

## DRAFT TERMS AND CONDITIONS

This agreement (the "Agreement") regulates the terms of business between:

- (1) TRACKER Network (UK) Limited ("TRACKER"); and
- (2) [insert] ("the Broker"), (together "the parties") whose details are set out in the Terms of Business Application.

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

**Anti-Corruption Laws** means (a) the Bribery Act 2010; and (b) any anti-bribery or anti-corruption related provisions in criminal and anti-competition laws and/or anti-bribery, together with any amending, consolidating or successor legislation or case law which has effect from time to time in the relevant jurisdiction;

**"Commission"** means the commission payable to the Broker by TRACKER in accordance with the terms of this Agreement and the Terms of Commissions agreed between the parties;

**"Confidential Information"** means, without limitation, all commercial or proprietary information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly and whether disclosed before or after the date of this Agreement) by the disclosing party ("Disclosing Party") to the receiving party ("Receiving Party") including without limitation the Devices, Software and information relating to the Disclosing Party's know-how, trade secrets and business affairs and including (in relation to Confidential Information disclosed by TRACKER);

**"Effective Date"** means the date on which the Broker receives the Notice of Acceptance;

**"Good Industry Practice"** means that the obligations will be performed in an efficient, effective, reliable, professional and safe manner and with the standard of skill, care, knowledge and foresight which would reasonably and ordinarily be expected from an experienced person engaged in fulfilling the Broker's obligations which are the same as, or similar to, the obligations provided under these Terms of Business;

**"Intellectual Property Rights"** means any of these rights, namely: (a) patents, trade marks, rights in designs, get-up, trade, business or domain names, copyrights including rights in computer software and databases (including database rights) and topography rights (in each case whether registered or not and, where these rights can be registered, any applications to register or rights to apply for registration of any of them), and where applicable any goodwill therein; and (b) rights in inventions, know-how, trade secrets and other confidential information; and (c) any other intellectual property rights which may exist at any time in any part of the world;

**"Notice of Acceptance"** means a written notice from TRACKER advising the Broker that its Terms of Business Application has been accepted;

**"Supplemental Agreement"** means any written agreement governing the conduct of sale of goods and services and associated business transacted between the parties over and above that governed by this Agreement;

**"Terms of Business Application"** means the terms of business application issued by TRACKER which forms part of this Agreement;

**"Terms of Commission"** means the terms of commission in Schedule 2 or such other terms of commission as are updated by TRACKER and provided to the Broker from time to time; and

**"TRACKER Documentation"** means any documentation that TRACKER may issue to the Broker from time to time in relation to the sale of TRACKER's products by the Broker under this Agreement.

**"Trade Marks"** means all TRACKER's trademark registrations and applications identified together with any further trade marks, which TRACKER may permit or procure permission for the Broker by, express notice in writing to use in respect of the Devices;

## **2. TERMS OF BUSINESS AGREEMENT**

- 2.1 Except as expressly stated, references to a statute or any section of any statute include any statutory amendment, modification or re-enactment and instruments and regulations under it in force from time to time. References to regulatory rules include any amendments or revisions to such rules from time to time; references to regulatory authorities refer to any successor regulatory authorities.
- 2.2 Where expressions are not specifically defined and are capable of having a special meaning according to the usage or custom of the relevant business, such expressions are to be interpreted accordingly. References to a party shall mean either party to this Agreement as the context dictates unless otherwise specified.
- 2.3 The singular includes the plural and vice versa and any words importing gender include the other gender.
- 2.4 The headings in this Agreement are for convenience only and shall not affect its interpretation.

## **3. APPOINTMENT**

- 3.1 This Agreement will come into force on the Effective Date.
- 3.2 TRACKER hereby appoints the Broker (which appointment the Broker accepts) to undertake to sell products and services on behalf of TRACKER and subject to the terms and conditions of this Agreement. The scope of business which the Broker may transact on TRACKER's behalf from time to time under this Agreement shall be restricted to such sales of goods and services and TRACKER reserves the right to extend or restrict the rights which are conferred on the Broker under this Agreement by written notice to the Broker. This Agreement shall apply to the conduct of any TRACKER products, goods or services which are transacted between the Broker and TRACKER subject to the terms and conditions of any existing or future Supplemental Agreement.
- 3.3 Nothing in this Agreement requires TRACKER to accept any proposal for sale of goods and services or renewal of any existing subscription for services if in its sole discretion TRACKER declines to do so.
- 3.4 The Broker shall not grant any sub-agency arrangements or place any business with TRACKER which has come to the Broker via another source unless it has obtained TRACKER's prior written consent. For the avoidance of doubt any Appointed Representative of the Broker is not a sub-agent for the purposes of this Agreement.
- 3.5 The Broker will comply with all instructions given by TRACKER regarding this Agreement and shall act in the utmost good faith to TRACKER in connection with the collection and remittance of all monies due to TRACKER.
- 3.6 TRACKER reserves the right to make enquiries through credit forums or credit checking agencies or other insurance companies regarding the Broker's credit status irrespective of whether the Broker is an individual, sole trader, partnership or incorporated company. Such enquiries may include credit checks against individuals involved in the Broker's business and the Broker shall procure that such individuals are aware of the possibility of such enquiries.
- 3.7 The Broker shall forward the latest copy of its annual accounts filed with Companies House/Inland Revenue (as applicable) and/or its management accounts to TRACKER immediately upon request and shall cooperate and assist with any enquiries TRACKER may have in relation thereto.
- 3.8 The Broker shall procure that all staff engaged by it shall offer an efficient and courteous service to the public, to Customers and prospective Customers and shall act in accordance with the highest

standards of honesty and integrity at all times in the operation of this Agreement.

- 3.9 The Broker shall maintain at all times the highest professional standards of quality, skill and service in providing services and carrying out sales of goods and services on behalf of TRACKER to Customers and prospective Customers and in connection with the performance of its obligations hereunder.

#### **4. AUTHORITY**

- 4.1 Other than as expressly stated in this Agreement, the Broker agrees that it alone is responsible for any advice it gives (or should give) to, or arrangements it makes (or should make) for, its clients relating to product or service sales provided by TRACKER and that no agency arises in respect of these activities. The Broker accepts that TRACKER is not responsible for any such advice and/or arrangements and the Broker agrees to ensure that its clients are properly informed of the nature of the services that it will provide.
- 4.2 Other than as expressly stated in this Agreement or any Supplemental Agreement, no authority is given to the Broker to bind TRACKER in any way and in particular not in relation to Customer orders, subscriptions, complaints or to give any pledge of credit on TRACKER's behalf. Credit granted by the Broker to the Customer shall be at the Broker's risk and not that of TRACKER.
- 4.3 The Broker agrees to promptly pass to TRACKER any information notified to it, including without limitation any information known to it which would or could reasonably be expected to influence TRACKER's decision regarding whether to accept a Customer subscription or order. For this purpose the Broker remains the agent of the prospective Customer or the Customer and notification to the Broker of such information does not constitute notification to TRACKER.
- 4.4 Save as expressly agreed in writing by TRACKER the Broker is not empowered to vary in any way the terms or conditions of any of TRACKER's terms of business or other documentation.
- 4.5 The Broker shall not use, display or cause to be displayed an advertisement or banner or any other promotional material which refers to TRACKER or TRACKER's business without TRACKER's prior written consent.
- 4.6 Save as expressly agreed in writing by TRACKER (and as necessary in order to facilitate any EDI, or other software system services agreed with the Broker), the Broker is not authorised in any way to provide quotations on or bind TRACKER for business purposes. TRACKER will not under any circumstances guarantee quotations it has not approved.

#### **5. CONFIRMATION OF SALE AND MARKETING**

- 5.1 The Broker will use TRACKER approved publicity materials and documentation in line with the TRACKER Documentation, this Agreement and any other guidance from TRACKER.
- 5.2 The Broker will send details of each sale to TRACKER in accordance with the TRACKER Documentation and this Agreement unless agreed otherwise by TRACKER.

#### **6. PAYMENTS**

- 6.1 The Broker acts as agent for TRACKER for the purposes of receiving and holding payments for goods and services from Customers, and will send information to the Customers for each order as set out in the TRACKER Documentation or as may be agreed (including quotation letter, order letter, any terms and conditions for that order).
- 6.2 All payments and other monies received by the Broker pursuant to this Agreement shall be the property of TRACKER, and shall be held by the Broker as agent for TRACKER in trust for and on behalf of TRACKER. The Broker shall hold such monies in a bank account at a major UK clearing bank ("the Account") in accordance with the provisions of this clause and shall ensure at all times that such monies are easily identifiable as being held on trust for TRACKER.
- 6.3 Subject to deduction of Commission properly due to the Broker, all such monies shall not be applied for any other purpose than for remittance to TRACKER.

- 6.4 The Broker shall procure that the bank shall have no rights by way of charge (whether fixed or floating), encumbrance, lien or right of set-off, compensation or retention against monies standing to the credit of the Account at any time. The Broker shall keep accurate and up to date records of all monies in the Account, which shall contain sufficient detail to identify which monies are held on trust for TRACKER.
- 6.5 Regular statements of account and invoices will be issued by TRACKER showing the aggregate amount due from the Broker to TRACKER together with the amount of Commission payable to the Broker. The total amount due from the Broker to TRACKER must be remitted to TRACKER within seven (7) days of receipt of invoice and the Broker acknowledges that time is of the essence for payment. All payments remitted must be for the full amount and any other monies due to TRACKER less Commission properly due to the Broker but otherwise without deduction, or set-off. Unpaid amounts may be subject to interest at the rate in the late Payment of Commercial Debts (Interest) Act 1988.
- 6.6 The Broker shall apply a Customer credit limit of seven (7) working days or any other credit limits and terms of credit that TRACKER may specify from time to time.
- 6.7 In the event that the credit terms specified under clauses 6.5 or 6.6 are not complied with, TRACKER reserves the right to withhold service or other subscription documentation and to correspond with Customers without reference to the Broker and/or to terminate this Agreement.
- 6.8 TRACKER reserves the right to amend its requirements in relation to Customer payments and to withdraw any payment facility offered from time to time. Any changes will be notified to the Broker in writing.
- 6.9 No confirmation of supply of TRACKER product or service or other document or receipt shall be handed to a proposed Customer or Customer unless the order payment has been paid in full by the Customer or proposed Customer.
- 6.10 All goods and products supplied by TRACKER will remain the property of TRACKER until payment has been received in full.

## **7. COMMISSION**

- 7.1 The Broker is entitled to Commission in accordance with the Terms of Commissions in Schedule 2 and such Commission will be deducted by the Broker from Customer payments in respect of any sales of TRACKER's products or services provided that: (a) the Broker has received instructions from the Customer to act on his or her behalf in relation to the sale of TRACKER products; and (b) this Agreement has not terminated.
- 7.2 Commissions payable as set out in the Terms of Commissions may be varied by TRACKER on thirty (30) days' written notice.
- 7.3 Other than the Commission, the Broker will not be entitled to any other payment, fees or expenses from TRACKER. The Commission shall be held to cover all expenses, including but not limited to postages, that the Broker may incur and shall be payable only upon the payments received (less any deduction, bonus or returns allowed by TRACKER to the Customer) and retained by TRACKER in respect of Customer orders placed or renewed by the Broker through this Agreement.
- 7.4 If TRACKER agrees to any refund of a Customer subscription payment (or part thereof) the Broker shall repay to TRACKER immediately on demand the amount of Commission paid thereon.
- 7.5 In the event of Commission being claimed by more than one agent in respect of the same business TRACKER's decision as to which agent (if any) should receive the Commission shall be binding and final.
- 7.6 TRACKER reserves the right to set-off and deduct from any Commission due to the Broker from time to time any monies due to TRACKER from the Broker on any account whatsoever.
- 7.8 Where the Consumer Protection (Distance Selling) Regulations 2000 apply and a customer requests a cancellation of a sale within their 14 days cooling off period:
- (a) the Broker will return any sums paid to the customer;

- (b) if the Broker has paid any such sums to TRACKER for services, then TRACKER will return any such sums to the Broker as a credit note to the next payment;
- (c) provided that the customer's 14 day cooling off period has expired, TRACKER may charge the Broker a 'no-show' cost equivalent to costs incurred by TRACKER in relation to the cancellation and The Broker will not return any payments made by the customer. TRACKER will then deactivate the subscription and will not offer a subscription renewal at the end of the proposed subscription; and
- (d) where hardware or installation services have been accepted by a customer and performed by TRACKER, irrespective of the 14 days cooling off period, TRACKER will not be obliged to make payment of any refunded amounts to the customer or the Broker.

## **8. RESELLER/CLIENT RELATIONSHIP**

TRACKER hereby acknowledges and agrees that insofar as the Customer has chosen to appoint the Broker to advise upon and arrange TRACKER services for the Customer for a particular order, the Customer remains the client of the Broker in relation to that order. Upon an order being accepted and a subscription for service becoming active or in the case of any technical matters that the Broker and TRACKER agree that it would be in the best interests of both parties for TRACKER to be responsible for, then the Broker agrees that TRACKER may deal with the Customer directly.

## **9. TERMINATION**

- 9.1 Either party may terminate this Agreement on thirty (30) days' written notice to the other party.
- 9.2 In addition either party may terminate this Agreement immediately on written notice to the other in the following circumstances:
  - 9.2.1 where the other party has a receiver, administrative receiver, manager or administrator appointed over the whole or part of its undertaking or assets; enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986 or otherwise makes any composition with creditors; if a petition for a winding up or an administration order is presented against it or if such an order is made in respect of it; if it is unable to pay its debts when they become due within the meaning of s123 of the Insolvency Act 1986; on dissolution of partnership;
  - 9.2.2 where one party has reasonable grounds for suspecting fraud, or dishonesty by the other party its staff or agents, or any Appointed Representatives or independent contractors engaged by the other party;
  - 9.2.3 where one party has failed to remedy a breach of this Agreement within thirty (30) days' of a written request from the party not in breach to do so; or
  - 9.2.4 the other party commits a material breach of any provision of this Agreement which is not remediable.
- 9.3 TRACKER may terminate this Agreement immediately on written notice to the Broker if:
  - 9.3.1 The Broker is in breach of clause 3.4;
  - 9.3.2 The Broker is in breach of clause 13;
  - 9.3.3 the administration of the account is being operated by the Broker in a manner causing or likely to cause prejudice to Customers;
  - 9.3.4 where the Broker is a sole trader and is unable to carry on trading due to illness or other incapacity or in the event of death; or
  - 9.3.5 if TRACKER becomes aware that there has been a change of control of the Broker provided that TRACKER will not be entitled to terminate the Agreement or this Letter where the change of control has been approved by TRACKER in advance in writing. For this purpose, the Broker will notify TRACKER in writing immediately on becoming aware that any such change of control has taken or is due to take

place.

## **10. CONSEQUENCES OF TERMINATION**

10.1 Upon termination of this Agreement:

10.1.1 no further commission shall be payable other than in respect of completed business introduced by the Broker up to and including the date of termination;

10.1.2 all monies payable to TRACKER pursuant to this Agreement shall become immediately due and payable by the Broker;

10.1.3 interest shall be charged in respect of any amount remaining outstanding not paid on demand at a rate per annum equal to 3% above The Royal Bank of Scotland's base rate from time to time such interest to accrue daily and to be paid both before and after judgment;

10.1.4 the Broker shall immediately return to TRACKER all of TRACKER's books, papers, cover notes and other property and documentation (including TRACEKR Documentation) regarding this Agreement.

10.3 Any termination of this Agreement shall not affect any accrued rights or liabilities of either party nor will it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

## **11. INDEMNITY**

11.1 The Broker shall indemnify and keep indemnified TRACKER from and against all losses, liabilities, costs and expenses TRACKER incurs as a result of the Broker (or its employees, agents, Appointed Representatives, representatives or sub-contractors) exceeding the limit of its authority in any way under this Agreement and/or in respect of any risk assumed by the Broker (or its employees, agents, Appointed Representatives, representatives or sub-contractors) in TRACKER's name outside the scope of the Broker's authority set out in this Agreement.

## **12. NOTIFICATIONS**

12.1 The Broker shall notify TRACKER immediately in writing if:

12.1.1 there is any proposed change to the Broker's address; and where the Broker is incorporated, any change in the directors of the company and/or the shareholders, and where the Broker is a partnership any change in the members of the partnership;

12.1.2 there are any material occurrences relating to this Agreement, including without limitation those relating to the TRACKER products, Customers and the Broker's carrying out of the sales of TRACKER products under this Agreement; or

12.1.3 there are any threatened or actual litigation in connection with a sale of the products carried out pursuant to this Agreement.

## **13. COMPLIANCE**

13.1 The Broker's appointment under this Agreement is subject to the following conditions:

13.1.1 the Broker shall prepare and file all applications, reports, statements, and other documents or information necessary for it to qualify or otherwise obtain approval to do or continue to perform its obligations under this Agreement;

13.1.2 for the duration of these Terms and Conditions the Broker shall maintain in force, with a reputable insurance company, a minimum of £5,000,000 sterling in respect of public liability insurance policy cover per claim or series of related claims; and in other cases, £5,000,000 Sterling insurance policy cover per claim or series of related claims which may arise under or in connection with these Terms and Conditions. The Broker shall on TRACKER's request, produce the insurance certificates.

13.1.3 the Broker shall comply at all times with all applicable legislation regulations and directives applicable

to its business including without limitation the Data Protection Act 1998, Consumer Protection (Distance Selling) Regulations 2000, Anti Corruption Laws and the Consumer Credit Act 1974 as amended;

- 13.1.4 So as to protect the interest of Customers the Broker will not unduly limit the number of suppliers it is able to use and at all times will act independently and impartially placing the interests of the Customers before all other consideration.

#### **14. COMPLAINTS**

- 14.1 For the purposes of this Agreement a complaint arises when, in the Customer's opinion, the Broker or TRACKER has not performed to the standard of service the Customer is reasonably entitled to expect. A complaint includes anything that relates to expressions of dissatisfaction about financial loss, material distress and material inconvenience.
- 14.2 Subject to clause 14.3, the Broker shall handle any complaint received in accordance with its usual process. TRACKER will provide the Broker with any necessary assistance in dealing with the complaint.
- 14.3 The Broker shall refer any complaint relating to TRACKER, and its conduct to TRACKER by the next working day after receipt for TRACKER to handle. The Broker will provide TRACKER with any necessary assistance in dealing with the complaint.
- 14.4 The Broker shall ensure that appropriately competent and trained employees with the relevant level of authority to resolve complaints handle every complaint. The Broker shall also ensure that any person who is the subject of the complaint does not handle the complaint.

#### **15. AUDIT AND PROCEDURES**

- 15.1 The Broker shall maintain adequate and relevant records of its sale of TRACKER products and services (including complaints information).
- 15.2 The Broker shall allow TRACKER to access the premises of the Broker and any agents, representatives or subcontractors used pursuant to this Agreement to inspect, review and or copy without limitation all records, documents, files, audio and video tapes, computer databases, information stored electronically and any other material or information that TRACKER may require which relate to the Broker's obligations under this Agreement.
- 15.3 The Broker acknowledges that TRACKER is ISO9001 accredited and may need to audit, enter and inspect the Broker's premises, procedures and workmanship as may be notified in advance and upon reasonable notice.

#### **16. CONFIDENTIALITY**

- 16.1 During the term of this Agreement the Receiving Party shall:
- 16.1.1 keep any Confidential Information confidential and secure;
- 16.1.2 not disclose any Confidential Information to any third party other than its officers, employees, servants, agents and professional advisers to the extent reasonably necessary to enable it to perform or enforce any of its rights or obligations under this Agreement and who in each case of disclosure shall be made aware of the obligations of confidence of the Receiving Party under this clause 16 and shall be required to observe the same restrictions of use of the Disclosing Party's Confidential Information;
- 16.1.3 not use any Confidential Information for any purpose other than the performance of its obligations under this Agreement.
- 16.2 Clause 16.1 shall not apply to any Confidential Information:
- 16.2.1 to the extent that the Confidential Information is, except as a result of breach of confidentiality by the receiving party, public knowledge at the time of disclosure;
- 16.2.2 which is lawfully in the possession of the Receiving Party having been acquired from a third party not under any obligation of confidence to the Disclosing Party;

- 16.2.3 to the extent that the Confidential Information is required to be disclosed by law or pursuant to any requirement of any competent governmental, official or regulatory body.
- 16.3 The provisions of this clause 16 shall survive and continue to apply notwithstanding the expiration or termination of this Agreement howsoever caused.

## **17. GENERAL**

- 17.1 In the case of a partnership, the terms of this Agreement will be binding on any person becoming a member of the partnership. The Broker shall procure that each member of the partnership, if required by TRACKER, enters into a new agreement with TRACKER following any such change.
- 17.2 This Agreement is personal to the parties and may not be assigned, novated or otherwise transferred to any other person, firm or company without the prior written agreement of the other, provided that TRACKER may assign the benefit of this Agreement to any company in its group of companies.
- 17.3 This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
- 17.4 No failure by either party in enforcing any of its rights shall prejudice its rights to do so in the future.
- 17.5 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement which shall remain in full force and effect. In such event the parties shall negotiate in good faith with a view to replacing the invalid or unenforceable provision with a legal and enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.
- 17.6 Any notice served by one party upon the other under or in connection with this Agreement shall be in writing and shall be delivered personally or by first class prepaid letter or be sent by facsimile. Such notice or document shall be deemed to have been received when delivered in the case of personal delivery or 48 hours after posting (in the case of a first class prepaid letter), or if sent by facsimile on the day following that on which the facsimile was sent, provided that the party serving such notice shall post a copy (first class prepaid) within 24 hours of sending the notice. Such notice shall be addressed to the relevant party at its address set out on the Terms of Business Application (or at such other address designated in writing by the relevant party).
- 17.7 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 17.8 Unless otherwise stated in this Agreement, TRACKER may vary the terms of this Agreement at any time and the changes will be effective thirty (30) days' from notification.
- 17.9 Neither party shall issue any announcement and/or any information or statement to any person (including, but not limited to, the press) relating to this Agreement or any part of it without the prior written consent of the other party, provided no such consent shall be required in the case of disclosure to a regulatory body pursuant to a statutory obligation.

## **18. DISPUTE RESOLUTION**

- 18.1 The parties shall attempt to resolve any dispute, controversy or claim arising out of or in connection with this Agreement amicably and promptly by negotiation between the parties. If such dispute is not resolved by such negotiations either party may give the other party a written notice of dispute. Within fourteen (14) working days' after delivery of such notice, a senior management representative nominated by each party with the authority to settle such dispute shall meet at a mutually acceptable time and place and thereafter as long as they deem reasonably necessary to attempt to resolve the dispute.
- 18.2 In the event of a failure under clause 18.1 to resolve the dispute within thirty (30) days' of the dispute arising (or any agreed extended period) the parties shall attempt to resolve the dispute or difference by



mediation in accordance with the Centre for Dispute Resolution (CEDR) model mediation procedure ("the Mediation Procedure") before pursuing any other remedies available to them.

- 18.3 If the matter has not been resolved by the Mediation Procedure within one hundred and twenty (120) days' of the dispute arising either party may refer the dispute to the courts pursuant to clause 19 below.
- 18.4 Nothing in this clause 18 shall prevent either party from seeking urgent provisional or similar interlocutory relief (together "Interlocutory Relief") from the competent Courts before the processes described in clauses 18.1 to 18.3 have been completed, but only those steps necessary to obtain, or to challenge the grant or continuation of, such Interlocutory Relief shall be taken and the parties shall otherwise still be required to act in accordance with this clause 18 as if no application for Interlocutory Relief had been made.

## **19. GOVERNING LAW**

- 19.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of England, and both parties agree to submit to the exclusive jurisdiction of the English courts subject to clause 18.

## **21. OPEN G I ELECTRONIC TRADING**

- 21.1 With TRACKER's prior written consent the Broker may choose to trade with TRACKER electronically through the EDI
- 21.2 The Broker agrees to comply with TRACKER and OPEN G I's terms and conditions in relation to the EDI. The Broker agrees to hold and maintain an EDI licence or any other licence approval or authorisation required to fulfil its contractual obligations under this Agreement or as may be directed by TRACKER from time to time. The Broker will operate any EDI software in accordance with TRACKER's directions or any approved software house user manuals provided by TRACKER or OPEN G I to the Broker (as appropriate). The Broker will notify TRACKER if it loses any licence, approval or authorisation which is required for the Broker to fulfil its contractual obligations as soon as reasonably practicable.
- 21.4 TRACKER reserves the right to withdraw the EDI facility from the Broker at any time in whole or in part and to modify or change the software and applications used in relation to EDI.
- 21.5 All equipment and software used by the Broker in connection with EDI shall be at the Broker's sole risk and expense and TRACKER accepts no liability in relation thereto.
- 21.6 In the event TRACKER withdraws the EDI facility or the electronic cover note and proposal form facility the Broker will cease to use the facility immediately. In addition the Broker shall co-operate to permit the facility to be disabled and allow access to and co-operate with TRACKER's authorised representative to disable the facility.
- 21.7 The Broker will keep safe all information provided by TRACKER for the purpose of electronic trading. The Broker shall make such information available only to those members of its staff who have a need to know it and ensure that all access to its computer systems is password controlled.
- 21.8 In the event of any part of its computer systems being stolen the Broker will notify TRACKER immediately it becomes aware of the theft.
- 21.9 The Broker is required to backup its computer systems.
- 21.10 The Broker agrees to promptly make available to TRACKER or its agents or representatives all records of data held on TRACKER's behalf and all documents issued from the EDI system on TRACKER's behalf upon request.

## SCHEDULE 1

### TRACKER DOCUMENTATION

The Broker will send details required for each sale order to TRACKER to include the following;

The following XML sample indicates the standard output. Additional fields can be added as required but may incur additional cost.

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  <Provider>ACME</Provider>
  <Alias>ACME</Alias>
  <StartDate>08-03-2012 10:49:14</StartDate>
  <EndDate>20-04-2012 11:28:11</EndDate>
  <AddOn>
    <SchemeName>Roadside Assistance Cover</SchemeName>
    <MessageType>New Business</MessageType>
    <PolicyType>Accidental Death Benefit And Personal Accident</PolicyType>
    <CurrencyType>Sterling</CurrencyType>
    <Premium>54.19</Premium>
    <PremiumTax>3.26</PremiumTax>
    <BrokerCommission>0.00</BrokerCommission>
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    <OGIFee>0.20</OGIFee>
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    <AcceptedDate>18-04-2012 12:04:00</AcceptedDate>
    <CancellationDate/>
    <PolicyNumber>MTR_00001</PolicyNumber>
    <ProductName>Motor</ProductName>
    <ProposerName>John Smith</ProposerName>
    <ProposerDOB>01/01/1970</ProposerDOB>
    <ProposerAddressLine1>Buckholt Drive</ProposerAddressLine1>
    <ProposerAddressLine2>Warndon</ProposerAddressLine2>
    <ProposerAddressLine3>Worcester</ProposerAddressLine3>
    <ProposerAddressLine4>Worcestershire</ProposerAddressLine4>
    <ProposerPostcode>WR4 9SR</ProposerPostcode>
    <ProposerTelephone>01905 754455</ProposerTelephone>
    <BrokerName>Towergate</BrokerName>
    Vehicle registration number
    Vehicle Make
    Customer e-mail address
    Vehicle Model
  </AddOn>
</AddOnReport>
```

## SCHEDULE 2

### TERMS OF COMMISSION

#### General

1. For Broker sales of the TRACKER Monitor product with 1 year subscription period the Broker will pay to TRACKER £288 excluding value added tax (VAT).
2. For any such sales, the Broker will retain commission of [either a fixed sum £xx or as a %] for an agreed period from [start date] to [end date].
3. For Broker sales of any other TRACKER products which TRACKER may agree at its discretion to make available through the EDI platform from time to time will be subject to commercial terms which are to be agreed by TRACKER and the Broker.

## SCHEDULE 3

### ELECTRONIC TRADING ("EDI")

#### 1. DEFINITIONS

**"Adopted Protocol"** The accepted method for the interchange of Messages based on the UN/EDIFACT/UNGTDI standard for the presentation and structuring of the transmission of Messages specified in the applicable User Manual, as amended from time to time.

**"Data Log"** The complete record of data interchanged representing the Messages between TRACKER and the Broker. The 'master version' of which shall be maintained by TRACKER.

**"Message"** Data structured for presentation in a human readable form and/or data structured in accordance with the Adopted Protocol and transmitted electronically between TRACKER and the Broker, including where the context admits any part of such data.

**"User Manual"** The commercial and technical procedures and rules and legal requirements which are applicable to the transmission of Messages as amended from time to time. TRACKER shall specify the applicable User Manual to be used by the Broker. TRACKER may agree in advance in writing that the Broker will use the EDI for the supply of Messages in which case the User Manual shall be specified by OPEN G I.

#### 2. SCOPE

2.1 These Terms and Conditions shall apply to all Messages between TRACKER and the Broker and it is agreed that all such Messages shall be transmitted in accordance with the provisions of User Manual.

2.2 TRACKER reserves the right to vary or replace or terminate these Terms and Conditions on thirty (30) days' notice in writing to the Broker.

#### 3. SECURITY OF DATA

3.1 The Broker shall:

3.1.1 take all appropriate steps and establish and maintain all appropriate procedures so as to ensure that as far as reasonably practicable Messages are properly stored, are not accessible to unauthorised persons, are not altered, lost or destroyed, and are capable of being retrieved only by properly authorised persons;

3.1.2 ensure that any Messages containing confidential information is maintained in confidence and is not disclosed to any unauthorised person or used by the Broker other than for the purposes of the business transaction to which it related. Messages shall not be regarded as containing confidential information to the extent that such information is in the public domain, or the Broker is already in receipt of it prior to transmission or receives the information from a third party entitled to disclose it. Any authorised disclosure to another person shall be on the same terms as to confidentiality as contained in this clause;

3.1.3 upon becoming aware of any breach of security in relation to any Message or in relation to the procedures implemented under this clause, immediately inform TRACKER and shall use all reasonable endeavours to rectify the cause of such a breach as soon as possible.

3.2 Where permitted by law, TRACKER and the Broker may apply special protection to Messages by encryption or by other agreed means including those set out in the User Manual. Unless TRACKER and the Broker otherwise agree, the recipient of a Message so protected shall use at least the same level of protection for any other

transmission of the Message.

#### **4. AUTHENTICITY OF MESSAGES**

4.1 All Messages must identify the sender and recipient(s) and must include a means of verifying the authenticity of the Message either through a technique used in the Message itself or by some other means provided for in the User Manual.

#### **5. INTEGRITY OF MESSAGE**

5.1 The Broker shall ensure that all Messages are complete, accurate and secure against being altered in the course of transmission by him and, subject to clauses 5.2 and 5.4 shall be liable to TRACKER for the direct consequences of any failure to perform its obligations under this clause.

5.2 The Broker accepts the integrity of all Messages and agrees to accord these the same status as would be applicable to a document or to information set other than by electronic means, unless such Message can be shown to have been corrupted as a result of technical failure on the part of machine, system or transmission line.

5.3 Where there is evidence that a Message has been corrupted or if any Message is identified or capable of being identified as incorrect it shall be re-transmitted by the sender as soon as practicable with a clear indication that it is a corrected Message.

5.4 Notwithstanding clauses 5.1 and 5.3, the sender will not be liable for the consequences of an incomplete or incorrect transmission if the error is or should in all the circumstances be reasonably obvious to the recipient.

#### **6. CONFIRMATION OF RECEIPT OF MESSAGES**

6.1 Except where receipt of a Message is automatically confirmed the sender of a Message may request the recipient to confirm receipt of that Message.

6.2 When the recipient has received such a request for or where the User Manual require a confirmation that party must send it without unreasonable delay.

6.3 Each party shall process or deal with Messages received by it in accordance with any response times specified in the User Manual, or as TRACKER and the Broker may agree or, in the absence of specification or agreement, without unreasonable delay.

6.4 Confirmation of receipt in accordance with this clause 6 is intended merely to denote that a Message has been received and shall be deemed not to give rise to any legal obligation, or confer any right on any person, or constitute acceptance of any offer contained in any such Message.

#### **7. STORAGE OF DATA**

7.1 Each party shall maintain one or more Data Logs without modification.

7.2 Subject to any requirements of the national law in the country of the party maintaining a Data Log or any requirements contained in the User Manual, TRACKER and the Broker may agree a period during which the Data Log must be stored unchanged.

7.3 The Data Log may be maintained on computer media or other suitable means provided that the data can be readily retrieved and presented in readable form.

#### **8. INTERMEDIARIES**

8.1 If the Broker uses the services of a third party in order to transmit, log or process Messages, the Broker shall be liable to TRACKER for any acts, failures or omissions by such agent in its provision of the said services as though they were its own acts, failure or omissions.

**9. INTERPRETATION OF THE USER MANUAL**

- 9.1 Any question relating to the interpretation of the User Manual may be referred by TRACKER and the Broker to Centre for Effective Dispute Resolution (or its replacement organisation from time to time), acting as experts and not arbitrators, whose decision shall be final and binding on TRACKER and the Broker making the reference.