

APPY FLEET LIMITED – APPY FLEET TERMS AND CONDITIONS

The customer's attention is drawn in particular to the provisions of condition 7.

1. Definitions and Interpretation

1.1 **Definitions** In these Conditions, the following definitions apply:

Applicable Law	in any jurisdiction in which the Services are to be supplied under this Contract, any and all applicable laws, regulations and industry standards or guidance including any applicable and binding judgment of a relevant court of law or competent regulator;
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Commencement Date	has the meaning given in condition 2.3;
Conditions	the terms and conditions set out in this document as amended from time to time in accordance with condition 12.3;
Confidential Information	any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise, relating to the business, affairs, customers, suppliers, employees, affiliates, products and/or methods of the Supplier or the Customer and disclosed to or otherwise obtained by the other party in connection with the Contract;
Contract	the contract between the Supplier and the Customer for the Services which incorporates these Conditions, the Order, and the Specification;
Customer	the person or firm who procures the Services from the Supplier;
Deliverables	all documents, products and materials developed by the Supplier or the Supplier Personnel as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts), whether made available to the Customer through the Portal or otherwise;
Driver	an employee of the Customer added to the Portal by the Customer;

Driver App	the app to be downloaded by each Driver (for iPhones download here , for Android phones download here , for Windows phones download here);
Driver Availability	the availability and ability of each Driver to use the Driver App as and when the Customer reasonably requires;
Force Majeure Event	has the meaning given in condition 11;
Insolvency Event	has the meaning given in conditions 10.2(b) and 10.2(c);
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
Order	the Customer's order for the supply of the Services submitted through the Supplier's website, or, if the Supplier's website is unavailable or the Supplier specifically agrees, the Customer may submit their order via email to info@appyfleet.co.uk ;
Portal	the Fleet Manager Portal created and maintained by the Supplier, through which the Customer can access the Services;
Privacy Policy	the Supplier's privacy policy, as updated from time to time and notified to the Customer and the Drivers, the current version of which is set out here www.appyfleet.co.uk/DownloadFile?fileName=cookie_and_privacy_policy ;
Services	the services, including any Deliverables, to be provided by the Supplier under the Contract;
Specification	the specification for the Services that is set out on the Supplier's website as at the date of acceptance of the Customer's Order, as updated and made available on the Supplier's website from time to time;

Supplier	Appy Fleet Limited (registered in England and Wales with company number 10387540);
Supplier Materials	all materials, equipment and tools, drawings, specifications and data supplied or made available by the Supplier to the Customer;
Supplier Personnel	the personnel, including subcontractors, engaged by the Supplier in the performance of the Contract;
Term	the period from the Commencement Date until termination, howsoever caused, or expiry of this Contract, provided that where no expiry date is specified within the Order then the Contract shall remain in force on a rolling basis;
Vehicle	a Bluetooth-enabled vehicle (whether directly or using a Bluetooth adaptor) owned or used by the Customer or, where applicable, its Drivers in the course of the Customer's business which is registered within the Portal and allocated to a slot;
Virus	any thing or device (including any software, code, file or programme) which may: <ul style="list-style-type: none"> (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; (b) prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or (c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 **Interpretation** In these Conditions, the following rules apply:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended, re-enacted or superseded from time to time and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. **Basis of contract**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to procure the Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, which shall, unless the Supplier specifies otherwise, take the form of an automated email, at which point the Contract shall come into existence (**Commencement Date**). Either party may terminate the Contract in accordance with condition 10.
- 2.4 Any drawings, descriptive matter, or advertising produced by the Supplier and any illustrations contained on the Supplier's website are produced for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any document that is inconsistent with these Conditions.

3. **Performance of the Services**

- 3.1 The Supplier shall from the Commencement Date and for the duration of the Contract provide the Services to the Customer in accordance with the Contract in all material respects.
- 3.2 The Supplier shall use reasonable endeavours to ensure the availability of the Services, however the Customer acknowledges that:
- (a) the nature of the Services (including access to the Portal through the internet);
 - (b) the provision of the Services is dependent upon the Customer fulfilling its obligations under these Conditions and Driver Availability, which the Customer acknowledges are beyond the Supplier's control.
 - (c) there may be circumstances beyond the Supplier's control which restrict Driver Availability including but not limited to disablement of the Driver App whether actively caused by a party other than the Supplier or the Customer or due to loss of connectivity;

such that the Supplier cannot guarantee the availability of the Services or that the Portal will be secure or free from bugs or viruses.

- 3.3 The Customer acknowledges that, unless otherwise agreed between the parties or notified by the Supplier, each Driver may only be registered to one fleet manager at any one time. Accordingly, if a Driver is already registered and using Appy Fleet with another fleet manager this will affect the Driver Availability (in accordance with condition 3.2(b)) and that Driver will not be able to be linked with the Portal.

3.4 The Supplier warrants that it shall provide the Services with reasonable care and skill. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

4. Customer obligations

4.1 The Customer shall:

- (a) ensure that the information submitted in the Order is complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide such information to the Supplier as the Supplier may reasonably request for the purpose of providing the Services and ensure that such information is accurate in all material respects;
- (d) ensure that each Driver downloads the Driver App to a compatible device (as set out in the Specification) and updates the Driver App from time to time. The Customer acknowledges that in order to receive updates to the Driver App, it will need to ensure that:
 - (i) push notifications are enabled on the device or devices on which the Driver App is downloaded; and
 - (ii) any instructions, howsoever issued, of the Supplier relating to actions required to facilitate any and all updates to the Driver App are promptly followed;
- (e) ensure that when linking each Driver and Vehicle to the Portal, the Customer provides to the Driver a unique identifying code generated through the Portal for that Driver, as applicable (**Identifying Code**). The Customer shall ensure that each Driver inserts the relevant Identifying Code into the Driver App to allow the Customer to link each Driver and the relevant Vehicle(s) through the Portal;
- (f) ensure that it has sufficiently secure and robust access to the internet (including virus protection software) to be able to access the Portal;
- (g) ensure that the Portal is updated from time to time, including as the Supplier may direct from time to time;
- (h) comply with all Applicable Law with respect to its activities under the Contract; and
- (i) comply with conditions 4.2 and 4.4.

4.2 The Customer agrees and acknowledges that management of the Portal, including registering additional Vehicles and allocating Vehicles to Slots, is the Customer's responsibility. The Customer shall use the Portal in accordance with the instructions provided to the Customer by the Supplier and set out on the Supplier's website (as updated and notified to the Customer by the Supplier from time to time).

4.3 The Customer acknowledges the Supplier's advice that use of the Portal should not be the sole tool used to monitor Driver performance and agrees that it shall not in any circumstances

rely solely upon any information or data provided through the Portal to assess a Driver's performance.

4.4 When using the Portal and the Services, the Customer must comply with all Applicable Law and the terms of this Contract. In particular, the Customer must not (and shall procure that each Driver shall not):

- (a) use the Portal or the Services in any unlawful manner or in a manner which promotes or encourages illegal activity or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including Viruses, or harmful data, into the Portal, any Service or any operating system;
- (b) attempt to gain unauthorised access to the Portal or any networks, servers, operating systems or computer systems connected to the Portal;
- (c) modify, adapt, translate or reverse engineer any part of the Portal or re-format or frame any portion of the pages comprising the Portal, save to the extent expressly permitted by this Contract or by Applicable Law;
- (d) infringe the Supplier's Intellectual Property Rights (including, without limitation, copyright infringement) or those of any third party in relation to the Customer's use of the Portal or the Services (to the extent that such use is not licensed by this Contract);
- (e) transmit any material that is defamatory, offensive or otherwise objectionable or which may or is likely to damage the reputation of the Supplier in relation to the Customer's use of the Portal; and/or
- (f) collect any information or data from the Portal (save as required for the purpose of obtaining the benefit of the Services) or the Supplier's systems or attempt to decipher any transmissions to or from the servers hosting the Portal or running any Service;

4.5 When using the Portal and the Services, the Customer must ensure that it has all required data subject consents in place to ensure compliance with Applicable Law.

4.6 The Customer shall indemnify the Supplier in respect of any claims arising from a breach of condition 4.4 and condition 4.4.

4.7 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall, without limiting its other rights or remedies, have the right to suspend provision of the Services until the Customer remedies the Customer Default;
- (b) the Supplier shall not be liable for any losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this condition 4.2; and
- (c) the Customer shall reimburse the Supplier on demand for any losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. **Charges (reservation of the Supplier's position)**

5.1 The Supplier shall provide the Services to the Customer at no cost, however, the Supplier reserves the right to introduce charges from time to time, in which case the Contract will terminate and the parties shall enter into a new contract for the provision of paid services.

6. Intellectual Property Rights

- 6.1 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Supplier Materials are and shall remain the sole property of the Supplier or (as the case may be) the third party rights owner.
- 6.2 All Intellectual Property Rights arising in the performance of the Services (including the Deliverables) shall be owned by the Supplier.
- 6.3 The Customer may use the Deliverables only for the purpose of receiving the Services. The Customer shall not supply the Deliverables to any third party or use the Services or the Deliverables to provide a service to any third party without the Supplier's prior written consent.
- 6.4 The Supplier may inform third parties that it provides or has provided the Services to the Customer. The Customer licenses the Supplier to use its name and logo(s) for this sole purpose.

7. Liability

- 7.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its Supplier Personnel (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) liabilities incurred by the Customer to a third party, together with reasonable legal costs, as a direct result of any award made by a court against the Customer for infringement of that third party's Intellectual Property Rights arising out of or in connection with the receipt, use or supply of the Services (**Infringement Claim**), provided that:
 - (i) the Customer shall where reasonably practicable give the Supplier a reasonable opportunity to remedy the Infringement Claim before the Customer incurs any liabilities in responding to the Infringement Claim itself, or as soon as practicable thereafter;
 - (ii) where it is not possible to remedy the Infringement Claim in accordance with condition 7.1(c)(i), the Customer shall promptly allow the Supplier to assume full management of each Infringement Claim (at the Supplier's cost) and shall provide all reasonable assistance to the Supplier in managing the Infringement Claim; and
 - (iii) the Supplier's liability in respect of each Infringement Claim shall not exceed £1,000;
 - (d) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1979;
 - (e) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (f) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

7.2 Subject to condition 7.1, the Supplier shall under no circumstances be liable to the Customer, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for:

- (a) any indirect, special, consequential or pure economic loss or damage;
- (b) any loss of profits, anticipated profits, revenue or business opportunities; or
- (c) damage to goodwill;
- (d) data roaming charges incurred by the Customer and/or the Drivers;

in each case arising as a direct or indirect result of the relevant claim.

8. Confidentiality

8.1 Subject to condition 8.2, each party to the Contract (the **Recipient**) shall:

- (a) use the other party's (the **Disclosing Party's**) Confidential Information solely for the performance of the Contract; and
- (b) keep the Disclosing Party's Confidential Information strictly confidential and not, without the Disclosing Party's prior written consent, disclose it to any other person.

8.2 The Recipient may disclose the Disclosing Party's Confidential Information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Recipient's rights or carrying out its obligations under or in connection with the Contract and the Recipient shall ensure that such persons comply with this condition 8.2;
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; and
- (c) if such information is public knowledge or already known to the Recipient at the time of disclosure or subsequently becomes public knowledge other than by breach of any duty of confidentiality (contractual or otherwise).

8.3 This condition 8 shall survive termination of the Contract.

9. Data Protection

9.1 The Supplier acknowledges and agrees that for the purposes of the Contract and other than in the special circumstances set out in the Privacy Policy, the Customer is the data controller and the Supplier is a data processor in respect of all personal data processed pursuant to the Contract. Where the Supplier is a data controller, the provisions set out in the Privacy Policy shall apply. In either case, you confirm that where you provide us with personal data relating to Drivers that you have the right to do so, including consent from the relevant Driver.

9.2 In processing personal data for the purposes of the Contract the Supplier shall:

- (a) do so only for the purpose of performing its obligations under the Contract;

- (b) comply with all relevant instructions or requests that the Customer may give to the Supplier from time to time concerning such processing;
- (c) take appropriate technical and organisational security measures to safeguard such data against unauthorised or unlawful processing and against accidental loss or destruction of, or damage to, that data, having regard to:
 - (i) the nature of such data and the harm which could result from such processing, loss, destruction or damage; and
 - (ii) the state of technological development and the cost of implementing such measures;
- (d) not cause or allow such data to be transferred out of or otherwise processed outside the European Economic Area save that the Customer acknowledges that where Vehicles travel outside the European Economic Area and the Driver does not switch the App off data will still be captured by the Driver App as usual;
- (e) not pass such data to any third party save to the Supplier Personnel, except: (i) with the Customer's prior written consent in each case; and (ii) where the Supplier has entered into a written contract with that third party under which that third party agrees to obligations that are materially equivalent to those set out in this condition 9; or (iii) to comply with Applicable Law;
- (f) procure that all Supplier Personnel who reasonably require access to such data for the purposes of the Contract comply with the terms of this condition 9; and
- (g) allow the Customer access (on no less than 30 days' notice or such other period as the parties may agree from time to time) to its premises and/or any other location where personal data is processed under the Contract to allow the Customer to audit the Supplier's compliance with this condition 9. For the purposes of any such audit, the Supplier shall permit and/or shall procure that the Customer shall be permitted access to such premises and/or locations, facilities, personnel, systems, records, books, accounts and information as may reasonably be required by the Customer for the purpose of such audit.

9.3 For the purpose of this condition 9:

- (a) the terms **personal data**, **data controller**, **data processor** and **process** have the meanings given to them in the Data Protection Act 1998; and
- (b) the Supplier's obligations in respect of personal data exclude any personal data relating to the Supplier Personnel generated by the Supplier for the purposes of administering the Contract.

10. Termination

10.1 The Contract shall commence on the Commencement Date and, subject to earlier termination in accordance with the terms of the Contract, shall continue in full force and effect until the Supplier exercises its right to terminate in accordance with condition 10.4 of these Conditions,

without limiting its other rights or remedies, or the Customer gives the Supplier no less than 5 Business Days' written notice to terminate.

10.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party:

- (a) commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 Business Days of being notified in writing to do so;
- (b) (being a body corporate) is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, or takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application, the entering into of a board resolution or the giving of any notice) by it or by any other person in respect of any of these circumstances (an **Insolvency Event**);
- (c) (being an individual) is declared bankrupt, enters into any composition or arrangement with his creditors, has a receiver appointed to any of his assets, or ceases to carry on business, or takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application or the giving of any notice) by him or any other person in respect of any of these circumstances (also an **Insolvency Event**) (or, the other party being a partnership, has a partner to whom any Insolvency Event applies);
- (d) (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or
- (e) suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

10.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Supplier and the Customer if the Customer becomes subject to an Insolvency Event or the Supplier reasonably believes that the Customer is about to become subject to any of them. The Supplier may also suspend the Services under the Contract where it, in its sole discretion considers such suspension is commercially necessary.

10.4 The Customer acknowledges that because the Services are provided on a no cost basis, the Supplier may need to withdraw provision of the Services at any time where the Supplier, in its sole discretion, believes that it is no longer financially viable to continue to provide the Services. Accordingly the Customer acknowledges and agrees that the Supplier may therefore terminate the Contract for convenience with no less than 10 Business Days' notice. Where practicable, the Supplier shall use reasonable endeavours to provide reasonable notice in advance of the withdrawal of the Services.

10.5 On expiry or termination of the Contract for any reason:

- (a) the parties' rights and remedies that have accrued as at termination shall be unaffected; and
- (b) conditions that expressly or by implication survive termination of the Contract shall continue in full force and effect;
- (c) the Supplier shall automatically switch off all linked Driver Apps and the Portal within 5 Business Days from the date of notice of termination or, if later, the date of termination.

11. **Force majeure**

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event which hinders, delays or prevents performance of a party's obligations and which is either beyond that party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure or interruption of energy sources, other utility service or transport network, acts of God, war, threat of or preparation for war, armed conflict, terrorism, riot, civil commotion, interference by civil or military authorities, sanctions, embargo, export or import restriction, quota or prohibition, breaking off of diplomatic relations, national or international calamity, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosion, collapse of building structures, fire, flood, drought, storm, earthquake, volcanic eruption, loss at sea, epidemic, pandemic or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

12. **General**

12.1 **Assignment subcontracting and other dealings**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, declare a trust over, subcontract, delegate or deal in any other manner with any or all of its rights or obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, declare a trust over, subcontract, delegate or deal in any other manner with any or all of its rights or obligations under the Contract without the Supplier's written consent.

12.2 **Entire agreement** The Contract (incorporating these Conditions) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

12.3 **Variation** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

12.4 **Waiver** Except as set out in condition 2.5, no failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of or prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 **Severance** If any provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification or deletion of a provision under this condition shall not affect the validity and enforceability of the rest of the Contract.

12.6 **Notices**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or by a signed-for next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice shall be deemed to have been received: (i) if delivered by hand, on signature of a delivery receipt or, if not signed for, at the time the notice is left at the correct address; (ii) if sent by pre-paid first-class post, at 09:00 on the second Business Day after posting; and (iii) if sent by a signed-for next working day delivery service, at the time recorded by the delivery service.
- (c) This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- (d) A notice given under the Contract is not valid if sent by email unless:
 - (i) for a notice from the Customer to the Supplier, the notice is sent to support@applyfleet.co.uk;
 - (ii) for a notice from the Supplier to the Customer, the notice is sent to the email address used by the Customer during the sign-up process (or as updated and notified to the Supplier in writing);

and, in either case, is acknowledged by the receiving party.

12.7 **Third party rights** No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.

12.8 **Relationship** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Supplier and the Customer, constitute either party the agent of the other party or authorise either party to make or enter into any commitments for or on behalf of the other party.

- 12.9 **Governing law** The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales.
- 12.10 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).