

# Your Agreement

## Background

This Agreement sets out the terms and conditions on which Directed Telematics Pty Ltd will provide the Vipertraq Services to you as the Subscriber for those services.

The Vipertraq Services are a web based information service which provides detailed information with regard to your Vehicle travel, usage and operation.

The Vipertraq Services are provided on a subscription basis in relation to specified Vehicles and, in order to enable us to provide those services to you, the Equipment must already be installed into your nominated Vehicle when you purchase that Vehicle, or installed as a retrofit after the vehicle is purchased.

The Equipment, the Vipertraq Services and your nominated Vehicles are identified or set out in the Registration Details which you will have completed as part of the online application for the Vipertraq Services. The Registration Details form part of our Agreement with you.

## 1. Definitions and Interpretation

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### 1.1 Definitions

In this agreement unless inconsistent with the context, the following bolded words have the following meanings:

**Agreement** means this agreement including the Registration Details and Vehicle List.

**App** means a mobile application which may be installed on your mobile device which will allow access to the Vipertraq Portal.

**Commencement Date** means the date you have completed your online registration and agreed to these terms and conditions by clicking "I agree" on the Vipertraq Portal or Vipertraq App.

**Contact Person** means the contact person(s) you have nominated in the Registration Details or such person(s) as you notify to us in writing from time to time.

**Directed Electronics** means Directed Telematics Pty Limited, ACN 613 177 049. References to "we" and "us" and analogous terms are references to Directed Electronics.

**Directed Electronics Control Centre** means the centre where signals are received from and/or transmitted to the Equipment.

**GPS** is a Global Positioning System.

**Vipertraq Portal** means the web portal to which limited Vipertraq Services are accessed.

**Vipertraq Services** means the services and reports described in the Vipertraq Portal, to be provided to you by Directed Electronics under this Agreement in relation to a Vehicle or vehicles included on the Vehicle List.

**Vipertraq Telematics Equipment** or **Equipment** means the "Vipertraq" branded equipment specified in the Registration Details which is part of and enables use of the Vipertraq GPS Tracking System.

**Vipertraq GPS Tracking System** means the system consisting of the Vipertraq GPS Tracking Equipment, the Third Party Services, the Directed Electronics Control Centre and the Vipertraq Portal and App used to provide the Vipertraq Services.

**Registration Details** means the details that you have completed online in the Vipertraq Portal as part of your application for the Vipertraq Services, which identifies you as the Subscriber and sets out the other particulars applicable to this Agreement including the Vehicle List identifying the Vehicles in relation to which the Vipertraq Services will be provided.

**Subscriber** means the customer identified in the Registration Details. References to "you" and analogous terms are references to the subscriber as identified in the Registration Details.

**Subscription Period** means the period set out in the Registration Details for the provision of the Vipertraq Services as a pre-paid data subscription service.

**Territory** means Australia & New Zealand

**Third Party Services** includes the communications network services and the GPS mapping services.

**Vehicle List** means the list comprised in the Registration Details which identifies the vehicles that are covered for the Vipertraq Services provided under this Agreement, which may be updated by Directed Electronics from time to time (to add or remove vehicles) following a request from you.

**Vehicle/s** means the vehicle/s specified in the Vehicle List.

## 1.2 Interpretation

- (a) Words such as "includes" and "including" are not to be interpreted as words of limitation.
- (b) To the extent permitted at law, the rule of construction that a contract will be interpreted against the party responsible for the drafting or preparation of the Agreement will not apply.
- (c) Notwithstanding the references to 'you' in this Agreement, this does not mean the person entering into this Agreement as an individual if the Subscriber is a corporate entity such as a company. Where a company is named as the Subscriber, the reference to 'you' means to that company as the nominated Subscriber and not the person acting completing the Registration Details on behalf of the Subscriber except to the extent that the person signing on behalf of the corporate Subscriber warrants that he or she has full authority to enter into this Agreement on behalf of the Subscriber.

## 1.3 Acknowledgements

You acknowledge that Directed Electronics provides the Vipertraq Services.

## **2. Duration of contract**

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### **2.1 Term**

- (a) Subject to the provisions of this Agreement, this Agreement takes effect on the Commencement Date and continues for the Subscription Period which has been prepaid for you and only continues if you elect to renew your subscription for an additional Subscription Period by paying the applicable charges.
- (b) We may terminate this Agreement prior to the completion of the Subscription Period specified in the Registration Details by providing not less than 30 days' notice of such termination to you.
- (c) Re-occurring payment subscription will be renewed automatically upon receipt of the funds for the corresponding payment period.
- (d) For non re-occurring payments if you want to renew your subscription prior to the end of a Subscription Period, you can do so by going to the Vipertraq Portal and selecting the Subscription Period you wish to subscribe for and paying the relevant charges. On payment of those charges and clicking 'I agree' to the terms and conditions, your subscription will be renewed for your selected Subscription Period.
- (e) If you do not renew your subscription for a further Subscription Period before the current Subscription Period expires, your subscription will lapse.

## **3. Subscription and Vipertraq Services**

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### **3.1 Subscription**

By completing the online registration including completing the Registration Details and clicking "I agree" to these term and conditions, you agree to subscribe for and, subject to you paying any applicable charges on any renewal and to the terms of this Agreement, we agree to provide the Vipertraq Services to you in the Territory during the Subscription Period.

### **3.2 Vipertraq Services**

We will provide the Vipertraq Services to you by making available the Vipertraq App and Vipertraq Portal to you.

### **3.3 No guarantee of interrupted service**

You should note that we do not guarantee continuous or uninterrupted provision of the Vipertraq Services or the availability of the Vipertraq Portal. Service provision is subject to schedule maintenance periods and from time to time, we may experience outages and other service interruptions. During these periods, we will not be able to provide the Vipertraq Services to you, but we will use all reasonable endeavors to minimize both scheduled maintenance and unanticipated outages or service interruptions.

### **3.4 Third Party Services and Internet availability**

- (a) The Vipertraq Services are also dependent on Third Party Services including both telecommunications networks and GPS mapping services. These services may also experience outages or service interruptions for which we cannot be held responsible. Specifically, in relation to GSM services, the Vipertraq Service excludes such areas or situations (regardless of whether known or unknown by us) where a vehicle and/or the Equipment is not capable of or is

otherwise prevented from, sending and receiving signals of any kind, including radio, telephone, data and GSM/GPS signals.

- (b) Your access to the Vipertraq Portal and Vipertraq App is dependent on your own internet service and or mobile provider service which you will need to take out and maintain. We are not responsible for your internet service or mobile phone service or for any inability on your part to access the Vipertraq Services as a consequence of any failure, outage or interruption to your internet service or mobile phone service.

## **4. Installation and operation of equipment**

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### **4.1 Installation and operation**

On your purchase of a Vipertraq Service, the installed Equipment should be operating as required. If it is not, you should refer back to the place of purchase or installation for assistance.

### **4.2 Suspensions of our obligations**

- (a) You acknowledge that we will be relieved of our obligations to provide the Vipertraq Services to the extent and for the period in which the Equipment is not functioning correctly. Your Subscription Period will not be extended except where the Equipment is not functioning and we determine it is due to our failure, in which case it will be extended by a period equal to the period during for which you cannot use the Vipertraq Services due to that failure.
- (b) We will also be relieved of our obligations to provide the Vipertraq Services in circumstances where you have not complied with your obligations under this Agreement.

## **5. Obligations of the Subscriber**

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### **5.1 No tampering with Equipment**

You must not alter or modify or otherwise interfere or permit any third party to alter or modify or otherwise interfere with any of the Equipment. If you do so, your ability to access and use the Vipertraq Services may be compromised or adversely affected and regardless, we may terminate your right to receive the Vipertraq Services immediately.

### **5.2 Use of the Equipment**

You must only use the Equipment and the Vipertraq Services in a careful and proper manner and strictly in accordance with the terms of this Agreement and any other use manuals or directions we may issue from time to time. However, if there is any conflict between the terms of this Agreement and any other literature, the terms of this Agreement will prevail.

### **5.3 Vipertraq Portal**

When you use the Vipertraq Portal you must comply with terms and conditions set out in that portal including the terms of use and the acceptable use policy. Specifically, you must not use the portal to transmit any obscene, defamatory, infringing or offensive communications or materials.

#### **5.4 Vehicle information services**

You acknowledge that you understand and agree that the Vipertraq Services are an information service only and any information received from the Vipertraq Services is a tool to be used for productivity enhancement in relation to your use of your vehicle. Accordingly, the benefits to you from the Vipertraq Services depend on how you use that information.

### **6. Fees and charges, payment and interest**

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#### **6.1 Charges**

- (a) You must pay the charges for your selected renewal Subscription Period in advance.
- (b) Renewal of your Vipertraq Service subscription is on the same terms and conditions and is subject to your payment of our charges for the renewal Subscription Period, in advance.
- (c) All payments are non-refundable.

#### **6.2 GST**

Our charges and all other amounts payable under this Agreement are inclusive of GST which is payable as part of the charges required to be paid under this Agreement. If required to do so under *A New Tax System (Goods and Services Tax) 1999 (Cth)*, we will provide a tax invoice to you for the amount of the charges.

#### **6.3 No deduction or set off**

Payment of all charges must be made without deduction or setoff of any nature including bank costs and other charges.

### **7. Privacy and use of information**

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#### **7.1 Compliance with Privacy Act**

- (a) Directed Electronics complies with the Privacy Act 1988 and the Australian Privacy Principles as set out in the Privacy Act 1988 (Privacy Laws).
- (b) We will only use your personal information for the purposes for which you provide it to us which is use in connection with provision of the Vipertraq Services to you. This would include provision of your personal information to other providers of Third Party Services for that purpose only.
- (c) You consent to your personal information contained in the Registration Details, or as otherwise provided to us, being disclosed to and any Third Party Services provider and/or to any party where such disclosure is necessary for the performance of our obligations under this Agreement.

## **7.2 Use of data**

The Subscriber acknowledges and agrees that any data (this does not include personal information and we confirm that all such data will be depersonalised so that it no longer constitutes personal information) generated by Directed Electronics through your use or the provision of the Vipertraq Services absolutely becomes their property severally and that each of Directed Electronics may do anything with such data including provision, sale or licence by Directed Electronics to any Third Party Services provider or any other third party at their absolute discretion.

## **8. Limitation and Exclusion of liability**

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### **8.1 No liability for loss resulting from reliance on data**

You acknowledge that information or data received by you as a result of the use of the Vipertraq Services which information and data is used at your own risk and Directed Electronics will not be responsible for any loss or damage or expense suffered by you or any third party resulting from any use of the Equipment and/or the Services or reliance on the information or data received.

### **8.2 Limitation and exclusion of liability**

Notwithstanding anything to the contrary contained in this Agreement and to the maximum extent permitted at law, Directed Electronics will not be liable to you for:

- (a) any special, exemplary or punitive damages;
- (b) loss of business or interruption to business, loss of profit, loss of revenue, cost of capital, cost of insurance cover, downtime costs, increased operating costs, management time loss of goodwill, loss of opportunity or loss of anticipated savings; or
- (a) any form of indirect or consequential loss or damage,

which may be suffered by you or any third party and, without affecting the generality of clause 8.1, our liability to you will not exceed in aggregate total for all claims that you may make against us, an amount equal to the charges you have paid for the three months prior to the most recent (at any time) claim that you make against us. The limitation and exclusion of liability contained in this clause apply regardless of the nature of the claim whether in common law, equity, contract, tort (including negligence), for breach of statutory obligation or duty, repudiation, anticipatory breach or otherwise and regardless whether we have been made aware of the likelihood of such losses or not.

### **8.3 Exclusion of implied terms and limitation**

To the full extent permitted by law, all warranties, conditions, guarantees, terms, representations and undertakings, other than as expressly set out in this Agreement, whether express, implied or verbal, statutory or otherwise, and whether arising under this Agreement or otherwise, are hereby excluded including, without limitation, the implied guarantees or warranties of merchantability, non-infringement and fitness for a particular purpose provided that, to the extent that any such provision cannot be excluded and is implied into this Agreement, our liability is limited to (to the extent permitted at law):

- (a) the supplying of the services again; or
- (b) the payment of the cost of having the services supplied again.

## **9. Breach**

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### **9.1 Termination for breach**

(a) If you:

- (i) breach any term or condition of this Agreement; or
- (ii) you fail to pay any charges when due,

we may immediately suspend our obligations under this Agreement or terminate this Agreement by giving 7 days' notice to you without any liability to you or any further obligation to provide the Vipertraq Services.

(b) Any such suspension or termination will be without prejudice to any other rights which we may then have against you.

(c) Upon termination of this Agreement all amounts which are payable by you may be invoiced by us (if not previously invoiced) and all such amounts together with any other amounts outstanding will immediately be due and payable.

### **9.2 Consequences of termination**

If we terminate this Agreement in accordance with this clause 9, all payments previously made by you are non-refundable.,

## **10. Force majeure**

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### **10.1 Relief from performance**

Subject to the following provisions of this clause 10, we will not be responsible to you for failure to perform or any delay in performing any obligation under this Agreement to the extent that such failure or delay is caused by force majeure.

### **10.2 Meaning of 'force majeure'**

For the purposes of this Agreement, force majeure will mean any circumstance which:

- (a) Is beyond our reasonable control; and
- (b) Is not a circumstance we could, by the exercise of a reasonable standard of care and skill, have avoided.

### **10.3 Notice and right to terminate**

We will give notice to you as soon as practicable upon the occurrence of an event of force majeure. If the event of force majeure prevents us from providing all or part of the Vipertraq Services for a period of more than 30 days, we may by notice to you terminate this Agreement without further liability to you.

## **11. Notices**

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### **11.1 Giving of informal notices**

Where we are required to notify you of any matter in relation to this Agreement (except for the service of legal documents) such notice will be effected by electronic notification via the

Vipertraq System to you or your Contact Person and/or email. It is important to keep the contact email address nominated by you on the Vipertraq Portal updated so we can communicate these notifications to you when required. Where we cannot reach you or your Contact Person at the given email address, we will be relieved of any obligation to provide such notice.

## **11.2 Address for service**

(a) Our address for service is:

Directed Electronics: 44 Translink Drive, Keilor Park, Victoria 3042 Australia.

(b) Your address for service is: as set out in the Registration Details.

## **11.3 Giving of formal notices**

Except for notices provided or in clause 11.1, any formal notice required or permitted to be given under this Agreement will be valid and effective only if in writing to the above address (as applicable) and:

(a) given by hand to the recipient;

(b) sent by prepaid registered post (by airmail if appropriate) which will be deemed to have been received on the second business day after posting (unless the contrary is proven).

Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party will be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered in accordance with this clause 11.

## **12. General**

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### **12.1 Severability**

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

### **12.2 Entire Understanding**

(a) This Agreement is the entire agreement and understanding between the parties.

(b) Each party has entered into this Agreement without relying on any representation by any other party or any person purporting to represent that party.

### **12.3 Variation**

An amendment or variation to this Agreement is not effective unless it is in writing and signed by a duly authorised representative of each party provided that we may update these terms and conditions by updating the Vipertraq Portal from time to time.

### **12.4 Governing Law**

This Agreement is governed by the law in force in the State of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of that State and courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.



## **12.5 Assignment**

You are not entitled to assign or delegate your rights or obligations under this Agreement without our prior written consent. You agree that, Directed Electronics may assign all or any of its rights under this Agreement.