

This Agreement is between Total Drive Software Limited, a company limited in England and Wales with Company Number 12853994 and registered at 37 Shiphay Lane, Torquay, England TQ2 7DU (Us/We/They) and You (Subscriber/you, your), collectively referred to hereinafter as the parties (each as a “party”). The Supplier will provide its Software Services to Subscribers through its website located at iOS and Android Smartphone Apps and Web portal at www.totaldrive.app (“the User App”). This Agreement is effective as at the date 29/02/2019.

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 App, you are accepting the terms of the Total Drive Software as a Service 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 this Agreement, in which case “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 this Agreement then you may not use the services or content.

Agreed terms

1. Interpretation

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

Applicable Data Protection Laws: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

Authorised Users: those employees, agents, independent contractors of the Subscriber and Pupils thereof who are authorised by the Subscriber to use the Services

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

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 14.

Customer Personal Data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

Supplier Personal Data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a controller.

UK GDPR: has the meaning given to it in the Data Protection Act 2018.

Effective Date: the earlier of (a) the date you accept this Agreement by clicking an “I Agree” button on the 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: patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (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.

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 local UK time Monday to Friday.

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

Privacy Statement: the policy relating to the privacy and security of the Subscriber Data is available upon request or such other website address as may be notified to the Subscriber from time to time.

Pupils: individuals who are clients of the subscribers and customers who are learning to drive who will utilise the facilities within the Mobile Application.

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 App 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 online 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 Customer, 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 Subscriptions, as set out in clause 3.

Subscription Term: has the meaning given in clause 3.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

User App: www.totaldrive.co.uk

Virus: any thing 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.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A 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.
- 1.9 A reference to writing or written includes faxes but not 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 in accordance with the booking process 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. After the initial free trial period, Users must subscribe to the system based on the current rates. 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, without the right to grant sublicences, to permit the Authorised Users to use the Services during the Subscription Term solely for the Subscriber's internal business operations. This 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 Subscribers Customers.
- 3.2 The Subscriber shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
 - (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;

- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) 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.

3.3 The Subscriber shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services in order to build a product or service which competes with the Services; or
- (c) subject to clause , license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
- (d) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 3; or
- (e) introduce or permit the introduction of, any Virus or Vulnerability into the Supplier's network and information systems.

3.4 The Subscriber shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

3.5 The rights provided under this clause 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.

4. The Services

- 4.1 The Supplier shall, during the Subscription Term, provide the Services subject to the terms of this Agreement.
- 4.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for;
- (a) 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
 - (b) 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.

5. Mobile Applications

- 5.1 The Mobile Applications are included in the Services provided to the Subscriber under clause 4
- 5.2 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
- 5.3 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 9 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.
- 5.4 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).

6. UPDATE OF SERVICES

- 6.1 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.
- 6.2 The Supplier shall notify the Subscriber promptly in writing of the issue of any New Version, specifying the following:
- (a) the fee payable for the New Version (if applicable); and
 - (b) in what way the New Version differs from the previous version in terms of functionality, performance and compatibility.
- 6.3 The Supplier does not support software versions other than the current active version. Services

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 to the Application. 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:

- (a) 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;
- (b) 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 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;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) 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;

- (h) 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;
- (i) 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;
- (j) 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;
- (k) in addition to, and without prejudice to, any obligations set out at clause 18 (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);
- (l) 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
- (m) permit the Subscriber to take all reasonably necessary steps to ensure compliance with the obligations imposed by this clause under Applicable Data Protection Laws.

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

8.1 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 relevant third parties 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 substantially in accordance 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. If the Services do not conform with the foregoing undertaking, the 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.
- 9.3 The Supplier:
- (a) does not warrant that:
 - (i) the Subscriber's use of the Services will be uninterrupted or error-free;
 - (ii) that the Services and/or the information obtained by the Subscriber through the Services will meet the Subscriber's requirements; or
 - (iii) the Software or the Services will be free from Vulnerabilities or Viruses.
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Subscriber acknowledges that the Services and Documentation 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 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
- 9.7 permit the Subscriber to take all reasonably necessary steps to ensure compliance with the obligations imposed by this clause under Applicable Data Protection Laws.
- 9.8 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.
- 9.9 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 maintenance and back-up for which it shall remain fully liable).

10. Subscriber's obligations

- 10.1 The Subscriber shall:
- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this agreement; and
 - (ii) 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;

- (b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) 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;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) 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;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing 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.

10.2 The Subscriber shall own all right, title and interest in and to all of the Subscriber Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Subscriber Data.

11. Charges and payment

11.1 The Subscriber shall pay the Subscription Fees to the Supplier on a monthly basis as outlined at <https://totaldrive.co.uk/>

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 the due date, and without prejudice to any other rights and remedies of the Supplier:

- (a) 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

- (b) 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 from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- (c) If the Supplier than receives payment for the outstanding Subscription Fees, the Supplier reserves the right to charge a reconnection fee commensurate to the Subscribers monthly Subscription Fee in the Subscribers territory.

11.4 All amounts and fees stated or referred to in this agreement:

- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 16.3(b) non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

11.5 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 The Total Drive payment platform is provided by Total Drive Software Ltd and operated by Adyen. The platform is designed to facilitate the purchase of Driving lessons by pupils. Payments made through the platform happen instantly. As a condition of TOTAL DRIVE enabling payment processing services through Adyen, 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 Adyen.

12.2 The applicable payment processing fees are set out in accordance with the booking process.

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 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 Adyen payment gateway the sole responsibility of the subscriber.

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 and the Documentation. Except as expressly stated herein, this agreement does not grant the Subscriber any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

- 13.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation 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 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, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services.

- 13.4 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.

- 13.5 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 may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;

- (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 14.2 Subject to clause 14.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 14.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 14.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 14.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 14.5 The Subscriber acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 14.6 The Supplier acknowledges that the Subscriber Data is the Confidential Information of the Subscriber.
- 14.7 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.
- 14.8 The above provisions of this clause 14 shall survive termination of this agreement, however arising.
- 15. Indemnity**
- 15.1 The Subscriber shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation

court costs and reasonable legal fees) arising out of or in connection with the Subscriber's use of the Services and/or Documentation, provided that:

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

15.2 The Supplier shall defend the Subscriber, its officers, directors and employees against any claim that the Subscriber's use of the Services or Documentation in accordance with this agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trademark, database right or right of confidentiality, and shall indemnify the Subscriber for any amounts awarded against the Subscriber in judgment or settlement of such claims, provided that:

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

15.3 In the defence or settlement of any claim, the Supplier may procure the right for the Subscriber to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Subscriber without any additional liability or obligation to pay liquidated damages or other additional costs to the Subscriber.

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:

- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
- (b) the Subscriber's use of the Services or Documentation in a manner contrary to the instructions given to the Subscriber by the Supplier; or
- (c) the Subscriber's use of the Services or Documentation 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 patent, copyright, trademark, database right or right of confidentiality.

16. Limitation of liability

16.1 Except as expressly and specifically provided in this agreement:

- (a) the Subscriber assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Subscriber, 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 discretion;
- (b) 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; and
- (c) the Services and the Documentation are provided to the Subscriber on an "as is" basis.

16.2 Nothing in this agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

16.3 Subject to clause 16.1 and clause 16.2:

- (a) the Supplier shall not be liable whether in tort (including for [negligence or] breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) 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, restitution or otherwise, arising in connection with the performance or contemplated performance of 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 of 1 month (each a **Renewal Period**), unless:

- (a) 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
 - (b) otherwise terminated in accordance with the provisions of this Agreement; and
- the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

17.2 If the Subscriber wishes to cancel the subscription to Total Drive they will need to visit <https://totaldrive.co.uk/cancellations/> and complete the cancellation form. Cancellations will only be accepted using this method

17.3 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:

- (a) the other party 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;
- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
- (c) 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,
- (d) 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 debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) 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;
- (f) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (g) 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;

- (h) 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 (being a company, partnership or limited liability partnership);
- (i) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (j) 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;
- (k) 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;
- (l) 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 17.3(c) to *clause 17.3(j)* (inclusive);
- (m) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (n) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

17.4 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Subscriber shall immediately cease all use of the Services;
- (b) 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;
- (c) 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 then most recent back-up of the Subscriber Data along with evidence of the authority for the data to be provided to the Subscriber, by way of Privacy Policies which the Data Subjects/Authorised Users have agreed to or via express authority from the Data Subjects/Authorised Users in writing. Upon receipt of such evidence the Supplier shall use reasonable commercial endeavours to deliver the back-up 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

- (d) 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.

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, 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-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 23.2 If any provision or part-provision of this agreement is deemed deleted under clause 23.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. Entire agreement

- 24.1 This agreement 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.
- 24.2 Each party acknowledges that in entering into this agreement 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 this agreement.
- 24.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

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) pursuant to the Contracts (Rights of Third Parties) Act 1999.

28. Notices

28.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes.

28.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

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 England and Wales.

30. Jurisdiction

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