

AutoPlan FleetMaster is a registered reseller of FleetCheck, the software that is used for our service. As such, we are bound by the terms and conditions of FleetCheck. Please find these below.

FleetCheck Limited Terms and Conditions Company Registration Number 05674824)

1 Basis of sale

- 1.1 In this agreement the following words and expressions shall have the following meanings, unless the context otherwise requires:
- “Services”** mean the services provided by FleetCheck which shall include:
- the **Licence to use the vehicle management support software package** for the Contract Period, specifications of which will be supplied prior to the date hereof and reviewed at the end of each Contract Period;
 - **Technical Support**, details of which can be supplied on demand and shall be reviewed at the expiry of each Contract Period;
- “Order Form”** means the pro-forma listing the customer details;
- “Total Annual Fee”** means the fee for the first Contract Period which is referred to as the total annual fee notified to the Customer on the Order Form and thereafter notified to the Customer prior to the commencement of any subsequent Contract Period;
- “Set Up Charge”** means the fee referred to as the set up charge on the Order Form;
- “Monthly Instalment”** means the monthly instalment stated on the Order Form;
- “FleetCheck Software Licence”** means the annual licence to use the vehicle management software support software supplied by FleetCheck to the Customer;
- “Contract Period”** means an initial period of 24 calendar months commencing on the date of the Order form and thereafter, unless terminated in accordance with this agreement, every subsequent 12-month period commencing on the date of the Order Form;
- “Parties”** shall mean (1) FleetCheck and (2) the Customer;
- “Customer”** The Automobile Association Limited, Company number *[please insert]*
- “FleetCheck”** FleetCheck Limited registered in England and Wales under company number 05674824; and
- “Contract”** the contract between FleetCheck and the Customer for the supply of the Services in accordance with this Agreement.
- 1.2 The terms listed above and on the Order Form shall form the entire Agreement between the Parties in respect of the supply of the Services. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of FleetCheck which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by FleetCheck and any descriptions or illustrations contained on Fleetchecks website, or in their catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or any other contract between FleetCheck and the Customer for the supply of Services,
- 1.3 Reference to a party includes its personal representatives, successors or permitted assigns.
- 1.4 a reference to a statute or statutory provision us a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or a statutory provision, as amended or re-enacted.
- 1.5 Any phrase introduced by terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.6 A reference to writing or written includes faxes.

2. Basis of Contract

- 2.1 The Order Form constitutes an offer by the Customer to purchase Services from Fleetcheck in accordance with this Agreement.
- 2.2 The Order shall only be deemed accepted when FleetCheck accepts the ORDER Form at which point and on which date this Agreement shall come into existence.
- 2.3 The terms contained in this Agreement apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3 Specification and alterations

- 3.1 FleetCheck shall supply the Services to the Customer in accordance with its specification.
- 3.2 FleetCheck reserves the right to change the specification and content of the Services at the expiry of each Contract Period and shall notify the Customer in any such event provided that the changes made to the Services shall not remove or restrict the functionality of the Services provided to the Customer.
- 3.3 In the event of FleetCheck being unable to provide the Services of the same nature and quality specified prior to the date hereof or prior to the expiry of the last Contract Period, FleetCheck shall provide 14 days' written notice to the Customer who may at any time in this period terminate this Agreement by service of a written notice on FleetCheck
- 3.4 In the event of a termination by the Customer in accordance with clause 3.2 the Customer will not be liable to make a further monthly instalment payment after the expiry of the calendar month within which notice under clause 3.2 has been served

4 Customer Obligations 4.1

The Customer shall:

- 4.1.1 co-operate with FleetCheck in all matters;
- 4.1.2 provide FleetCheck, its employees, Agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by FleetCheck; and
- 4.1.3 obtain all necessary licences, permissions and consents which may be required before the date on which the Services are to start.

5 Payment Terms

5.1 Price

Subject to 5.7, all fees and costs charged by FleetCheck for the current Contract Period shall be as stated on the Order Form or as notified by FleetCheck to the Customer prior to the commencement of the current Contract Period;

5.2 All prices stated are exclusive of VAT unless otherwise stated. Where any taxable supply for VAT purposes is made under the Contract by FleetCheck to the Customer, the Customer shall, on receipt of a valid VAT invoice from FleetCheck, pay to FleetCheck such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due from the supply of the Services.

5.3 FleetCheck shall at the beginning of each month issue the Customer with an invoice for the Services provided during the preceding month. The Customer shall promptly pay all issued, undisputed invoices within 42 days of the date on which it was received by the Customer. Furthermore the Customer shall pay each invoice in full and in cleared funds to a bank account nominated in writing by FleetCheck.

5.4 All sums due to FleetCheck under the terms of this Agreement shall be paid in full by the Customer without any deduction, withholding or set-off whatsoever and all time periods quoted under this clause 5 shall be of the essence. Furthermore the Customer shall not be entitled to assert any credit, set-off or counterclaim against FleetCheck in order to justify withholding payment of any amount in whole or in part. FleetCheck may without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by FleetCheck to the Customer.

5.5 Without limiting any other right or remedy of FleetCheck, if payment in full is not received by FleetCheck upon the due date then FleetCheck shall be entitled to interest on the overdue amount at a rate of 4% per annum above the then current Natwest Bank Plc base lending rate occurring on a daily basis from the due date until the actual date of payment at the overdue amount, whether before or after judgement and compounded quarterly and the balance of the Total Annual Fee outstanding at the date of default shall immediately fall due and become payable by the Customer

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

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

6 Liability

6.1 This condition 6 sets out the entire financial liability of FleetCheck (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of this Agreement;
- (b) any use made by the Customer of the Services; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

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

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

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

6.4 Subject to condition 6.2 and condition 6.3:

- (a) FleetCheck shall not be liable to the Customer, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill and/or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) loss of or corruption of data or information; or
 - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) FleetCheck shall not be liable to the Customer, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise in relation to:
 - (i) any misinformation supplied to FleetCheck by the Customer or any third party; or
 - (ii) the booking of services repairs and MOT testing; or
 - (iii) any aspect of the implementation Customer's health and safety policy and risk assessment policy; or
 - (iv) negligence by Customer employees in the operation of customer company vehicles; or
 - (v) any aspect of the implementation of the Customer company vehicle policy; or
 - (vi) any breakdown or failure of equipment supplied by FleetCheck arising from its incompatibility with equipment which has not been previously supplied or recommended by FleetCheck; or
 - (vii) any delay in or failure to perform all or part of its obligations under the terms of this Agreement if such a delay or failure shall be due to act of god strikes lockouts laboured services statute order or any regulations of any government public local or other authority delays or defaults of suppliers and sub-contractors and without prejudice to the generality of the foregoing any other causes beyond the reasonable control of FleetCheck; or
 - (viii) the Customer loading inaccurate data onto the FleetCheck software; or
 - (ix) the Customer supplying data to FleetCheck for upload which is inaccurate; or
 - (x) failure of data to be accurately saved into the Fleetcheck system unless such a failure is due to a processing error within the software itself; or
 - (xi) making good the Customer's premises in the event of the removal of goods supplied under the terms of this Agreement.

- (c) Subject to (a) and (b) above, FleetCheck's total liability in contract, 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 Annual Fee.

6.5 The provisions of this clause 5 shall continue to apply notwithstanding the termination of this Agreement

7 Suspension of Service

7.1 FleetCheck may at its sole discretion and without limiting its other rights and remedies elect to suspend forthwith the provision of the Services until further notice without liability to the Customer on notifying the Customer either orally (confirming the same in writing) or in writing in the event that:-

- (a) The Customer is in breach of any term of this Agreement; or
- (b) The Customer prevents or delays access to the Customer's premises; or
- (c) The Customer is suspected in FleetCheck's reasonable opinion of involvement with fraud or attempted fraud in connection with the use of the Services; or
- (d) The Customer fails to comply with its obligations in clause 4 above.

7.2 FleetCheck shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from FleetCheck's failure or delay to perform any of its obligations as set out in this clause 7.

8. Termination

8.1 Without limiting its other rights and remedies either Party may terminate this Agreement upon service of not less than three months' written notice expiring on the last day of a Contract Period on the other.

8.2 Without limiting its other rights and remedies, each party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
- (b) 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) 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 (where a company) 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; (d) 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 (being a company) 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;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) 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 its assets and such attachment or process is not discharged within 14 days;
- (g) 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);
- (h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) 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; (j) 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 8.2(b) to clause 8.2(i) (inclusive); (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

8.3 Without limiting its other rights or remedies, FleetCheck may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

8.4 Notice under this clause will be construed as having been served on FleetCheck by the Customer upon the cancellation of the standing order instructions required under clause 5 hereof by the Customer whereupon the balance of the Total Annual Fee shall immediately become payable by the Customer.

8.5 Nothing in this clause limits the usual contractual and statutory remedies open to either Party. This Agreement shall come into force when signed and dated by the Parties and shall continue unless terminated by either party under the terms of clause 8.1 hereof.

9 Data Protection

9.1 It is agreed that the Customer may need to disclose Personal Data (as defined in the Data Protection Act 1998) of its employees to FleetCheck and that FleetCheck will act as a Data Processor (as defined in the Data Protection Act 1998) for the Customer, who shall at all times remain a Data Controller (as defined in the Data Protection Act 1998), in addition FleetCheck may collect certain additional Personal Data from Data Subjects (as defined in the Data Protection Act 1998) in order to perform its obligations under this Agreement. At all times the following provisions shall apply in respect of Personal Data which FleetCheck receives or collects or processes as a result of or pursuant to this Agreement:

- (a) FleetCheck shall at all times comply fully with the Data Protection Act 1998;
 - (b) FleetCheck undertakes that it shall process the Personal Data strictly in accordance with the terms of the Agreement and the Customer's instructions from time to time;
 - (c) FleetCheck shall ensure that only such of its employees who may be required by the FleetCheck to assist it in meeting its obligations under the Agreement shall have access to the Personal Data. FleetCheck shall ensure that all employees used by it to provide the services have undergone training in data protection and in the care and handling of Personal Data;
 - (d) FleetCheck shall ensure appropriate operational and technical measures are in place to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of the Customer's Personal Data and, having regard to the state of technological development and the cost of implementing any measures, the measures must ensure a level of security appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or damage. In addition if required, the FleetCheck will provide to the Customer assurance in respect of the security of any Personal Data processed by the FleetCheck as may be reasonably required by the Customer to comply with its obligations under the Act;
 - (e) FleetCheck will process the Personal Data only in accordance with this Agreement and the Customer's instructions, having regard to the provisions of the Act, unless otherwise required by law or any regulatory body;
 - (f) FleetCheck agrees to notify the Customer in the event that it receives a request or notice from a Data Subject exercising his rights under the Act. FleetCheck shall assist the Customer promptly with any and all subject access requests which may be received whether by the Customer, FleetCheck or otherwise) from Data Subjects;
 - (g) FleetCheck will not disclose the Personal Data to a third party in any circumstances other than at the specific request of the Customer or as otherwise specified in the Agreement;
 - (h) FleetCheck will not appoint a sub-processor other than with the prior written agreement of the Customer;
 - (i) FleetCheck will allow its data processing facilities, procedures and documentation which relate to the processing of the Personal Data to be inspected by the auditors (on reasonable written notice) of the Customer and/or the Customer's employees or agents, in order to ascertain compliance with the terms of the Agreement. The FleetCheck shall promptly carry out any request from the Customer requiring the FleetCheck to amend, transfer or delete the Personal Data or any part of the Personal Data;
 - (j) FleetCheck shall notify the Customer immediately upon receiving any notice or communication from any supervisory or government body which relates directly or indirectly to the processing of the Personal Data;
 - (k) If requested in writing by the Customer from time to time, FleetCheck shall provide to the Customer a copy of the Personal Data in the format and on the media reasonably specified by the Customer;
 - (l) If any Personal Data in the possession or control of the FleetCheck become lost, corrupted or rendered unusable for any reason, the FleetCheck shall promptly restore such Personal Data using its back up and/or disaster recovery procedures at no cost to the Customer;
 - (m) FleetCheck shall not under any circumstances transfer the Personal Data from the European Economic Area to a territory outside the EEA unless authorised in writing to do so by the Customer; and
 - (n) FleetCheck shall promptly upon request, or on the expiry or termination of this Agreement, supply the Customer with all of the Personal Data in its possession.
- 9.2 All Personal Data shall be regarded as confidential information belonging to the Customer (or a company which is from time to time part of the group of companies to which the Customer belongs) and FleetCheck shall not make any use of such Personal Data other than as set out in this Agreement.
- 9.3 FleetCheck shall not contact Data Subjects directly, nor permit any third party to do so, without the prior written consent of the Customer.
- 9.4 Any and all intellectual property in the Personal Data shall belong to the Customer (or a company which is from time to time part of the group of companies to which the Customer belongs).

10 General

- 10.1 This Agreement shall not be assigned in whole or in part by the Customer without the prior written consent of FleetCheck
- 10.2 As between the Customer and FleetCheck, all intellectual property rights and all other rights in the software, documents, downloads and all other materials provided as part of the Services shall be owned by FleetCheck. FleetCheck licenses all such rights to the Customer on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services. If this Agreement is terminated, this licence will automatically terminate.
- 10.3 If either party is affected by Force Majeure (any circumstances beyond their reasonable control including without limitation all industrial actions and natural disasters) it shall notify the other immediately of same and the party shall be deemed not to be in breach of this Agreement in so far as any failure to comply with this Agreement is attributable to Force Majeure.
- 10.4 Confidential information concerning either parties' business made available to the other party will not be disclosed by the other party or any associate to any third party whatsoever (save to the extent that it is in the public domain or that such disclosure accords with the terms of FleetCheck's Privacy Policy) without written consent of the party who supplied the confidential information unless otherwise required by law PROVIDED ALWAYS that the Customer may disclose any confidential information to any company that is, from time to time, a member of the group of companies to which the Customer belongs.
- 10.5 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 10.6 This Agreement represents the entire agreement and understanding of the Parties in respect of the subject matter hereof and supersedes all prior undertakings and representations whether written or oral and this Agreement may only be modified if such modification is in writing and signed by the Company and the Customer.
- 10.7 Failure by either Party to exercise to enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate as to bar the exercise or enforcement thereof or any other right on a later occasion.
- 10.8 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

- 10.9 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- 10.10 Clauses 10.8 and 10.9 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail
- 10.11 This Agreement shall be governed by and construed and interpreted in accordance with English Law and the Parties hereby submit to the exclusive jurisdiction of the English Courts.
- 10.12 A person who is not a party to this Agreement shall not have any rights under or in connection with it.
- 10.13 Any variation, including the introduction of any additional terms and conditions to the Contract, shall only be binding when agreed in writing and signed by FleetCheck.