

ANNUAL MAINTENANCE CONTRACT

FOR ACTIVE TRACKER

Magnum Opus IT Consulting Pvt. Ltd.

Flat No:202, 2nd Floor, Siddhi Vinayak Apartment, Adwait
nagar Near Yena Bungalow, Paud Road, Kothrud, Pune,
Maharashtra

Email: actc@magnumopusindia.in

MEMORANDUM OF UNDERSTANDING

1. PARTIES
2. DEFINITIONS
3. PREAMBLE
4. BASIC SCOPE
5. INFRASTRUCTURE AND ALLIED PROVISIONS
6. PROCESS FLOW
7. COMMERCIAL ASPECTS & TERMS AND CONDITIONS
8. NON-DISCLOSURE
9. INTELLECTUAL PROPERTY RIGHTS
10. WAIVER
11. NOVATION
12. FORCE MAJEURE
13. TERMINATION
14. JURISDICTION
15. ARBITRATION

PARTIES

These present articles of Memorandum of Association are made and executed on _____ Day of _____ Month 2015.

BY AND BETWEEN

Magnum Opus IT Consulting Private Limited, A company registered under the Companies Act 1956, having its registered office at Flat No:202, 2nd Floor, Siddhi Vinayak Apartment, Adwait nagar, Paud Road, Kothrud, Pune (hereafter refer to as "SERVICE PROVIDER" which expression shall unless repugnant to the context or meaning thereof, mean & include its successors, administrators, agents and assigns)..... PARTY OF THE FIRST PART

AND

_____, (hereafter refer to as "THE CLIENT") having its registered of -

 ----- which expression shall unless repugnant to the context or meaning thereof, mean & includes its heirs, successors, administrators, legal representatives, agents and assigns) PARTY OF THE SECOND PART

DEFINITIONS

- 1) **“CONFIDENTIAL INFORMATION”** shall mean without limitation, all or any information, document/s, correspondence, communication, intellectual property identified, specified, created and designated as “Confidential” or which may be reasonably presumed to be confidential and disclosed by either party to the other or obtained by either party from the other which relates to the past, present or future research, development or business activities, including but not limited to, any invention, ideas, trade secrets, know how, research and development, training, plans, blue prints, drawings, concepts, titles, names, programs, price lists, data, manuals, handbooks, sponsors, investors, business strategies and plans, marketing, sales, records, project specifications, designs, materials, parts, customer lists, consumer information, suppliers, contract terms, vendor lists, financial information, and all other information, material or data of any kind or character relating to the business of The Company or The Employee.
- 2) **“PARTIES” and “PARTY”** Wherever the context allows The Company and The Employee have been hereinafter individually referred to as **“Party”** and collectively as **“Parties”**.
- 3) **“PERSON”** shall include an individual, an association, a corporation, a partnership, a joint venture, a trust an unincorporated organization, a joint stock establishment or other entity or organization, including a government or political subdivision, or an agency or instrumentality thereof and/or any other legal entity.
- 4) **“THE SERVICE PROVIDER”** and **“THE PARTY OF THE FIRST PART”** and/or **“THE CLIENT”** and **“THE PARTY OF THE SECOND PART”** these terms may be/have been used interchangeably in the present AMC agreement/MOU and wherever, in any clause or part thereof, such usage creates or creates a possibility of ambiguity/illegality, then, in such an event such usage shall be construed in reference to context by the use of the rule of harmonious construction OR severability as the case may be and the invalidation, in part or whole of the particular clause or part thereof, shall be avoided.

5) RULE OF HARMONIOUS CONSTRUCTION:

Wherever any clause or part thereof, in the present MOU is likely to be contradictory to each other or is such or has an effect which leads to ambiguity as to the ambiguity of that or any other clause or part thereof, then, so far as is possible, such a clause or part thereof, shall be so interpreted and performed accordingly so that neither of the clauses or parts thereof are thereby invalidated and the harmony as to the enforceability and validity of the entire instrument as such is maintained.

6) **SEVERABILITY:**

If any provision of this Agreement is invalid or unenforceable or prohibited by Applicable Law, this Agreement shall be considered divisible as to such provision which shall be inoperative and the remainder of this Agreement shall be valid and binding.

7) **“UNAUTHORISED DISCLOSURE”:**

Shall mean and include the disclosure, divulgence, revelation, release or loss, whether in whole or in part of confidential information caused by a party, whether intentionally, negligently or otherwise, without obtaining a prior written authorization, permission or consent from the other and in absence of any mandatory Legal requirement which requires such disclosure, divulgence, revelation or release.

8) **REFERENCE TO “HIM”, “HIMSELF”**

Shall mean and include wherever, the context so allows and/or requires personal pronoun (feminine) “her”, “herself” and personal pronoun (plural) “them”, “themselves”

9) **AMC/MOU/Agreement:**

The present draft may be named and referred to interchangeably by any of the terms above mentioned and the same shall have the meaning of a legally valid contract.

PREAMBLE

Memorandum of Understanding (MOU) is drawn up between THE PARTY OF THE FIRST PART and THE PARTY OF THE SECOND PART, whereby, the both parties have approached each other in order to finalize the roles and responsibilities inters and in order to reduce into writing the terms and conditions which will govern the annual maintenance contract and the services provided there-under by the PARTY OF THE FIRST PART TO THE PARTY OF THE SECOND PART.

BASIC SCOPE

The PARTY OF THE FIRST PART has been appointed as the SERVICE PROVIDER under the present AMC by THE PARTY OF THE SECOND PART. The present AMC has been entered into with the PARTY OF THE FIRST PART on exclusive basis for all the operational activities **within specific territorial limits and within the specific subject matter related limits**

as specified hereunder ranging from receipt of complaints from either THE PARTY OF THE SECOND PART to their redressal.

Nothing in this arrangement shall *or shall be deemed* to constitute THE PARTY OF THE FIRST PART as the legal representative or agent, of THE PARTY OF THE SECOND, unless otherwise specified and if so specified, then only to the extent as specified for any purpose whatsoever. In particular, THE PARTY OF THE SECOND is not granted any right or authority to endorse the name of 'THE SERVICE PROVIDER', on any contract or instrument, nor to assume or create any obligation, *liability* or responsibility on behalf of, or in name of 'THE SERVICE PROVIDER'; nor to otherwise affect the rights or obligations of 'THE SERVICE PROVIDER'.

UNLESS otherwise specified and to the extent so specified, the present agreement shall NOT be deemed to be a comprehensive AMC.

INFRASTRUCTURES AND ALLIED PROVISIONS

(I) STATUTORY:

THE Parties shall make respective arrangements for necessary Taxes and other Legal Dues. Cost of these has to be incurred by the parties independently.

(II) TERM:

The duration of the present Agreement shall be 12 months from the date of execution.

PROCESS FLOW

The following Process Flow would be followed:

- (I) Complaint to be registered by the client on the online portal as per instruction specified on the portal.
- (II) Depending on the type of complaint the onsite visit of the engineer will be planned within 72 working hours.
- (III) In case, it is not possible for the engineer to reach in 72 hours, it will be conveyed to Client within 48 hours of the complaint logged through email and next visit date and time will be communicated.
- (IV) A service report document will be given to the client duly signed by the engineer of the Service Provider, mentioning the details of the visit. The client has to sign on the same service document.

(III) REPORTS:

PARTIES shall report to each other, at the earliest possible opportunity, of any difficulty or problem which may be faced by them, and shall, if either of the PARTIES should so feel or think proper, make it a point of reporting the same in writing by letter/facsimile/e-mail.

(IV) WARRANTIES:

THE SERVICE PROVIDER - shall provide all services in a workmanlike, professional and proper manner and shall comply with all applicable regulations, laws and best industry practices. THE PARTIES undertake to individually as well as an organization together to hold any necessary approvals, certificates or licenses for performing the services/business, including any necessary approval or license for conducting international projects, if part of the services/business.

THE PARTY OF THE FIRST PART AND SECOND PART shall employ and maintain sufficient, sufficiently qualified, trained, directed and supervised staff necessary to properly and safely perform the services/projects/assignments/business in compliance with this agreement.

THE PARTIES hereto hereby undertake to comply with, provide the services and conduct themselves, subject to and in strict accordance with the terms and conditions of this Agreement, including any exhibits or schedules attached hereto. In the event of conflict between any of the exhibits, schedules or ancillary documents and this agreement, the terms of this agreement shall prevail, and in turn in case of any conflict between the present Memorandum of Understanding and the MOA and AOA of the SERVICE PROVIDER (latter shall act as the Parent Agreement to which the present agreement/MOU shall be deemed to be subsidiary) and shall prevail.

THE PARTIES hereto will comply with all applicable laws, including labor laws and other applicable commercial laws and regulations, in the performance of this Agreement. THE PARTY OF THE SECOND PART shall, keep sufficiently saved, indemnify and hold harmless, THE PARTY OF THE FIRST PART, its affiliates and their respective officers and employees harmless against any loss, damage/s, cost or expense arising out of any claim, dispute or litigation by third parties or by the said PARTY OF THE SECOND PART or its affiliates, or their respective employees, officers, agents or contractor, alleging or involving, directly or indirectly, the breach by the said PARTY OF THE SECOND PART of this Agreement, or its violation of any

applicable laws or regulations, whether such claim, dispute or litigation involves property damages or loss, personal injury, economic loss or damage or otherwise.

COMMERCIAL ASPECTS

TERMS & CONDITIONS

A. Maintenance Fees:

1. THE CLIENT, hereby agree that the SERVICE PROVIDER shall be paid an annual lump sum amount of **Rs. 5,500/- (Rupees five thousand five hundred only)** per Active Tracker device which has been installed. Thus, the Fees for the devices which have been installed shall be paid at the time of execution of the present AMC.

Provided for calculating one year, the 1st day shall be the day on which this agreement is executed. As regards the devices installed after the date of

execution of this agreement, the 1st day for calculating one year shall be the date of the installation report.

2. The AMC amount as mentioned in above para no.1 shall be paid at least 15 days before the completion of the one year from the date of installation.
3. The list of services included in this AMC has been appended as Annexure **A** to this AMC. It is further agreed between the parties hereto that the services not mentioned in the said Annexure **A** which THE SERVICE PROVIDER is required to provide shall be charged on "at Actual" basis.

B. AUTHORISED SIGNATORY/IES:

For the Party of the First Part: _____

For the Party of the Second Part: _____

INTELLECTUAL PROPERTY RIGHTS

It is hereby expressly agreed by and between the parties hereto, that any intellectual property or rights/interest therein developed/created/vesting by or with SERVICE PROVIDER or developed/created during, in the course of, for or incidental to, the project/s covered by or under the present MOU shall belong to the SERVICE PROVIDER as an exclusive owner thereof TO HAVE AND TO HOLD THE SAME AS SUCH FOREVER.

The Right/s to transfer, assign, license, extinguish, relinquish or use the same shall be exclusively reserved by the SERVICE PROVIDER. Any returns/gain/profit/revenue earned in money or money's worth, from such transaction/s with respect to the intellectual property so developed/created as aforementioned, shall not be a subject matter falling within the purview and scope of this MOU and as such shall be the exclusive property of the SERVICE PROVIDER.

WAIVERS

No forbearance, indulgence or relaxation of any Party at any time to require performance of any provision of this Agreement shall in any way affect, diminish or prejudice the right of such Party to require performance of the same provision and any waiver or acquiescence by any Party of any breach of any provision of this Agreement shall not be construed as a waiver or acquiescence of any continuing or succeeding breach of such provisions, a waiver of any continuing or succeeding breach of such provisions, a waiver of any right under or arising out of this Agreement or acquiescence to or recognition of rights and/or position other than as expressly stipulated in this Agreement.

NOVATION

This Agreement shall, for all the purposes be the only agreement which shall remain in force and any and all previous agreement/s, if any, between the parties hereto, shall be no longer in force for any purposes there under mentioned.

Provided, however, that all the Parties hereto execute an agreement specifying to be solely and expressly for the purposes of being a novation over the present MOU and in case of common matters covered under both (present MOU and the agreement expressed to be a novation) the provisions of such an Agreement shall prevail. As regards the matters not commonly covered, the present MOU shall remain valid.

Force Majeure

Neither party shall be held liable for delays and damages caused by its failure to perform or delay in performing its duties and/or functions under this MOU, where such failure or delay is caused by unforeseeable and unavoidable natural calamities such as heavy rains, floods or famines, tidal waves, typhoons, fire, war, riots, agitation, armed rebellion, civil war, riots, strikes, terrorist attacks, earthquakes, government actions, and other recognized events of force majeure, the occurrence or consequences of which are unforeseeable and unavoidable and cannot be overcome by due diligence ("**Force Majeure**"). The party who was so prevented from

fulfillment/performance, in the whole or in part of its obligations under this MOU, shall notify immediately the other party by cable, telex or telefax without delay, followed by a letter within seven (7) days thereafter, providing detailed information concerning the events and the reasons preventing or delaying the fulfillment in the whole or in part of its obligations under this MOU. The Parties shall, mutually, decide whether to suspend, waive certain obligations or allow for the delayed performance in the whole or in part of the obligations, where such delayed performance and fulfillment of the obligations or part thereof is reasonably possible, practicable and permissible under this MOU, is not derogatory to the purposes and scope of this MOU or any project which is being run, and is otherwise not prevented by any Law for the time being in force, depending on the seriousness, nature, circumstances and consequences of the event/s.

The SERVICE PROVIDER shall not be liable to make good any loss/damage suffered or likely to be so suffered by The Party of the Second so far as the loss/damage is caused or can be reasonably inferred to be proximately caused due to the cause/s of Force Majeure, which loss/damage is to the person or personal/private property of the Parties hereto, subject only to and to the extent of Cover of the insurance policy, if any.

After the cessation of the Force Majeure cause, as mentioned above, the prevented party shall notify the other party/ies by, telex or telefax without delay, followed by a letter within seven (7) days thereafter. A Party hindered by Force Majeure shall use its best efforts to minimize and overcome the consequences of the Force Majeure and shall resume the performance of its duties under this Lease Deed as soon as possible after the cessation of the Force Majeure cause.

TERMINATION

Notwithstanding anything contained in this MOU, the SERVICE PROVIDER shall have a right to determine the Present MOU in case of any default, non-performance, or non compliance (in part or in whole) by the Party of The Second Part by issuing to the said party a prior written notice of not more than 30 days (working or otherwise), at the end of which the MOU shall be deemed to be determined and terminated. In case of such a termination, the party in default, as aforesaid, shall have no entitlement or claim over any amount of money paid or due to the SERVICE PROVIDER.

Similarly The Party of the Second Part and Third Part shall also have a right to voluntarily terminate the present MOU by giving a prior written notice of 30 days to The SERVICE PROVIDER. The SERVICE PROVIDER shall have a reciprocal right to

voluntarily terminate the present MOU by giving a prior written notice of 30 days to the party of the second part.

In case of Notice of determination or that of voluntary termination, as the case may be, the same shall be signed by an authorized signatory of the Party of the First & Second Part respectively.

Provided however that in case of the 'voluntary termination notice' being served by either party:

The Balance, if any, due to the SERVICE PROVIDER shall be released within 5 working days of the same.

LIMITATION OF LIABILITY

Notwithstanding anything contained in the present Agreement the SERVICE PROVIDER shall not be liable to provide services under this AMC in following cases:

1. The device has been handled /tampered with by any person, other than the person so authorized specifically by Law or The SERVICE PROVIDER.
2. Any electrical connection/s related (directly/indirectly) with the device has been handled /tampered with by any person, other than the person so authorized specifically by Law or The SERVICE PROVIDER.
3. Any defect in the device not covered by the warranty terms and/or the warranty duration.
4. The SERVICE PROVIDER shall not be liable to bear any costs/charges/responsibility arising out of legal/quasi legal proceeding/s initiated by CLIENT against any third party or vice versa.
5. For the actions/activities/items as mentioned in Annexure A to this agreement.
6. The customer agrees that the Company or the Engineer of the Company shall not be held responsible/liable for any legal proceeding or prosecution whether under PCPNDT Act or otherwise initiated against the Customer by Appropriate Authority or otherwise and in case of any loss caused to the engineer/company by being compelled to be involved in the legal action, the same shall be made good by the customer.
7. To the extent that it is permissible by the law of the land neither the Company nor the Engineer shall be responsible in case of any criminal prosecution initiated against the customer under any law for the time being in force.

COMMUNICATION AND CORRESPONDENCE

1. PARTY OF THE FIRST PART: Magnum Opus IT Consulting Pvt

Ltd Telephone:

Email:

2. THE PARTY OF THE SECOND

PART: Telephone:

Email:

REVIEW

The agreement/MOU shall be reviewed after every 12 (twelve) months and changes shall be made if and as may be thought necessary by the parties unanimously.

ARBITRATION

It is agreed between the Parties hereto that all disputes including but not limited to and relating to claims, ambiguity/ties/questions as to interpretation of any part or whole of the clause/s herein contained shall be settled by Arbitration and the Courts shall have no Jurisdiction in regard to the same except as provided by the Arbitration and Conciliation Act 1996 and the Constitution of India as well as any other Law for the time being in force.

JURISDICTION

Subject to the Clause of Arbitration, if in any event it is required that the parties move before the Court of Law for seeking any relief, then it is agreed between the Parties that all disputes that may arise out of this agreement (subject to the Clause of "Arbitration") if required to be settled in courts only then the courts at Pune shall have exclusive Jurisdiction subject to any Law for time being in force and subject to the Constitution of India.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SIGNED THIS AGREEMENT WITH ANIMUS EXECUTANDI ON THIS DAY OF YEAR TWO THOUSAND AND FIFTEEN.

FOR PARTY OF THE FIRST PART

**PARTY OF THE SECOND
PART**

BY: _____ BY: _____

TITLE: _____ TITLE: _____

NAME: _____ NAME: _____

FOR PARTY OF THE THIRD PART

BY: _____

TITLE: _____

NAME: _____

Signatures of the Witnesses hereunder have been put by them with the intention to attest the present agreement and hence they have signed this Agreement in presence of the Parties hereto and also in presence of each other:

Witness No. 1

Name: _____

Age: _____ **Occupation:** _____

Address: _____

Witness No. 2

Name: _____

Age: _____ **Occupation:** _____

Address: _____

ANNEXURE A

Services NOT covered under AMC

1. Any item that is found to be damaged manually/by accident/by third party damage or damaged for any other reason other than manufacturing defect like damaged due to water, damaged due to rats cutting the cables, short circuit etc.
2. External cables, extension board, are not covered under AMC.
3. If it is found that the service complaint is not concerned to Active Tracker technical problem, shall be charged extra at actual & will not be covered under AMC. Like, physical shifting of USG machine, servicing of USG machine etc.
4. The hard disk replacement is not included in the AMC which would be charged as actual.

Annexure B

Data Card

The State Appropriate Authority has instructed to have the online tracking mechanism to each Active Tracker.

Active Tracker works on the GPRS/SMS mode which fulfils the requirement of remote monitoring and functioning of the Active Tracker.

The Data Card has a SIM card of a telecom service provider and need a GPRS/SMS data plan.

The rental for the GPRS/SMS SIM is charged as Rs. 99/- per month plus service tax by the telecom service provider.

The current cost as mentioned in the annexure C has covered the yearly rental.

In the area, not having range for the GPRS/SMS, the data card will not work. In such situation, no liability arises against service provider or the client.

The GPRS/SMS functioning depends upon the third party (telecom service provider). Service provider shall not be responsible for any technical problem arises due to third party (telecom service provider).

Annexure C

Commercial

Sr. No.	Particulars per Active Tracker	Amt (Rs)
1	Comprehensive Annual Maintenance Contract of Active Tracker Machine	3,707
2	SIM Card Rental Charges for the period of 12 months (Rs.99 per month for 12 months)	1,188
	Sub Total	4,895
	Add : Service Tax	605
	Total AMC Amount	5,500

Other Terms:

1. 100% advance payment shall be made in favour of Magnum Opus IT Consulting Pvt. Ltd., payable at Pune by cheque or Demand Draft or RTGS.
2. Rs. 1000/- (rupees one thousand) will be charged extra against bounce or dishonor of cheques or DD.