

Total Drive User Agreement

(Total Drive & Instructor/Driving School)

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EXECUTING THIS AGREEMENT:

This AGREEMENT is entered into as of the EFFECTIVE DATE by and between Total Drive Software Limited trading as Total Drive (“Supplier” “We”, “Our” or “Us”), a company formed under the laws of Great Britain, and a business or individual (“Subscriber”, “You” or “Your”), collectively referred hereinafter as the parties (each a “party”). The Supplier provides its Services to Subscribers through its website located at <https://www.totaldrive.co.uk> (the “User Website”), whose use is subject to these Terms.

BY ACCESSING, VIEWING OR USING ALL OR ANY PART OF THE TOTAL DRIVE SERVICES OR SITE, OR DOWNLOADING ANY MATERIALS, OR BY COMPLETING ANY REGISTRATION PROCESS VIA THE USER WEBSITE, YOU ARE ACCEPTING THE TERMS OF THE TOTAL DRIVE SOFTWARE AS A SERVICE (SAAS) AGREEMENT (“AGREEMENT”). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES.

IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES OR CONTENT.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Applicable Data Protection Legislation: laws applicable to the Supplier and the Subscriber in relation to the processing of personal data under this Agreement, including: (i) the Data Protection Acts 1988 and 2003, or any other legislation or regulations implementing Directive 95/46/EC; (ii) the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011; (iii) on and with effect from its effective date, the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016) and any consequential national data

protection legislation; and (iv) any guidance and / or codes of practice issued by the Data Protection Commissioner or other relevant supervisory authority, including, 1without limitation, the European Data Protection Board, in each case as amended, supplemented or replaced from time to time.

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

Confidential Information: information that is proprietary or confidential, including, but not limited to, commercial, financial, marketing or technical information, know-how, trade secrets or business methods and is either clearly labelled as such or identified as Confidential Information in clause 14.

Effective Date: the earlier of (a) the date you accept this Agreement by clicking an “I Agree” button on our setup page or otherwise indicate that you accept this Agreement or (b) the date you first access or use the Services.

Initial Subscription Term: the first subscription term that you choose on the Effective Date, which can be monthly, quarterly and annually.

Intellectual Property Rights: any patent, copyright, trade mark, service mark or trade name, right in software, right in design, right in databases, image right, moral right, right in an invention, right relating to passing off, domain name, right in confidential information (including trade secrets) or right of privacy, and all similar or equivalent rights in each case whether registered or not and including all applications (or rights to apply) for, or renewal or extension of, such rights which exist now or which will exist in the future in Great Britain & Northern Ireland and all other countries in the world.

Mobile Applications: the mobile applications provided as part of the Services and made available to the Subscriber’s Customers on the iOS platform via the App Store and on the android platform via Google Play.

New Release: a new release of all or any part of the Software suitable for use in the Services in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made.

New Version: a new version of the Services released by the Supplier which provides additional functionality.

Normal Business Hours: 9.00 am to 5.00 pm GMT Monday to Friday.

Order Form: Form signed by the Subscriber which sets out the product / service purchased with relevant pricing, payment and contractual terms.

Personal Data Breach: has the meaning ascribed to it under Applicable Data Protection Legislation.

Privacy Statement: the policy relating to the privacy and security of Subscriber Data is available [here](#) or such other website address as may be notified to the Subscriber from time to time.

Renewal Period: the period described in clause 17.1.

Set up Services: the design and deployment of the Mobile Applications to the App stores and the integration of the Services on the Subscriber's website.

Services: the software services provided by the Supplier to the Subscriber under this Agreement via the User Website and the Mobile Applications. The services are identified in the Order process completed by the Subscriber upon ordering the Services and are priced according to the particular features required by the Subscriber.

Software: the software applications provided by the Supplier as part of the Services.

Subscriber's Customers: the individuals who purchase products and services from the Subscriber.

Subscriber Data: the data inputted by the Subscriber, the Supplier on the Subscriber's behalf, or the Subscriber's Customers, for the purpose of using the Services or facilitating the Subscriber's or the Subscriber's Customers' use of the Services and stored by the Supplier. This data is the sole property of the Subscriber and shall be held confidential by the Supplier.

Subscription Fees: the subscription fees payable by the Subscriber to the Supplier for the Services either monthly, quarterly or annually as set out in clause 11.

Subscription Term: has the meaning given in clause 17.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Virus: anything or device (including any software, code, file or programme) which may: 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; 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 adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.

1.8A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

1.9A reference to writing or written includes faxes and e-mail.

1.10 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

2. CONTRACT EXECUTION

2.1 The Supplier shall provide the Services on accordance with any Order Form accepted by the Supplier, subject to this Agreement, which shall take effect to the exclusion of any other terms and conditions whatsoever of the Subscriber or otherwise. No terms or conditions of any Subscriber purchase order or other terms and conditions shall apply to the Services. The

Subscriber agrees not to submit any alternative terms or conditions in relation to the supply of the Services.

3. SUBSCRIPTION

3.1 Subject to the Subscriber paying the Subscription Fees and complying with the restrictions set out in this clause 3 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Subscriber a non-exclusive, non-transferable right to use the Services during the Subscription Term solely for the Subscriber's business operations which includes publicly displaying information such as class and appointment schedules, products and services on the Subscriber's website and on the Mobile Applications and to make the Services available to Subscriber's Customers.

3.2 The Subscriber shall not knowingly access, store, distribute or transmit any Viruses or any material during the course of its use of the Services that:

1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
2. facilitates illegal activity;
3. depicts sexually explicit images;
4. promotes unlawful violence;
5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
6. in a manner that is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Subscriber, to disable the Subscriber's access to any material that breaches the provisions of this clause. Supplier will notify the Subscriber of such action prior to disabling access. Upon providing notice, Supplier will be available to discuss the issue and possible remedies.

3.3 The Subscriber shall not:

1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
2. and except to the extent expressly permitted under this Agreement, 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
3. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
4. access all or any part of the Services in order to build a product or service which competes with the Services; or
5. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Services or any part thereof.

3.4 The Subscriber 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 the Supplier.

3.5 The rights provided under this clause 3 are granted to the Subscriber only, and shall not be considered granted to any subsidiary or holding company of the Subscriber unless the Subscriber purchases additional subscriptions for related companies or affiliates as set out in clause 4.

4. MOBILE APPLICATIONS

4.1 The Mobile Applications are included in the Services provided to the Subscriber under clause 3.

4.2 The Supplier shall arrange for the publication of the Mobile Applications to the Apple App Store and the Google Play Store as part of the Set up Services

4.3 The Subscriber represents to the Supplier and unconditionally guarantees that any content (and Intellectual Property Rights in that content), including text, information or graphics furnished to the Supplier for inclusion in the Mobile Applications is owned by the Subscriber, or that the Subscriber has permission from the rightful owner to use those elements, and will hold defend, indemnify and hold harmless the Supplier and its subcontractors on demand (with no

duty to mitigate its loss) from and against any and all liabilities, claims, demands, damages, losses or expenses (including legal and other professional advisers' fees and disbursements), interest and penalties incurred by the Supplier as a result of any actual or alleged third-party claim, judgment or proceeding arising from the use of such elements furnished by the Subscriber.

4.4 To the extent permitted by law, all Intellectual Property Rights in the content provided by the Subscriber, including text, information or graphics, shall remain the property of the Subscriber. The Subscriber grants the Supplier a non-exclusive, non-transferable, irrevocable, royalty-free licence to use the Intellectual Property Rights in the content provided by the Subscriber in order to provide the Services.

4.5 For the avoidance of any doubt and apart from the custom branding of the Mobile Applications with the Subscriber's branding, logos and trademarks, the Intellectual Property Rights in the Mobile Applications and the Software are, and at all times shall remain, the property of the Supplier (or the appropriate third-party rights-owner(s), if any).

5. UPDATE OF SERVICES

5.1 The Supplier reserves the right to supply the Subscriber with New Releases and to replace, modify, and/or upgrade the Services purchased by the Subscriber in its sole discretion. Any replacement or upgrade to such the Services shall be treated as part of the Services for the purpose of this Agreement.

5.2 The Supplier shall notify the Subscriber promptly in writing of the issue of any New Version, specifying the following:

1. the fee payable for the New Version (if applicable); and
2. in what way the New Version differs from the previous version in terms of functionality, performance and compatibility.

5.3 The Supplier does not support software versions other than the current active version.

6. SERVICES

6.1 The Supplier shall, during the Subscription Term, provide the Services subject to the terms of this Agreement.

6.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

1. planned maintenance (notification of maintenance will be provided to Subscribers) carried out during the maintenance window of 2.00am to 5.00 am GMT on weekends; and
2. unscheduled maintenance performed outside Normal Business Hours, and the Supplier will use reasonable endeavours to give the Subscriber at least 6 Normal Business Hours' notice in advance

7. SUBSCRIBER DATA

7.1 The Subscriber shall own all right, title and interest in and to all of the Subscriber Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Subscriber Data.

7.2 In the event of any loss or damage to Subscriber Data, the Subscriber's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Subscriber Data. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Subscriber Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Subscriber Data).

7.3 The Services provide the ability for the Subscriber to download and extract certain elements of the Subscriber Data. The Supplier accepts no responsibility for the security of any Subscriber Data downloaded and extracted from the Services and the responsibility for maintaining the security of this data remains solely with the Subscriber.

7.4 In order to provide the Services, the Supplier collects and processes the personal data relating to employees and agents of the Subscribers. The Supplier shall, in providing the Services, comply with its Privacy Statement relating to the privacy and security of such personal

data available at www.totaldrive.co.uk or such other website address as may be notified to the Subscriber from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.

7.5 If the Supplier processes any personal data, including the Subscriber Data, on the Subscriber's behalf when performing its obligations under this Agreement, the parties acknowledge that the Subscriber shall be the data controller and the Supplier shall be a data processor and in any such case:

1. the Supplier shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Subscriber from time to time;
2. if the Supplier engages another processor (a "Sub- Processor") to carry out specific processing activities on any of the personal data, the Supplier shall notify the Subscriber in advance and shall ensure that at least the same data protection obligations as are set out in this clause 7.5 are imposed on that Sub-Processor by way of a written agreement. If the Subscriber objects to any proposed Sub-Processor, the Subscriber may cease using the Services. The Subscriber acknowledges and agrees that the Supplier may use third party data centres in the provision of the Services, details of which are available on request. The Supplier shall be liable and responsible for the acts and omissions of the Sub-Processor as if such acts and omissions were its own;
3. the Subscriber acknowledges and agrees that the personal data may be transferred or stored outside of the European Economic Area or the country where the Subscriber is located in order to carry out the Services and the Supplier's other obligations under this Agreement. In the event that the personal data is transferred or stored outside of the European Economic Area, the Supplier will comply with Applicable Data Protection Legislation, and for the limited purposes of such transfers, may execute the EU Commission's approved model clauses or other available data transfer mechanism as agent for the Subscriber;
4. the Supplier shall ensure that any persons authorised to process the personal data by it (including its employees, contractors, agents and subcontractors) have agreed to comply

with obligations of confidentiality which are at least commensurate with those set out in clause 14;

5. the Subscriber warrants that it shall comply with all Applicable Data Protection Legislation in its collection and use of the Subscriber Data and shall ensure that the Subscriber is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this Agreement on the Subscriber's behalf;
6. the Subscriber shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by Applicable Data Protection Legislation, including without limitation any consents required in relation to marketing by the Subscriber using the Services;
7. each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage;
8. the Supplier shall notify the Subscriber, without undue delay, of any request made by a data subject to access personal data and shall at all times cooperate with the Subscriber and provide the Subscriber with any assistance it may require in order to execute the Subscriber's obligations under Applicable Data Protection Legislation in relation to such data subject access requests;
9. the Supplier shall, to the extent necessary and insofar as reasonably possible, cooperate with and assist the Subscriber to execute the Subscriber's obligations under Applicable Data Protection Laws in relation to a data subject's rights;
10. in the case of a Personal Data Breach, the Supplier shall, without undue delay, notify the Subscriber of the Personal Data Breach and shall provide all reasonable assistance and information to the Subscriber in relation to same;
11. in addition to, and without prejudice to, any obligations set out at clause 17 (Term and Termination), at the Subscriber's direction and cost the Supplier shall delete or return all personal data to the Subscriber at the end of the provision of the applicable Services to which the processing relates, and delete all existing copies held by the Supplier (unless applicable law requires the storage of such personal data by the Supplier);
12. the Supplier shall make available to the Subscriber such information as is reasonably necessary for the Subscriber to demonstrate compliance with its obligations under

Applicable Data Protection Legislation and the Supplier shall allow for and contribute to audits, including inspections, conducted by the Subscriber or another auditor mandated by the Subscriber provided that any such audits or inspections must be on reasonable prior notice, conducted during regular business hours, subject to the Supplier's policies, and may not unreasonably interfere with Supplier business activities. Audits may be undertaken no more frequently than annually, unless required by Applicable Data Protection Laws; and

13. permit the Subscriber to take all reasonably necessary steps to ensure compliance with the obligations imposed by this clause under Applicable Data Protection Laws.
14. 7.6 As part of its normal business operations, the Supplier collects and compiles aggregated data from all of the Subscribers to the Services (the "Aggregated Data"). This Aggregated Data does not reveal the identity of the Subscriber or the Subscriber's Customers. The Subscriber agrees that the Aggregated Data is owned solely by the Supplier to be used at its discretion.

8. SUBSCRIBER WEBSITE AND SOCIAL MEDIA

The Subscriber acknowledges that the Services may enable or assist it and Subscriber's Customers to access the website content of, correspond with, and purchase products and services from, the Subscriber's websites or other social media platforms used by the Subscriber ("Subscriber social media"). Any contract entered into, any transaction completed and any marketing undertaken via any Subscriber social media is between the Subscriber and the relevant third party, and not the Supplier, and the Supplier shall have no liability or obligation whatsoever in relation to the Subscriber social media or the use of same. The Subscriber shall refer to the Subscriber social media terms and conditions and privacy policy prior to using and / or permitting Subscriber's Customer to use the Subscriber social media. The Supplier does not endorse or approve any Subscriber social media or marketing nor the content of any Subscriber social media or marketing made available via or using the Services. The Supplier is not responsible for any personal data collected by the Subscriber via any Subscriber social media.

9. SUPPLIER'S OBLIGATIONS

9.1 The Supplier undertakes that the Services will be performed with reasonable skill and care.

9.2 The undertaking at clause 9.1 shall not apply to the extent of any non- conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents.

9.3 If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non- conformance promptly, or provide the Subscriber with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Subscriber's sole and exclusive remedy for any breach of the undertaking set out in clause 9.1. Notwithstanding the foregoing, the Supplier:

1. does not warrant that the Subscriber's use of the Services will be uninterrupted or error-free; and
2. 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 Subscriber acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

9.4 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and / or services which are similar to those provided under this Agreement.

9.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

9.6 All warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.

10. SUBSCRIBER'S OBLIGATIONS

The Subscriber shall:

1. provide the Supplier with:

2. all necessary co-operation in relation to this Agreement; and
3. all necessary access to such information as may be required by the Supplier; in order to provide the Services, including but not limited to Subscriber Data, security access information and configuration services;
4. comply with all applicable laws and regulations, including, without limitation, Applicable Data Protection Laws, with respect to its activities under this Agreement;
5. carry out all other Subscriber responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Subscriber's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
6. ensure that its staff use the Services in accordance with the terms and conditions of this Agreement and shall be responsible for any breach of this Agreement by its staff;
7. obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
8. ensure that its network and systems are secure and comply with the relevant specifications provided by the Supplier from time to time; and
9. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Subscriber's network connections or telecommunications links or caused by the Internet.

11. CHARGES AND PAYMENT

11.1 The Subscriber shall pay the Subscription Fees to the Supplier on a monthly bases as outlined at www.totaldrive.co.uk/pricing

11.2 The Subscriber shall on the Effective Date provide to the Supplier valid, up- to-date and complete bank account details, up-to-date and complete contact and billing details and, if the Subscriber provides its credit or debit card or bank account details to the Supplier, the Subscriber hereby authorises the Supplier to bill such bank account in accordance with the payment plan selected by the Subscriber.

11.3 If the Supplier has not received payment within 14 days after any due date, and without prejudice to any other rights and remedies of the Supplier:

1. the Supplier may, without liability to the Subscriber, disable the Subscriber's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Allied Irish Banks Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

11.4 If the Supplier then receives payment for the outstanding Subscription Fees, the Supplier reserves the right to charge a Reconnection Fee commensurate to the Subscriber's monthly Subscription Fee in the Subscriber's territory.

11.5 All amounts and fees stated or referred to in this Agreement:

1. shall be payable in the Subscriber's local currency;
2. are non-cancellable and non-refundable;
3. are exclusive of any taxes, levies or duties required or accessible in the Subscriber's territory. If the Supplier is legally required to charge and collect any taxes, any relevant sum shall be added to the Supplier's invoice(s) at the appropriate rate.

11.6 The Supplier shall be entitled to increase the Subscription Fees, at the start of each Renewal Period upon 30 days' prior notice to the Subscriber.

12. PAYMENT PROCESSING

12.1 Payment processing services on TOTAL DRIVE are provided by Stripe and are subject to the Stripe Connected Account Agreement, (<https://stripe.com/en-gb/connect-account/legal>) which includes the Stripe Terms of Service (collectively, the "Stripe Services Agreement"). By accepting the terms of this Agreement or continuing to operate as a Subscriber on TOTAL DRIVE, you agree to be bound by the Stripe Services Agreement, as the same may be modified by Stripe from time to time. As a condition of TOTAL DRIVE enabling payment processing

services through Stripe, you agree to provide TOTAL DRIVE accurate and complete information about you and your business, and you authorize TOTAL DRIVE to share it and any transaction information related to your use of the payment processing services provided by Stripe.

12.2 The applicable payment processing fees are set out on the Order Form.

12.3 The Subscriber expressly acknowledges that the Subscriber has a direct relationship with the Subscriber's Customers and the Subscriber's relevant business name should appear on all credit card statements.

12.4 It is the Subscriber's sole responsibility to create the terms and conditions associated with the sale and supply of its products and services to Subscriber's Customers through the Software and associated services. The Supplier provides the Subscriber with the ability to notify such terms and conditions to Subscriber's Customers prior to transactions but does not accept any responsibility or provide any warranty, representation, condition or guarantee as to the accuracy or legality of such terms and conditions. The terms of this clause 12.4 are expressly acknowledged by the Supplier. The Subscriber shall indemnify, defend and hold harmless the Supplier on demand (with no duty to mitigate its loss) from and against any and all liabilities, claims, demands, damages, losses or expenses (including legal and other professional adviser's fees and disbursements), interest and penalties incurred by the Supplier howsoever arising from the Subscriber's contract with Subscriber's Customers (or potential customers).

12.5. Refunds, chargebacks and fraudulent payments made through the stripe payment gateway the sole responsibility of the subscriber to liase with stripe. For further details please refer to Stripes refund policy at <https://stripe.com/docs/refunds> and disputes policy at <https://stripe.com/docs/disputes>

13. PROPRIETARY RIGHTS

13.1 The Subscriber acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Services, Software and Mobile Applications. Except as expressly stated herein, this Agreement does not grant the Subscriber any rights to, or in,

patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services.

13.2 The Supplier confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

13.3 The Subscriber authorises the Supplier to include its business name, logo and any relevant trademark on its client directories and on the Supplier's public website during the Subscription Term.

14. CONFIDENTIALITY

14.1 Each party shall keep and procure to be kept secret and confidential all Confidential Information belonging to the other party disclosed or obtained as a result of the relationship of the parties under this Agreement and shall not use nor disclose the same save for the purposes of the proper performance of this Agreement or with the prior written consent of the other party.

14.2 The parties may disclose Confidential Information to an employee, contractor, consultant or agent to the extent necessary for the performance of this Agreement provided such disclosure is subject to obligations equivalent to those set out in this Agreement. Each party shall procure that any such employee, consultant, or agent complies with such obligations. Each party will be responsible to the other party in respect of any disclosure or use of such Confidential Information by a person to whom disclosure is made.

14.3 The obligations of confidentiality in this clause 14 do not extend to any Confidential Information which the party that wishes to disclose or use can show:

1. is or becomes generally available to the public other than as a result of a breach of the obligations of confidentiality under this Agreement;
2. was in its written records prior to the Effective Date and not subject to any confidentiality obligations;
3. was or is disclosed to it by a third party entitled to do so;

4. the parties agree in writing is not Confidential Information or may be disclosed; or
5. is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

14.4 The Subscriber acknowledges, without limitation, that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

14.5 The Supplier acknowledges, without limitation, that the Subscriber Data constitutes the Confidential Information of the Subscriber.

14.6 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

14.7 This clause 14 shall survive termination of this Agreement, howsoever arising.

15. INDEMNITY

15.1 The Subscriber shall indemnify, defend and hold harmless the Supplier in full and on demand from and against any and all liabilities, claims, demands, damages, losses or expenses (including legal and other professional adviser's fees and disbursements), interest and penalties incurred by the Supplier arising out of or in connection with the Subscriber's breach of the terms of this Agreement, provided that:

1. the Subscriber is given prompt notice of any such claim;
2. the Supplier provides reasonable co-operation to the Subscriber in the defence and settlement of such claim, at the Subscriber's expense; and
3. the Subscriber is given sole authority to defend or settle the claim.

15.2 The Supplier shall indemnify, defend and hold harmless the Supplier in full and on demand from and against any and all liabilities, claims, demands, damages, losses or expenses (including legal and other professional adviser's fees and disbursements), interest and penalties incurred by the Subscriber howsoever arising whether wholly or in part resulting directly or indirectly

from any claim that the operation, possession or use of the Services, Software or Mobile Applications infringes the Intellectual Property Rights of a third party, provided that:

1. the Supplier is given prompt notice of any such claim;
2. the Subscriber provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
3. the Supplier is given sole authority to defend or settle the claim.

15.3 In the event of an intellectual property infringement or misappropriation claim for which the Supplier has indemnification obligations pursuant to this Agreement, the Supplier may, at the Supplier's option and at the Supplier's expense, without prejudice to the Subscriber's rights under clause 15.2 (i) modify the applicable Services, Software or Mobile Applications provided hereunder so that the Services, Software or Mobile Applications become non-infringing but still comply with the Supplier's obligations under this Agreement; (ii) replace the applicable Services, Software or Mobile Applications with substitute that is non-infringing but functionally equivalent and still in compliance with this Agreement's requirements; and/or (iii) obtain for the Subscriber the right to use such Services, Software or Mobile Applications upon commercially reasonable terms at the Supplier's sole expense; and/or, failing the Supplier's ability to achieve (i), (ii) or (iii), the Supplier shall remove the infringing or violative Services, Software or Mobile Applications and refund to the Subscriber the amount paid for such Services, Software or Mobile Applications that is the subject of such a claim.

15.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Subscriber to the extent that the alleged infringement is based on:

1. a modification of the Services or Documentation by anyone other than the Supplier; or
2. the Subscriber's use of the Services in a manner contrary to the instructions given to the Subscriber by the Supplier; or
3. the Subscriber's use of the Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

15.5 The foregoing states the Subscriber's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any Intellectual Property Rights or right of confidentiality.

16. LIMITATION OF LIABILITY

16.1 Except as expressly and specifically provided in this Agreement:

1. the Subscriber assumes sole responsibility for results obtained from the use of the Services by the Subscriber and Subscriber's Customers, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Subscriber in connection with the Services, or any actions taken by the Supplier at the Subscriber's direction; and
2. the Services are provided to the Subscriber on an "as is" basis.

16.2 Nothing in this Agreement excludes or limits the Supplier's liability for any liability which cannot legally be excluded or limited.

16.3 Under no circumstances will the Supplier be liable, whether in contract, tort (including negligence, breach of statutory duty or otherwise), misrepresentation or otherwise for any:

1. lost profits, damages resulting from loss of data, security, loss of revenue, loss of business or lost savings (in each case direct or indirect); or
2. indirect, incidental, consequential, special, exemplary or punitive damages,
3. arising out of or in connection with this Agreement or the Services.

16.4 Subject to clauses 16.1 – 16.3, the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 15.2), tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection this Agreement shall be limited to the total Subscription Fees paid for Services during the 12 months immediately preceding the date on which the claim arose.

17. TERM AND TERMINATION

17.1 This Agreement shall, unless otherwise terminated as provided in this clause 17, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods, monthly, quarterly or annually as selected by the Subscriber (each a Renewal Period), unless:

1. either party notifies the other party of termination, in writing, during any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Renewal Period; or
2. otherwise terminated in accordance with the provisions of this Agreement;
3. and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.

17.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

1. the Subscriber fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
2. the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
3. the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
4. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debt;
5. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

7. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
8. the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
9. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
10. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
11. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.2(d) to clause or 17.2 (j) (inclusive); or
12. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

17.3 On termination of this Agreement for any reason:

1. all licences granted under this Agreement shall immediately terminate;
2. each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;
3. the Supplier may destroy or otherwise dispose of any of the Subscriber Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Subscriber of the Subscriber Data in its possession. The Supplier shall use reasonable commercial endeavours to deliver the data to the Subscriber within 30 days of its receipt of such a written request, provided that the Subscriber 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 Subscriber shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Subscriber Data; and
4. 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

Agreement which existed at or before the date of termination shall not be affected or prejudiced. For the avoidance of doubt, termination of this Agreement will not affect a party's rights pursuant to any indemnity under this Agreement.

18. FORCE MAJEURE

The Supplier shall have no liability to the Subscriber under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Subscriber is notified of such an event and its expected duration.

19. Conflict

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

20. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it 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.

22. RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

23. SEVERANCE

23.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

23.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

24. ENTIRE AGREEMENT

24.1 This Agreement contains the entire agreement between the parties in relation to its subject matter and supersedes any prior arrangement, understanding written or oral agreements between the parties in relation to such subject matter. This Agreement applies as between the parties to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

24.2 The parties acknowledge that this Agreement has not been entered into wholly or partly in reliance on, nor has either party been given, any warranty, statement, promise or representation by the other or on its behalf other than as expressly set out in this Agreement.

24.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind this Agreement which it might otherwise have had in relation to them.

24.4 All warranties, conditions, terms and representations not set out in this Agreement whether implied by statute or otherwise are excluded to the extent permitted by law.

24.5 Nothing in this clause 24 (Entire Agreement) will exclude any liability in respect of misrepresentations made fraudulently

25. ASSIGNMENT

25.1 The Subscriber shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

25.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

26. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

27. THIRD PARTY RIGHTS

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns).

28. NOTICES

28.1 Any notice required to be given under this Agreement for the Subscriber shall be delivered by electronic mail to the contact email address provided to the Supplier during the TOTAL DRIVE registration process. Any notice for the attention of the Supplier should be sent via email to support@totaldrive.co.uk

28.2 Notices delivered via electronic mail during normal business hours shall be deemed to be received on the same date.

29. GOVERNING LAW

This Agreement 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 Great Britain and Northern Ireland.

30. JURISDICTION

Each party irrevocably agrees that the courts of Great Britain & Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).