

Standard terms and conditions

1. Introductions and definitions

1.1 The customer (as defined in clause 1.2 below understands that in order to receive the Equipment/Services (as defined in clause 1.2 below) and the Airtime Services (as defined in clause 1.2 below) it is required to enter into two separate agreements. These are:

1.1.1 This agreement with **Tracktech Limited** and/or Tracktech t/a Commercial Wireless the Seller and, herein, referred to simply as Tracktech who have their offices at 122 Winchcombe Street, Cheltenham, GL52 2NW, which governs the supply of the Equipment and or Services from Tracktech to the customer; and

1.1.2 The Airtime Agreement (as defined in clause 1.2 below) with the relevant network/service provider.

1.2 In this Agreement, the following words and expressions shall have the meanings set out below "**Airtime Agreement**" means the agreement which governs the provision of Airtime Services from the relevant network/service provider, a copy of which will be provided with Agreement;

"**Airtime Services**" means cellular mobile telecommunications airtime and network capacity procured from a network/service provider;

"**Connection**" means the connection of an end user to a network or service provider such that the end user is capable of accessing and utilising the Airtime Services;

"**Customer**" means the person ordering the Equipment/Services and/or the Airtime Services whose full details are set out in form of overleaf;

"**Downward Migration**" means in respect of a connection, the transfer (at the request of the customer) from one tariff provided by the network/service provider ("The Old Tariff") to another tariff provided by that same network/service provider ("The New Tariff") which results in the Customer being charged a lower monthly line rental under the New Tariff than it was being charged under the Old Tariff and the phrase Downward Migrated shall be construed accordingly;

"**Equipment**" means mobile telecommunications handsets and other associated equipment;

"**Minimum Term**" means the minimum period of the time which the Customer has agreed to maintain (a) Connection(s) under the Airtime Agreement;

"**Monthly Subsidy Amount**" means the amount which is derived by dividing the Subsidy payable for a Connection by the number of months in the minimum term applicable to that Connection;

"**Services**" means any services ordered by the Customer and provided by Tracktech; and

"**Subsidy**" means the sum payable by Tracktech to subsidies and equipment supplied to the Customer as is determined by Tracktech in its sole discretion, taking into consideration the number of Connections which the customer is taking out and the applicable tariffs and the Minimum Term which the customer is prepared to enter into.

2. Applicable Terms.

Unless other terms and conditions are expressly by Tracktech by means of a specific written amendment signed by a director of Tracktech the supply of Equipment and or the provision of Services will be on the terms and conditions set out in this Agreement to the exclusion of any other terms and conditions whether or not the same are endorsed upon, delivered with or referred to in any purchase order or other document delivered or sent to the Customer to

Tracktech.

2.1 All drawings, descriptive matter, specifications and advertising issued by Tracktech and any descriptions or illustrations contained in a Tracktech proposal or website are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them from the relevant manufacturer or Service Provider. The do not form part of any contract.

3. Supply Of Customer Equipment.

3.1 In consideration of the Customer entering into the Airtime Agreement, Tracktech undertakes to supply the Customer such Equipment/Services as is ordered by the Customer from time to time.

3.2 Tracktech shall use its reasonable endeavors to deliver the Equipment on the date agreed by the parties but the Customer acknowledges that the time shall not be of the essence.

3.3 Notwithstanding delivery and acceptance of the Equipment to the Customer, title to the same will not pass to the Customer (but will be retained by Tracktech until the earlier of either i) the expiry of the Minimum Term or (ii) the date on which all undisputed invoices relating to the same (including VAT) have been paid in full to Tracktech.

3.4 The risk in the Equipment will pass to the customer upon delivery and the Customer will be liable for any loss or damage of the same as and from the time when the Equipment is delivered to the address notified by the customer.

3.5 The Customer undertakes to notify Tracktech as to any alleged defect, shortage or discrepancy in any Equipment within 3 days of delivery of the Equipment to the Customer. In the event that the customer fails to notify Tracktech within this period then the Customer will be deemed to have accepted the Equipment and Tracktech shall have no liability to the customer whatsoever in respect of such Equipment.

4. Provision Of The Services

4.1 Tracktech shall use its reasonable endeavors to provide the Services on the dates agreed by the parties.

4.2 Tracktech shall use its reasonable endeavors to ensure that the services are provided with reasonable skill and care.

5. Charges and Payment

5.1 The Customer hereby agrees to pay to Tracktech for each item of Equipment and, any Services ordered and provided to the Customer within 14 days from the date of a Tracktech invoice.

5.2 Tracktech reserves the right at its absolute discretion to levy a surcharge for all credit card transactions in accordance with Tracktech tariff applicable from time to time, a copy of which will be available at Tracktech principal place of business.

5.3 Interest at an annual rate of 5% above Nat West Bank Plc base rate from time to time will accrue daily and be calculated on a daily basis on overdue accounts from the due date until payment.

6. Payment And Reclamation Subsidies.

6.1 Subject to the remaining provisions of this clause 6, Tracktech may, acting in its sole discretion, provide the Customer with a Subsidy as a result of the Customer entering into the

Airtime Agreement with the network/service provider.

6.2 In the event that Tracktech does provide the Customer with a Subsidy this may be provided to the Customer at the sole discretion of Tracktech, using the following methods set out below or any combination of them.

6.2.1 Deducing this from the value of the Equipment or the Services which the Customer orders from Tracktech;

6.2.2 The payment of monies (representing the amount of the Subsidy) to the Customer and such monies shall be paid to the Customer; (a) In full after the expiry of 12 months from the Connection date where the applicable Minimum Term is 24 months.

6.2.3 Using such amount to discharge any termination charges levied upon the Customer by the relevant network/service provider for terminating their previous airtime agreement subject to Tracktech being provided with a copy of the relevant invoice from such network/service provider.

6.3 Any subsidy (or installment payment of a Subsidy) payable by Tracktech within 30 days from the date that the Customer presents an invoice to Tracktech (save that no invoice shall be necessary where the subsidy is being deducted from the price of the Equipment/Services ordered by the Customer pursuant to clause 6.2.1) provided that;

6.3.1 At all times the Connection is still active on the relevant payment date that the Subsidy (or installment payment of the Subsidy) is due;

6.3.2 Where the invoice is payable in installments or after a prescribed period of time the appropriate trigger date has passed.

6.3.3 The invoice has been raised in accordance with the provisions of this Agreement; and 6.3.4 Where the

(a) invoice is for termination charges pursuant to clause 6.2.3, this amount is invoiced within 3 months from the Connection date; and or

(b) invoice is for the payment of monies pursuant to clause 6.2.2, this amount is for the payment of monies pursuant to clause 6.2.2, this amount is invoiced during the minimum term; and or

(c) amount claimed is being deducted from the price of Equipment Services ordered by the Customer pursuant to clause 6.2.1, this amount is claimed during the Minimum Term; and in the event that the Customer fails to invoice/ claim the Subsidy within the time scales set out in clause 6.3.4 (a) to (c) (inclusive) then the Customers right to the Subsidy shall cease.

6.4 The customer acknowledges that;

6.4.1 The payment of Subsidy is conditional upon;

(a) The Customer containing each Connection for the Minimum Term; and

(b) The Customer not Downward Migrating any Connection during the minimum term; and

(c) Such other conditions as are notified to the customer from time to time by Tracktech

6.4.2 Tracktech will provide the Subsidy prior to the satisfaction of the conditions set out in clause 6.4.1 and hence the need for clause 6.5.

6.5 Tracktech shall be entitled to reclaim from the Customer the Subsidy (or such proportion of the Subsidy) already paid to the customer (or withhold such amount from any Subsidy or installment of a Subsidy to be paid to the Customer) in the event that;

6.5.1 A Connection is for whatever reason disconnected prior to the expiry of the Minimum Term; or

6.5.2 A Connection is for whatever reason

Downward Migrated during the Minimum Term;
or

6.5.3 The relevant network/service provider (for whatever reason) reclaims or withholds in full or in part from Tracktech any of the connection commission paid to Tracktech by the network/service provider in respect of that Connection; and the proportion of the Subsidy that Tracktech shall be entitled to reclaim from the customer shall be the monthly Subsidy Amount for each month (and such pro rata amount for each incomplete month) of the balance of the Minimum Term which is unexpired at the date of disconnection or the Downward Migration.

6.6 In the event that a Customer cancels prior to connection, disconnects a Connection prior to the expiry of the Minimum Term or a Connection is Downward Migrated during the Minimum Term then Tracktech shall be entitled to charge the customer an administration charge of £250 for each connection.

6.7 Any such sum reclaimed (or withheld) pursuant to clause 6.5 shall be invoiced to the Customer and such sum shall be payable (unless withheld) within 14 days of the date of Tracktech invoice.

7. Warranties

7.1 the Customer acknowledges that Tracktech is not the manufacturer of the Equipment, and accordingly, that the warranty given by Tracktech is limited as follows, if any Equipment is proved to the reasonable satisfaction of Tracktech to be defective in material or workmanship then:

7.1.1 If the Equipment is returned to Tracktech within 14 days of the date of their delivery then Tracktech will at its option (a) repair the equipment; (b) replace the equipment; (c) substitute substantially equivalent goods, or (d) credit the Customer in respect of any such Equipment. For the avoidance of doubt, where Tracktech replace Equipment or provides substitute goods, the original Equipment returned by the customer will belong to Tracktech, provided that these obligations on part of Tracktech will not apply where:-

(a) The Equipment has been altered in any way whatsoever or been subjected to misuse or unauthorised repair; or

(b) The Equipment has been improperly installed or connected (unless Tracktech carried out such installation and connection); or

(c) The customer has failed to observe any maintenance requirements relating to the Equipment or;

(d) The Equipment has been expressly sold on a "no warranty" basis or in respect of any promotional items supplied from time to time with or in connection with the Equipment.

7.2 Save as provided in this Agreement Tracktech hereby excludes all conditions, warranties and stipulations express or implied, statutory, customary or otherwise which but for such exclusion would or might subsist in favour of the Customer.

8. Limitation Of Liability

8.1 Tracktech liability for loss or damage of any kind whatsoever (however such liability arises and whether in contract, tort, for breach of statutory duty or otherwise) under or in connection with;

(a) This Agreement and/or

(b) Any matter collateral to this Agreement and/or in respect of any representation or misrepresentation (other than a fraudulent misrepresentation made by or on behalf of Tracktech; shall in no circumstances exceed the sum paid by the Customer to Tracktech in respect of the Equipment or services with which

such liability arises provided that nothing in this clause shall limit or exclude liability for death or personal injury arising from Tracktech negligence.

8.2 Save as otherwise provided, Tracktech will be under no liability under this Agreement for any personal injury, death loss or damage of any kind whatsoever (other than death or personal injury resulting from Tracktech negligence) whether consequential or otherwise including but not limited to loss of profits, pure economic loss, loss of business and depletion or goodwill.

8.3 Save for death or personal injury resulting from Tracktech negligence, Tracktech shall not be liable to the Customer for any loss as a result of electric magnetic frequencies or any similar result from use of the Equipment.

9. General

9.1 Tracktech will be entitled to assign, sub-contract or sub-let this Agreement or any part thereof. The Customer shall not be permitted to assign or sub-let this Agreement or any part thereof without the written consent of Tracktech.

9.2 Failure by Tracktech to enforce any of the provisions of this Agreement will not be construed as a waiver of any of its rights hereunder.

9.3 Tracktech shall be entitled to amend any of the terms of this Agreement upon the giving of 7 days written notice to the Customer.

9.4 In relation to all obligations of the Customer under this Agreement, the time of performance is of the essence.

9.5 The illegality, invalidity or enforceability of the remainder. If any such clause or part is found by any competent court or authority to be legal, invalid or unenforceable the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.

9.6 Each of the parties hereto is an independent contractor and nothing contained in this Agreement shall be construed to imply that there is any relationship between the parties of partnership or of principal/agent or of employer/employee.

9.7 The legal construction of these clauses shall not be affected by their headings which are for convenience and reference only.

9.8 Any demand, notice or communication shall be deemed to have been duly served.

9.8.1 If delivered by hand, when left at the proper address for service

9.8.2 If given or prepaid by first class post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays)

9.8.3 If given or made by fax at the time of transmission subject to receipt of the appropriate "clear" transmission report provided that where in the case of delivery by hand or transmission by fax such delivery or transmission occurs either after- 4.00 p.m. on a Business day or on a day other than a business day service shall be deemed to occur at 10.00 am. On the next following Business Day is a day when the banks in the location of the recipient at its registered office or its address stated in this Agreement (or such other address or fax number as may be notified in writing from time to time)

9.9 Any and all prices quoted are good for a maximum of 30-days and/or the calendar month in which they were quoted and are always subject to VAT at the appropriate rate.

9.10 Any dates specified by Tracktech for delivery of Equipment or Services are intended to be an estimate and time of delivery shall not be made of the essence by notice. If no dates are specified delivery shall be within a

reasonable time.

9.11 Tracktech shall have no liability to the Customer for any failure to deliver the Goods and/or Services or any delay in doing so or for any damage or defect to the goods delivered that is caused by any event or circumstance beyond Tracktech's reasonable control.

9.12 No variation to this Agreement may be made unless set out in writing and signed by a director of Tracktech.

9.13 This agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.