



# Terms and Conditions of Service

Effective 1<sup>st</sup> March 2023

iTRAKassets (ABN 85 609 447 841) is a registered business incorporated in the State of Victoria, Australia, will provide you with the services from "iTRAKassets" in accordance with the terms and conditions, set out in this document. This agreement constitutes a valid and binding agreement between iTRAKassets and You, as a customer/user, for the use of the iTRAKassets Hardware, Software (APPS included) and our GPS Tracking & IoT website.

Your access to and use of the iTRAKassets website and software is conditional based on you agreeing to the terms and conditions set in this agreement.

By installing and using, the iTRAKassets Software and accessing the iTRAKassets GPS or IoT service you agree to be bound by the terms of this Agreement and any new versions hereof.

## Definitions

Contract	means this agreement
Information	means all material delivered by us through the Website
GPS Tracking Hardware, IoT or another Device	means the GPS or IoT device
GPS	means the Global Position System
Service	means the iTRAKassets range of services.
We, Us, Our	means iTRAKassets
SMS, messages	means a text message from the service to you or a message received by the service for you
Website	means the relevant website situated at <a href="http://www.itrakassets.com">www.itrakassets.com</a> or <a href="https://itrakassets.telematics.guru/">https://itrakassets.telematics.guru/</a>
You, Your, Yourself	means you, the Service end user
Term	means starting on the date that you activate the Service (the "Term")
Renewal	Means automatically renews at the end of billing cycle.
Cancellation	Means 30 days' notice

## Your Agreement with Us

- a) By using the GPS or IoT Service, you agree to be bound by the terms of this Agreement.
- b) This Agreement begins on the date on which.
  - i. You create an account with iTRAKassets GPS or IoT service that is linked to an active GPS or IoT unit or software bought from us.
  - ii. you buy GPS or IoT credits from us for a tracking unit/s or mobile device registered with us.



### **Pre-requisites to using the ITRAKassets Services**

- a) You need to have an active account on the **ITRAKassets** website and a GPS or IoT device programmed specifically to the **ITRAKassets** service.
- b) We require you to use a SIM card provided by **ITRAKassets**.
- c) You are responsible for ensuring compliance with the SIM card Provider's terms and conditions, and you indemnify us for any loss or damage that we may suffer as a result of your breach.

### **Restrictions on use**

You must not.

- ✓ use the ITRAKassets service in any way that would violate any applicable law;
- ✓ collect any information or communication about the Service or users of the Service or the ITRAKassets Software by monitoring or intercepting any process of the Service or the ITRAKassets Software.
- ✓ remove any proprietary notices from the Service, ITRAKassets Software, or any copy,
- ✓ cause permit or authorise the modification, creation of derivative works, translation, or copying of the ITRAKassets Software or the Service.
- ✓ You will not sell, assign, rent, lease, distribute, act as an intermediary or provider, or otherwise grant rights to third parties regarding the ITRAKassets Service or Software, to any other person without our prior written consent.
- ✓ decompile, disassemble, reverse engineer, or hack the ITRAKassets Software or to overcome any encryption, technical protection or security methods implemented by us with respect to the ITRAKassets Software and/or data transmitted, processed, or stored by us or other users of the ITRAKassets Software.
- ✓ use GPS or IoT illegally to track anybody without his/her consent.
- ✓ attempt to do anything referred to in this clause.
- ✓ You indemnify us for any loss or damage we may suffer as a result of you breaching any of your obligations.

We reserve the right to investigate occurrences which may involve violations referred to in, or breaches of.

We may involve, and cooperate with, law enforcement authorities in prosecuting users who have participated in such violations or breaches.

### **Our Service**

We will use reasonable endeavours to make our Service available to you. However, the quality and availability of our Service may be affected by factors outside of our reasonable control (for example, without limitation, weather, power services and fault in phone networks). As a result, the ITRAKassets Software and the Service are provided "as is" and we do not represent or warrant that the ITRAKassets Software or the Service will always be available, accessible, uninterrupted, timely, secure, accurate, complete, error-free, or will operate without data loss, nor do we warrant any particular quality of messages sent to or through the ITRAKassets Software or the Service. We as a location service provider, contract with several third parties including mobile telephony service providers, digital map providers, and Internet hosting providers for facilities to enable the provision of the Service to you.



GPS is a line-of-sight technology. Physical placement of the tracking device, tall buildings, signal reflection and electronic jamming will affect the accuracy or acquisition of a GPS signal by the tracking device.

As such components of the Service are supplied to us by third parties, we can make no promises or warranties, express, or implied as to the Service, including without limitation, its accuracy, relevance, or quality.

The Service is subject to the limitations of the enabling technology on which it relies and may be adversely affected by operational factors beyond our control such as network congestion, network coverage, undelivered SMS messages, GPS availability, Internet connections and the performance of your GPS or IoT device or mobile phone.

You acknowledge that:

- Due to transient nature of the Internet, the Service may be unavailable temporarily.
- SMS text messages, or email messages may be delayed and sometimes not delivered.
- There may be location errors either because of the GPS data or because of typographic errors in map data.
- The Service is dependent on tracking unit having access to the GSM network.
- We are not liable to you or any other person for faults or defects that arise in telecommunication services not provided under this Agreement even if they are connected with our consent, to the Service which we have arranged under this Agreement which are due to incompatibility with the Service.

### **Your account**

- a) You must not change the SIM card of the GPS or IoT device you must let us know before you do that, as it may make the tracking service unavailable to you for the duration in which the system is reset.
- b) You may have one or more accounts with one or many locating tracking devices associated with each account.
- c) If you have more than one account we may, at our option, suspend or terminate all your accounts with us if you are in breach of your obligations under any account and that breach is not rectified.
- d) Without limiting, if you have more than one account with us and you are in arrears in payment of any of your accounts, we may, at our option, recover any amounts outstanding on any of your accounts from any of your accounts that have positive balances or charge you for the use of our Service on your other account.
- e) You must tell us about any change in your address or other details you supply us. If we ask you for information about you or your account for the purpose of operating the Service, then you must provide it.
- f) We will store location data per unit for up to 90 days. Location data over 90 days will be over written.
- g) The security of your Username and Password we allocate you is your responsibility.



## **Charges and Payment**

### **Goods and services tax**

("GST") is included in the Charges, where applicable.

### **Term:**

The minimum duration of each service plan is one year, starting on the date that you activate the Service (the "Term").

### **Renewal**

At the end of the term, your service automatically renews based on payment within 30 days of invoice for service.

### **Timely Payments**

You agree to pay, on time, any applicable activation fees for your Service Plan, usage, and cancellation fees, plus any applicable taxes, surcharges, and fees as provided in your Service Plan. You are responsible for all Charges on your account, regardless of whether they have been incurred by you personally.

You will be liable for all Charges relating to use of your account until you notify us and request us to suspend the Service to that account.

### **Late Payments**

You agree to pay a late charge of 1.5% per month if your bill is not paid by the due date. This late charge is applicable to the unpaid balance as of the due date and will be billed on subsequent invoices and statements. You agree to pay ITRAKassets costs associated with the collection of any outstanding fees owed by you.

### **Credit Approval**

Initiation or continuation of the Services is subject to credit approval by ITRAKassets.

### **Liability**

The ITRAKassets Software is intended for GPS or IoT use only and accordingly, we (which term includes our affiliates, related bodies corporate, officers, directors, employees, agents or service providers) accept no liability under or in relation to this Agreement or its subject matter whether in contract, tort (including negligence), under statute or otherwise for any loss of or damage to business or reputation, loss of revenue, loss of profits, loss of opportunity, loss of advantage, loss of use of any software or data, loss of use of any other equipment, loss of use of the system on which the Service or the ITRAKassets Software is used, or indirect special or consequential loss or damage. In this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

Subject to clause 7(c) below, to the extent permitted by law we exclude all liability to you or any other person claiming through you, for any costs, loss, expenses, liability or damage, regardless of the form of action, whether in contract, tort (including negligence), under statute or otherwise, and whether arising from our (or our agents') performance or non-performance of our obligations under this Agreement.

Nothing in this Agreement excludes your rights as a consumer arising from the terms implied by the Trade Practices Act 1974 or similar legislation, however, our liability for breach of those implied terms will be limited to.

In the case of goods supplied.

- the replacement of the goods or the supply of equivalent goods;



- the repair of the goods;
- the payment of the cost of replacing those goods or of acquiring equivalent goods; or
- the payment of the cost of having the goods repaired; or

*In the case of services supplied.*

- the supplying of those services again, or
- the payment of the cost of having those services supplied again.
- We are not liable to you or any other person for faults or defects in the service or the ITRAKassets software which are caused by your own conduct or misuse. Our liability to you in contract, tort (including negligence), under statute or otherwise, will be reduced by the extent (if any) to which you caused or contributed to the loss or damage.
- This clause will apply even after this Agreement is terminated.

### **Indemnity**

*You agree to indemnify us and our affiliates, related bodies corporate, officers, directors, employees, agents and service providers at your expense, against any claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs and expenses (including, without limitation, reasonable legal fees and other dispute resolution expenses) incurred by us arising out of or relating to your:*

- a) breach of any term of this agreement or any policy or guidelines referred to in it, or*
- b) use or misuse of the ITRAKassets GPS or IoT Service or Software.*

### **Suspending our Service**

*We may suspend your use of the Service, at our sole discretion without notice, if:*

- *we decide that the service needs maintenance or upgrading.*
- *you are in breach of this Agreement.*

### **Termination**

*You can terminate this Agreement at any time for any reason by notifying us in writing.*

*We may terminate this Agreement immediately if.*

- *you do not pay a subscription by the due date as required.*
- *you become bankrupt, a trustee is appointed over, or warrant issued against your assets, or if you enter any composition with your creditors.*
- *we are ordered by a government agency to cancel the Service.*

*If this agreement is terminated for any reason, you will not be able to use the Service and you will forfeit any credits remaining on your account.*

*Upon termination of this Agreement for any reason.*

- *the provisions of other clauses which by their nature should survive, will survive the termination of this Agreement.*

### **Your information and privacy**

*The Privacy Policy on our Website explains how we will handle your personal information.*



Your password, code, or personal identification number (PIN) we give you to use our service must be kept confidential.

### **License to use ITRAKassets Mobile Software**

Subject to the terms of this agreement, you are granted a limited, non-exclusive, non-sub licensable, non-assignable license to download, install and use the ITRAKassets Software onto a Mobile device for your sole use and for the sole purpose of using the ITRAKassets service supplied by us. The ITRAKassets Software may only be used in connection with the ITRAKassets GPS or IoT Service.

### **Intellectual Property Rights**

You acknowledge that we retain all intellectual property rights (including, without limitation, rights protected by laws relating to copyright, patents, trade secrets and trademarks) relating to the Service and the ITRAKassets Software, the design or operation of the Service and the ITRAKassets Software, any modification or enhancements to the ITRAKassets Software, and any other technical information relating to the provision of the Service and the ITRAKassets Software ("Intellectual Property Rights"). Except for the limited license granted to you, we reserve all rights, title, and interest in and to the ITRAKassets software and the service.

You must keep any information you receive relating to our Intellectual Property Rights confidential, and you must not allow any written or electronically recorded material to be copied or disclosed to another person, including after termination of this Agreement. You will not use information which you acquire from us for any purpose that is not authorised by us in writing.

You must not do anything that would jeopardise, damage, limit or interfere with our Intellectual Property Rights or our interest in them.

### **Service failures**

The client accepts that neither ITRAKassets, its agents nor employees will be held liable for any service failures resulting from any failure of the telecommunications network, Internet Service Provider network that acts as the carrier of the ITRAKassets service, failure of the mobile handset, device or related equipment including mobile handset or device batteries.

ITRAKassets, it's agents, employees and partners cannot be held liable for any failure to the system where that failure is outside of the control of ITRAKassets SAAS described in relation to networks, ISP's and devices not supplied by ITRAKassets.

### **General**

We can vary the terms of this Agreement at any time, including, without limitation, by changing the Service. If we do this and the change is to your detriment, we will notify you 30days prior to any change.

Your continued use of the Software and/or the Service constitutes your acceptance of these revised terms.

You must not transfer your account or assign any of your rights and responsibilities under this Agreement without our prior written approval. We may assign any of our rights and obligations at any time.

If any term of this Agreement is invalid or unenforceable, it will be severed from this Agreement and the remainder of this Agreement will remain valid and effective.



*You acknowledge that you enter into this Agreement entirely as a result of your own enquiries and that you do not rely on any statement, representation or promise by us or on our behalf not expressly set out in this Agreement.*

*Any failure or delay by us at enforcing a provision of this Agreement does not affect our right at a time to enforce that or any other provision.*

### **Governing Law**

*This Agreement is governed by and construed in accordance with the laws of Australia and the Courts of Australia shall each have non-exclusive jurisdiction over all disputes relating to this Agreement.*