

Terms and Conditions

1 Basis of sale

1.1 **"Applicable Law"** means as applicable and binding on the Customer, FleetCheck and/or in respect of the provision of the Software and Services:

- (a) any law, statute, regulation, byelaw or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the Software or Services is provided to or in respect of;
- (b) the common law and laws of equity as applicable to the parties from time to time;
- (c) any binding court order, judgement or decree; or
- (d) any applicable direction, policy rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business.

1.2 **"Applicable Data Protection Laws"** means (i) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and (ii) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which FleetCheck is subject, which relates to the protection of Personal Data.

1.3 **"Authorised Users"** means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services.

1.4 **"Conditions"** means these terms and conditions as amended from time to time.

1.5 **"Controller, Data Subject, Personal Data, Processor and processing"** shall have the respective meanings given to them in the UK GDPR from time to time (and related expressions, including **"process, processed, processing, and processes"** shall be construed accordingly);

1.6 **"Contract Period"** means the Initial Contract Period together with any subsequent Renewal Periods.

1.7 **"Contract Year"** means a 12 month period commencing on the commencement date of this Agreement or any anniversary of it.

1.8 **"Customer"** means the person or firm who purchases the Services from FleetCheck as detailed on the Order Confirmation.

1.9 **"Customer Data"** means the data inputted by the Customer, or FleetCheck on the Customer's behalf, for the purpose of using the Services or facilitating the Customer's use of the Services, including any Protected Data.

1.10 **"EU GDPR"** means the General Data Protection Regulation (EU) 2016/679;

1.11 **"EULA"** means the FleetCheck Software (End User) Terms of Use

1.12 **"FleetCheck"** means FleetCheck Limited (company number 5674824).

1.13 **"FleetCheck Expert"** means FleetCheck's professional services for fleets operating cars and light commercial vehicles.

1.14 **"FleetCheck Software Licence"** means the annual, fully paid-up, worldwide, non-exclusive licence to use the Software supplied by FleetCheck to the Customer under these Conditions.

1.15 **"Fundamental Change"** means a change to the Software which materially reduces its functionality or which otherwise constitutes such a significant amendment to the previous version as to reasonably cause the Software to be considered a different product.

1.16 **"Initial Contract Period"** means an initial 36 month period (unless an alternate term is otherwise agreed with FleetCheck in writing).

1.17 **"Intellectual Property Rights"** means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, 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.

1.18 **"Monthly Instalment"** means the monthly subscription fees stated on the Order Confirmation, as may be amended from time to time in accordance with clause 6.

1.19 **"Order Confirmation"** means the pro-forma signed by the Customer listing the customer details and Services to be supplied in accordance with these Conditions.

- 1.20 **"Parties"** shall mean (1) FleetCheck and (2) the Customer.
- 1.21 **"Protected Data"** means Personal Data received from or on behalf of the Customer in connection with the performance of FleetCheck's obligations under the Contract.
- 1.22 **"Renewal Period"** means a period of 12 months.
- 1.23 **"Services"** mean the following services to be provided by FleetCheck:
- **FleetCheck Software**, use of the Software for the Contract Period, specifications of which will be supplied in the Order Confirmation prior to the date hereof and reviewed at the end of the Initial Contract Period and each Renewal Period and which is otherwise subject to the terms of the FleetCheck Software Licence;
 - **Technical Support**, details of which can be supplied on demand and shall be reviewed at the expiry of the Initial Contract Period and each Renewal Period; and
 - **Additional Services**, any additional services requested in writing by the Customer and agreed by FleetCheck during the Contract Period.
- 1.23 **"Set Up Charge"** means the fee defined as the set up fee on the Order Confirmation.
- 1.24 **"Software"** means FleetCheck's vehicle management support software package as further detailed in the Order Confirmation.
- 1.25 **"Sub-Processor"** means any agent, subcontractor or other third party (excluding its employees) engaged by FleetCheck for carrying out any processing activities on behalf of the Customer in respect of the Protected Data.
- 1.26 **"Total Annual Fee"** means the total of the Monthly Instalments payable in a Contract Year.
- 1.27 **"UK GDPR"** has the meaning given to it in the Data Protection Act 2018.
- 1.28 The Conditions and the Order Confirmation (together the **"Agreement"**) shall form the entire agreement between the Parties in respect of the supply of the Services.
- 1.29 These Conditions apply 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.
- 1.30 A reference to writing or written includes email.

2 Duration and Termination

- 2.1 This Agreement shall commence when the Order Confirmation is signed and dated by the Customer and shall continue for the Initial Contract Period and, thereafter, shall be automatically renewed for successive Renewal Periods, unless terminated earlier in accordance with clause 2.3 or until either party gives to the other party no less than 3 months written notice to terminate, expiring on or after the last day of the applicable Initial Contract Period or Renewal Period.
- 2.2 Notice of termination under clause 2.1 will be construed as having been served on FleetCheck by the Customer upon the cancellation of the direct debit instructions required under clause 6 hereof by the Customer whereupon the balance of the fees for the Initial Contract Period or applicable Renewal Period (as the case may be) shall immediately become payable by the Customer.
- 2.3 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under the Agreement and (if such breach is remediable) fails to remedy that breach within 21 days after receipt of notice in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 2.4 Without affecting any other right or remedy available to it FleetCheck may suspend the supply of Services under the Agreement or any other contract between the Customer and FleetCheck and disable the Customer's access to all or part of the Software if the Customer fails to pay any amount due under the Agreement on the due date for payment, the Customer becomes subject to any of the events listed in clause 2.3(b) to clause 2.3 (d), or FleetCheck

reasonably believes that the Customer is about to become subject to any of them.

Fundamental Change, which notice shall include details of the changes to be made.

3. Consequences of Termination

3.1 Upon termination of this Agreement for any reason:

- (a) the Customer shall immediately cease all use of the Services, except that the Customer will have 2 months from the effective date of termination to download any Customer Data;
- (b) FleetCheck may destroy or otherwise dispose of any of the Customer Data in its possession following expiry of the period set out in clause 3.1(a); and
- (c) If the Customer wishes to receive a copy of the last back-up of its Customer Data it must submit a request in writing to FleetCheck. FleetCheck shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by FleetCheck in providing the back-up of Customer Data.

3.2 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

3.3 Any provision of the Agreement that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

4 Specification and alterations

4.1 Any descriptive matter or advertising issued by FleetCheck and any descriptions of the Services issued or published for the sole purpose of giving an approximate idea of the Services described in them shall not form part of the Agreement or have any contractual force.

4.2 Subject to clause 4.3, FleetCheck reserves the right to automatically update the Software from time to time to improve performance, enhance functionality, reflect changes to the operating system or address security issues.

4.3 FleetCheck may only make a Fundamental Change to the Software and Services at the expiry of the Initial Contract Period and each Renewal Period, provided that the Customer is given no less than 4 months' notice of FleetCheck's intention to make a

4.4 In the event of FleetCheck being unable to provide the Services of the same nature and quality specified prior to the expiry of the Initial Contract Period or applicable Renewal Period, FleetCheck shall provide 14 days' written notice to the Customer who may at any time in this period terminate this Agreement by service of a written notice on FleetCheck.

4.5 In the event of a termination by the Customer in accordance with clause 4.4 the Customer will not be liable to make a further Monthly Instalment payment after the expiry of the calendar month within which notice under clause 4.4 has been served.

5 Obligations and warranties

5.1 FleetCheck warrants that it will use reasonable care and skill in providing the Services.

5.2 FleetCheck:

(a) does not warrant that:

- (i) the Customer's use of the Services will be uninterrupted or error-free; or
- (ii) that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements.

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

5.3 The Customer acknowledges that use of FleetCheck Expert may call for the provision of opinions and advice and assistance and the parties acknowledge and agree that FleetCheck may give an opinion or an interpretation on a set of facts or an issue provided by the Customer which is fully in accord with its obligations under this Agreement but another professional may give a different opinion or interpretation on the same facts or issue.

5.4 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against FleetCheck shall be for FleetCheck to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by FleetCheck. FleetCheck shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by FleetCheck to perform services related to Customer Data

maintenance and back-up for which it shall remain fully liable).

debit and shall complete the appropriate mandate by the date hereof.

5.5 If during the term of this Agreement the Customer wishes to access historic Customer Data it must submit a request in writing to FleetCheck. FleetCheck shall use reasonable commercial endeavours to deliver the relevant back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer shall pay all reasonable expenses incurred by FleetCheck in providing the back-up of Customer Data.

6.5 All sums due to FleetCheck under the terms of this Agreement shall be paid in full by the Customer without any set-off whatsoever and all time periods quoted under this clause 6 shall be of the essence.

5.6 The Customer shall:

(a) provide FleetCheck with:

- (i) all necessary co-operation in relation to this Agreement; and
- (ii) all necessary access to such information as may be required by FleetCheck in order to provide the Services;
- (b) without affecting its other obligations under this agreement, comply with all Applicable Laws and regulations with respect to its activities under this Agreement; (c) ensure that the Authorised Users use the Services in accordance with the terms and conditions of this Agreement and the EULA and shall be responsible for any Authorised User's breach of this Agreement or the EULA;
- (e) obtain and maintain all necessary licences, consents, and permissions necessary for the Customer, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by FleetCheck from time to time; and
- (g) own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

6.6 If payment in full is not received by FleetCheck upon the due date then:

- (a) FleetCheck shall be entitled to charge interest at a daily rate of 2% over the then current base lending rate of the Bank of England from time to time on any unpaid overdue balance, commencing on the due date and continuing until fully paid; and
- (b) the balance of the fees for the Initial Contract Period or applicable Renewal Period (as the case may be) outstanding at the date of default shall immediately fall due and become payable by the Customer.

6.7 FleetCheck retains ownership of the Software and the Monthly Instalment shall be in part a monthly rental fee for it.

6.8 FleetCheck shall be entitled to charge additional fees for any unquoted Additional Services required and agreed by the Customer. The refusal by FleetCheck to carry out such Additional Services shall not be construed as a breach of this Agreement.

6.9 FleetCheck reserves the right to:

- (a) Increase the Monthly Instalments on an annual basis with effect from each anniversary of the Agreement;
- (b) Increase the Monthly Instalments, by giving notice to the Customer at any time to reflect any increase in the Customer's fleet size; or
- (c) Increase the Monthly Instalments by giving notice to the Customer at any time if the Customer exceeds the amount of disk storage space specified by FleetCheck from time to time, or the Customer's use of the Services is deemed by FleetCheck to be outside the expected reasonable level of use.

6 Payment Terms

6.1 Subject to 6.8 and 6.9, all fees and costs charged by FleetCheck for the Initial Contract Period shall be as stated on the Order Confirmation or as notified by FleetCheck to the Customer prior to the commencement of any Renewal Period.

6.2 All prices stated are exclusive of VAT unless otherwise stated.

6.3 The Customer shall pay the Set Up Charge (where relevant) in accordance with the details set out in the Order Confirmation.

6.4 The Customer shall pay the Monthly Instalments (unless otherwise agreed with FleetCheck) by direct

7 Liability

7.1 This clause 7 sets out the entire financial liability of FleetCheck (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of this Agreement;
- (b) any use made by the Customer of the Services; and

- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

7.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

7.3 Nothing in this Agreement shall exclude or restrict FleetCheck's liability for:

- (a) death or personal injury arising from the negligence of FleetCheck or its employees while acting in the course of their employment; or
(b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by FleetCheck.

7.4 Subject to clause 7.2 and clause 7.3:

- (a) FleetCheck shall not be liable to the Customer, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
- (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill and/or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) loss of or corruption of data or information; or
 - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) FleetCheck shall not be liable to the Customer, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise in relation to:
- (i) any misinformation supplied to FleetCheck by the Customer or any third party; or
 - (ii) the booking of services repairs and MOT testing; or
 - (iii) any aspect of the implementation of the Customer's health and safety policy and risk assessment policy; or
 - (iv) negligence by Customer employees in the operation of Customer company vehicles; or
 - (v) any aspect of the implementation of the Customer company vehicle policy; or
 - (vi) any breakdown or failure of equipment supplied by FleetCheck arising from its incompatibility with equipment which has

not been previously supplied or recommended by FleetCheck; or

- (vii) any delay in or failure to perform all or part of its obligations under the terms of this Agreement if such a delay or failure shall be due to act of god strikes lockouts laboured services statute order or any regulations of any government public local or other authority delays or defaults of suppliers and sub-contractors and without prejudice to the generality of the foregoing any other causes beyond the reasonable control of FleetCheck; or
(viii) any data input errors, either by the Authorised Users or supplied to FleetCheck by the Customer for initial data upload; or,
(ix) failure of the Software to save data, either by user error or system failure; or
(x) for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use.

- (c) Subject to 7.4 (a) and 7.4 (b) above, FleetCheck's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with all breaches of duty occurring within any Contract Year shall not exceed an amount equal to the Total Annual Fee for the Contract Year in which the breaches occurred.

7.5 The provisions of this clause 7 shall continue to apply notwithstanding the termination of this Agreement.

7.6 FleetCheck will assign a manufacturers' recommended cambelt and service interval schedule to every vehicle, using approved industry guidelines for the provision of this information. However, manufacturers often vary the standard recommendations applicable to a specific vehicle/group of vehicles. Therefore, it is imperative that the individual service and cambelt schedules assigned are checked and verified to ensure that the correct maintenance schedules are applied in every case. FleetCheck recommends that the Customer consults with its service agents and/or vehicle suppliers to ensure total verification.

8 Suspension of Service

8.1 Notwithstanding clause 2.4, FleetCheck may at its sole discretion elect to suspend forthwith the provision of the Services until further notice without liability to the Customer on notifying the Customer either orally (confirming the same in writing) or in writing in the event that:

- (a) The Customer is in material breach of its obligations under this Agreement and (if such breach is remediable) fails to remedy that

breach within 21 days after receipt of notice in writing to do so; or

- (b) The Customer is suspected in FleetCheck's reasonable opinion of involvement with fraud or attempted fraud in connection with the use of the Services.

9. Intellectual Property Rights

9.1 FleetCheck and its licensors shall retain ownership of all Intellectual Property Rights in or arising out of or in connection with the Software and the Services (other than Intellectual Property Rights in any materials provided by the Customer).

9.2 FleetCheck grants to the Customer or shall procure the direct grant to the Customer of, non-exclusive, non-transferable right and licence during the term of the Agreement to use the Services solely for the Customer's internal business operations. If this Agreement is terminated, this licence will automatically terminate.

9.3 The Customer shall not sub-licence, assign or otherwise transfer the rights granted by clause 9.2.

9.4 The Customer shall not:

- (a) except as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

- (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
- (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or the Services; or

- (c) access all or any part of the Services in order to build a product or service which competes with the Services; or
- (d) use the Services to provide services to third parties; or
- (e) subject to clause 11.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
- (f) attempt to obtain, or assist third parties in obtaining, access to the other than as provided under this clause 9.

9.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the

Services and, in the event of any such unauthorised access or use, promptly notify FleetCheck.

10. Data Protection

10.1 Both parties will comply with all applicable requirements of the Applicable Data Protection Laws. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Applicable Data Protection Laws.

10.2 The parties acknowledge that for the purposes of the Applicable Data Protection Laws, the Customer is the Controller and FleetCheck is the Processor in respect of the Protected Data. Schedule 1 sets out the scope, nature and purpose of processing by FleetCheck, the duration of the processing and the types of personal data and categories of Data Subject.

10.3 Where FleetCheck is processing any Personal Data in connection with this Agreement in the capacity of a Controller, the Customer consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by FleetCheck in connection with the processing of such Personal Data, provided these are in compliance with the then-current version of FleetCheck's privacy policy available on its website. In the event of any inconsistency or conflict between the terms of the Privacy Policy and this Agreement, the Privacy Policy will take precedence.

10.4 Without prejudice to the generality of clause 10.1, the Customer warrants, represents and undertakes, that:

- (a) it has all necessary appropriate consents and notices in place to enable lawful transfer of the Protected Data to FleetCheck for the duration and purposes of the Agreement;
- (b) all instructions given by the Customer to FleetCheck in respect of the Protected Data shall at all times be in accordance with Applicable Data Protection Laws; and
- (c) The Customer is satisfied that:

- (i) FleetCheck's processing operations are suitable for the purposes for which the Customer propose to use the Software and Services and engage FleetCheck to process the Protected Data; and
- (ii) FleetCheck has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of Applicable Data Protection Laws.

10.5 The Customer shall indemnify and keep indemnified FleetCheck against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional

costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under this clause 10.

10.6 Without prejudice to the generality of clause 10.1, FleetCheck shall, in relation to the Protected Data:

- (a) process that Protected Data only on the documented instructions of the Customer, unless FleetCheck is required by Applicable Laws to otherwise process that Protected Data. Where FleetCheck is relying on Applicable Laws as the basis for processing Protected Data, FleetCheck shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prevent FleetCheck from doing so on important grounds of public interest. FleetCheck shall inform the Customer if, in its opinion, the instructions of the Customer infringe Applicable Data Protection Laws
- (b) implement the technical and organisational measures as set out in Schedule 1 Part B, reviewed and approved by the Customer, to protect the Protected Data against unauthorised, unlawful or accidental destruction, loss, alteration, disclosure or access;
- (c) ensure that all personnel who have access to and/or process Protected Data are obliged to keep the Protected Data confidential; and
- (d) only transfer Protected Data outside of the UK if required under this Agreement and provided that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of FleetCheck, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

10.7 FleetCheck shall:

- (a) assist the Customer insofar as is possible (taking into account the nature of the processing and the information available to FleetCheck), at the Customer's cost, in responding to any reasonable request from a Data Subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (b) notify the Customer within 2 days of becoming aware of a personal data breach affecting the Customer's account or Protected Data;

- (c) at the written direction of the Customer, delete or return Protected Data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Law to continue to process that Protected Data. For the purposes of this clause 9.7(c) Protected Data shall be considered deleted where it is put beyond further use by FleetCheck; and
- (d) maintain complete and accurate records and information to demonstrate its compliance with this clause 10.

10.8 The Customer can contact FleetCheck for any issues relating to data protection at privacy@FleetCheck.co.uk.

10.9 Without prejudice to clause 10.6, if FleetCheck believes that any instruction received by it from the Customer is likely to infringe Applicable Data Protection Laws it shall promptly inform the Customer and be entitled to cease to provide the Services until the parties have agreed appropriate amended instructions which are not infringing.

10.10 The Customer hereby provides its prior, general authorisation for FleetCheck to:

(a) use the Sub-Processors already engaged by FleetCheck as at the date of the Agreement (FleetCheck shall make available to the Customer a list of all Sub-Processors authorised to process the Protected Data (**Sub-Processor List**) on request) and appoint further Sub-Processors, provided that FleetCheck:

(i) shall ensure that the terms on which it appoints such Sub-Processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on FleetCheck in this clause 10;

(ii) shall remain responsible for the acts and omission of any such Sub-Processor as if they were the acts and omissions of FleetCheck; and

(iii) shall at least ten (10) business days prior to authorising any new Sub-Processor to process Protected Data provide notice to the Customer of the update to the Sub-Processor List. If the Customer objects to such changes within ten (10) business days of receipt of such notice FleetCheck shall work with the Customer in good faith to make available a commercially reasonable change in the provision of the Software which avoids the use of that proposed Sub-Processor and, where such a change cannot be made and FleetCheck chooses to retain the Sub-Processor, FleetCheck shall notify the Customer at least ten (10) business days prior to the authorisation of the Sub-Processor and the Customer may choose to discontinue the Services and terminate the relevant portion/parts of the Services which require the use of the proposed Sub-Processor immediately upon written notice to FleetCheck, such notice to be given by the Customer within thirty (30) business days of having been so notified by FleetCheck.

- 10.11 Either party may, at any time on not less than 30 days' notice, revise this clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

11 General

- 11.1 This Agreement shall not be assigned in whole or in part by the Customer without the prior written consent of FleetCheck.
- 11.2 If either party is affected by an event of Force Majeure (any circumstances beyond their reasonable control including without limitation all industrial actions and natural disasters) it shall notify the other immediately of the same and the party shall be deemed not to be in breach of this Agreement in so far as any failure to comply with this Agreement is attributable to the event of Force Majeure.
- 11.3 Confidential information concerning either party's business made available to the other party will not be disclosed by the other party or any associate to any third party whatsoever (save to the extent that it is in the public domain or that such disclosure accords with the terms of FleetCheck's Privacy Policy) without written consent of the party who supplied the confidential information unless otherwise required by law.
- 11.4 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 11.5 This Agreement represents the entire agreement and understanding of the Parties in respect of the subject matter hereof and supersedes all prior undertakings and representations whether written or oral.
- 11.6 FleetCheck may change, modify or amend these Conditions as it may determine in its reasonable discretion. To make such a variation FleetCheck shall notify the Customer by email of any revisions to the Conditions not less than ten (10) days prior to the effective date of such variation. If the Customer considers any proposed variation to be unreasonable, it shall be entitled to terminate the Agreement by providing written notice to FleetCheck prior to the effective date of the variation, otherwise the Customer shall be deemed to have accepted the Conditions from the effective date of the variation.
- 11.7 Failure by either Party to exercise or enforce any right conferred by this Agreement shall not be

deemed to be a waiver of any such right nor operate as to bar the exercise or enforcement thereof or any other right on a later occasion.

- 11.8 Any notice, invoice or other document which may be given by either Party under this Agreement shall be deemed to have been given if left or sent by post if sent to an address notified by the other party in writing as an address to which notices invoices or other documents may be sent.
- 11.9 FleetCheck's address for service of any notice hereunder shall be such address as appears on the face of this Agreement or on the last invoice rendered to the Customer or such other address as may be prescribed by FleetCheck and notified to the Customer in writing for that purpose.
- 11.10 This Agreement shall be governed by and construed and interpreted in accordance with English Law and the Parties hereby submit to the exclusive jurisdiction of the English Courts.
- 11.11 A third party who is not a party to this Agreement shall not have any rights under or in connection with it under Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

Schedule 1:

Part A

Data processing details

Processing of the Protected Data by FleetCheck under the Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of personal data and categories of Data Subjects set out in this Part A.

1. Subject Matter, Nature, Purpose and Duration of processing:

FleetCheck will process Protected Data to provide Services to you. The processing of Protected Data shall be for the term of the Contract Period or until FleetCheck's legal obligations in relation to the processing of the Protected Data have ceased.

2. Type of Personal Data:

- 2.1 The Software provided by FleetCheck, or as may be further developed, upgraded or supplemented from time to time, generally includes (but is not limited to) portals for drivers, fleet managers and other types of users as determined by the Customer, computer programs or applications, integration with a number of telematics systems, information regarding vehicle and driver management, fuel management, driver policy management, grey fleet assistance, accident management, fleet maintenance, document storage, plant and equipment, advanced reporting, driver risk

management, HGV module, HGV maintenance module, advanced HGV reporting and other types of information as determined by the Customer.

2.2 The types of Personal Data that FleetCheck processes to provide the Services depend on factors such as (but not limited to):

- (a) the features selected by the Customer as part of the Software;
- (b) the data fields and types of detail added to the Software and used by the Customer as part of the selected system features;
- (c) the types of data input directly into the Software's system by the Customer or by FleetCheck under the instruction of the Customer; and
- (d) the people added by the Customer as users of the Software.

2.3 In accordance with the Agreement to provide the Services and Software to the Customer FleetCheck may process (but not limited to) the following types of Personal Data depending on the factors mentioned in paragraph 2.2 above:

- (a) In relation to drivers: name of driver, date of birth, place of birth, private address, private telephone number, email address, disciplinary and grievance, accident reports, right to work checks (passport details) National Insurance Number, name of supervisor, work location, references, performance reports, insurance documents, driving licence details, records of medical data and incidents.
- (b) any other types of Personal Data collected by the Customer which may be processed by FleetCheck for the purposes of providing the Software and Services.

3. Categories of Data Subjects:

3.1 As noted in paragraph 2.2 the types of Data Subjects for which Personal Data may be processed depends on the factors mentioned in paragraph 2.2 and FleetCheck does not control the types of Data Subjects for which or from which the Customer may collect or process Personal Data. Subject to that it is confirmed that FleetCheck may typically process (but not limited to) Protected Data in relation to the following data subjects:

- (a) the Customer's drivers;
- (b) the Customer's employees;
- (c) the Customer's job applicants; and
- (d) any other categories of data subjects which may be added by the Customer for the use of the Software and therefore in relation to who FleetCheck may process Personal Data to provide the Software to the Customer.

4. Specific processing instructions:

FleetCheck shall process Protected Data as reasonably necessary for the provision of the Software and Services arising from the Agreement and in accordance with the Customer's written instructions. If the Customer has any specific processing instructions, the Customer is required to notify FleetCheck in writing so that FleetCheck may process the Protected Data in accordance with those specific instructions.

Part B

Technical and organisational security measures

1. FleetCheck shall implement and maintain the following technical and organisational security measures to protect the Protected Data:

1.1 In accordance with the Applicable Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with the Agreement, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, FleetCheck shall implement appropriate technical and organisational security measures appropriate to the risk.

1.2 The Customer is, however, responsible for:

- (a) maintaining the security of access to data ;
- (b) ensuring that data held at the Customer's premises is adequately backed up;
- (c) ensuring the correct environment is deployed to get the safest and fastest possible experience from FleetCheck's software products; and
- (d) protecting its systems from any bugs in any third-party software or other software, viruses, corrupt data and back-up failures.

1.3 The Protected Data which is processed within the Software shall be hosted on servers based at UK data centres.