

Dated

2016

AUTOTRIP LTD (1)

[CUSTOMER] (2)

SOFTWARE AS A SERVICE AGREEMENT

relating to

AutoTrip Ltd's business mileage reporting system

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TABLE OF CONTENTS

1	Interpretation	1
2	Device	3
3	User Subscriptions and Authorised Users	3
4	Additional User Subscriptions	5
5	Services.....	5
6	AutoTrip's obligations	6
7	Business use	6
8	Customer's obligations	6
9	Charges and payment	7
10	Proprietary rights	9
11	Confidentiality	9
12	Customer data	10
13	Third party providers	10
14	Indemnity	11
15	Limitation of liability	12
16	Term and termination	12
17	Force majeure	14
18	Conflict	14
19	Variation	14
20	Waiver	14
21	Rights and remedies	15
22	Severance	15
23	Entire agreement.....	15
24	Assignment.....	15
25	No partnership or agency	15
26	Third party rights	15
27	Notices	15
28	Governing law	16
29	Jurisdiction	16
Schedule 1	The Services	17
Schedule 2	Fixed Term Model	18
Schedule 3	Rolling Term Model	19

THIS AGREEMENT is dated

PARTIES

- (1) **AUTOTRIP LTD** incorporated and registered in England and Wales with company number 08703170 whose registered office is at 29 Shand Street, London, SE1 2ES (**AutoTrip**); and
- (2) [**FULL COMPANY NAME**] incorporated and registered in England and Wales with company number [**NUMBER**] whose registered office is at [**REGISTERED OFFICE ADDRESS**] (**Customer**).

BACKGROUND

- (A) AutoTrip supplies a hardware device which records mileage and engine data for cars. Businesses which have purchased the device can additionally purchase access to Autotrip's software applications and analytics platform, made available to subscribers via a cloud-based account on a pay-per-use basis. These services allow the businesses' employees to manage their mileage expenses and claims. Businesses who pay for an administrative account, can manage and analyse all their fleet mileage data on their designated account, which the ability to download and to generate automated reports.
- (B) The Customer is a business and wishes to use AutoTrip's service in its business operations.
- (C) AutoTrip has agreed to provide and the Customer has agreed to take and pay for AutoTrip's goods and services subject to the terms and conditions of this agreement.

AGREED TERMS

1 Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.
- 1.2 **Additional User Subscription Fee:** the fee for purchasing additional User Subscriptions, as set out in either Schedule 2 or Schedule 3, depending on the Subscription Model selected by the Customer.
- 1.3 **Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 3.
- 1.4 **Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- 1.5 **Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.
- 1.6 **Customer Data:** the data inputted by the Customer, Authorised Users, or AutoTrip on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
- 1.7 **Device:** means the AutoTrip OBDII (or alternative where provided) GPS recording device which connects to the user's vehicle and which is necessary for the proper functioning of the Services.
- 1.8 **Documentation:** the document made available to the Customer by AutoTrip online via *www.autotrip.co.uk* or such other web address notified by AutoTrip to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.
- 1.9 **Effective Date:** the date of this agreement.

- 1.10 **Fixed Term Model:** the fixed term Subscription Model, the terms of which are set out in Schedule 2.
- 1.11 **Free Trial Period:** a free 28 days' initial trial period in which the Customer opts to begin using the AutoTrip Device and Services without incurring any cost
- 1.12 **Initial Subscription Term:** the initial term of this agreement as set out in either Schedule 2 or Schedule 3, depending on the Subscription Model selected by the Customer. For the avoidance of doubt, where the Customer has selected the Fixed Term Model, the Initial Subscription Term shall constitute the entire Subscription Term.
- 1.13 **Normal Business Hours:** 08:00 to 18:00 local UK time, each Business Day.
- 1.14 **Output Data:** anonymised Customer Data and metadata which has been collected and processed by AutoTrip, including data produced by AutoTrip pursuant to its provision of the Services under this agreement.
- 1.15 **Renewal Period:** the period for which the agreement automatically renews if the Customer has selected the Rolling Term Model as specified in Schedule 3.
- 1.16 **Rolling Term Model:** the rolling term Subscription Model, the terms of which are set out in Schedule 3.
- 1.17 **Services:** the services provided by AutoTrip to the Customer under this agreement as more particularly described in Schedule 1 and the Documentation.
- 1.18 **Software:** the online software applications provided by AutoTrip as part of the Services.
- 1.19 **Subscription Fees:** the subscription fees payable by the Customer to AutoTrip for the User Subscriptions, as set out in Schedule 2 or Schedule 3 depending on the Subscription Model selected by the Customer, pursuant to clause 16.1.
- 1.20 **Subscription Model:** the Fixed Term Model or the Rolling Term Model, as selected by the Customer pursuant to clause 16.1.
- 1.21 **Subscription Term:** the Initial Subscription Term together with any Renewal Periods.
- 1.22 **Support Services Policy:** AutoTrip's policy for providing support in relation to the Services as made available at www.autotrip.co.uk or such other website address as may be notified to the Customer from time to time.
- 1.23 **Trial Conclusion Date:** the date in which the Free Trial Period concludes
- 1.24 **User Subscriptions:** the user subscriptions purchased by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.
- 1.25 **Virus:** anything or device (including any software, code, file or programme) which may; prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
- 1.26 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.27 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

- 1.28 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.29 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.30 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.31 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.
- 1.32 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.
- 1.33 A reference to writing or written includes faxes but not e-mail.
- 1.34 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 Device

- 2.1 The Customer acknowledges that use of the Services requires that a Device be properly fitted in each Authorised User's vehicle. In addition to those packaged with the Device, instructions on how to fit and connect the Device are available on AutoTrip's website (www.autotrip.co.uk).
- 2.2 The Customer will be required to purchase the AutoTrip Device in order to use all Services outline in this agreement in accordance with clause 4 and clause 9. The customer will be required to pay an up-front, one-off cost in accordance with the prices set out in Schedule 2 or Schedule 3.

3 User Subscriptions and Authorised Users

- 3.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 4 and clause 9, the restrictions set out in this clause 3 and the other terms and conditions of this agreement, AutoTrip hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term for the Customer's internal business.
- 3.2 In relation to the Authorised Users, the Customer undertakes that:
- 3.2.1 the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
 - 3.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
 - 3.2.3 each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than quarterly and that each Authorised User shall keep his password confidential;
 - 3.2.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to AutoTrip within 5 Business Days of AutoTrip's written request at any time or times;

- 3.2.5 it shall permit AutoTrip to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at AutoTrip's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
 - 3.2.6 if any of the audits referred to in clause 3.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to AutoTrip's other rights, the Customer shall promptly disable such passwords and AutoTrip shall not issue any new passwords to any such individual; and
 - 3.2.7 if any of the audits referred to in clause 3.2.5 reveal that the Customer has underpaid Subscription Fees to AutoTrip, then without prejudice to AutoTrip's other rights, the Customer shall pay to AutoTrip an amount equal to such underpayment as calculated in accordance with the prices set out in Schedule 2 or Schedule 3 (depending on the Subscription Model selected by the Customer pursuant to clause 16.1) within 10 Business Days of the date of the relevant audit.
- 3.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services which is illegal or which has the potential to cause damage or injury to any person or property. AutoTrip reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 3.4 The Customer shall not:
- 3.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - 3.4.1.1 and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Device, Software and/or Documentation (as applicable) in any form or media or by any means; or
 - 3.4.1.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Device or Software; or
 - 3.4.2 access all or any part of the Device, Services and Documentation in order to build a product or service which competes with the Device, Services and/or the Documentation; or
 - 3.4.3 use the Device, Services and/or Documentation to provide services to third parties; or
 - 3.4.4 subject to clause 24.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Device, Services and/or Documentation available to any third party except the Authorised Users, or
 - 3.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3; and
- 3.5 The Customer 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 AutoTrip.

3.6 The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer without AutoTrip's prior written consent.

4 Additional User Subscriptions

4.1 Subject to clause 4.2 and clause 4.3, the Customer may, from time to time during the Subscription Term, purchase additional User Subscriptions in excess of the number included in the Subscription Fee set out in Schedule 2 or Schedule 3 (depending on the Subscription Model selected by the Customer pursuant to clause 16.1) and AutoTrip shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.

4.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify AutoTrip in writing. AutoTrip shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request.

4.3 If AutoTrip approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of AutoTrip's invoice, pay to AutoTrip the relevant fees for such additional User Subscriptions as set out in Schedule 2 or Schedule 3 (depending on the Subscription Model selected by the Customer pursuant to clause 16.1) and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4.4 Where the Customer has selected the Rolling Term Model pursuant to clause 16.1 and has purchased additional User Subscriptions by operation of this clause 4, then the Subscription Fees payable in respect of each subsequent Renewal Period shall be deemed to have been increased to account for the additional number of User Subscriptions now provided. The number of additional User Subscriptions can be decreased by agreement between the parties and if so agreed, the Subscription Fees in respect of each subsequent Renewal Period shall be decreased accordingly.

5 Services

5.1 AutoTrip shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.

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

5.2.1 planned maintenance carried out during the maintenance window of 22:00 to 02:00 UK time; and

5.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that AutoTrip has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

5.3 AutoTrip will, as part of the Services and at no additional cost to the Customer, provide the Customer with AutoTrip's standard customer support services during Normal Business Hours in accordance with AutoTrip's Support Services Policy in effect at the time that the Services are provided. At the Effective Date (and subject to the operation of the following clause 5.4), such support services shall include:

5.3.1 automatic updating of the Software to the latest stable revision;

5.3.2 a hardware guarantee for each Device, as more fully described in Schedule 1; and

5.3.3 (where the Customer has subscribed to the Fixed Term Model only) the replacement of faulty Devices for the duration of the Subscription Term in accordance with the policy more fully described in Schedule 1.

5.4 AutoTrip may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at AutoTrip's then current rates.

6 **AutoTrip's obligations**

6.1 AutoTrip undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Device or Services contrary to AutoTrip's instructions or permission, or modification or alteration of the Device or Services by any party other than AutoTrip or AutoTrip's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, AutoTrip will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, AutoTrip:

6.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements;

6.2.2 has no responsibility (except to the extent provided under any Device replacement policy pursuant to clause 5.3.3) for loss of functionality of the Device or Services due to the Customer or Authorised User's misuse of the Device (including without limitation where the Customer or Authorised User has caused or has permitted to be caused the Device to be incorrectly installed and/or damaged); and

6.2.3 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 Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.3 This agreement shall not prevent AutoTrip from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products (such as the Device) and/or services which are identical or similar to those provided under this agreement.

7 **Business use**

It is a condition of this agreement (and the Customer accordingly represents and AutoTrip relies upon such representation) that the Customer enters into this agreement in its capacity as a business.

8 **Customer's obligations**

The Customer shall:

8.1.1 provide AutoTrip with:

8.1.1.1 all necessary co-operation in relation to this agreement; and

8.1.1.2 all necessary access to such information as may be required by AutoTrip;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

- 8.1.2 comply with all applicable laws and regulations with respect to its activities under this agreement;
 - 8.1.3 carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, AutoTrip may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - 8.1.4 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;
 - 8.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for AutoTrip, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
 - 8.1.6 ensure that its network and systems comply with the relevant specifications provided by AutoTrip from time to time; and
- 8.2 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to AutoTrip's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9 Charges and payment

- 9.1 The Customer shall pay the Device Cost and Subscription Fees to AutoTrip for the Device and User Subscriptions respectively, in accordance with this clause 9 and Schedule 2 or Schedule 3 (as applicable).
- 9.2 The Customer shall on the Effective Date provide to AutoTrip valid, up-to-date and complete credit/debit card details or (subject to AutoTrip's prior approval) approved purchase order information acceptable to AutoTrip and any other relevant valid, up-to-date and complete contact and billing details (including VAT number, where applicable).
- 9.3 If:
 - 9.3.1 the Customer provides its credit/debit card details to AutoTrip, the Customer hereby authorises AutoTrip to bill such credit/debit card:
 - 9.3.1.1 where the Customer has selected the Fixed Term Model and subject to contrary prior agreement in writing between the parties, on:
 - 9.3.1.1.1 the Effective Date for the Subscription Fees payable in respect of the Subscription Term;
 - 9.3.1.2 where the Customer has selected the Rolling Term Model, on:
 - 9.3.1.2.1 the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - 9.3.1.2.2 at the start of each Renewal Period (as defined in Schedule 3) for Subscription Fees payable in respect of such Renewal Period;
 - 9.3.1.3 where the Customer has purchased the Device, on

- 9.3.1.3.1 the Effective Date for the Fixed Term or Rolling Term Model agreement in accordance with Schedule 2 or Schedule 3
 - 9.3.1.4 where the Customer selected a Free Trial Period and not return the Device to AutoTrip within 14 days of the Trial Conclusion Date
- 9.4 (subject to AutoTrip's prior approval) the Customer instead provides its approved purchase order information to AutoTrip, AutoTrip shall invoice the Customer:
 - 9.4.1 where the Customer has selected the Fixed Term Model and subject to contrary prior agreement in writing between the parties, on:
 - 9.4.1.1 the Effective Date for the Subscription Fees payable in respect of the Subscription Term;
 - 9.4.2 where the Customer has selected the Rolling Term Model, on:
 - 9.4.2.1 the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - 9.4.2.2 at the start of each Renewal Period (as defined in Schedule 3) for Subscription Fees payable in respect of such Renewal Period;

and the Customer shall pay each invoice within 30 days after the date of such invoice.
- 9.5 If AutoTrip has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of AutoTrip:
 - 9.5.1 AutoTrip may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and AutoTrip shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - 9.5.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of AutoTrip's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.6 All amounts and fees stated or referred to in this agreement:
 - 9.6.1 shall be payable in pounds sterling;
 - 9.6.2 are, subject to clause 15.4.2, non-cancellable and non-refundable;
 - 9.6.3 are exclusive of value added tax, which shall be added to AutoTrip's invoice(s) at the appropriate rate.
- 9.7 If a maximum mileage limit is specified in Schedule 1 and the Customer exceeds said limit, AutoTrip shall charge the Customer and the Customer shall pay AutoTrip's then current additional mileage fees. Where applicable, the additional mileage fees as at the Effective Date are set out in Schedule 1.
- 9.8 AutoTrip shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 4.3 and the additional mileage fees payable pursuant to clause 9.7 and Schedule 1 (where applicable) by up to 20% each in any one year. Where:
 - 9.8.1 the Customer has chosen the Rolling Term Model, AutoTrip may increase such fees to take effect at the start of the next Renewal Period by giving 28

days' prior notice to the Customer and the definitions contained in Schedule 3 shall be deemed to have been amended accordingly.

10 Proprietary rights

- 10.1 The Customer acknowledges and agrees that AutoTrip and/or its licensors own all intellectual property rights in the Device, Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer 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 or the Documentation.
- 10.2 AutoTrip confirms that it has all the rights in relation to the Device, 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.

11 Confidentiality

- 11.1 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:
 - 11.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 11.1.2 was in the other party's lawful possession before the disclosure;
 - 11.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 11.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, 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.
- 11.3 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.
- 11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute AutoTrip's Confidential Information.
- 11.6 Except to the extent that such data may be classified as Output Data, AutoTrip acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.7 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.
- 11.8 The above provisions of this clause 11 shall survive termination of this agreement, however arising.

12 Customer data

- 12.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 12.2 AutoTrip shall own all right, title and interest in and to all Output Data.
- 12.3 AutoTrip shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at www.autotrip.co.uk or such other website address as may be notified to the Customer from time to time, as such document may be amended by AutoTrip in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for AutoTrip to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by AutoTrip in accordance with the archiving procedure described in its Back-Up Policy. AutoTrip shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by AutoTrip to perform services related to Customer Data maintenance and back-up).
- 12.4 AutoTrip shall, in providing the Services, comply with its Privacy and Security Policy relating to the privacy and security of the Customer Data available at www.autotrip.co.uk or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by AutoTrip in its sole discretion.
- 12.5 If AutoTrip processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and AutoTrip shall be a data processor and in any such case:
- 12.5.1 the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located (including the country that the Authorised User is travelling through from time to time) in order to carry out the Services and AutoTrip's other obligations under this agreement;
- 12.5.2 the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to AutoTrip so that AutoTrip may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;
- 12.5.3 the Customer 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 all applicable data protection legislation; and
- 12.5.4 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.

13 Third party providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. AutoTrip makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the

relevant third party, and not AutoTrip. AutoTrip recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. AutoTrip does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

14 Indemnity

14.1 The Customer shall defend, indemnify and hold harmless AutoTrip 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 Customer's use of the Services and/or Documentation, provided that:

14.1.1 the Customer is given prompt notice of any such claim;

14.1.2 AutoTrip provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

14.1.3 the Customer is given sole authority to defend or settle the claim.

14.2 AutoTrip shall defend the Customer, its officers, directors and employees against any claim that the Device, Services or Documentation infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

14.2.1 AutoTrip is given prompt notice of any such claim;

14.2.2 the Customer provides reasonable co-operation to AutoTrip in the defence and settlement of such claim, at AutoTrip's expense; and

14.2.3 AutoTrip is given sole authority to defend or settle the claim.

14.3 In the defence or settlement of any claim, AutoTrip may procure the right for the Customer to continue using the Device and/or Services, replace or modify the Device and/or 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 Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

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

14.4.1 a modification of the Device, Services or Documentation by anyone other than AutoTrip; or

14.4.2 the Customer's use of the Device, Services or Documentation in a manner contrary to the instructions given to the Customer by AutoTrip; or

14.4.3 the Customer's use of the Device, Services or Documentation after notice of the alleged or actual infringement from AutoTrip or any appropriate authority.

14.5 For the avoidance of doubt, the preceding indemnity and related provisions shall include (without limitation) any instance where data is disclosed by the Customer to AutoTrip (including the transfer of Customer Data pursuant to this agreement) and such disclosure is unlawful or in breach of any third party rights.

14.6 The foregoing and clause 15.4.2 state the Customer's sole and exclusive rights and remedies, and AutoTrip's (including AutoTrip's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

15 **Limitation of liability**

15.1 This clause 15 sets out the entire financial liability of AutoTrip (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

15.1.1 arising under or in connection with this agreement;

15.1.2 in respect of any use made by the Customer of the Services and Documentation or any part of them; and

15.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

15.2 Except as expressly and specifically provided in this agreement:

15.2.1 the Customer assumes sole responsibility for results obtained from the use of the Device, Services and the Documentation by the Customer, and for conclusions drawn from such use. AutoTrip shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to AutoTrip by the Customer in connection with the Services, or any actions taken by AutoTrip at the Customer's direction;

15.2.2 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

15.2.3 the Services and the Documentation are provided to the Customer on an "as is" basis.

15.3 Nothing in this agreement excludes the liability of AutoTrip:

15.3.1 for death or personal injury caused by AutoTrip's negligence; or

15.3.2 for fraud or fraudulent misrepresentation.

15.4 Subject to clause 15.2 and clause 15.3:

15.4.1 AutoTrip shall not be liable whether in tort (including for 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

15.4.2 AutoTrip's total aggregate liability in contract (including in respect of the indemnity at clause 14.2), 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 the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

16 **Term and termination**

16.1 The Customer will at the Effective Date have chosen a Subscription Model from the following options and the agreement shall be interpreted accordingly:

16.1.1 If the Customer chose the **Fixed Term Model** then the relevant provisions contained at Schedule 2 shall apply to this agreement.

16.1.2 If the Customer chose the **Rolling Term Model** then the relevant provisions contained at Schedule 3 shall apply to this agreement.

16.2 This agreement shall, unless otherwise terminated as provided in this clause 16, commence on the Effective Date and shall continue for the Initial Subscription Term.

- 16.3 If the Rolling Term Model has been selected then this agreement shall renew automatically and indefinitely for successive Renewal Periods (as defined at Schedule 3) unless:
- 16.3.1 prior written notice is given by one party to the other, in which case this agreement shall not renew after that 28 day period; or
 - 16.3.2 the agreement is otherwise terminated in accordance with the provisions herein.
- 16.4 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:
- 16.4.1 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;
 - 16.4.2 the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
 - 16.4.3 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - 16.4.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 16.4.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 16.4.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 16.4.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - 16.4.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 16.4.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 16.4.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - 16.4.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.4.4 to clause 16.4.10 (inclusive); or

16.4.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

16.5 On termination of this agreement for any reason:

16.5.1 all licences granted to the Customer under this agreement shall immediately terminate;

16.5.2 except as otherwise agreed in writing, 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;

16.5.3 each party shall comply with any additional post-termination obligations contained in Schedule 1;

16.5.4 AutoTrip may destroy or otherwise dispose of any of the Customer Data in its possession unless AutoTrip receives, no later than 10 days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. AutoTrip shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer 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 Customer shall pay all reasonable expenses incurred by AutoTrip in returning or disposing of Customer Data; and

16.5.5 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.

17 **Force majeure**

AutoTrip shall have no liability to the Customer 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 AutoTrip 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 AutoTrip or sub-contractors, provided that the Customer is notified of such an event and its expected duration where practicable to do so.

18 **Conflict**

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

19 **Variation**

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

20 **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.

21 **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.

22 **Severance**

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

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

23 **Entire agreement**

23.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

23.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

24 **Assignment**

24.1 The Customer shall not, without the prior written consent of AutoTrip, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

24.2 AutoTrip 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.

25 **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).

26 **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.

27 **Notices**

27.1 Any notice required to be given under this agreement shall be in writing and sent by email to the email address specified below (or such other substitute email address nominated from time to time by the relevant party). Any such notice or communication shall be deemed to have been received on the next Business Day after transmission.

- 27.2 If either party's email address for service of notice should change then they must immediately notify the other of the change and specify a replacement email address.
- 27.3 As at the Effective Date AutoTrip's email addresses for service is sales@autotrip.co.uk and the Customer's email address for service is the email address it supplied with its order.
- 27.4 This clause 27 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

28 **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.

29 **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).

This agreement has been entered into on the date stated at the beginning of it.

SCHEDULE 1 THE SERVICES

The client has selected the **AutoTrip** service.

1 **Hardware provision**

- 1.1 One Device per User Subscription, plus additional extension cabling where required.
- 1.2 Hardware guaranteed to be free from defects for a period of [24 months] from the Effective Date. Suspected defective Devices shall first be returned to AutoTrip offices for inspection and determination of any problems and appropriate corrective actions. AutoTrip will repair or replace at its option any Devices deemed to be defective during the Subscription Term.
- 1.3 The Customer's exclusive remedy for faulty or defective Devices shall be AutoTrip's replacement of such Devices within a reasonable timeframe.

2 **Software Services**

- 2.1 For the duration of the Subscription Term, AutoTrip will provide digital storage of all trips recorded by installed Hardware taken within the UK [and the following territories:
 - 2.1.1 []
 - 2.1.2 []].

3 **Other Services**

Access to customer support between Normal Business Hours where required.

4 **Post-termination obligations**

[None.]

SCHEDULE 2 FIXED TERM MODEL

The following provisions apply where the Customer has selected the Fixed Term Model:

1 Initial Subscription Term:

The Initial Subscription Term is either:

- a) 12 months;
- b) 24 months; or
- c) 36 months;

as chosen by the Customer as at the Effective Date.

2 Subscription Fees

The Subscription Fee is as follows:

- a) where the Initial Subscription Term is 12 months, the Subscription Fee is £[] exclusive of VAT, being [] User Subscriptions at £[] for the Subscription Term;
- b) where the Initial Subscription Term is 24 months, the Subscription Fee is £[] exclusive of VAT, being [] User Subscriptions at £[] for the Subscription Term; or
- c) where the Initial Subscription Term is 36 months, the Subscription Fee is £[] exclusive of VAT, being [] User Subscriptions at £[] for the Subscription Term.

3 Additional User Subscription Fee

The Additional User Subscription Fee is £[] per user (excluding VAT).

SCHEDULE 3 ROLLING TERM MODEL

The following provisions apply where the Customer has selected the Rolling Term Model:

1 Initial Subscription Term:

The Initial Subscription Term is 1 month.

2 Renewal Period:

The Renewal Period is 1 month.

3 Subscription Fee:

The Subscription Fee is £ [] exclusive of VAT and being £ [] per User Subscription per month.

4 Additional User Subscription Fee

The Additional User Subscription Fee is £ [] per user per month (excluding VAT).

SIGNED by **AUTOTRIP LTD** acting)
by two directors or a director and the)
company secretary)

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Director

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Director/Secretary

SIGNED by **[CUSTOMER]** acting by)
two directors or a director and the)
company secretary)

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