

## FleetCheck DriverLite Software: Terms of Use

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 7 (LIMITATION OF LIABILITY).**

### 1. Interpretation

**The following definitions and rules of interpretation apply in these Conditions.**

#### 1.1 Definitions:

**Activation Email:** an email to the Customer or Authorised User which allows them to set up Login Details to enable them to access the FleetCheck Portal and/or FleetCheck DriverLite App as appropriate.

**Asset:** any asset uploaded to the FleetCheck Portal or FleetCheck DriverLite App including, but not limited to vehicles, trailers and machinery.

**Authorised User:** any individual authorised by, or acting on behalf of, the Customer that uses the FleetCheck DriverLite App.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 13.5.

**Contract:** the contract between FleetCheck and the Customer for the supply of Services in accordance with these Conditions and the Order Form.

**Contract Year:** means a 12-month period commencing with the Commencement Date or any anniversary of it.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

**Customer:** the person or firm who procures Services from FleetCheck.

**Customer Default:** has the meaning set out in clause 4.2.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to

the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**DriverLite App EULA:** the end user licence agreement between FleetCheck and the employees of the Customer using the FleetCheck DriverLite App a copy of which is at Schedule 1.

**FleetCheck:** FleetCheck Limited registered in England and Wales with company number 5674824.

**FleetCheck DriverLite App:** a daily pre-use check app.

**FleetCheck Portal:** means the driver portal which receives and presents the data collected via the FleetCheck DriverLite App.

**FleetCheck Software:** means the FleetCheck DriverLite App and FleetCheck Portal.

**Intellectual Property Rights:** patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks 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.

**Login Details:** login credentials in the form of a user name and password.

**Modifications** means any changes, modifications, replacements or upgrades to the functionality, content or other properties of the FleetCheck Software.

**Order:** the Customer's order for Services as set out in FleetCheck's Order Form.

**Order Form:** means the pro-forma signed by the Customer setting out the Services.

**Services:** the services, including the provisions of the FleetCheck Software and Support Services supplied by FleetCheck to the Customer as set out in the Specification.

**Specification:** the description or specification of the Services provided in writing by FleetCheck to the Customer.

**Support:** the support services available to assist with using the FleetCheck Software available via email.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic

Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

### 1.2 Interpretation:

1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** includes email but not fax.

## 2. Basis of Contract

2.1 The Order constitutes an offer by the Customer to procure the Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when FleetCheck issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).

2.3 FleetCheck shall only accept orders from Customers based in the United Kingdom.

2.4 Any descriptive matter or advertising issued by FleetCheck or published on its website is issued or published 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 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 law, trade custom, practice or course of dealing.

## 3. Supply of Services

3.1 FleetCheck shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2 FleetCheck shall use all reasonable endeavours to meet any performance dates specified in the Order Form, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 FleetCheck reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or to reflect changes to the Services. FleetCheck shall use reasonable endeavours to notify the Customer in any such event.

- 3.4 FleetCheck warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5 The FleetCheck DriverLite App will be provided to employees of the Customer via either the app store owned and operated by Apple Inc. or the app store owned and operated by Google LLC. The employees' access to the FleetCheck DriverLite App will be governed by the DriverLite App End User Licence.

#### **4. Customer's Obligations**

- 4.1 The Customer shall:
- 4.1.1 ensure that the terms of the Order are complete and accurate;
  - 4.1.2 co-operate with FleetCheck in all matters relating to the Services;
  - 4.1.3 provide FleetCheck with such information and materials as FleetCheck may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - 4.1.4 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - 4.1.5 comply with all applicable laws, including health and safety laws; and
  - 4.1.6 comply with any additional obligations as set out in the Specification.
- 4.2 The Customer shall ensure that each Authorised User:
- 4.2.1 complies with the DriverLite App EULA; and
  - 4.2.2 complies with all relevant terms of this Agreement which are relevant to the use of the FleetCheck DriverLite App.
- 4.3 The Customer shall be responsible for all activities undertaken by the Authorised Users whilst they are using the FleetCheck DriverLite App, including for any information submitted by the Authorised Users and for any breach by an Authorised User of the DriverLite App EULA. A system notification made to an Authorised User shall be deemed to have been made to the Customer, and it is the Customer's responsibility to ensure that Authorised Users make the Customer aware of any such system notifications.
- 4.4 If FleetCheck's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer (or its employees or Authorised Users) or failure by the Customer (or its employees or Authorised Users) to perform any relevant obligation (**Customer Default**):
- 4.4.1 without limiting or affecting any other right or remedy available to it, FleetCheck shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve

it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays FleetCheck's performance of any of its obligations;

4.4.2 FleetCheck shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from FleetCheck's failure or delay to perform any of its obligations as set out in this clause 4.4; and

4.4.3 the Customer shall reimburse FleetCheck on written demand for any costs or losses sustained or incurred by FleetCheck arising directly or indirectly from the Customer Default.

## 5. Intellectual Property Rights

5.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by FleetCheck (or its licensors). The Customer acknowledges that FleetCheck (or its licensors) own all legal rights, title and interest in the FleetCheck Software and any Modifications. FleetCheck (or its licensors) reserve all rights in and to the FleetCheck Software.

5.2 FleetCheck grants to the Customer, or shall procure the direct grant to the Customer of, a worldwide, non-exclusive, royalty-free licence during the term of the Contract to use the FleetCheck Software.

5.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 5.2.

5.4 The Customer grants FleetCheck a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to FleetCheck for the term of the Contract for the purpose of providing the Services to the Customer.

## 6. Data Protection

6.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 6, **Applicable Laws** means (for so long as and to the extent that they apply to FleetCheck) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

6.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and FleetCheck is the processor.

6.3 Without prejudice to the generality of clause 6.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to FleetCheck for the duration and purposes of the Contract.

- 6.4 Without prejudice to the generality of clause 6.1, FleetCheck shall, in relation to any personal data processed in connection with the performance by FleetCheck of its obligations under the Contract:
- 6.4.1 process that personal data only on the documented written instructions of the Customer unless FleetCheck is required by Applicable Laws to otherwise process that personal data. Where FleetCheck is relying on Applicable Laws as the basis for processing personal data, FleetCheck shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit FleetCheck from so notifying the Customer;
  - 6.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - 6.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
  - 6.4.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - (i) the Customer or FleetCheck has provided appropriate safeguards in relation to the transfer;
    - (ii) the data subject has enforceable rights and effective legal remedies;
    - (iii) FleetCheck complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
    - (iv) FleetCheck complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
  - 6.4.5 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- 6.4.6 notify the Customer without undue delay on becoming aware of a personal data breach;
- 6.4.7 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and
- 6.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 6 and immediately inform the Customer if, in the opinion of FleetCheck, an instruction infringes the Data Protection Legislation.
- 6.5 The Customer consents to FleetCheck appointing third party processors, which it has been notified of in advance in writing, of personal data under the Contract. FleetCheck confirms that it has, or will, enter into a written agreement with each third party processor incorporating terms which are substantially similar to those set out in this clause 6 and in either case which FleetCheck confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and FleetCheck, FleetCheck shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 6.
- 6.6 Either party may, at any time on not less than 30 days' notice, revise this clause 6 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 the Contract).
- 7. Limitation of Liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 7.1 The restrictions on liability in this clause 7 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 7.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 7.2.1 death or personal injury caused by negligence; and
- 7.2.2 fraud or fraudulent misrepresentation.
- 7.3 The Customer accepts responsibility for the selection of the FleetCheck Software to achieve its intended results and acknowledges that the FleetCheck Software has not been developed to meet the individual requirements of the Customer and is provided on an "as is" basis. The Customer assumes sole responsibility for results obtained from the use of the Services by the Customer and its Authorised Users, and for conclusions drawn from such use. FleetCheck shall have no liability for any actions taken by FleetCheck at the Customer's direction.
- 7.4 No representations, conditions, warranties or other terms of any kind are given in respect of the FleetCheck Software, and all statutory warranties and conditions which

might have effect between the parties or be implied or incorporated into the Contract or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the fullest extent possible.

7.5 Subject to clause 7.2, clause 7.3 and clause 7.4, FleetCheck's total liability to the Customer in respect of all breaches of duty occurring within any Contract Year shall not exceed £200.

7.6 Subject to clause 7.2, clause 7.3 and clause 7.4, FleetCheck shall have no liability for any:

- (i) loss of profits
- (ii) loss of sales or business.
- (iii) loss of agreements or contracts.
- (iv) loss of anticipated savings.
- (v) loss of use or corruption of software, data or information.
- (vi) loss of or damage to goodwill; and
- (vii) indirect or consequential loss.

7.7 Unless the Customer notifies FleetCheck that it intends to make a claim in respect of an event within the notice period, FleetCheck shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

7.8 This clause 7 shall survive termination of the Contract.

## **8. Transmission and Storage of Data**

8.1 The Customer acknowledges and agrees that the transmission of data by FleetCheck via the FleetCheck Software may be subject to errors, omissions, delays, and losses (including but not limited to viruses or inadvertent loss of data or damage to media) that may give rise to loss or damage. FleetCheck is not liable for any such errors, omissions, delays, or losses, unless caused by its wilful misconduct.

8.2 As a result of accessing the FleetCheck Portal or the FleetCheck DriverLite App, a copy of that data may be copied to the computer or other device used ('**cached**'). Once data has been cached on the user's device that data is beyond FleetCheck's control, and may be accessible to anyone with access to the same device. The Customer assumes all liability associated with any data cached on a local device. The Customer should (and procure that its Authorised Users should) empty the relevant web browser cache when logging out of the FleetCheck Portal or the FleetCheck DriverLite App.



- 8.3 The Customer is responsible for (i) downloading its data at regular intervals and maintaining appropriate back-up copies; and (ii) implementing appropriate security measures, to the level of good industry practice and to meet any security protocols that FleetCheck have in place from time to time, to limit the impact of data loss, for example, virus protection. The Customer must implement and maintain appropriate administrative, technical, and physical safeguards and appropriate technical and organisational measures adequate to ensure the security and confidentiality of data and protect against unlawful processing and against accidental loss, destruction, damage, alteration or disclosure of data, including implementing any measures prescribed by law.

### **9. Security and Login Details**

- 9.1 To access the FleetCheck Portal and FleetCheck DriverLite App, FleetCheck shall provide the Customer with an Activation Email. The Customer must protect the Login Details from unauthorised use and keep them strictly confidential.
- 9.2 The Customer will be able to send an Activation Email to each Authorised User so that they can register to use the FleetCheck DriverLite App and create Login Details.
- 9.3 If, for any reason the Customer or an Authorised User has any reason to suspect that the Login Details have been compromised, or suspect any breach of security to the FleetCheck Software, then the Customer must inform FleetCheck immediately by contacting the support team on 01666 577928.
- 9.4 The Customer is responsible for:
- 9.4.1 maintaining the confidentiality of the Login Details; and
  - 9.4.2 all activity that occurs through use of the Login Details. The Customer is deemed to have authorised all such activity.
- 9.5 FleetCheck is entitled to rely on any action taken under the Login Details without further verification, and to hold the Customer fully responsible for each such action.
- 9.6 The Customer is responsible for rectifying any breach of security promptly to FleetCheck's satisfaction and in any event within two (2) Business Days.

### **10. Modifications**

- 10.1 FleetCheck may at any time and in its sole discretion make Modifications. FleetCheck may notify the Customer of specific Modifications to the FleetCheck Software via email.
- 10.2 FleetCheck may, in its sole discretion, act on any suggestions made by the Customer or any other user about any aspect of the FleetCheck Software. The Customer grants FleetCheck a royalty-free perpetual, non-exclusive, worldwide, fully and freely transferable and sub-licensable, irrevocable right and licence to use, store, copy, edit, modify, adapt, publish, reproduce, otherwise exploit, or display any of the Customer's suggestions in any manner chosen by FleetCheck, in any form, medium or technology,

without restriction and without compensation of any kind to the Customer, and the Customer waives all moral rights in such content.

### **11. Termination**

- 11.1 The Services are made available by FleetCheck to the Customer free of charge.
- 11.2 Subject to clause 11.3, the Customer shall have access to the Services for so long as FleetCheck provides the FleetCheck Software. FleetCheck may suspend or withdraw or restrict the availability of all or any part of the Services for business or operational reasons at any time. FleetCheck will try to give the Customer reasonable notice of any such suspension or withdrawal or restriction, but offers no guarantee.
- 11.3 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 11.3.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of that party being notified in writing to do so;
  - 11.3.2 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;
  - 11.3.3 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
  - 11.3.4 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 Contract has been placed in jeopardy.
- 11.4 Without affecting any other right or remedy available to it, FleetCheck may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 11.4.1 there is a change of control of the Customer; or
  - 11.4.2 the Customer's use of the FleetCheck Software, and the number of Assets registered to a Customer's account, is deemed by FleetCheck (in its sole opinion) to be excessive and outside the expected reasonable level of use.

### **12. Consequences of Termination**

- 12.1 On termination of the Contract for any reason:
- 12.1.1 all rights granted to the Customer under the Contract shall cease; and

12.1.2 the Customer shall be permitted to access the FleetCheck Software for 7 days from the date of termination of the Contract for the purpose of downloading its data, after which access to the FleetCheck Software shall be withdrawn and FleetCheck may destroy or otherwise dispose of any Customer data in its possession.

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

12.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## 13. General

13.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

### 13.2 Assignment and Other Dealings

13.2.1 FleetCheck may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

13.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

### 13.3 Confidentiality

13.3.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.3.2.

13.3.2 Each party may disclose the other party's confidential information:

- (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.3; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

### 13.4 **Entire Agreement**

13.4.1 The Contract 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.

13.4.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

13.4.3 Nothing in this clause shall limit or exclude any liability for fraud.

13.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

13.7 **Severance.** If any provision or part-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 or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 13.7 shall not affect the validity and enforceability of the rest of the Contract.

### 13.8 **Notices**

13.8.1 Any notice or other communication given to a party under or in connection with the Contract (other than notices provided under clauses 4.3 and 9) shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Order Form.

13.8.2 Any notice or communication shall be deemed to have been received:

- (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause (iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

13.8.3 This clause 13.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

### 13.9 Third Party Rights

13.9.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

13.9.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

13.10 **Governing Law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, the law of England and Wales.

13.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

### Schedule 1 –DriverLite App EULA

#### **FLEETCHECK DRIVERLITE APP (END USER) TERMS OF USE**

**PLEASE READ THESE LICENCE TERMS CAREFULLY.** These terms tell you who we are, how we will provide the App to you, how we may make changes to it, what you must not do, what to do if there is a problem and other important information.

#### **1. Who we are and what this agreement does**

- 1.1 These terms relate to the use of FleetCheck DriverLite (**App**).
- 1.2 Please read these licence terms (**App Terms**) before you start to use the App as they will apply to your use of the App, including any updates or supplements to the App, and the service you connect to via the App and the content we provide to you through it (**Service**).
- 1.3 By using the App, you confirm that you agree to these App Terms and will comply with them. If you do not agree to these App Terms you must immediately stop using the App and uninstall it.
- 1.4 FleetCheck Limited a company registered in England and Wales under company number **05674824** and with registered office 701 Stonehouse Park, Sperry Way, Stonehouse, Gloucestershire, GL10 3UT (**we, us or our**).

#### **2. Related Terms**

- 2.1 The following terms are incorporated into these App Terms by reference and apply to your use of the App and the Services:
  - 2.1.1 **Corporate Contract.** Your use of the App is pursuant to an agreement between us and your employer, and such terms take precedence over these App terms.
  - 2.1.2 **Privacy Policy.** Under data protection legislation, we are required to provide you with certain information about who we are, how we process your personal data and for what purposes and your rights in relation to your personal data and how to exercise them. This information is provided in our Privacy Policy [https://my.fleetcheck.co.uk/Documents/FC/PrivacyPolicyMobile\\_1.pdf](https://my.fleetcheck.co.uk/Documents/FC/PrivacyPolicyMobile_1.pdf). By using the App or any of the Services, you agree to us collecting and using technical information about the devices you use the App on and related software, hardware and peripherals to improve our products and to provide any Services to you.
  - 2.1.3 **Appstore Terms.** In addition the ways in which you can use the App may also be controlled by the rules and policies of Apple Inc. <https://www.apple.com/uk/legal/internet-services/terms/site.html> or Google Play [https://play.google.com/intl/en-US\\_uk/about/play-terms/index.html](https://play.google.com/intl/en-US_uk/about/play-terms/index.html) (**Appstore Provider**) depending on which Appstore Provider you used. The

Appstore Provider rules and policies will apply instead of these App Terms where there are differences between the two.

- 2.2 By using the App you acknowledge that internet transmissions are never completely private or secure and that any message or information you send using the App or any Service may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.

### 3. Licence

- 3.1 We grant you a worldwide, royalty-free, non-assignable, non-exclusive, revocable, non sub licensable and non-transferable licence to use the App subject to these App Terms.
- 3.2 There is no personal charge to you to either download or use the App, however you acknowledge that your agreement with your mobile network provider (**Mobile Provider**) will apply to your use of the App. You acknowledge that you may be charged by the Mobile Provider for data services while using the App and you accept sole responsibility for such charges. You must have permission from your employer to use the App.
- 3.3 If you download the App onto any phone or other device not owned by you, you must have your employer's permission to do so. You will be responsible for complying with the App Terms, whether or not you own the phone or other device.

### 4. Changes to These Terms and the App

- 4.1 We may change these App Terms at any time to reflect changes in law or best practice or to deal with additional features which we introduce. We will notify you of any change to the App Terms when you next start the App. If you do not accept the notified changes you will not be permitted to continue to use the App.
- 4.2 From time to time we may automatically update the App and change the Service to improve performance, enhance functionality, reflect changes to the operating system or address security issues. Alternatively we may ask you to update the App for these reasons. If you choose not to install such updates or if you opt out of automatic updates you may not be able to continue using the App and the Services.
- 4.3 You are responsible for making all arrangements necessary for you to have access to the App. We may change the minimum specification required to access the App at any time. We give no guarantee that you will have access to the App on your mobile device (or continue to have access to the App). We shall not be liable to you if any such change in specification results in your mobile device becoming incompatible with the App.

### 5. Eligibility and Your Account

- 5.1 The App requires a device capable of running Android v5 or later / iOS v10 or later. The device must also have a camera and you must grant the App permission to use it for the App's full functionality to work.

- 5.2 You will need to register to use the App and the Service. As part of the registration procedure you will need to choose a password. You must treat such information (whether chosen by you) as confidential and you must not disclose it to any third party.
- 5.3 You are responsible for any activity using your account, whether or not you authorised that activity. If you know or suspect that anyone other than you knows your password we recommend that you change your password immediately.

## 6. Licence Restrictions

6.1 You agree that you will:

- 6.1.1 not rent, lease, sub-license, loan, provide, or otherwise make available, the App or the Services in any form, in whole or in part to any person without our prior written consent;
- 6.1.2 not copy the App or Services, except as part of the normal use of the App or where it is necessary for the purpose of back-up or operational security;
- 6.1.3 not translate, merge, adapt, vary, alter or modify, the whole or any part of the App or Services nor permit the App or the Services or any part of them to be combined with, or become incorporated in, any other programs, except as necessary to use the App and the Services on devices as permitted in these App Terms;
- 6.1.4 not disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the App or the Services nor attempt to do any such things, except to the extent that (by virtue of sections 50B and 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the App with another software program and provided that the information obtained by you during such activities:
- is used only for the purpose of achieving inter-operability of the App with another software program, approved by FleetCheck in writing in advance;
  - is not disclosed or communicated without our prior written consent to any third party; and
  - is not used to create any software that is substantially similar in its expression to the App; and
  - is kept secure.



### **7. Acceptable Use Restrictions**

#### 7.1 You must not:

- 7.1.1 use the App or any Service in any manner inconsistent with these App Terms, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, such as viruses, or harmful data, into the App, any Service or any operating system;
- 7.1.2 use the App or any Service in any way, or for any purpose, that breaches any applicable local, national or international law or regulation;
- 7.1.3 infringe our intellectual property rights or those of any third party in relation to your use of the App or any Service, including by the submission of any material (to the extent that such use is not licensed by these terms) or by registering as a user name the name or identity of another person that is not your own;
- 7.1.4 transmit any material that is defamatory, discriminatory, offensive, obscene, sexually explicit, promotes violence or is otherwise objectionable in relation to your use of the App or any Service;
- 7.1.5 use the App or any Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; or
- 7.1.6 collect or harvest any information or data from any Service or our systems or attempt to decipher any transmissions to or from the servers running any Service.

7.2 We reserve the right to review all content and material uploaded to the App, and to remove any such content that, in our opinion, violates this clause 7. However we are under no obligation to review all of the content uploaded and, as a result, we cannot guarantee that content on the App will not breach the restrictions in this clause 7. We expressly exclude our liability for any loss or damage arising from the use of any interactive element of the App in contravention of this clause 7.

### **8. User-generated Content**

- 8.1 Whenever you make use of a feature that allows you to upload content to the App, you must comply with the acceptable use restrictions set out in clause 7 and you warrant that any such content does comply with those restrictions, and you will be liable to us and indemnify us for any breach of that warranty. This means you will be responsible for any loss or damage we suffer as a result of your breach of that warranty.
- 8.2 All content and material uploaded to the App by you will be transported to an API connected to this App that transfers the data inputted to your employer.
- 8.3 The App includes information uploaded by other users of the App. This information has not been verified or approved by us.

8.4 Use of the App is at your own risk and you are solely responsible for decisions that you make as a result of the content and material published on the App by you and other users.

8.5 We have the right to disclose your identity to any third party who is claiming that any content posted or uploaded by you to the App constitutes a violation of their intellectual property rights, or of their right to privacy. We have the right to disclose your identity to any law enforcement agency or regulatory body who has a lawful and legitimate interest in obtaining it.

## 9. Intellectual Property Rights

9.1 All intellectual property rights in the App and the Services throughout the world belong to us (or our licensors) and the rights in the App and the Services are licensed (not sold) to you. You have no intellectual property rights in, or to, the App or the Services other than the right to use them in accordance with these App Terms.

## 10. Liability

10.1 To the maximum extent permitted by law, and except as expressly provided for in these App Terms:

10.1.1 access to the App and any content provided through the App is made available to you on an 'as is' and 'as available' basis and we do not provide any warranties for accuracy or comprehensiveness of such content;

10.1.2 we do not guarantee that access to the App will be continuously available or that the App will function without error, inaccuracy or defect;

10.1.3 your access to the App is at your sole risk;

10.1.4 we disclaim any and all express or implied promises, representations, and warranties of any kind with respect to your access to the App, including but not limited to condition, conformity to any representation or description, compatibility with all equipment and software configurations, existence of any latent or patent defects, negligence, warranties of title, against infringement, and merchantability or fitness for a particular use or purpose;

10.1.5 in no event are we or our third party providers liable for any loss or damage, including any cost, expense (including legal fees), payment, liability (including contingent and prospective liabilities), claim, judgment, demand or other liabilities (including all consequential loss including all consequential economic loss and loss of profit, revenue, margin, use, production, opportunity, contract, goodwill, business or anticipated savings and whether based on contract, tort or any other legal theory, even if we have been advised of the possibility of such damages) from your access and/or use of the App; and

10.1.6 all terms which would otherwise be implied by law, custom or usage are excluded.

- 10.2 The App may contain hyperlinks to third party websites and services. These hyperlinks are provided for your information only. We are not responsible for information gathered from, or the use of, any of these third party websites and services and should not be interpreted as endorsement by us of those linked websites. We will not be liable for any loss or damage that may arise from your use of them.
- 10.3 Any liability, including breach of contract, tort (including negligence and breach of statutory duty), misrepresentation or restitution, that we may have to your employer as a result of a breach of these terms shall be governed by the Corporate Contract.
- 10.4 Nothing in these App Terms excludes or limits our liability for:
- 10.4.1 injury or death caused by our negligence;
  - 10.4.2 loss caused by our willful default of, or fraudulent misrepresentation or fraudulent concealment;
  - 10.4.3 any breach of the confidentiality obligations set out in these App Terms; or
  - 10.4.4 any other liabilities to the extent they cannot be excluded under law.

## **11. Suspension and Termination**

- 11.1 We may suspend or terminate your access to the App at any time if, in our reasonable opinion, you are in breach of any of these App Terms or any other policies and/or guidelines created for the App and the Service.
- 11.2 We may also suspend or terminate all or any part of your access to the App if in our sole reasonable opinion we have a legitimate concern about your access to the App, or conclude that you have suffered a security breach that impacts on the confidentiality or integrity of the App.
- 11.3 We may terminate your access to all or any part of the App if we have reason to believe that you are no longer authorised by your employer to share or receive data through the App or if we are no longer a supplier to your employer.
- 11.4 We may exercise these rights to suspend or terminate immediately, or at any point in our sole discretion, without notice.

## **12. Consequences of Suspension or Termination**

- 12.1 On termination of these App Terms:
- 12.1.1 You must cease using the App;
  - 12.1.2 the licences granted under clause 3 shall cease;
  - 12.1.3 all perpetual licences granted to us under these App Terms continue in full force and effect; and

12.1.4 we shall immediately disable your access to the App and cancel your login details.

12.2 On suspension of these terms we may:

12.2.1 disable your access to all or any part of the App; and

12.2.2 suspend your login details.

12.3 Suspension and termination of these App Terms does not affect any continuing rights and obligations of the parties set out in these Terms, including (without limitation) clauses 3, 9, 10 and 12.

### **13. Other Important Terms**

13.1 We may transfer our rights and obligations under these App Terms to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under the contract.

13.2 You may only transfer your rights or your obligations under these terms to another person if we agree in writing.

13.3 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

13.4 Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

13.5 We are not liable for delay in performing, or failure to perform, any of our obligations under these App Terms if such delay or failure results from events, circumstances or causes beyond our reasonable control.

13.6 Even if we delay in enforcing this contract, we can still enforce it later. If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.

13.7 You acknowledge that your breach of any of the provisions of these App Terms may cause immediate and irreparable harm to us for which we may not have an adequate remedy in money or damages. We may obtain an injunction against you from a court of competent jurisdiction and recover from you the costs incurred in seeking such an injunction. Our right to obtain injunctive relief does not limit our right to seek or obtain further remedies.

13.8 These App Terms are governed by English law and any legal proceedings in respect of the products must be brought in any court of competent jurisdiction in the United

Kingdom. Notwithstanding the foregoing, we may initiate legal proceedings in any court of competent jurisdiction to secure interim or interlocutory relief.

#### **14. How to Contact Us**

If you have any queries regarding these App Terms or problems using the App, please contact us via:

Email: [support@fleetcheck.co.uk](mailto:support@fleetcheck.co.uk)

If we have to contact you we will do so by email, by SMS or in-app message, using the contact details you have provided to us.