TERMS OF USE
AND
END-USER LICENSE AGREEMENT
AND
DATA PROCESSING AGREEMENT
FOR
NIFTYLINK SERVICES

1. General

1.1 This end-user license agreement (“EULA”) is a legal agreement between you (“Licensee”) and Niftylift Limited, Chalkdell Drive, Milton Keynes, MK5 6GF (“Niftylift”) and governs Licensee’s use of the Niftylink mobile application and the Niftylink web portal (“Niftylink Services”).

1.2 Licensee acknowledges and agrees to be bound by the terms and conditions of this EULA. If Licensee does not agree to the terms and conditions of this EULA, Licensee is not allowed to install or use the Niftylink Services in any manner.

2. Grant of License

2.1 Subject to Licensee’ acceptance of and compliance with the terms and conditions of this EULA, including without limitation payment of applicable license fees, Niftylift hereby grants Licensee a limited, personal, non-exclusive, non-perpetual, and non-transferable right to install and use the Niftylink Services solely for the purpose of enabling Licensee to access and use the Niftylink Services solely for Licensee’s own internal Business or Personal use (as applicable).

3. Restrictions and limitations

3.1 Licensee is not entitled to copy, distribute, resell, make available, alter, modify, sub-license, rent, lend or otherwise dispose of the Niftylink Services except as otherwise expressly set out in this EULA.

3.2 Licensee is not entitled to reverse-engineer, disassemble or decompile the Niftylink Services or in any other way attempt to investigate, tamper with and/or discover the source code and/or the structural framework and/or the principles on which the Niftylink Services is based except as otherwise explicitly permitted under mandatory applicable law.

3.3 Licensee may under no circumstance use any Niftylink Services in violation of (i) any third party intellectual property rights and/or (ii) any applicable legislation.

4. Niftylift obligations

4.1 Niftylift’s sole obligation under this EULA is to make available the Niftylink Services “as-is”.

4.2 Niftylift undertakes no obligations or liabilities with respect to the provision of any upgrades, new versions, fixes, patches, remediation of defects, maintenance, support, telecommunication lines, Internet subscriptions or any other matters pertaining to the use or inability to use the Niftylink Services and any and all liabilities, costs and risks in this respect shall thus remain solely with Licensee or the applicable third party.

4.3 Notwithstanding Section 4.1 Niftylift may in Niftylift’s sole discretion decide to make available upgrades, new versions, patches, fixes or the like in connection with the Niftylink Services to Licensee and Licensee shall upon notification by Niftylift to Licensee be obligated to implement and use such upgrades, new versions, patches, fixes or the like.
5. Intellectual Property Rights

5.1 The Niftylink Services are protected by copyright laws and international copyright treaties and other applicable legislation on proprietary rights and intellectual property rights. Niftylift and/or Niftylift’s vendors are the sole proprietors and own and retain any and all intellectual property rights including without limitation copyrights, patent rights, trademark rights, know-how etc. in and to the Niftylink Services. The Licensee is not entitled to change or remove any marks and notices concerning copyright, patents, trademarks or other rights placed on, applied to or otherwise implemented in the Niftylink Services.

6. Data protection

6.1 The Licensee - responsible for the download and use of the Niftylink Services - is responsible for fulfilling the requirements regarding data protection e.g. providing information to data subjects and/or preparation of data processing agreements. The responsibility of complying with relevant then-current data protection laws applies to Licensee regardless of whether Licensee acts as data controllers, data processors or sub-processors. Depending on the circumstances, Niftylift may act as a data processor or sub-processor and will to the extent required by applicable mandatory law execute data processing agreements in the forms attached with applicable third parties (if any). For more information on the processing of data by Niftylift, please see Niftylift’s website, www.niftylift.com/uk/about-us/terms-and-policies.

7. Licensee’ Feedback

7.1 Licensee may provide Niftylift with feedback based on Licensee’s experiences obtained using the Niftylink Services which feedback may inter alia include information concerning usability, bug reports, test results, errors, user applicability, user friendliness etc. (“Feedback”).

7.2 Licensee agrees that Niftylift may free of charge and without any restrictions, obligations or conditions use improve, develop, modify, alter, disclose, reproduce, make available license, sub-license, transfer, distribute, market, sell and in any other manner exploit the Feedback for whatever purpose deemed appropriate by Niftylift whether in connection with a subsequent commercial release of the Niftylink Services or in connection with any other software, product, technology or other service made available now or in the future in connection with Niftylift’s business operations.

7.3 If Licensee’s Feedback includes material subject to intellectual property right protection, Licensee hereby transfers free of charge, irrevocably, perpetually and globally any and all intellectual property rights and proprietary rights vested in such Feedback to Niftylift. Niftylift is entitled without limitation or any obligation to pay any royalties to Licensee or any third party to improve, develop, modify, alter, disclose, reproduce, make available license, sub-license, transfer, distribute, market, sell and in any other manner exploit such intellectual property rights vested in the Feedback for whatever purpose deemed appropriate by Niftylift whether in connection with a subsequent commercial release of the Niftylink Services or in connection with any other software, product, technology or other service made available now or in the future in connection with Niftylift’s business operations.

8. Indemnification

8.1 The Licensee shall promptly notify Niftylift in writing in the event that Licensee becomes aware of (i) any breach or alleged breach of this EULA, (ii) any claim or alleged claim concerning infringement third party intellectual property rights from any third party pertaining to Licensee’s use of the Niftylink Services and/or (iii) any breach of any applicable legislation in connection with Licensee’s use of the Niftylink Services.
8.2 The Licensee shall compensate, defend and indemnify Niftylift from and against any claims, damages and losses pertaining to any of the circumstances set out in Section 8.1, to the extent that such claims, damages or losses are a result of (i) Licensee’s breach of this EULA, (ii) any infringement by Licensee of any third party’s intellectual property rights and/or (iii) any breach of any applicable legislation.

9. Disclaimer of representations and warranties

9.1 The Niftylink Services is standard software and are made available by Niftylift "as-is" with all faults and defects and Niftylift disclaims any and all warranties whether statutory, express or implied to the maximum extent permitted by applicable law.

10. Limitation of liability

10.1 The liability of either party shall be subject to the ordinary rules of English law, save for the exceptions and limitations as explicitly set out in this EULA.

10.2 Notwithstanding Section 10.1, Niftylift shall not be liable towards Licensee or any third party for any indirect, punitive or other damages or losses including, without limitation, damages for loss of profits, business interruption, loss of data or the restoration hereof, product liability or personal injury arising out of the use of or inability to use the Niftylink Services. The aforesaid exclusions and limitations shall apply irrespective of whether such damages or losses are caused by acts or omissions by Niftylift attributable to Niftylift as negligent (including both gross and simple negligence) or incidental.

10.3 In addition to the exclusions and limitations of liability set forth in section 9 and this section 10 of this EULA, the entire liability of Niftylift (and irrespective of the basis of such liability) to pay any damages, compensation or any other amounts for direct losses (other than profits, business interruption, loss of data to which clause 10.2 will apply) during the term of this EULA shall not exceed the sum paid by the licensee to Niftylift under this agreement in the preceding twelve (12) months.

10.4 The limitations and exclusions set out in this section 10 shall apply to the maximum extent permitted by applicable law.

11. Term and Termination

11.1 This EULA shall come into force and be effective as of the date of Licensee’s installation for the first time of the Niftylink Services ("Effective Date").

11.2 This EULA shall continue in full force and effect for a period of twenty four (24) months following the Effective Date ("Initial Term"). Unless terminated by either party in accordance with this Section 11, this EULA shall automatically renew for consecutive periods of thirty six (36) months (each a “Renewal Term”).

11.3 Either party may terminate this EULA for convenience with a notice of at least 3 (three) months prior to and with effect as of expiration of the Initial Term or any Renewal Term by serving written notice to the other party in this respect.

11.4 Upon termination of this EULA and irrespective of the reason for such termination, Licensee shall immediately cease to use the Niftylink Services. Licensee acknowledges and agrees that Niftylift in the event of termination of this EULA for whatsoever reason is entitled to delete Licensee as user.
12. Miscellaneous

12.1 Niftylift may assign this EULA without the consent of Licensee to (i) a company affiliated with Niftylift or (ii) an unaffiliated third party to the extent that such assignment takes place in connection with a transaction, restructuring, divestiture, merger, acquisition or the like.

12.2 This EULA shall be governed by and construed in accordance with English Law (excluding (i) any rules concerning choice of law and (ii) the UN Convention on Contracts for the International Sale of Goods (“CISG”), which shall not apply). Any disputes arising from this EULA shall be subject to the jurisdiction of the ordinary English courts. The aforesaid choice of law and venue shall however not apply to Niftylift’s application of any preliminary remedies enforcing Niftylift’s rights including without limitation filing for grant of a preliminary injunction and/or securing of evidence.

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SUPPLEMENTARY TERMS FOR iOS

13. Supplementary terms for iOS to this EULA

13.1 The following terms are supplementary to this EULA and specific for iOS licensing of the Niftylink Services to the Licensee. Thus the above terms (“General Terms”) also apply for iOS licensing of the Niftylink Services but is supplemented by these supplementary terms (“Supplementary Terms”) for the iOS version of the Niftylink Services. In the case of any conflict between these Supplementary Terms and the General Terms these Supplementary Terms shall prevail for iOS licensing.

14. Contractual relationship

14.1 Niftylift and Licensee acknowledge that this EULA is concluded between Niftylift and Licensee only, and that Niftylift – subject to limitations of liability and warranties in this EULA to the maximum extent permitted by applicable law – is solely responsible for the Niftylink Services and the content hereof.

15. Grant of license

15.1 The Licensee’s non-transferable license granted by Niftylift in this EULA, cf. Section 2.1, is limited to use of the Niftylink Services on any Apple branded product that the Licensee owns or controls and subject to the terms set forth in Apple’s App Store Terms of Service.

16. Maintenance

16.1 Niftylift and Licensee acknowledge that Niftylift, and not Apple is solely responsible for any maintenance and support of the Niftylink Services which may be carried out (if any).

17. Warranties

17.1 Niftylift is solely responsible for any Niftylink Services warranty which may be implied by law (if any) and to the extent not disclaimed in Section 10.1.

17.2 In the event of failure of the Niftylink Services to conform to any applicable warranty implied by law, Licensee may notify Apple. Apple will then refund the purchase price (if any) for the Niftylink Services to Licensee, and Apple will have no other warranty obligation to the maximum extent permitted by applicable law with respect to the Niftylink Services. Niftylift is solely responsible for failure to conform to any warranty implied by law and any other claims, losses, liabilities,
damages, costs or expenses attributable to any failure to the extent not disclaimed or limited in this EULA as permitted by applicable law.

18. **Product claims**

18.1 Niftylift and Licensee acknowledge that Niftylift and not Apple is responsible for addressing claims by Licensee or third parties in relation to the Niftylink Services or the Licensee’s possession and/or use of the Niftylink Services, including, but not limited to product liability claims, claims that the Niftylink Services fails to conform to regulatory requirements and claims under consumer protection legislation.

19. **Intellectual property**

19.1 Niftylift and Licensee acknowledge that Niftylift and not Apple is responsible for any investigation, defense, settlement and discharge of any intellectual property infringement claims by third parties regarding the Niftylink Services or the Licensee’s possession and use hereof.

20. **Emargo & legal compliance**

20.1 The Licensee represents and warrants that Licensee is not located in a country that is subject to a U.S. Government Embargo or that has been designated as a “terrorist supporting” country by the U.S. Government and that Licensee is not listed as a prohibited or restricted party by the U.S. Government.

21. **Contact information**

21.1 Licensee questions, complaints or claims relating to the Niftylink Services can be directed to Niftylift, Fingle Drive, Stonebridge. Milton Keynes MK13 0ER, e-mail: service@niftylift.com

22. **Third party terms**

22.1 Licensee must comply with any applicable third party terms of agreement relating to the use of the Niftylink Services, e.g. third parties’ data service agreements necessary for the Niftylink Services to function.

23. **Apple as third party beneficiary**

23.1 Niftylift and Licensee acknowledges and agree that Apple, including its subsidiaries, are third party beneficiaries of this EULA and that the Licensee by acceptance of this EULA results in a right for Apple to enforce this EULA against the Licensee as a third party beneficiary.
Data Processing Agreement

“The Customer”

and

Niftylift Ltd
Company registration number 01264184
Chalkdell Drive
Shenley Wood
Milton Keynes MK5 6GF
England
(“Niftylift”) (referred to separately by “Party” or jointly by “Parties”)

have concluded this Data Processing Agreement (this "Agreement") on Niftylift’s processing of Personal Data on behalf of the Customer.

1. Defined terms

| The Customer | The end-customer, rental company or distributor (either data controller or data processor) who have entered into the Main Agreement with Niftylift. |
| Data Controller | the end-customer of the machine in which tracking devices have been installed |
| Data Processor | Niftylift |
| Data Subject | the registered person whose Personal Data Niftylift processes on behalf of the Customer. |
| Personal Data | any information relating to a Data Subject that allows the identification of the respective Data Subject. |
| Process/Processing | any operation or set of operations which is performed on data or Personal Data, whether or not by automatic means, including collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction. |
Purpose

the purpose of the Processing of Personal Data as set out in clause 4 in the Agreement.

Niftylift

Niftylift Ltd. and affiliates.

The Main Agreement

this Data Processing Agreement has been entered into in connection with the Parties execution of the agreement regarding Niftylift’s general terms and conditions of sale.

In case there is no Main Agreement signed between Niftylift and the Customer, Niftylift’s general terms and conditions of sale shall cover the legal basis for the cooperation between Niftylift and the Customer, including this Agreement, available on, www.niftylift.com/uk/about-us/terms-and-policies/

The Agreement

this Data Processing Agreement and all relevant addendums or otherwise separately agreed changes throughout the period of which this Agreement is valid.

1.1 Expressions such as “including” or any similar expressions shall mean “including, but not limited to”.

2. Background and scope

2.1 This Agreement has been entered into in connection with the Parties’ execution of the Main Agreement.

2.2 The end-customers of the equipment in which tracking devices have been installed are the Data Controllers for Personal Data which Niftylift processes pursuant to the Main Agreement and this Agreement. If there is any conflict between the provisions of this Agreement and the Main Agreement in connection with the parties obligations around Personal Data, this Agreement shall take precedence.

3. The processed Personal Data

3.1 Niftylift Processes the types of Personal Data on behalf of the Customer in relation to the relevant Data Subjects as specified in Schedule 1.

4. Purpose and instructions

4.1 Niftylift shall Process Data for Purposes that are necessary in order for Niftylift to provide services and solutions for Fleet management and Telematics. Niftylift may aggregate and/or anonymize Personal Data and Process such aggregated or anonymized data for statistical Purposes, innovated development and benchmarks.

4.2 The Customer hereby instructs Niftylift to only Process the Personal Data specified in clause 3.1 for the Purpose of performing the following data Processing services:
To be able to provide services and solutions for Fleet management and Telematics in accordance with the Main Agreement, such as:
  o Tracking the devices that have been installed in the Customer’s or the Data Controller’s machine
  o Niftylink digital solutions web portal
  o Customer support and care

Aggregate and/or anonymize the Personal Data.

4.3 Niftylift shall immediately inform the Customer if, in Niftylift’s opinion, the instructions specified in clauses 4.1 and 4.2 infringes the data protection legislation in force from time to time.

5. **Obligations of the Customer**

5.1 The Customer warrants that the Personal Data is Processed for legitimate and objective Purposes and that Niftylift will not be instructed to Process more Personal Data than required for fulfilling such Purposes.

5.2 The Customer is responsible for ensuring that a valid legal basis for Processing exists at the time of making the Personal Data available to Niftylift, including that any consents of the Data Subjects are given explicitly, voluntarily, unambiguously and on an informed basis. Upon Niftylift’s request, the Customer undertakes, in writing, to account for and/or provide documentation of the basis for Processing.

5.3 In addition, the Customer is responsible for ensuring that the Data Subjects, who the Personal Data concern, have been provided with sufficient information on the Processing of their Personal Data.

5.4 Any instructions regarding the Processing of Personal Data carried out under this Agreement shall be submitted to Niftylift. In case the Customer instructs another data processor appointed in accordance with clause 7.1 directly, the Customer shall immediately inform Niftylift hereof. Niftylift shall not in any way be liable for any Processing carried out by such other data processor in accordance with such instructions.

6. **Obligations of Niftylift**

6.1 Niftylift must comply with data protection legislation in force from time to time.

6.2 Niftylift must take all necessary technical and organisational security measures, including any additional measures, required to ensure that the Personal Data specified in clause 3.1 is not accidentally or unlawfully destroyed, lost or impaired or brought to the knowledge of unauthorised third parties, abused or otherwise Processed in a manner which is contrary to the data protection legislation in force from time to time.

6.3 Niftylift must ensure that employees authorised to Process the Personal Data have committed themselves to confidentiality or are under appropriate statutory obligation of confidentiality.

6.4 Upon the request of the Customer, Niftylift shall state and/or document that Niftylift complies with the requirements of the applicable data protection legislation. Further, if so requested by the Customer, Niftylift must provide the Customer respectively with sufficient information for the latter to be able to ensure that Niftylift has taken the necessary technical and organisational security measures. If the Customer requests anything that is beyond what is required by the applicable data protection legislation, the Customer may compensate Niftylift for time spent by it and its employees complying with the above request.

6.5 Niftylift must notify the Customer without undue delay after becoming aware of a Personal Data breach as defined in the applicable data protection legislation. If requested by the Customer, Niftylift shall assist the Customer in relation to clarifying the scope of the Personal Data breach, including preparation of any notification to the competent data protection authority and/or Data Subjects.
If requested by the Customer, Niftylift shall use reasonable measures to assist the Customer in ensuring compliance with the obligations regarding the security of personal data pursuant to the applicable data protection legislation, such as the provision of the information, which is available to Niftylift and relevant to prepare a data protection impact assessment and/or the consultation with the supervisory authority. If the Customer requests anything that is beyond what is required by the applicable data protection legislation, the Customer may compensate Niftylift for time spent by it and its employees complying with the above request.

The Customer is entitled, at its own expense, to have Niftylift’s Processing of Personal Data reviewed annually by an independent third party. If the Customer requests anything that is beyond what is required by the applicable data protection legislation, the Customer should, in addition hereto, compensate Niftylift for time spent by it and its employees complying with the above request.

If Niftylift, or another data processor which has received Personal Data, receives a request for access to the registered Personal Data from a Data Subject or his agent, or a Data Subject objects to the Processing of his/her Personal Data, Niftylift must send such request and/or objection to the Customer, for the Customer's further processing thereof, unless Niftylift is entitled to handle such request itself. If requested by the Customer, Niftylift shall assist the Customer in answering any such requests and/or objections.

If the Customer receives a legal request and/or objection as described in Section 6.8, the Customer is entitled to request assistance from Niftylift by appropriate technical and organisational measures to respond to such a legal request and/or objection, insofar as Niftylift’s assistance is possible and relevant. If the Customer requests anything that is beyond what is required by the applicable data protection legislation, the Customer shall compensate Niftylift for time spent by it and its employees complying with the above request.

Transfer of data to other data processors or third parties

By the signing of this Agreement, the Customer approves that Niftylift can make use of other data processors (subprocessors) in relation to Niftylift’s fulfilment of its obligations by this Agreement. At the time of entering this Agreement, Niftylift uses the data processors as listed in Schedule 2. Niftylift must, in writing, inform the Customer of any intended changes concerning the addition or replacement of other data processors. The Customer may object to such changes within 48 hours. Niftylift is not entitled to disclose or transfer Personal Data to third parties without the prior written instruction of the Customer, unless such disclosure or transfer is stipulated by law.

Before transferring Personal Data to another data processor, Niftylift must ensure that such other data processor warrants similar obligations as described in this Agreement.

If the Personal Data is transferred to other foreign data processors, it shall be stated in the said data processing agreement that the data protection legislation of the country of the Customer applies to other foreign data processors.

Niftylift must, in its own name, enter into written data processor agreements with other data processors within the EU/EEA. As for other data processors outside the EU/EEA, Niftylift must enter into standard agreements in accordance with Commission Decision 2010/87/EU of 5 February 2010 on standard contractual clauses for the transfer of Personal Data to processors established in third countries under the European Parliament and the Council’s Directive 95/46/EC (“Model Clauses”) or later versions of the Commission Decision 2010/87/EU or any Commission decisions replacing the Commission Decision 2010/87/EU, unless the data processor is certified under an adequacy decision as described in Regulation 2016/679 of 27 April 2016 in Art. 45, such as the EU/US Privacy Shield Framework.

The Customer hereby authorises Niftylift to enter into Model Clauses with other data processors outside the EU/EEA on behalf of and in the name of the Customer.
8. Amendments

8.1 If the Agreement has been altered by the Customer in any way, the Agreement will be null and void.

9. Liability

9.1 The Parties are liable for compensation in accordance with the applicable data protection legislation and the general rules of liability in damages. However, none of the Parties are entitled to compensation for any indirect or consequential losses, regardless if it is the Customer, Niftylift or a third party, who suffers indirect or consequential losses.

9.2 Loss of business opportunities, loss of profit, operating loss, loss of sales, loss of goodwill, loss of data, including loss in connection to recreation of data, will always be considered as indirect/consequential losses.

10. Effective date and termination

10.1 This Agreement becomes effective on the acceptance of this Agreement.

10.2 Niftylift will remain bound by this Agreement, as long as Niftylift Processes Personal Data on behalf of the Customer. This Agreement will terminate automatically and without notice when Niftylift ceases to Process Personal Data.

10.3 In the event of the termination of this Agreement, the Customer is entitled to determine the media format to be used by Niftylift when returning the Personal Data and to determine if Personal Data should instead be deleted. This does not include aggregated or anonymized data which Niftylift may Process for statistical Purposes, reference clauses 4.1, 4.2 and 5.2.

11. Governing law and jurisdiction

11.1 This Agreement is governed by and will be interpreted in accordance with the laws of England and Wales. However, the conflict of laws rules must be disregarded to the extent that such rules are non-mandatory.

11.2 Any dispute arising out of the Agreement, including any dispute concerning the existence or validity of this Agreement will be brought before Niftylift’s venue.
Schedule 1
Data Subjects and Types of Personal Data

Data Subjects:
Operators of Niftylift’s equipment in which tracking devices have been installed.

Types of Personal Data:
Information in connection with the use of the equipment in which tracking devices have been installed, such as:

- Duration of the use
- The general use of the equipment or machine
- The driving license or/and operator certificate
- GPS locations.

Other Personal Data the Data Subjects provide themselves when using Niftylift sites, products and services.

Schedule 2
Other data processors

The contracted Trackunit entity for enriching the data collected from the installed tracking devices and the provision of fleet management and telematics.
Contact information: https://www.trackunit.com/company/.
Data protection requests: dpo@trackunit.com.