (A) immediately upon installation of an On-board Unit, the Customer will at all times safeguard the On-board Unit; and
 - (B) shall not improperly use nor cause any damage to the On-board Unit

6. **No Transfer of On-board Unit**

The Customer is not permitted to transfer an On-board Unit from a Specified Vehicle to another vehicle

7. **Fees and Charges**

- 7.1 The Customer shall pay for the Autotoll GPS Service performed during each [month] - within 7 calendar days in accordance with the Charges. Charges shall be invoiced for a full month in advance of the Autotoll GPS Service rendered. Such payment for the Charges shall not be refunded wholly or partially in the event that the Autotoll GPS Service is terminated by either the Company and/or the Customer pursuant to clause 10.
- 7.2 If the Customer fails to pay any invoiced amount in full by the due date of payment, the Company shall without prejudice to its other rights, be entitled to charge interest at the rate of 2% per month on any outstanding amount calculated on a daily basis from the due date of payment until the date on which payment is actually received by the Company in full. In addition, the Company reserves the right to charge the Customer collection and handling fees in respect of any late payment.

- 7.3 The Customer agrees to pay to the Company:-
- (A) in connection with each On-board Unit a monthly service fee of such amount as specified by the Company in writing [and notified to the Customer]; and
 - (B) all administration fees, periodic charges and other fees and charges payable under or in connection with this Agreement as specified by the Company in writing [and notified to the Customer].
- 7.4 On the date of issue of the On-board Unit(s) the Customer shall pay the Company (as may be determined by the Company from time to time):-
- (A) the sum (if any) specified by the Company [and notified to the Customer] as the deposit; and
 - (B) the monthly service fee pursuant to clause 7.3(A)
- 7.5 If any time the Company requires a Deposit to be paid or the Deposit (if already paid) to be replaced (where the same has been forfeited or utilised as provided in this Agreement) or increased, the amount of the Deposit, replacement Deposit or such increase, as the case may be, shall be paid by the Customer to the Company upon notification of such requirement.
- 7.6 The Customer hereby acknowledges that no interest will be paid or payable on the Deposit, and that the Deposit may be applied at the absolute discretion of the Company firstly in or towards payment of any outstanding fees and charges payable under or in connection with this Agreement.
- 7.7 In the event that a cheque drawn by the Customer in favour of the Company is not honoured for the full amount on first presentation or the autopay authorisation instruction or a credit card authorisation instruction given by the Customer in favour of the Company is rejected, a handling charge as determined by the Company from time to time in this connection will be payable by the Customer to the Company.
- 7.8 In addition to any general right of set-off or other rights conferred by law or under any other agreement, the Company may without notice, set-off or transfer any money paid by the Customer to the Company under this Agreement in or towards satisfaction of the Customer's liability to the Company under any other Agreement.

8. **Suspension of service**

- 8.1 Without in any way affecting the rights of the Company under this Agreement, the Company shall be entitled to suspend its provision of the Autotoll GPS Service without prior notice to the Customer if:-
- (A) the Customer fails to pay any sum payable under this Agreement within 7 calendar days of the due date and shall not resume the provision of the Autotoll GPS Service until the sums payable have been received in full by the Company; and
 - (B) the Customer misuses the Autotoll GPS Service as contemplated in clause 3.4 and shall not resume the provision of the Autotoll GPS Service until the Customer provides such evidence to the company so that the Company is satisfied that such misuse was inadvertent or otherwise; if the Company is not so satisfied within 7 calendar days of the suspension, the Company shall be entitled to terminated this Agreement immediately pursuant to clause 10.3(B)

The Company shall not incur any liability to the Customer or any other person as a result of or in connection with such suspension.

- 8.2 If the Company suspends its provision of the Autotoll GPS Service, the Company may, but shall not be obliged to, following such suspension give written notice to the Customer of such suspension and thereafter the Customer shall pay any sums payable to the Company as soon as practicable

8.3 Notwithstanding the suspension of the provision of the Autotoll GPS Service, the Company shall be entitled to charge and the Customer shall pay all fees and charges incurred during the suspension.

9. **Forfeiture of Deposit**

9.1 Without prejudice to any of the other rights of the Company under this Agreement, the Deposit will be absolutely forfeited to the Company without prior notice to the Customer in any of the following circumstances:-

- (A) the Customer fails to return an On-board Unit contrary to clauses 10.4; or
- (B) save where clauses 5.2 applies, an On-board Unit is not returned in good condition; or
- (C) an On-board Unit is lost or stolen

9.2 Without prejudice to any of the obligations of the Customer under this Agreement, the Company may in its absolute discretion utilise the Deposit or part thereof to set-off against any monies owing by the Customer to the Company

9.3 In the event that the Customer has not paid a Deposit or the Deposit has been forfeited or utilised as provided herein and has not been replaced and without prejudice to any of the other rights of the Company under this Agreement, a sum equal to the amount specified by the Company from time to time as the Deposit will be paid by the Customer to the Company in any of the circumstances set out in clause 9.1; otherwise, the Company is entitled to terminate the Autotoll GPS Service pursuant to clause 10.3(A).

10 **Termination of this Agreement**

10.1 The Company may terminate this Agreement at any time upon giving to the Customer thirty (30) days written notice. If the Company and the Customer so agree in writing after the Minimum Period, the Customer may terminate the Agreement at any time by giving the Company thirty (30) days written notice.

10.2 Termination hereunder shall not affect the Company's right of action against the Customer for any antecedent breach or liability incurred prior to the date of termination.

10.3 The Company may terminate this Agreement immediately without notice to the Customer in any of the following circumstances:-

- (A) the Customer fails to pay any sum payable under this Agreement within 14 calendar days of the due date;
- (B) if the Customer misuses the Autotoll GPS Service as contemplated in clause 3.4;
- (C) the Customer is otherwise in breach of this Agreement and fails to remedy such breach (if capable of remedy) within seven calendar days' written notice thereof given to the Customer;
- (D) the Customer (being a company) goes into liquidation or has a winding up or receiving order made against it or a receiver is appointed over any of its assets or it enters into a composition or other arrangement with its creditors;
- (E) the Customer (being an individual) dies or has a bankruptcy or receiving order made against him or he enters into a composition or other arrangement with his creditors.

10.4 Upon termination of this Agreement, the Customer shall immediately pay a sum to the Company sufficient to settle any monies owing from the Customer to the Company (which shall include the monthly service fee payable or that would

have become payable if the Agreement had continued in effect until the end of the contract period specified in the Application Form) after deducting the amount of the Deposit and taking into account all outstanding fees and charges payable to the Company under or in connection with this Agreement and shall attend at the Service Centre within 14 calendar days of termination in order for the Company to uninstall and retain the On-board Unit(s).

- 10.5 Subject to clause 9, after receipt of the On-board Unit(s) by the Company in good condition and subject to such reasonable period as is necessary to enable the Company to process all outstanding transactions and to determine the balance of any monies paid by the Customer to the Company, the Company will return the Deposit to the Customer without interest provided that the Customer has paid a sum sufficient to settle any monies owing by the Customer to the company after deducting the amount of the Deposit. In the event that there is a positive balance after such processing, a sum representing such balance will be paid to the Customer.
- 10.6 Notwithstanding termination of this Agreement, the Company shall be entitled to set-off any monies paid by the Customer to the Company under this Agreement against any fees and charges payable by the Customer to the Company under or in connection with this Agreement.
- 10.7 Forfeiture of the Deposit by the Company and/or termination of this Agreement shall not affect the rights of either party accrued under this Agreement prior to such termination nor the obligations of the Customers to return the On-board Unit(s) to the Company and to settle any outstanding monies owned by the Customer to the Company and to indemnify the Company against all costs (including legal fees) and expenses incurred in recovering the On-board Unit(s) and such outstanding balance.

11. **Lost or Stolen On-board Unit**

- 11.1 Any loss or theft of any On-board Unit must be reported to the Company immediately upon the Customer becoming aware of such loss or theft. The Customer shall be fully liable and responsible for all Charges incurred whether or not authorized by the Customer.
- 11.2 Upon receipt of the written notification of the loss or theft of an On-board Unit as provided in clause 11.1, the Company will issue a replacement On-board Unit to the Customer and the Customer will be liable to pay any charge as may be chargeable by the Company for issuing such replacement.

12. **Use of Data**

- 12.1 The Customer further acknowledges, consents and authorises the Company 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 Application Form, information relating to the use of the On-board Unit or the Autotoll GPS Service by the Customer) for the following purposes:
- (A) the daily operation of the Autotoll GPS Service;
 - (B) conducting credit checks on the Customer;
 - (C) handling and following up customer enquiries, suggestions and complaints;
 - (D) conducting service surveys to better understand the characteristics and feedback of the Subscriber and its drivers about the Service;
 - (E) better tailor products and services to the needs of the Subscriber and/or the type of information presented to the Subscriber;
 - (F) designing products for use by the Customer and other customers;
 - (G) marketing by the Company, its agents or third parties of goods and/or services to the Customer and other customers;

- (H) determining the amount of indebtedness owed to or by the Customer;
- (I) collection of amounts outstanding from the Customer;
- (J) as a source of information and data for transport and other services in general;
- (K) assessing the eligibility of the Customer to apply for an Unallocated On-board Unit, and
- (L) prevention or detection of crime;
- (M) compiling of information or data relating to traffic and transportation for supply to the Company'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);
- (N) meeting the requirements to make disclosure under the requirements of any law binding on the Company; and
- (O) matters relating to or in connection with any of the foregoing.

12.2 The Customer agrees that the Company may disclose details of and relating to himself or the Autotoll GPS Service to any third person.

13 **Indemnity**

13.1 The Customer shall keep the Company indemnified and shall hold the Company harmless at all times from and against:-

- (A) any and all damage, loss, costs, expenses, liability or claims arising from or as a result of the use or performance of the Autotoll GPS Service;
- (B) any and all damage, loss, costs, expenses, liability or claims arising from or as a result of any misuse of the Service Portal as contemplated in clause 3.4;
- (C) any and all damage, loss, costs, expenses, liability or claims arising from or as a result of the installation of the On-board Unit(s) in the Specified Vehicle(s) and the use thereof upon the Customer's request as specified in the Application Form;
- (D) any and all costs (including legal fees) and expenses incurred in recovering the On-board Unit(s), any monies due from the Customer to the Company and any interest thereon and any other sums due or payable by the Customer under or in connection with this Agreement; and
- (E) any breach of provision of this Agreement on the part of the Customer.

14. **Disclaimer and Limitation of Liability**

14.1 The Company will use its reasonable efforts to make the Autotoll GPS Service available to the Customer without abnormal interruption. The Company makes no warranty as to the quality and availability of any of Autotoll GPS Service and other communication networks to which the Autotoll GPS Service is connected. The Customer acknowledges that radio signals may be affected by factors such as building obstructions, radio interference and weather conditions and the Company does not guarantee that the Autotoll GPS Service will be uninterrupted or information or data will be duly transmitted to, and received by, the Customer through the Autotoll GPS Service at all times. The Company accepts no responsibility and the Customer shall not hold the Company liable for any failure, interruption, delay, data accuracy or suspension of Autotoll GPS Service and its networks. The Company 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.

14.2 In the event that the provision of Autotoll GPS Service is undertaken by other

independent service providers (the "Independent Service Providers"), the Company disclaims for itself and on behalf of the Independent Service Providers all responsibilities or liabilities arising from the acts, default, neglect, omission and mistakes committed by the Independent Service Providers. In consideration of the services provided by the Independent Service Providers to the Customers, it is expressly acknowledged and agreed by the Customer that the Company has the requisite authority to make the disclaimer on behalf of the Independent Service Providers and that this clause shall be extended to protect the Independent Service Providers and shall be relied upon by the Independent Service Providers as if they were parties to the contract with the Customer.

- 14.3 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.
- 14.4 Except as expressly set forth above, no other warranties are expressed or implied, in particular but without prejudice to the generality of the foregoing the Company neither represents that the Autotoll GPS Service is infallible nor guarantees that it will be able to trace or retrieve the Specified Vehicle in the event of its emergency or theft or attempted theft.
- 14.5 The Customer acknowledges that the Company has not made, and insofar as not prohibited by law the Company expressly disclaims any representation or warranty, express or implied, relating to the Autotoll GPS Service or On-board Unit (including without limitation any express or implied warranty as to merchantable quality or fitness for a particular purpose). In no event shall the Company be liable to the Customer or related party or any third party for any loss, inconvenience or damage whether direct, incidental, consequential or otherwise resulting from breach of any express warranty herein or any implied warranty of merchantability, fitness for a particular purpose or otherwise with respect to the Autotoll GPS Service or On-board Unit or otherwise howsoever except as set forth above.
- 14.6 To the extent permitted by law, the Company 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 Specified Vehicle or its contents other than those caused by the wilful default or gross negligent of the Company under this Agreement.
- 14.7 The Company shall under no circumstances be liable for any indirect or consequential loss or damage or loss of profit of the Customer.
- 14.8 To the extent allowed by the law, the maximum liability of the Company to the Customer under this Agreement shall be limited to the aggregated Charges received by the Company from the Customer since the beginning of the subscription period.
- 14.9 Any claim by the Customer against the Company arising out of the Agreement must be notified in writing to the Company within one month of the incident giving rise to such claim failing which the Customer will be deemed to have waived the Customer's right in respects of such claim.

15 **Confidentiality**

- (A) The Company does not warrant and accepts no responsibility for confidentiality of any information or data whether personal or otherwise transmitted through the Company servers, its networks and/or Autotoll GPS Service. The Company current practice is to take reasonable steps to maintain confidentiality as is set out in the Company's Personal Information Collection Statement.
- (B) The Company reserves the right at all times to disclose any information as the Company deems necessary to satisfy any applicable law, regulation, legal process or government request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in the Company sole discretion.

16. **Data Privacy**

The Customer acknowledge that his/her personal data are given to the Company

and the Customer agrees to be bound by the terms thereof on a voluntary basis and the Customer has been shown or otherwise advised how to obtain a copy of the Company Personal Information Collection before subscription. A copy of the Company's Personal Data Privacy Policy is available on the Company's website at "www.autotoll.com.hk".

17. **Miscellaneous**

- 17.1 All payments to be made by the Customer to the Company under this Agreement shall be without set-off or counterclaim.
- 17.2 The Company shall not be under any liability to the Customer in respect of any loss arising directly or indirectly out of any failure of or direct in an On-board Unit.
- 17.3 The provision of this Agreement (including but not limited to the amount of the Deposit, the Charges and any fees or charges payable by the Customer to the Company) are subject to change or modification by the Company at any time without notice to the Customer. The Customer shall be deemed to have knowledge of and shall be bound by any such provisions as hereafter amended, made or adopted by the Company 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 the Company thinks fit but not limited to posting the same at the website of the Company.
- 17.4 If any of the terms and conditions of this Agreement are or become invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining terms and conditions of this Agreement shall not in any way be affected or impaired and such remaining terms and conditions shall remain in full force and effect.
- 17.5 Any waiver by the Company of any breach of this Agreement shall be effective only in the instance and for the purpose for which it is given and no failure or delay by the Company in exercising or enforcing any right under this Agreement shall operate as a waiver thereof.
- 17.6 No term or condition hereof may be amended or waived unless agreed in writing by the General Manager of the Company.
- 17.7 The Customer will notify the Company promptly in writing of any change in the statements or information provided by the Customer in the Application Form or at any time thereafter and the Customer shall indemnify the Company for all losses and damages which the Company may suffer as a result of any change in such information not reported to the Company.
- 17.8 Any notice from the Company to the Customer and any statement, record, copy or other information to be sent to the Customer in accordance with the paid post to the address of the Customer set out in the Application Form or as otherwise notified to the Company and shall be deemed to have been received by the Customer two calendar days after the date of posting. Any notice from the Customer to the Company shall be sent by prepaid post to the Service Centre.
- 17.9 This Agreement will be governed by and construed in accordance with the laws of Hong Kong and the parties submit to the non-exclusive jurisdiction of the courts of Hong Kong.
- 17.10 In the event of any inconsistency between the Chinese version and the English version of this Agreement, the English version shall prevail.