

**FUEL CARD SERVICES LIMITED  
MILEAGE COUNT APPLICATION TERMS OF USE**

The following Terms and Conditions govern the use of the Software (as defined below) and related Services (as defined below) provided by Fuel Card Services Limited.

**1. DEFINITIONS**

1.1 In these Terms and Conditions the following words, terms or expressions have the following meanings: "Agreement"

means the contract between the parties for the supply of the Services which incorporates these Terms and Conditions.

**"Authorised Users"**

means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in Clause 2.2.3.

**"Business Day"**

means any day which is not a Saturday, Sunday or public holiday in the UK.

**"CarweB"**

means CarweB Limited (CRN: 6234516) whose registered office is at 220 Vale Road, Tonbridge, TN9 1SP.

**"CarweB Data"**

means the data provided by CarweB as part of the Services.

**"CarweB Terms"**

means CarweB's terms as set out at [www.mileagecount.co.uk](http://www.mileagecount.co.uk).

**"Change of Control"**

means the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, of a party by another entity in a single transaction or a series of transactions.

**"Confidential Information"**

means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Clause 10.5.

**"Customer"**

means the person or firm to whom FCS provides the Services.

**"Customer Data"**

means the data inputted by the Customer, Authorised Users, or FCS on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services and the Documentation.

**"DLC Data"**

means the driver licence checking data generated pursuant to the Customer's use of the Ultimate Services.

<b>"Documentation"</b>	means the documentation made available to the Customer by FCS online via <a href="http://www.mileagecount.co.uk">www.mileagecount.co.uk</a> which sets out a description of the Services and the user instructions for the Services (all as may be amended by FCS from time to time).
<b>"Dongle"</b>	has the meaning given in Clause 4.4.
<b>"Effective Date"</b>	means the date of this Agreement or the date the Customer accesses the Software or Services (whichever is the earlier).
<b>"FCS"</b>	means Fuel Card Services Limited (CRN: 2107821) whose registered office is at Alexandra House, Lawnswood Business Park, Redvers Close, Leeds, LS16 6QY.
<b>"Fees"</b>	means the fees for the Customer's use of the Services as notified to the Customer by FCS from time to time, and which may include a charge per Authorised User.
<b>"Helpdesk"</b>	means the telephone helpdesk provided by FCS (telephone number set out at <a href="http://www.mileagecount.co.uk">www.mileagecount.co.uk</a> ) to provide support in relation to the Services.
<b>"Licence Bureau"</b>	means Licence Bureau Limited (CRN: 4819897) whose registered office is at 5 Amberside, Wood Lane, Hemel Hempstead, HP2 4TP.
<b>"Licence Bureau Terms"</b>	means the Licence Bureau's terms which govern the provision of the driver licence checking services pursuant to the Ultimate Services, as set out at <a href="http://www.mileagecount.co.uk">www.mileagecount.co.uk</a> .
<b>"Mobile App"</b>	means the mobile application which may be downloaded by the Customer and/or Authorised Users, further details of which are set out in the Documentation.
<b>"Normal Business Hours"</b>	means 9.00 am to 5.00 pm local UK time, each Business Day.
<b>"Plus"</b>	means the Services as described within the Documentation under the heading "Plus" (as may be amended by FCS from time to time).
<b>"Premium"</b>	means the Services as described within the Documentation under the heading "Premium" (as may be amended by FCS from time to time).
<b>"Services"</b>	means the services (being Plus, Premium or Ultimate, as appropriate) provided by FCS to the Customer via <a href="http://www.mileagecount.co.uk">www.mileagecount.co.uk</a> (or any other website notified to the Customer by

FCS from time to time) and/or via the Mobile App (if applicable), as more particularly described in the Documentation.

**"Software"**

means the online software applications (including the Mobile App, if applicable) provided by FCS as part of the Services.

**"Ultimate"**

means the Services as described within the Documentation under the heading "Ultimate" (as may be amended by FCS from time to time).

1.2 Construction. In these Terms and Conditions, the following rules apply:

1.2.1. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted, and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.4 references to clauses and schedules are to the clauses and schedules of these Terms and Conditions; references to paragraphs are to paragraphs of the relevant schedule to these Terms and Conditions.

1.2.5 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.6 a reference to **writing** or **written** includes faxes and e-mails.

**2. AUTHORISED USERS** 2.1 Subject to the Customer paying for the Services in accordance with Clause 8, the restrictions set out in this Clause 2 and this Agreement, FCS hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the appropriate Services and the Documentation solely for the Customer's internal business operations.

2.2 In relation to the Authorised Users, the Customer undertakes that:

2.2.1 it will not allow or suffer any Authorised User's login details to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;

2.2.2 each Authorised User shall keep a secure password for his use of the Services and Documentation and each Authorised User shall keep his password confidential;

2.2.3 it shall maintain a written, up to date list of current Authorised Users and provide such list to FCS within 2 Business Days of FCS's written request at any time or times;

2.2.4 it shall permit FCS to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at FCS's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business; and

2.2.5 if any of the audits referred to in Clause 2.2.4 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to FCS's other rights, the Customer shall promptly disable such passwords and FCS shall not issue any new passwords to any such individual.

2.3 The Customer shall not:

2.3.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

(a) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

(b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;

2.3.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;

2.3.3 use the Services and/or Documentation to provide services to third parties;

2.3.4 subject to Clause 18.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or

2.3.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Clause 2.

2.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify FCS.

2.5 The rights provided under this Clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

2.6 These Terms and Conditions apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### **3. ADDITIONAL AUTHORISED USERS**

The Customer may, in consideration of the payment of the relevant Fees, from time to time, add additional Authorised Users and FCS shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.

## 4. SERVICES

4.1 FCS shall, subject to termination of the Agreement in accordance with its terms, provide the relevant Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

4.2 FCS shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, subject to any required maintenance.

4.3 FCS will, as part of the Services and at no additional cost to the Customer, provide the Customer with access to the Helpdesk during Normal Business Hours.

4.4 FCS may provide the Customer (in connection with the Ultimate Services) with a GPS tracking device (referred to in the Documentation as the "GPS Mileage Capture Dongle" (the "**Dongle**")) which, if used correctly and in accordance with the Documentation can assist the Customer in recording personal and business mileage.

## 5. CUSTOMER DATA

5.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

5.2 If FCS processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the data controller and FCS shall be a data processor and in any such case:

5.2.1 the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to FCS so that FCS may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf;

5.2.2 the Customer shall ensure that the relevant third parties have been informed of the Customer's legitimate grounds or have given their consent (where legally possible), for such use, processing, and transfer as required by all applicable data protection legislation;

5.2.3 FCS shall process the personal data only for the purposes of the Agreement for the term of the Agreement, in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time;

5.2.4 each party shall comply with the provisions of the Data Protection Act 1998, General Data Protection Regulation 2016 and any related, relevant data protection legislation (including any replacement, codification or amendment laws) and take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage;

5.2.5 except as required to comply with the terms of this Agreement, FCS shall not transfer the personal data to any third party without the Customer's prior written consent;

5.2.6 FCS shall take reasonable steps to ensure the reliability of those of its employees which process personal data and ensure that those employees have received adequate data protection training.

5.2.7 Upon the expiry of this Agreement, howsoever arising, all personal data held by the FCS for the purposes of the provision of the Services under this Agreement, including any archive or back-up copies, will be securely destroyed at a date to be agreed by the relevant parties. Following the destruction of the data, as shall have been agreed between the parties, FCS will provide a written declaration confirming that the data has been destroyed;

5.2.8 The Customer shall use reasonable endeavours to deal timeously with any subject access requests or other requests from any individual whose personal data has been passed to FCS to access or delete such personal data relating to them, and any requests from the Information Commissioner or any other law enforcement or regulatory authority for information regarding the processing of personal data arising under or in connection with this

Agreement, provided FCS uses reasonable endeavours to notify the Customer of any such request it is made aware of.

5.2.9 The Customer agrees that FCS may engage third parties to process personal data in order to assist FCS to deliver the Services on behalf of the Customer ("**Sub-processors**"). FCS has or will enter into written agreement with each Sub-processor containing data protection obligations no less protective than those in this Agreement.

5.2.9.1 The current Sub-processors for the Services have been notified to the Customer and the Customer agrees and approves that FCS has engaged such Sub-processors to process personal data as set out in that list (if any).

5.2.9.2 FCS shall notify the Customer thirty (30) days in advance of any intended changes concerning the addition or replacement of any Sub-processor during which period the Customer may raise objections to the Sub-processor's appointment. Any objections must be raised promptly (and in any event no later than fourteen (14) days following FCS's notification of the intended changes). Should FCS choose to retain the objected to Sub-processor, FCS will notify the customer at least fourteen (14) days before authorising the Sub-processor to process personal data and then the Customer may immediately discontinue using the relevant portion of the Services and may terminate the relevant portion of the Services. There will be no liability for either party in respect of such early termination.

5.2.9.3 For the avoidance of doubt, where any Sub-processor fails to fulfil its obligations under any sub-processing agreement or under applicable law FCS will remain fully liable to the Customer under this Agreement.

5.2.10 The Customer agrees that except as otherwise set out in this provision, FCS's ISO certifications, or comparable industry standards, will be used to satisfy any audit or inspection requests by or on behalf of the Customer and FCS shall make such reports available to the Customer on request. In the event that the Customer, a regulator or data protection authority requires additional information or an audit related to the Services, then, FCS agrees to submit its data processing facilities, data files and documentation needed for processing personal data to audit by the Customer (or any third party such as inspection agents or auditors, selected by Customer) to ascertain compliance with this Agreement, subject to being given reasonable notice and compliance with FCS's security requirements and the auditor entering into a non-disclosure agreement directly with FCS. FCS agrees to provide reasonable cooperation to Customer in the course of such an audit. The audit shall be carried out at the Customer's cost and expense.

5.2.11 In the event that FCS becomes aware of any breach of security that results in the accidental, unauthorised or unlawful destruction or unauthorised disclosure of or access to personal data FCS shall, among other things notify the Customer in writing immediately but not later than 36 hours after becoming aware of the breach of security and will assist the Customer with regard to the Customer's obligation to provide information to the data subject and to provide the Customer with relevant information.

5.2.12 Save where requested under a data subject access request, FCS will provide the Customer with electronic copies of data, upon reasonable request from the Customer provided that FCS reserves the right to apply a reasonable charge in respect of excessive or complex types of data. Any charge will be explained to the Customers in advance.

## 6. FCS' OBLIGATIONS

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

6.2 The undertaking at Clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to FCS's instructions, or modification or alteration of the Services by any party other than FCS or FCS's duly authorised contractors or agents. If the Services do not conform to the foregoing undertaking, FCS will, at its expense, use its reasonable commercial endeavours to correct any such non-conformance promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in Clause 6.1.

6.3 FCS:

6.3.1 does not warrant that the Customer's use of the Services will be uninterrupted or error free; nor that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements;

6.3.2 does not warrant that the Customer's receipt or use of the Services (or Documentation) will ensure its compliance with, or satisfaction of, any regulatory, statutory or any other obligations (including, any requirements imposed by any tax authority). The Customer acknowledges that FCS does not provide financial, taxation or tax planning advice and that the Customer is solely responsible for managing its tax affairs; and

6.3.3 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.4 This Agreement shall not prevent FCS from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

6.5 FCS warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

6.6 Save as expressly provided for in these Terms and Conditions, all warranties, conditions and other terms (including those relating to fitness for a particular purpose, satisfactory quality, and description) implied by statute, common law, trade custom and industry practice are, to the fullest extent permitted by law, excluded from this Agreement.



## **7. CUSTOMER'S OBLIGATIONS**

7.1 The Customer shall:

7.1.1 provide FCS with:

- (a) all necessary co-operation in relation to this Agreement; and
- (b) all necessary access to such information as may be required by FCS,

in order to render the Services, including Customer Data, security access information and configuration services;

7.1.2 comply with all applicable laws and regulations with respect to its activities under this Agreement;

7.1.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, FCS may adjust any agreed timetable or delivery schedule as reasonably necessary;

7.1.4 comply with (and ensure that the Authorised Users comply with) the CarweB Terms in relation to the use of the CarweB Data;

7.1.5 (if relevant) comply with (and ensure that the Authorised Users comply with) the Licence Bureau Terms in relation to the use of the DLC Data (including, the requirement that the Customer shall inform its employees that failure to complete a Consent Form (as defined in the Licence Bureau Terms) shall not constitute a breach of the relevant employee's contract of employment or otherwise result in disciplinary action being taken);

7.1.6 ensure that the Authorised Users use the Services and the Documentation in accordance with this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

7.1.7 obtain and shall maintain all necessary licences, consents, and permissions necessary for FCS, its contractors and agents to perform their obligations under this Agreement, including the Services;

7.1.8 ensure that each Authorised User has access to the internet and appropriate browser software so as to enable the Authorised Users to access the Services; and

7.1.9 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to FCS'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.

## **8. CHARGES AND PAYMENT**

8.1 FCS shall invoice the Customer for the Fees (which may be in the form of an E-Bill). FCS will send invoices to the Customer monthly in arrears detailing the relevant charges. If E-Bills are not acceptable to the Customer, FCS will provide hard copy invoices at its prevailing rates.

8.2 Payment of each invoice shall be made in one payment by the Customer in full and cleared funds in the timescales and in accordance with the payment terms detailed on the relevant invoice



8.3 If FCS has not received payment on the due date, and without prejudice to any other rights and remedies of FCS:

8.3.1 FCS may, without liability to the Customer, disable access by the Customer (including any Authorised Users) to all or part of the Services and FCS shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

8.3.2 interest shall accrue on such due amounts at an annual rate equal to 4% over the then current base lending rate of FCS's bankers in the UK at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.4 All amounts and fees stated or referred to in this Agreement:

8.4.1 shall be payable in pounds sterling;

8.4.2 are exclusive of value added tax, which shall be added to FCS's invoice(s) at the appropriate rate.

## **9. PROPRIETARY RIGHTS**

9.1 The Customer acknowledges and agrees that FCS and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

9.2 FCS confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

## **10. CONFIDENTIALITY**

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

10.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

10.1.2 was in the other party's lawful possession before the disclosure;

10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

10.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or

10.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

10.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

10.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

10.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute FCS's Confidential Information.

10.6 FCS acknowledges that the Customer Data is the Confidential Information of the Customer.

10.7 This Clause 10 shall survive termination of this Agreement, however arising.

## **11. INDEMNITY**

11.1 The Customer shall defend, indemnify and hold harmless FCS against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation

11.2 In no event shall FCS, its employees, agents and sub-contractors be liable to the Customer to the extent that any alleged infringement of any third party's intellectual property rights arising out of the use of the services or Documentation is based on:

11.2.1 a modification of the Services or Documentation by anyone other than FCS;

11.2.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by FCS; or

11.2.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from FCS or any appropriate authority.

## **12. LIMITATION OF LIABILITY**

12.1 This Clause 12 sets out the entire financial liability of FCS (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

12.1.1 any breach of this Agreement;

12.1.2 any use made by the Customer of the Services and Documentation or any part of them; and

12.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

12.2 Subject to Clause 12.3, and except as expressly and specifically provided in this Agreement:

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

12.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement;

12.2.3 the Services (including the Dongle) and the Documentation are provided to the Customer on an "as is" basis;

12.2.4 FCS shall have no liability to the Customer in respect of any charges imposed by any governmental organisation or authority (including, the HMRC) in relation to the Customer's use of the Services (including, any use of the Dongle);

12.2.5 FCS shall have no liability to the Customer in respect of any losses, damages, charges or expenses arising out of or in connection with the Customer's use of, or the operation of, the Dongle (or any associated equipment); and

12.2.6 FCS shall have no liability to the Customer for any charges incurred by the Customer in relation to any automated licence checks being undertaken in respect of drivers whom are no longer employed by the Customer and the Customer acknowledges that it is the Customer's responsibility to remove such persons from the relevant records.

12.3 Nothing in this Agreement excludes the liability of FCS:

12.3.1 for death or personal injury caused by FCS's negligence; or

12.3.2 for fraud or fraudulent misrepresentation.

12.4 Subject to Clause 12.2 and Clause 12.3:

12.4.1 FCS shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise (including under any indemnity) 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

12.4.2 FCS's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise (including under any indemnity), arising in connection with the performance or contemplated performance of this Agreement shall be limited to £5000 or a sum equal to 125% of the Fees paid by the Customer during the 12 months immediately preceding the date on which the claim arose (whichever is the higher).

### **13. TERM AND TERMINATION**

13.1 This Agreement shall commence on the Effective Date and shall continue until either party terminates the Agreement in accordance with its terms.

13.2 FCS may terminate the Agreement at any time upon written notice to the Customer.

13.3 The Customer may terminate this Agreement at any time by providing 3 months' written notice to FCS or, in the case of a contracted account holder; their termination and conditions of termination would be applied as stated separately on the signed application form.

13.4 This Agreement shall automatically terminate in the event that FCS terminates the Customer's fuel card account due to adverse credit or payment information.

13.5 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:

13.5.1 the other party commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;

13.5.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party;

13.5.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);

13.5.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets;

13.5.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way;

13.5.6 the other party ceases, or threatens to cease, to trade; or

13.5.7 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

13.6 On termination for any reason:

13.6.1 all licences granted under this Agreement shall immediately terminate;

13.6.2 each party shall return and make no further use of any equipment (including, any Dongles), property, Documentation and other items (and all copies of them) belonging to the other party;

13.6.3 FCS may destroy or otherwise dispose of any of the Customer Data in its possession unless FCS receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. FCS shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all costs and expenses incurred by FCS in returning or disposing of Customer Data; and

13.6.4 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

## **14. FORCE MAJEURE**

FCS shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, strikes, lock-outs or other industrial disputes (whether involving the workforce of FCS or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

## **15. WAIVER**

15.1 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 to the circumstances for which it is given.

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

## **16. SEVERANCE**

16.1 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.

16.2 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.

## **17. ENTIRE AGREEMENT**

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

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

## **18. ASSIGNMENT**

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

18.2 FCS may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

## **19. NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **20. THIRD PARTY RIGHTS**

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999 except that CarweB and any provider of the DLC Data shall be entitled to enforce the terms of the CarweB Terms or Licence Bureau Terms (as appropriate) directly against the Customer in the event of any breach of Clause 7.1.4.

## **21. NOTICES**

21.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post 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 fax to the other party's fax number as set out in this Agreement; or by email (to support@mileagecount.co.uk for FCS and such Customer company administrator address as the Customer may nominate).

21.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during normal business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post 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 fax or email shall be deemed to have been received at the time of transmission (or if transmission does not occur during normal business hours, at 9 am on the first business day following transmission).

## **22. GOVERNING LAW AND JURISDICTION**

22.1 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 law of England..

22.2 The parties irrevocably agree that the courts of England 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).