



SUPPLY OF SIM CARDS AND MOBILE COMMUNICATIONS  
SERVICES

JUNE 2022

# TRAFALGAR WIRELESS LLC

## TERMS AND CONDITIONS OF SALE

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This agreement (the “Agreement”) is a legal contract between the parties;

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(“Customer” or “you”) and

**TRAFALGAR WIRELESS LLC** of 2870 Peachtree Road, Suite 288, Atlanta, Georgia GA 30305, USA (“Trafalgar Wireless”, “us” or “we”).

### 1. Definitions

1.1 In this Agreement:

- (a) **Confidential Information** means any information which is either designated as confidential by the disclosing party or which by its nature is confidential.
- (b) **Intellectual Property Rights** means all intellectual and industrial property rights, including patents, copyright, database rights, trade-marks, service marks, designs and logos, design rights and registered designs, know-how and all other rights of a similar nature anywhere in the world in each case whether registered, unregistered or incapable of registration.
- (c) **MNO** means mobile network operator and can include mobile virtual network operators.
- (d) **Products** means SIM cards, data, SMS, CSD and/or voice services (or other mobile network services), network infrastructure, API services or billing services or other services as agreed between the parties, supplied to Trafalgar Wireless by the MNO or other third party suppliers.
- (e) **Restricted Persons** has the meaning set out in clause 5.7(c).
- (f) **Sanction Laws** has the meaning set out in clause 5.7(a).
- (g) **Service Charges** shall mean the combination of reoccurring fixed charges invoiced in advance and usage-based charges invoiced in arrears relating to the data consumed and Products provided.
- (h) **Term** means the duration of the Agreement between you and Trafalgar Wireless as provided to you either in an email or a quote from us.

### 2. Acceptance and order

2.1 You acknowledge and agree that should you do any of the following:

- (a) clicking on an “I accept” style button; or
- (b) sending us a fax, post, email order for Product(s); or
- (c) agreeing to the terms of this Agreement by email or similar; or
- (d) using any Products,

## TRAFALGAR WIRELESS LLC TERMS AND CONDITIONS OF SALE

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and if Trafalgar Wireless does any of the following:

- (e) accepting your order; or
- (f) delivering Products to you (whichever is earlier),

then a legally binding agreement is formed between you and Trafalgar Wireless. Trafalgar Wireless does not recognise any terms and conditions supplied by Customer unless specifically acknowledged and agreed in writing by a director of Trafalgar Wireless. Execution of, compliance with, or implementation of orders received from Customer does not imply acceptance by Trafalgar Wireless of any terms and conditions contained within or attached to Customer's order or otherwise presented by the Customer to Trafalgar Wireless.

2.2 You represent that:

- (a) you have read, understand, and agree to be bound by the Agreement; and
- (b) you have the authority to enter into the Agreement personally or on behalf of the company you represent, and to bind that company to the terms of this Agreement.

2.3 Trafalgar Wireless reserves the right, at its sole discretion, to reject and not to supply any Customer order and, in such circumstances, a contract is not deemed to have been formed between the parties.

2.4 Any order submitted by You is subject to final confirmation in writing by Trafalgar Wireless. Such confirmation is contingent upon the availability of Products and Trafalgar Wireless may reject any order at any time prior to final confirmation. You will receive a final confirmation only after an order is accepted by the MNO. An order may not be cancelled after an order of acceptance is issued from an MNO, even if a final confirmation has not yet been sent to or received by Customer. No request for cancellation or rescheduling of delivery will be effective unless agreed in writing by an authorized representative of Trafalgar Wireless. Should Trafalgar Wireless, in its sole discretion, agree to cancel or reschedule an order, the following fees will apply:

- (a) Cancellation of orders or rescheduling of shipments of Products with an acknowledged shipment date between 1 and 50 days of the date of cancellation or reschedule - full purchase price.

## TRAFALGAR WIRELESS LLC TERMS AND CONDITIONS OF SALE

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- (b) Cancellation of Orders or rescheduling of shipments of Products with an acknowledged shipment date between 51 and 80 days of the date of cancellation or reschedule - 60% of the full purchase price.
  - (c) Cancellation of Orders or rescheduling of Products with an acknowledged shipment date between 81 and 110 days of the date of cancellation or reschedule - 25% of the full purchase price.
- 2.5 Any request to cancel or change a service previously ordered, shall be at the sole discretion of Trafalgar Wireless and shall only be deemed accepted once Customer receives a confirmation of cancelation from Trafalgar Wireless and may be withheld if You have not paid the applicable cancellation fees.
- 3. Delivery**
  - 3.1 Unless agreed otherwise by Trafalgar Wireless in writing, the Customer will bear all costs of shipping Products to the Customer, including any re-deliveries. Delivery of the Products takes place Ex Works (as defined by Incoterms 2010, subject to the other terms contained herein), at the place designated by Trafalgar Wireless (“Delivery Location”) . Prices are based on the Products being delivered in one consignment in standard packaging. Customer shall be responsible for arranging shipping from the Delivery Location to its premises. Trafalgar Wireless may, upon request and for an additional fee, arrange shipping on behalf of and as an agent of Customer.
  - 3.2 The provision of Products may be affected by circumstances beyond Trafalgar Wireless’ control. These include, but are not limited to: (i) the capability of the Products or any equipment related to the Services; (ii) the networks of the telecommunications network provider where the Products may be situated; (iii) network congestion; (iv) geographic or atmospheric conditions; (v) maintenance requirements; and/or (vi) equipment failures. Trafalgar Wireless shall bear no liability, consequential or otherwise for delay in delivering any Product supplied to the Customer. Trafalgar Wireless may, at its sole discretion, schedule or reschedule the delivery date of Products. All delivery dates are approximate. Customer acknowledges that Trafalgar Wireless is dependent upon manufacturing by third parties for production of the Products and that delays in shipping are not attributable to Trafalgar Wireless. Any delay in delivery shall not relieve Customer of any obligation to accept and pay for any other deliveries.
  - 3.3 Trafalgar Wireless may, at any time, set a limit on the amount of Service Charges Customer can incur during each billing period or place a bar on the Products being supplied or used. The Customer can request the variation of any such limit or release

## TRAFALGAR WIRELESS LLC TERMS AND CONDITIONS OF SALE

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any such bar by contacting Trafalgar Wireless. Trafalgar Wireless may make or refuse to make such variances in its sole discretion.

- 3.4 No products may be returned without the prior written consent of Trafalgar Wireless which may be withheld in Trafalgar Wireless' sole discretion. Trafalgar Wireless will not provide consent if Customer's intent to return is received more than 5 days after delivery. Should a warranty be offered, Products returned as a warranty claim which prove to be other than a genuine warranty failure will be disposed of and the Customer charged for testing and warehousing. If a return is authorized, all Products returned must be securely packed and must be consigned Carriage Paid (as defined by Incoterms 2010) to the destination indicated by Trafalgar Wireless.
- 3.5 Risk of loss or damage to the Customer shall pass to the Customer on delivery at the Delivery Location. The Customer shall insure the Products until Trafalgar Wireless has been paid in full. The Customer shall examine all packaging on delivery at the Delivery Location and shall notify Trafalgar Wireless in writing within 5 days of delivery of any shortage in delivery, damage or any other non-conformity with the order or these conditions that ought reasonably to have been apparent on a reasonable inspection of the Products. It is agreed that the Customer waives any such claims it may otherwise have had where no claim has been made in writing, or no inspection has been completed, within the aforesaid period. In the event of any such claim, the packaging and contents must be retained for examination. All insurance claims will be pursued by the Customer as swiftly and efficiently as is practicable, whatever the terms of delivery. Shortages or damage not fully covered by insurance referenced above, must be notified in writing to Trafalgar Wireless (along with full particulars) within 5 days of receipt of the Products.
- 3.6 Title to the Products shall be retained by either Trafalgar Wireless or the MNO until full payment has been received by both Trafalgar Wireless and the MNO. Until such time as the title in the Products has passed to Customer, the Customer shall:
- (a) hold such Products on a fiduciary basis as bailee and shall insure them as Trafalgar's Wireless' property and shall store and mark them in such a way that they are readily identifiable as Trafalgar's Wireless property, and shall not mix them with any other goods;
  - (b) not pledge or allow any encumbrance, lien, charge or other interest to arise or be created over the Products;

**TRAFALGAR WIRELESS LLC**  
**TERMS AND CONDITIONS OF SALE**

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- (c) not dispose of or deal with the Products or any documents of title relating to them or any interest in them;
- (d) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- (e) notify Trafalgar's Wireless immediately if any insolvency or administration events occur which affect or are reasonably likely to affect the Customer; and
- (f) give Trafalgar's Wireless information relating to the Products as may be required from time to time.
- (g) keep to any other conditions set regarding the use of the Products from time to time;
- (h) immediately give notice of any change of address;
- (i) notify Trafalgar Wireless immediately if any Products are lost or stolen and write or email to confirm the details.
- (j) not use the Products (or allow any of them to be used) for any illegal purpose.

**4. Prices and payments**

- 4.1 The prices and Term for the Products will be as provided in a quote or by email to the Customer. Unless indicated otherwise, prices exclude applicable federal, state, local, sales, use, excise, utility, and value added taxes and other applicable taxes, or other special fees or damages charged by the MNO arising from or related to Your products or uses, which shall be passed to the Customer. Products are supplied in accordance with the specifications provided at the time of final confirmation, and any additions or alterations requested by the Customer in respect of the Products shall be the subject of an extra charge.
- 4.2 Customer agrees to pay any Invoice within 30 days of the date of said Invoice. Trafalgar Wireless may, at its sole discretion, request a deposit before any Products are supplied. Customer agrees that invoices must be paid before the Products will be ordered.
- 4.3 Unless otherwise agreed in writing, payments by the Customer will be made:
  - (a) for physical SIM cards (including commissioning costs): in advance of delivery;

**TRAFALGAR WIRELESS LLC**  
**TERMS AND CONDITIONS OF SALE**

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- (b) for 'bundled charges' including any monthly line rental on SIM cards, per MB usage and billing services, either:
  - (i) billed in advance of the applicable period with payment prior to the beginning of the applicable period or the applicable usage; or, if agreed by Trafalgar Wireless,
  - (ii) billed at the beginning of the month, on a 30-day payment period;
- (c) for overuse traffic usage (if applicable): billed in arrears with a 30-day payment period or taken from any outstanding credit on the Customer's account. If additional charges from the MNOs are received for a period that has already been billed, the SIM usage report will be re-issued and the Customer invoiced the difference; and
- (d) for additional Products, as agreed between the parties: but always in advance of the provision of Products unless otherwise agreed in writing by the parties.
- (e) In the event that alternative terms of payment are agreed in writing by Trafalgar Wireless, and Customer does not comply with the alternative terms of payment, the payment terms shall automatically revert to payment in full of all outstanding sums prior to delivery and without further notice. This clause is intended by both parties to survive and "entire agreement clause" in said writing unless this clause is specifically referenced and excluded.

Customer agrees to be bound by this Agreement and pay all charges for Products provided to the Customer regardless of whether charges were incurred by the Customer or a third party, or as a result of misuse or fraudulent activity, including, but not limited to, the payment of all charges for a SIM card until either:

- (f) the SIM card has been terminated with 40 days' written notice (if such written notice is given on or before the 15th day of the month); or
- (g) 50 days' written notice (if notice is given after the 15th day of the month); or
- (h) the Term has expired as specified in writing (in order of preference) in a quote or by email,

4.4 The Customer shall pay all invoices in full (including disputed amounts, without any right of set-off) in accordance with the terms of this Agreement, and shall, if a dispute in

## TRAFALGAR WIRELESS LLC TERMS AND CONDITIONS OF SALE

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relation to an invoice occurs, co-operate in good faith with Trafalgar Wireless to resolve any dispute in accordance with clause 4.5.

- 4.5 The Customer may only dispute an invoice within 20 days of the Customer's receipt of such invoice and only after said invoice is paid. If the invoice or part thereof is subsequently found by Trafalgar Wireless to be incorrect, then Trafalgar Wireless will credit the Customer within 10 business days of such a finding. Trafalgar Wireless will not accept, and Customer agrees not to proceed with, disputes about any invoice where the Customer informs Trafalgar Wireless about any such dispute more than 20 days after the date of the invoice.
- 4.6 All payments must be made directly to a designated Trafalgar Wireless bank account. If any payments due are not received and cleared in Trafalgar Wireless's bank account within the agreed payment terms as set out in this clause 4, Trafalgar Wireless reserves the right to charge interest on the overdue amount at the rate of 2.5% per month. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount. If this amount would be usurious by applicable law the interest shall instead be the largest amount under the said law that is not usurious.
- 4.7 If any payments are overdue, Trafalgar Wireless reserves the right to employ a credit recovery agency to recover monies due. Trafalgar Wireless is not liable for any detrimental effect (financial or otherwise) if action by the credit recovery agency affects the Customer's credit rating and/or financial position. Furthermore, the costs, including any legal costs and court fees, incurred in the collection of any overdue payments will be paid by the Customer.
- 4.8 If any SIMs have incurred costs that exceed three times the expected level of use, Trafalgar Wireless reserves the right to invoice for these charges separately and the Customer must pay these charges in full within 5 days of the date of such invoice.
- 4.9 If any payments are overdue, Trafalgar Wireless reserves the right to terminate all Products on the Customer's account without notice and charge a re-connection charge equal to the previous month's invoice for reconnection and other administration or MNO charges that may also be incurred.
- 4.10 Trafalgar Wireless shall be entitled to pass onto the Customer any increases in the underlying cost of the Products, that is the direct result of a price increase from an MNO, even if it occurs between the date of final confirmation and the actual date of delivery of the Products. In the event of an increase of more than 10% in charges or minimum charges caused by price changes of a supplier or MNO, Customer has a right



## **TRAFALGAR WIRELESS LLC TERMS AND CONDITIONS OF SALE**

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of termination as set out in clause 10.2(b). For the avoidance of doubt, Trafalgar Wireless does not operate a price protection policy. Customer will not be entitled to a refund, credit, or price reduction in respect of any Products, the price of which is subject to change.

- 4.11 If Customer fails to pay for or otherwise purchase when Customer is obligated to do so, Trafalgar shall invoice Customer for any amounts charged by the MNO for such failure to purchase in addition to an administrative charge equal to 20% of the amount charged by the MNO.
- 4.12 The use of Products other than as agreed by Trafalgar Wireless (for example in a different country not specified) shall grant Trafalgar Wireless the right to apply such extra charges as may apply in respect of the actual use of the Products in each case in accordance with the Trafalgar Wireless' Standard Charges (which can be obtained on request).
- 4.13 Unless otherwise agreed in writing, within 6 months of the start of this Agreement, and in addition to the purchase price, the Customer agrees to pay, whichever is the greater of: 100 euros, pounds or dollars for the use of connectivity only Products; 200 euros, pounds or dollars for the use of security Products (where security is supplied as an additional chargeable Product to connectivity); or 500 euros, pounds or dollars for the use of billing Products (where billing is supplied as an additional chargeable Product to connectivity and/or security).

### **5. Customer obligations**

- 5.1 The Customer is responsible for ensuring that any hardware equipment, or software application running on that equipment, that uses a Product provided by Trafalgar Wireless complies with any and all requirements of all networks and will not cause any damage or interruption to any mobile phone network. The Customer accepts all liabilities for damage or interruption to any mobile phone network caused as a direct result of the hardware equipment or software application running on that equipment. If the Customer is unsure whether the equipment or software being used may cause any damage to a mobile phone network, the Customer may request Trafalgar Wireless to gain approval from the MNO prior to use. Whether approval is sought is at the sole discretion of Trafalgar Wireless.
- 5.2 The Customer shall ensure that neither the content passed over the mobile network nor the details of users or customers or other personal data held by the Customer pursuant to this Agreement shall infringe the rights of any third parties or any applicable laws or

## TRAFALGAR WIRELESS LLC TERMS AND CONDITIONS OF SALE

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regulations (including, without limitation, the Data Protection Directive (95/46/EC), the General Data Protection Regulation (2016/679/EC), the Directive on Privacy and Electronic Communications (2002/58/EC), the Electronic Commerce Directive (00/31/EC) and the Distance Selling Directive (97/7/EC)), and any national implementations thereof, in any country where any message is originated, delivered or in respect of which any of service provided by the Product are performed or any other similar laws within the United States of America, United Mexican States, or Canada.

- 5.3 The Customer agrees to comply with any reasonable instructions as Trafalgar Wireless may from time to time notify to the Customer in regards to using the Product. Customer also agrees to comply with any third-party terms and/or usage guidelines or instructions which apply to a specific Product. However, even without instructions the Customer warrants and represents that it will not breach any applicable laws, standards or codes, including but not limited to “SIM boxing”(even if legal in territory in which attempted), or infringe a third party’s rights, or breach any content requirements or codes stipulated by any relevant authority. Furthermore, the Customer shall refrain, and prevent others, from using the Product for any purpose other than that intended by the relevant telecommunications operator, in any way whatsoever, including “annoyance”, “spamming” or any other form of harassment, creating, or having third parties create, connections with buy lines (090x numbers) on a large scale or committing criminal offences or use the Product in a way which interferes with other users or harasses or restricts any other user from using or enjoying the hosting MNO network or the internet. Customer shall be liable for any damage, costs or usage (at standard overuse rates or the rates charged by the MNO to Trafalgar Wireless – whichever is the higher), arising as a result of unlawful or fraudulent use of the Product, regardless as to whether the Customer was aware of such use or not. Fraudulent use includes, but is not limited to, using the SIM in a way that was not agreed with Trafalgar Wireless, including via satellite modem, WAP, voice, SMS, USSD and use of an APN which was not provided by and agreed with Trafalgar Wireless. Fraudulent use can only be prevented by cancelling the SIM off the network. Once a SIM is registered on the network (SIMs are registered on the network prior to delivery to Customer) there may be some services that are impossible to block. Use of any services apart from those agreed with Trafalgar Wireless will be deemed to be fraudulent use.
- 5.4 The hosting MNO or the supplier thereof, as a supplier of Trafalgar Wireless, has an independent right to claim for damages suffered as a result of the Customer’s failure to comply with clause 5.3. Therefore, the hosting MNO may claim damages directly from the Customer. The MNO is an intended third party beneficiary of this clause.

## TRAFALGAR WIRELESS LLC TERMS AND CONDITIONS OF SALE

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- 5.5 If the Customer requests any functionality that is not provided within Trafalgar Wireless's standard Products, Trafalgar Wireless may choose to provide a non-binding quote for the Product requested. After receiving the quote, a written confirmation by the Customer to proceed will be considered a binding offer by Customer, which Trafalgar Wireless may accept by invoicing Customer for the Product requested.
- 5.6 Customer shall not assign, resell, or otherwise transfer any of the Products without Trafalgar Wireless's prior written approval.
- 5.7 Customer represents, warrants and covenants that Customer:
- (a) is compliant in all respects relevant to this Agreement with all applicable sanction or embargo laws and regulations in effect from time to time, including trade and economic sanctions maintained by the United States Treasury Department's Office of Foreign Assets Control, and any other enabling legislation or government order relating thereto (collectively "Sanction Laws");
  - (b) is not listed on, or owned or controlled by an entity or person on, the U.S. Department of Treasury list of Specially Designated Nationals or any similar list in place in any jurisdiction where Customer is conducting business;
  - (c) is not located in or organised under the laws of a country subject to Canadian, Mexican, U.S. or E.U. trade embargo (collectively, "Restricted Persons");
  - (d) will take all such steps as prudent to ensure that it will not provide Product to Restricted Persons; and
  - (e) will not use the Product, or allow them to be used, for any purposes prohibited by applicable Sanction Laws, including nuclear, chemical, or biological weapons proliferation, or development of missile technology.
  - (f) will not allow the Products to be used for the transmission of illegal or offensive materials
  - (g) will not allow the Products to be used for the transmission of material that contains software viruses or any other disabling or damaging programs
  - (h) will not allow the Products to be used fraudulently, to commit fraud, illegally, or commit an illegal act, or in any way that had the act been done by Customer would constitute a violation of this agreement.

# TRAFALGAR WIRELESS LLC

## TERMS AND CONDITIONS OF SALE

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Notwithstanding any other provision in this Agreement, Trafalgar Wireless reserves the right to terminate this Agreement immediately upon written notice to the Customer if Trafalgar Wireless reasonably believes that Customer is not in compliance with this clause 5.6 or that its actions, inactions, or the actions or inaction of any third party are causing Trafalgar Wireless to be exposed to prosecution or liability for violation of Sanction Laws or any other applicable law arising from or related to the Products received or to be received by Customer.

5.8 In order to preserve the integrity of the network, Trafalgar Wireless reserves the right to request that the Customer changes the firmware of its device so that it does not stop and start authentication requests and/or data session requests (including retries) more than on average 30 times per hour over any consecutive 12-hour period. If requested, the firmware change needs to be completed within 3 working days otherwise Trafalgar Wireless has the right to immediately and without notice cease the use of that SIM card and Trafalgar Wireless will not be responsible for any consequential or other costs as a result of the SIM's cessation.

### **6. Confidentiality**

Neither party shall without the prior written consent of the other party (during and after termination of this Agreement) use (other than in the performance of this Agreement) or divulge or otherwise disclose to any other person other than to their professional advisers, directors, officers or employees of whose province it is to know the same any Confidential Information received at any time by it in consequence of this Agreement, save that any obligations contained in this clause shall not apply in respect of any Confidential Information which is in or comes into the public domain other than as a result of any breach by the receiving party of any duty of confidentiality or in respect of any disclosure required by law or any legal or regulatory authority.

### **7. Intellectual Property**

The Customer acknowledges that all Intellectual Property Rights arising in or in relation to the Products, including any services delivered under this Agreement shall at all times belong to Trafalgar Wireless or its licensors, and the Customer shall have no rights in or to the same other than the limited rights set out in this Agreement. In purchasing the Products the Customer obtains no right to copy, reproduce or otherwise exploit the Products (or such drawings, specifications or instruction manuals) or any aspects of their design or construction (or to licence others to do so), the Customer's right being limited to using the Products in its normal course of business. Should Customer require details of any software incorporated in the Product to integrate the Products into the Customer's systems, it shall request such details

## TRAFALGAR WIRELESS LLC TERMS AND CONDITIONS OF SALE

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from Trafalgar Wireless (which shall be given at Trafalgar Wireless' discretion) and not reverse engineer or disassemble any Product unless authorised by law. The Customer shall indemnify Trafalgar Wireless against all damages, losses, penalties, costs and expenses which Trafalgar Wireless may incur or become liable to pay as a result of a claim that work done by Trafalgar Wireless at the request of the Customer infringes the intellectual property rights of a third party

### **8. Warranty**

- 8.1 Trafalgar Wireless does not warrant or guarantee the fault free working of the Products, including but not limited to the fault free working of mobile networks. Trafalgar Wireless is not liable for any service or proof of service of Customer, which is carried over Trafalgar Wireless's or any other mobile network. Trafalgar Wireless is also not liable for any losses caused by an operator or MNO ceasing or terminating mobile or other services. Under no circumstances shall Trafalgar Wireless be liable for any direct, indirect or consequential damages, including but not limited to damages that result from the Customer or any user's use of or inability to access any part of the Product or the Product's functionality, or the Customer or any user's reliance on or use of information and services provided on or through the Product or damages that result from mistakes, omissions, interruptions, loss, theft, or deletion of files, packet data or other information, errors, viruses, defects, delays in operation or transmission, or any failure of performance. Trafalgar Wireless cannot and does not accept responsibility for the security of data sent via SMS.
- 8.2 Except as expressly stated elsewhere in the Agreement, Trafalgar Wireless makes no express or implied warranty or representation (including the warranties of fitness for a particular purpose or merchantability) concerning the Products, or their accuracy or completeness and therefore excludes all conditions, warranties and representations (express or implied), statutory or otherwise in respect of the Products. The MNO or manufacturer may extend certain warranties to Trafalgar Wireless. Trafalgar Wireless may, at its sole discretion, extend the benefit of these warranties to Customer, if available.
- 8.3 Any advice or recommendation given by or through Trafalgar Wireless or its employees or agents to Customer or its employees or agents as to the storage, application or use of the Products, shall be followed or acted upon entirely at the Customer's own risk, and accordingly Trafalgar Wireless shall not be liable for any such advice or recommendation. Any representations concerning the Products by Trafalgar Wireless' employees or agents shall be deemed not to have been authorised and shall not be binding on Trafalgar Wireless unless they are confirmed in writing by a duly authorized party.

**TRAFALGAR WIRELESS LLC**  
**TERMS AND CONDITIONS OF SALE**

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8.4 Customer shall not use any third-party product that has not been approved by Trafalgar Wireless for use of the services or on the relevant network. If doubts arise in relation to the suitability of certain third-party product, the Customer shall contact Trafalgar Wireless.

8.5 Customer Acknowledges that Customer has been given an opportunity to inspect, test and analyse the Products offered and Customer is satisfied as to their suitability functionality and safety. The Customer accepts full responsibility for maintaining Products after sale in such a manner that no loss, damage or injury to persons or property shall occur. Trafalgar Wireless shall have no liability for any claim in respect of any defect in the Products which ought reasonably to have been apparent on inspection and which is made after shipment from the place of delivery, or in respect of any damage during transit.

**9. Liability**

9.1 Nothing in this Agreement shall limit or exclude the liability of either party for:

- (a) a death or personal injury caused by gross negligence;
- (b) fraud (including fraudulent misrepresentation); or
- (c) any other liability which cannot be limited or excluded by applicable law.

9.2 Subject to clause 9.1, Trafalgar Wireless nor its MNO shall have no liability to Customer or any third party however arising (whether in contract, tort (including negligence), statutory duty or otherwise) in connection with this Agreement, and/or the Products for any:

- (a) direct or indirect loss of or damage to profit, revenue, business, opportunity, anticipated savings, data, goodwill, reputation or similar; or
- (b) indirect or consequential loss or damage.

9.3 Subject to clauses 9.1 and 9.2 Trafalgar Wireless' liability under this Agreement however arising (whether in contract, tort (including negligence), statutory duty or otherwise) or in connection with its performance is expressly limited to the express provisions in this Agreement and the maximum sum of any and all claims will be limited to the lesser of either:

**TRAFALGAR WIRELESS LLC**  
**TERMS AND CONDITIONS OF SALE**

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- (a) Eighty percent of the cost of Products supplied to the Customer in the preceding calendar year; or
  - (b) £8,000.
- 9.4 Other than confirmed in a final confirmation, Trafalgar Wireless shall not be under any obligation to continue to sell all or any of the Products and/or provide any of the Services and shall be entitled to make alterations to the specifications of the Products and/or the Services, at any time, and at its sole discretion, including during the term of any contract.
- 9.5 The Customer shall indemnify Trafalgar Wireless and hold Trafalgar Wireless harmless from and against all losses, damages, expenses (including, without limitation, legal expenses), costs and liabilities for personal injury, loss of life, personal property damage, or any other claim at law or in equity arising out of or in connection with:
  - (a) any breach of this Agreement by the Customer;
  - (b) the Customer's wilful or negligent, acts or omissions; or
  - (c) any claims, demands, actions or proceedings made by any person or entity (including, without limitation, any regulator) arising out of or in connection with the provision or use of the Product by the Customer (unless the same arises solely as a result of any breach of this Agreement by Trafalgar Wireless or Trafalgar Wireless's negligent act or omission or predicated on strict product liability and no claim of Customer negligence or misuse of the Products).
- 9.6 In the event of Customer breach of this Agreement Trafalgar Wireless may immediately
  - (a) set-off any amounts owed to Customer
  - (b) resell or return any products not yet delivered to Customer
  - (c) Demand the return of Products for which payment remains outstanding
  - (d) In addition, should Trafalgar Wireless have colourable reason to believe Customer has breached this agreement, Customer shall be sent itemized invoices for the damages sustained by said breach. Customer agrees to pay said invoices in advance and, if necessary, claim for reimbursement after all alleged damages have been paid. Trafalgar wireless shall be under no obligation to hold funds in controversy on behalf of Customer. Trafalgar

## TRAFALGAR WIRELESS LLC TERMS AND CONDITIONS OF SALE

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Wireless shall solely use such funds to pay for damage caused or fee assessed due to the breach of Customer. Before Trafalgar may exercise its rights under this Section 9.5(d), it must either receive a signed opinion of counsel stating that a breach has occurred and the amounts to be invoiced are legally recoverable as damages for said breach or have incurred a fee, reimbursement request, or other penalty from the MNO arising from or related to from customers use of the Products.

### **10. Emergency Calls**

10.1 The customer expressly acknowledges that the Products, whether for mobile or fixed devices, are not intended, designed or fit for placing, carrying or supporting any emergency service or any call for the purpose of obtaining assistance, help or aid in the event of an emergency.

10.2 Neither Trafalgar Wireless nor any of its agents, partners, affiliates or employees are or will be liable to the customer or any third party in any respect for any costs or damages arising either directly or indirectly from the use of the Products for emergency calls, including calls to emergency services and calls for the purpose of obtaining assistance, help or aid in the event of any emergency.

### **11. Service suspension and termination**

11.1 Trafalgar Wireless may at any time immediately suspend all or part of the Product it provides until further notice without incurring any liability:

- (a) if it or an MNO is obliged to comply with an order, instruction or request of government, or emergency services organisation, or other competent administrative authority; or
- (b) it or an MNO needs to carry out work related to exceptional upgrading or maintenance of its facilities where those facilities must cease operation; or
- (c) in order to prevent damage or degradation of Trafalgar Wireless's or the MNO's contracting party's network integrity which may be caused by whichever reason; or
- (d) for behaviour that in Trafalgar Wireless's reasonable discretion may be deemed to be illegal; or



**TRAFALGAR WIRELESS LLC**  
**TERMS AND CONDITIONS OF SALE**

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- (e) in order to protect Trafalgar Wireless or an MNO, at its sole discretion, from legal liability which relates to a breach of obligation and/or warranties by Customer; or
- (f) if any SIMs have undertaken a level of usage either in the amount and number of transmissions or costs, that exceeds three times the expected level of use; or
- (g) in case of notifications or signs of fraud or abuse of service; or
- (h) the services of one or more of the MNOs upon which the provision of the Product hereunder is dependent suspends its provision of those services to Trafalgar Wireless under the terms of its or their relevant agreement(s) with Trafalgar Wireless; or
- (i) if payments have not been made in accordance with this Agreement.

11.2 This Agreement may be terminated prior to expiration of the Term by notice in writing as follows:

- (a) by either party in the event the other has failed to perform any material obligation required to be performed under this Agreement and such failure is not corrected by Customer within 21 days or by Trafalgar Wireless with 40 days from receipt of written notice advising of such failure from the other party; or
- (b) by the Customer after a period of 20 days in the event of a significant change in price as set out in clause 4.10; or
- (c) by Trafalgar Wireless by immediate notice in the event that one or more of the MNOs upon which the provision of services hereunder is dependent terminates its provision of those services to Trafalgar Wireless under the terms of its or their relevant agreement(s) with Trafalgar Wireless; or
- (d) by Trafalgar Wireless by immediate notice in the event that the Customer is in material breach of its obligations under this agreement. By way of example and without limitation, any breach of obligation contained in Section 5 above shall be considered a material breach; or
- (e) by either party in the event that the other party (being a company) enters into liquidation (other than for the purposes of a bona fide reconstruction or amalgamation), enters into a voluntary arrangement with its creditors, has a receiver, administrative receiver or administrator of all or any of its

## TRAFALGAR WIRELESS LLC TERMS AND CONDITIONS OF SALE

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undertakings or assets appointed, or is deemed by the relevant statutory provisions under the applicable law to be unable to pay its debts or (if an individual) presents or has presented against him a bankruptcy petition or (if a non UK national or corporation) shall suffer anything analogous to these matters to occur to him or it.

- (f) Customer agrees to reimburse Trafalgar Wireless for any termination fees from an MNO resulting from Customer's early termination of this agreement or the Products.

### **12. Anti-bribery and anti-corruption**

Each party shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act of 1977 and promptly report to the other party any request or demand for any undue financial or other advantage of any kind it receives in connection with the performance of this Agreement.

### **13. Disclosure**

13.1 The Customer agrees to:

- (a) the disclosure to any telecommunications company, debt collection agency, credit reference agency, credit or fraud monitoring scheme, security agency or credit provider of any information relating to the Customer's performance in meeting its obligations under this Agreement;
- (b) any disclosure as may be required by Trafalgar Wireless's obligations under any applicable regulatory requirement, including data protection laws; and
- (c) any disclosure required as a result of an order of any court of competent jurisdiction or by statutory authority.

### **14. Force Majeure**

14.1 Either party's performance of any part of this Agreement, other than payment obligations, shall be excused to the extent that it is hindered, delayed or otherwise made impractical by:

- (a) the acts or omissions of the other party or any MNO;

**TRAFALGAR WIRELESS LLC**  
**TERMS AND CONDITIONS OF SALE**

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- (b) flood, fire, earthquake, strike or riot; or
- (c) any other cause (whether similar or dissimilar to those listed) beyond the reasonable control of that party.

14.2 If a default due to an event listed in clause 13.1 shall continue for more than 3 months, then either party may terminate its contract with the other without any liability to the other.

**15. General**

15.1 Trafalgar Wireless may at any time sub-licence, assign, transfer, charge or deal in any other manner with any of its rights or obligations hereunder. The Customer may not sub-licence, assign, charge, or otherwise transfer any of its rights or obligations under this Agreement without the prior consent of Trafalgar Wireless which will not be unreasonably withheld.

15.2 Any notice given under this Agreement shall be in writing, in English, and may be served by leaving it at, or by sending it by pre-paid first-class post, by email or recorded delivery to, the intended recipient's address. A notice is deemed to be received when left at the recipient's address or, if sent by email on delivery or, if sent by pre-paid first-class post or recorded delivery, 48 hours from the date of posting. If such deemed receipt is not within business hours (being between 9.00 am and 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice is deemed to be received when business hours next commence.

15.3 This Agreement constitutes the entire agreement, and upon acceptance, supersedes all previous agreements, versions of this agreement, regulations, representations and discussions) between the parties in respect of the subject matter of this Agreement and neither party shall be entitled to rely on any agreement, understanding, representation or arrangement which is not expressly set out within the Agreement.

15.4 If any provision or part of a provision in this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions of this Agreement will remain in force and effect. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give the provision legal effect.

**TRAFALGAR WIRELESS LLC**  
**TERMS AND CONDITIONS OF SALE**

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- 15.5 No amendment of this Agreement shall be effective unless it is made in writing and signed by each of the parties to the Agreement or on their behalf by duly authorised representatives. For the purposes of this clause, the expression “variation” includes any supplement, deletion or replacement however effected.
- 15.6 No waiver by a party in exercising a right or remedy arising in connection with this Agreement or by law is valid unless it is in writing and signed by the relevant party or on his behalf by a duly authorised representative. A waiver of a right or remedy on one occasion shall not constitute a waiver of the same right or remedy in the future.
- 15.7 Nothing in this Agreement shall be deemed to constitute a partnership, joint venture, representative or agency relationship between the parties hereto or construed or have effect as constituting any relationship of employer and employee between the parties.
- 15.8 There are no third-party beneficiaries to this contract and it is intended that only the parties hereto, or their legitimate successors and assigns made in compliance with this agreement may enforce any of its terms.
- 15.9 References to legislation shall be construed to include references to future re-enactments and modifications from time to time. Headings to clauses shall not affect their meaning. Unless expressly stated to the contrary in this Agreement:
- (a) words and phrases like “other”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words; and
  - (b) words denoting the singular include the plural and vice versa, words denoting any one gender include all genders and vice versa, and references to persons include individuals, partnerships, bodies corporate and unincorporated associations or any other legal persons.
- 14.10 This Agreement and any dispute or claim (including any non-contractual dispute or claim) that arises out of or in connection with this Agreement shall be governed by the laws of the State of California. The parties irrevocably submit to the exclusive jurisdiction of the Courts of the Fulton County Georgia for the determination of all disputes or claims (including non-contractual disputes or claims) arising out of or in connection with this Agreement between the parties. Except if an MNO is also a party in which case the parties agree to the exclusive jurisdiction of the court in England and laws of England shall apply. The parties hereby agree that English law is reasonable due to the flow through nature of this agreement and the corresponding MNOs in order to ensure compatible rulings.