

eSERVICES ORDER REQUEST

Customer:

The Customer can choose one of two ways to purchase Driver Hire eServices. Either:

Option 1 buy access to dh Licence Check only on a pay per Check basis, without any commitment to a licence period;
or

Option 2 buy a fixed term licence which is capable of being renewed on an annual basis. This enables Authorised Users to use our eServices other than dh Licence Check throughout that licence period. Under Option 2, access to dh Licence Check may be added upon request and agreement to alternative pricing arrangements only.

Purchasing Option	Tick as applicable	Total Charges applicable
Option 1 – Pay per check, up to a maximum of Checks		Check Fee: £ Administration fee referred to in Clause 4.1.2: £ Total Charges of £ (being the Check Fee x maximum number of Licence Checks)
Option 2 – Initial Licence Period N/A]		Annual Licence Fee £ N/A
Where applicable, under either Purchasing Option 1 or 2		User Subscriptions: N/A

Authorised Administrative User

Contact Name:

Contact Email Address:

FORMATION OF CONTRACT:

The Customer's access to and DHT's provision of the e-Services is conditional upon payment in full in advance of the Total Charges for Purchasing Option 1 or the first Annual Licence Fee for Purchasing Option 2, unless otherwise agreed in writing by DHT.

By making payment in full of the applicable sums indicated above you confirm your agreement for the Customer to be bound by this Agreement as governed by this Order and the Terms and Conditions overleaf.

The Customer acknowledges that DHT is subject to certain obligations arising from its contractual relationship with the Driver and Vehicle Licensing Agency (DVLA). In accordance with such relationship, DHT is required to incorporate certain obligations into its agreement with the Customer, which can be found at <https://driverhiretraining.co.uk/terms-conditions/> under "DVLA Contract Obligations". The Customer agrees to fully comply with all such obligations and the terms of the DVLA Contract Obligations are hereby incorporated into this Agreement.

In the event of any conflict between the terms of the main body of this Agreement and the DVLA Contract Obligations, the terms of the DVLA Contract Obligations shall prevail.

TERMS AND CONDITIONS

1 INTERPRETATION

- 1.1 In this Agreement (which shall incorporate these Terms and Conditions as well as the Order) the following words and phrases shall have the following meanings except where the context otherwise requires:

"Annual Licence Fee" means the licence fee applicable to Purchasing Option 2 as set out in the Order and payable in accordance with Clause 4.

"Authorised Administrative User" the employee(s) of the Customer identified in the Order who is authorised by the Customer to be responsible for identifying the Authorised Users and managing their access and use of the e-Services, including for the purposes of Dh Licence Check determining the categorisation of licence endorsements and other related information received as a result of the conduct of a Check together with the application to the same of red, amber and green indicators for the assistance of the Customer's monitoring of results of Checks as indicated when using Dh Licence Check, and being listed in or in an attachment to the Order, and who shall also be deemed to be Authorised Users.

"Authorised Users" those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the e-Services and the Documentation, as further described and notified to DHT in Clause 3.2.5, and listed, where appropriate, in or in an attachment to the Order.

"Check" a check to determine, using data sourced from the DVLA and such other data providers selected by us (at our sole discretion), the information held by the DVLA and those other data providers regarding an individual.

"Check Fee" the fee calculated at a per Check rate applicable to Purchasing Option 1 and as set out in the Order for each Check conducted using Dh Licence Check, payable in accordance with Clause 4, in consideration of access to the Dh Licence Check service for up to the maximum number of Checks indicated on the Order;

"Customer" the person or organisation purchasing access to the e-Services whose details are set out on the Order.

"Customer Data" the data inputted by the Customer, Authorised Users, the Authorised Administrative Users or DHT on the Customer's behalf for the purpose of using the e-Services or facilitating the Customer's use of the e-Services.

"Customer Equipment" the Customer's computer system (hardware and software) on which the Software is to be used.

"Data Laws" all applicable data protection and privacy legislation in force from time to time in the UK, including the UK GDPR (as defined in section 3(10) (as supplemented by section 205(4) of the Data Protection Act 2018)), the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications regulations 2003 (SI 2003/2426).

"dh Licence Check" the particular e-Service provided to the Customer which shall enable the Customer to manage the results of and conduct automated Checks in the numbers and at the frequency and against the individual names as requested by the Customer as indicated using the Software provided for these purposes.

"DHT" DH PEOPLE PLUS LIMITED t/a DRIVER HIRE TRAINING (incorporated and registered in England and Wales with company number 04698770) and/or Driver Hire Group Services Limited (incorporated and registered in England and Wales with company number 02216564) whose registered offices are at 7 Bradford Business Park, King's Gate, Bradford, West Yorkshire, BD1 4SJ as identified in an Order.

"Documentation" means the user documentation relating to the e-Services and/or the Software as supplied from time to time by DHT to the Customer.

"Driver Data" means the Personal Data and other Information sourced from DVLA (which may include criminal conviction data) and made available as a result of a Check.

"e-Services" the electronic and subscription services provided by DHT to the Customer under this Agreement via www.dhportal.co.uk or any other website notified to the Customer by DHT from time to time, as more particularly described in the Documentation.

"Initial Licence Period" the first fixed licence period for which access is granted to the e-Services if the Customer has chosen Purchasing Option 2.

"Intellectual Property Rights" means copyright, database rights, patents, design rights and trade marks (registered and unregistered), confidential information, domain names and all other rights of an equivalent or similar nature anywhere in the world including, without limitation, applications for any of the foregoing.

"Driver Declaration" the prescribed form of data protection mandate in the form as issued by the DVLA from time to time and provided by DHT to the Customer which is required to be completed by any individual in respect of which a Check is requested by the Customer to confirm the necessary declaration is received in order to conduct a Check.

"Month" each calendar month and "Monthly" shall have a corresponding meaning.

"Normal Business Hours" 9.00am to 5.00pm local UK time, each Working Day.

"Order" the form issued either in hard copy written form or by electronic means confirming the details of the e-Services requested and Purchasing Option chosen by the Customer, further completed by DHT confirming the Total Charges payable for the e-Services as a result of the Customer's request and choice.

"Personal Data" means any information relating to an identified or identifiable natural person ("Data Subject"); an identifiable natural person is one who can be identified, directly or indirectly in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

"Purchasing Option" the alternative methods of purchasing access to the e-Services as specified on the Order and being numbered to have a corresponding meaning.

"Quarter" each period of 3 calendar months beginning on 1 January, 1 April, 1 July and 1 October and "Quarterly" shall have a corresponding meaning.

"Renewal Period" has the meaning given in Clause 13.1.

"Software" the online software provided and licensed to the Customer as part of and to enable the Customer's access to the e-Services under this Agreement and also including any Updates.

"Start Date" the date on which DHT receives in full and cleared funds the first payment required in accordance with the Order and Clause 4 and from which date the Customer's permission to access the e-Services commences.

"Term" if the Customer has chosen Purchasing Option 1, this will be such period as is required for the Customer to conduct the maximum number of Checks purchased as indicated on the Order and if the Customer has chosen Purchasing Option 2 on the Order, this will be the Initial Licence Period of this Agreement as set out in the Order together with any Renewal Periods applied at the Customer's request in accordance with clause 13.1.

"Total Charges" all fees payable by the Customer in consideration for access to the e-Services (as applicable to the Purchasing Option chosen by the Customer) including the Annual Licence Fee and/or any Check Fees, and any part or combination of them.

"Updates" means any and all upgrades, enhancements, modifications and software fixes relating to the Software which are supplied by DHT to the Customer during the subsistence of this Agreement.

"User Subscriptions" the number of user subscriptions purchased by the Customer, as detailed in the Order, which entitle a specified number of Authorised Users to access and use the e-Services and the Documentation in accordance with this Agreement.

"Working Day" means Monday to Friday excluding English bank and other public holidays.

"Virus" any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or in part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 In this Agreement and in the Order, unless the context otherwise requires or unless otherwise specified:

- 1.2.1 **"including"** and in **"particular"** shall be construed as not limiting any general words or expressions in conjunction with which either of those expressions is used;

- 1.2.2 any reference to a person includes that person's successors, personal representatives and permitted assigns;

- 1.2.3 reference to any statute or statutory provision includes a reference to the same as from time to time amended, extended, re-enacted or consolidated and all subordinate legislation made pursuant to it;

- 1.2.4 **"writing"** or any similar expression includes transmission by facsimile or email, and

- 1.2.5 if any action or duty to be taken or performed under any of the provisions of this Agreement would fall to be taken or performed on a day which is not a Working Day such action or duty shall be taken or performed on the Working Day next following such day.

2 FORMATION OF CONTRACT

- 2.1 The Order, once completed by DHT with details of the Purchasing Option chosen and the applicable Total Charges, constitutes an offer by DHT to provide the e-Services specified in it on these conditions and conditionally upon payment in full in advance of the first payment due of the Total Charges. Accordingly, the payment by the Customer in accordance with Clause 4, shall establish a contract for the supply and purchase of those e-Services on these conditions and DHT shall only be bound by the same upon receipt of payment in full and cleared funds of the first payment due of the Total Charges. Any copy of the Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in any correspondence between the parties shall not govern this contract.

3 LICENCE

- 3.1 Subject to the Customer paying the first payment due of the Total Charges as indicated in the Order and due in accordance with Clause 4 and subject to the restrictions set out in this Clause 3 and the other terms and conditions of this Agreement, DHT hereby grants to the Customer a non-exclusive, non-transferable

- and non-sub-licensable right to permit the Authorised Users to use the e-Services and the Documentation during the Term solely for the Customer's internal business operations.
- 3.2 In relation to the Authorised Users, the Customer undertakes that:
- 3.2.1 the maximum number of Authorised Users that it authorises to access and use the e-Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
- 3.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, with the prior written consent of DHT, in which case the prior Authorised User shall no longer have any right to access or use the e-Services and/or Documentation;
- 3.2.3 each Authorised User shall keep a secure robust password for his use of the e-Services and Documentation and that each Authorised User shall keep his password confidential;
- 3.2.4 it shall provide such Customer Data and personal details of the Authorised Users to DHT as reasonably requested and as required to identify, and set up access to the e-Services for, each Authorised User. Driver Data must not be accessed from, copied onto or stored on removable media such as USB sticks, DVD's and flash drives. Use with laptops is permitted with full disc encryption;
- 3.2.5 it shall maintain a written, up to date list of current Authorised Users and provide such list to DHT within 5 Working Days of DHT's written request at any time or times and shall notify DHT of any change to the identity of the Authorised Administrative User at any time;
- 3.2.6 it shall permit DHT to audit the e-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 DHT's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- 3.2.7 if any of the audits referred to in Clause 3.2.6 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to DHT's other rights, the Customer shall promptly disable such passwords and DHT shall not issue any new passwords to any such individual; and
- 3.2.8 if any of the audits referred to in Clause 3.2.6 reveal that the Customer has underpaid the Total Charges to DHT, then without prejudice to DHT's other rights, the Customer shall pay to DHT an amount equal to such underpayment within 10 Working Days of the date of the relevant audit.
- 3.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the e-Services and shall maintain the latest versions of industry recognised anti-virus software. The Customer shall not use the e-Services in a manner that:
- 3.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 3.3.2 facilitates illegal activity;
- 3.3.3 depicts sexually explicit images;
- 3.3.4 promotes unlawful violence;
- 3.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 3.3.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;
- and DHT reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 3.4 The Customer shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, and except to the extent expressly permitted under this Agreement:
- 3.4.1 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
- 3.4.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 3.4.3 access all or any part of the e-Services and Documentation in order to build a product or service which competes with the e-Services and/or the Documentation; or
- 3.4.4 use the e-Services and/or Documentation to provide services to third parties; or
- 3.4.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the e-Services and/or Documentation available to any third party except the Authorised Users, or
- 3.4.6 attempt to obtain, or assist third parties in obtaining, access to the e-Services and/or Documentation, other than as provided under this Clause 3.
- 3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the e-Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify DHT.
- 3.6 The rights provided under this Clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 3.7 The Customer is responsible for ensuring that Customer Equipment meets all of the hardware, software and backup requirements specified by DHT from time to time and that the Software is compatible with any other software loaded or to be loaded on the Customer Equipment.
- 3.8 The Customer shall also ensure the accuracy of any data provided relating to access to the e-Services and access to dh Licence Check. The Customer shall ensure before relying on any item of Data that it matches the information properly requested and they possess a valid Declaration. Any records passed to the Customer which do not pertain to a valid Declaration must be disregarded, and deleted from any systems, you must promptly inform us of any such event and the details of it in writing.
- 3.9 The Customer shall provide DHT with details of any change in business process which may impact upon their use of Driver Data. The Customer shall not permit its employees, staff or anyone with access to dh Licence Check to view their own driver record.
- 3.10 The Customer will retain Driver Data only for as long as necessary to meet the permitted use of that Driver Data and should dispose of Driver Data where there is no business need to retain it.
- 3.11 Access to the Driver Data must be minimised so that only where necessary are individuals given access.
- 3.12 DHT may provide further written minimum data security requirements or standards as required the DVLA from time to time which shall thereafter be met and maintained by the Customer as a condition precedent for accessing and using the Driver Data originating from DVLA.
- ## 4 CHARGES AND PAYMENT
- ### Applicable to Purchasing Option 1 only:
- 4.1 In consideration for DHT making dh Licence Check available to the Customer in accordance with Purchasing Option 1 under this Agreement, the Customer shall pay:
- 4.1.1 the Total Charges as indicated in full on receipt of the Order from DHT and in advance of any access to dh Licence Check being granted, unless otherwise agreed in writing; and
- 4.1.2 any additional administrative charges payable in respect of manual Checks (at such rate as is specified in the Order) triggered in the circumstances described in Clause 6.4 and for which an invoice shall be raised by DHT, payable within 30 days of receipt of invoice.
- 4.2 If the Customer notifies DHT that it wishes to purchase an additional number of Checks at any time during the Term DHT shall notify the Customer of the corresponding adjustment in the Check Fees and shall invoice the Customer for such amount which shall be payable in advance of the next subsequent period and then for each subsequent period for which the adjusted Check Fees become due and payable.
- ### Applicable to Purchasing Option 2 only:
- 4.3 In consideration for DHT making the e-Services available to the Customer in accordance with Purchasing Option 2 under this Agreement, the Customer shall pay:
- 4.3.1 the first Annual Licence Fee in full on receipt of the Order from DHT and in advance of any access to the e-Services being granted, unless otherwise agreed in writing; and
- 4.3.2 each subsequent payment of the Annual Licence Fee in full no later than 30 days in advance of each anniversary of the Start Date.
- 4.4 DHT shall be entitled to increase the Annual Licence Fee applicable to any subsequent Renewal Period provided it gives the Customer no less than 45 days' notice that such increase will take effect upon the start of the next subsequent Renewal Period should the Customer choose to renew this Agreement in accordance with Clause 13.1.
- 4.5 DHT may, by giving notice to the Customer at any time during the Term, increase the Total Charges:
- 4.5.1 to reflect any increase in the costs of performing this Agreement to DHT that is due to (i) any request by the Customer to amend the Order; (ii) any failure of the Customer to give DHT adequate or accurate information or instructions relating to DHT's provision of the e-Services; or (iii) any event outside of DHT's control, including any increases in taxes, duties, labour, materials and other supply costs; and
- 4.5.2 to reflect the percentage increase in the most recent stated UK Retail Prices Index over the period from the Start Date if no increase has yet occurred, or from the end of the period in relation to the UK Retail Prices Index since the last increase.
- ### Applicable to both Purchasing Options 1 and 2:
- 4.6 If the Customer notifies DHT that it wishes to purchase additional User Subscriptions for use of the e-Services at any time during the Term then DHT shall notify the Customer of the corresponding adjustment to either the Total Charges due and shall invoice the Customer for such amount which shall be payable in advance of such additional Authorised Users being given access to the e-Services and, under Purchasing Option 2 only, each subsequent payment of the Annual Licence Fee shall be adjusted accordingly.
- 4.7 Time for payment shall be of the essence.
- 4.8 If the Customer fails to make payment by the due date DHT may, without prejudice to any other rights or remedies it may have:
- 4.8.1 charge interest (both before and after judgment) on the amount unpaid at whichever is the greater of the rate of 4% above the base rate at the time of DHT's bank, compounded with monthly rests, or the rate of interest prescribed by law;
- 4.8.2 charge such reasonable administrative charges as it, in its discretion, sees fit; and/or

- 4.8.3 suspend all access to the e-Services until such time as the outstanding amount has been made good in full. DHT shall not be liable for any delay caused by such a withholding of access.
- 4.9 All payments due to DHT under this Agreement shall be exclusive of all value added and other sales taxes and shall be made without any deduction or set off whatsoever.
- 4.10 All payments due from the Customer to DHT shall be made in pounds (£) sterling unless otherwise agreed in writing by DHT.
- 5 E-SERVICES**
- 5.1 DHT shall, during the Term, provide the e-Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 5.2 DHT shall use commercially reasonable endeavours to make the e-Services available 24 hours a day, seven days a week, except for:
- 5.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
- 5.2.2 unscheduled maintenance performed outside Normal Business Hours provided that DHT has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 5.3 DHT will, as part of the e-Services and at no additional cost to the Customer, provide the Customer with DHT's standard customer support services during Normal Business Hours in accordance with DHT's support services in effect at the time that the e-Services are provided. DHT may amend its support services in its sole and absolute discretion from time to time.
- 6 DH LICENCE CHECK – PURCHASING OPTION 1 ONLY**
- 6.1 This Clause 6 shall only apply to Customer's using dh Licence Check in accordance with Purchasing Option 1.
- 6.2 The Customer's use of dh Licence Check, and the conduct of any Checks requested by the Customer, is entirely conditional in respect of each Check upon the Customer:
- 6.2.1 having obtained a completed Driver Declaration confirming the necessary declaration provided by the relevant individual in respect of which the Check is being conducted; and
- 6.2.2 having uploaded onto the dh Licence Check system a copy of the Driver Declaration referred to in Clause 6.2.1.
- 6.3 dh Licence Check enables the Customer to, and the Customer acknowledges it is responsible for, determining the frequency and identity of each individual in respect of which a Check is requested following which each Check will be conducted as part of an automated process.
- 6.4 The Customer acknowledges that in certain circumstances, being pre-determined by the DVLA (and therefore not within DHT's control) an electronic Check may be blocked and as a result a manually conducted Check may be undertaken in relation to which an administrative charge (in addition to the per Check rate applied to determine the Check Fee for the originally electronic Check requested) will be payable by the Customer in the amount specified as such in the Order and in accordance with Clause 4.
- 6.5 It shall be the Customer's responsibility to ensure, and DHT shall have no liability for:
- 6.5.1 the accuracy of all information contained within and confirmation of signed and completed receipt of all necessary Driver Declarations in respect of the Checks requested by the Customer in its use of dh Licence Check prior to conducting any Check;
- 6.5.2 the regular renewal of each Driver Declaration once expired (which expiry currently takes place 3 years following receipt of an individual's signed Driver Declaration) to ensure continued conduct of the Checks can take place as the Customer has requested; and
- 6.5.3 the deactivating of any automatic request for a Check in respect of an individual for which the Customer no longer wishes to conduct Checks (including if the individual for which a Check has been requested is no longer engaged or employed by the Customer). If such Checks take place automatically as a result of the Customer failing to deactivate the automatic request the Customer will still be charged for the Check taking place.
- 6.6 It shall be the Customer's responsibility to ensure it is satisfied that the Authorised Administrative User and/or any other individual which may have access to the dh Licence Check or the results of any Checks is authorised by it to work with such data, which it acknowledges may constitute special category personal data and criminal conviction data (as such term is defined under the Data Laws), and that the Authorised Administrative User and/or any such individual are suitably trained to operate and make use of dh Licence Check and the results of any Checks in compliance at all times with all applicable data protection legislation and under appropriate obligations of confidentiality.
- 6.7 dh Licence Check enables the Customer to determine the categorisation of licence endorsements and other related information received as a result of the conduct of a Check together with the application to the same of red, amber and green indicators for the assistance of the Customer's monitoring of results of Checks.
- 6.8 It shall be the Customer's responsibility to ensure, and DHT shall have no liability for:
- 6.8.1 the review of all detailed information provided as a result of a Check, regardless of whether such information has been categorised as having a red, amber or green indicator as a result of the choices applied in this regard by the Customer and regardless of on which part of the dh Licence Check pages such information is made available to the Customer; and
- 6.8.2 the Customer's compliance with all applicable laws as a result of and its use or misuse of any and all information made available to the Customer as a result of the conduct of a Check.
- 6.9 The data supplied to the Customer as a result of using the dh Licence Check is sourced from the DVLA and is therefore supplied in circumstances where DHT has no control over the content of the data available, the results of any Checks conducted on behalf of the Customer or the permanent availability of this service. As a result DHT does not warrant and accepts no liability for:
- 6.9.1 the accuracy, completeness or promptness of the information provided in relation to dh Licence Check and any Checks;
- 6.9.2 the continued availability of the dh Licence Check service; and
- 6.9.3 any loss or damage, however caused, as a result of any inaccuracy or incompleteness of the information provided or downtime or delay in providing the service in relation to dh Licence Check and/or any Checks.
- 6.10 Access to dh Licence Check is provided for the purposes of checking an individual's entitlement to drive for the internal business purposes of the Customer only and not for any other purposes, including identity checking of any kind or for the purpose of enabling any Authorised User to check their own records which is strictly prohibited.
- 7 CUSTOMER DATA & PERSONAL DATA**
- 7.1 Both parties will comply with all applicable requirements of the Data Laws. The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 7.2 DHT shall follow its archiving procedures for Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for DHT to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by DHT in accordance with DHT's usual archiving procedure. DHT shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by DHT to perform services related to Customer Data maintenance and back-up).
- 7.3 DHT shall, in providing the e-Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data available at www.driverhiretraining.co.uk and www.dhlicencecheck.co.uk or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by DHT in its sole discretion.
- 7.4 If DHT processes any Customer 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 DHT shall be a data processor and in any such case:
- 7.4.1 the Customer shall ensure that the Customer is entitled to transfer the relevant Customer data to DHT so that DHT may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf;
- 7.4.2 the Customer shall ensure that the relevant third parties have been informed of, and provided their declaration acknowledging, such use, processing, and transfer as required by all applicable Data Laws and the DVLA;
- 7.4.3 DHT shall process the Customer Data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time; and
- 7.4.4 The parties acknowledge that Driver Data which may be made available as part of the e-Services originates from DVLA as a separate data controller. The Customer hereby acknowledges and undertakes to comply with all requirements of the DVLA as may vary from time to time (and as notified to them) in respect of access to, security, management and use of Driver Data and in respect of meeting with DHT and DVLA, allowing access to premises and systems and in respect of providing information to DVLA as may be required by the DVLA relating to Driver Data and its processing;
- 7.4.5 The types of Personal Data processed includes Driver Data which incorporates Special Category Data (as defined in the Data Laws) and criminal offence data relating to employees or workers or potential employees or workers. The legal basis of release of Driver Data is that it is necessary for the performance of a task carried out in the public interest or the exercise of an official authority vested in the DVLA, processing of which is limited to that permitted as a matter of official authority from DVLA;
- 7.4.6 Each party shall ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- 7.4.7 Each party shall ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 7.4.8 The Customer shall not transfer any Personal Data outside of the UK or wider European Economic Area, without the express written permission of DHT, who will not provide that written permission without specific DVLA authority;
- 7.4.9 The Customer will comply with reasonable instructions notified to it in advance by DHT's written direction and as directed, delete or return Personal Data and copies thereof to DHT on termination of arrangements between the parties unless required by law or otherwise entitled to maintain a record of the Personal Data;
- 7.4.10 The Customer shall maintain complete and accurate records and information to demonstrate its compliance with this clause 7;

- 7.4.11 Each Party will assist the other (at their own cost), in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 7.4.12 The Customer shall (and shall ensure that each member of the Customer's staff) comply with any notification obligations under the Data Protection Laws and will notify DHT without undue delay and in any event within 24 hours on becoming aware of a Personal Data breach;
- 7.4.13 The Customer acknowledges that data subjects have the right to restrict processing of their Personal Data, the Customer shall ensure that enquiries in respect of that data subject's records are not submitted once the Customer is notified by a data subject, DHT or the DVLA.

The Customer shall indemnify, keep indemnified and hold harmless DHT against any damages (including reasonable costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the Customer has breached any of its obligations under this Clause 7.

8 WARRANTY

- 8.1 Subject to the limitations upon its liability set out in Clause 9 below, DHT warrants that:
- 8.1.1 it will provide the e-Services with reasonable skill and care;
- 8.1.2 its title to and property in the Software is free and unencumbered and that it has the right, power and authority to enter into this Agreement.
- 8.2 The Customer shall give notice to DHT as soon as it is reasonably able upon becoming aware of a breach of warranty.
- 8.3 Subject to Clause 8.4, DHT shall as soon as reasonably practicable after receiving a notice in respect of a breach of the warranties set out in Clause 8.1 above, at its option, either:
- 8.3.1 replace the relevant Software free of charge; or
- 8.3.2 repair the relevant Software free of charge; or
- 8.3.3 terminate this Agreement immediately by notice in writing to the Customer and refund any of the Total Charges paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the e-Services to the date of termination) on return of the Software and all copies thereof
- provided the Customer provides all the information that may be necessary to assist DHT in resolving the defect or fault, including sufficient information to enable DHT to re-create the defect or fault.
- 8.4 DHT shall have no liability to the Customer for the failure of any of the e-Services to comply materially with any description of the Software, as set out in the relevant Documentation, and any other specification for the Software previously agreed between the parties in writing if such failure has been caused by:
- 8.4.1 the improper use, operation or neglect of either the e-Services or the Customer Equipment;
- 8.4.2 the merger of the Software (in whole or in part) with any other software;
- 8.4.3 the use of the e-Services on equipment other than the Customer Equipment;
- 8.4.4 the failure by the Customer or any relevant end user to implement recommendations in respect of or solutions to faults previously advised by DHT;
- 8.4.5 any repair, adjustment, alteration or modification of the Software by any person other than DHT without DHT's prior written consent;
- 8.4.6 any breach by the Customer of any of its obligations under any maintenance agreement in respect of the Customer Equipment; or
- 8.4.7 the use of the e-Services and/or Software for a purpose for which it was not designed or outside the provisions set out in the Documentation.
- 8.5 Without prejudice to the foregoing DHT does not warrant that the operation of the Software or access to the e-Services will be uninterrupted or error free.
- 8.6 The Customer accepts responsibility for the selection of the e-Services and/or Software to achieve its intended results.
- 8.7 The Customer acknowledges that no representations were made prior to entering this Agreement. The Customer agrees that, in entering into this Agreement, it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement. The Customer shall have no remedy in respect of any representation (whether written or oral) made to it on which it relied in entering into this Agreement and DHT shall have no liability otherwise than pursuant to the express terms of this Agreement.
- 8.8 Subject to the foregoing all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- ## **9 LIMITATION OF LIABILITY**
- 9.1 The following provisions set out DHT's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Customer in respect of:
- 9.1.1 any breach of its contractual obligations (including fundamental breach) arising under this Agreement; and
- 9.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement.

AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 9.

- 9.2 Any act or omission on the part of DHT or its employees, agents or sub-contractors falling within Clause 9.1 above shall for the purposes of this Clause 9 be known as an 'Event of Default'.
- 9.3 There shall be no limit on DHT's liability to the Customer for:
- 9.3.1 death or injury or liability therefore resulting from DHT's own or its employees', agents' or sub-contractor's negligence;
- 9.3.2 all liability incurred by the Customer as a result of any breach by DHT of its obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and e-Services Act 1982;
- 9.3.3 all damage or liability incurred by the Customer as a result of any fraud committed by DHT; or
- 9.3.4 any other liability which cannot be excluded or limited by law.
- 9.4 Subject to the provisions of Clause 9.3 above DHT's entire aggregate liability in respect of all Events of Default shall in no circumstances exceed a total of 120% of the Total Charges payable during the 12 month period immediately preceding the date of the Events of Default in question.
- 9.5 Subject to Clause 9.3 above DHT shall not be liable to the Customer in respect of any Event of Default for:
- 9.5.1 any type of special, indirect or consequential loss (even if such loss was reasonably foreseeable or if DHT had been advised of the possibility of the Customer incurring the same); and/or
- 9.5.2 loss of profit; and/or
- 9.5.3 loss of anticipated savings; and/or
- 9.5.4 loss of business and/or goods; and/or
- 9.5.5 loss of revenue; and/or
- 9.5.6 loss of contract; and/or
- 9.5.7 loss of goodwill; and/or
- 9.5.8 loss of use; and/or
- 9.5.9 downtime; and/or
- 9.5.10 loss and/or corruption of data and/or other information; and/or
- 9.5.11 any loss relating to the procurement by the Customer of any substitute goods or services.
- 9.6 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.
- 9.7 The Customer hereby agrees to allow DHT not less than 30 days in which to remedy any Event of Default.
- 9.8 Except in the case of an Event of Default arising under Clause 9.3 above DHT shall have no liability to the Customer in respect of any Event of Default unless the Customer serves notice of the same upon DHT within 90 days of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.
- 9.9 The Customer will procure that all data on any Customer Equipment or other computer system (whether its own or that of any third party) on which the Customer proposes to use (or allow the use of) the e-Services and/or the Software (or any Updates thereto provided by DHT under this Agreement) is fully backed up before such installation takes place. DHT shall in no circumstances be liable for any loss of or corruption of the data of any party whether or not such loss or corruption is caused by the use of the e-Services or the Software.
- 9.10 Nothing in this Clause 9 shall confer any right or remedy upon the Customer to which it would not otherwise be entitled.
- ## **10 INTELLECTUAL PROPERTY RIGHTS**
- 10.1 The Customer acknowledges that any and all Intellectual Property Rights in relation to the e-Services, in the Software and Documentation and any Updates shall vest in and shall be the sole property of DHT and the Customer shall not during or at any time after the completion, expiry or termination of this Agreement in any way question or dispute the ownership by DHT of the same.
- ## **11 INTELLECTUAL PROPERTY RIGHTS INDEMNITY**
- 11.1 DHT shall indemnify and hold harmless the Customer against any damages (including reasonable costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation, possession or use of the Software by the Customer infringes the UK Intellectual Property Rights of said third party (an 'Intellectual Property Infringement') provided that the Customer:
- 11.1.1 gives notice to DHT of any Intellectual Property Infringement immediately upon becoming aware of the same;
- 11.1.2 gives DHT the sole conduct of the defence to any claim or action in respect of any Intellectual Property Infringement and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of DHT; and
- 11.1.3 acts in accordance with the reasonable instructions of DHT and gives to DHT such assistance as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court process and the provision of all relevant documents.
- 11.2 DHT shall reimburse the Customer its reasonable costs incurred in complying with the provisions of Clause 11.1 above.

- 11.3 DHT shall have no liability to the Customer in respect of an Intellectual Property Infringement to the extent that the same results from:
- 11.3.1 possession, use, development, modification or maintenance of the Software (or any part thereof) by the Customer other than in accordance with the terms of this Agreement; or
- 11.3.2 any alteration modification or adjustment to the Software made by any party other than by DHT.
- 11.4 In the event of an Intellectual Property Infringement DHT may at its sole option and expense:
- 11.4.1 procure for the Customer the right to continue using, developing, modifying or maintaining the Software (or any part thereof) in accordance with the terms of this Agreement; or
- 11.4.2 modify the Software so that it ceases to be infringing; or
- 11.4.3 replace the Software with non-infringing software; or
- 11.4.4 terminate this Agreement immediately by notice in writing to the Customer and refund any of the Total Charges paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies of the same.

12 CONFIDENTIALITY

- 12.1 Each of DHT and the Customer undertakes to the other:
- 12.1.1 to keep confidential all information (written or oral) 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 performance of this Agreement (the 'Information');
- 12.1.2 not without the other's written consent to disclose the Information in whole or in part to any other person save those of its employees who have a need to know the same; and
- 12.1.3 to use the Information solely in connection with the matters contemplated by this Agreement and not for its own or the benefit of any third party.
- 12.2 The provisions of Clause 12.1 shall not apply to the whole or any part of the Information to the extent that it is:
- 12.2.1 trivial or obvious;
- 12.2.2 already in the other's possession other than as a result of a breach of this Clause; or
- 12.2.3 in the public domain.
- 12.3 Each of DHT and the Customer undertakes to the other to make all relevant employees, agents and sub-contractors aware of the confidentiality of the Information and the provisions of this Clause 12 and without prejudice to the generality of 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.
- 12.4 These obligations of confidence shall continue after termination of this Agreement and for so long as the Information remains outside the public domain.

13 TERMINATION

- 13.1 This Agreement shall, unless otherwise terminated as provided in this Clause 13, commence on the Start Date and shall continue for the Term.
- 13.2 If the Customer has chosen to access the e-Services using Purchasing Option 2 indicated on the Order then this Agreement shall be renewable by the Customer on giving written notice of its intention to do so to DHT no less than 30 days before the end of the Initial Licence Period and paying a further instance of the Annual Licence Fee, upon which payment the Customer's permission to access the e-Services shall extend for a period equal to the Initial Licence Period to run from the anniversary of the Initial Licence Period ("Renewal Period").
- 13.3 The Initial Licence Period together with any Renewal Period(s) in their entirety shall constitute the "Term".
- 13.4 DHT may terminate this Agreement or any part of the e-Services without cause:
- 13.4.1 upon 2 months written notice to the Customer at any time; or
- 13.4.2 with immediate effect if the DVLA at its discretion revokes or significantly impedes DHT's ability to make available the dh Licence Check service.
- 13.5 DHT may terminate this Agreement immediately by written notice to the Customer where the Customer:
- 13.5.1 fails to pay any monies owing under this Agreement, whether or not demanded; or
- 13.5.2 uses or permits a third party, not being an Authorised User, to use the e-Services, the Software and/or the Documentation other than in accordance with this Agreement; or
- 13.5.3 fails to comply with its obligations under clause 7.
- 13.6 Either party may terminate this Agreement at any time on written notice to the other if the other:
- 13.6.1 is in material or persistent breach of any of the terms of this Agreement and either that breach is incapable of remedy, or the other party fails to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or
- 13.6.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer

appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

- 13.7 Termination by either party in accordance with the rights contained in this Clause 13 shall be without prejudice to any other rights or remedies of that party accrued prior to termination.
- 13.8 On termination for any reason:
- 13.8.1 all rights granted to the Customer under this Agreement shall cease;
- 13.8.2 the Customer shall cease all activities authorised by this Agreement;
- 13.8.3 the Customer shall immediately pay to DHT any sums due to DHT under this Agreement; and
- 13.8.4 the Customer shall immediately destroy or return to DHT (at DHT's option) all copies of the Software and Documentation then in its possession, custody or control and, in the case of destruction, certify to DHT that it has done so.

14 NOTICES

Any notice required or permitted under the terms of this Agreement or required by statute, law or regulation shall (unless otherwise provided) be in writing and shall be delivered in person, sent by registered mail or air mail as appropriate, properly posted and fully prepaid in an envelope properly addressed or sent by facsimile to the respective parties at the addresses and/or any facsimile numbers appearing in this Agreement or to such other address or facsimile number as may from time to time be designated by notice from one party to the other. Any such notice shall be in the English language and shall be considered to have been given at the time when actually delivered, sent by facsimile or in any other event within 7 days after it was posted in the manner provided above.

15 SEVERABILITY

- 15.1 If the whole or any part of this Agreement is or becomes or is declared illegal, invalid or unenforceable in any jurisdiction for any reason:
- 15.1.1 in the case of the illegality, invalidity or unenforceability of the whole of this Agreement, the Agreement shall terminate in relation to the jurisdiction in question; or
- 15.1.2 in the case of the illegality, invalidity or unenforceability of part of this Agreement, that part shall be severed from this Agreement in the jurisdiction in question and that illegality, invalidity or unenforceability shall not in any way whatsoever prejudice or affect the remaining parts of this Agreement which shall continue in full force and effect.

16 WAIVER

- 16.1 Save as expressly provided in this Agreement neither party shall be deemed to have waived any of its rights or remedies whatsoever howsoever arising unless the waiver is made in writing, signed by a duly authorised representative of that party and may be given subject to any conditions thought fit by the grantor. Unless otherwise expressly stated any waiver shall be effective only in the instance and for the purpose for which it is given.
- 16.2 No delay or failure of either party in exercising or enforcing any of its rights or remedies whatsoever shall operate as a waiver of those rights or remedies or so as to preclude or impair the exercise or enforcement of those rights or remedies. No single or partial exercise or enforcement of any right or remedy by either party shall preclude or impair any other exercise or enforcement of that right or remedy by that party.

17 GOVERNING LAW AND JURISDICTION

The parties agree that this Agreement shall be governed by the laws of England and Wales and each party agrees to submit to the non-exclusive jurisdiction of the English courts.

18 MISCELLANEOUS

- 18.1 This Agreement sets out the entire agreement between the parties in relation to the subject matter of this Agreement and supersedes all previous agreements, representations or warranties in connection with it.

No party which is not a party to this Agreement shall be entitled to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.