

**TERMS AND CONDITIONS FOR THE SUPPLY OF TELEMATICS SERVICES**

**1 DEFINITIONS AND INTERPRETATION**

1.1 In these terms and conditions the following definitions shall have the following meanings unless the context otherwise admits or requires:

<b>"Agreement"</b>	means the agreement between Northgate Vehicle Hire Limited (“ <b>NVH</b> ”) and the Customer comprising this document and the Order, including the clauses and the appendices;
<b>"Airtime"</b>	means a telecommunications service providing access to a mobile telecommunications network which enables messages to be conveyed using wireless telegraphy between a user and a third party and includes other ancillary telecommunications services;
<b>"Airtime Service Fee"</b>	means the charge payable by the Customer to NVH for the provision of the Airtime, which forms part of the Daily Charge;
<b>"Amortised Payment"</b>	the monthly charge as set out in the Order and comprising the Equipment Charge and the Installation Charge;
<b>"Amortised Period"</b>	the total period over which the Customer is paying for the Equipment and installation thereof as detailed in the Order;
<b>"Applicable Law"</b>	means: a) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the Services are provided to or in respect of; b) the common law and laws of equity as applicable to the parties from time to time; c) any binding court order, judgment or decree; d) any applicable industry code, policy or standard; or e) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party’s assets, resources or business;
<b>"Associated Company"</b>	means any company which is in relation to another company its parent undertaking or its subsidiary undertaking or a subsidiary undertaking of its parent undertaking or any other person controlled by or under the same control (direct or indirect) within the meaning of section 450 of the Corporation Tax Act 2010;
<b>"Authorised Representatives"</b>	means a person from either party, being a person authorised to act on behalf of that party to give instructions to the other in relation to the provision of the Services and to bind that party under this Agreement;
<b>"Business Day"</b>	means a day other than a Saturday, Sunday or public holiday in England when London banks are open for business;
<b>"Charges"</b>	means the price of the Services comprising: a) Equipment Charge; b) Installation Charge and De-installation Charge;

	<p>c) Early Termination Charges; and</p> <p>d) Daily Charge.</p> <p>as more particularly set out in the Price Book;</p>
<b>“Commencement Date”</b>	means the date the Customer commences receiving the Services on a per Order basis;
<b>“Confidential Information”</b>	means all data, documentation and information of all kinds and in whatsoever form or medium disclosed (including orally) by one party (the <b>“Disclosing Party”</b> ) to the other party (the <b>“Receiving Party”</b> ) in connection with this Agreement or in connection with the Disclosing Party’s business operations, customers, Customers, plans or market intentions;
<b>“Customer”</b>	means the customer as set out in the Order and/or any Associated Company who appoints NVH in connection with the Services under the terms of this Agreement;
<b>“Customer Application Form”</b>	means the account application form entered into by the Customer and NVH, setting out the Customer’s details;
<b>“Customer Data Feed”</b>	means the Customer instructing NVH to make arrangements for data arising either from services supplied by a third party to the Customer or for data from the Customer’s own systems to be included within the Customer Portal as agreed between the parties;
<b>“Customer Portal”</b>	means NVH’s own portal that the Customer can access via the Web Service to view data as part of the Services;
<b>“Daily Charge”</b>	means the Airtime Service Fee and Service Fee;
<b>“Data Protection Legislation”</b>	<p>means as applicable:</p> <p>a) Data Protection Act 2018 and the UK GDPR;</p> <p>b) the Electronic Communications Data Protection Directive (2002/50/EC), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) (as amended);</p> <p>c) any laws which implement any such laws; and</p> <p>d) any laws that replace, extend, re-enact, consolidate or amend any the foregoing;</p>
<b>“Data Subject”</b>	shall bear the meaning given to it in the Data Protection Legislation;
<b>“De-installation Charge”</b>	means the cost of removing the Equipment from a vehicle as set out in the Price Book;
<b>“Early Termination Charges”</b>	means the Charges incurred by the Customer where the Customer terminates the Services in whole or part, prior to the expiry of the Minimum Term as set out in the Price Book;
<b>“Equipment Charge”</b>	means the cost of the Equipment and as set out in the Price Book;
<b>“Equipment”</b>	The units provided, whether or not hardwired to a Vehicle, each consisting of a GPS/GPRS and any associated hardware and incorporated software for the transmission of vehicle statistical information, as set out in the Price Book;
<b>“Expert”</b>	means any person qualified by education, experience and training to determine the matter in dispute and not having a conflict of interest in relation to the matter in dispute;
<b>“Installation Charge”</b>	means the cost of fitting the Equipment to a vehicle as set out in the Price Book;

<b>“Intellectual Property Rights“</b>	means patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
<b>“International Organisation”</b>	shall bear the meanings given to it in the UK GDPR;
<b>“Minimum Term”</b>	Means the minimum period set out in the Early Termination Charges section in the Price Book.
<b>“Order”</b>	means an order for the Services submitted by the Customer, in accordance with Appendix 3;
<b>“Personal Data”</b>	shall bear the respective meaning given to it in the Data Protection Legislation;
<b>“Personal Data Breach”</b>	shall bear the meanings given to it in the UK GDPR;
<b>Price Book</b>	means the document setting out the Charges for provision of Telematics Services, as amended from time to time by NVH, or, otherwise, as agreed between the parties;
<b>“Processing”</b>	together with related expressions, including <b>process, processed, processing,</b> and <b>processes</b> shall bear the respective meanings given to them in the Data Protection Legislation;
<b>“Protected Data”</b>	means Personal Data referred to in Appendix 2 that is, or will be, received from or on behalf of the Customer in connection with the performance of the NVH's obligations under this Agreement;
<b>“Service Fee”</b>	means the charge payable by the Customer to NVH for the provision of the Services, which forms part of the Daily Charge;
<b>“Services”</b>	means the services to be supplied by NVH to the Customer as set out and as more particularly described in Appendix 1;
<b>“Services Information”</b>	means all reports and data arising out of the Services and provided by NVH during the Term of this Agreement;
<b>“Temporary Suspension”</b>	means a suspension of recording of data from the Equipment and/or lack of availability of the Customer Portal through the Web Service;
<b>“Term”</b>	means the duration of an Order, subject always to the terms of this Agreement;
<b>“Territory”</b>	means the United Kingdom and the Republic of Ireland;
<b>“UK GDPR”</b>	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018; and
<b>“Web Service”</b>	means internet-based access via a URL provided by us to you allowing, amongst other things, monitoring of data and usage of the Equipment comprising part of the Services.

1.2 The headings in this Agreement are for convenience only and shall not affect its construction.

- 1.3 Where appropriate words denoting the masculine shall include the feminine and the neuter and the singular shall include the plural and vice versa.
- 1.4 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
- 1.5 A reference to a clause or Appendix shall be a reference to a clause or Appendix to this Agreement.

## **2 APPOINTMENT**

- 2.1 The Customer hereby appoints NVH as the supplier of the Services in the Territory.
- 2.2 The Customer acknowledges and accepts the right of NVH, in its sole discretion, to appoint agents or sub-contractors / third party suppliers from time to time for the purpose of the conduct of the Services.

## **3 TERM**

- 3.1 Each Order shall be deemed to have commenced from, and including, the Commencement Date and shall continue for the Minimum Term (unless otherwise terminated in accordance with the terms of this Agreement).
- 3.2 After the Minimum Term the respective Order shall continue thereafter unless otherwise terminated in accordance with the terms of this Agreement or until it is terminated by either party giving to the other party not less than one (1) month's written notice of such termination, such notice not to expire before the expiry of the Minimum Term.

## **4 THE SERVICES AND NVH'S OBLIGATIONS**

- 4.1 NVH agrees to supply the Services to the Customer in accordance with the terms of this Agreement during the Term in consideration of payment, by the Customer, of the Charges.
- 4.2 NVH shall use reasonable care and skill in the provision of the Services.
- 4.3 NVH may at any time make changes to the Services necessary to comply with Applicable Law.
- 4.4 NVH shall, save in the case of emergency or request by the Customer, give to the Customer at least 7 (seven) days written notice of its intention to make any material alterations to the Services.
- 4.5 Where a material alteration to the Services is required the parties shall discuss such changes in good faith prior to the material changes being implemented. Where the parties cannot agree to the changes, both acting reasonably, either party may terminate any Orders immediately on written notice to the other party. The parties acknowledge and agree that providing there is not a change to the Services, which has a material detrimental impact on the features or functionality of the Services, NVH may at its discretion change the functionality of the Services as currently set out in this Agreement.
- 4.6 NVH will use its reasonable endeavours to ensure the security and integrity of the Customer Portal.
- 4.7 NVH will use its reasonable endeavours to prevent unauthorised use of, or access to, the Customer Portal.
- 4.8 Unless otherwise agreed in writing by NVH, all dates or other times for delivery of the Services agreed in writing by NVH are estimates only, except that NVH shall use reasonable endeavours to perform the Services no later than the date or time stated, and in default of a date or time being agreed in writing, the Services shall be delivered from the Commencement Date.
- 4.9 NVH is entitled to determine the manner in which the Services are performed.
- 4.10 NVH shall not be required to provide any aspect of the Services at the Customer's premises. All aspects of the Services will be delivered remotely.
- 4.11 NVH is discharged from performing our obligations under this Agreement where, to the extent, and for so long as the following circumstances affect performance NVH has been provided with inaccurate, incomplete or misleading information; or the Customer is in breach of this Agreement.
- 4.12 Where sub-clause 4.11 above applies, NVH shall notify the Customer as soon as reasonably practicable, and shall use its reasonable endeavours to continue to perform the Services but shall not be liable for any failure to do so

(including any delayed or defective performance); and the Customer shall reimburse NVH on demand in respect of all losses incurred by NVH in performing its obligations under this Agreement as a result.

- 4.13 If the Customer can demonstrate that the Services do not comply with the requirements of sub-clause 4.2, NVH shall re-perform the Services within a reasonable period of time, but this is the Customer's only remedy in respect of a breach of this Agreement or otherwise in respect of the provision of the Services by NVH.
- 4.14 Ownership of the Equipment shall remain with NVH at all times save to the extent it is otherwise provided for in the Price Book.

## **5 OBLIGATIONS AND ACKNOWLEDGEMENTS OF THE CUSTOMER**

- 5.1 It is the Customer's responsibility to provide NVH with such access and staff co-operation as NVH may reasonably require for the proper performance of any Services.
- 5.2 The Customer shall pay all Charges properly due to NVH in accordance with clause 8 (Charges and Payment).
- 5.3 The Customer consents, and shall procure the consent of the Customer, to NVH accessing data as may be required for the provision of the Services.
- 5.4 The Customer, nor any Customer, shall neither request nor compel NVH to release any data of a driver which may constitute sensitive personal data (as defined in the Data Protection Legislation beyond that to which the driver specifically consents).
- 5.5 The Customer warrants and represents to NVH that it, and any Customer:
- 5.5.1 will only use the Equipment for the purpose of the Services;
  - 5.5.2 shall not, and shall procure that any employee or third party shall not, as applicable, deconstruct, decompile, remove, damage, tamper with, repair, misuse or interfere with the:
    - a) Equipment;
    - b) the Customer Portal;
    - c) the Web Serviceor any part of it;
  - 5.5.3 will provide NVH with any vehicle or driver-related information or material which NVH may reasonably require from time to time in connection with the provision of the Services and it shall be the Customer's responsibility to keep NVH informed of any changes to such information;
  - 5.5.4 shall comply with any reasonable request that NVH may make at any time in respect of either the Equipment or the Services; and
  - 5.5.5 shall provide NVH on request with such information or material relating to the Services as NVH may request in order to carry out any investigation in connection with the Services as may be required by Applicable Law and/or as otherwise agreed in this Agreement. If the Customer does not provide the required information in a timely manner, NVH shall not be liable to the Customer in respect of the consequences of failing to provide such information.
- 5.6 The Customer shall not, and shall procure that the Customer shall not, sell, deal, transfer and/or otherwise make available Services Information that may benefit to any other third party other than to its Associated Companies.
- 5.7 The Customer hereby further warrants and represents to NVH that, to the extent required by Applicable Law, it has obtained, or will procure, all necessary licences, consents and permissions to include, without prejudice to the generality of the foregoing, the consent of its drivers in relation to the following:
- 5.7.1 the installation of the Equipment;
  - 5.7.2 the provision of the data which the Equipment shall transmit to NVH;
  - 5.7.3 the consequential analysis of such data; and
  - 5.7.4 the fact that NVH shall be reporting to the Customer in respect of such data which data shall include driver behaviour and performance.
- 5.8 In the event of a breach of any of clause 5.5.1 and 5.5.2 the Customer shall fully indemnify and keep NVH

indemnified against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by NVH, or any Associated Company, arising out of or in connection with the breach.

- 5.9 For the avoidance of any doubt, the Customer shall not (except to the extent permitted by applicable law):
- (i) access all or any part of the Services in order to build a product or service which competes with the Services;
  - (ii) attempt to obtain or assist third parties in obtaining, access to the Services;
  - (iii) copy the software in whole or in part;
  - (iv) introduce any virus, code into the software; or
  - (v) use the Customer Portal and Web Service otherwise than in accordance with this Agreement.
- 5.10 The Customer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Services and notify NVH promptly of any such unauthorised access or use.
- 5.11 The Customer shall not cause or permit the Services to be used by any person who is not the Customer's employee unless expressly authorised to do so under this Agreement.

### **Acknowledgments**

- 5.12 The Customer acknowledges and agrees and shall ensure each driver acknowledges and agrees that:
- 5.12.1 data in respect of a vehicle's use will be transmitted by the Equipment regardless of the purpose of the journey being carried out by the driver, whether in connection with the Customer's business or personal to the driver or by any other person driving the vehicle at any time;
  - 5.12.2 it shall be the Customer's responsibility to put in place and implement a policy to ensure that all drivers of vehicles into which the Equipment is installed make all those who may drive the vehicle at any time (including for personal use) aware of the presence of the Equipment and its function;
  - 5.12.3 the Services are a facility to assist the Customer and its drivers in understanding and thereby improving driving behaviour with the intention of achieving cost savings resulting from more efficient driving and, as such, it requires a driver to take steps to modify driving behaviour for such savings to be realised. The Customer understands that, whilst the Services provide data analysis and can provide recommended driving behaviour modifications, NVH cannot guarantee any consequential cost savings;
  - 5.12.4 the data received and collated in respect of the provision of the Services may be requested legitimately by, without limitation, a law enforcement agency, a court or other statutory authority of competent jurisdiction. In the event of NVH receiving such a request, NVH shall be allowed at any time to disclose any data or other supporting information to the extent required by Applicable Law; and
  - 5.12.5 NVH shall not be required to assist in any investigation or proceedings carried out by the Customer as to the activity of its drivers which may arise out of the provision of the Services or the data obtained thereunder beyond confirming that the data provided in respect of any particular journey appears, to the best of the NVH's knowledge, to be accurate.

## **6 TERMINATION, CONSEQUENCES OF TERMINATION AND SUSPENSION**

- 6.1 Either party shall be entitled to terminate an Order immediately by service of notice in writing on the other party if:
- 6.1.1 the other party shall fail on more than 3 (three) occasions in any calendar year to pay any sum due hereunder on the due date for payment;
  - 6.1.2 the other party shall otherwise be in material breach of any of its obligations hereunder and in the case of a breach capable of remedy shall fail to remedy such breach within 30 (thirty) calendar days of receipt of notice in writing from the party not in breach, specifying the breach and requiring it to be remedied; or
  - 6.1.3 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 or negotiates or arranges with its creditors to reschedule its debts or has a petition presented against it or passes a resolution for its winding up (otherwise than in connection with a reconstruction or amalgamation of its business whilst solvent) or suffers the appointment of a receiver administrative receiver or administrator over the whole or any part of its assets or suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

- 6.2 NVH shall be entitled to terminate any Order at any time and without liability to the Customer where there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the other Customer (or any Associated Company of the Customer) where control is acquired by a competitor or where, in the NVH's reasonable opinion, the entity is commercially incompatible with NVH.
- 6.3 NVH may terminate an Order by giving not less than three (3) months' written notice to the Customer.
- 6.4 On termination of an Order NVH shall cease to provide Services with immediate effect but without prejudice to the rights of either party in respect of any breach of the obligations of the other party under this Agreement. Equipment shall be dealt with in accordance with the provisions of clause 7 below.
- 6.5 Without prejudice to NVH's rights under any other provision of this Agreement, and without liability to the Customer, NVH shall be entitled, upon giving to the Customer written notice (with reasons), to immediately suspend the provision to the Customer of all or any part of the Services in the event of:
- 6.5.1 any non-performance by the Customer of its obligations as set out in clause 5;
  - 6.5.2 non-payment of any Charges or any other sum which may become due and owing from the Customer to NVH;
  - 6.5.3 NVH having reasonable cause to believe that a Customer may be or may be about to become subject to any of the events set out in clause 6.1.3; or
  - 6.5.4 NVH, in its sole but reasonable opinion, being, or reasonably believing that it may become, financially detrimentally affected (to a material extent in relation to this Agreement) if it were to continue to provide the Services.
- 6.6 In the event that NVH exercises its right to suspend provision of any part of the Services pursuant to clause 6.5, NVH shall lift such suspension upon the Customer:
- 6.6.1 remedying the non-performance concerned, in the event of suspension pursuant to clause 6.5.1;
  - 6.6.2 making such payment as may be outstanding, in the event of suspension pursuant to clause 6.5.2;
  - 6.6.3 providing such evidence to satisfy NVH that, in its sole but reasonable opinion, a Customer will not become subject to any of the events set out in clause 6.1.3 within 6 (six) months of such suspension, in the event of suspension pursuant to clause 6.5.3; or
  - 6.6.4 providing such evidence so as to satisfy NVH (to its sole but reasonable opinion) that the NVH's reasons for so suspending the Services are unfounded, in the case of suspension pursuant to clause 6.5.4.

## **7 EQUIPMENT**

### **Equipment: Where a vehicle has ceased to be part of the Customer's fleet**

- 7.1 Where the Customer requires the Equipment to be removed from the vehicle and re-installed into another of the Customer's vehicles:
- 7.1.1 the Customer will be liable to pay a De-installation Charge and a re Installation Charge for any Equipment that is hard wired as set out in the Price Book;
  - 7.1.2 the Daily Charge shall continue to be payable.
- 7.2 Where the Customer requires the Equipment to be removed from the vehicle (this must be undertaken by NVH):
- 7.2.1 the Customer will be liable to pay a deinstallation charge for any Equipment that is hard wired as set out in the Order; and

7.2.2 the Daily Charge shall continue to be payable until the Equipment is returned to NVH.

#### **Equipment: On termination of an Order**

7.3 Where the Order is terminated for whatever reason:

7.3.1 the Daily Charge shall remain payable for period set out in the Order. For the avoidance of any doubt, To the extent there is no stated period in the Order the Daily Charge shall be payable up to the date of termination;

7.3.2 NVH shall not provide any Services to the Customers from the date of termination;

7.3.3 NVH shall disable the recording of data from the Equipment from and including the date of termination; and

7.3.4 if any Equipment is fitted to a non-NVH vehicle, the Customer shall inform NVH (a minimum of two weeks prior to termination) where it requires the removal of any hard-wired Equipment and shall pay NVH the De-installation Charge as set out in the Price Book.

#### **Equipment: Following the expiry of the Minimum Period**

7.4 Where, following the expiry of the Minimum Period, the Agreement remains in full force and effect, and provided always that the Equipment has been paid for in full, NVH shall continue to provide the Services under the terms of this Agreement and the Customer shall only be charged the Daily Charge until:

7.4.1 the vehicle ceases to be part of the Customer's fleet and the Customer does not require the Equipment to be re-installed into another vehicle pursuant to clause 7.2; or

7.4.2 the applicable Order is terminated.

### **8 CHARGES AND PAYMENT**

8.1 All Charges shall be invoiced in accordance with this Agreement.

8.2 The Customer agrees to pay the Charges due to NVH under this Agreement by Direct Debit or BACS transfer within 30 (thirty) calendar days of the date of the invoice together with value added tax at the applicable rate.

8.3 The Charges shall be reviewed at NVH's discretion and NVH will notify the Customer of any increases, which shall only be effective at expiry of the 28-day notice period.

8.4 Subject to the provisions of clause 8.3, NVH shall have the right to review and amend the Charges from time to time to reflect any increase in the cost to NVH which is due to any factor beyond NVH's control PROVIDED THAT it gives no less than one (1) months' notice of such changes to the Customer. For the avoidance of doubt, this shall constitute a material alteration to the Services pursuant to clause 4.5 above.

8.5 If the Customer fails to make any payment by the due date then, without prejudice to any other right or remedy available to NVH, NVH shall be entitled to:

8.1.1 terminate the relevant Order(s) or suspend any further supply of the Services to the Customer in accordance with the provisions of clause 6; and/or

8.1.2 charge the Customer interest on the amount unpaid, subject to the Late Payment of Commercial Debts (Interest) Act 1998, such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest immediately on demand by NVH.

8.6 In the event that any services additional to those outlined in this Agreement are requested by or made available to the Customer, NVH shall agree with the Customer any associated fees or charges connected with such additional services and the payment terms for the same.

8.7 No Temporary Suspension shall affect the Charges payable unless it exceeds a period of 48 (forty-eight) hours in which case the Charges payable shall be reduced pro rata by NVH in line with the actual period of suspension.

## **9 INSURANCE**

- 9.1 NVH shall, during the Term, maintain employer's liability, third party liability, product liability and professional negligence insurance cover in respect of its liabilities arising out of or connected with this Agreement such cover to be to a minimum value of one million pounds (£1,000,000) and with an insurance company of repute.
- 9.2 NVH shall on request supply to the Customer copies of the relevant certificates of insurance as evidence that such policies remain in force.

## **10 EXCLUSION AND LIMITATION OF LIABILITY**

- 10.1 Save as otherwise expressly provided in this Agreement and save also in respect of the circumstances set out in clause 10.4, NVH shall not, under any circumstances whatsoever, be liable for any of the following (in each case, whether direct or indirect):
- 10.1.1 loss occasioned by any failure to perform its obligations due to the acts or omissions of Airtime providers, or any other telecommunications service provider;
  - 10.1.2 loss of profits;
  - 10.1.3 loss of business;
  - 10.1.4 depletion of goodwill and/or similar losses;
  - 10.1.5 loss of anticipated savings;
  - 10.1.6 loss of contract;
  - 10.1.7 loss of use; or
  - 10.1.8 any consequences of any use to which the Customer puts the data (whether internally or externally).
- 10.2 Subject to clause 10.4, NVH shall not be liable for consequential, indirect or special losses.
- 10.3 NVH shall have no liability to the Customer for any:
- 10.3.1 any delay, loss, damage, costs, expenses, charges or claims suffered or incurred by the Customer due to causes beyond NVH's reasonable control; or
  - 10.3.2 any delay, loss, damage, costs, expense, charges or claims due to or caused by the Customer.
- 10.4 Nothing in this Agreement shall limit either party's liability for:
- 10.4.1 death or personal injury caused by negligence;
  - 10.4.2 fraud or fraudulent misrepresentation; and
  - 10.4.3 any other losses which cannot be excluded or limited by Applicable Law.
- 10.5 Subject always to clause 10.4, NVH's total liability, arising under each Order, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to £5,000.

## **11 WARRANTY: EQUIPMENT**

- 11.1 The Customer accepts that the Equipment and/or Services cannot be guaranteed to be fault free and that, amongst other factors, NVH is dependent on its suppliers for the provision of the Equipment and/or certain elements of the Services. In the event that the Customer becomes aware of any fault in the Equipment and/or breakdown in the operation of the Services it shall notify NVH without delay.
- 11.2 NVH warrants to the Customer that each unit of Equipment supplied in accordance with an Order will be free from material defects for a period of 1 (one) year from installation / delivery of the Equipment (as the case may be dependent on whether the Equipment requires installation or is a plug in device) ("**Warranty Period**"). During the Warranty Period, NVH shall arrange for the prompt repair or replacement of any defective Equipment at no cost to the Customer provided that any repairs or replacements required have not been the result of wilful neglect, negligence, improper use, storage or handling, accident or act of God.
- 11.3 A claim under the warranty at clause 11.2 in respect of any unit of Equipment must be made in writing to NVH

within the Warranty Period for each unit of Equipment.

- 11.4 If a warranty claim is invalid for any reason, the Customer will be charged for all Services performed and expenses incurred by NVH in organising the repair of, handling, shipping and replacing or reinstalling the returned Equipment.
- 11.5 As to any unit of Equipment repaired or replaced during an applicable Warranty Period, the warranty period on the replacement product or the repaired product shall terminate upon the termination of the original Warranty Period.
- 11.6 Any spare parts or replacement items will be furnished on an exchange basis and will be new, equivalent to new or reconditioned.
- 11.7 Other than any warranties expressly given in this Agreement, in respect of the Equipment or the Services, all warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law, excluded from this Agreement.
- 11.8 Pursuant to clause 10.5 and for the avoidance of doubt, NVH shall not be liable at all to the Customer, its employees or any third party whatsoever in respect of any issues or disputes arising out of the presence of the Equipment in a vehicle or the transmission of data.
- 11.9 Where the Customer installs or arranges installation of the Equipment, NVH shall not be liable whatsoever for any fault of the Equipment or transmission of the data due to the installation.

## **12 CONFIDENTIALITY**

- 12.1 Each of the parties hereby undertakes to the other to:
  - 12.1.1 keep confidential all Confidential Information concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into or during the performance of this Agreement;
  - 12.1.2 not without the other's prior written consent disclose the Confidential Information in whole or in part to any other person save those of its employees, agents or sub-contractors involved in the provision or receipt of the Services and who have a need to know the same; and
  - 12.1.3 use the Confidential Information solely in connection with the provision or receipt of the Services and not otherwise for its own benefit or the benefit of any third party.
- 12.2 The provisions of clause 12.1 above shall not apply to the whole or any part of the Confidential Information to the extent that it is:
  - 12.2.1 trivial or obvious;
  - 12.2.2 already in the Receiving Party's possession on a non-confidential basis prior to the date of its disclosure by the Disclosing Party;
  - 12.2.3 in the public domain other than as a result of a breach of this clause 12; or
  - 12.2.4 required to be disclosed by law, court order or any governmental or regulatory authority provided that, to the extent it is legally permitted to do so, the Receiving Party gives the Disclosing Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.2.4, the Receiving Party takes into account the reasonable requests of the Disclosing Party in relation to the content of such disclosure.
- 12.3 Each of the Customer and NVH hereby undertakes to the other to make all relevant employees, agents and sub-contractors aware of the confidentiality of the Confidential Information and the provisions of this clause 12 and without limitation to the foregoing to take all such steps as shall from time to time be necessary to ensure compliance by its employees, agents and sub-contractors with the provisions of this clause 12. The Receiving Party shall be liable to the Disclosing Party for the actions or omissions of any party to whom the Confidential Information is disclosed by the Receiving Party pursuant to this clause 12, as if they were the actions or omissions of the Receiving Party itself.
- 12.4 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's

Confidential Information other than those expressly stated in this Agreement are granted to the other party, or to be implied from this Agreement.

- 12.5 The Receiving Party acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of confidentiality in this Agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the confidentiality provisions of this Agreement.
- 12.6 The Receiving Party shall indemnify and keep indemnified the Disclosing Party at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and other reasonable costs and expenses suffered or incurred by the Disclosing Party) arising from any breach of confidentiality by the Receiving Party and from the actions or omissions of any permitted recipient of Confidential Information.
- 12.7 On termination, each party shall:
- 12.7.1 return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
  - 12.7.2 erase all the other party's Confidential Information from its computer systems (to the extent possible); and
  - 12.7.3 certify in writing to the other party that it has complied with the requirements of this clause 12.7.
- 12.8 The obligations of each party in relation to this clause 12 shall continue for a period of 3 (three) years from the termination.
- 12.9 Any breach of this clause 12 (Confidentiality) by one party shall be deemed a material breach of the Order, which is not capable of remedy, and shall entitle the other party to terminate an Order in accordance with clause 6.1.2.

### **13 DATA PROTECTION**

#### Compliance with Data Protection Legislation

- 13.1 Each party shall at all times comply with all Data Protection Legislation in connection with the processing of Protected Data.
- 13.2 NVH shall process Protected Data in compliance with the obligations placed on it under Data Protection Legislation and the terms of this Agreement.
- 13.3 The Customer warrants, represents and undertakes, that:
- 13.3.1 all Protected Data, prior to such data being provided to or accessed by NVH for the performance of the Services under this Agreement, shall comply in all respects with Data Protection Legislation which shall include, without prejudice to the generality of the foregoing, the Customer providing all of the required fair processing information to, and obtaining (where relevant) all necessary consents from, Data Subjects);,; and
  - 13.3.2 all instructions (including the terms of this Agreement) given by it to NVH in respect of Protected Data shall at all times be in accordance with Data Protection Legislation.

#### Instructions

- 13.4 NVH shall:
- 13.4.1 only process (and shall ensure NVH staff only process) the Protected Data in accordance with Appendix 2 and this Agreement (and not otherwise unless alternative processing instructions are agreed between the parties in writing) except where otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest);
  - 13.4.2 without prejudice to clause 13.1, if NVH believes that any instruction received by it is likely to infringe the Data Protection Legislation it shall be entitled to cease to provide the relevant Services until the

parties have agreed appropriate amended instructions which are not infringing;

- 13.4.3 inform the Customer if NVH becomes aware of a processing instruction that, in NVH's opinion, infringes Data Protection Legislation and the Customer agrees that to the maximum extent permitted by applicable law, NVH shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and legal and other professional costs (calculated on a full indemnity basis) arising from or in connection with any processing in accordance with such of the Customer's processing instructions following the Customer's receipt of that information.

#### Security

- 13.5 NVH shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Article 32 of the UK GDPR.

#### Sub-processing and personnel

- 13.6 NVH may allow the processing of Protected Data by any agent, subcontractor or other third party ("**Sub-Processor**") on condition that NVH shall:
- 13.6.1 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this clause 13 and shall ensure each such Sub-Processor complies with all such obligations;
- 13.6.2 notify the Customer in writing at least 56 (fifty six) days prior to any intended addition or replacement of other Sub-Processors so that the Customer has the opportunity to object to the addition or replacement. Any objection must be made within 28 (twenty eight) days of receipt of the notification failing which NVH may proceed and the Customer's right to object will end. The Customer will not unreasonably object to such addition or replacement and where it does so object will set out its reasons for doing so; and
- 13.6.3 remain fully liable to the Customer under this Agreement for all the acts and omissions of each Sub-Processor as if they were its own.
- 13.7 NVH shall ensure that all its personnel are subject to a binding obligation to keep the Protected Data confidential.

#### Assistance

- 13.8 NVH shall (in respect of Protected Data only) taking into account the nature of the processing and taking into account the nature of information available to NVH:
- 13.8.1 assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the UK GDPR; and
- 13.8.2 assist the Customer (by appropriate technical and organisational measures, which shall be applied at the Customer's expense), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the UK GDPR .

#### International Transfers

- 13.9 NVH shall not transfer any Protected Data in or to countries outside the United Kingdom or to any International Organisation without the prior written consent of Customer.

#### Audit

- 13.10 NVH shall make available to the Customer such information as is necessary to demonstrate the NVH's compliance with the obligations placed on it under this clause 13, and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose subject to the Customer:
- 13.10.1 giving NVH reasonable prior notice of such information request, audit and/or inspection being required by the Customer;
- 13.10.2 ensuring that such audit or inspection is undertaken during normal business hours, with minimal disruption to NVH's business, the Sub-Processors' business and the business of other customers of NVH;

- 13.10.3 ensuring that all information obtained or generated by the Customer or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the Information Commissioner's Office or as otherwise required by applicable law);
- 13.10.4 in respect of the second and each subsequent audit or inspection in a calendar year paying NVH's reasonable costs for assisting with the provision of information and allowing for and contributing to inspections and audits.

#### Breach

- 13.11 NVH shall notify the Customer without undue delay on becoming aware of any Personal Data Breach in respect of any Protected Data.

#### Deletion or Return of Protected Data and Copies

- 13.12 NVH shall, at the Customer's written request, either delete or return all the Protected Data to the Customer in such form as the Customer reasonably requests within a reasonable time after the earlier of:
  - 13.12.1 the end of the provision of the relevant Services related to processing; or
  - 13.12.2 once processing by NVH of any Protected Data is no longer required for the purpose of NVH's performance of its relevant obligations under this Agreement,and delete existing copies (unless storage of any data is required by applicable law).

#### Liability, indemnities and compensation claims

- 13.13 The Customer shall indemnify and keep NVH indemnified in respect of all losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and legal and other professional costs (calculated on a full indemnity basis) suffered or incurred by, awarded against or agreed to be paid by, NVH, its Associated Companies and any Sub-Processor arising from or in connection with any:
  - 13.13.1 non-compliance by the Customer with the Data Protection Legislation;
  - 13.13.2 processing carried out by NVH or any Sub-Processor pursuant to any processing instruction given by the Customer that infringes any Data Protection Legislation; or
  - 13.13.3 breach by the Customer of any of its obligations under this clause 13.
- 13.14 NVH shall be liable for losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and legal and other professional costs (calculated on a full indemnity basis) (howsoever arising, whether in contract, tort (including negligence) or otherwise) under or in connection with this Agreement:
  - 13.14.1 non-compliance by NVH with the Data Protection Legislation;
  - 13.14.2 breach by NVH of any of its obligations under this clause 13.

#### Survival of data protection provisions

- 13.15 This clause 13 shall survive termination or expiry provided always that any termination or expiry of this clause 13 shall be without prejudice to any accrued rights or remedies of either party at the time of such termination or expiry.

## **14 DISPUTE RESOLUTION**

- 14.1 Any dispute arising between the parties out of or in connection with this Agreement shall be dealt with in accordance with the provisions of this clause 14.
- 14.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 14.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
  - 14.3.1 Within 7 (seven) days of service of the notice, the Account Director of NVH and the Customer shall meet to discuss the dispute and attempt to resolve it.
  - 14.3.2 If the dispute has not been resolved within 7 (seven) days of the first meeting then the matter shall be

referred to the relevant NVH representative (as notified by NVH to the Customer) and representative nominated by the Customer and notified to NVH who shall meet within 7 (seven) days to discuss the dispute and attempt to resolve it.

- 14.3.3 If the dispute has not been resolved within 7 (seven) days of the second meeting then the matter shall be referred to the Board Sponsor of NVH and the Managing Director of the Customer (or persons of equivalent seniority) who shall meet within 7 (seven) days to discuss the dispute and attempt to resolve it.
- 14.4 The specific format for the resolution of the dispute under clause 14.3.1 - 14.3.3 (inclusive) shall be left to the reasonable discretion of the parties but may include the preparation and submission of statements of fact or of position.
- 14.5 If the dispute has not been resolved within 28 (twenty-eight) days of the first meeting under clause 14.3.1 the parties shall upon the application of either party refer the dispute to an Expert agreed between the parties. Such Expert shall determine the dispute in writing within 28 (twenty-eight) days written submissions by the parties thereto, such submissions to be delivered to the Expert within 14 (fourteen) days of his appointment.
- 14.6 Any such Expert shall act as an expert and not as an arbitrator and the decision of such Expert shall be final and binding on the parties save in the case of manifest error.
- 14.7 Any such Expert may determine the reasonable amount of his or her fees which shall be borne equally by the parties.
- 14.8 Neither NVH nor the Customer may suspend the performance of the Services by reason of the reference of a dispute to an Expert.

## **15 INTELLECTUAL PROPERTY RIGHTS**

- 15.1 All Intellectual Property Rights in the Customer's Data Feed which is assessed and/or processed by NVH as part of or in connection with the Services, as well as the data and information produced by such processing, shall belong to the Customer. The Customer hereby grants, or procures the grant, to NVH a non-exclusive, royalty-free licence to use the Customer's data and any associated Intellectual Property Rights in connection with the Services for such period as the Services are being delivered to the Customer by NVH.
- 15.2 The Customer Portal and the Web Service and all Intellectual Property Rights of whatever nature in both the Customer Portal and the Web Service and any documentation relating to them, is and shall remain the property of NVH and NVH reserves the right to grant licences to use the Customer Portal and the Web Service or part thereof to any third party whether in connection with this Agreement or not.
- 15.3 NVH hereby grants with effect from the Commencement Date, to the Customer, a non-exclusive, revocable in whole or in part, non-transferable, royalty free licence to access and use both the Customer Portal and the Web Service, authorised access to which is provided by NVH to the Customer during the Term but only to the extent that such access and/or use is necessary and agreed by NVH in advance to be necessary for the receipt of the Services.
- 15.4 The Customer's licence to access and/or use of both the Customer Portal and the Web Service is extended to the Customer's staff and to the Customer for the purpose only of their receipt of Services in accordance with this Agreement. The Customer shall procure compliance from its staff and/or Customer with the provisions of this clause 15 both before and after termination.
- 15.5 NVH shall not be held liable for any charges, fees or expenses that may arise as a result of the unauthorised use of both the Customer Portal and the Web Service, or any part of it, by the Customer's current or previous staff or the Customer and the Customer shall indemnify and keep NVH indemnified in relation to any unauthorised use.
- 15.6 Any licence granted by this clause 15 shall terminate automatically upon the later of:
  - 15.6.1 the termination; or
  - 15.6.2 the termination of the Services

without the need for further notice from any party.

15.7 Upon the later of:

15.7.1 the termination; or

15.7.2 the termination of the Services

the Customer shall:

15.7.3 cease to use both the Customer Portal and the Web Service and on request either delete or return all Confidential Information of NVH obtained from the Customer Portal and the Web Service or other material subject to Intellectual Property rights which it then holds and shall certify to NVH that such deletion or return has occurred; and

15.7.4 shall procure that its staff and/or Customer, cease to use and on request either delete or remove access or disable in any other way to be agreed with NVH access to any or any part of the Customer Portal and the Web Service.

15.8 Notwithstanding the provisions of this clause 15 in the event a party wishes to use any item or material referred to in this Agreement (other than the Customer Portal or any part of it) which is subject to Intellectual Property Rights of the other party then the parties shall discuss and work towards agreement on the terms of a non-exclusive, non-transferable licence to use such item or material for the agreed purposes.

15.9 Any information, reports, training material provided by NVH that are required in order to support the delivery of the Services, shall at all times remain the property of NVH and be subject to this clause 15.

15.10 Where, in connection with the Services, either party uses any Intellectual Property which is owned by any third party, then the providing party shall procure that their licence to use such Intellectual Property extends so as to allow the other party to use and/or access it.

15.11 Each party ("**Indemnifying Party**") shall indemnify and keep the other party indemnified ("**Indemnified Party**") against all loss, damage, claims, demands, actions, costs, charges, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the possession or use by the Indemnified Party of any of the software, systems or the provision of the Services provided by the Indemnifying Party infringes the copyright, patent, registered design, trade mark, design right, moral right or other intellectual property right of any third party.

## **16 ANTI-BRIBERY AND MODERN SLAVERY**

### Anti-Bribery

16.1 For the purposes of this clause 16 "**Bribery Laws**" means all applicable anti-corruption laws and regulations including without limitation the United States Foreign Corrupt Practices Act of 1977 as amended and the Bribery Act 2010 (the "**BA 2010**").

16.2 Each party shall comply with applicable Bribery Laws, including ensuring that it has in place adequate procedures to ensure compliance with the Bribery Laws, and with the other party's anti-bribery policy as may be provided and updated from time to time and each shall use all reasonable endeavours to ensure that:

16.2.1 all of that party's personnel

16.2.2 all others associated with that party, and

16.2.3 all of that party's sub-contractors,

involved in performing the Services or with this Agreement so comply. The expressions "**adequate procedures**" and "**associated**" shall be construed in accordance with the BA 2010 and documents published under it.

16.3 Without limitation to the above, neither party shall make or receive any bribe (as defined in the BA 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

### Anti-Slavery

16.4 For the purposes of this clause 16 "**Modern Slavery Offence**" means an offence under the Modern Slavery Act

2015 (“**MSA 2015**”) and all other applicable UK legislation, regulations and codes relating to modern slavery.

- 16.5 Both parties acknowledge and agree that there are modern anti-slavery and human trafficking laws to which both parties are subject to which prohibit slavery, servitude and forced or compulsory labour as well as human trafficking. These laws include but are not limited to the MSA 2015.
- 16.6 Both parties agree to refrain from, and to procure that its staff, agents or sub-contractors refrain from any activity in connection with this Agreement that would constitute a violation by either party of an anti-slavery and human trafficking statute under the MSA 2015.
- 16.7 Each party undertakes, warrants and represents that:
- 16.7.1 neither it nor any of its officers, employees, agents or sub-contractors has:
- a) committed an Modern Slavery Offence; or
  - b) been notified that it is subject to an investigation relating to an alleged Modern Slavery Offence or prosecution under the MSA 2015; or
  - c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged Modern Slavery Offence or prosecution under the MSA 2015;
- 16.7.2 it shall comply with the MSA 2015 and with the other party’s modern anti-slavery and human trafficking policy as may be provided and updated from time to time.

#### General

- 16.8 Either party shall report any allegation made by any of the other party’s staff or other third party of any conduct which does not comply with clause 16, no later than 2 (two) Business Days after such an allegation has been made.
- 16.9 Any breach of this clause 16 by one party shall be deemed a material breach of the Agreement, which is not capable of remedy, and shall entitle the other party to terminate in accordance with clause 6.1.2.
- 16.10 Each party shall provide such supporting evidence of compliance to this clause 16 may be reasonably requested.

### **17 ASSIGNMENT AND THIRD PARTY RIGHTS**

- 17.1 Neither party shall assign, transfer, sub-contract or in any other manner make over to any third party the benefit and/or burden of this Agreement without the prior written consent of the other save that the Customer may at any time assign, transfer, novate or subcontract any and all of its rights and obligations under this Agreement to any of its Associated Companies.
- 17.2 The Customer shall advise NVH and NVH shall advise the Customer of their respective Authorised Representatives who shall have the right to direct activities in accordance with this Agreement.
- 17.3 This Agreement shall be binding upon the permitted successors and assigns of the parties and the name of a party appearing herein shall be deemed to include the names of its successors and assigns provided always that nothing shall permit any assignment by either party except as expressly provided.
- 17.4 The Customer may enforce the terms of this Agreement subject to and in accordance with the provisions of the Contract (Rights of Third Parties) Act 1999 (the “**Act**”). Save as expressly provided herein it is not the intention of the parties that a person who is not a party to this Agreement shall have any rights under or in connection with it by virtue of the Act.
- 17.5 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement and only the Customer or its permitted assigns shall be capable of terminating (and only in accordance with the Agreement’s terms).

### **18 FORCE MAJEURE**

- 18.1 Neither party shall be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations if there is any total or partial failure of performance by it of its duties and obligations under this Agreement occasioned by any act of God (including flood, earthquake or extreme adverse weather conditions), fire, act of government or state, war, civil commotion, insurrection, embargo, prevention

from or hindrance in obtaining any raw materials, energy or other supplies, labour disputes of whatever nature and any other reason beyond the control of either party.

- 18.2 If either party is unable to perform its duties and obligations under this Agreement as a direct result of the effect of one of those reasons, that party shall give written notice to the other of the inability which sets out full details of the reason in question. The operation of this Agreement shall be suspended during the period (and only during the period) for which the reason continues. Forthwith upon the reason ceasing to exist, the party relying upon it shall give written advice to the other of this fact. If the reason continues for a period of more than 90 (ninety) days and substantially affects the commercial intention of this Agreement, the party not claiming relief under this clause 18 shall have the right to terminate upon giving 30 (thirty) days' written notice of such termination to the other party. Neither party shall incur any liability to the other in respect of any termination arising pursuant to this clause 18.

## **19 SEVERANCE**

- 19.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 19.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

## **20 NOTICE**

- 20.1 Any notice or other document to be given under this Agreement shall be in writing and shall be deemed to have been duly given if left at or sent by:
- 20.1.1 first class post or express or air mail or other fast postal service; or
  - 20.1.2 registered post.
- 20.2 Any notice or other document shall be deemed to have been received by the addressee 2 (two) Business Days following the date of despatch of the notice or other document by post or, where the notice or other document is sent by hand simultaneously with the delivery or transmission. To prove the giving of a notice or other document, it shall be sufficient to show that it was despatched.

## **21 RIGHT TO OFFSET**

- 21.1 In the event that NVH is owed money by the Customer under any agreement, or is the debtor of any Associated Company, then NVH shall be entitled to offset any monies due under that agreement or account against any monies due under this Agreement.
- 21.2 In the event of termination under clause 6 by either party NVH will be entitled to offset any monies due under any other agreement between the parties or due to or becoming due to any Associated Company against any monies due to it under this Agreement.

## **22 GENERAL**

- 22.1 This Agreement embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Agreement. Neither party shall be entitled to rely on any agreement, understanding or arrangement which is not expressly set forth in this Agreement.
- 22.2 An amendment made by the Customer to this Agreement is ineffective unless it is in writing, expressly purports to amend the Agreement and is executed by both NVH and the Customer. Notwithstanding the provisions of Clause 20, NVH may revise these Terms from time to time as they appear on our website. Each time NVH fulfils an Order, the version of this Agreement in force at that time will apply to the Order and the supply of the relevant Services.
- 22.3 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement.

- 22.4 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy
- 22.5 Any date or period mentioned in this Agreement may be extended by agreement between the parties (or such of the parties as may be affected thereby).
- 22.6 Each of the parties shall be responsible for its respective legal and other costs incurred in relation to the preparation of this Agreement.
- 22.7 This Agreement shall be governed by and construed in accordance with English Law and the parties submit to the exclusive jurisdiction of the English Courts.

**APPENDIX 1**  
**THE EQUIPMENT & SERVICES**

**Services: Part 1: Equipment**

Any Equipment, as set out in each Order placed by the Customer.

**Services: Part 2: The Customer Portal: General**

**A. Driver Behaviour**

Driver behaviour system showing driver scores based on driving performance taking into account cornering, speeding, braking and idling. All thresholds are G-force based and are managed by NVH. The system counts events occurred and this measurement is converted into a score out of 100 for the month.

**B. Mileage Capture**

Recordings of all journeys to allow users/ drivers to identify business and private journeys, exportable in csv and pdf.

**Services: Part 3: The Customer Portal: Integration of Customer Data Feed into the Customer Portal**

NVH will facilitate the Customer in transferring the data / data feeds from its systems or from the systems of its third-party suppliers into the Customer Portal, as may be agreed by the Parties.

**APPENDIX 2**  
**DATA PROCESSING DETAILS**

**1 Subject-matter of processing:**

Vehicle tracker data collected from any Telematics Equipment for fleet management by the Customer. Personal Data of the Customer's employees processed to provide the Services.

**2 Duration of the processing:**

In accordance with NVH's data retention policy.

**3 Nature and purpose of the processing:**

To receive, record and transmit Telematics data for fleet management by the Customer including vehicle tracking, driver behaviour, asset tracking, first notification of loss and managing risk to provide the Services.

**4 Type of Personal Data:**

- a) Name.
- b) Work email address .
- c) Driving behaviour. This will include the date, time, location, duration, speed, distance, start, finish, direction of travel and deceleration for each journey where the Telematics Equipment is active.
- d) Video recordings and still images captured by any cameras installed in vehicles.
- e) Audio recordings (where applicable).

**5 Categories of Data Subjects:**

Customer staff e.g. fleet manager, drivers and nominated drivers.

**6 Specific processing instructions:**

None.

## APPENDIX 3

### ORDERS

#### Process

1. If you are not an existing customer, upon request for the Services NVH will require completion of the Customer Application Form.
2. To be eligible to place an Order the Customer must have completed the Customer Application Form.
3. The Customer can place an Order in writing to NVH including by email. Alternatively, where the Customer has existing terms in relation to the provision of Telematics, the provision of such Telematics shall be deemed an Order subject to the terms of this Agreement, to the exclusion of NVH Standard Terms and Conditions of Vehicle Hire ("**NVH Hire Terms**"). For the avoidance of any doubt, any existing non-Telematics services under NVH Hire Terms, shall remain subject to the NVH Hire Terms.
4. NVH may accept or decline Orders at its absolute discretion. NVH may, at its discretion, accept an amendment to an Order by the Customer.
5. NVH shall assign an order number to each Order it accepts and notify the order number to the Customer. Each party shall use the relevant order number in all subsequent correspondence relating to the Order.
6. After confirming an Order, NVH shall as soon as reasonably practicable inform the Customer of the NVH's estimated delivery date for the Order.
7. In placing an Order, the Customer is responsible for ensuring the suitability of the Telematics Services for its own purposes. The Customer shall give the NVH all necessary information that the NVH reasonably requires to fulfil each Order.
8. The Customer acknowledges and agrees that each Order is a separate contract, governed by the terms of this Agreement.