

## TERMS AND CONDITIONS

### 1. DEFINITIONS

**Additional Costs** - includes but is not limited to Roaming Costs, additional devices or optional extra's, change of ownership, no-show fee on scheduled appointments, early termination of contract admin fee, out of warranty repair cost, storage of vehicle costs, de-installation and reinstallation cost of any Tracking Device and/or Dashcam all of which carry additional costs;

**Agreement** - The contract entered into and concluded between the Client and Fidelity SecureDrive in respect of the Tracking Device and/or the Dashcam and the Service set out in the Customer Application Form or the Voice-logged Contract which Agreement will be exclusively governed by these Terms and Conditions together with the features applicable to the relevant Tracking Device and/or the Dashcam (as set out on Fidelity SecureDrive's web-based and app-based portals read together with the Customer Application Form and/or any annexures attached which shall be made available to the Client on request);

**Business Day** - Any day other than a Saturday, Sunday or official public holiday in South Africa; as defined under the Public Holidays Act 36 of 1994.

**Client/Customer** - means the party to whom this Agreement applies and whose particulars are set out on the Customer Application Form or Voice-logged Contract.

**Cooling-Off** – If applicable, the Client will have a cooling-off period as stipulated by the Consumer Protection Act 68 of 2008, as amended from time to time;

**Customer Application Form** - refers to the form or Voice-logged Contract which includes *inter alia* where applicable all of the Client particulars including the identity of the Client, details of the Dashcam, the Fidelity SecureDrive service chosen by the Client, the identity of the vehicle for which the Service will be provided as well as the fees payable for such services elected by the Client;

**Dashcam** – means the Dashcam that will be provided by Fidelity SecureDrive, the full details of which will be included in the Customer Application Form read with Fidelity Secure Drive's web-based and app-based portals.

**Effective date** - means the date of installation of the Tracking Device and/or the Dashcam into the Vehicle;

**Emergency Number** - 0861 737 483 or any other number as amended from time to time by SecureDrive;

**False Alarm** - means any incident where the Recovery service was activated other than a Loss or Recovery of the Vehicle to which the Tracking Device is installed. This will include but not be limited to any incident where it was established that the Vehicle or asset was not stolen or hi-jacked. All costs as a result of a False Alarm are for the Clients expense.

**Fee** - means the costs of providing the Service as set out on the Customer Application Form, the Monthly Subscription Fee payable monthly in advance by the Client (regardless of whether it is a cash or rental agreement, the Tracking Device and the Dashcam payable within 7 days of signature of this Agreement (if this is a cash sale) together with any other ancillary charges which may be applicable from time to time;

**Fidelity SecureDrive** - means Fidelity SecureDrive, a brand of Fidelity ADT (Pty) Ltd, a South African company bearing registration number 2000/029969/07 with its registered office at Ulwazi Business Park, 505 15th Road, Randjespark,

Midrand, 1685 and includes entities appointed by Fidelity SecureDrive to perform the Service and shall include references to the employees, agents, sub-contractors, service providers, suppliers and any independent contractors of Fidelity SecureDrive or such appointed entities;

**Fidelity SecureDrive Control Centre** - means the centre appointed by Fidelity SecureDrive where signals from the Tracking Device can be received, monitored and acted upon by Fidelity SecureDrive.

**FMS (if applicable)** - means the "*Fleet Management System*", a provision by Fidelity SecureDrive to the Client of the real-time web-based system whereby the Client is able to position, monitor and obtain reports covering various aspects of the driver behaviour and Vehicle performance. This Service only applies where the fleet management Tracking Device is installed, and Roaming Costs may apply should the Vehicle cross Territory borders (see clause below related to Roaming Costs);

**GSM network** - means Global Systems for Mobile Communications Network which is a wireless communications network over which the GSM service is provided by Fidelity SecureDrive, where applicable;

**GSM service** - means the services provided by Fidelity SecureDrive in terms of the Contract using the GSM Network;

**Installation Centre** - A center authorized and approved by Fidelity SecureDrive for the installation of a fixed Tracking Device and/or Dashcam;

**Loss** – means the loss of the Vehicle or Assets due to but not limited to theft and/or robbery (hijacking) (evidenced by a SAPS case number). Note that in the case of such Loss the onus and responsibility is on the Client to immediately notify Fidelity SecureDrive through either of their notification portals (web-based or app-based) or alternatively *via* the supplied emergency number which may vary from time to time;

**Monthly Subscription Fee** - means the monthly fee, as set out in the Customer Application Form or Voice-logged Contract, which is payable monthly in advance for the period of the Agreement;

**Health Check**- if applicable, means that Fidelity SecureDrive will regularly perform health checks on the Tracking Devices to determine whether they are functional;

**Pricing Schedule** - means the price list setting out the retail price for the Service, the Tracking Device and the Dashcam and any ancillary charges as set out in the Customer Application Form or Voice-logged Contract;

**Recovery** – if applicable, means the physical tracking, locating and/or recovery of the Client's Vehicle by any means;

**Recovery Fees** – means the fees that Fidelity SecureDrive may incur in the event that a Tracking Device and/or Dashcam has to be deinstalled due to early termination of the Agreement.

**Rental** - means the provision of the Tracking Device and/or the Dashcam, which includes installation, for the duration of the Rental Period where the ownership of the Tracking Device and/or the Dashcam remains with Fidelity SecureDrive;

**Rental Period** – means 36 (thirty-six) months.

**Roaming Costs** - means any GSM costs incurred when the Tracking Device transmits messages *via* a GSM network outside of the Territory.

**Service** – if applicable, means the provision of the Tracking Device and various other services provided by Fidelity SecureDrive in terms of the Agreement which includes but is not limited to vehicle tracking, FMS (if applicable), SVR over the GSM Network, all dependent on the Tracking Device and service selected by the Client on the Customer Application Form.

**SIM Card** - means the "*Subscriber Identity Module*" card which ownership thereof shall at all times vest in Fidelity SecureDrive.

**SVR** - means "*Stolen Vehicle Recovery*", a provision of a Service of Fidelity SecureDrive to the Client whereby Fidelity SecureDrive conducts the tracking and recovery operations in accordance with Fidelity SecureDrive's standard procedures to secure the Vehicle after receiving notification of a Loss by the Client. This Service is only applicable in the Territory and the countries where Fidelity SecureDrive has operational capacity;

**Terms and Conditions** – means the terms and conditions attached to your welcome letter which may be amended from time to time;

**Territory** - means The Republic of South Africa;

**Tracking Device** - means the Fidelity SecureDrive Tracking Device which may use a variety of communication protocols including but not limited to radio frequency, GSM, satellite or Internet of Things (IoT);

**Vehicle** - means any Vehicle or other asset of the Client which is the subject of this Agreement and in which a Tracking Device and/or Dashcam is installed, the details of which appear either on the Customer Application Form or on any attached addendum, or the Voice-logged Contract;

**Voice-logged Contract** – means, where applicable, an oral Contract concluded telephonically by the Client with SecureDrive for the Dashcam and/or Service to which the terms and conditions of this Agreement apply;

**Website** - means <https://adt.co.za/solutions/fidelity-securedrive/>

Annexure A – This Annexure contains any early termination penalties and recovery costs in the event that the Agreement is terminated early.

## **2. AGREEMENT OF SERVICE**

- 2.1. The Client has agreed to contract with Fidelity SecureDrive for the purchase of the Dashcam and/or the provision of the Service and Fidelity SecureDrive has agreed to provide the Dashcam and/or Service to the Client, in terms of the Agreement, subject to these Terms and Conditions.
- 2.2. The provisions of the Terms and Conditions will take precedence over any conflicting provision found under the web-based portal, app-based portal or any other applicable document which may be provided or accessible to the Client from time to time in any form.
- 2.3. Where the Client has entered into a web-based or app-based Agreement the Client agrees that these Terms and Conditions will apply in all respects to the Service and Agreement which the Client has elected to enter into.
- 2.4. The Client warrants that he has read, understood, and has no objections to the Terms and Conditions and Fidelity SecureDrive's Privacy Policy as set out on its Website.
- 2.5. It is agreed that the Voice-logged Contract, where applicable will be legally binding and will incorporate these Terms and Conditions.
- 2.6. It is agreed that Fidelity SecureDrive shall, from time to time at its sole election, be entitled to modify these Terms and Conditions and the Client's continued use of the Dashcam and/or Service will be subject to the

Terms and Conditions in force at the time of use. Accordingly, it is the Client's obligation to review any changes to these Terms and Conditions periodically as Client's continued access or use of the Dashcam and/or Service shall be deemed to signify Client's acceptance of the updated Terms and Conditions.

### **3. OBLIGATIONS BETWEEN FIDELITY SECUREDRIVE AND THE CLIENT**

- 3.1. Fidelity SecureDrive agrees to provide the Client with the Dashcam and/or the Service in terms of the Agreement on condition that the Client complies with its obligations set out in these Terms and Conditions.
- 3.2. On conclusion of the Agreement it is the Client's responsibility to present the Vehicle for the installation of the Tracking Device and/or the Dashcam at an Installation Centre or alternatively at such place as pre-arranged with Fidelity SecureDrive or an authorized SecureDrive representative.
- 3.3. The Client accepts that the Service cannot be provided by Fidelity SecureDrive or used by the Client unless the Tracking Device is properly installed in the Vehicle at an Installation Centre and according to Fidelity SecureDrive's specifications.
- 3.4. Ownership and risk of any loss and/or damage of the Tracking Device and/or the Dashcam shall pass to the Client on the Effective Date in the instance of cash sales. For Rental agreements, ownership of the Tracking Device and/or the Dashcam remains with Fidelity SecureDrive while the risk of Loss or damage shall pass to the client on the Effective Date.
- 3.5. Ownership of the Tracking Device and/or Dashcam shall however remain with Fidelity SecureDrive until payment of the Tracking Device and/or Dashcam has been made in full. If the Tracking Device and/or the Dashcam has not been paid in full and this Agreement is terminated as per clause 4 or 7 then Fidelity SecureDrive may as a result thereof provide the Client with written notice to deliver the Vehicle and /or the Dashcam to an Installation Centre within 7 (seven) working days and remove the Tracking Device and/or the Dashcam at the Client's expense.
- 3.6. The following shall apply where the Client has selected a Tracking Device:
  - 3.6.1. Fidelity SecureDrive shall and is obliged to respond to each reported Loss and do all that it reasonably can to recover the Vehicle.
  - 3.6.2. The Client authorises Fidelity SecureDrive to recover the Vehicle for the Client at the scene of the location of the Vehicle;
  - 3.6.3. Should the Client elect not to collect his Vehicle at the location from which the Vehicle is recovered then the Client duly authorises Fidelity SecureDrive to tow and store the Vehicle away at the Client's own risk and the Client will become liable to Fidelity SecureDrive for any towing and storage costs which may arise from the time the Vehicle has been delivered to the storage facility until such time that the Vehicle is collected by the Client or an authorised third party;
  - 3.6.4. All costs incurred in 3.6.3 above will be for the Client's account;
  - 3.6.5. Only the Recovery will, unless agreed otherwise in written or verbal notice by Fidelity SecureDrive to the Client, be rendered free of additional charges within the Territory and only within the first hour after the Recovery has taken place.
  - 3.6.6. Should the Client require a cross-border recovery, the Client will be responsible for the return of the Vehicle and the cost thereof together with any other additional charges that may be incurred by Fidelity SecureDrive;
  - 3.6.7. In the instance that either of the additional SVR components are required by the Client such as but not limited to cargo safeguarding, emergency services and towing then additional charges will be levied to the account of the Client and shall be payable within 30 days from the date of the Recovery;
  - 3.6.8. Fidelity SecureDrive does not guarantee that the SVR will lead to a Recovery. The Client acknowledges that the SVR is intended to reduce the risk of Loss but will not eliminate such risk.
- 3.7. The Client will inform Fidelity SecureDrive as soon as possible but no later than 60 minutes after becoming aware of the Loss;
- 3.8. The Client shall notify the Fidelity SecureDrive Control Centre immediately of any Recovery request that is accidentally activated otherwise known as a False Alarm. The Client accepts responsibility for all consequences of any False Alarm which may include a response by police authorities or response teams and

a subsequent wrongful arrest of the Client or any third party. The Client in this instance holds Fidelity SecureDrive harmless from and indemnifies Fidelity SecureDrive from any claims including any claims damages of whatsoever nature that may be brought by any party against Fidelity SecureDrive or its agents as a result of such False Alarm activation.

- 3.9. The Client accepts responsibility for making all reasonable enquiries as to the suitability for the purpose of the Tracking Device to be installed in his Vehicle.
- 3.10. In the case of a GSM or IOT Service the Client will as soon as possible notify Fidelity SecureDrive and within 24 hours notify the police of any loss, damage or theft of the Tracking Device and SIM card.
- 3.11. It is recorded that Fidelity SecureDrive 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 Service provided that Fidelity SecureDrive's obligations to the Client as provided under the Agreement will not be affected;
- 3.12. The Client must ensure that the Tracking Device is tested at least once a month via the Client portals and/or a call centre.
- 3.13. The Client will not transfer the Tracking Device and/or the Dashcam to any other vehicle for the duration of the Agreement, unless agreed between the Parties in writing or in a Voice-logged call to Fidelity SecureDrive.

#### **4. DURATION OF THE AGREEMENT**

- 4.1. The following clauses (4.1-4.4) shall only be applicable to the Client who is defined as a natural person as per the Consumer Protection Act 68 of 2008:
  - 4.1.1. This Agreement shall commence on the Effective Date and shall continue for the period of 36 (thirty-six) months (*"the Rental Period"*).
  - 4.1.2. If applicable, Fidelity SecureDrive shall notify the Client within 30 days before the expiry date of the Rental Period of the Agreement in writing or other recordable form of the impending expiry date of the Rental Period;
  - 4.1.3. If applicable, on expiry of the Agreement, the Agreement will continue to run on a month-to-month basis until such time that the Client either provides Fidelity SecureDrive with their intention to cancel or alternatively to renew the Agreement;
- 4.2. Upon early termination the following will apply:
  - 4.2.1. Cash Option: Either the Client or Fidelity SecureDrive may terminate this Agreement by giving at least 20 business days written notice;
  - 4.2.2. Cash Upfront Option: The Client may terminate this agreement by giving 20 business days' notice;
  - 4.2.3. Rental Option: Both Parties may terminate the agreement by giving at least 20 business days written notice. In the event that the Client cancels the agreement prior to the expiry date or Fidelity SecureDrive cancels the agreement due to the Client's breach, the Client will remain liable for all amounts owing up to the date of cancellation, including and not limited to, cost of installation, the cost of having the unit removed and early cancellation fee as set out in the Customer Application Form or the Voice-logged Contract.
- 4.3. Any amounts due in terms of clause 4 shall become due and payable in full, free of any deductions or set-off, on expiration of the 20 (twenty) business days' notice given to Fidelity SecureDrive by the Client.
- 4.4. The following clauses 4.5 to 4.7 shall only be applicable to the Client who is not subject to the Consumer Protection Act 68 of 2008:
  - 4.5. This Agreement shall commence on the Effective Date and endure for the Rental Period.
  - 4.6. This Agreement shall continue for the Rental Period in accordance with the Terms and Conditions unless it is terminated by either Fidelity SecureDrive or the Client by giving 20 (twenty) business days written notice to the other party. If applicable, should the Agreement continue after the Rental Period, the agreement will continue on a month-to-month basis (if applicable).
  - 4.7. In the event that the Client wishes to cancel the Agreement before the expiry of the Rental Period the Client shall be liable to Fidelity SecureDrive for:
    - 4.7.1. Any amounts owed to Fidelity SecureDrive by the Client in terms of the Agreement up until the date of termination including de- installation costs of the Tracking Device and/or the Dashcam;

- 4.7.2. A reasonable cancellation fee as per Fidelity SecureDrive's cancellation policy at the time, which will be set out in Annexure A will apply;
- 4.7.3. Any amounts due by the Client to Fidelity SecureDrive which shall become due and payable in full, free of any deductions or set-off.
- 4.7.4. Within 15 (fifteen) Business Days if no installation has been completed; or
- 4.7.5. Within 15 (fifteen) Business Days after the return of the Tracking Device to Fidelity SecureDrive's installation centre if installation has already taken place.
- 4.8. In the event that the Client finds the Tracking Device and/or the Dashcam defective or alternatively not of the standard described, the Client shall return the Vehicle and/or the Dashcam to Fidelity SecureDrive within 10 (ten) Business Days of fitment for Fidelity SecureDrive to inspect the Tracking Device and/or the Dashcam installed in the Vehicle. Should the Tracking Device and/or the Dashcam be found to be defective, Fidelity SecureDrive shall at its discretion and cost, replace the Tracking Device and/or the Dashcam or cancel the Agreement.
- 4.9. In the event that the Client's vehicle is Recovered, the Client will ensure that the Tracking Device is inspected and/or tested by one of our installation centres, in order to ensure that it is in working order.

## **5. FEES AND CHARGES**

- 5.1. The Client shall pay Fidelity SecureDrive the amount for the Tracking Device and/or the Dashcam, together with the installation cost of the Tracking Device and/or the Dashcam, as set out in the Customer Application Form or Voice-logged Contract within 7 (seven) days from the date of the signature of the Customer Application Form or conclusion of the Voice-logged Contract and before installation of the Tracking Device and/or the Dashcam for all cash sale agreements.
- 5.2. The Client shall pay Fidelity SecureDrive the Monthly Subscription Fee as set out in the Customer Application Form or Voice-logged Contract, monthly in advance by direct bank debit order or any other payment arrangement agreed to by Fidelity SecureDrive.
- 5.3. THE MONTHLY SUBSCRIPTION FEE IS SUBJECT TO AN ANNUAL ESCALATION RELATED TO CPI (If Applicable).
- 5.4. Should the Client enter into a Rental Agreement then ownership of the Tracking Device and/or the Dashcam will always vest in Fidelity SecureDrive and shall be returned to Fidelity SecureDrive within 7 (seven) days of termination of the Agreement and at Fidelity SecureDrive's request.
- 5.5. In the event that the payment date as selected by the Client on the Customer Application Form or Voice-logged Contract does not fall on a Business Day, the Client hereby agrees that Fidelity SecureDrive may debit the Client's bank account on the preceding Business Day.
- 5.6. The Client shall pay Fidelity SecureDrive for Additional Costs within 30 (thirty) days of receipt of an invoice from Fidelity SecureDrive. The Client agrees such costs reflected on an invoice received from Fidelity SecureDrive shall be considered a true reflection of the costs incurred by the Client and the CLIENT SHALL NOT BE ENTITLED TO OFFSET OR WITHHOLD PAYMENT FOR ANY REASON WHATSOEVER.
- 5.7. Where authenticated debit orders are required by Fidelity SecureDrive or the financial institution, the Client undertakes to authorise any future debits on their account from Fidelity SecureDrive as required in terms of This Agreement by approving the debit order mandate, through an electronic authentication process, ensuring that all debits are legally authorised.
- 5.8. In the event that a third Party (i.e. a finance company, insurance company or any other entity) is paying for the Client's Fees the obligation will still be on the Client to ensure that the payment of the Monthly Subscription Fee is paid on time. The Client's obligation to pay the Monthly Subscription Fee will not be limited because a third party is paying for it on behalf of the Client and if the third party fails to pay the Client's Monthly Subscription Fee, then the Client will remain liable for payment.
- 5.9. In the case that the contract between the Client and the finance company, insurance company or any other entity comes to an end, as set out in clause 5.8 above, then the Client accepts that he is legally responsible to continue paying Fidelity SecureDrive according to the Agreement and the Client hereby provides Fidelity

SecureDrive with consent to deduct any due amounts from the Client's bank account by using any method Fidelity SecureDrive is legally entitled to do so.

- 5.10. It shall remain the client's responsibility to ensure that the Tracking Device and/or the Dashcam is comprehensively insured at all times against theft, damage or any other loss not covered under maintenance provided for in terms of this Agreement.
- 5.11. The Client will not be allowed to withhold payment of any fees or other amounts due to Fidelity SecureDrive where the Tracking Device and/or the Dashcam is not functioning properly for any reason. Where this is the case, the Client must immediately inform Fidelity SecureDrive and make the necessary arrangements with Fidelity SecureDrive for the Tracking Device and/or the Dashcam to be repaired by an Installation Centre.
- 5.12. All amounts outstanding in terms of this Agreement shall bear interest from the due date until the payment date at the maximum rate prescribed by the law.
- 5.13. If the cash option is elected by the Client, upfront payment is payable immediately. Proof of payment will be required to arrange fitment (if applicable).
- 5.14. Should the client fail to stay up to date with Monthly Subscription Fee payments, all services will be suspended immediately, after reasonable notice (including stolen vehicle recovery). Should the Client settle all arrears payments the Service shall be reactivated within a reasonable time. However, it must be noted that all previous data shall be lost.

## **6. COMPLIANCE WITH FURNISHING OF INFORMATION**

- 6.1. The Client warrants that all information provided on the Customer Application Form, Voice-logged Contract or otherwise furnished by or on behalf of the Client to Fidelity SecureDrive is complete, true and correct.
- 6.2. The Client shall immediately notify Fidelity SecureDrive in writing of any changes to the information on the Customer Application Form or Voice-logged Contract by providing them with written notice to [fadtsecuredrive@Fidelitysecuredrive.co.za](mailto:fadtsecuredrive@Fidelitysecuredrive.co.za) or through their web-based or app-based portal.
- 6.3. The Client has selected the address referred to on the Customer Application Form or Voice-logged Contract as its selected legal address where all communications from Fidelity SecureDrive and any legally required notices will be delivered for all purposes arising out of this Agreement, provided that the Client shall be entitled to change such legal service address, on written notice to Fidelity SecureDrive or through the web-based or app-based portal or written notice to [fadtsecuredrive@Fidelitysecuredrive.co.za](mailto:fadtsecuredrive@Fidelitysecuredrive.co.za).
- 6.4. The Client expressly gives Fidelity SecureDrive permission to:
  - 6.4.1. Access, from any duly registered credit bureau, the Client's personal information concerning financial risk and payment habits (payment profile) to process the Client's application for the Fidelity SecureDrive service
  - 6.4.2. Share or disclose information about the Client's payment profile to credit bureaus;
  - 6.4.3. The Client will provide consent that Fidelity SecureDrive will process its personal information in order to onboard the Client and to perform the services (if applicable) via the Customer Application Form or Voiced-logged Contract.
  - 6.4.4. If applicable, the Client will provide consent that the driver behavior data that is generated by the Tracking Device may be shared with Liquid Capital in order to assess its driving habits and offer them specific products and services that may be beneficial to them via the Customer Application Form or Voiced-logged Contract.
  - 6.4.5. If applicable, the Client acknowledges that it is under a duty to provide Fidelity SecureDrive with certain mandatory information in accordance with the Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002 (as amended) and hereby undertakes to provide all required documentation and information to Fidelity SecureDrive prior to the implementation of the GSM service failing which it shall hold Fidelity SecureDrive harmless against any loss or damage resulting from such failure.
- 6.4.6. The Client acknowledge that the contact information (cell number/email address/physical address) may be used to serve legal notices which will be legal and binding. It is the responsibility of the Client to ensure that

the contact information is updated should it change within the duration of the Rental Period or for as long as the Service are rendered.

## **7. BREACH**

- 7.1. In the event that the Client is in breach of any term of this Agreement and/or fails to make payment of any amounts due in terms of this Agreement and after having received written notice from Fidelity SecureDrive still fails to remedy such breach within 7 (seven) days thereof then and in that event, Fidelity SecureDrive will be entitled to:
  - 7.1.1. Immediately institute action against the Client and claim the full outstanding balance in respect of any amount which the Client's account is in arrears as at the date of such breach and furthermore, the balance outstanding in respect of the remaining Rental Period of the Agreement;
  - 7.1.2. Cancel the Agreement and/or immediately terminate/suspend the Service and take possession of the Tracking Device and/or the Dashcam and any goods delivered to the Client; and
  - 7.1.3. Claim any damages suffered, which will include but not be limited to a cancellation/deinstallation fee that will reimburse Fidelity SecureDrive for the upfront Device and installation costs.
  - 7.1.4. Should the services be suspended/terminated Fidelity SecureDrive will not be held responsible for any loss or damage suffered by the Client due to the suspension/termination and indemnify Fidelity SecureDrive accordingly.
  - 7.1.5. Fidelity SecureDrive further reserve the right to blacklist the Client should they default in payment.
- 7.2. Should the Service be suspended due to non-payment then Fidelity SecureDrive will commence providing the Tracking Device and/or Dashcam and Service again as soon as reasonably possible after Fidelity SecureDrive receives confirmation from its bank that the Client has paid all amounts due together with any Additional Costs plus interest to date of payment;
- 7.3. These remedies are without any prejudice to any other right that Fidelity SecureDrive may be entitled to in terms of this Agreement or in law.
- 7.4. Any order for the purchase of the Service is also subject to cancellation by Fidelity SecureDrive if the Client commits a breach of any material term of this Agreement, provides false information to Fidelity SecureDrive or makes any attempt of compromise, liquidation, sequestration, termination or judgement or applies for business rescue proceedings in terms of Section 129 of the Companies Act 71 of 2008 (as amended).
- 7.5. The Client will be liable for all collection costs whether it be from the services of an attorney, a debt collector or any entity that deals with collections, including legal fees in the event of Fidelity SecureDrive taking legal action against the Client, on an attorney and client basis.
- 7.6. The nature and amount of any indebtedness of the Client to Fidelity SecureDrive at any time shall be determined and proved by a document signed by a Director or manager of Fidelity SecureDrive, whose capacity or authority it shall not be necessary to prove. Such certificate shall, upon the mere production thereof, be binding on the Client as *prima facie* proof that the amount stated therein is due and payable and will *prima facie* be valid as a liquid document against the Client in any competent court. If the Client wishes to dispute such certificate or the effects thereof, the burden of proof rests on the Client.

## **8. WARRANTIES AND REPRESENTATIONS**

- 8.1. The Client represents and warrants that:
  - 8.1.1. It has the necessary right and authority to enter into this Agreement, is the lawful owner and/or possessor of the Vehicle, and is therefore permitted to allow Fidelity SecureDrive to install the Dashcam and/or to provide the Service herein;
  - 8.1.2. In making such disclosure, the Client hereby indemnifies Fidelity SecureDrive from any claim whatsoever which may arise from any third party against Fidelity SecureDrive if the Client has misrepresented its right and authority.



- 8.2. The Client will be responsible to use the Tracking Device and/or the Dashcam and the Service in the manner advised by Fidelity SecureDrive and as reflected in the Terms and Conditions, Fidelity SecureDrive's web-based and app-based portals.
- 8.3. Subject to the Client complying with Clause 8.2, the Tracking Device and/or the Dashcam and the installation thereof carries a 12 (twelve) month warranty from the Effective date, subject to wear and tear which is excluded. Any maintenance and/or repairs that fall within the warranty period must be carried out at an installation Centre and will be at no cost to the Client.
- 8.4. Instances where the warranty will not apply are as follows:
  - 8.4.1. If a person that Fidelity SecureDrive did not authorise either tampered with, altered, modified, repaired or attempted to repair the Tracking Device and/or the Dashcam or the way it was installed.
  - 8.4.2. If the problem of the dysfunctionality of the Tracking Device and/or the Dashcam was caused by the abuse of the Tracking Device and/or the Dashcam, water damage to the Tracking Device and/or the Dashcam, a collision or car accident which effected the Tracking Device and/or the Dashcam;
  - 8.4.3. In such instances set out in clause 8.4.1 and 8.4.2 as well as instances when the Tracking Device and/or the Dashcam is out of its Warranty period the Client accepts that he is fully responsible for the costs of having the Tracking Device and/or the Dashcam repaired or replaced. Costs of repair work to the Tracking Device and/or the Dashcam may vary from time to time depending on the severity of the damage to the Tracking Device and/or the Dashcam, which in some instances may involve a cost of replacing the entire Tracking Device and/or the Dashcam.
- 8.5. The Client must ensure that the Fidelity SecureDrive emergency number is kept handy and the Client contacts Fidelity SecureDrive as soon as possible after a Loss.
- 8.6. The Client holds exclusive responsibility and Fidelity SecureDrive shall have no liability, for ensuring that the Service complies with all laws regarding the intended use by the Client of the Service herein.
- 8.7. The onus is on the Client to ensure that the Tracking Device is in good-working order *via* the phone/web applications.
- 8.8. Fidelity SecureDrive will be relieved of its obligation to provide the Service at any time that the Tracking Device is not functioning properly.
- 8.9. In the instance that the Tracking Device is defective and still under warranty and the Client has failed to have the Tracking Device tested as per its obligations set out above or has not made any attempt to have the Tracking Device repaired by an Installation Centre, the Client will still be liable to pay the Fee.
- 8.10. If applicable, the Client warrants that the driver of the vehicle (If the driver is a third party) was informed that the Vehicle is tracked and indemnifies Fidelity SecureDrive accordingly.

## **9. EXCLUSIONS OF LIABILITY AND DISCLAIMER**

- 9.1. The Service and Tracking Device provided by Fidelity SecureDrive are intended to enhance the Client's security and is designed to mitigate the risk of loss of the Vehicle.
- 9.2. Fidelity SecureDrive does not warrant to the Client that:
  - 9.2.1. the Services or the Tracking Device will detect or avert all occurrences or the consequences arising therefrom;
  - 9.2.2. particular losses or injuries will be prevented by using the Service.
  - 9.2.3. the Tracking Device and fleet management web-based system will operate continuously and without error;
  - 9.2.4. GSM/GPS/RF network signals or any other communication cannot be disrupted;
  - 9.2.5. the Tracking Device will not, like all mechanical and electrical devices, develop faults;
  - 9.2.6. the Service will capture all events; or
  - 9.2.7. the Vehicle will be recovered.
- 9.3. The Customer agrees that Fidelity SecureDrive shall be exempt from any liability, and the Customer indemnifies and holds Fidelity SecureDrive not liable against and/or for any Loss, loss, damage or injury arising directly or indirectly:
  - 9.3.1. from any of the occurrences as referred to in clauses 9.2.1 to 9.2.7 above;

- 9.3.2. from any failure arising from a cause beyond the control of Fidelity SecureDrive;
- 9.3.3. from any failure arising as a result of the Customer's failure to meet the obligations imposed by this Agreement or to follow instructions regarding the use of the Service.
- 9.3.4. for any other reason and/or cause, of whatsoever nature; unless, pertaining to clauses 9.3.1 to 9.3.3 above where there has been any malicious, intentional, fraudulent, reckless, or grossly negligent act by Fidelity SecureDrive or any agent of Fidelity SecureDrive.
- 9.4. Fidelity SecureDrive shall not be liable for any damage, loss, injury, or any other claim arising from any fitment, servicing, alterations, modifications, changes, movements, removal, tampering or interference in respect of the Service or the Tracking Device and/or the Dashcam or any of its component parts by the Customer or any third party, not subject to the control of Fidelity SecureDrive.
- 9.5. It is understood and agreed by the Client that Fidelity SecureDrive is not an insurer.
- 9.6. Fidelity SecureDrive shall not be held responsible for any damage to the Vehicle caused as a result of Fidelity SecureDrive fitting or removing the Tracking Device and/or the Dashcam or other equipment, including but not limited to any damage caused by the removal of any wiring used in any installation which may be glued or affixed to the interior of the Vehicle and the Client hereby indemnifies Fidelity SecureDrive against all and any claims that may be made against Fidelity SecureDrive by any third party arising directly or indirectly from the installation or removal of the Tracking Device and/or the Dashcam and/or any other equipment from the Vehicle, unless Fidelity SecureDrive failed to exercise reasonable care in fitting or removing the Tracking Device and/or the Dashcam or equipment.
- 9.7. The limitations of liability set forth in this Agreement shall be to the benefit of all subsidiaries, group companies and affiliates of Fidelity SecureDrive, whether directly or indirectly, as well as to the benefit of all Fidelity SecureDrive's employees, agents, officers, shareholders, and directors.
- 9.8. The Client's Identity number/cell number and/or a 'safe word/phrase' may be captured and stored on the backend to be used in case of an emergency for the Client to confirm their identity. It is the responsibility of the Client to remember this word/phrase and not share this with unauthorised parties.

## **10. FORCE MAJEURE**

- 10.1. If Fidelity SecureDrive 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 war, strike, riot, crime, fire, or an Act of God such as flooding, an earthquake, storm or adverse weather conditions, an act of Government or other authority which prevents one or both parties from performing their obligations under the Contract) then Fidelity SecureDrive will be relieved of its obligations to provide the Service during the period that such event and its consequences continue, and Fidelity SecureDrive will not be liable for any loss, damage, action or claim which may be brought by the Client or by any other party in consequence of such delay or inability to perform. In the event that the force majeure event continues for a period in excess of three months and Fidelity SecureDrive is unable to or prevented from providing all Services, then either Party shall be entitled to terminate the Agreement.

## **11. COMPLAINTS AND DISPUTE RESOLUTION**

- 11.1. Complaints must be submitted to Fidelity SecureDrive and will be dealt with by Fidelity SecureDrive in accordance with the provisions of this clause.
- 11.2. Any payment default by you arising from, or in connection with, any Service, will be excluded from the provisions of this clause, and Fidelity SecureDrive will be entitled to proceed to institute legal action against the Client.
- 11.3. Without prejudice to the Client's rights in law, the Client is required to first approach Fidelity SecureDrive with any complaint or dispute and afford us an opportunity to resolve a complaint before the Client approaches any other relevant authority, court or other dispute resolution body or refer the matter to Arbitration as contemplated below.
- 11.4. Please direct all complaints to [fadtsecuredrive@Fidelitysecuredrive.co.za](mailto:fadtsecuredrive@Fidelitysecuredrive.co.za)

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- 11.5. The Client's complaint should include the following:
- 11.5.1. name and surname;
  - 11.5.2. your account number;
  - 11.5.3. the date on which the complaint arose; and
  - 11.5.4. a brief description of what gave rise to the complaint.
- 11.6. In the event of a billing complaint the Client should also include the following:
- 11.6.1. a copy of the bill concerned or the particulars thereof, e.g. account number;
  - 11.6.2. the reason for the dispute;
  - 11.6.3. the amount in dispute; and
  - 11.6.4. supporting information or documentation, if any.
- 11.7. The Client may approach any other relevant authority, court or dispute resolution body or refer the matter to Arbitration as set out below, for resolution of the dispute, should the Client not be satisfied with the proposed resolution of the dispute by Fidelity SecureDrive.
- 11.8. Any dispute between Fidelity SecureDrive and the Client may be referred to arbitration and finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa. Such arbitration shall be held either in Cape Town or Johannesburg and conducted in the English language before one arbitrator appointed in accordance with the said rules. This agreement to arbitrate shall be enforceable in, and judgement upon any award may be entered in any court of any country having appropriate jurisdiction. A dispute shall be deemed to have arisen when either Fidelity SecureDrive or the Client notify the other in writing to that effect.
- 11.9. The arbitrator shall have the power to give default judgement if either of Fidelity SecureDrive or the Client fails to make submissions on due date and/or fails to appear at the arbitration.
- 11.10. The provisions set out above shall not prevent either of Fidelity SecureDrive or the Client from approaching any court of competent jurisdiction to obtain interim or other relief in cases of urgency.
- 11.11. The costs of the arbitrator and the venue shall be borne by the Parties on an equal basis until the outcome of the arbitration and an award relating to costs is made.

## **12. GENERAL PROVISIONS**

- 12.1. This Agreement will be interpreted in accordance with the laws of the Republic of South Africa which courts shall have exclusive jurisdiction in relation to the Agreement. Fidelity SecureDrive will make every reasonable effort to carry out its obligations under this Agreement and will attempt to resolve any dispute quickly and efficiently.
- 12.2. Where Fidelity SecureDrive is directly or indirectly prevented or restricted from carrying out all or any of its obligations under this Agreement by a cause beyond its control, then Fidelity SecureDrive cannot be held responsible for delay or failure in performance in meeting its obligations.
- 12.3. For the duration of this Agreement and at all times after its termination, each party and its employees and agents agree not to disclose any confidential information obtained from the other party to any other person or entity, save as may be otherwise provided for in this Agreement.
- 12.4. Fidelity SecureDrive reserves the right to amend these Terms and Conditions from time to time. Any new version of the Terms and Conditions will be displayed on the Fidelity SecureDrive web-based- portal as well as the Fidelity SecureDrive app-based portal as soon as reasonably possible once any amendments have been made.
- 12.5. The Client will not be able to transfer, cede, delegate, or assign its rights or obligations in terms of this Agreement to another person without the prior written consent of Fidelity SecureDrive, which consent will not be unreasonably withheld. Fidelity SecureDrive will be entitled to transfer, cede, delegate, or assign its rights or obligations under this Agreement provided that the Clients rights in terms of this Agreement remain unaffected.
- 12.6. No change or cancellation of this Agreement will be of any force or effect unless such change or cancellation is agreed to in writing and signed by both parties.