



TERMS & CONDITIONS

DEFINITIONS

“Agreement” means these terms and conditions as amended from time to time.

“Company” means Fleet Planner Compliance Solutions Ltd (Company Number 09370655).

“Customer” means the person, company or other organisation purchasing the Product.

“Product” means the products and/or services to be delivered under this Agreement to include the software, applications, documentation, technical support and consultancy.

“Charges” means the charges payable by the Customer to the Company for the supply of the Product

“Contract Period” means an initial 12 month period (unless an alternate term is agreed with the Company in writing) and each subsequent period of 12 months.

“Authorised User” means employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Product.

“Website” means fleetplanner.co.uk and the FPDailycheck mobile application.

“User Content” means material (including without limitation text, images, audio material, video material and audio-visual material) that the Customer submits to the Website, for whatever purpose.

“Confidential Information” means all information confidential to the Customer whether relating to the Customer’s business, customer, client, suppliers or otherwise but excluding information now or at any time hereafter becoming generally known or accessible to the general public (unless due to the default of the Company hereunder) and information obtained by the Company from a third party free of restrictions on use or disclosure.

“Intellectual Property Rights” means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

1. COMPANY’S OBLIGATIONS

- 1.1. The Company will provide the Product to the Customer in accordance with this Agreement.
- 1.2. Without prejudice to any other obligation of confidentiality from time to time subsisting between the Customer and the Company, the Company hereby undertakes (subject to the Customer’s written consent) not at any time hereafter to disclose any Confidential Information to any third party nor to use any Confidential Information saved (in either case) as may be reasonably necessary for the purposes of providing the Products hereunder or as may be required under a court order or lawful order of a government authority.
- 1.3. The Company will use all reasonable endeavours to provide the Products to the Customer within the estimated timings provided but all timings agreed to by the Company are business estimates only (but given in good faith) and the Company will not be liable for any loss, injury, damage or expenses arising directly or indirectly from any delay and time will not and cannot ever be of the essence in respect of the Company’s performance of its obligations hereunder.



2. PRODUCT

- 2.1. Any descriptions or illustrations on the Company's Website (or any other marketing literature) are published for the sole purpose of giving an approximate idea of the services described in them. They will not form part of the Agreement or have any contractual force.
- 2.2. The Company reserves the right to amend the specification of the Product if required by any applicable statutory or regulatory body or if the amendment will not materially affect the nature or quality of the Product.
- 2.3. The Company will use all reasonable endeavours to meet any performance dates requested or specified to provide the Product, but any such dates are estimates and any failures to meet these dates will not give the Customer the right to terminate this Agreement.

3. CUSTOMER'S OBLIGATION

- 3.1. The Customer shall provide the Company with:
 - 3.1.1. the necessary co-operation in all matters relating to this Agreement;
 - 3.1.2. information and materials required to supply the Product;
 - 3.1.3. access to the Customer's premises when required;
- 3.2. The Customer shall:
 - 3.2.1. carry out all Customer responsibilities set out in this Agreement in a timely and efficient manner;
 - 3.2.2. obtain and maintain all necessary licences, permissions and consents which may be required;
 - 3.2.3. comply with all applicable laws and regulations;
 - 3.2.4. ensure that the Authorised Users use the Product in accordance with this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

4. PAYMENT TERMS

- 4.1. Subject to 4.6, all Charges for the Product shall be notified to the Customer prior to the commencement of the initial Contract Period any subsequent Contract Periods.
- 4.2. All prices stated are exclusive of VAT unless otherwise stated.
- 4.3. The Customer shall pay the Charges (unless otherwise agreed with the Company) by a PayPal direct debit mandate.
- 4.4. All sums due to the Company under the terms of this Agreement shall be paid in full by the Customer without any set-off whatsoever and all time periods quoted under this clause 4 shall be of the essence.
- 4.5. If payment in full is not received by the Company upon the due date then the Company shall be entitled to levy a late payment charge at a rate of 2% per month on any unpaid overdue balance outstanding.
- 4.6. The Company reserves the right to:
 - 4.6.1. increase the Charges on an annual basis with effect from each anniversary of the Contract Period.
 - 4.6.2. increase the Charges, by giving notice to the Customer at any time to reflect any increase in the cost of the Product that is due to an increase in the Customer's fleet size.

5. TERM AND TERMINATION

- 5.1. This Agreement shall continue for the Contract Period, thereafter automatically extending for another Contract Period, unless:
 - 5.1.1 either party notifies the other party of termination, in writing, at least 30 days before the end of the Contract Period, in which case this Agreement shall terminate upon the expiry of the applicable Contract Period.
- 5.2. Without affecting any other right or remedy available to it, the Company may terminate this Agreement at any time by giving notice in writing to the Customer if:
 - 5.2.1. the Customer or any Authorised User commits a material breach of this Agreement and such breach is not remediable;
 - 5.2.2. the Customer or any Authorised User commits a material breach of this Agreement which is not remedied within 30 days of receiving written notice of such breach;
 - 5.2.3. the Customer has failed to pay any amount due under this Agreement on the due date and such amount remains unpaid within 30 days after the Customer has received notification that the payment is overdue; or
 - 5.2.4. any consent, licence or authorisation held by the Customer is revoked or modified such that it is no longer able to comply with its obligations under this Agreement or access and use the Product.



- 5.3. Either party may terminate this Agreement at any time by giving notice in writing to the other party if that other party:
- 5.3.1. stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 5.3.2. is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1947 or if the non-defaulting party reasonably believes that to be the case;
 - 5.3.3. becomes the subject of a company voluntary arrangement under the Insolvency Act 1947;
 - 5.3.4. has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 5.3.5. has a resolution passed for its winding up;
 - 5.3.6. has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 5.3.7. is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
 - 5.3.8. has a freezing order made against it;
 - 5.3.9. is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
 - 5.3.10. is subject to any events or circumstances analogous to those in clauses 5.3.1 to 5.3.9 in any jurisdiction;
 - 5.3.11. takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 5.3.1 to 5.3.10 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 5.4. The right of a party to terminate the Agreement pursuant to clause 5.3 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to this Agreement.
- 5.5. If a party becomes aware that any event has occurred, or circumstances exist, which may entitle the other party to terminate this Agreement under this clause 5, it shall immediately notify the other party in writing.
- 5.6. Termination of this Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. Each party acknowledges the existence of the other's intellectual property at the commencement of this Contract Period and neither party obtains any right to the other's intellectual property by entering into this Agreement.
- 6.2. The Company as the owner of the Product shall retain ownership of and all intellectual property rights in the Core Code and any additions or improvements to it.
- 6.3. Subject to the Customer first paying all Charges to the Company hereunder, the Customer shall obtain a licence for use of the Product.

7. LIMITATION OF LIABILITY

- 7.1. The extent of the parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 7.
- 7.2. Except as expressly and specifically provided in this Agreement:
 - 7.2.1. the Customer assumes sole responsibility for results obtained from the use of the Product by the Customer and Authorised Users, and for conclusions drawn from such use;
 - 7.2.2. the Company shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Company by the Customer in connection with the Product, or any actions taken by the Company at the Customer's direction;
 - 7.2.3. 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
 - 7.2.4. the Product is provided to the Customer on an "as is" basis.
- 7.3. Notwithstanding any other provision of this Agreement, the liability of the Company shall not be limited in any way in respect of the following:



- 7.3.1. death or personal injury caused by negligence;
 - 7.3.2. fraud or fraudulent misrepresentation;
 - 7.3.3. any other losses which cannot be excluded or limited by applicable law.
 - 7.4. Subject to clause 7.2 and 7.3:
 - 7.4.1. The Company shall not be liable for consequential, indirect or special losses; and
 - 7.4.2. The Company shall not be liable for any of the following (whether direct or indirect):
 - 7.4.2.1. loss of profit;
 - 7.4.2.2. loss of data;
 - 7.4.2.3. loss of use;
 - 7.4.2.4. loss of production;
 - 7.4.2.5. loss of contract;
 - 7.4.2.6. loss of opportunity;
 - 7.4.2.7. loss of savings, discount or rebate (whether actual or anticipated);
 - 7.4.2.8. harm to reputation or loss of goodwill.
 - 7.4.3. The Company shall not be liable for property damage;
 - 7.4.4. The Company total liability shall not exceed:
 - 7.4.4.1. an amount equal to the Charges paid to the Company in the 6-month period immediately preceding the first incident giving rise to the loss, or
 - 7.4.4.2. for incidents occurring in the first 6 months of the Contract Period, an amount equal to the paid Charges for the period in which the Product has been provided.
 - 7.4.4.3.
8. WEBSITE USE
- 8.1. Unless otherwise stated, the Website and/or its licensors own the Intellectual Property Rights in the Website and its content. Subject to this Agreement, all these Intellectual Property Rights are reserved.
 - 8.2. The Customer must not:
 - 8.2.1. republish material from the Website (including republication on other websites);
 - 8.2.2. sell, rent or sub-license material from the Website;
 - 8.2.3. show any material from the Website in public;
 - 8.2.4. reproduce, duplicate, copy or otherwise exploit material on the Website for a commercial purpose;
 - 8.2.5. edit or otherwise modify any material on the Website;
 - 8.2.6. or redistribute material from the Website.
 - 8.2.7. use the Website in any way that causes, or may cause, damage to the Website or impairment of the availability or accessibility of the Website; or in any way which is unlawful, illegal, fraudulent or harmful, or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity;
 - 8.2.8. use the Website to copy, store, host, transmit, send, use, publish or distribute any material which consists of (or is linked to) any spyware, computer virus, Trojan horse, worm, keystroke logger, rootkit or other malicious computer software;
 - 8.3. Restricted access
 - 8.3.1. Access to certain areas of the Website is restricted;
 - 8.3.2. The Company reserves the right to restrict access to other areas of the Website, or indeed this entire Website, at the Company's discretion.
 - 8.3.3. If the Company provides the Customer with a user ID and password to enable the Customer to access restricted areas of the Website or other content or services, the Customer must ensure that the user ID and password are kept confidential.
 - 8.3.4. The Company may disable the Customer's user ID and password at the Company's sole discretion without notice or explanation.
 - 8.4. User Content
 - 8.4.1. The Customer must ensure the User Content:
 - 8.4.1.1. must not be illegal or unlawful;
 - 8.4.1.2. must not infringe any third party's legal rights;
 - 8.4.1.3. must not be capable of giving rise to legal action whether against the Customer or the Company or a third party (in each case under any applicable law)
 - 8.4.2. The Customer must not submit any User Content to the Website that is or has ever been the subject of any threatened or actual legal proceedings or other similar complaints.
 - 8.4.3. The Company reserves the right to edit or remove any material submitted to this website, or stored on the Company's servers, or hosted or published upon the Website.



8.4.4. Notwithstanding the Company's rights under this Agreement in relation to User Content, the Company does not undertake to monitor the submission of such content to, or the publication of such content on, the Website.

9. ASSIGNMENT

- 9.1. The Company may transfer, sub-contract or otherwise deal with the Company's rights and/or obligations under this Agreement without notifying the Customer or obtaining the Customer's consent.
- 9.2. The Customer may not transfer, sub-contract or otherwise deal with the Customer's rights and/or obligations under this Agreement.

10. FORCE MAJEURE

- 10.1. Neither party shall be liable to the other under this Agreement, nor deemed in breach of this Agreement, for failure to carry out its provisions to the extent that such failure is caused by any cause beyond the parties' respective reasonable control, including without limitation fire, war, riot, sabotage, sickness, pandemic or industrial action.

11. WAIVER

- 11.1. No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy.

12. SEVERANCE

- 12.1. Each paragraph of this Agreement operates separately. If any court or relevant authority decides that any of them is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

13. ENTIRE AGREEMENT

- 13.1. This Agreement constitutes the entire agreement between the Customer and the Company supersedes all previous agreements.

14. THIRD PARTY RIGHTS

- 14.1. Except as noted in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Agreement (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement.

15. COMPLAINTS

- 15.1. If the Customer has a complaint about the Product or service received, then the Customer shall contact the Company immediately.
- 15.2. All complaints will be dealt with in a fair and confidential manner.

16. GOVERNING LAW

- 16.1. This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.