

## NETSTAR TERMS AND CONDITIONS

### 1 CONTRACT

- 1.1 The Subscriber requires certain Netstar Units and Netstar Services from Netstar, and Netstar has agreed to provide the Netstar Units and Netstar Services to the Subscriber.
- 1.2 This Contract sets out the terms which will apply to the Netstar Unit and Netstar Services provided by Netstar to the Subscriber, regardless whether this Contract has been signed by the Subscriber.

### 2 DEFINITIONS AND INTERPRETATION

- 2.1 The words and phrases stated below will be used throughout the Contract. When reading the Contract, the word or phrase must be given the meaning set out next to it.
- 2.1.1 **"Business Day"** means Monday to Friday, excluding weekends, being Saturday and Sunday and excluding a public holiday as defined under the Public Holiday Act, 36 of 1994;
- 2.1.2 **"Contract"** means this agreement, the Netstar User Manual and related literature and where applicable, any addendum to this agreement;
- 2.1.3 **"Effective Date"** means the date when the Netstar Unit is installed into the Vehicle;
- 2.1.4 **"Data Subject"** means the individual or juristic person to whom the Personal Information relates;
- 2.1.5 **"De-identified Data"** means Personal Information and Vehicle Data that has been anonymised such that the identity of the Subscriber or any other person is not or no longer identifiable;
- 2.1.6 **"Emergency Contact"** means the person/s nominated by the Subscriber to be contacted in the event of an emergency or if Netstar is not able to make contact with the Subscriber;
- 2.1.7 **"GSM Network"** means the Global Systems for Mobile Communications Network, which is a wireless communications network over which the GSM Service is provided by Netstar, where applicable;
- 2.1.8 **"GSM Service"** means the services provided by Netstar in terms of the Contract using the GSM Network;
- 2.1.9 **"Initial Period"** means the period of the Contract;
- 2.1.10 **"Netstar"** means Netstar (Proprietary) Limited, a South African company bearing registration number 1992/001223/07 with its registered office at Block O, Central Park Offices, Midrand, and includes its employees, agents sub-contractors and contractors and where applicable business partners;
- 2.1.11 **"Netstar Control Centre"** means the Netstar centre where signals from the Netstar Unit can be monitored and acted upon by Netstar;
- 2.1.12 **"Netstar Fitment Centre"** means an independent entity that has been authorised and approved by Netstar to install the Netstar Unit on Netstar's behalf into the Vehicle;
- 2.1.13 **"Netstar Privacy Policy"** means the document/s which states the manner in which Netstar collects and uses the Subscriber's Personal Information, with whom Netstar shares it, and the Subscriber's rights in relation to its Personal Information, which can be viewed at <https://www.altron.com/privacy-policy/>;
- 2.1.14 **"Netstar Service"** means the Netstar Unit and various services provided by Netstar in terms of the Contract which includes the response, tracking and an attempt to recover any reported or suspected stolen or hijacked Vehicle;
- 2.1.15 **"Netstar Unit"** means the Netstar tracking device, and SIM card (if any) installed in the Vehicle used to provide the Netstar Service and which is sold or rented to the Subscriber under this Contract;
- 2.1.16 **"Netstar User Manual"** means the user guide, training materials and related documents provided to the Subscriber, which states how the Netstar Service operates;
- 2.1.17 **"Network Service Provider"** means the service provider who provides the GSM Network;
- 2.1.18 **"Parties"** means both the Subscriber and Netstar collectively and **"Party"** means either the Subscriber or Netstar;
- 2.1.19 **"Personal Information"** has the meaning set out in section 1 of POPIA and includes information relating to an identifiable, natural or juristic person, and for the purposes of this Contract may include Vehicle Data;
- 2.1.20 **"POPIA"** means the Protection of Personal Information Act, 4 of 2013;
- 2.1.21 **"Processing" or "Process"** has the meaning set out in POPIA and includes any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including:
- 2.1.21.1 the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
- 2.1.21.2 dissemination by means of transmission, distribution or making available in any other form; or
- 2.1.21.3 merging, linking, as well as restriction, degradation, erasure or destruction of Personal Information,
- 2.1.22 **"Subscriber"** means the Party to whom this Contract applies;
- 2.1.23 **"Territory"** means the countries in Southern Africa stated in the Netstar User Manual where the Netstar Service is available, which may be amended at Netstar's sole discretion from time to time by written notice to the Subscriber;
- 2.1.24 **"VAT"** means value added tax as levied from time to time in terms of the Value Added Tax Act, 89 of 1991;
- 2.1.25 **"Vehicle"** means the vehicle in respect of which the Netstar Service will be provided; and
- 2.1.26 **"Vehicle Data"** means information which is Processed during the course of providing the Netstar Service to the Subscriber, or information which is Processed as a result of the Subscriber using the Netstar Service or information which is Processed through the use, operation and functioning of the Netstar Unit or the Vehicle, including the information referred to in clause 12.11.
- 2.2 The provisions of this Contract will take precedence over any conflicting provision found under the Netstar User Manual, or any other applicable document which may be provided to the Subscriber from time to time.
- 2.3 Words referring to the single form will include the plural form and words referring to one gender will include the other gender.

### 3 AGREEMENT TO PROVIDE THE NETSTAR SERVICE

- 3.1 The Subscriber has agreed to contract with Netstar for the Netstar Service and Netstar has agreed to provide the Netstar Service to the Subscriber on the terms set out in this Contract.

### 4 DURATION OF THE CONTRACT

- 4.1 The duration of the Contract will be for the Initial Period, commencing on the Effective Date, unless terminated earlier by either of the Parties, as permitted in terms of this Contract.
- 4.2 On expiry of the Initial Period, and provided that the Subscriber has not confirmed that the Contract will terminate on the expiration of the Initial Period, the Contract will continue on an indefinite basis, and either Party will have the right to terminate the Contract on 1 (one) calendar months written notice to the other.
- 4.3 Where the Netstar Unit is purchased by the Subscriber, there will be no Initial Period applicable and either Party will have the right to terminate the Contract at any time upon 20 (twenty) Business Days written notice to the other.

### 5 SUBSTITUTE VEHICLES AND ADDITIONAL VEHICLES

- 5.1 The Subscriber may at any time add on a vehicle or substitute another vehicle for the Vehicle in respect of which the Netstar Service is being provided, in the manner directed by Netstar.
- 5.2 Where a Vehicle has been added or substituted for another Vehicle, the Subscriber will be liable to Netstar for any additional fees relating to the Netstar Service, including the costs of removal and or installation of the Netstar Unit as the case may be and authorises Netstar to increase the amount of the debit order, which increase will be effective from the date of installation of the Netstar Unit in the new or substituted Vehicle.
- 5.3 The terms set out in this Contract will apply in all respects to the Netstar Service in respect of any new or substituted Vehicle.

## **6 THE NETSTAR SERVICE, NETSTAR UNIT AND WARRANTIES**

- 6.1 Netstar will provide the Subscriber with the Netstar Service for the duration of the Contract, provided that the Subscriber complies with its obligations under the Contract.
- 6.2 On conclusion of the Contract, the Subscriber will present the Vehicle for the installation of the Netstar Unit at a Netstar Fitment Centre or alternatively at such place as pre-arranged with Netstar.
- 6.3 Netstar will only be obliged to provide the Netstar Service for Netstar Unit which has been provided and installed in the Vehicle by a Netstar Fitment Centre or by Netstar.
- 6.4 Although the Contract will commence on the Effective Date, the Subscriber accepts that the Netstar Service cannot be provided by Netstar or used by the Subscriber unless the Netstar Unit is properly installed in the Vehicle, is programmed, enabled and is functioning according to Netstar's specification.
- 6.5 If the Netstar Unit is purchased from Netstar, ownership and risk of any loss or damage, in the Netstar Unit will pass to the Subscriber on the Effective Date.
- 6.6 If the Netstar Unit is rented from Netstar, ownership in the Netstar Unit will stay with Netstar but the risk of loss or damage in the Netstar Unit will pass to the Subscriber on the Effective Date.
- 6.7 In the case of a GSM Service the Subscriber will as soon as possible but within 48 (forty eight) hours notify Netstar and the police, of any loss, damage or theft of the SIM card.
- 6.8 Netstar warrants that the Netstar Unit will be free of defects in workmanship, design and materials for the full duration of the Initial Period and where the Netstar Unit is purchased for cash by the Subscriber, the Netstar Unit will carry a 12 (twelve) month warranty from the Effective Date.
- 6.9 The Subscriber agrees not to alter or modify the Netstar Unit under any circumstances. If the Netstar Unit is tampered with, altered, modified, misused or is damaged as a result of a collision, water or any other cause beyond Netstar's control, including fair wear and tear, then the warranty set out under clause 6.8 will not apply and Netstar will not have any obligation to repair or replace the Netstar Unit or provide the Netstar Service, or refund to the Subscriber any amounts claimed by the Subscriber, in respect of any warranty, damages or contractual claim. Any maintenance or repairs which are required in terms of the Netstar warranty will be carried out by a Netstar Fitment Centre at no cost to the Subscriber.
- 6.10 WHERE NETSTAR ATTEMPTS TO CONTACT THE SUBSCRIBER TO ADVISE THE SUBSCRIBER THAT THE NETSTAR UNIT IS NOT FUNCTIONING PROPERLY AND NETSTAR ATTEMPTS TO MAKE ARRANGEMENTS WITH THE SUBSCRIBER TO ATTEND TO REPAIR OR REPLACEMENT OF THE NETSTAR UNIT HOWEVER THE SUBSCRIBER IS NOT CONTACTABLE AND OR THE SUBSCRIBER DOES NOT PROVIDE NETSTAR WITH REASONABLE ACCESS TO THE VEHICLE THEN NETSTAR WILL BE RELIEVED OF ITS OBLIGATION TO PROVIDE THE NETSTAR SERVICE DURING THIS TIME THAT THE NETSTAR UNIT IS NOT FUNCTIONING PROPERLY .
- 6.11 Where the Netstar Unit is not functioning properly, whether under warranty or not, and the Subscriber is not contactable and or fails to provide Netstar with reasonable access to the Vehicle to have the Netstar Unit repaired or replaced the Subscriber will still be liable to pay the Netstar Service fee.
- 6.12 The Subscriber will notify the Netstar Control Centre immediately should the Netstar Unit be accidentally activated and or should the Subscriber provide a false instruction for Netstar to attend to a recovery. The Subscriber accepts responsibility for all consequences of any accidental activation of the Netstar Unit and or providing a false recovery instruction, which may include a response by the police or response teams and a subsequent wrongful arrest of the Subscriber or any third party. THE SUBSCRIBER AGREES TO HOLD NETSTAR HARMLESS FROM, AND INDEMNIFIES NETSTAR AGAINST ANY CLAIMS FOR DAMAGES THAT MAY BE BROUGHT BY ANY PARTY AS A RESULT OF ANY ACCIDENTAL ACTIVATION OF THE NETSTAR UNIT AND OR PROVIDING A FALSE RECOVERY INSTRUCTION.
- 6.13 The Subscriber agrees to use the Netstar Unit and the Netstar Service in accordance with the Netstar User Manual and other literature provided by Netstar from time to time.
- 6.14 Subject to clause 7.6, the Netstar Service will be provided in the Territory. Netstar is not obliged to render the Netstar Service outside the Territory.
- 6.15 It is recorded that Netstar may at any time change the Network Service Provider who provides the GSM Service or use facilities other than a GSM Service to provide the Netstar Service provided that Netstar's obligations to the Subscriber as provided under the Contract will not be affected.

## **7 NETSTAR SERVICE FEES**

- 7.1 The fees for the Netstar Services will include the following:
  - 7.1.1 where the Netstar Unit is purchased by the Subscriber, the once off purchase price for the Netstar Unit;
  - 7.1.2 where the Netstar Unit is rented by the Subscriber, the monthly rental fee in respect of the Netstar Unit;
  - 7.1.3 an installation fee for installing the Netstar Unit in the Vehicle;
  - 7.1.4 the monthly service fee for the Netstar Service;
  - 7.1.5 international roaming charges, where activated; and
  - 7.1.6 where a Vehicle has been added on or substituted for the existing Vehicle, a fee for installation or removal of the Netstar Unit as the case may be.
- 7.2 Where the Effective Date does not fall on the first day of the month, the Subscriber will pay a pro-rata amount for the Netstar Service in respect of that month, calculated on a daily basis from the Effective Date and the Subscriber will not be billed for the period prior to the Effective Date.
- 7.3 Notwithstanding anything to the contrary in this clause, the fees stated in clause 7.1 as applicable, for the first 2 (two) months of the Contract (pro rata where applicable) will be paid on the Effective Date, in the manner directed by Netstar.
- 7.4 The fees will be set out in a monthly VAT invoice which will be provided to the Subscriber on a monthly basis.
- 7.5 Where the Subscriber has elected to subscribe for the GSM Service, which is provided over the Network Service Provider's network, it will, in addition pay a fee for the GSM Service, as well as the costs of SMS messages, voice calls, data messages, and any other related expenses, which will be paid in arrears, notwithstanding that the SIM card may, through no fault of the Subscriber, have been lost and fraudulently used by a third party unless the Subscriber has reported the loss to Netstar in terms of clause 6.7.
- 7.6 Should the Subscriber require an international roaming service, and the Netstar Service is provided to the Subscriber outside the borders of the Republic of South Africa but within the Territory, the Subscriber will be responsible for all and any charges which may be charged by the Network Service Provider, in respect of the international roaming service at standard rates, applicable from time to time.
- 7.7 WHERE AN INTERNATIONAL ROAMING SERVICE IS ACTIVATED AS STATED IN CLAUSE 7.5, THE SUBSCRIBER HOLDS NETSTAR HARMLESS FROM ANY LIABILITY FOR ANY COSTS AND CHARGES WHICH MAY BE INCURRED IN RESPECT OF THE INTERNATIONAL ROAMING SERVICE AND AGREES THAT IT WILL BE LIABLE FOR ANY CLAIM BROUGHT AGAINST NETSTAR BY THE NETWORK SERVICE PROVIDER, IN RESPECT OF SUCH FEES.
- 7.8 International roaming charges will be billed in arrears and the Subscriber acknowledges and accepts that Netstar is dependent on the Network Service Provider for the billing information and that billing may therefore be delayed due to delays by the Network Service Provider, beyond the control of Netstar.
- 7.9 Subject to clause 7.8, all fees will be paid by way of debit order in favour of Netstar free of bank charges or in any other manner approved by Netstar, monthly in advance on or before the 7th (seventh) day of each calendar month or such date as specified by the Subscriber.
- 7.10 Should any debit order be returned unpaid or dishonoured for any reason, the Subscriber authorises Netstar to submit additional debit orders as may be necessary for the full outstanding balance including any arrear amounts.

- 7.11 The Subscriber authorises Netstar to debit the Subscriber's nominated bank account in respect of the Netstar Service fee and must ensure that such banking details are accurate and up to date.
- 7.12 Netstar will have the right to increase the Netstar Service fee and charges on an annual basis, provided that such increase is reasonable and that it provides the Subscriber with at least 1 (one) month's prior written notice of such increase in which event the Subscriber will be entitled to cancel this Contract as permitted in terms of clause 8.
- 7.13 If, as a result of a signal from the Netstar Unit, or at the Subscriber's request, Netstar renders any service not required of it in terms of this Contract, the Subscriber agrees that it will pay Netstar an amount determined in accordance with Netstar's standard fees applicable from time to time, for such service rendered.
- 7.14 The Subscriber will not be allowed to withhold payment of any fees or other amounts due to Netstar where the Netstar Unit is not functioning properly for any reason. Where this is the case, the Subscriber must immediately inform Netstar and make the necessary arrangements with Netstar for the Netstar Unit to be repaired by a Netstar Fitment Centre.
- 7.15 If the Subscriber fails to pay to Netstar any amount owing in terms of this Contract, Netstar will have the right to suspend the Netstar Services and will give the Subscriber 20 (twenty) Business Days to make payment of all outstanding amounts. Should Netstar not receive payment as requested in the notice, Netstar will have the right to terminate the Contract and hand the outstanding account to an attorney or debt collector for recovery.
- 7.16 During any period of suspension or disconnection, Netstar reserves the right to refuse to release the SIM card to the Subscriber or to any other party.
- 7.17 Where the Subscriber's insurance company or employer pays the Netstar Service fees to Netstar on behalf of the Subscriber, THE SUBSCRIBER AUTHORISES NETSTAR IN THE EVENT OF ANY DEFAULT OF PAYMENT, CANCELLATION OF THE INSURANCE POLICY OR TERMINATION OF EMPLOYMENT CONTRACT, TO DEBIT THE SUBSCRIBER'S BANK ACCOUNT DIRECTLY WITH THE MONTHLY NETSTAR SERVICE FEES AT THE NORMAL RETAIL RATE.
- 7.18 A certificate signed by any director or manager of Netstar stating the indebtedness of the Subscriber to Netstar under the Contract will be sufficient proof of the Subscriber's indebtedness to Netstar. It will not be necessary for Netstar to prove the appointment of the person signing any such certificate.

## **8 RIGHT TO TERMINATE PRIOR TO EXPIRY OF THE INITIAL PERIOD**

- 8.1 The Subscriber may elect to cancel the Contract at any time for any reason including where the Vehicle is sold or written off in an accident subject to clause 8.2.
- 8.2 Where the Subscriber elects to cancel the Contract, the Subscriber may do so upon 20 (twenty) Business Days written notice to Netstar and where such notice has been provided by the Subscriber prior to the Initial Period, the Subscriber must pay a reasonable cancellation fee together with any other amounts due and payable in terms of this Contract to Netstar.

## **9 FURNISHING INFORMATION AND NOTICES**

- 9.1 The Subscriber confirms that all information which it has provided to Netstar under the Contract is true and accurate and can be relied on by Netstar.
- 9.2 In the event of an emergency, the Subscriber agrees that it or its Emergency Contact may be contacted.
- 9.3 If there is any change to the information set out under the Contract, the Subscriber will notify Netstar of the change. Where the Subscriber fails to notify Netstar of any changes then the Subscriber agrees to hold Netstar harmless should Netstar rely or act upon the former and outdated information.
- 9.4 Where Netstar is required to notify the Subscriber or its contact person of any fact, notice and document relating to or in connection with this Contract, Netstar will communicate such message or notice using any form of electronic communication of its choice, including communication sent by SMS, email or phone as Netstar deems appropriate and the Subscriber agrees that communication can be given in such a manner.
- 9.5 Where Netstar cannot reach the Subscriber or its contact person at the details supplied by Subscriber, Netstar will be excused and legally relieved of the duty to provide such notice.
- 9.6 Where legal notice is to be served, in terms of the Contract on the Subscriber, the Subscriber chooses its address for service of all legal notices and documents in connection with this Contract (domicilium citandi et executandi) at its physical address provided by the Subscriber.
- 9.7 Where legal notice is to be served, in terms of the Contract on Netstar, Netstar chooses its respective address for service of all legal notices and documents in connection with this Contract (domicilium citandi et executandi) at the following physical addresses: Central Park Offices, Block O, 16th Road, Randjespark, Extension 5, Midrand.
- 9.8 Either Party may change its address, by written notice to the other Party providing that any new address selected by it will be a physical address, and such changes will only be effective upon receipt of notice in writing by the other Party.
- 9.9 The Subscriber acknowledges that Netstar is obligated to ascertain the Subscriber's credit worthiness as per the provisions of the National Credit Act, 34 of 2005. The Subscriber expressly gives Netstar permission to:
- 9.9.1 access from any duly registered credit bureau, the Subscriber's Personal Information concerning financial risk and payment habits ("payment profile") to process the Subscriber's application for the Netstar Service; and
- 9.9.2 share or disclose information about the Subscriber's payment profile to credit bureau.
- 9.10 Where the Subscriber has authorised a third party which is also a business partner of Netstar such as the Subscriber's insurance company, emergency response company or any other third party to receive Vehicle Data from Netstar, then to the extent of such authorisation, THE SUBSCRIBER EXPRESSLY CONSENTS TO NETSTAR PROVIDING VEHICLE DATA TO SUCH PARTY AND WILL HOLD NETSTAR HARMLESS FROM ANY LOSS OR DAMAGE RESULTING FROM SUCH DISCLOSURE.
- 9.11 In the case of any GSM Service, the Subscriber acknowledges that it is under a duty to provide Netstar with certain mandatory information in accordance with the Regulation of Interception of Communications and Provision of Communication Related Information Act, 48 of 2008 ("RICA") and undertakes to cooperate with Netstar prior to the activation of the GSM Service, in respect of the provision of all the required documentation and information, FAILING WHICH IT WILL HOLD NETSTAR HARMLESS AGAINST ANY LOSS OR DAMAGE RESULTING FROM SUCH FAILURE.
- 9.12 THE SUBSCRIBER REPRESENTS AND UNDERTAKES IN RELATION TO ANY DATA SUBJECT, INCLUDING BUT NOT LIMITED TO ANY OF THE SUBSCRIBER'S DESIGNATED DRIVERS OR EMERGENCY CONTACT PERSONS, THAT THE SUBSCRIBER HAS COMPLIED WITH, AND WILL CONTINUE TO COMPLY WITH, ANY AND ALL RELEVANT DATA PROTECTION LAWS SUCH AS POPIA. THE SUBSCRIBER UNDERSTANDS THAT SUCH COMPLIANCE WILL INCLUDE BUT NOT BE LIMITED TO OBTAINING CONSENT TO THE EXTENT NECESSARY, IN THE EVENT THAT THE SUBSCRIBER SHARES PERSONAL INFORMATION THAT THE SUBSCRIBER HOLDS IN RESPECT OF SUCH DATA SUBJECT WITH NETSTAR FOR THE PURPOSES OF THIS CONTRACT.

## **10 EXCLUSION OF LIABILITY**

- 10.1 The Subscriber accepts that the Netstar Service is intended to reduce the risk of loss if the Subscriber's Vehicle is stolen or hijacked, but that recovery of the Vehicle is not guaranteed.
- 10.2 UNLESS PROHIBITED BY LAW, THE SUBSCRIBER AGREES TO HOLD NETSTAR HARMLESS FOR ANY LOSS OR DAMAGE CAUSED TO THE SUBSCRIBER ARISING FROM THE NETSTAR SERVICE, AND OR NETSTAR NOT BEING ABLE TO PERFORM THE NETSTAR SERVICE FOR ANY REASON, INCLUDING NETSTAR'S NEGLIGENCE, OR DUE TO ANY MALFUNCTION OF THE NETSTAR UNIT AND OR THE NETWORK.

## **11 RECOVERY SERVICE WARRANTY**

- 11.1 The recovery service warranty ("RSW") arrangement is between Netstar and MiWay Insurance Limited ("MiWay") and is applicable to Vehicles fitted with the Netstar Unit upon MiWay's request or where the Vehicle was already fitted with Netstar Unit before being covered by MiWay. For the avoidance of any doubt, the RSW is payable directly to MiWay and not the Subscriber. The Subscriber must ensure that it adheres to all obligations in terms of the RSW as this impacts its arrangement with Netstar and MiWay.
- 11.2 The Subscriber is insured through MiWay or MiWay Blink, a division of MiWay (whichever is applicable), with whom Netstar has an arrangement to pay the RSW directly to. The Subscriber understands and agrees that s/he shall not be entitled to any payment of the RSW at any time, notwithstanding termination of the insurance policy with MiWay.
- 11.3 The RSW is not an insurance product, and is not intended to substitute any insurance on the Vehicle.
- 11.4 The Subscriber must be subscribed to the Netstar Stolen Vehicle Recovery service, and the Vehicle installed with the approved Netstar Unit which falls within the MiWay and Netstar agreement. All other Netstar Units are excluded.
- 11.5 The Netstar Unit must have been installed by one of Netstar's mobile technicians, and not by any other installation agent.
- 11.6 The following types of vehicles will be excluded:
- Unpowered/ non-motorised assets such as trailers;
  - motor cycles;
  - specialised vehicles used for agriculture, construction and mining purposes (earth moving equipment);
  - marine crafts and vessels.
- 11.7 The theft or hijacking must occur within the borders of South Africa. This RSW will only apply to Vehicles that are classified as motor vehicles licensed to travel on public roads and only to Vehicles utilised as a means of transportation for people and/or cargo.
- 11.8 The theft or hijacking must be reported to Netstar's emergency control centre at telephone number 0800112222 within a maximum of 2 (two) hours of the incident or from the Subscriber becoming aware of the theft, whichever is the later.
- 11.9 The Subscriber must report the incident to the South African Police ("SAPS") within 48 (forty eight) hours of becoming aware of the incident and provide the SAPS case number to Netstar and/or MiWay.
- 11.10 All of the Subscriber's information, Emergency Contacts and Vehicle details must be up to date at the time of the incident. The Subscriber can update its details on the My Netstar Portal (<https://my.netstar.co.za/login>) or by contacting Netstar or via any of the Netstar platforms as directed by Netstar from time to time. The Subscriber must inform Netstar immediately should any of its Personal Information or Vehicle information change. Netstar shall be relieved of its obligations if the Subscriber's contact details are incorrect and in Netstar's opinion this contributed materially to the non-recovery of the Vehicle.
- 11.11 Subject to clause 11.9, if Netstar contacted the Subscriber or the Emergency Contact to enquire about an emergency signal and the Subscriber or any of its Emergency Contact advised that the Vehicle was safe and it in fact had been stolen and subsequently not recovered, Netstar shall be relieved of the RSW.
- 11.12 Notwithstanding the provisions of clause 11.10, in the event that the voice recordings and transcript of the calls would reasonably lead a Netstar agent into believing that the Subscriber and the Emergency Contact were hijacked and kidnapped together, and in such an instance Netstar did not respond accordingly, then Netstar will not be relieved of its obligations in terms of this RSW.
- 11.13 The Subscriber must not be in breach of any term of the Contract and the Subscriber's account with Netstar must not be in arrears. If the Subscriber's account has been suspended at the time of the incident, Netstar will have no obligation to pay the RSW.
- 11.14 Where the terms and conditions set out in the Contract are not complied with, Netstar shall be under no obligation to pay the RSW, notwithstanding anything to the contrary contained herein.
- 11.15 The Subscriber must also adhere to the terms and conditions of MiWay's insurance policy which includes among other things using all reasonable care and taking all reasonable steps to prevent or minimise loss with the same degree of carefulness which can be expected from the reasonable man on the street.
- 11.16 Netstar will ensure that once the Netstar Unit has been installed and is functioning and reporting correctly, it will contact the Subscriber should the Netstar Unit need inspection where after further action will then be taken if required.
- 11.17 If the Vehicle is involved in an accident, the Subscriber must urgently test the Netstar Unit by logging onto the My Netstar Portal (<https://my.netstar.co.za/login>) or via any of the Netstar testing platforms as directed by Netstar from time to time as the impact may have damaged it.
- 11.18 The Subscriber must take the Vehicle to the nearest fitment centre for a repair or make the Vehicle available for a technician to inspect/repair within 3 (three) working days of being informed by Netstar that the Netstar Unit is faulty or needs to be inspected.
- 11.19 The RSW does not apply to any damages to the Vehicle, or any possessions taken from the Vehicle, whether in a theft or hijacking or not.
- 11.20 The RSW and Netstar does not cover any damage to the Vehicle in the event of the Vehicle being recovered.
- 11.21 The Subscriber must fully cooperate with and allow Netstar to investigate the theft or hijacking incident.
- 11.22 The RSW shall not be applicable to any Vehicle which was stolen and recovered with the Netstar RSW Netstar Unit installed previously under the MiWay portfolio, unless the Subscriber has the Netstar Unit inspected and certified in order by Netstar after such incident. A fee of R495.00 (four hundred and ninety five rand) inclusive of VAT will be charged for this inspection. Netstar may adjust this fee from time to time.
- 11.23 Where the Vehicle is recovered by any third party, the Subscriber must inform Netstar of the recovery within 10 (ten) days of becoming aware of the recovery.
- 11.24 The RSW shall be valid for 3 (three) years from date of installation of the Netstar Unit, and after this period it can be renewed by the Subscriber for an inspection fee of R495.00 (four hundred and ninety five rand) inclusive of VAT for a further 3 (three) years. Netstar may adjust this fee from time to time.
- 11.25 An RSW claim will be deemed invalid if the Subscriber did not comply with their responsibilities as outlined in this clause.
- 11.26 A RSW claim will be deemed invalid if Netstar made all reasonable attempts to contact the Subscriber to arrange a repair or inspection of the Netstar Unit and could not get hold of the Subscriber or if the Subscriber did not avail its Vehicle for repair of the Netstar Unit.
- 11.27 In the event of a conflict between this clause 11 and the remaining provisions of the Contract, this clause 11 shall take precedence.

## **12 DATA PROTECTION AND PRIVACY**

- 12.1 In order for Netstar to provide the Netstar Service the Subscriber understands and agrees that Netstar requires information including but not limited to Personal Information to enable Netstar to fulfil its obligations in terms of this Contract. The Subscriber undertakes to provide such information to Netstar as and when required in relation to the Netstar Services.
- 12.2 Netstar will collect the following categories of Personal Information from the Subscriber:
- name and surname;
  - contact number;
  - email address;
  - physical address;
  - postal address;
  - identity number;
  - banking details;
  - Vehicle registration number;
  - make and model of Vehicle;
  - location information; and



- 12.2.11 Vehicle Data.
- 12.3 Netstar will collect Personal Information directly from the Subscriber and third parties, such as, including but not limited to, brokers, insurance companies, credit bureaus, dealerships and business partners.
- 12.4 Netstar will exercise all reasonable measures to process the Subscriber's Personal Information in terms of the Netstar Privacy Policy, POPIA and the provisions of this clause.
- 12.5 By entering into this Contract, the Subscriber confirms, acknowledges and agrees, with express consent, that Netstar may collect Process and or store the Personal Information contained in the Contract, or any transaction under it, or any entry, account or other information held by Netstar in relation to this Contract (which may include the Subscriber's Personal Information and/or Personal Information of the Subscriber's Emergency Contact as well as De-identified Data) for the purposes of:
- 12.5.1 sharing certain of the Subscriber's Personal Information (and non-personal information such as make and model of the Vehicle, frequently travelled areas, traffic information, theft and hi-jacking statistics) including Vehicle Data with Netstar's business partners, service providers and or sub-contractors for purposes of providing the Netstar Services to the Subscriber;
- 12.5.2 concluding, implementing and monitoring the operation of this Contract;
- 12.5.3 to banks for purposes of effecting the deduction and payment of amounts due to Netstar and all ancillary actions related to such deduction and payment;
- 12.5.4 assessing financial risks;
- 12.5.5 fraud prevention and preventing and detecting crime;
- 12.5.6 providing the Subscriber, any combination of services, analysis, advice or intermediary service linked to the Contract or the Subscriber's relationship with Netstar as a client;
- 12.5.7 SMS and other electronic forms of direct marketing for Netstar products and services as well as products and services of third parties affiliated with Netstar (unless the Subscriber has requested not to receive such information);
- 12.5.8 carrying out statistical and other analyses to identify potential markets and trends;
- 12.5.9 developing new products and services and enhancing and developing Netstar's existing products and services;
- 12.5.10 training of Netstar employees;
- 12.5.11 inclusion in data lists which may be used by third parties to improve and enhance Netstar's products and service and offerings to the Subscriber;
- 12.5.12 referring it to a credit reference agency or credit bureau (which may make records of searches and enquiries which may be used by others for lending, credit or purchasing decisions about the Subscriber or any individual);
- 12.5.13 any person, subsidiary, holding company or associated company or other company who is engaged in Netstar's business or who is acting on Netstar's behalf; and
- 12.5.14 disclosing of Personal Information required or permitted by Law.
- 12.6 THE SUBSCRIBER HEREBY EXPRESSLY CONSENTS TO NETSTAR:
- 12.6.1 DISCLOSING ITS PERSONAL INFORMATION, TO ANY PERSON, SUBSIDIARY, HOLDING COMPANY OR ASSOCIATED COMPANY OR OTHER COMPANY WHO IS ENGAGED IN NETSTAR'S BUSINESS OR WHO IS ACTING ON NETSTAR'S BEHALF FOR THE ABOVE PURPOSES;
- 12.6.2 DISCLOSING THE SUBSCRIBER PERSONAL INFORMATION TO ANY PERSON WHO PROVIDES SERVICES TO NETSTAR OR ACTS AS NETSTAR'S AGENT OR TO WHOM NETSTAR HAS TRANSFERRED OR PROPOSE TO TRANSFER ANY OF NETSTAR'S RIGHTS AND DUTIES IN RESPECT OF THIS CONTACT, LOCALLY AND OUTSIDE THE REPUBLIC OF SOUTH AFRICA WHEN INTERNATIONAL ROAMING IS ACTIVATED, AS NECESSARY. NETSTAR REQUESTS PERSONS WHO PROVIDE SERVICES TO NETSTAR TO AGREE TO THE NETSTAR PRIVACY POLICIES IF THEY NEED ACCESS TO ANY PERSONAL INFORMATION TO CARRY OUT THEIR SERVICES.
- 12.7 THE SUBSCRIBER ACKNOWLEDGES THAT:
- 12.7.1 NETSTAR WILL AT ALL TIMES REMAIN RESPONSIBLE FOR DETERMINING THE PURPOSE OF AND MEANS FOR PROCESSING THE SUBSCRIBER'S PERSONAL INFORMATION IN TERMS OF AND SUBJECT TO THIS CLAUSE 12;
- 12.7.2 NETSTAR IS REQUIRED BY VARIOUS LAWS, TO COLLECT AND DISCLOSE SOME OF THE SUBSCRIBER'S PERSONAL INFORMATION;
- 12.7.3 WITHOUT THIS PERSONAL INFORMATION NETSTAR WILL BE UNABLE TO CONCLUDE AND OPERATE THIS CONTRACT; AND
- 12.7.4 THE SUBSCRIBER IS PROVIDING NETSTAR WITH ITS PERSONAL INFORMATION VOLUNTARILY.
- 12.8 The Subscriber expressly consents thereto that Netstar may transfer the details of this Contract, to computer system operators in countries outside of South Africa, which have data protection laws equivalent or greater than those in South Africa.
- 12.9 The Subscriber consents to and acknowledges that Netstar may monitor and/or record telephone calls with the Subscriber for quality security, and training purposes.
- 12.10 The Subscriber waives any right, title or interest in and to the De-identified Data and expressly agrees that Netstar may process the De-identified Data in any manner whatsoever which may include commercial gain.
- 12.11 The Subscriber acknowledges and agrees that Netstar will Process Vehicle Data for the purpose of providing the Netstar Services. The Vehicle Data may include, without limitation, information relating to:
- 12.11.1 the Vehicle and the details of the driver of the Vehicle;
- 12.11.2 the location of the Vehicle at any given time;
- 12.11.3 the manner in which the Vehicle is used;
- 12.11.4 the driving patterns and driving behaviour of the driver of the Vehicle; and
- 12.11.5 information derived from the Netstar Unit in the Vehicle.
- 12.12 Netstar will use reasonable endeavours to ensure that the Subscriber's Personal Information as provided is accurate, however, it is the Subscriber's responsibility to ensure that the information provided is accurate. The Subscriber undertakes to immediately advise Netstar of any changes to the Subscriber's Personal Information should any of these details change. Netstar will not be responsible for any loss or damage, howsoever caused, in the event of the Subscriber providing inaccurate or incomplete information.
- 12.13 The Subscriber has the right to lodge a complaint with the Information Regulator, under POPIA. The contact details of the Information Regulator are available on the following website: <https://www.justice.gov.za/inforeg/>.
- 13 ACCESS TO DATA**
- 13.1 The Subscriber acknowledges that Netstar will have access to and Process Personal Information for the duration of the Contract in accordance with clause 12 for the provision of the Netstar Service to the Subscriber. The Netstar Service, including access to the provision of the Vehicle Data to the Subscriber shall terminate upon termination of the Contract.
- 13.2 Netstar will delete the Personal Information within a reasonable period of time following termination of the Contract except where required retention of the Personal Information is required by law in which case Netstar will retain such Personal Information in accordance with applicable legislation.

#### **14 FORCE MAJEURE**

If Netstar is prevented or restricted in any way from carrying out all or any of its obligations under this Contract by reason of force majeure (an event or circumstance beyond the control of the Parties, such as a war, strike, riot, crime, or an "act of God" such as flooding or an earthquake which prevents one or both Parties from performing their obligations under the Contract), then Netstar will be relieved of its obligations to provide the Netstar Service during such period of force majeure, and Netstar will not be liable for any loss, damage, action or claim which may be brought by the Subscriber or by any other party in consequence of such delay or inability to perform.

#### **15 BREACH AND CONSEQUENCES**

15.1 If the Subscriber or its authorised agent, which includes an insurer, employer or bank:

15.1.1 fails to pay any amount under this Contract on due date; or

15.1.2 fails to carry out or perform any of its contractual obligations or breaches any term or condition of this Contract; or

15.1.3 in Netstar's reasonable opinion raises false alarms or abuses the Netstar Service, (referred to as "the breach"); then Netstar may immediately suspend the Netstar Service and provide the Subscriber with a written notice requiring it to rectify the breach within 20 (twenty) Business Days of the date of such notice.

15.2 Where the Subscriber fails to rectify the breach within the 20 (twenty) Business Day period, Netstar will thereafter have the right to immediately terminate the Contract, without notice to the Subscriber, which termination shall be without prejudice to any rights which Netstar may then have in law, including:

15.2.1 where the Initial Period of the Contract has not expired, the right to claim from the Subscriber an early termination fee reasonably calculated by Netstar;

15.2.2 where the Initial Period of the Contract has not expired, the right to immediately remove and recover ownership and possession of the Netstar Unit from the Vehicle, at the Subscriber's risk and expense;

15.2.3 the right to demand from the Subscriber, all amounts payable, by the Subscriber to Netstar under the Contract; and

15.2.4 the right to claim any other damages from the Subscriber, which it may have incurred in law in consequence of the Subscriber's breach.

15.3 Where Netstar breaches any material term of the Contract, the Subscriber has the right to send Netstar a written notice requiring Netstar to rectify the breach within 20 (twenty) Business Days of receipt of such notice.

15.4 Where Netstar fails to rectify the breach within the 20 (twenty) Business Day period, the Subscriber will thereafter have the right to immediately terminate the Contract, on written notice to Netstar which termination will be without prejudice to any rights which the Subscriber may have in law, including the right to claim damages from Netstar which it may have incurred in consequence of Netstar's breach.

15.5 Where the Subscriber cancels the Contract during the Initial Period in terms of clause 15.4, the Subscriber will still be liable to pay Netstar an early termination fee and Netstar will have the right to immediately remove and recover ownership and possession of the Netstar Unit from the Vehicle.

15.6 Where Netstar has to remove the Netstar Unit in terms of this clause, the Subscriber will do all such things as may be reasonably necessary to enable Netstar to uplift and collect the Netstar Unit from the Vehicle.

15.7 Where Netstar has to use the services of a debt collector or attorney to successfully enforce any provisions of the Contract, then the Subscriber will bear the costs incurred by Netstar, including legal fees, on an attorney and client basis.

#### **16 GENERAL**

16.1 This Contract will be interpreted in accordance with the laws of the Republic of South Africa.

16.2 Should any provision of this Contract be declared unlawful whilst the Contract is in force, such provision will be deleted from the Contract and the remaining parts of the Contract will continue to operate.

16.3 This Contract sets out the entire agreement and understanding between the Parties and supersedes all prior Contracts, in connection with the subject matter of this Contract.

16.4 No change or cancellation of this Contract will be of any force or effect unless such change or cancellation is agreed in writing and signed by both Parties.

16.5 Where one of the Parties does not act on a breach of the Contract by the other Party, failure to act will not result in that Party giving up its rights to act upon that breach or another breach, at a later stage.

16.6 The Subscriber will not be able to transfer, cede, delegate or assign its rights or obligations in terms of this Contract to another person without the prior written consent of Netstar, which consent will not unreasonably be withheld.

16.7 Netstar will be entitled to transfer, cede, delegate or assign its rights or obligations under this Contract provided that the Subscriber is not reasonably prejudiced in any manner.