

**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:

<b>Adequacy Decision</b>	means a finding under Article 25(2) of the Data Protection Directive that a country or territory ensures an adequate level of protection within the meaning of Article 25 of the Data Protection Directive or (as applicable) a finding under Article 45(1) of the GDPR that a country, a territory or one or more specified sectors within that country, or the international organisation in question ensures an adequate level of protection within the meaning of Article 45 of the GDPR;
<b>API</b>	the Supplier's application programming interface, accessible via the Portal;
<b>Applicable Law</b>	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;
<b>Billing Date</b>	the first Business Day of a calendar month;
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
<b>Charges</b>	the charges payable for the Services as set out in an Order;
<b>Commencement Date</b>	the date on which an Order is accepted by the Supplier and on which a Contract shall come into existence;
<b>Conditions</b>	the terms and conditions set out in this document as amended from time to time;
<b>Confidential Information</b>	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;

<b>Contract</b>	the contract between the Supplier and the Customer for the Services which incorporates these Conditions, the Order, and the Specification;
<b>Customer</b>	the person or firm who procures the Services from the Supplier;
<b>Customer Default</b>	any act or omission of the Customer or failure by the Customer to perform any relevant obligation which results in the prevention or delay of the Supplier's performance of any of its obligations under the Contract;
<b>Data Controller</b>	means as set out in the Data Protection Act 1998 or (as applicable) has the meaning given to " <b>controller</b> " in the GDPR;
<b>Data Processor</b>	means as set out in the Data Protection Act 1998 or (as applicable) has the meaning given to " <b>processor</b> " in the GDPR;
<b>Data Protection Directive</b>	means Directive 95/46/EC on the protection of individuals with regard to the processing of Personal Data and on the free movement of such data;
<b>Data Protection Laws</b>	means before 25 <sup>th</sup> May 2018, the Data Protection Act 1998 and the Data Protection Directive and from 25 <sup>th</sup> May 2018 the GDPR;
<b>Deliverables</b>	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, including the Premium Features;
<b>Disclosing Party</b>	a party who discloses Confidential Information under the Contract;
<b>Driver</b>	an employee of the Customer added to the Portal by the Customer;
<b>Driver App</b>	the app to be downloaded by each Driver to allow the receipt of the Services by the Customer;
<b>Driver Availability</b>	the availability and ability of each Driver to use the Driver App as and when the Customer reasonably requires;

**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;

**GDPR**

means Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data;

**Group**

all group undertakings of the relevant party from time to time, 'group undertaking' having the meaning set out in section 1161(5) of the Companies Act 2006 and any reference to a "**Group Company**" means any such group undertaking;

**Identifying Code**

the unique identifying code generated through the Portal for a Driver when the Customer links that Driver and Vehicle to the Portal;

**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;

**Non-adequate Country**

means a country or territory which is outside the European Union and in respect of which there has not been an Adequacy Decision. For the purposes of this Agreement, "**Non-adequate Country**" includes the United States of America;

**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;

**Personal Data**

means the definition of personal data as set out in the Data Protection Laws;

**Premium Features**

those features of the Services which are not available to customers using the free version of the service, as detailed in the Specification from time to time;

**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;

**Recipient**

a party who received Confidential Information from the Disclosing Party;

**Services**

the services, including any Deliverables, to be provided by the Supplier under the Contract;

**Special Conditions**

any additional terms and conditions or amendments to these Conditions which may be agreed between the parties, and as set out in the Order;

**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);

<b>Supplier Materials</b>	all materials, equipment, tools, drawings, specifications and data supplied or made available by the Supplier to the Customer;
<b>Supplier Personnel</b>	the personnel, including subcontractors, engaged by the Supplier in the performance of the Contract;
<b>Term</b>	the period from the Commencement Date until termination or expiry of this Contract, howsoever caused;
<b>Vehicle</b>	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;
<b>Virus</b>	any thing or device (including any software, code, file or programme) which may: <ul style="list-style-type: none"> <li>(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;</li> <li>(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</li> <li>(c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;</li> </ul>
<b>VAT</b>	value added tax at the then prevailing rate.

## 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;
- (c) in the event of any inconsistency between these Conditions and any Special Conditions, the Special Conditions shall take precedence.

## 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.
- 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:
  - (a) the nature of the Services (including access to the Portal and the API through the internet) are reliant on the Customer ensuring it has appropriate, uninterrupted internet access;
  - (b) that the provision of the Services is dependent upon the Customer fulfilling its obligations under these Conditions and Driver Availability, which are beyond the Supplier's control;
  - (c) that 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.
- 3.5 During the Term, the Supplier shall provide a support service to the Customer, such support service to be available between the hours of 9am to 5pm on a Business Day.
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 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 4.5.
- 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 sole 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 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 The Customer warrants that it has all necessary and relevant statutory or other relevant legal authority to enter into this Contract in respect of its processing of Driver personal data. For the avoidance of doubt the Customer acknowledges and agrees that whilst the Supplier facilitates the processing of Driver personal data through the Driver App it shall have no responsibility or control in any way of the Customer's use of the Driver App nor of the Customer's collection and/or processing of Driver personal data for any reason once the Driver App has been activated.
- 4.5 When using the Portal, the Services and/or the API, the Customer must comply with all Applicable Law and the terms of this Contract. In particular, the Customer must not (and shall procure that (where applicable) 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 API or 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;
- 4.6 Without prejudice to condition 4.4, when using the Portal, the API and the Services, the Customer must ensure that it has all required data subject consents in place to ensure



compliance with Applicable Law, and shall, on request, provide copies of these consents to the Supplier to allow it to satisfy itself of the Customer's compliance with this condition 4.6.

4.7 Without prejudice to condition 4.5, when using the API, the Customer must:

- (a) promptly make and maintain all necessary arrangements to access, use and interface with the API in accordance with such specifications and guidance as the Supplier may stipulate from time to time (including by making such specifications and guidance available through the Portal);
- (b) implement industry-standard security measures and comply with the Supplier's security requirements as notified to the Customer from time to time (including by making such specifications and guidance available through the Portal) so as to protect the API and the Supplier's systems from the risk of penetration by, or exposure to, a third party or any other security threat to the Supplier and/or the API and/or the Portal;
- (c) only use the API and, subject to the Supplier's prior written consent, allow its third party suppliers to access and use the API for the Customer's own internal purposes and those of its Group Companies;
- (d) allow the Supplier the opportunity, on reasonable notice and always during the hours of 9am to 5pm on a Business Day, to audit compliance with this condition, including allowing the Supplier access to the Customer's systems, or providing the Supplier with alternative evidence to the Supplier's reasonable satisfaction, that the Customer has complied with the provisions of this condition and condition 4.5;
- (e) on reasonable notice, take such steps as the Supplier requires to integrate any modifications or updates to the API, specifications or guidelines.

4.8 The Supplier reserves the right to restrict the Customer's access to the API and/or restrict the support provided to the Customer if the Supplier reasonably determines, in its sole discretion acting reasonably, that the volume of queries originating from the Customer's use of the API is unduly burdening the API (or any of the associated systems, network devices or data, including the Portal), and/or creating capacity-related issues or resulting in any additional costs. The Supplier will promptly notify the Customer of any such restrictions and the Customer shall make any necessary changes to the way in which its applications and systems interact with the API within 30 days of the Supplier's notice requiring the Customer to do so. If the Customer fails to do so, the Supplier reserves the right to suspend the Customer's access to the API, at no liability to the Supplier, and, for the avoidance of doubt, the Customer shall not be entitled to any rebate of the Charges in such circumstances.

4.9 The Customer shall indemnify the Supplier in respect of any claims arising from a breach of conditions 4.4, 4.5, 4.6 and 4.7.

4.10 In the event of a 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 4.210; 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 and Payment

5.1 The Supplier shall invoice the Customer for the Services in advance, on a monthly basis, on the Billing Date. Charges are payable by the Customer in pounds sterling and shall be calculated in accordance with the Charges set out in the Specification or as otherwise agreed in writing between the parties from time to time.

5.2 Each such invoice shall be payable by the Customer by direct debit within 28 days of the date of invoice.

5.3 In the event that Trak is unable to collect payment for an invoice by direct debit, Trak shall notify the Customer and payment shall be made by the Customer by electronic payment to the following account, no later than 5 Business Days from receipt of such notice:

HSBC Plc, 47 Eastgate St, Chester CH1 1XW

Account Name - Trak (Global Solutions) Limited

Sort code - 40 17 14

Account No. 3239 4758

5.4 Where payment is not made by direct debit, the Customer acknowledges and agrees to payment of an additional payment and handling charge of 3 per cent (3%) of the outstanding sum (as amended and notified by the Supplier in writing from time to time) to cover the processing fees incurred by the Supplier in relation to electronic payments.

5.5 The Supplier reserves the right to review the Charges on a yearly basis. Any variation to the Charges shall take effect on reasonable notice to the Customer.

5.6 All payments to be made by the Customer to the Supplier under this Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Customer is required by law to make any such deduction or withholding or the Customer has provided notice in writing that it disputes a particular amount. For the avoidance of doubt the Customer shall pay all undisputed amounts.

5.7 If the Customer fails to make payment of the Charges when due, the Supplier may:

- (a) suspend the Customer's access to the Premium Features until all outstanding payments are received in cleared funds; and/or
- (b) charge interest on the amount from the due date to the date of receipt by the Supplier (whether or not after judgment), at the annual rate of 2% above the base lending rate

from time to time of Barclays Bank plc, accruing on a daily basis and being compounded Quarterly until payment is made, whether before or after any judgment.

- 5.8 In the event that any sums due and owing under this Contract remain unpaid for 20 Business Days after their due date, and provided always that the Supplier has notified the Customer that such outstanding sums remain unpaid, the Supplier shall be entitled to terminate this Contract on giving 5 Business Days' notice to the Customer.
- 5.9 The Charges are exclusive of VAT which shall be payable in addition.
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 including all data arising out of the use of the Driver App which shall include, but not be limited to, journey data.
- 6.3 The Customer may use the Deliverables only for the purpose of receiving the Services, and to that extent the Supplier grants to the Customer a limited, revocable, non-exclusive, royalty-free license to use the Deliverables during the Term. 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. A breach of this condition 6.3 shall be a breach of this Contract which is incapable of remedy.
- 6.4 The Customer shall use reasonable endeavours to prevent any infringement of the Intellectual Property Rights in the Supplier Materials and shall promptly report any such infringement that comes to its attention.
- 6.5 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.
- 6.6 For the avoidance of doubt, the right for the Customer to access and utilise the API is subject to condition 6.1 and shall not affect the pre-existing Intellectual Property Rights of either party.
7. Liability
- 7.1 Nothing in these Conditions shall limit or exclude either party's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of any person acting on its behalf;
  - (b) fraud or fraudulent misrepresentation;
  - (c) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability;
  - (d) subject to condition 7.2(c), any indemnity given by a party under this Contract.

7.2 The Supplier shall indemnify the Customer from and against all losses, costs, expenses and demands suffered by the Customer as a direct result of any actual or alleged infringement of a 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:

- (a) 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;
- (b) where it is not possible to remedy the Infringement Claim in accordance with condition 7.2(a), 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
- (c) the Supplier's liability in respect of each Infringement Claim, or series of related Infringement Claims, shall not exceed £1,000,000.

7.3 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;
- (c) damage to goodwill; or
- (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.

7.4 Subject to conditions 7.1, 7.2 and 7.3, the Supplier's total aggregate liability in each calendar year of the Term for any event or series of related events, whether arising in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract or any collateral contract shall not exceed £100,000.

7.5 Subject to condition 7.1, the Customer's total aggregate liability in each calendar year of the Term for any event or series of related events, whether arising in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract or any collateral contract shall not exceed £100,000.

## 8. Confidentiality

8.1 Subject to condition 8.2, the Recipient shall:

- (a) use 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 Applicable 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 Each term used in this condition 9 shall have the meaning given in the Data Protection Laws unless otherwise stated. References to "**Articles**" in this condition 9 shall mean the Articles of the GDPR.

9.2 The Supplier acknowledges and agrees that for the purposes of this Contract the Customer is the Data Controller and the Supplier is a Data Processor in respect of all Personal Data processed pursuant to this Contract.

9.3 The Customer shall comply with its obligations under Data Protection Laws in respect of all Personal Data Processed pursuant to this Contract.

9.4 The Supplier shall use its reasonable commercial endeavours to process Personal Data only for the purpose of performing the Services during the Term and on the documented instructions that the Customer may give to it from time to time and in compliance with the Data Protection Laws.

9.5 The Supplier shall use its reasonable commercial endeavours to:

- (a) not do anything that would put the Customer in breach of the Data Protection Laws;
- (b) put in place, before undertaking any processing, and maintain thereafter appropriate technical and organisational measures in accordance with Articles 5 and 32;
- (c) provide the Customer with such assistance as the Customer reasonably requires to ensure compliance with Articles 32 to 36 (inclusive), taking into account the nature of the processing and the information available to the Supplier;
- (d) maintain a record of all of its processing activities under or in connection with this Contract and of the measures implemented under this condition 9 in accordance with the requirements of Article 30;

- (e) provide the Customer with such information as the Customer reasonably requests from time to time to enable the Customer to satisfy itself that the Supplier is complying with its obligations under this condition 9.5, provided that the Customer shall not make more than 2 requests in any rolling 12-month period;
- (f) not cause or allow Personal Data to be transferred to and/or otherwise processed in a Non-adequate Country without the Customer's prior written approval;
- (g) not transfer Personal Data to, or permit the processing of Personal Data by, any third party except:
  - (i) with the Customer's prior written consent (such consent not to be unreasonably withheld or delayed); and
  - (ii) where the Customer has given such consent, the Supplier has entered into a written contract with that third party under which that third party agrees to obligations that are equivalent to the Supplier's obligations set out in this condition 9.5

unless required to do so by Applicable Law in which case the Supplier shall (to the extent permitted by Applicable Law) give the Customer written notice of such requirement;

- (h) at any time upon request, and in any event upon termination or expiry of this Contract, deliver up or securely delete or destroy all Personal Data in the Supplier's possession (except for such Personal Data which it is required to keep in compliance with Applicable Law and/or the Data Protection Laws);
- (i) provide all assistance reasonably requested by the Customer from time to time in undertaking any data protection impact assessments and consultation with a supervisory authority that the Customer may reasonably decide to undertake; and
- (j) ensure its employees are subject to binding obligations of confidentiality in respect of Personal Data processed under this Contract.

9.6 If the Supplier becomes aware of or suspects a Personal Data Breach it shall notify the Customer without undue delay and in any event within 72 hours of becoming aware of it. The Supplier shall, at the Customer's cost, provide all assistance reasonably requested by the Customer to ensure that the Customer complies with its obligations under Articles 33 and 34. The Supplier shall take all reasonable steps to mitigate any risks of a Personal Data Breach occurring in the future.

9.7 If for any reason the Supplier is unable to provide any of the information set out in Article 33 within the timescale referred to in condition 9.6, it shall provide a written explanation to the Customer as soon as possible.

9.8 The Supplier shall not disclose any information about or in connection with any unauthorised or unlawful processing or accidental loss or destruction of, or damage to, Personal Data, other than:

- (a) to the Customer;
  - (b) with the Customer's express prior written approval; or
  - (c) as required to be disclosed by Applicable Law.
- 9.9 The Supplier shall use its reasonable commercial endeavours to procure that all Supplier Personnel and any sub-processors who have access to Personal Data in connection with this Agreement comply with the terms of this condition 9.
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 and subject always to condition 10.5, shall continue in full force and effect until terminated by a party giving not less than one calendar month's written notice to the other.
- 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 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;
- (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; and
- (d) the Customer shall pay all rendered but unpaid invoices within 10 Business Days of the date of termination, and the Supplier shall be entitled to render invoices to the Customer in respect of any Services rendered but which have not yet been invoiced, such invoices to be paid by the Customer within 10 Business Days of receipt.

11. Force majeure

11.1 Provided that it has complied with the provisions of condition 11.2, 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.

11.2 If either party is affected by a Force Majeure Event, it shall promptly notify the other party of the nature and extent of the circumstances and will make reasonable endeavours to mitigate the effects of such event on the performance of its obligations under this Contract.

11.3 Either party may defer the date of delivery, or cancel an Order or request a variation to an Order if the Supplier is prevented from or delayed in carrying on its business for a period in excess of ten (10) Business Days by a Force Majeure Event.

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 prior written consent.

**Entire agreement**

12.2 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.

#### **Variation**

- 12.3 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.

#### **Waiver**

- 12.4 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.

#### **Severance**

- 12.5 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.

#### **Third party rights**

- 12.7 No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms and the terms of the Contracts (Rights of Third Parties) Act 1999 are excluded to the fullest extent.

### **Relationship**

- 12.8 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.

### **Governing law**

- 12.9 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.

### **Jurisdiction**

- 12.10 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).