

*Trafficmaster Plc's  
Terms and conditions for Trafficmaster  
Mobile products and services*

*January 2009*



## 1. Definitions

In these terms and conditions and/or any subsequent amendments and/or additions as published on the Websites the following definitions shall apply and in the event of any conflict those terms and conditions published on the Websites take precedence:

- "Agreement"** means the purchase of a Subscription for either of the Services by the Customer subject to these terms and conditions together with the details provided by the Customer on Registration/Activation;
- "Application"** means the software application made available by Tm, downloaded from the internet by the Customer to the Device enabling the Customer to utilise the Services;
- "Authorisation Code"** or **"Key"** means the application or authentication code provided by Tm to the Customer upon request and/or Registration/Activation for secure access to the Application;
- "Authorised User"** means any person lawfully authorised by the Customer to use a the Customer's Device and/or the Application;
- "Breakdown"** is where a Vehicle is inoperative and/or has ceased to function as a whole as a result of a mechanical or electric failure (but not as a result of a road traffic accident, fire, theft or act of vandalism). A component failure (e.g. air-conditioning failure) in itself does not constitute a Breakdown unless it causes a Vehicle to cease to function as a whole;
- "Breakdown & Emergency Service in the UK"** or **"B&E UK"** means that part of the Smartnav Mobile, details of which are set out in Clause 5 below;
- "CLI"** means caller line identification being the ability of the recipient of a telephone call or SMS from a Device to view the mobile telephone number making the call or sending the SMS;
- "Commencement Date or Start Date"** means the date of Registration or download of the Application by the Customer to the Device, whichever is the earlier;
- "Companion"** or **"Services"** means either or both of (as the context dictates) Smartnav Mobile and/or International Rescue excluding telephone calls and/or downloads to the Device using the Customer's communication airtime provider);
- "Concierge Service"** means that part of Smartnav Mobile or International Rescue enabling Customers via Tm to order consumer goods (as determined by Tm from time to time) or make hotel reservations at selected hotels via TPSPs, or obtain information relating to flights, weather, car hire, restaurants, taxi services etc (as determined by Tm from time to time) referred to in Clause 4 below;
- "Customer"** means a person, firm or company whose order for the Services has been accepted by Tm;
- "Customer Address"** means the Customer's contact details most recently provided to Tm being, email and/or mobile phone number and recorded on Tm's customer database;
- "Device"** means a GPS enabled mobile phone owned or controlled by the Customer;
- "Emergency"** means the risk of serious injury to the Customer, Authorised User or a passenger in a Vehicle, a risk of serious damage to a Vehicle, or a suspicion that a serious crime is in progress concerning a Vehicle or its passengers requiring immediate attendance of Police, ambulance or fire authorities in the UK;
- "False Alarm"** means where, in Tm's opinion, the Customer had no reasonable grounds on which to believe that a genuine B&E UK or International Emergency existed or acted recklessly in respect of notifications to Tm of any such events;
- "GPS"** means Global Positioning System;
- "GPRS"** means General Packet Radio Services and is a packet-based wireless communication service that provides higher data rates than GSM;
- "GSM"** means the Global System for Mobile communications for cellular communication;
- "IPR"** means any patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights or obligations whether registerable or not in any country;
- "International Emergency"** means when a Subscriber is the victim of a crime or experiences or is at material risk of a medical emergency or other serious personal disaster which genuinely requires the immediate attendance of Police, ambulance or fire authorities or other emergency services in the country of the incident;
- "International Rescue"** or **"IR"** means Tm's international emergency assistance service accessed via the Application referred to in Clause 7 below in addition to the Concierge Service;
- "IR Countries"** means those listed from time to time at <https://secure.eurowatchcentral.com/countries.aspx> except for UK and Brazil;
- "Map Supplier"** means the supplier of maps which enables the Software to determine the location of a Device and provide a Route for Smartnav Mobile;
- "Navigation Service"** or **"NS"** means Tm's GPS enabled navigation and routing service referred to in Clause 6 below that forms part of the Smartnav Mobile;
- "PA Routes"** form part of the Smartnav Mobile where the Customer requests a Route from a PA using the Application;
- "Personal Assistant"** or **"PA"** means a Tm employee who handles requests from Customers;
- "Price"** means the tariff for the Services listed on the Websites or listed during Registration/Activation or as promoted to the Subscriber and as amended by Tm from time to time;
- "Registration"** or **"Activation"** means the process whereby Tm receives the Customer's personal data for the purpose of purchasing Services by internet registration or telephone or otherwise;
- "Route"** means directions by road from a single point of origin to a single destination;
- "SIM"** means subscriber identity module card used in connection with Devices;
- "Smartnav Mobile"** means the combination of the Concierge Service, B&E UK and the Navigation Service with integrated UK traffic data which together are branded as "Smartnav Mobile" excluding communication costs (i.e. the cost of messages, telephone calls and/or downloads to the Device using the Customer's communication airtime provider);
- "SMS"** means short message service allowing users to send and receive short text messages;
- "Software"** means the Application and any of the software comprising Tm's systems and the Websites;
- "Software Vendors"** means third party vendors of software incorporated into the Software;
- "Software Warranty"** means the warranty obligations of Tm as described in Clause 12;
- "Subscription"** means the agreement pursuant to these terms for Tm to provide Services to the Customer for a period of time and on payment terms selected by the Customer during Registration and either: "Annual Subscription" means a 12 month Subscription paid for in full on or prior to the Commencement Date or as otherwise agreed; "Three Month Subscription" means a 3 month Subscription paid for in full on or prior to the Commencement Date or as otherwise agreed; or "Monthly Payment Subscription" means a month by month subscription paid for monthly in advance commencing on the Commencement Date; or "Lifetime Subscription" means a subscription for the lifetime of the phone as defined in Clause 10.2; or as otherwise agreed;
- "Term"** means the periods of time as set out in Clause 10;
- "Tm"** means Trafficmaster Plc (Company No. 2292714), whose registered office is at Martell House, University Way, Cranfield, Bedfordshire MK43 0TR;
- "TPSPs"** means third party service providers that provide concierge services to Customers;

**"UK"** means the UK [the United Kingdom of Great Britain and Northern Ireland] in addition to the Isle of Man and the Channel Islands and such other territories as Tm may include from time to time;

**"Updates"** means updates to the Software, such as bug fixes, patches, missing plug-ins and new versions;

**"Vehicle"** means the Customer's vehicle;

**"Websites"** means the websites which are located the following domain names: [www.trafficmaster.co.uk](http://www.trafficmaster.co.uk) and/or such other websites as may be nominated by Tm from time to time; and

**"Working Days"** means Monday to Friday 9am to 5.30pm, excluding public holidays in the UK.

## **2. Acceptance**

Registration and/or use of Services having had the opportunity to read these terms shall be deemed conclusive evidence of the Customer's acceptance of the terms of this Agreement.

## **3. Provision of Services**

3.1 Subject to the other provisions of this Agreement, Tm will use reasonable endeavours to make the Services available 24 hours a day, 365 days a year to Customers who have paid for Subscriptions.

3.2 The Services and the technology associated are constantly changing and being developed. As a result of this, Tm reserves the right to make reasonable changes to the terms of this Agreement at any time during the Term, but will only do so when it has good reason. In the case of a change Tm will publish a 30 day notice in advance on the Websites before the change comes into effect and provide a link from the main pages of the Websites (where such change arises as a consequence of changes imposed by third party manufacturers or suppliers or a regulatory body the notice will be issued as soon as reasonably practicable). The change will apply from the date shown in the notice. The Customer should visit the Websites regularly to identify any change.

3.3 Tm also reserves the right to vary the Tm Price List from time to time by giving at least 30 days notice on its Websites, any such variation to the Tm Price List shall only take effect in relation to each Customer at the renewal of any Subscription in accordance with Clause 10.1.

3.4 The Customer must ensure that their Device running the Application and SIM operating within the Device is GSM international roaming enabled and that the Device is not configured to withhold the CLI.

## **4. Concierge (or PA) Service**

4.1 The Concierge Service is available to Customers who have paid for a Subscription for Services. The Customer is responsible for providing a PA with all details required for Tm to facilitate the provision of this service or information requested, including, if necessary, the credit card or other payment details for payment of the TPSPs and/or Tm.

4.2 Tm shall use its reasonable endeavours to order from TPSPs the service requested by Customers as soon as reasonably possible. Tm will act as the agent of the Customer for these purposes and accepts no liability in the event that the service requested by the Customer is not provided or delivered in part or at all or is not acceptable to the Customer. The Customer's contract for the service facilitated by Tm will be with the TPSPs or with the TPSPs' supplier, whichever is appropriate, and the Customer is responsible for all costs associated with the delivery of the service by the TPSPs save that Tm may charge the Customer for some services amounts listed on the Websites from time to time or as advised by a PA. Tm will provide booking reference details to the Customer or report back to the Customer if it has not been possible to provide the service requested.

## **5. Breakdown & Emergency Service in the UK**

5.1 B&E UK is only available to Customers who have paid for a Subscription for Smartnav Mobile and only in the event of a Breakdown or an Emergency in the UK.

5.2 The Customer may request this service by pressing the relevant button on the Application.

5.3 Tm will, upon receipt of all relevant and sufficient information use all reasonable endeavours to provide the Customer's information to the relevant Breakdown service provider or put the Customer in direct contact with the UK public emergency services.

5.4 The Customer acknowledges that nothing in this Agreement shall oblige a Breakdown service provider or the public emergency services to take action and Tm is not liable for the acts or omissions of any of the same or for any costs incurred by a Breakdown service provider.

5.5 A Subscription for Smartnav Mobile does not include provision of actual Breakdown services but if the Customer has not contracted a third party for Breakdown services then Tm will take reasonable steps to put the Customer in contact with a Breakdown service provider.

## **6. Navigation in the UK Service**

6.1 NS is only available to Customers who have paid for a Subscription for Smartnav Mobile and covers the UK.

6.2 When used in vehicles NS is only suitable for passenger cars and light goods vehicles up to 3.5 tonnes in weight.

6.3 Route instructions do not allow for vehicles of abnormal length, height, width and/or weight and Tm is not liable for damage or loss as a result of use of this service in such vehicles.

6.4 The Customer may request a Route by using the Application. The Customer is responsible for all communications charges incurred by the Customer from the Customer's communication airtime provider for the data transfer and/or telephone call. Airtime provider communications may change from time to time and will differ between different providers. For calls to a PA for a Route the communication charges will depend on the length of the call and Tm will list on its Websites indicative average call charges as they may vary from time to time and the Customer should consult the Websites from time to time in the event of changes.

6.5 NS does not provide Routes that involve the Vehicle crossing water other than by road (e.g. ferry). Where applicable it is the Customer's responsibility to request Routes to and from ports.

## **7. International Rescue or IR**

7.1 IR is only available to Customers who have paid for a Subscription to IR and only in the event of an International Emergency;

7.2 The IR service provides the Subscriber with access to public emergency services in the IR Countries in the event of an International Emergency;

7.3 The Customer may request IR by pressing the relevant button on the Application.

7.4 Tm will, upon receipt of all relevant and sufficient information from the Subscriber that there is an International Emergency, use all reasonable endeavours to provide the Customer's information (position and status) to the police or emergency services in the relevant country via partners based in those countries.

7.5 The Customer acknowledges that nothing in this Agreement shall oblige the police or other emergency services in the country of the International Emergency to take action and Tm is not liable for the acts or omissions of any of the same if they fail to respond to a request for

assistance properly or at all, as they will be subject to other operational demands and local verification procedures. Further Tm is not liable for any costs relating to the police or other emergency services.

- 7.6 The IR service is NOT to be used:
- 7.6.1 For non-crime/non-emergency events as determined by Tm or the public emergency services in the relevant countries from time to time;
- 7.6.2 When in the sole opinion of Tm (or a partner in the relevant country) the International Emergency commenced before the Subscription had started; or
- 7.6.3 When the request for IR relates to an International Emergency in a country that is not, at the date of the Incident, an IR Country.
- 7.7 Customers must follow any user guidelines in relation to IR issued from time to time by Tm and/or any and all instructions given to the Customer by a PA.
- 7.8 The Customer acknowledges that Tm will not be responsible for any incorrect data entered by the Customer at Registration and is only able to act upon the information provided by the Customer and that Tm is at liberty to correct or change the Customer's data if requested by the Customer or if it is incorrect.
- 7.9 The Customer acknowledges that Tm will not be responsible for any delays or the inoperability of the IR service in the event that the Customer's CLI is not available or the PA cannot hear the Customer properly or at all when using the IR service.

## **8. Licence to use Software**

- 8.1 Tm hereby grants the Customer a limited nonexclusive, non-transferable licence to use the Software in conjunction with the Services.
- 8.2 The Software is developed by Tm and may include software from Software Vendors. The Software is a proprietary product of, and constitutes trade secrets of Tm and/or the Software Vendors. The Software is protected by copyright laws and international treaty. All right, title and interest in and to the Software and all copies and duplicates thereof, and all related IPR subsisting therein are vested and remain in Tm and/or the Software Vendors.
- 8.3 The Customer shall not (and shall not permit any third party to):
  - 8.3.1 copy, sell, assign, lease, licence, distribute, transfer, modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive the object or source code from the Software unless otherwise permitted herein or save to the extent permitted by law;
  - 8.3.2 take any action to circumvent or defeat the security or content usage rules provided, deployed or enforced by any functionality (including without limitation digital rights management functionality) contained in the Software;
  - 8.3.3 use the Software to access, copy, transfer or retransmit content in violation of any law or third party rights;
  - 8.3.4 remove, obscure or alter Tm's copyright notices, trademarks or other proprietary rights affixed to or contained within or accessed in conjunction with or through the Software; and
  - 8.3.5 otherwise damage or compromise Tm's or the Software Vendor's IPR in relation to the Software.
- 8.4 The Software and all materials and knowledge related thereto is obtained by the Customer in confidence and neither the Software or any information contained in it (except information which is or becomes public knowledge through no fault of the Customer) shall be duplicated or disclosed or published by any such persons in any form, or reproduced, transcribed, imitated or simulated in whole or in part.
- 8.5 In the event of any breach of this Clause 8, monetary damages will not suffice to compensate Tm and/or the Software Vendors and Tm and/or the Software Vendors will be entitled to seek equitable remedies, including, without limitation, temporary restraining orders and temporary and permanent injunctions, without being required to prove special damages or provide security to the relevant court. If there is any violation or suspected violation of this Clause 8, the Customer shall immediately notify Tm and shall, at its expense, assist Tm in the enforcement of this Clause against any of its current or former employees, agents, representatives or a relevant third party. The Customer agrees to indemnify and hold Tm harmless from any claim, liability, damage or expense, including reasonable legal fees, suffered by Tm as a result of any breach of this Clause by the Customer. In addition, the Customer shall promptly notify Tm of any claim that the Software infringes their rights. Upon reasonable notice, in the event of infringement, Tm will take reasonable steps to amend the Software to avoid such infringement, obtain the right to use the Software or give the Customer a refund on the unused portion of any Subscription. This is the Customer's only remedy in the event of a claim of infringement.
- 8.6 Only the current version of the Software and the immediately preceding version will be supported by Tm. Tm may from time to time update Software at its discretion and in the event that Tm advises the Customer of Updates and the means to Update, the Customer shall diligently follow any such instructions as soon as reasonably possible. The Software may also communicate with Tm servers from time to time to check for available Updates. By installing the Application and/or using the Software the Customer agrees to automatically request and receive Updates. Nothing herein shall require Tm to release Updates and Tm shall, at its sole discretion, determine the nature, content, and timing of Updates, if any.
- 8.7 Subject to Clauses 8.1 to 8.6 above Tm shall provide the additional services described below without additional charge during each period for which Customer has purchased the Services where appropriate to a Subscription:
  - 8.7.1 Defects in the Software. During the Term, if the Customer identifies a previously unidentified defect in the Software, the Customer shall notify Tm of the defect and Tm shall use reasonable endeavours to resolve such defect. If the error reported by Customer has been identified previously to Tm, Tm shall provide the defect correction as part of an Update; and
  - 8.7.2 Customer Support. Tm provides email support to Customers during Tm's normal business hours at Tm's discretion.
- 8.8 Subject to Clauses 8.1 and 8.2, to the extent that any rights of whatever nature in the Software are vested in the Customer (if any), the Customer hereby assigns all such rights absolutely to Tm.
- 8.9 The licence granted under Clause 8.1 will terminate forthwith on the termination or expiry of a Subscription.
- 8.10 The Software utilises Maps owned and maintained by the Map Supplier. The Customer's use of the Services is subject to the terms of the Map Supplier listed in Appendix A which forms part of this Agreement.

## **9. Payment**

- 9.1 The price of a Subscription and the only means of payment allowed are set out during Registration/Activation, on the Tm Price List or as detailed by authorised Tm personnel or a third party reseller, dependent on the method of purchase.
- 9.2 Tm has no obligation to commence the provision of Services until the Customer has paid for or commenced payment of a Subscription unless otherwise agreed.
- 9.3 If any sums due from the Customer to Tm remain unpaid for more than 7 days from the due date then Tm will be entitled to:
  - 9.3.1 charge interest on the outstanding sum at the rate of three percent (3%) above the base rate of Barclays Bank Plc, which interest shall accrue on a daily basis until payment is received in full by Tm; and/or
  - 9.3.2 suspend the provision of Services until full payment has been received; and/or

- 9.3.3. terminate this Agreement whereupon the Customer shall reimburse Tm on demand in respect of all unpaid sums in addition to the costs and expenses incurred by Tm in tracing the Customer and in taking steps to enforce payment of any sums due.
- 9.4. If a Customer's bank, building society or other financial institution fails to honour any direct debit, cheque or other method of payment, the Customer shall reimburse Tm in respect of all costs incurred in re-presenting the same.
- 9.5. Where a Customer pays by automatic continuous payment it is the Customer's responsibility to ensure that the direct debit, or such other automatic method of payment, is cancelled with both Tm and the bank, building society or other financial institution. Tm shall be entitled to charge for its reasonable administration costs if it is required to return monies as a result of the Customer failing to cancel such payment.
- 9.6. All sums payable are inclusive of Value Added Tax at the prevailing rates unless otherwise stated by Tm.
- 9.7. Tm may charge an administration fee should a Customer fail to pay before the expiry of a Subscription and subsequently renew a Subscription by making the necessary payment.

## **10. Term and Termination**

- 10.1. This Agreement shall commence on the Commencement Date and shall continue for:
- 10.1.1. a minimum fixed period of 12 months and thereafter shall automatically be renewed for a further minimum period of 12 months on each anniversary of the Commencement Date in the case of an Annual Subscription; or
- 10.1.2. for a minimum fixed period of 1 month and thereafter shall automatically be renewed for a further minimum period of month on each anniversary of the Commencement Date in the case of an Monthly Payment Subscription; and
- 10.1.3. for a minimum fixed period of 3 months and thereafter shall automatically be renewed thereafter for further minimum periods of one month on each monthly anniversary of the Commencement Date in the case of a Three Month Subscription.
- unless terminated by either party giving at least 7 days notice prior to the next renewal date. Notice of termination by the Customer must be sent to: Subscription Cancellations, Customer Service, FREEPOST, ANG7506, Bedford, MK43 0BR (or such other address as Tm may nominate from time to time). Notice of termination by Tm must be sent to the Customer Address.
- 10.2. In the case of a Lifetime Subscription this Agreement commences on the Commencement Date and continues until the Device onto which the Application was first downloaded is no longer operational and/or functioning.
- 10.3. Save for Clause 17.1 herein Subscriptions are not refundable.
- 10.4. Either party may, by written notice to the other, terminate this Agreement in the event that:
- 10.4.1. the other party is in material or persistent breach of this Agreement; and/or
- 10.4.2. the other party becomes insolvent or bankrupt, enters into liquidation, whether voluntary or compulsory, passes a resolution for its winding up, has a receiver or administrator appointed over the whole part or any part of its assets, makes any composition or arrangement with its creditors or takes or suffering any similar action in consequence of its debt.
- 10.5. Tm may terminate a Subscription or part thereof and this Agreement with immediate effect on written notice to the Customer in the event that:
- 10.5.1. any government or other regulatory approvals for the use of the Services are prohibited by law or withdrawn, suspended or ended by Tm at any time;
- 10.5.2. in the sole opinion of Tm the Customer or any Authorised User has abused the Services and/or abused Tm personnel and/or is using it for unlawful or criminal purposes under the law of any jurisdiction; and
- 10.5.3. the Customer reports one (1) or more False Alarms during the term of a Subscription. In addition, Tm reserves the right, should a Customer's actions or inaction result in a False Alarm, to charge the Customer a reasonable sum to compensate it for its wasted time and effort in responding to such a False Alarm.
- 10.6. Upon termination of this Agreement the accrued rights and liabilities of the parties shall not be affected and payments made by the Customer prior to termination are non-refundable and non-transferable unless agreed in writing by Tm prior to termination.
- 10.7. Termination of the Agreement by the Customer will take effect at the end of the relevant term of any Subscription or as otherwise agreed in writing between Tm and the Customer.

## **11. IPR**

- The Customer hereby acknowledges that:
- 11.1. any IPR relating to the Software or the Services owned by Tm shall remain Tm's exclusive property; and
- 11.2. Tm (or its associated companies) is the proprietor of the "Trafficmaster", "Trackstar", "Smartnav", "Fleet Director", "Safe Speed", "International Rescue", "Smartnav Mobile" and "Companion" names, derivatives, symbols and trademarks and all documentation relating thereto and any use is specifically prohibited unless by written agreement with Tm.

## **12. Software Warranty**

- 12.1. Tm warrants that the Software will comply in all material respects with the Tm product information set out on the Websites (from time to time).
- 12.2. The Customer hereby agrees that the only remedy available under this limited warranty is to receive a refund of the amount paid for the Subscription in the event that Tm cannot rectify any fault notified to it in writing, within 30 days. No oral or written advice or information provided by Tm or any of its agents or employees, whether given before or after delivery or download of Software shall create a warranty or in any way increase the scope of this limited warranty, and the Customer is not entitled to rely on any such advice or information. This Software Warranty shall not be applicable if there has been any alteration, modification, or special configuration made to the Software, if the Application has been downloaded onto a Device that has not been approved by Tm as being compatible, if there is a conflict with other software loaded on the same Device, or in the case of accidents, misuse, abuse, neglect, damage, tampering, improper installation, maintenance, or repair (not provided by Tm), connection to an improper voltage supply, water damage or exposure to the elements, use with accessories or devices not approved by Tm, use other than in the normal and customary manner or failure to install or use the Software in accordance with instructions.
- 12.3. For the avoidance of doubt during the period of time between receiving notice of any defect in the Software and rectification, Tm will not be liable for any loss or damage suffered by the Customer that might have been prevented had the Services been fully operational.

## **13. Liability**

- The provisions of Clauses 13.1 to 13.4 shall only apply to Customers who are purchasing the Services in the course of their business or for commercial use.
- 13.1. The Services are provided to the Customer "as is," and the Customer agrees to use it at its own risk.
- 13.2. Other than the limited and only warranties provided above by Tm any other guarantees, representations or warranties of any kind, express or implied, arising by law or otherwise, including but not limited to, content, quality, accuracy, completeness, effectiveness, reliability, fitness for a particular purpose, usefulness, use or results to be obtained from the Software or the Services or that the Software or the Services will be

uninterrupted or error-free are expressly excluded except where prohibited by law. Where prohibited, any such warranty is limited to the minimum warranty and period provided by law.

- 13.3 The exclusions in this Agreement, including this Clause 13, shall apply to the fullest extent permissible at law, but Tm does not exclude liability for death or personal injury caused by the negligence of Tm, its officers, employees, contractors or agents; for fraud or fraudulent misrepresentation; for breach of the obligations implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982; or for any other liability which may not be excluded by law.
- 13.4 Except as expressly stated in Clause 13.3:
- 13.4.1 Tm's liability, whether under this Agreement or any collateral contract, for loss of or damage to the Customer's tangible property caused by the negligence of Tm, its officers, employees, contractors or agents, shall not exceed £5,000;
- 13.4.2 (save as set out in 13.4.1) the total liability of Tm, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equal to 250% of the total fees paid by the Customer in the preceding twelve (12) months; and
- 13.4.3 Tm shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
- 13.4.3.1 loss or damage caused to, or suffered by, the Customer relating to the Vehicle being damaged or an incorrect Route being provided;
- 13.4.3.2 special damage even though Tm was aware of the circumstances in which such special damage could arise;
- 13.4.3.3 loss of profits;
- 13.4.3.4 loss of anticipated savings;
- 13.4.3.5 loss of business opportunity;
- 13.4.3.6 loss of goodwill; and
- 13.4.3.7 loss of data;
- provided that this Clause 13.4.3 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of Clause 13.4.1 or any other claims for direct financial loss that are not excluded by any of categories 13.4.3.1 to 13.4.3.7 inclusive of this Clause 13.4.3.
- The provisions of Clauses 13.5 to 13.13 shall apply only where the Customer is purchasing the Services outside of the course of business or for personal use.
- 13.5 Tm accepts responsibility if a Customer is injured or dies as a result of its negligence.
- 13.6 Tm also accepts responsibility for loss or damage to a Customer's physical property arising from its negligence. It will pay up to £5,000 in any 12 month period for this loss or damage.
- 13.7 Tm will have no responsibility to pay the Customer compensation for financial loss, for any information which is lost or corrupted, or for any loss that could not have been reasonably foreseen or for any business losses.
- 13.8 Except as described in Clauses 13.5 and 13.6, Tm will not pay the Customer more than £5,000 in compensation (even if Tm has been negligent) in any 12 month period.
- 13.9 Nothing in this Agreement affects the Customer's legal rights relating to the Services which are faulty or have been incorrectly described.
- 13.10 Tm cannot guarantee that it will be able to solve all problems reported by the Customer or that it will be able to advise on all issues related to the Services.
- 13.11 Tm is not responsible for any consequences of the Customer's failure to correctly follow Tm's advice and recommendations. The provisions of the remainder of Clause 13 shall apply to all Customers
- 13.12 The Services must not be used in any way which would or may affect the ability of any driver of the Vehicle to drive safely and in accordance with the Highway Code. The Customer or an Authorised User is ultimately responsible for the Vehicle under his/her control and they should be aware of their surroundings at all times. In certain geographic areas one way streets, turn restrictions and entry prohibitions (e.g. pedestrian zones) are not recorded or displayed. Tm is not liable for any loss or damage caused by the acts or omissions of the driver of the Vehicle.
- 13.13 Users of the Vehicle remain at all times responsible for observing all relevant laws and codes of safe driving and Tm is not liable for any fine, penalty, or punishment issued to the Customer or any user of the Vehicle.
- 13.14 The Customer acknowledges that, owing to the nature of the technology utilised to benefit from the Services, the operation of Services may from time to time be adversely affected by faults and disruptions caused by physical features such as underpasses, windscreens and other physical features of the Vehicle, other electronic devices, atmospheric conditions, the state of the ionosphere, GSM networks and GPS satellite availability, internet and website performance and availability and other causes of interference beyond Tm's reasonable control. Tm gives no guarantee that the Services will operate properly or at all in adverse conditions or in the event of Force Majeure as defined in Clause 16.1 below. In particular, the provision of the Services depends to some extent upon the operation of the digital cellular telecommunications technology, and this technology is not operative all the time in all parts of the world.
- 13.15 The Customer acknowledges that Tm has no liability with regard to any communication costs including the cost of messages, telephone calls and/or downloads to and from the Device incurred by the Customer from the Customer's communication airtime provider.
- 13.16 The Customer acknowledges that traffic data forming part of the Services may contain inaccurate or incomplete information due to changing circumstances, sources used and the nature of collecting comprehensive traffic data, any of which may lead to incorrect results.
- 13.17 The Customer must maintain adequate insurance and the provision of the Services does not mitigate that responsibility of the Customer in that respect.
- 13.18 The Customer acknowledges that the provisions of this Clause limiting and excluding the liability of Tm are reasonable given the complex nature of the technology involved in the Software and the provision of Services and the many other factors affecting the Services outside Tm's reasonable control.
- 14. Assignment**
- 14.1 This Agreement is personal to the Customer and may not be assigned by the Customer.
- 14.2 Tm may assign, transfer or novate this Agreement and the rights and obligations under it in whole or in part to any other party at any time, and must inform the Customer of any such transaction at the Customer's Address within a reasonable time after it has occurred.

## **15. Customer Information**

- 15.1 *Tm operates in accordance with applicable UK data protection legislation. A Customer has a right to ask for a copy of his personal data.*
- 15.2 *The Customer acknowledges that for quality control, security reasons and training, telephone calls between Tm and the Customer may be recorded.*
- 15.3 *The Customer consents to Tm tracking and tracing the location, time and speed of a Device via the Application for the purposes of this Agreement.*
- 15.4 *The Customer consents to his personal data being made available during an International Emergency or an Emergency to Tm partners and/or public emergency services and to TPSPs for the Concierge Service and Breakdown service providers in the case of a Breakdown and consents to his personal data being made available during an International Emergency to Tm partners, police and other emergency services in countries whose legislation may not provide the same level of data protection as in the UK.*
- 15.5 *Tm reserves the right to use the Customer's personal data, including personal data obtained from the Device for traffic information, data analysis, mapping, and marketing purposes.*
- 15.6 *Tm reserves the right to use and to allow third parties to use anonymised location, time and speed information obtained from the Device for traffic information, journey data analysis and mapping purposes.*
- 15.7 *Tm and its agents, its business partners and/or carefully selected companies may use the Customer's information to keep the Customer informed by post, telephone, facsimile, e-mail, SMS or other means about Tm products and services. By providing Tm with contact details, the Customer consents to being contacted by these parties for these purposes. If the Customer does not wish to receive marketing information, the Customer must state this in writing to Trafficmaster plc, FREEPOST, ANG7506, Bedford, MK43 0BR or send a message by email to the email address listed at the end of these terms.*
- 15.8 *The Customer undertakes to inform all Authorised Users of the information set out in this Clause.*

## **16. General**

- 16.1 *Tm is not liable for any delay in performing or for failure to perform its obligations hereunder to the extent that and for so long as the delay or failure results from any cause or circumstance whatsoever beyond its reasonable control including, without limitation, the activities of civil or governmental authorities, industrial disputes, acts of God, or severe weather conditions (each an event of "Force Majeure"). Tm shall notify the Customer as soon as practicable upon becoming aware of any event of Force Majeure and shall indicate the manner and extent to which its obligations are likely to be prevented or delayed. If any event of Force Majeure occurs, the date(s) for performance of the obligation(s) affected shall be postponed for so long as is made necessary by the event of Force Majeure.*
- 16.2 *All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered or transmitted by the Customer to Tm at the address specified above at Clause 15.7 or such other address as Tm may notify to the Customer at the Customer's Address for this purpose. Notices by Tm to the Customer shall be to the Customer Address and it is the responsibility of the Customer to advise Tm of any change of Customer Address expeditiously. Any notice shall be treated as having been served on delivery if delivered by hand, email or SMS, 4 Working Days after posting if sent by pre-paid registered mail, 2 Working Days after dispatch if sent by courier and on confirmation of transmission if sent by facsimile. Reference to "in writing" in this Agreement includes Tm notifying the Customer by email or SMS where the Customer has supplied such contact details.*
- 16.3 *In the event that a Customer is dissatisfied with the Services it must bring any such complaint to Tm's attention within 28 days of being aware of it. This does not affect a Customer's statutory rights. Otherwise, the failure of either party to enforce or to exercise at any time or for any period of time any term of or any right pursuant to this Agreement (including but not limited to Tm enforcing its rights under Clause 8 herein) does not constitute, and shall not be construed as, a waiver of such term or right and does not affect that party's right later to enforce or to exercise it.*
- 16.4 *If any term of this Agreement is found to be illegal, invalid, or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.*
- 16.5 *This Agreement and/or any subsequent additions and/or amendments notified to the Customer and/or as published on the Websites contain all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated in this Agreement. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into this Agreement (unless such untrue statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided in this Agreement.*
- 16.6 *The construction, validity and performance of this Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English courts to resolve any disputes between them.*
- 16.7 *Where any provision of this Agreement refers to an affiliated company or licensor of Tm, it shall be enforceable by that company in accordance with the Contracts (Rights of Third Parties) Act 1999 (UK), but otherwise no provision in this Agreement is intended for the benefit of any third party.*

## **17. Distance Selling**

- 17.1 *Where the Customer is a consumer (that is acting outside of the course of your business) and this contract has been concluded by distance means (e.g. by phone or over the internet) The Consumer Protection (Distance Selling) Regulations 2000 gives the Customer a right to cancel this agreement up to 12 days after it has entered into it except where Tm has started to provide the Services to the Customer by agreement. In order to cancel please contact Tm using the address set out at Clause 10.1. If the Customer exercises this right Tm will not charge the Customer and will return any money it has paid.*
- 17.2 *Where Clause 17.1 applies, the Customer agrees that Tm's provision of the Services may start prior to the end of the statutory cancellation period arising under the Consumer Protection (Distance Selling) Regulations 2000. As a result, after Tm starts to provide Services to the Customer, the Customer will no longer be able to cancel its agreement under the Consumer Protection (Distance Selling) Regulations 2000. For more details in relation to statutory rights please contact your local Citizens Advice Bureau.*
- 17.3 *For the purpose of this Clause 17 Tm will be considered to have started providing Services when the Customer first downloads the Application.*

*It is the policy of Trafficmaster Plc always to try to give our best possible service to you, but if you have any questions or concerns about the product or service, please contact Trafficmaster Plc. The contact details are: Trafficmaster Plc, Martell House, University Way, Cranfield, Bedfordshire, MK43 0TR. Email: customerservices@trafficmaster.co.uk*

**APPENDIX A**

The data ("Data") is provided for your personal, internal use only or for you to use for the business purposes for which you were licensed only and not for resale. It is protected by copyright, and is subject to the following terms and conditions which are agreed to by you, on the one hand, and Trafficmaster Plc ("Tm") and its licensors (including their licensors and suppliers) on the other hand.  
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Terms and Conditions

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Restrictions. Except where you have been specifically licensed to do so by Tm, and without limiting the preceding paragraph, you may not (a) use this Data with any products, systems, or applications installed or otherwise connected to or in communication with vehicles, capable of vehicle navigation, positioning, dispatch, real time route guidance, fleet management or similar applications; or (b) with or in communication with any positioning devices or any mobile or wireless-connected electronic or computer devices, including without limitation cellular phones, palmtop and handheld computers, pagers, and personal digital assistants or PDAs.

Warning. The Data may contain inaccurate or incomplete information due to the passage of time, changing circumstances, sources used and the nature of collecting comprehensive geographic data, any of which may lead to incorrect results.

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Export Control. You agree not to export from anywhere any part of the Data provided to you or any direct product thereof except in compliance with, and with all licenses and approvals required under, applicable export laws, rules and regulations.

Entire Agreement. These terms and conditions constitute the entire agreement between Tm (and its licensors, including their licensors and suppliers) and you pertaining to the subject matter hereof, and supersedes in their entirety any and all written or oral agreements previously existing between us with respect to such subject matter.

Governing Law. The above terms and conditions shall be governed by the laws of England, without giving effect to (i) its conflict of laws provisions, or (ii) the United Nations Convention for Contracts for the International Sale of Goods, which is explicitly excluded. You agree to submit to the jurisdiction of England for any and all disputes, claims and actions arising from or in connection with the Data provided to you hereunder.

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CONTRACTOR (MANUFACTURER/SUPPLIER) ADDRESS: 425 WEST RANDOLPH STREET, CHICAGO, ILLINOIS 60606  
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