

VehicleVision<sup>®</sup>

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**End User Licence Agreement (EULA)**

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## General Terms and Conditions

### 1. Interpretation

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

**API:** any application programming interface made available to the Customer by the Supplier as part of the Software.

**Charges:** the charges in respect of the continued licensing and use of the Software as notified by the Supplier to the Customer from time to time, including subscription fees and any per-use fees (as applicable and as described in the Order Form).

**Consumer:** means an end customer of the Customer whose personal data, vehicle data or other media may be inputted or uploaded using the Software (whether by the Consumer directly or by the Customer or its Employees).

**Customer:** means the customer whose details are set out on the Order Form and (where the context allows) its Sites and Employees.

**Customer Data:** the data (including videos or other media) inputted or uploaded by a Consumer or by the Customer or its Employees using the Software.

**Data Protection Legislation:** (i) unless and until the General Data Protection Regulation ((EU) 2016/679) (**GDPR**) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018.

**Employees:** means any or all of the Customer's employees working at a Site or remotely who are authorised to use the Software.

**Hardware:** means physical hardware supplied to the Customer by the Supplier including but not limited to iOS or Android devices and associated components.

**Initial Term:** the minimum term set out in the Order Form.

**Maximum Licence Number:** means the Maximum Licence Number specified in the Order Form in relation to Sites and/or user licences.

**Order Form:** means the Software Licence Agreement Order Form completed by the Customer in respect of the Software.

**Sites:** means the Sites owned or operated by the Customer which are authorised by the Customer to use the Software (as set out on the Order Form or as otherwise agreed with the Supplier).

**Software:** means the software licensed to the Customer (as set out on the Order Form), including the online services, APIs, mobile device software apps and any other documentation and online support software provided in relation thereto.

**Supplier:** means Vehicle Vision International Limited a company incorporated in England and Wales with company number 10492384 whose registered office is c/o Charnwood Accountants, The Point, Granite Way, Mountsorrel, Loughborough, Leicestershire, LE12 7TZ.

**Term:** the term of this agreement as set out at clause 9.

1.2 Clause headings do not affect the interpretation of this agreement and references to clauses are (unless otherwise provided) references to the clauses of this agreement.

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

1.4 References to "this agreement" or "this licence" include these terms and conditions and the Order Form. In the event of any inconsistency between these terms and conditions and the provisions of the Order Form, the provisions of the Order Form shall prevail.

1.5 References to statutes are to the statutes of the United Kingdom.

### 2. Grant of Licence

In consideration of the ongoing payment of the Charges by the Customer to the Supplier, the Supplier grants to the Customer a non-exclusive, non-transferable licence for the Customer (and its authorised Sites and Employees) to use

the Software during the Term on the terms and conditions of this agreement. Where the Software permits Consumers to input or upload media themselves in response to email or other notifications from the Customer, the Customer may license the Consumers to do so.

### 3. Supplier Rights and Responsibilities

3.1 The Supplier shall provide the Customer with passwords for accessing the Software.

3.2 The Supplier will host the Software on such website(s) as it notifies to the Customer from time to time.

3.3 The Supplier may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Customer.

3.4 The Supplier shall update the Software from time to time as it considers necessary and shall ensure that the Software does not infringe any applicable laws, regulations or third party rights.

### 4. Customer Rights and Responsibilities

4.1 The Customer may use the Software within the authorised Sites (where appropriate) and must ensure that the number of Sites and/or user licences does not exceed the corresponding Maximum Licence Number. The Customer may purchase further licences in respect of additional Sites or user licences by signing an additional Order Form and paying the corresponding charges.

4.2 The Customer shall

(a) ensure that its Employees use the Software in accordance with the terms and conditions of this agreement and shall be responsible for any Employee's breach of this agreement;

(b) keep a complete and accurate record of all persons authorised to use the Software by it;

(c) notify the Supplier as soon as it becomes aware of any unauthorised use of the Software by any person;

(d) ensure that the network and systems at each Site or for each remote user as the case may be complies with the relevant specifications provided by the Supplier from time to time (including but not limited to a wireless broadband connection with upload speeds of not less than 0.75Mbps in a Site) and be solely responsible for any failure of the Software to operate correctly arising from or relating to any upgrade to the Customer's systems (including but not limited to hardware and operating system upgrades); and

(e) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

4.3 The Customer shall use the Software in accordance with the Supplier's user guides, videos and any training or guidance provided by the Supplier and in relation to scope of use:

(a) the Customer shall use the Software for the purpose of processing its data for its normal business purposes (which shall not include allowing the use of the Software by, or for the benefit of, any person other than its Employees or, to the extent permitted by clause 2, its Consumers);

(b) the Customer may not use the Software other than as specified in this agreement without the prior written consent of the Supplier, and the Customer acknowledges that additional Charges may be payable on any change of use approved by the Supplier; and

(c) the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error

- corrections to the Software in whole or in part and shall take steps to prevent unauthorised copying.
- 4.4 The Customer shall permit the Supplier to inspect and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that the Supplier provides reasonable advance notice to the Customer of such access being required. In the event of any unauthorised use of the Software by the Customer, its Sites or Employees (whether the Supplier becomes aware of such unauthorised use as a result of the audits referred to in this clause or otherwise) then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to the Charges which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced, together with interest applied in accordance with clause 7.3 from such date to the date of payment.
- 4.5 The Customer may not use the Software or any information provided by the Supplier to create any software substantially similar to the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 4.6 The Customer shall not:
- (a) sub-license, assign or novate the benefit or burden of this licence in whole or in part other than in accordance with this agreement;
  - (b) allow the Software to become the subject of any charge, lien or encumbrance; or
  - (c) deal in any other manner with any or all of its rights and obligations under this agreement.
- 4.7 The Customer shall not allow any third-party software developer to access the APIs or any other part of the Software (whether to provide software development services to the Customer or otherwise) without the prior written consent of the Supplier. The Customer acknowledges that such consent (if given) will be conditional on the developer entering into a developer licence agreement directly with the Supplier.
- 5. Limitation of the liability of the Supplier**
- 5.1 The Supplier does not warrant that the use of the Software will be uninterrupted or error-free.
- 5.2 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.
- 5.3 The Supplier warrants that the Software will conform in all material respects to the user guides, videos or other documentation made available by the Supplier from time to time.
- 5.4 The Supplier shall use reasonable endeavours to assign to the Customer all guarantees or warranties relating to any Hardware. If any guarantee or warranty cannot be assigned to the Customer, the Supplier shall provide reasonable assistance to enforce the terms of such guarantees or warranties on the Customer's behalf.
- 5.5 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 5.6 Nothing in this agreement shall operate to exclude or limit the Supplier's liability for:
- (a) death or personal injury caused by its negligence; or
  - (b) any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - (c) fraud; or
  - (d) any other liability which cannot be excluded or limited under applicable law.
- 5.7 Subject to clause 5.6:
- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
  - (b) the Supplier's total aggregate liability in contract, 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 Charges paid during the 12 months immediately preceding the date on which the claim arose (or anticipated to be paid where the claim arises during the first 12 months of the Term).
- 5.8 The Supplier shall have no liability whatsoever arising out of any sharing or distribution of Customer Data in a manner inconsistent with the intended use of the Software, including any such sharing or distribution using social networking tools (whether by the Customer, its Employees, Consumers or other persons).
- 6. Intellectual Property Rights and Customer Data**
- 6.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software. 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, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software.
- 6.2 The Supplier confirms that it has all the rights in relation to the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.
- 6.3 As between the Customer and the Supplier, all intellectual property rights subsisting in any Customer Data inputted or uploaded by the Customer or its Consumers or Employees using the Software shall be owned by the Customer. The Customer warrants that it is entitled to input or upload all such Customer Data using the Software. The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 6.4 The Customer shall not (and shall not permit its Consumers or Employees to) input or upload any material during the course of its use of the Software that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - (b) facilitates illegal activity;
  - (c) depicts sexually explicit images;
  - (d) promotes unlawful violence;
  - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;
- and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause. Breach of this clause shall be considered a material breach of the terms of this licence.
- 6.5 The Supplier shall be entitled to delete Customer Data from its systems following the expiry of the retention period set out in the Order Form.

## 7. Charges and payment

- 7.1 Following receipt of a signed Order Form, the Supplier may invoice the Customer for the setup fee, first month's subscription fee and any Hardware supplied to the Customer. Subscription fees for part months will be invoiced pro-rata together with (at the Supplier's discretion) the following month's subscription fee. The first issued invoice must be paid within seven days of the invoice date unless otherwise specified.
- 7.2 The Customer will submit a signed Direct Debit mandate with its Order Form, authorising the Supplier to deduct subsequent Charges from the Customer, which the Supplier may at its discretion deduct monthly in advance or in arrears (or a combination where the Customer is licensed to use more than one Software product). Cancellation of a Direct Debit (without the agreement of the Supplier) shall be a material breach of this agreement. If the Customer's country of origin is not covered by the UK Direct Debit scheme the Customer agrees that the Supplier may at its discretion invoice subsequent Charges monthly in advance or in arrears (or a combination where the Customer is licensed to use more than one Software product). Such invoices must be paid within 30 days of the date on which the invoice is created.
- 7.3 If the Customer fails to pay any amount payable by it under this agreement, the Supplier shall be entitled, but not obliged, to charge the Customer interest on the overdue amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall be payable by the Customer forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment.
- 7.4 The Supplier reserves the right to suspend access to the Software without notice if payments are not made in accordance with these terms and conditions.
- 7.5 The Supplier shall be entitled to increase the Charges once per year and shall notify the Customer of any new Charges no later than 95 days prior to the end of the Initial Term or any Extended Term.

## 8. Data Protection

- 8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 8.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).
- 8.3 Without prejudice to the generality of clause 8.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
- 8.4 Without prejudice to the generality of clause 8.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any purpose other than those consistent with the operation of the Software or expressly authorised by the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) only transfer Personal Data outside of the European Economic Area when the following conditions are fulfilled:
- (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
- (ii) the data subject has enforceable rights and effective legal remedies;
- (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 8.
- 8.5 The Customer consents to the Supplier appointing such third party processors of Personal Data as are reasonably necessary for the operation of the Software provided that:
- (a) the Supplier notifies the Customer of any changes to such third party processors and gives them the opportunity to object to such changes;
- (b) the Supplier enters into a written agreement with the third party processor substantially on its standard terms of business; and
- (c) as between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 8.5.
- 8.6 The Customer shall indemnify the Supplier against all costs, losses and expenses incurred by the Supplier arising out of or in connection with any claim brought by a data subject to the extent that such claim results from the instructions, acts or omissions of the Customer.

## 9. Term and termination

- 9.1 This agreement shall commence on the Commencement Date specified in the Order Form. Unless terminated earlier in accordance with this clause 9, this agreement shall continue for the Initial Term and shall automatically extend for 12 months (**Extended Term**) at the end of the Initial Term and at the end of each Extended Term. Either party may give written notice to the other party, not later than 90 days before the end of the Initial Term or the relevant Extended Term, to terminate this agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.
- 9.2 The Supplier may terminate this agreement on immediate written notice if the Customer commits any material breach of its obligations under this agreement which (if remediable) is not remedied within 30 days after the service of written notice specifying the breach and requiring it to be remedied.
- 9.3 If no subscription or other fixed monthly fees are payable as part of the Charges (as set out in the Order Form) then either party may terminate this agreement at any time by 90 days' written notice to the other party.
- 9.4 Either party may terminate this agreement immediately at any time by written notice to the other party if that other party:
- ceases to trade (either in whole, or as to any part or division involved in the performance of this agreement); or
  - becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party; or
  - a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of that party, or notice of an intention to appoint such a person is given or documents relating to such an appointment are filed with any court; or
  - the ability of that party's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of that party's creditors accept, by agreement or pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or
  - any process is instituted which could lead to that party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction).
- 9.5 On termination for any reason:
- all rights granted to the Customer under this licence shall cease;
  - the Customer shall cease all activities authorised by this licence; and
  - the Customer shall immediately pay to the Supplier any sums due to the Supplier under this licence.
- 9.6 On expiry or termination of this agreement, all provisions of this agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.
- 9.7 After the period of 90 days following the expiry or termination of this agreement, the Supplier shall be entitled at its sole discretion to delete the Customer Data from its systems.

## 10. Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

## 11. Confidentiality

- 11.1 In this clause **Confidential Information** means all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:
- identified as confidential at the time of disclosure; or
  - ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.
- 11.2 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.
- 11.3 Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.
- 11.4 The obligations set out in this clause 11 shall not apply to Confidential Information that the receiving party can demonstrate:
- is or has become publicly known other than through breach of this clause 11; or
  - was in the possession of the receiving party prior to disclosure by the other party; or
  - was received by the receiving party from an independent third party who has full right of disclosure; or
  - was independently developed by the receiving party; or
  - was required to be disclosed by a governmental authority, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.
- 11.5 The obligations of confidentiality in this clause 11 shall not be affected by the expiry or termination of this agreement.

## 12. Notices

- 12.1 Any notice required to be given under this agreement shall be in writing in the English language and shall be delivered by hand or sent by pre-paid first-class post, recorded delivery post or registered airmail to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by email to one of the other party's authorised persons (as notified by the other party from time to time).
- 12.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post, recorded delivery post or airmail shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received upon receipt by the sender of a Read Receipt or other form of acknowledgement.

## 13. Publicity

All media releases, public announcements and public disclosures by either party relating to this agreement or its subject matter, including promotional or marketing material, shall be co-ordinated with the other party and approved jointly by the parties in writing prior to release. The Customer shall not use any of the Supplier's trade marks (whether registered or unregistered) in any of its marketing or other publicity without the Supplier's prior written consent.

## 14. Entire agreement

This agreement constitutes the entire agreement between the parties regarding its subject matter and supersedes and replaces any and all prior agreements, understandings or arrangements between the parties, whether oral or in writing,

with respect to the same. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this agreement except as expressly stated in this agreement. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into this agreement (unless such untrue statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided in this agreement.

**15. Third party rights**

This agreement is made for the benefit of the parties to it and is not intended to benefit, or be enforceable by, any other person.

**16. Waiver**

16.1 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.

16.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

**17. Severance**

17.1 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.

17.2 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.

**18. Governing law and jurisdiction**

18.1 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation

(including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England.

18.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

**19. Fair use policy**

In the event that the Customer uses the Software to upload an unreasonably high number of videos (or other media), as determined by the Supplier (acting reasonably) with reference to the size and number of Sites and/or number of authorised user licences associated with the Customer, the Supplier shall be entitled to increase the Charges by a fair and reasonable sum to take account of such excessive usage. Such increase shall take effect from the next payment date after the Supplier notifies the Customer of the increased Charges. This clause shall not apply to any part of a Software product which is charged to the Customer on a per-use basis.

**20. Changes to the terms and conditions**

20.1 The Supplier may make changes to these terms and conditions from time to time. The Supplier will publish the changes on its relevant website and notify the Customer by email. The changes will be effective when published. The Customer is encouraged to review the latest terms and conditions on a regular basis. The Customer understands and agrees that the express acceptance of updated terms and conditions or the use of the Software and/or relevant websites after the date of publication shall constitute the Customer's agreement to any updated terms and conditions.

20.2 Any specific variations to these terms and conditions agreed in writing between the Supplier and the Customer shall continue in full force and effect (and shall if necessary supersede any changes to these terms and conditions pursuant to clause 20.1 above) unless varied in writing by the parties.