



# WAIDLER

## **INSURANCE COMPANY** **VEHICLE INVESTIGATION TERMS AND CONDITIONS**

### **1. Introduction:**

**1.1.** Waidler (Pty) Ltd is a motor vehicle investigation service that provides a one stop solution to automotive related services. Waidler (Pty) Ltd possess extensive expertise in the automotive industry where motor vehicle collisions, defects and damages are concerned.

**1.2.** The Insurance company wishes to procure an inspector to conduct certain vehicle investigation services, as described more fully in the Scope of Investigation attached hereto and specifically incorporated herein as Schedule "A";

### **2. Definitions:**

**2.1.** "Company" means Waidler (Pty) Ltd a company with limited liability which is incorporated in terms of the Company Laws of South Africa with company registration number: 2014/228614/07 and registered address situated at

\_\_\_\_\_\*\*  
**2.2.** "Cancellation Fee" means the amount payable by the Insurance company as referred to in clause 7 of these terms and conditions.

**2.3.** "Consent" means permission to be obtained by the Insurance company/Insurer from the vehicle owner.

**2.4.** "Digital Data Download" means the parameters and data which have been recorded on the electronically controlled vehicle systems;

**2.5.** "Fee" means the amount payable by the insurance company to the company for investigation services.

**2.6.** "Investigation" means the execution and download of a digital data download on behalf of the insurance company.

**2.7.** "Insurance company" means \_\_\_\_\_ (name of insurance company/individual) with registration number/Identity number: \_\_\_\_\_ with registered address at

\_\_\_\_\_ a/an insurance company/insurer/individual or any person, natural or juristic who is the owner of a vehicle that places an order for an investigation with the company.

**2.8.** "Investigator" means an employee, sub- contractor or third party, engaged and/or affiliated with the Company, who is responsible for conducting an investigation into the digital data of the identified vehicle and who will carry out the investigation in terms of these terms and conditions

**2.9.** "Operational Information" means information regarding the vehicle prior to the collision which will be obtained via Digital Data Download which will be shared with the Insurance company;

**2.10.** "Personal Information" means information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;



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# WAIDLER

**2.11.** "Terms and Conditions" means this document, including any ancillary documents or attachments which is specifically incorporated herein.

**2.12.** "Report" means the written and/or digital report produced by the company as part of the Investigation, which includes the Insurance company's name and address, registration details of the specific Vehicle inspected and its location and an outline of any areas of concern which the Inspector has decided should be brought to the attention of the Insurance company.

**2.13.** "Insurance company information Checklist" means the list documents and/or information the Company requires in order for the inspector to properly conduct an investigation as per the Insurance company's requirements.

**2.14.** "Vehicle" means the vehicle in respect of which the Insurance company requires an Inspector to carry out an Investigation.

**2.15.** "Vehicle Owner" means the registered owner in terms of title and possession of a specific Vehicle.

### **3. General**

**3.1.** Investigations are prepared from visual, external and digital data download of a Vehicle. Investigations do not normally involve dismantling or disturbing any structure, assembly, component or internal mechanism, however, there may be instances where the vehicle are totalled, and it requires the company to dismantle certain parts of the vehicle in order to obtain the vehicle's control unit; It mainly consists of the downloading of digital data from the vehicles internal recorded data called digital data download.

**3.2.** Digital data download will be retrieved in a binary syntax and will be decoded via code protocols provided by the unit manufacture. The retrieval of this information will be performed directly from the Micro Processor stored on the hardware, either via the OBDII interface in the vehicle or via the relevant pins on the unit itself. All available data and parameters are recorded in a closed loop circuit and stored according to a first in - first out principle. Therefore, it cannot be tampered and deleted manually. This process is not comparable with a common diagnostic test.

**3.3.** Items which are listed on the Insurance company information checklist as a part/item to be checked, but which are not reasonably accessible and/or invalid/corrupt data and/or damaged beyond repair on the Vehicle, will not be inspected. In such circumstances, the company will be under no obligation to inspect and/or report on requirements that fall outside of the intended scope.

**3.4.** The Investigation can only describe and/or identify defects actually recorded and downloaded as per the digital data. The company cannot be held liable and are not responsible for any latent defects which are later discovered and which were not part of the initial scope of investigation.





# WAIDLER

#### **4. Consent to inspect and acknowledgement**

- 4.1.** Schedule "B" contains an explanation on the process and what data will be extracted from the Vehicle's digital data, in order to assist with the investigation.
- 4.2.** The parties agree that it remains the responsibility of the Insurance company to obtain consent from the Vehicle owner in order for the Company to perform investigation services. The Insurance company/Vehicle owner cannot hold the Company liable to obtain such a consent and it will never form part of the Company's scope of investigation. Should the Insurance company not be the Vehicle Owner, it will be the responsibility of the Insurance company to obtain such a consent.

#### **5. Fees and cancellations**

- 5.1.** Any fees payable by the Insurance company must be paid within 7 days of receipt of invoice.

#### **6. Refusal to inspect:**

- 6.1.** The Company reserves the right to refuse to carry out an Investigation or to issue a report on any vehicle if:
- 6.1.1.** the Inspector cannot reasonably access; or appears to the Inspector to be;
  - 6.1.2.** where the Insurance company has failed to ensure that the proper provision has been made for the Investigation to be carried out;
  - 6.1.3.** where the Insurance company has provided incorrect or incomplete information that has prevented the company from carrying out an Investigation.
- 6.2.** The Insurance company acknowledges and agrees that in the event that the inspector refuses to inspect as per the circumstances mentioned in 6.1 above, the company is entitled to treat the instruction as terminated and is entitled to retain the fee in full. Should the Insurance company request the Company to carry out a further Investigation, the Insurance company will be required to pay a further Fee.

#### **7. Cancellation of Instruction to Inspect**

- 7.1.** The Company will only deem the instruction to inspect as cancelled once a cancellation letter, as set out in the Schedule attached to these terms and conditions, has been completed and sent to the Company accordingly.
- 7.2.** In the event that the Insurance company cancels an Investigation:
- 7.2.1.** By 2pm on the day before the investigation is due to take place, the Insurance company will be charged a fee of R750.00 (seven hundred and fifty rand) to cover the costs in setting up the investigation.
  - 7.2.2.** After 2pm on the day before the investigation is due to take place, the Insurance company will be charged a fee of R1500.00 (one thousand five hundred rand) to cover the costs in arranging the investigation including allocating an inspector's time.
- 7.3.** In order to cancel an Investigation, you must inform the Operations Department by emailing the cancellation letter to [enquiry@waidler.co.za](mailto:enquiry@waidler.co.za)



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## **8. Matters outside of Our reasonable control / Force Majeure**

**8.1.** The Company will not be liable for any delay to/non-performance of the Investigation due to events or circumstances outside of the Company's reasonable control. The Company will take steps to minimise the effects of this where possible.

## **9. Exclusion of liability for loss**

**9.1.** The Parties shall not be liable to each other for any direct, indirect or consequential loss or damage, including loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract.

**9.2.** Insurance company shall indemnify and hold the Company, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description in terms of rendering the said investigation. The Insurance company will at all times be responsible, to the fullest extent for all information provided to the Company pertaining to the vehicle and collision.

**9.3.** The Company's maximum liability towards the Insurance company will not exceed the fee payable by the insurance company to the company of the specific investigation scope which brought rise to the claim.

**9.4.** The Company will only be liable to the Insurance company (and not to any other third party) to the extent that the Company fails to carry out the Investigation in accordance with these terms and conditions. Without limiting the foregoing, the Insurance company acknowledges that neither the Company nor the Inspector will be liable to Insurance company or any other third party for any liability, loss, damage, claim, proceedings, costs or expenses (together referred to as "Losses") suffered or incurred by the Insurance company

**9.5.** Nothing herein will affect the statutory rights of a consumer under any applicable statute.

## **10. Intellectual Property and Copyright**

**10.1.** It is an explicit condition of this agreement between the Company and the Insurance company that all rights to any proprietary information will be held by the Company up to and until all payments has been affected, only then will any right to proprietary information be transferred to the Insurance company.

**10.2.** The above inter alia includes, but is not limited to, methodologies, products, processes, data, specifications and reports.

## **11. Reports and Content.**

**11.1.** Due to the confidential nature of the services that the company renders, the reports will under no circumstances be shared with any third party and will only be submitted to the Insurance company directly.

**11.2.** All reports, content and downloaded digital data are a true technical and scientific reflection of facts only. The parties agree that under no circumstances will the Insurance company request any amendment or changes to be made which would deform the true reflection and/or integrity of such a report.



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## **12. Third Parties**

**12.1.** The parties agree that under no circumstances will any information be shared with any third party, which includes but is not limited to policy holder, vehicle owner, witnesses, panel beater etc.

**12.2.** Any and all correspondence will only occur between the Company and the Insurance company. Any information requested by a third party will have to be channelled through the Insurance company in relation to any discussions relating to results, reports, explanations or meetings and the same can only be only requested via the Insurance company or a representative acting on its behalf.

**12.3.** The company reserves their right to take appropriate legal action in the event of a breach in terms of clause 12

## **13. Enforcement of terms**

**13.1.** Each of the clauses of these terms operates separately. If any court of relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.

**13.2.** The Agreement is between the Insurance company and the Company. No other person or third party shall have any rights to enforce any of its terms.

## **14. Verification of evidence before a Court of law**

**14.1.** The Company will under no circumstances disclose any "raw data" to any third party, insurer, Insurance company or whoever requests same, without a Court Order first being obtained by the party requesting the information.

**14.2.** Should it be required, the parties agree that the investigator will testify voluntarily to verify its expert findings, however and any right to Private Privilege and/or privileged information must be granted and/or respected. No question into any privileged and/or private information will be answered, unless a Court Orders the investigator to answer same;

**14.3.** should the Insurance company require an investigator to testify at any Court of Law to verify its findings, the parties agree as follows:

**14.3.1.** That the parties, together with its representation schedule a preparation meeting, no more than 10 (ten) days prior to the set-down of the matter in question.

**14.3.2.** All notices and/or pleadings, which include but is not limited to all other expert reports or relevant evidence at least prior to the court (ten) days prior to date of set-down.

**14.3.3.** That the Insurance company, through its representatives, communicate to the presiding officer as well as all other relevant parties that the investigator will only be providing a certified copy of its SAQA Qualification Evaluation and Carrier Profile as Curricula Vitae. No other certifications or testimonials will be provided, unless a Court orders the Investigator to obtain same.

**14.3.4.** That any representation by the investigator at any court or tribunal, an expert/scientist fee will be charged at an increased hourly rate which will be equivalent to double the normal hourly rate.

**14.3.5.** The Insurance company, through its representative will within 3 (three) days, inform the Company in writing of the Order and/or Judgement the Court and/or tribunal handed down.



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**14.3.6.** We require the entire written court notice including all other Expert report or relevant evidence prior to the court date. A reasonable time period prior to the court date.

## **15. Use of personal information.**

**15.1.** The Company will use the obtained personal information for the purposes outlined in the fair processing notice in the Schedule below.

**15.2.** The Company will use your Vehicle's operational information as downloaded from the vehicle systems for purposes of an investigation only and will only disclose same to the Insurance company or any of its appointed representatives.

## **16. Notices.**

**16.1.** All notices under these terms and conditions shall be in writing and: (a) if delivered personally or by an internationally recognized overnight courier, be deemed given upon delivery; (b) if sent by registered or certified mail, return receipt requested, be deemed given upon receipt; or (c) if transmitted electronically, be deemed given on the date on which the acknowledgment of receipt has been received.

**16.2.** A party may from time to time change its address or designee for notification purposes by giving the other prior written notice of the new address or designee and the date upon which it shall become effective. Notices shall be sent to the parties personally as described herein below

## **17. Interpretation**

**17.1.** The headings used in these terms and conditions are for convenience only and shall not affect the interpretation of their contents.

**17.2.** These terms and conditions are governed by South African Law. No amendment of or addition to this Agreement or any consensual cancellation thereof or any part thereof shall be binding on the parties unless reduced to a written document and signed by them;

**17.3.** No relaxation or indulgence, which the Company may show to the Insurance company, shall in any way prejudice the Company or be deemed to be a waiver of its rights nor shall such relaxation or indulgence preclude or stop the Company from exercising its rights in terms of this agreement in respect of any further breach;

**17.4.** This Agreement constitutes the whole agreement between the parties and no warranties or presentations whether express or implied have been given or made by the Company to the Insurance company;

**17.5.** Each paragraph or clause in this Agreement is severable from the other and if any paragraph or clause is found by any competent court to be defective or unenforceable for any reason whatsoever, the remaining paragraphs or clauses shall be in full force and effect and continue to be of full force and effect.

**17.6.** Notwithstanding anything to the contrary herein contained, this Agreement shall be deemed to have become binding on the parties on the date of signing of this Agreement by both parties.



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## Signatories

Signed at \_\_\_\_\_ on this \_\_\_\_\_ of \_\_\_\_\_ 2021

\_\_\_\_\_ Full name

## COMPANY

As witnesses for the COMPANY:

1. Signature \_\_\_\_\_ Full name

2. Signature \_\_\_\_\_ Full name

Client Name: \_\_\_\_\_

ID/Reg No: \_\_\_\_\_

Address: \_\_\_\_\_ (domicilium)

\_\_\_\_\_ Full name

## CLIENT

As witnesses for the CLIENT:

1. Signature \_\_\_\_\_ Full name

2. Signature \_\_\_\_\_ Full name

**By signing this document, you declare that all details are true and correct and that you are bound by the terms and conditions as stated above.**



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## **Schedule "A" SCOPE OF INVESTIGATION**

### Collision Investigation:

- Download all stored digital data and parameters to determine the collision data.
- Determine the speed driven prior to the time of impact.
- Vehicle behaviour prior to and during the collision.
- Steering actions recorded.
- Braking actions recorded.
- Determine whether the kilometre reading has been altered on the instrument cluster.
- Identify all performance enhancements conducted on the vehicle.
- Determine if any faults on the vehicle could have contributed to the incident.
- Evaluate the overall condition of the vehicles tyres and brakes.

### Technical/Mechanical Investigation:

- Download all stored digital data and parameters to determine the incident data.
- Identify the technical specifications on the vehicle.
- Verify whether any malfunction or warning indication lights were illuminated. (Exact date & time, and kilometre reading)
- Determine how long the malfunction or warning indication lights were illuminated.
- Determine the distance driven with the vehicle after impact recognition until the vehicle was finally stopped.
- Identify the damages caused to the vehicles engine/transmission/ etc.
- Determine what the cause of damage was to the vehicle engine/transmission/ etc.
- Verify whether the damages are due to a collision with an object as per the provided brief incident description.
- Verify whether the damages are due to continuous operation after engine oil/coolant loss. Consequential loss.
- Verify whether the damages are due to mechanical failure.
- Determine if any faults on the vehicle could have contributed to the incident.
- Evaluate the overall condition of the vehicle and the vehicles engine. Sufficiently maintained.
- Evaluate the overall condition of the vehicles tyres and brakes.

### Water Ingress Investigation:

- Download all stored digital data and parameters to determine the incident data.
- Identify the technical specifications on the vehicle.
- Verify whether any malfunction or warning indication lights were illuminated.
- Identify the damages caused to the vehicles engine.
- Determine what the cause of damage was to the vehicle engine.
- Verify whether the damages are due to water ingress.
- Verify whether the damages are due to mechanical failure.
- Determine if any faults on the vehicle could have contributed to the incident.
- Evaluate the overall condition of the vehicle and the vehicles engine. Sufficiently maintained.
- Evaluate the overall condition of the vehicles tyres and brakes.

### Key Readout/Theft Investigation:

- Verify whether the VIN correlates with the said vehicle and with the key(s) provided.
- Verify if the keys() are indeed Original & Genuine ... vehicle key(s).
- Verify the last used date and time of the provided keys.
- Provide any additional information available on the key.







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## GPS-Location Tracking:

- Retrieve the coordinates of the vehicle last location picked up via the satellite navigation signal.
- Retrieve the date and time of when the vehicles last location signal was active.
- Verify whether the vehicles satellite navigation signal is still active.

## Fire Investigation:

- Identify the damages caused by the fire.
- Identify the causes/source of the fire to the vehicle.
- Determine if any faults on the vehicle could have contributed to the incident.
- Evaluate the overall condition of the vehicle prior to the fire.
- Identify any previous damages to the vehicle prior to the fire.
- Identify the causes/source of the fire to the vehicle.

## Fraud Investigation:

- Verify whether the damages to the vehicle are due to the provided incident description. (Staged Collision/Staged Water Ingress Incident/Staged Mechanical Failure)
- Verify whether the provided incident description corresponds with the Digital Findings. (Staged Theft/Hi-Jacking of vehicle)



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## **“Schedule B” EXPLANATORY LETTER**

Road Collision and vehicle investigation including digital data download

**1.** The Company has been appointed to conduct an in-depth investigation on the vehicle, with specification listed in the consent letter. The following X information may be obtained from the investigation:

- 1.1.** Speed driven, prior to the accident and at point of impact (Vector calculation)
- 1.2.** Passive Safety System Parameters. i.e. Vehicle motions and behaviour (Gravity forces in X, Y, Z Axle) ; Vehicle Occupation ; Airbag Deployment ; Impact recognition ; Restraint System activation .
- 1.3.** Instrument Cluster parameters. i.e. KM-reading and possible tampering
- 1.4.** Parameters from the Navigation system. i. e. GPS coordinates; driving distance, location and time
- 1.5.** Parameters from Active Safety Systems i.e. Braking actions, ESP activation, Line Assist activation,
- 1.6.** Parameters from the Steering Systems i.e. Steering actions
- 1.7.** Parameters from Automatic Transmission Systems. i.e. Gear Selection, Transmission Driving Mode
- 1.8.** Pre-existing damages, defaults and erased defaults
- 1.9.** Video and audio messages in and around vehicle (Telematic Systems, Vehicle systems related)
- 1.10.** Presence of chemical substances. i.e. Chemical analysis of fluids

**2.** For purposes of this explanatory letter, the following definitions has baring:

- 2.1.** “Digital Data Download” means the parameters and data which have been recorded on the electronically controlled vehicle systems;
- 2.2.** “Operational Information” means information regarding the vehicle prior to the collision which will be obtained via Digital Data Download which will be shared with the insurer;
- 2.3.** “Personal Information” means information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;
- 2.4.** “The Company” means Waidler (Pty) Ltd, a private company incorporated in terms of the company laws of South Africa, which is appointed to conduct an investigation into a collision using its state-of-the-art technologies in order to obtain digital data from the vehicle immediately prior to the collision.
- 2.5.** “Insurance company” means \_\_\_\_\_ (name of insurance company/individual) with registration number/Identity number: \_\_\_\_\_ a/an insurance company/insurer/individual or any person, natural or juristic who is the owner of a vehicle that places an order for an investigation at the company.



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**Process:**

Digital data download will be retrieved in a binary syntax and will be decoded via code protocols provide by the unit manufacture. The retrieval of these information will be performed directly from the Micro Processor stored on the hardware, either via the OBDII interface in the vehicle or via the relevant pins on the unit itself and from Micro Processor directly via a Batronix Reader X. All available data and parameters are recorded in a closed loop system and is stored according to a first in - first out principle. Therefore, it cannot be tampered and deleted manually. This process is not comparable with a common diagnostic test.

**Undertaking:**

Every effort has been made by the insurer and The Company to provide accurate information and facts. All information gathered is an accurate reflection of the vehicle at the time and date of investigation. Data and information that is retrieved will not be handed over directly to the policy holder. The Company undertakes to not in any way contact or be contacted by the policy holder and all information and data will only be provided to the Insurance company

**Indemnity:**

Insurance company shall indemnify and hold The Company, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description in terms of rendering the said investigation. The Insurance company will at all times be responsible, to the fullest extent for all information provided to The Company pertaining to the vehicle and accident.

Note: The Raw Digital Data retrieved by The Company Pty Ltd will not be provided to any third party. A third party will be responsible to conduct their own digital data download to decode and verify the data by themselves and to be able to provide their own results in order to compare it to The Company 's findings. Please note that The Company conducts a Digital Data Download, not a Diagnostic Test.

The process of the data retrieval has no influence on any existing motor plans or warranty. No vehicle parts will be removed, replaced nor altered during this process.

**Declaration:**

By signing the attached Consent Letter, the Vehicle owner hereby declare that he/she/it has read and understood the above and that this will be binding on the parties without limitation. The Insurance company further understand and agree that he/she/it was not forced to provide any information in order to assist the insurer and/or The Company to perform an investigation into the vehicle, nor was he/she/it forced to sign the consent letter.



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## **Schedule "C" Processing of Personal Information Notice**

### **Using your personal information**

The Company will use your personal information to provide the Investigation the Insurance company and/or the insurer has requested and for investigation into a collision purposes. The Company may also use your personal information to prevent and detect fraud.

The Company may disclose your information to other people and organisations to enable The Company to provide the Investigation the Insurance company/Insurer have requested or where legitimately required for legal or regulatory purposes including prospective legal proceedings. By providing us your details is viewed as a consent to such disclosure. The Company will always use reasonable efforts to ensure sufficient protection is in place to safeguard your personal data as required by the Protection of Personal Information Act as well as the GDPR.



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**Schedule "E"  
Cancellation of Investigation Form**

**Waidler (PTY) LTD**

I/We\* hereby give notice that I/We\* cancel my/our\* intention to have an investigation done on a vehicle.

Ordered on\*/received on\*,

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Name of Insurance company and/or organisation

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Claim/Reference number

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Address of Insurance company

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Signature of Insurance company or his representative

Date \_\_\_\_\_

\*delete as appropriate.



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