

Terms & Conditions

1. Definitions

In this Agreement the following words shall have the following meanings:

“Agreement” the Agreement between the Customer and the Company for the provision of the Services to the Customer to which these conditions apply;

“Charges” where applicable the Connection Charge, the Quarterly Line Access Charge, the SMS Call Charge, the Data Call Charge, the Roaming Charge and the Voice Call Charge;

“Connection” the connection of the Customer to the Network;

“Company” The Tracking Store (LDC Pagers Direct Limited, trading as);

“Connection Charge” the charge for Connection described in the Particulars;

“Customers” the person named as such in the Particulars;

“Customer’s Contact” the Customer’s contacts described in the Particulars;

“Data Call Charge” where applicable the charge for data calls described in the Particulars;

“Direct Debit” payment by the Customer of the Charges in accordance with condition 4.2;

“Equipment” the SIM operated equipment described in the Particulars to which the Network is connected;

“Quarterly Line Access Charge” the charge for quarterly line access described in the Particulars;

“Network” the telecommunications network by which the Company makes the Services available;

“Network Provider” the provider from time to time of the Network;

“Network Area” the area in which the Network Provider provides the Network;

“Order” an order by a Customer for such Services as are specified in the Particulars;

“Particulars” the Particulars to which these conditions are attached;

“Receipt of Invoice” payment by the Customer of the Charges in accordance with condition 4.3;

“Roaming Charge” where applicable the charge for roaming described in the Particulars;

“Services” the Services provided by the Company to the Customer pursuant to the Agreement as described in the Particulars;

“SIM Card” the necessary card to which a unique number(s) will be applied to be used with the Equipment to enable access to the Services;

“SMS Call Charge” where applicable the charge for SMS calls described in the Particulars;

“Term” the period specified in condition 5;

“Voice Call Charge” where applicable the charge for voice calls described in the Particulars.

2. Acceptance of Orders

2.1 By placing an Order, you agree to accept all the terms and conditions set forth on The Tracking Store website, including this Agreement and the equivalent where provided by other means such as hard copy or e-mail. Quotations are for information only and shall not bind the Company.

2.2 These terms and conditions shall govern an Agreement for the provision of the Services to the exclusion of any other terms and conditions and no variation to these terms and conditions shall be binding unless agreed in writing between the Customer and the Company.

2.3 The Company’s employees and agents are not authorised to make any representations or warranties concerning the Equipment, or the Services unless confirmed by the Company in writing. In entering into an Agreement, the Customer acknowledges that it does not rely on any such representations or warranties which are not confirmed.

2.4 Any typographical, clerical or other error or omission in the Particulars, any literature, quotation, price list, acceptance of offer, invoice or other document or information issued

by the Company shall be subject to correction without any liability on the part of the Company.

2.5 The Customer shall be responsible for ensuring the accuracy and sufficiency of any Order shown in the Particulars. The Company shall not be liable for the consequences of any inaccuracy, will not issue a credit note in respect of an Order and will be entitled to charge the Customer for the costs it incurs by any variations to an Order.

3. Connection to the Network and Provision of the Services

3.1 Subject to these terms and conditions and in particular condition 11 the Company will use its reasonable endeavours to procure that the Connection is made and to make the Services available to the Customer within the Network Area throughout the Term but, if despite such endeavours the Company is unable for any reason (other than its negligence or that of its employees) to make the Services available to the Customer within the Network Area throughout the Term the Company shall have no liability to the Customer.

3.2 The Company will from time to time provide access to coverage maps of the Network Area. These maps are given as a general guide and do not form part of an Agreement nor do they guarantee coverage of the Network in any particular place at any particular time or at all. The Customer accepts that the Network coverage may be variably affected by topographical features and atmospheric conditions which naturally vary from time to time and season to season.

3.3 The Company may from time to time and without notice disconnect the Equipment from the Network in either of the following circumstances:-

(i) during the period of any technical failure, repair, or maintenance of the Network; or
(ii) during the period of any technical failure, repair, or maintenance of the Equipment; or
(iii) if the Customer commits a breach of any of the terms of an Agreement (including failure to pay Charges due) until the breach (if capable of remedy) is remedied, or does, or allows to be done, anything which in the Company's reasonable opinion may have a material adverse effect on the Company's business, its reputation or goodwill.

The Customer will remain liable to pay all the Charges due under these terms and conditions and an Agreement notwithstanding any suspension or disconnection under this sub-condition 3.3.

4. Payment

4.1 The Customer shall pay the Company the Charges by either Direct Debit or on Receipt of Invoice as specified in the Particulars.

4.2 Where the Customer agrees to pay the Charges by Direct Debit the Customer shall, if an Order is in written form, when signing the Particulars, or if the Order is in electronic form, on receipt of an acknowledgement of Order from the Company deliver to the Company an executed Agreement containing a duly completed direct debit mandate to cover the Charges.

4.3 Where the Customer agrees to pay the Charges on Receipt of Invoice the Customer shall pay the Company within 14 days following the date of the Company's invoice.

4.4 Unless otherwise expressly stated in the Particulars, all Charges are exclusive of any applicable value added tax which the Customer shall be additionally liable to pay the Company.

4.5 Notwithstanding sub-condition 4.1 any sums due to the Company from the Customer if unpaid for more than seven days after the due date shall bear interest at the rate of 8%

above the base rate of Barclays Bank plc from time to time calculated from the date the payment was due until the date of actual payment. Without prejudice to any other right the Company shall be entitled to recover from the Customer all costs and expenses (including legal costs) reasonably incurred in connection with the collection of overdue sums.

4.6 The Customer will pay all sums due to the Company or to such other person that the Company may specify by the method specified in the Particulars.

4.7 The Company shall be entitled to increase the Charges periodically provided that the Company shall give the Customer at least one month's notice of such increase and further provided that if the Customer deals as a consumer (as defined by section 12 of the Unfair Contract Terms Act 1977) the Customer may dissolve an Agreement within 14 days of receipt of such notice (time to be of the essence).

5. Term

Unless terminated as otherwise provided in these terms and conditions an Agreement shall commence on the date of acceptance by the Company pursuant to clause 2 and continue for the agreed period, with 1 month's written notice thereafter.

6. Liability

6.1 Except as expressly provided in this Agreement all warranties, statements, terms and conditions or undertakings which may be implied by statute, common law, custom of the trade or otherwise are hereby excluded and this condition 6 specifies the entire liability of the Company including liability for negligence.

6.2 The Company does not exclude liability:-

- (i) for death or personal injury resulting from its negligence or that of its employees;
- (ii) where a Customer deals as a consumer (as defined in Section 12 of the Unfair Contract Terms Act 1977) for any breach of any obligation implied by statute to use reasonable skill and care in the provision of the Services with due regard to the fact that the Company itself is not operating the Network;
- (iii) for direct physical damage to or physical loss of the property of the Customer resulting from the Company's or its employees negligent acts or omissions provided that the Company's liability under this Clause 6.2(iii) shall not exceed in aggregate a sum equal to two million pounds in respect of any one event or series of events and provided further that the Company is notified of any alleged damage or loss within 14 days of the date such damage or loss occurred (time to be of the essence).

6.3 Subject to condition 6.2, the Company will not be liable to the Customer for any:

- (i) direct loss, damage or injury; and/or
- (ii) indirect, consequential or special loss, damage or injury (including but without limitation) financial loss, loss of profits, loss of business or contracts, loss of operating time or loss of use: whether foreseeable or not to the Customer or to the Customer's property howsoever, whensoever or wheresoever arising whether by reason of any representation or any implied warranty, condition or other term or duty at common law or under statute or under the express terms of this Agreement (and whether caused by the negligence of the Company or otherwise) or otherwise in respect of or in connection with the Services.

6.4 Except to the extent as provided by conditions 6.2(i) and (ii) the Customer shall indemnify and keep the Company indemnified against any liability (including liability for negligence) no matter when or how arising out of any claim by any third party against the Company in respect of or in connection with the Services together with all legal and other costs relating to any such claim except that in so far as the claim relates to direct physical damage to or physical loss of property resulting from the negligence of the Company or its

employees, this indemnity shall only apply if and to the extent that the said liability and all costs exceeds the sum for which the Company is liable pursuant to clause 6.2(iii).

7. Customer's Obligations

The Customer agrees during the Term:

7.1 not to adjust, reset, repair or alter the internal workings or set up of the Equipment or interfere with the Network in any way without the prior written consent of the Company; and

7.2 to allow the Company, its employees or representatives full and free access to the Equipment during normal working hours, and at other reasonable times required, to enable the Company to perform any repairs or adjustments; and

7.3 not to use the Services for any improper, immoral, fraudulent or unlawful purposes or for the sending of any communication which is of an offensive, abusive, indecent, obscene or menacing nature; and

7.4 not to cause, nor knowingly allow others to cause, any nuisance, annoyance or inconvenience, whether to the Company, the Network Provider or to any other person, by any means including the use of the Network for persistently sending unsolicited communications without reasonable cause; and

7.5 not to act in a way, whether knowingly or otherwise, which will impair the operation of the Network or any part of it, or put it in jeopardy; and

7.6 to notify the Company immediately of any loss of the Equipment and to comply with any reasonable security and other checks; and

7.7 not to be involved in or knowingly, recklessly or negligently permit or negligently allow any other party to be involved in any fraudulent or other unauthorised use or attempted use of any Equipment or SIM Cards by corrupt or dishonest or illegal means at any time and by an person and to notify the Company immediately on becoming aware of or suspecting such activity.

8. SIM Cards

8.1 Title in any SIM Card will never pass to a Customer but will remain vested in the Network Provider. All risks in a SIM Card shall pass to the Customer upon delivery by the Company or its carrier of the Equipment to the Customer's nominated address specified in the Particulars. Once delivery has taken place the Customer is responsible for any loss or damage or unauthorised use of the SIM Card together with the cost of any replacement required.

8.2 All rights in any numbers allocated to Customers shall at all time remain vested with the Network Provider.

8.3 If any number allocated to a Customer remains disconnected from the Services for any reason for a continuous period of 6 months the Network Provider may withdraw and re-allocate to a third party any such number.

9. Termination

9.1 Following acceptance by the Company of the Customer's Order, no cancellation and/or suspension, either in whole or in part, may be made by the Customer other than with the prior written consent of the Company and upon terms that the Customer shall indemnify

the Company in full against all loss (including without limitation loss or profit) damages, costs, expenses and other liabilities awarded against or incurred by the Company as a result of or in connection with the cancellation and/or suspension.

9.2 Without prejudice to any other claims or remedies which the Company may have against the Customer the Company may (subject to the provisions of the Consumer Credit Act 1974, if applicable) terminate this Agreement immediately in any one of the following circumstances by written notice :

- (i) if the Customer fails to comply with any of the terms of the Agreement including failure to pay any Charges when due; or
- (ii) if the Customer makes or offers to make any arrangements or composition with creditors or commits any act of bankruptcy, or if any petition in bankruptcy is presented or made against the Customer, or if the Customer is a limited company or corporation if any resolution to wind up that company or corporation is passed, or if any receiver or administrator is appointed over the whole or any part of such company's or corporation's assets; or if the Customer convenes any meeting to discuss or any proposal or application is made for the appointment of an administrator, receiver, liquidator or similar official in respect of the Customer or any of its assets; or
- (iii) if the Customer does or allows to be done anything which in the Company's reasonable opinion will or may have the effect of jeopardising the quality of the Services; or
- (iv) if the Company's licence to utilise the Network is revoked or terminated for any reason.

9.3 Upon the termination of this Agreement the Company shall disconnect the Customer from the Network.

9.4 After disconnection of the Customer from the Network pursuant to these terms and conditions, the Customer shall pay on demand all Charges outstanding at the time of disconnection. In addition, save in the case of a termination pursuant to Clause 9.1(v), the Customer shall pay to the Company a sum equal to the minimum sum for all Charges which would otherwise have fallen due for payment by the Customer had the Agreement continued until the earliest date at which the Customer could terminate this Agreement by notice pursuant to Clause 5, discount to be taken on account of early payment at a rate of 4% below Barclays Bank plc base rate, at the date of termination.

10. Assignment

An Agreement is personal to the Customer and may not be assigned to anyone else. The Company may assign an Agreement to any third party.

11. Excusable Events

The Company will not be liable to the Customer for any breach of these terms and conditions or failure on the Company's part to perform any obligation as a result of technical problems relating to the Network, physical obstructions or problems or atmospheric conditions, radio interference, termination of the licence to utilise the Network, act of God, governmental control, restrictions or prohibitions or any other government act or omission whether local or national or international, act or default of the Network Provider, any supplier, agent, sub-contractor, Network failure or suspension and in particular the inability of the Network to provide a signal or transmit data, faults in other telecommunication networks to which the Network is connected, industrial disputes of any kind or any other similar or dissimilar cause beyond the Company's control.

12. Intellectual Property Rights

12.1 The Customer acknowledges that all trade marks, logos or branding of the Network Provider is the property of the Network Provider and that misuse or unauthorised use or

reproduction of the same could damage the business and reputation of the Network Provider and that misuse or unauthorised use or reproduction will constitute a breach of an Agreement.

12.2 In the event of any infringement by the Customer of this condition 12 the Customer shall do everything in its power to assist the Company at the Customer's expense to recall and destroy all unauthorised materials, withdraw all unauthorised advertisements and take all steps to ensure that the unauthorised use ceases immediately and does not recur. The Customer acknowledges that a request made pursuant to this clause is without prejudice to any other rights the Company may have in respect of such breach.

12.3 The Customer agrees to indemnify and keep the Company indemnified against all claims, demands, actions, liabilities and damages incurred by the Company and any costs and expenses thereof (including legal fees) which arise directly or indirectly from the Customer's breach of condition 12.1.

13. Miscellaneous

13.1 Representations - An Agreement is the complete agreement between the Company and the Customer which supersedes all representations or other communications between them relating to the subject matter of an Agreement.

13.2 Notices - The Customer must promptly advise the Company of any change of address. Any notice hereunder must be in writing (which includes facsimile or electronic mail) and if sent by post shall be deemed delivered within 48 hours of posting and if sent by facsimile upon completion of its successful transmission. Any notice hereby sent by the Customer to the Company shall only be deemed to have been validly served on the Company if the Company shall have received the same.

13.3 Connection Date - The Company will make the Connection as soon as practicable after the date of the Company's acceptance of the Customer's Order pursuant to condition 2 but it is understood that the connection date which is arranged is an estimate only and may be liable to change. Accordingly the Company will not be responsible for the consequences of delay in Connection.

13.4 Disconnection and Reconnection Fees - The Company has discretion to charge a reasonable fee for disconnection or reconnection of the Customer to the Network having regard to the circumstances at the time of disconnection or reconnection.

13.5 Severable Contract - In the event of any of the provisions set out in an Agreement all these terms or conditions being unenforceable or void for any reason whatsoever each provision, term or condition (including each sub-clause) shall be deemed to be severable from the remaining provisions or terms and conditions and such remaining provisions, terms and conditions shall remain in full force and effect.

13.6 Subsequent Contract - If subsequent to the execution of an Agreement the Company agrees (whether in writing, orally or otherwise) to provide the Customer with services similar to the Services in respect of any other Customer apparatus, except to the extent otherwise agreed, such contract shall be deemed to be a separate and severable contract which incorporates these terms and conditions.

13.7 Other Agreements - The termination of any other agreement with the Company or any other person, firm or company by which the Customer hires, leases or rents equipment shall not effect an Agreement which the Customer may only terminate as provided herein and any such agreement shall be separate and severable from any Agreement between the Company and the Customer.

13.8 Waiver - Failure by the Company at any time to enforce provisions of an Agreement or these terms and conditions shall not be construed as a waiver of any such provision or

in any way effect the validity of an Agreement or any part hereof.

13.9 Law - Agreements and these terms and conditions shall be governed and construed in accordance with English Law and Customers and the Company agree to submit to the non-exclusive jurisdiction of the English Courts.

13.10 Headings - The headings are for convenience only and do not form part and shall not affect the construction of an Agreement or these terms and conditions or any part hereof.

13.11 Joint and Several - Where the Customer is more than one person all of the Customer's obligations under an Agreement shall be joint and several.

13.12 Authority - Any person signing an Agreement on behalf of the Customer warrants to the Company that he is authorised to do so.

13.13 Third Parties - A party who is not a party to these terms and conditions or an Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of an Agreement or these terms and conditions but this does not affect any right or remedy which exists or is available apart from that Act.