

*Trafficmaster Plc's  
General terms and conditions  
for products and services*

*January 2010*

## PART A - Interpretation

### 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:

**"Activation Card"** means any card provided to the Customer giving activation instructions for a Tm Unit and/or Service which may detail an Entitlement;

**"Agreement"** means the purchase of a Tm Unit and/or a Subscription by the Customer subject to these terms and conditions together with the details provided by the Customer on Registration and/or on any Order Form and/or any other registration means made available by Tm;

**"Authorised User"** means any person lawfully authorised by the Customer to use a Vehicle;

**"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;

**"Commencement Date or Start Date"** means the date on which Tm receives the Customer's signed Order Form, the date of Registration, the date of registration of the Vehicle with the UK Driver and Vehicle Licensing Agency (in the case of a Standard-Fit Tm Unit and where the Customer is the first owner of the Vehicle), Commissioning, or the date on which the Customer starts to use Service(s), whichever is the earlier, or any other date specified on any Order Form or during Registration;

**"Commissioning"** means the successful activation of a Tm Unit for Services;

**"Concierge Service"** means Tm's service to Customers enabling them to order wine, flowers, chocolates or other consumer goods (as determined by Tm from time to time) for delivery or hotel reservations at selected hotels, via TPSPs, referred to in Clause 4 below;

**"Congestion Charging Zone"** means the congestion charging zone operating in London;

**"Customer"** means a person, firm or company whose order for Services and/or a Tm Unit has been accepted by Tm;

**"Customer Address"** means the Customer's contact details most recently provided to Tm being postal, email and/or mobile phone number and recorded on Tm's customer database;

**"Dealer"** means vehicle dealerships and vehicle related accessory suppliers;

**"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;

**"Emergency & Breakdown Service"** means Tm's service to Customers, details of which are set out in Clause 8 below;

**"Entitlement"** means the Customer's entitlements to Route assistance by a PA and/or via a Touchscreen for the Vehicle Navigation Service referred to in Clauses 9 & 10 below;

**"False Alarm"** means where in Tm's opinion the Customer had no reasonable grounds on which to believe that a Vehicle had been stolen that a genuine Breakdown or Emergency existed or acted recklessly in respect of notifications to Tm of such events;

**"Fleet Director"** means the service provided by Tm to the Customer, referred to in Clause 6 below;

**"Fleet Director Software"** means the Software provided by Tm and used by Customers who purchase a Subscription for Fleet Director;

**"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;

**"Ignition Alarm"** means an electronic message sent from a Tm Unit in the event that a Vehicle moves when the Vehicle's ignition is off;

**"Incident"** means when the Customer or an Authorised User is unlawfully dispossessed of a Vehicle;

**"IPR"** means any patents, trade marks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights or obligations whether registrable or not in any country;

**"Lifetime Subscription"** means a Subscription for the period of time the Customer is the legal owner or keeper of a Vehicle;

**"Map Supplier"** means the supplier of maps which enables the Software to determine the location of a Vehicle and where applicable provide a Route;

**"On Demand"** means a service where Tm provides the Customer with a web interface to view the historic and current locations of a Vehicle including a facility to manage and report Vehicle mileage for personal and business purposes;

**"Order Form"** means the order form or any Customer agreement for the Tm Unit and/or Service and/or Entitlements signed by or on behalf of the Customer (if any);

**"Pay As You Go"** means as set out at Clause 9.6 below;

**"PA Routes"** form part of the Vehicle Navigation Service where the Customer requests a Route from a PA using a Tm Unit;

**"Personal Assistant"** or **"PA"** means a Tm employee who handles Route requests from Customers, Registrations, Commissioning and the Concierge Service;

**"Police"** means any police force, police authority or recognised law enforcement agency, or any of their respective servants or officers, or any of the same;

**"Public Emergency Service"** means Police, ambulance or fire public authorities;

**"Registration"** means the process whereby Tm receives the Customer's personal data for the purpose of purchasing Services, by Order Form or telephone or otherwise;

**"Route"** means directions by road from a single point of origin to a single destination;

**"Safe Speed"** means Tm's service to Customers alerting them via a Tm Unit to the presence of fixed (not mobile) safety cameras, details of which are set out in Clause 7 below;

**"Safe Speed Database"** means the database of safety camera sites used by Tm for the Safe Speed Service;

**"Sale of Vehicle"** means sale or disposal of a Vehicle by a Customer and includes circumstances where a Vehicle is destroyed or disposed of due to excessive damage or that the Vehicle is no longer under the control of the Customer;

**"Service(s)"** means any or all (as the context dictates) of the Concierge Service, Emergency and Breakdown Service, Stolen Vehicle Tracking, Safe Speed, Vehicle Navigation Service, Fleet Director, On Demand or any other product and/or service marketed by Tm from time to time (which may be varied at Tm's discretion from time to time);

**"Service Bureau"** means a centre operating Fleet Director services for Vehicles not owned or controlled by the Customer;

**"SIM card"** means the Subscriber Identity Module inserted into the Tm Unit to enable GSM, SMS and/or GPRS communications between the Tm Unit and Tm's systems;

**"Site"** means the location chosen by the Customer and agreed by Tm for installation or servicing of Tm Units;

**"Smartnav"** means the marketing name/brand used by Tm for the Vehicle Navigation Service;

**"SMS"** means short message service allowing users to send and receive short text messages;

**"Software"** means any of the software comprising the Websites, programmed into a Unit and/or provided to the Customer by download from any of the Websites for the operation of Services and includes the Fleet Director Software;

**"Software Administrator(s)"** means the person(s) who have been provided by the Customer with login ID and passwords for Fleet Director;

**"Software Vendors"** means third party vendors of software incorporated into the Software;  
**"Software Warranty"** means the warranty obligations of Tm as described in Clause 17;  
**"Standard-Fit Tm Unit"** means a Tm Unit fitted by a vehicle manufacturer prior to purchase of a new Vehicle by the Customer;  
**"Stolen Vehicle Tracking, or Vehicle Monitoring Service"** means Tm's services to Customers for non Thatcham category compliant stolen vehicle tracking, referred to in Clause 5 below;  
**"SVT"** means Stolen Vehicle Tracking or Trackstar;  
**"Subscription"** means the Service(s) selected by the Customer to be provided by Tm in periods of time selected during Registration and either: **"Annual Subscription"** means a 12 month Subscription paid for in full on or prior to the Commencement Date; or **"Monthly Payment Subscription"** means a 12 month subscription paid for by 12 equal monthly instalments commencing on the Commencement Date or as otherwise agreed; or **Single Month Subscription** means a 1 month subscription paid for in full on or prior to the Commencement Date; or **Pay As You Go; Lifetime Subscription**; or as otherwise detailed by Tm on the Websites or otherwise communicated to the Customer by Tm authorised personnel;  
**"System"** means the Customer's computer system inclusive of hardware and software (not provided by Tm) appropriate for integration with the Software;  
**"Term"** means the period of time as set out in Clause 13.1;  
**"Territory"** means the UK in addition to the Isle of Man and the Channel Islands and such other territories as Tm may include from time to time;  
**"Thatcham"** means the UK motor insurance repair research centre;  
**"Tm"** means Trafficmaster Plc (Company No. 2292714), whose registered office is at Martell House, University Way, Cranfield, Bedfordshire MK43 0TR;  
**"Tm Price List"** means the tariffs for the Tm Unit and Services listed on the Websites or as sent by Tm to the Customer or listed on the Order Form or provided by authorised Tm personnel at the time of Registration and/or Commissioning or as provided by the Dealer or reseller of a Tm Unit;  
**"Tm Unit(s)"** means the in-vehicle unit (with Touchscreen if included) installed in a Vehicle that enables Tm to provide Services;  
**"TPSPs"** means third party service providers that provides concierge services to Customers;  
**"Touchscreen"** means a Tm visual device (colour or monochrome) integrated into a Tm Unit and capable of illustrating Routes to the Customer;  
**"Trackstar"** means the marketing name/brand used by Tm for Thatcham category compliant stolen vehicle tracking referred to in Clause 5 below;  
**"UK"** means the United Kingdom of Great Britain and Northern Ireland;  
**"Updates"** means updates to the Software, such as bug fixes, patches, enhanced functions, missing plug-ins and new versions;  
**"Vehicle"** means the Customer's vehicle in which a Tm Unit is installed;  
**"Vehicle Navigation Service"** or **"VNS"** means Tm's GPS enabled navigation and routing service in the Territory referred to in Clause 9 below;  
**"Vehicle Navigation Service in Europe"** or **"VNS in Europe"** means VNS in the Territory and Europe referred to in Clause 10 below;  
**"Websites"** means the websites which are located the following domain names: [www.trafficmaster.co.uk](http://www.trafficmaster.co.uk), [www.smartnav.co.uk](http://www.smartnav.co.uk) and [www.trackstarondemand.com](http://www.trackstarondemand.com) and/or such other websites as may be nominated by Tm from time to time;  
**"Warranty"** means the Tm Unit warranty obligations of Tm as described in Clause 14;  
**"Warranty Services"** means engineering, installation and/or technical work carried out by Tm if required by the Warranty; and  
**"Working Days"** means Monday to Friday 9am to 5.30pm, excluding public holidays in the UK.

## 2. Acceptance

The signing of an Order Form by the Customer, Registration and/or use of a Service 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 provisions of this Part A and Part C of this Agreement will apply to all Services together with any Clauses which are applicable to a particular Service which are contained in Part B. If there is any conflict or inconsistency between these parts, the Clauses contained in Part B of this Agreement shall take precedence.
- 3.3 The Services and the technology associated with them 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.
- 3.4 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 period of Service in accordance with Clause 13.1.

## PART B – Service Specific Terms

### 4. Concierge (or PA) Service

- 4.1 The Concierge Service is available to Customers who have paid for a Subscription for VNS and the provisions of this Clause 4 shall apply in relation to this service in addition those Clauses in Parts A and C. Tm will charge the customer for this service an amount listed on the Websites from time to time or as advised by a PA.
- 4.2 The Customer is responsible for providing a PA with all details required for Tm to facilitate the provision of the service requested, including the credit card or other payment details for payment of the TPSPs and to Tm for provision of the service.
- 4.3 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. 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. Trackstar and Stolen Vehicle Tracking (SVT) and On Demand

- 5.1 SVT is only available to Customers who have paid for a Tm Unit and the relevant Subscription for these services. Subscriptions cover the Territory and Europe and the provisions of this Clause 5 shall apply in relation to these services in addition those Clauses in Parts A and C.
- 5.2 Subscriptions for these services can be Annual Subscriptions, Monthly Payment Subscriptions or Lifetime Subscriptions or as detailed by Tm

- authorised personnel as selected by the Customer on the Order Form or during Registration.
- 5.3 For the purposes of SVT "Europe" means those countries listed at any time on at [www.eurowatchcentral.com](http://www.eurowatchcentral.com) which includes: Andorra, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and Ukraine. Tm reserves the right to remove countries from this list from time to time.
- 5.4 Payment for a Subscription for SVT may NOT be made in relation to an Incident after that particular Incident has occurred.
- 5.5 If Tm requests security details from a Customer and the Customer fails to supply these then Tm will not be obliged to provide the SVT service.
- 5.6 In the event of an Incident the Customer shall be responsible for notification of the Incident to the Police as soon as reasonably practicable to obtain a crime reference number and shall supply it to Tm immediately.
- 5.7 If the Tm Unit installed in the Vehicle is fitted with an Ignition Alarm, Tm is entitled to assume that an Incident has occurred on activation of the Ignition Alarm and shall take the steps set out in Clause 5.8 below. Where a signal is received via the Ignition Alarm, Tm will use its reasonable endeavours to contact the Customer as soon as reasonably practicable using the Customer contact details recorded on Tm's customer database. It is the Customer's responsibility to ensure that Tm is provided with up-to-date and accurate contact information.
- 5.8 Upon notification of an Incident in accordance with Clauses 5.6 or 5.7 Tm shall use its reasonable endeavours to locate the Vehicle as soon as reasonably possible. If Tm is able to locate the Vehicle, Tm will inform the Police of the Vehicle's location and, after the Police have conducted their investigations, Tm may at its sole discretion procure that the Vehicle is guarded and/or moved (acting by its authorised agents and/or employees and according to local laws and regulations) to a location nominated by the Customer but the Customer will be fully responsible for all costs associated with any such guarding and/or movement unless otherwise agreed with Tm. Tm is not liable for any damage to the Vehicle pending movement to the specified location or during such movement.
- 5.9 The Customer undertakes to notify Tm in advance if the Vehicle is to be carried on a ferry or other transportation device such as trailers or transporters. If the Customer fails to notify Tm in advance, the Customer will be responsible for any costs incurred by Tm as a result of related False Alarms.
- 5.10 Nothing in this Agreement imposes on the Police any legal duty of care or entitlement greater than or different from that owed to the public and Tm is not liable for the acts or omissions of the Police.
- 5.11 Tm reserves the right to charge the Customer (in addition to the Subscription) for any costs incurred by Tm in locating or attempting to locate the Vehicle following any False Alarm raised by the Ignition Alarm, the Customer or any Authorised User.
- 5.12 On Demand is only available to designated Customers who already have an SVT Subscription and have also paid for a Subscription for On Demand. The provisions of this Clause 5.12 shall apply in relation to this service in addition those Clauses in Parts A and C.:
- 5.12.1 The Customer undertakes to notify any driver of the Vehicle who is not the Customer that the Vehicle is tracked;
- 5.12.2 The Customer undertakes to notify Tm of the Sale of Vehicle; and
- 5.12.3 The Customer is responsible for setting any business and private mileage criteria and for updating this criteria as required from time to time.
6. **Fleet Director**
- 6.1 Fleet Director is available to Customers who have paid for a Tm Unit and the relevant Subscription for this service and the provisions of this Clause 6 shall apply in relation to this service in addition those Clauses in Parts A and C. Subscriptions for this service can be either Annual Subscriptions (for one or multiple years) or Monthly Payment Subscriptions as selected by the Customer on the Order Form or during Registration.
- 6.2 Tm will provide the Customer with Tm Unit(s) for each Vehicle nominated by the Customer on the Order form or during the Registration process or as specified thereafter.
- 6.3 Subject to Clause 11 below Tm will supply to the Customer Fleet Director Software which, when installed on the System, will allow the Customer's Software Administrator(s) to view the locations of Vehicles over the internet and other Vehicle data.
- 6.4 Tm will also supply to the Customer log-in identities and passwords which the Customer may forward to its Software Administrator(s). The Customer must ensure that the log in identity and passwords are kept confidential at all times and that they are only used by its Software Administrator(s). In the event that the login identity and/or passwords are disclosed or stolen the Customer must immediately advise Tm and Tm will issue new log in identity and passwords as soon as practical.
- 6.5 Tm will supply the Customer with training on the relevant Fleet Director Software, to the extent that Tm may, in its absolute discretion, consider necessary and Tm shall be entitled to charge for such training.
- 6.6 The Customer shall ensure that relevant Vehicles are allocated to the Customer's account by including details on the Order Form or during Registration. The Customer shall advise all Authorised Users that the:
- 6.6.1 Vehicle(s) may be tracked;
- 6.6.2 Customer and its Software Administrators will be able to view details relating to the Vehicle(s) using the Fleet Director Software; and
- 6.6.3 Customer will be able to produce historical reporting of the movements of the Vehicle(s) for a period of up to six months prior to the date on which the report is requested or for the period from when the service is activated if less.
- 6.7 The Customer will require internet access in order to download, install and access the Software and will be responsible for all payments relating to internet access. Tm is not liable for any reduced performance of the service in the event that this is caused other than by Tm's default (including but not limited to where reduced performance is caused by the System or the Customer's internet connection). The Customer will be responsible for providing at its expense any support services or products required for the operation of the service, including but not limited to any computer equipment, telephone lines, internet access, and interface with data processing or telephone company equipment.
- 6.8 The Customer must contact Tm to request the removal of Vehicles from the Customer's account when those Vehicles are no longer part of the Customer's fleet (for example, when the driver of the Vehicle in question is no longer an employee of the Customer or on the Sale of Vehicle). Failure to do this may cause both the Customer and Tm to breach data protection legislation and the Customer hereby agrees to indemnify Tm in respect of any loss, damage, legal costs or other expense incurred as a result of the Customer's breach of this Clause.
- 6.9 The Customer will ensure that Authorised Users of the Vehicle(s) comply with this Agreement (in particular Clause 20) and Authorised Users shall be considered "Customers" for the purposes of this Agreement.
7. **Safe Speed**
- 7.1 Safe Speed is only available to Customers who have paid for the relevant Subscription for this service and the provisions of this Clause 7 shall apply in relation to this service in addition those Clauses in Parts A and C. The service is only available in the UK.
- 7.2 Subscriptions for this service can be either Annual Subscriptions or Monthly Payment Subscriptions as selected by the Customer on the Order Form or during Registration. For the avoidance of doubt Pay As You Go is not available.
- 7.3 Authorised Users of the Vehicle remain at all times responsible for observing all relevant laws and codes of safe driving and Tm will not in any event be liable for any fine, penalty, or punishment imposed.
- 7.4 Tm will make all reasonable efforts to procure the accuracy and completeness of the Safe Speed Database, but does not warrant the accuracy or completeness of it at all times.
- 7.5 Tm will automatically update the Tm Unit with the Safe Speed Database approximately every 35 days or if the Tm Unit is not active at the time of the attempted update when the Customer next uses a Service.

## **8. Emergency and Breakdown Service**

- 8.1 The Emergency and Breakdown Service is only available to Customers who have paid for a Tm Unit and a Subscription for VNS or SVT and only in the event of a Breakdown or an Emergency and the provisions of this Clause 8 shall apply in relation to this service in addition those Clauses in Parts A and C.
- 8.2 The Customer may request the Emergency and Breakdown Service by pressing the relevant Tm button located within a Vehicle (if any) or by pressing the relevant option on the Touchscreen.
- 8.3 Tm will, upon receipt of the signal, use all reasonable endeavours to provide the Customer's information to the relevant Breakdown service provider (unless the Customer uses the 999 option, in which case the Customer will be put in direct contact with the UK 999 control centre).
- 8.4 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.
- 8.5 A Subscription 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.

## **9. Vehicle Navigation Service (Smartnav)**

- 9.1 VNS is only available to Customers who have paid for a Tm Unit and the relevant Subscription for the service and Subscriptions can be either Annual Subscriptions, Monthly Payment Subscriptions or Pay As You Go and the provisions of this Clause 9 shall apply in relation to this service in addition those Clauses in Parts A and C.
- 9.2 VNS is only suitable for passenger cars and light goods vehicles up to 3.5 tonnes in weight and covers the Territory.
- 9.3 Route instructions do not allow for vehicles of abnormal length, height, width and/or weight and Tm is not liable for damage or loss incurred as a result of use of this service in such vehicles.
- 9.4 VNS allows incoming telephone calls for Customers who have a Touchscreen installed.
- 9.5 In the case of a Pay As You Go Subscription, the Customer pays an initial advance fee listed in the Tm Price List or on the Order Form or during Registration or as advised by a Tm representative and each time the service is used by the Customer a sum as listed in the Tm Price List is deducted from the advance payment. Once the sums deducted are equal to or greater than the advance fee the Customer must pay another advance fee to use the service. Tm shall publish revised rates for VNS on the Websites from time to time.
- 9.6 Customers using VNS will automatically receive notifications from their Tm Unit when near to, entering and exiting the Congestion Charging Zone. Customers have the ability to switch off these notifications if they have a Touchscreen. If a Customer without a Touchscreen wishes to switch off this part of the service the Customer must contact Tm. Tm will switch off this part of the service for the Customer as soon as practical. Tm accepts no responsibility for the use of the Congestion Charging Zone notifications and is not liable if payments are made or not made in error in respect of the Congestion Charging Zone. This element of the service is not available to some Customers who purchased Tm Units before 1 January 2006.
- 9.7 The Entitlement is as stated in the Order Form, the Tm Price List or recorded during Registration or as stated by authorised Tm personnel or as otherwise documented in writing by the parties (which may be varied at Tm's discretion from time to time by notification to the Customer in writing). The Entitlement is split between Routes provided by a PA and Routes provided by using a Touchscreen (including using functions including but not limited to double button press, "address entry", "last", "post code" and "favourites") per calendar year from the Commencement Date. In no circumstances shall the Entitlement comprise more than 150 Routes provided by a PA in a period of 12 months.
- 9.8 Any Customer who exceeds their Entitlement must purchase further Entitlements to continue to use VNS.
- 9.9 Should the Customer continue to exceed the Entitlement Tm reserves the right to suspend access to VNS until a further Entitlement is purchased.
- 9.10 VNS 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.
- 9.11 In the event of a purchase of On Demand with Smartnav then Clause 5.12 shall apply substituting "SVT" with "Smartnav".

## **10. Vehicle Navigation Service in Europe**

- 10.1 Use of VNS in Europe is only available to Customers who have an existing Subscription for VNS (excluding Pay As You Go) and who have also paid for the relevant additional Subscription for this service (which may be either an Annual Subscription, Monthly Payment Subscription or a Single Month Subscription) as set out on the Tm Price List and the provisions of this Clause 10 shall apply in relation to this Service in addition those Clauses in Parts A and C. For the avoidance of doubt, Pay As You Go is not available in Europe.
- 10.2 Paragraphs 9.2, 9.3, 9.4, 9.7, 9.8, 9.9 & 9.10 also apply to VNS in Europe.
- 10.3 For the purposes of this service, "Europe" means the following countries: Austria, Belgium, Denmark, Finland, France, Germany, Italy, Luxembourg, Netherlands, Norway, Portugal, Republic of Ireland, Spain, Sweden and Switzerland.
- 10.4 Customers wishing to travel between Denmark and Sweden via the Oresund Bridge need to specify the bridge as their destination, then once across the bridge request another Route to the desired final destination.
- 10.5 The Vehicle must be located in the UK for a minimum of two Working Days prior to the commencement of VNS in Europe and it is advisable for the Customer to inform Tm that a Vehicle will use this service 48 hours before leaving the UK.
- 10.6 VNS in Europe does not allow incoming telephone calls. If the Customer accepts an incoming telephone call Tm will suspend the use of the SIM card.
- 10.7 VNS in Europe does not include traffic information or Safe Speed.

## **PART C – Terms applying to all Services**

### **11. Licence to use Software**

- 11.1 Tm hereby grants the Customer a limited nonexclusive, non-transferable license to use the Software in conjunction with the Services.
- 11.2 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.
- 11.3 The Customer shall not (and shall not permit any third party to):
- 11.3.1 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;
- 11.3.2 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;
- 11.3.3 use the Software to access, copy, transfer or retransmit content in violation of any law or third party rights;
- 11.3.4 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

- 11.3.5 otherwise damage or compromise Tm's or the Software vendor's IPR in relation to the Software.
- 11.4 In the case of a Customer who purchases a Subscription for Fleet Director:
- 11.4.1 Tm further grants the Customer the right to make a single backup/archival copy of the Fleet Director Software or to download the Software onto more than one computer; and
- 11.4.2 The Customer shall not use the Fleet Director Software to operate a Service Bureau or for any other use involving the processing of data of other persons or entities, unless it has signed a separate reseller agreement with Tm.
- 11.5 The Software and all materials and knowledge related thereto is obtained by the Customer (and in relation to some Services, its employees, agents and representatives) 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 (except as permitted in paragraph 11.4 above) or disclosed or published by any such persons in any form, or reproduced, transcribed, imitated or simulated in whole or in part. The Customer may disclose relevant aspects of the Software to properly trained and authorised employees, agents and representatives but only as is reasonably necessary to use the Software in accordance with this Agreement; provided however, that the Customer shall take all reasonable steps to ensure that the Software is not disclosed or duplicated in contravention of this Agreement. The Customer shall ensure that any employee who has access to any such information is properly instructed as to its confidential nature, and takes all practicable steps to prevent a breach of this Clause 11.
- 11.6 In the event of any breach of this Clause 11, 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 11, 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.
- 11.7 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 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.
- 11.8 Subject to Clauses 11.1 to 11.7 above Tm shall provide the additional services described below without additional charge during each period for which Customer has purchased Services where appropriate to a Subscription:
- 11.8.1 Map Updates: within a reasonable time after they are received by Tm, Tm shall provide to the Customer all updates to the proprietary digital map database supplied by the Map Supplier during the Term;
- 11.8.2 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;
- 11.8.3 Telephone Consultation/On-Line Diagnostic Support. Tm provides telephone support and training to Customers during Tm's normal business hours at Tm's discretion; and
- 11.8.4 Initial Software training is offered by Tm for some Services and Tm shall be entitled to charge for such training. The Customer is responsible for using any training offered or recommended by Tm.
- 11.8.5 In relation to Fleet Director, the following terms shall also apply:
- 11.8.5.1 In the event of the discovery of a Defect in Fleet Director Software the Customer must submit to Tm a written description of the apparent defect, a complete copy of all output, including, when possible, any graphics produced during the computer run which generated the defective output and sufficient information to reproduce the defect. The Customer must also submit to Tm an unaltered copy of the Fleet Director Software;
- 11.8.5.2 When necessary, on-site troubleshooting is offered at no additional cost to Customers with Fleet Director Subscriptions. Any additional support requested by the Customer, including general maintenance, backup and purge of files, installation of upgraded Software, cleaning of peripheral equipment, on-site training, which requires support by Tm at the Customer's site, shall be provided and charged to the Customer at Tm's standard support rates as specified by Tm plus the cost of travel of Tm representatives (including meals and overnight lodging, if necessary); and
- 11.8.5.3 Tm provides on-line diagnostic support through the use of remote access software of Tm's designation, or other connectivity software where available.
- 11.9 Subject to Clauses 11.1 and 11.2, 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.
- 11.10 The licence granted under Clause 11.1 will terminate forthwith on the termination or expiry of a Subscription.
- 11.11 In the case of some Services, the Software utilizes Maps owned and maintained by the Map Supplier. The Customer's use of these Services is subject to the terms of the Map Supplier listed in Appendix A which forms part of this Agreement.
12. Payment
- 12.1 The prices of Subscriptions and means of payment are set out on the Order Form, during Registration, on the Tm Price List or as detailed by authorised Tm personnel or a third party reseller, dependent on the method of purchase.
- 12.2 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.
- 12.3 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:
- 12.3.1 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
- 12.3.2 suspend the provision of Services until full payment has been received; and/or
- 12.3.3 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.
- 12.4 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.
- 12.5 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.
- 12.6 All sums payable are inclusive of Value Added Tax at the prevailing rates unless otherwise stated by Tm.
- 12.7 Tm has no obligation to accept payment by cheque.

- 12.8 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.
- 13. Term and Termination**
- 13.1 This Agreement shall commence on the Commencement Date and shall continue for a minimum fixed period of 12 months (save in the case of a Single Month Subscription and Pay as you Go), and thereafter shall automatically be renewed for a further minimum period of 12 months on each anniversary of the Commencement Date unless terminated by either party giving at least 7 days notice prior to the next anniversary of Commencement Date. In the case of a Single Month Subscription the Subscription shall terminate one month after the Commencement 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.
- 13.2 Further, a Subscription automatically terminates upon the Sale of Vehicle. Subscriptions are not assignable unless permitted according to Clause 19.2. Subscriptions are not refundable and in the event of the Sale of Vehicle the accrued rights and liabilities of the parties shall not be affected and payments made a Customer prior to the Sale of Vehicle are non-refundable unless agreed in writing by Tm prior to termination.
- 13.3 Either party may, by written notice to the other, terminate this Agreement in the event that:
- 13.3.1 the other party is in material or persistent breach of this Agreement; and/or
- 13.3.2 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.
- 13.4 Tm may terminate a Subscription or part thereof and this Agreement with immediate effect on written notice to the Customer in the event that:
- 13.4.1 any government or other regulatory approvals for the use of the Tm Unit or any of the Services are prohibited by law or withdrawn, suspended or ended by Tm at any time;
- 13.4.2 in the sole opinion of Tm the Customer, or any Authorised User, persistently raises False Alarms; and/or
- 13.4.3 in the sole opinion of Tm the Customer or any Authorised User has abused the Services and/or abused Tm personnel.
- 13.5 Tm reserves the right to terminate a Pay As You Go Subscription if the Customer does not use the Service for a period of 180 days. Where the Service is terminated in this manner the Customer is not entitled to a refund for any sums paid unless a claim is made within 90 days of termination and for the avoidance of doubt, Tm shall be entitled to deduct a reasonable administration charge from such refund.
- 13.6 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 unless agreed in writing by Tm prior to termination.
- 13.7 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.
- 13.8 Upon termination of this Agreement when the Subscription relates to Fleet Director the Customer shall de-install the Fleet Director Software and return to Tm or destroy all related documentation.
- 14. Tm Unit Warranty**
- 14.1 If the Tm Unit is not a Standard-Fit Tm Unit and has been fitted after purchase of the Vehicle by the Customer Tm warrants that the Tm Unit will be free from defects in materials and/or workmanship for 12 months from the date of installation or Commissioning whichever is earlier, providing that the installation is carried out in accordance with Clause 15. However, this warranty will expire in the event that of a Sale of Vehicle.
- 14.2 If the Tm Unit is a Standard-Fit Tm Unit, Tm warrants that the Tm Unit will be free from defects in materials and/or workmanship for as long as the Vehicle's manufacturer's warranty subsists. However, this Warranty will expire in the event of a Sale of Vehicle, notwithstanding the fact that the Vehicle manufacturer's warranty may transfer to the new owner of the Vehicle.
- 14.3 In the event of a Warranty claim the Customer must notify the Dealer/reseller/retailer from whom the Vehicle was purchased or Tm if the Tm Unit and/or Services were purchased direct from Tm.
- 14.4 If Tm receives written notice of any breach of Warranty Tm will at its own expense and within a reasonable period of time of receiving such notice repair or, at its option, replace the Tm Unit. During the period of time between receiving notice and repairing or replacing the Tm Unit, Tm will not be liable for any loss or damage suffered by the Customer that might have been prevented had the Tm Unit and the Service been fully operational.
- 14.5 However, Tm has no liability under the Warranty:
- 14.5.1 unless it has received written notice of the defect in question no later than the expiry of the Warranty period; or
- 14.5.2 if the defect is caused as a result of the Tm Unit having been dismantled, tampered or interfered with, modified, dismantled or repaired (other than by a Tm approved engineer and in accordance with procedures issued by Tm from time to time), or otherwise interfered with misused or damaged; or
- 14.5.3 if the Tm Unit is on an island in the Territory (offshore to England, Scotland, Wales and Northern Ireland) unless the Customer brings the Vehicle to a Site on mainland UK.
- 14.6 In the event of a failure relating to any adhesive pads used for installation (for example on aerials or the Touchscreen base mounting), a replacement adhesive pad and installation instructions will be sent by Tm to the Customer without charge. If the Customer requests Tm to provide an engineer to arrange fitment of this part then Tm reserves the right to charge the Customer a standard service call fee as advised to the Customer by authorised Tm personnel.
- 14.7 Tm shall have no obligation under the Warranty other than to remedy breaches of the Warranty by provision of materials and/or Warranty Services within a reasonable time and free of charge to the Customer unless otherwise detailed herein. Tm will, wherever possible, diagnose faults on the basis of information given by the Customer by telephone. If, in Tm's opinion (acting reasonably), the Customer is able to remedy faults without excessive inconvenience if Tm supplies necessary material and instructions, Tm will not be under any obligation to provide Warranty Services, only materials and instructions. In the event that Tm determines that the fault requires Tm to supply Warranty Services (excluding installation and de-installation of Tm Units), Tm will do so as soon as reasonably practical and will not be liable for any loss suffered by the Customer (directly or indirectly) as a result of the Tm Unit and the Services not being fully operational. If Tm fails to comply with the obligations set out in this Clause its liability shall be limited to a sum equal to the purchase price of the Tm Unit by the Customer from Tm.
- 14.8 Tm units cannot be guaranteed to support all future services and options made available by Tm and Tm has no obligation to upgrade a Customer's Tm Unit to provide services and options that are subsequently made available. If the Customer wishes to utilise services which the Tm Unit does not support, the Customer must purchase a new Tm Unit at prices advised by authorised Tm personnel.
- 14.9 Neither the Customer nor his representatives, Authorised Users nor any third party may remove, attempt to remove or permit the removal of the SIM Card from the Tm Unit. Tm reserves the right to charge the Customer for any costs incurred by Tm and/or to terminate this Agreement in the event of a breach of this Clause by the Customer.

**15. Installation of Tm Unit**

- 15.1 If the Tm Unit is not a Standard-Fit Tm Unit and is to be fitted after purchase of the Vehicle by the Customer the Customer hereby confirms that any person with an interest in the Vehicle (e.g. a hire purchase company) has consented to the Tm Unit being installed in the Vehicle.
- 15.2 Subject to other provisions of this Agreement, Tm will arrange for installation of the Tm Unit in a Vehicle by an authorised installation engineer provided that installation has been paid for by the Customer at rates advised to the Customer. The Customer accepts that it may be necessary to drill a small hole in an unused blanking plate or elsewhere in the Vehicle's dashboard and may be necessary to drill a small hole in the body of the Vehicle to fit overt antenna solutions to certain vehicle types.
- 15.3 Installation carried out by any person other than an authorised Tm installation engineer will invalidate the Warranty and Tm will not be liable if the Tm Unit and/or Services are adversely affected.
- 15.4 Installation of the Tm Unit(s) by Tm shall take place at the Site indicated on the Order Form or agreed during Registration unless otherwise agreed in writing. The Customer shall provide a Site which meets each of the following standards:
- 15.4.1 safe without hazards;
- 15.4.2 all necessary utilities (including plumbing, lighting, air conditioning, heating, electrical power and access to telephone lines) shall be easily accessible and provided without charge;
- 15.4.3 the Customer shall allow Tm, its authorised agents, and subcontractors full and free access to the Site during any Working Day;
- 15.4.4 the Customer shall indemnify and hold harmless Tm from and against any and all liabilities, including reasonable legal fees, arising from Tm's use of the Site or the condition of the Site; and
- 15.4.5 for Customers who are purchasing the Services in the course of their business or for commercial use the Customer shall, at its expense, obtain and keep in force for the duration of installation a policy of general liability insurance covering any liability arising out of Tm's use or occupancy of the Site and all other relevant areas.
- 15.5 The Customer's signature of an Order Form, or as agreed with Tm personnel by phone or as otherwise recorded during Registration shall be deemed as acceptance of the installation date of the Tm Unit. Tm reserves the right to charge the Customer an additional fee in the event that the Customer fails to notify Tm of any change to the installation date and Site for installation less than 48 hours prior to the installation date. Tm may impose a surcharge for waiting time, Saturdays and other delays in installation caused by the Customer's failure to have the Site or Vehicles available as, when and where agreed according to Clause 15.4.
- 15.6 Tm shall use reasonable endeavours to ensure that authorised Tm installation engineers are properly trained to carry out installation procedures.
- 15.7 The Customer's signature on a Tm service call or job sheet at the time of installation shall be deemed to be acknowledgement by the Customer that Tm has fulfilled all of its obligations with regard to installation. In the event that a Customer is dissatisfied with the installation it must bring any such complaint to Tm's attention at the time of the installation or in the event of defects which weren't reasonably apparent on installation the Customer must notify Tm as soon as reasonably practicable following discovery of the defect.

**16. IPR, title and risk**

- 16.1 The legal and beneficial ownership of the Tm Unit shall pass to the Customer upon payment in full of the price of the Tm Unit to Tm or in the case of a Standard-Fit Tm Unit at the time the Customer becomes the legal owner of the Vehicle.
- 16.2 Risk in the Tm Unit shall pass to the Customer upon installation of the Tm Unit in the Vehicle or in the case of a Standard-Fit Tm Unit at the time the Customer becomes the legal owner of the Vehicle.
- 16.3 The Customer hereby acknowledges that:
- 16.3.1 any IPR relating to the Tm Unit, the Software or the Services owned by Tm shall remain Tm's exclusive property; and
- 16.3.2 Tm (or its associated companies) is the proprietor of the "Trafficmaster", "Trackstar", "Smartnav", "Fleet Director", "Safe Speed" names, derivatives, symbols and trademarks and all documentation relating thereto and any use is specifically prohibited unless by written agreement with Tm.
- 16.4 If the Vehicle is repossessed and the Tm Unit remains in the Vehicle, the Customer obligations under this Agreement subsist and Tm will not be liable to refund any payments made by the Customer.

**17. Software Warranty**

- 17.1 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).
- 17.2 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 there is use of computer equipment that has not been approved in writing by Tm as being compatible, if there is a conflict with other software loaded on the same computer equipment, 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 instruction manuals.
- 17.3 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 Service been fully operational.

**18. Liability**

- The provisions of Clauses 18.1 to 18.4 shall only apply to Customers who are purchasing the Services in the course of their business or for commercial use.
- 18.1 The Services are provided to the Customer "as is," and the Customer agrees to use them at its own risk.
- 18.2 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 Tm Unit, the Software or the Services or that the Tm Unit, 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.
- 18.3 The exclusions in this Agreement, including this Clause 18, 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.
- 18.4 Except as expressly stated in Clause 18.3:
- 18.4.1 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 £50,000;

18.4.2 [save as set out in 18.4.1] 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

18.4.3 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:

18.4.3.1 loss or damage caused to, or suffered by, the Customer relating to the Vehicle being stolen or damaged or an incorrect Route being provided;

18.4.3.2 special damage even though Tm was aware of the circumstances in which such special damage could arise;

18.4.3.3 loss of profits;

18.4.3.4 loss of anticipated savings;

18.4.3.5 loss of business opportunity;

18.4.3.6 loss of goodwill; and

18.4.3.7 loss of data;

provided that this Clause 18.4.3 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of Clause 18.4.1 or any other claims for direct financial loss that are not excluded by any of categories 18.4.3.1 to 18.4.3.7 inclusive of this Clause 18.4.3.

**The provisions of Clauses 18.5 to 18.13 shall apply only where the Customer is purchasing the Services outside of the course of business or for personal use.**

18.5 Tm accepts responsibility if a Customer is injured or dies as a result of its negligence.

18.6 Tm also accepts responsibility for loss or damage to a Customer's physical property arising from its negligence. It will pay up to £50,000 in any 12 month period for this loss or damage.

18.7 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.

18.8 Except as described in Clauses 18.5 and 18.6, Tm will not pay the Customer more than £50,000 in compensation (even if Tm has been negligent) in any 12 month period.

18.9 Nothing in this Agreement affects the Customer's legal rights relating to Services which are faulty or have been incorrectly described.

18.10 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 Service related issues.

18.11 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 18 shall apply to all Customers**

18.12 The Tm Unit is an electronic assembly that consumes electrical current. It is designed to draw low amounts of current when the Vehicle not being operated and therefore there is a small drain on the Vehicle battery that may adversely affect Vehicles that are not in regular operation. Tm is not liable for any consequences of the battery drain associated with use of the Tm Unit and recommends that the Vehicle battery should be recharged periodically to ensure maximum performance. In the case of a Standard-Fit Unit the drain on the Vehicle battery will not be any greater than the Vehicle manufacturer's recommended or agreed threshold.

18.13 The Tm Unit and/or 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.

18.14 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.

18.15 The Customer acknowledges that, owing to the nature of the technology in the Tm Unit, 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 all Services will operate properly or at all in adverse conditions or in the event of Force Majeure as defined in Clause 21.1 below. In particular, the operation of the Tm Unit and the provision of Services depend to some extent upon the operation of the digital cellular telecommunications technology on which the Tm Unit operates, and this technology is not operative all the time in all parts of the Territory or Europe.

18.16 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.

18.17 The Customer must maintain adequate insurance for the Vehicle and the Tm Unit and the provision of Services does not mitigate that responsibility of the Customer in that respect.

18.18 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 Tm Unit, Software and the provision of Services and the many other factors affecting the Services outside Tm's reasonable control.

## 19 Assignment

19.1 This Agreement is personal to the Customer and relates exclusively to the Vehicle and may not be assigned by the Customer other than under Clause 19.2 herein.

19.2 At the Customer's request, Tm will arrange for the Tm Unit to be transferred from one Vehicle to another upon payment by the Customer of the then current Tm de-installation and re-installation charges. If the Vehicle is sold and possession of the Tm Unit passes to the new owner, the new owner must contact Tm to arrange for the provision of Services. Unused portions of Subscriptions are not refundable.

19.3 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 in writing within a reasonable time after it has occurred.

## 20. Customer Information

20.1 Tm operates in accordance with applicable UK data protection legislation. A Customer has a right to ask for a copy of his personal data.

20.2 The Customer acknowledges that for quality control, security reasons and training, telephone calls between Tm and the Customer may be recorded.

20.3 The Customer consents to Tm tracking and tracing the location, time and speed of Vehicles via the Tm Unit for the purposes of this Agreement.

20.4 The Customer consents to his personal data being made available during an Incident or Emergency to Tm partners and/or Public Emergency Services in countries whose legislation may not provide the same level of data protection as in the UK and to TPSPs for the Concierge Service and Breakdown service providers in the case of a Breakdown.

20.5 Tm reserves the right to use the Customer's personal data, including personal data obtained from the Vehicle for traffic information, data analysis, mapping, and marketing purposes.

- 20.6 Tm reserves the right to use and to allow third parties to use anonymised location, time and speed information obtained from the Vehicle for traffic information, journey data analysis and mapping purposes.
- 20.7 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 an address specified by Tm.
- 20.8 The Customer undertakes to inform all Authorised Users of the information set out in this Clause.

## 21. General

- 21.1 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.
- 21.2 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 20.7 or such other address as Tm may notify to the Customer in writing or electronically by SMS or email for this purpose from time to time. 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 post, email or SMS where the Customer has supplied such contact details.
- 21.3 In the event that a Customer is dissatisfied with the Tm Units or 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 12 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.
- 21.4 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.
- 21.5 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.
- 21.6 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.
- 21.7 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.

## 22. Distance Selling

- 22.1 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 Service to the Customer with its agreement. In order to cancel please contact Tm using the address set out at Clause 13.1. If the Customer exercises this right Tm will not charge the Customer and will return any money it has paid.
- 22.2 Where Clause 22.1 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 the Services to the Customer, the Customer will no longer be able to cancel its agreement under the Consumer Protection (Distance Selling) Regulations 2000.
- 22.3 For more details in relation to statutory rights please contact your local Citizens Advice Bureau.  
For the purpose of this Clause 22 Tm will be considered to have started providing the Services at the earlier of when the Tm Unit is installed or when the Customer first uses the Service.

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: info@trafficmaster.co.uk

## APPENDIX A

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