

APPY FLEET LIMITED – APPY FLEET DRIVER APP TERMS AND CONDITIONS

**We license the use of our Appy Fleet Driver App to you on the basis of these Conditions. We do not sell the Driver App to you and we remain the owners of the Driver App and any associated documents at all times.**

**References to the Driver in these Conditions are to the individual downloading the Driver App. The Driver's attention is drawn in particular to the provisions of condition 7.**

**PLEASE NOTE: the Driver App is only intended for use by individuals employed as drivers by a customer of Appy Fleet Limited for the purposes of fleet management. The Driver App is not intended for use by any consumers. A consumer is an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession.**

1. Definitions and Interpretation

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

<b>Applicable Law</b>	in any jurisdiction in which the Services are to be supplied under these Conditions, 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>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
<b>Commencement Date</b>	has the meaning given in condition 2.1;
<b>Conditions</b>	the terms and conditions set out in this document as amended from time to time in accordance with condition 12.3;
<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 Fleet Manager and disclosed to or otherwise obtained by the other party in connection with these Conditions;
<b>Contract</b>	the contract between the Supplier and the Fleet Manager;
<b>Driver</b>	the individual who downloads the Driver App and who is an employee of a customer or potential customer of the Supplier;
<b>Driver App</b>	the app to be downloaded by the Driver to utilise the Services (for iPhones <a href="#">download here</a> , for Android

phones [download here](#), for Windows phones [download here](#)).

**Driver Availability**

the availability of each driver to be able to use the Driver App as and when the Fleet Manager reasonably requires;

**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 Driver through the Driver App or otherwise;

**Fleet Manager**

an employer of the Driver who adds the Driver to their Portal;

**Force Majeure Event**

has the meaning given in condition 11;

**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;

**Licence**

has the meaning set out in condition 2.1;

**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](http://www.appyfleet.co.uk/DownloadFile?fileName=cookie_and_privacy_policy) ;

**Portal**

the Fleet Manager Portal created and maintained by the Supplier, through which the Fleet Manager can access the driver tracking services;

**Services**

the driver tracking services, including use of the Driver App and any Deliverables, to be provided by the Supplier to the Fleet Manager under the Contract;

<b>Supplier</b>	Appy Fleet Limited (registered in England and Wales with company number 10387540);
<b>Supplier Materials</b>	all materials, equipment and tools, drawings, specifications and data supplied or made available by the Supplier to the Driver;
<b>Supplier Personnel</b>	the personnel, including subcontractors, engaged by the Supplier in the provision of the Driver App and the performance of the Services;
<b>Vehicle</b>	a vehicle owned or used by the Fleet Manager or, where applicable, its Drivers in the course of the Fleet Manager'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>

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; 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 In consideration of the Driver agreeing to abide by the terms of these Conditions, the Supplier grants to the Driver a non-exclusive, non-transferable licence to use the Driver App on the terms of these Conditions (the **Licence**) for a period of:

- (a) a minimum of 30 days (or any longer period which may be agreed between the Supplier and the Fleet Manager) prior to the Driver being linked to the Portal; and

- (b) once the Driver has been linked to a Portal, for so long as the Fleet Manager continues to use the Portal;

until the Licence is terminated in accordance with these Conditions. These Conditions apply to the exclusion of any other terms that the Driver seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 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 Agreement or have any contractual force.

2.3 The Driver 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, for the duration of the Licence, make the Driver App available to the Driver in accordance with these Conditions in all material respects.

3.2 The Supplier shall use reasonable endeavours to ensure the availability of the Services, however the Driver acknowledges that:

- (a) the provision of the Driver App and the Services is dependent upon the Driver fulfilling its obligations under these conditions, Driver Availability, and the Fleet Manager complying with its obligations under the agreement between the Fleet Manager and the Supplier;

- (b) there may be circumstances beyond the Supplier's reasonable control which prevent the Driver App from being available including but not limited to disablement of the Driver App whether actively caused by a party other than the Supplier or the Driver or due to loss of connectivity;

such that the Supplier cannot guarantee the availability of the Driver App or the Services.

3.3 The Driver acknowledges that, unless otherwise agreed between the Fleet Manager and the Supplier or notified by the Supplier, each Driver may only be registered to one fleet manager at any one time. Accordingly, if the Driver is already registered and using Appy Fleet with another fleet manager this will affect the Driver Availability (in accordance with condition **Error! Reference source not found.**) and that Driver will not be able to be linked with the Fleet Manager's 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 these Conditions.

### 4. Driver obligations

4.1 The Driver shall:

- (a) 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;
- (b) ensure that the Driver App is downloaded to a compatible device and update the Driver App from time to time. The Driver 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 or the Fleet Manager relating to actions required to facilitate any and all updates to the Driver App are promptly followed;
- (c) where the Driver downloads the Driver App without it first being linked to the Portal via the relevant Fleet Manager, such instance being referred to as **Unlinked**, the Driver shall provide the following information, which shall include personal data:
  - (i) First name and last name;
  - (ii) Name of the Fleet Manager's organisation;
  - (iii) Role within the Fleet Manager's organisation;
  - (iv) Contact number;
  - (v) Date of birth;
  - (vi) Business email address; and
  - (vii) Vehicle registration, make and model;

and the Driver acknowledges that such data will be provided by the Supplier to the Fleet Manager and shall be processed in accordance with condition 9.
- (d) comply with all Applicable Law with respect to its activities under the Licence and these Conditions; and
- (e) comply with condition 4.2.

4.2 When using the Driver App the Services, the Driver must comply with all Applicable Law and these Conditions. In particular, the Driver must not:

- (a) use Driver App 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 Driver App, 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 Driver App or the Portal or re-format or frame any portion of the pages comprising the Driver App, save to the extent expressly permitted by these Conditions 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 use of the Driver App, the Portal the Services (to the extent that such use is not licensed by these Conditions);
  - (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 Driver's use of the Driver App; and/or
  - (f) collect any information or data from the Driver App or 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 the Driver App or running any Service.
- 4.3 The Driver shall indemnify the Supplier in respect of any claims arising from a breach of condition 4.2.
- 4.4 If the Supplier's performance of any of its obligations under these Conditions is prevented or delayed by any act or omission of the Driver or failure by the Driver to perform any relevant obligation (**Driver Default**):
- (a) the Supplier shall, without limiting its other rights or remedies, have the right to suspend provision of the Services until the Driver remedies the Driver Default;
  - (b) the Supplier shall not be liable for any losses sustained or incurred by the Driver arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in these Conditions unless otherwise agreed with the Fleet Manager;
  - (c) the Driver shall reimburse the Supplier on demand for any losses sustained or incurred by the Supplier to the Fleet Manager arising directly from the Driver Default.
5. Charges (reservation of the Supplier's position)
- 5.1 The Supplier shall provide the Services to the Driver at no cost, however, the Supplier reserves the right to introduce charges from time to time, in which case the Agreement will terminate and the parties shall enter into a new contract for the provision of paid services.
6. Intellectual Property Rights
- 6.1 The Driver acknowledges that all Intellectual Property Rights used by or subsisting in the Driver App 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 use of the Driver App, shall be owned by the Supplier.
- 6.3 The Driver may use the Deliverables only for the purpose of receiving the Services and for the benefit of the Fleet Manager. The Driver shall not supply the Deliverables to any third party or use the Services or the Deliverables to provide a service to any third party other than the Fleet Manager.
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) 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 whatever be liable to the Driver, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for:

- (i) any indirect, special, consequential or pure economic loss or damage;
- (ii) any loss of profits, anticipated profits, revenue or business opportunities; or
- (iii) damage to goodwill;
- (iv) data roaming charges incurred by the Drivers;
- (v) any liability relating to the use of the Driver App other than wholly in the course of the Driver's trade, craft, business or profession;

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 these Conditions (the **Recipient**) shall:

- (a) use the other party's (the **Disclosing Party's**) Confidential Information solely for the performance of the Licence; 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 Licence and these Conditions 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 Licence.

9. Data Protection

9.1 The Supplier acknowledges and agrees that for the purposes of these Conditions the Supplier is the data controller, unless, as set out in the Privacy Policy, the Fleet Manager is the data controller.

9.2 The Supplier shall comply with the provisions of the Privacy Policy in its capacity as data controller and with the terms of the contract between the Fleet Manager and the Supplier in circumstances where the Fleet Manager is the data controller and the Supplier is the data processor.

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 General Data Protection Regulation.

10. Termination

10.1 Without limiting its other rights or remedies, the Driver may terminate the Licence with immediate effect by deleting the Driver App.

10.2 Without limiting its other rights or remedies, the Supplier may suspend or terminate the Licence with immediate effect:

(a) by giving written notice to the Driver if the Driver commits a material breach of any term of these Conditions 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) where the contract between the Fleet Manager and the Supplier is suspended or terminated.

10.3 The Driver acknowledges that because the Driver App and the Services are provided on a no cost basis, the Supplier may need to withdraw provision of the Driver App at any time where the Supplier, believes, in its sole discretion, that it is commercially necessary to suspend or discontinue the Services. Accordingly the Driver acknowledges and agrees that the Supplier may therefore suspend or terminate the Licence with immediate effect.

10.4 On expiry or termination of the Licence 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 Licence shall continue in full force and effect;

(c) the Driver App shall be switched off by the Supplier within 5 Business Days of 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 Licence and these Conditions 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 Licence.

(b) The Driver 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 Licence without the Supplier's written consent.

12.2 **Entire agreement** The Licence (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 Driver 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 these Conditions.

12.3 **Variation** Except as set out in these Conditions, no variation of the Licence, 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 2.3, no failure or delay by a party to exercise any right or remedy provided under these Conditions 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 these Conditions 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 Conditions.

## 12.6 Notices

- (a) Any notice given to a party under or in connection with the Conditions 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 Conditions is not valid if sent by email.

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

12.8 **Governing law** The Licence and these Conditions 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.

12.9 **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 Licence and these Conditions or their subject matter or formation (including non-contractual disputes or claims).