

YELLOW LINE PARKING LTD TRADING AS APPYWAY

TRAFFIC ORDER SUITE LICENCE AND SUPPORT AGREEMENT

Terms and Conditions of use

BACKGROUND

- (1) The Company is in the business of kerbside management and provides a product that enables the Authority to view, manage and edit TROs and TMOs (as defined later in this Agreement), including conducting public engagement, and the management of applicable approval processes (the “**Traffic Order Suite**”).
- (2) The Authority wishes to licence and use the Company’s Traffic Order Suite.
- (3) The Company wishes to grant access to the Authority to use its Traffic Order Suite on the terms as set out in this Agreement.

1. Interpretation

1.1 Definitions

Agreement: means this Traffic Order Suite Licence and Support Agreement including Schedules One, Two, and Three.

API: means the Application Programming Interface provided to the Authority by the Company that allows access to Data for technical purposes.

Authority Obligations: means the obligations on the Authority as set forth in Clause 3.

Authority Support: the support to be supplied by the Company to the Authority as set forth in Schedule Two.

Charges: have the meaning set forth in Schedule One.

Company: means Yellow Line Parking LTD.

Data: means the data of the Area, accessed via API for use in the Traffic Order Suite.

Derived Data: means any works, materials, or products created from, and including, the Data, created within the Traffic Order Suite or associated products of the Company.

Developer Portal: an online branded portal comprising API documentation, data URLs, access keys, and test harness provided to the Authority by the Company.

Documentation: means any user guides, technical specifications, marketing Materials, and other documentation and Materials that the Company provides to the Authority, as revised from time to time.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, APIs, Derived Data, machine learning programs, lidar mapping technology, data capture methodology, data asset extraction, Sensor Status Data, Sensor Status Data processing, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, Documentation, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Licence: the Licence(s) granted by the Company to the Authority to use the Traffic Order Suite for the Permitted Purpose only. The number of Licences granted to the Authority are set out in Clause 2.2.

Licence User: means an individual within the Authority who has been issued with a Licence to use the Product.

Local Authority: an administrative body in local government representing a geographical area such as a London borough or County.

Lucky Orange: means Lucky Orange LLC, a third party appointed by the Company for the purpose of analytics services to the Company.

Materials: any documentation or similar information supplied by the Company under this Agreement.

Ordnance Survey: means Ordnance Survey, the national mapping agency for Great Britain.

Ordnance Survey Derived Data: means 'Free to Use' data or 'Customer Created Analytics Data' as defined in the OS API Service Terms.

Ordnance Survey Premium API Data: means any Ordnance Survey API Data included in the Traffic Order Suite that is not Open API Data and is referred to as such in the support documentation relating to the API Services which is made available on the OS Data Hub (as may be amended from time to time).

Permitted Purpose: for use only by the Licence Users within the Authority to create, edit and publish Traffic Regulation Orders.

Public Sector Mapping Agreement or PSMA Licence: a licence obtained by the Authority from Ordnance Survey to use Ordnance Survey products.

Public Consultation Portal: means a tool accessible within the Traffic Order Suite that generates a digital map of a proposed TRO or TMO, with the ability for the public to provide feedback on the proposed TRO or TMO.

Records: database, computer files, paper files, reports, manuscripts, activity logs, file history, access history, accounts, any historical account.

Sensor Status Data: sensor ID, current sensor status (occupied, unavailable, available, occupied date and time stamp, available date and time stamp, message iteration reference, receiving base station ID, battery voltage, firmware version, firmware identification).

Software: any software provided by the Company to enable the Data to be used in the manner set forth by this Agreement.

Traffic Management Order, or TMO, or Traffic Regulation Order, or TRO: legal documents drafted by Councils under the Road Traffic Regulation Act 1984 regulating the use of highways for movement, on street parking and off-street parking areas.

Traffic Order Suite or TOS: means the SaaS software application provided to the Authority by the Company on the terms as set out in this Agreement.

Working Days: means any day except a Saturday, Sunday or any public holidays in England and Wales.

Working Hours: means any hour (UK GMT) within a Working Day.

- 1.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted and shall include all subordinate legislation made from time to time under that statute or statutory provision. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.3 Any words following the terms including, in particular any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms. Unless the context otherwise requires, words in the singular shall include the plural and in the plural, shall include the singular.

2. PRODUCT LICENCE

- 2.1 The Company's Traffic Order Suite comprises three modules, being Mapper, Engagement and Streets (each a "**Module**"). The modules included in the Licence to the Authority shall be set out in Schedule One. The Company shall make available to the Authority the selected Modules within the Traffic Order Suite, on which the Authority can view, create and update TROs or TMOs for the Area, on the terms set out within this Clause 2.
- 2.2 The Company grants to the Authority non-exclusive, non-transferable, revocable, product Licences, the number of which is detailed in Clause 1 of Schedule One, to access, view and use the selected Modules within the Traffic Order Suite for the Permitted Purpose only during the Term within the Area. Additional Licences for the Traffic Order Suite, and / or upgrades to additional Modules within the Traffic Order Suite, shall be subject to the Charges as set out in Schedule One.
- 2.3 If the Company becomes aware of, or has reasonable grounds to believe that product Licences are being used by multiple individuals within the Authority, the Company reserves the right to invoice the Authority for the additional Licence Users, and the Authority shall agree to pay such amounts unless disputed.
- 2.4 Access to the Traffic Order Suite is granted on the terms of this Agreement subject to the Authority complying with the Authority's Obligations.
- 2.5 The Authority shall ensure that each Licence User is made aware of the provisions of this Agreement, and shall procure that each Licence User complies with all such provisions. The Authority hereby agrees that it is responsible and liable for the Licence Users access to, and use of, the Traffic Order Suite and Data.
- 2.6 The Company shall ensure it acquires and maintains for the Term of this Agreement, the appropriate licences from Ordnance Survey for the Traffic Order Suite.
- 2.7 The Company may, with as much prior notice to the Authority as is reasonably practicable, schedule Traffic Order Suite downtime for changes, upgrades, or preventative or routine maintenance.
- 2.8 The Authority agrees that the Company may monitor the use of the Traffic Order Suite by Licence Users to ensure quality and improve the Company's products and services, and verify the Authority's compliance with this Agreement. The Company may suspend access to the Traffic Order Suite without notice if it believes that the Authority is in violation of this Agreement.
- 2.9 By entering into this Agreement and using the Licence, the Authority agrees that Ordnance Survey, as a third party, shall have the right to enforce any terms set out in this Agreement.

3. AUTHORITY OBLIGATIONS

- 3.1 The Authority shall:

- 3.1.1 maintain an up to date PSMA Licence at all times and enter the licence number and details into the Traffic Order Suite, and ensure usage of the Ordnance Survey data and maps within the Traffic Order Suite is in adherence with the licensed use as set out in the Open Government Licence;
- 3.1.2 immediately alert the Company upon becoming aware of any misuse or other activity that could compromise either the Company's or Ordnance Survey's Intellectual Property Rights;
- 3.1.3 ensure that the Authority's systems have appropriate security and protective measures in accordance with best industry practice;
- 3.1.4 keep copies of the Data for backup and security purposes;
- 3.1.5 not copy, reverse engineer, commercially exploit, sell, licence, or distribute the Traffic Order Suite or any element of the Traffic Order Suite, which shall include Ordnance Survey's base maps or any Ordnance Survey service used within the Traffic Order Suite;
- 3.1.6 not use any Ordnance Survey Premium API Data (including Ordnance Survey Derived Data) accessed through, or delivered by, the Traffic Order Suite for the purpose of the Authority's commercial applications or services;
- 3.1.7 not download, store, or extract Ordnance Survey Premium API Data;
- 3.1.8 provide Licence Users with the ability to provide feedback on issues they encounter with the Traffic Order Suite. The Licence User feedback shall be sent to directly to the Company;
- 3.1.9 be responsible for providing support directly to third parties with regards to Traffic Regulation Orders, Traffic Management Orders, and Penalty Charge Notices. For the avoidance of doubt, the Company shall not provide support directly to third parties;
- 3.1.10 co-operate with the Company to protect the goodwill and reputation of the Company;
- 3.1.11 ensure that the Company is acknowledged as the source of the Traffic Order Suite within any associated web site and all press releases, and marketing material, as set out in Clause 8.2; and
- 3.1.12 provide to the Company up to date principal contacts for the Authority's accounts department, and the contact details of all Licence Users.

4. DATA OWNERSHIP

- 4.1 Ownership and rights in the Data shall vest in, and remain, the property of the Authority.

5. CHARGES

- 5.1 The Charges applicable for the Licence of the Traffic Order Suite are as set out in Schedule One to this Agreement. The Charges do not include VAT.
- 5.2 The Authority shall pay the Charges for Licences for the Traffic Order Suite annually in advance. The Authority shall pay each invoice in full within 30 (thirty) days from invoice date.
- 5.3 All amounts due under this Agreement shall be paid by the Authority in full without any withholding, set-off, counterclaim or deduction.

- 5.4 If the Authority fails to make any payment due to the Company under this Agreement by the due date for payment, then the Authority shall pay interest on the overdue amount at the rate of 4% per cent per annum above Barclays Bank's base rate from time to time, compounded monthly. Such interest shall accrue daily from the due date until actual payment of the overdue amount, whether before or after judgment. The Authority shall pay the interest together with the overdue amount.
- 5.5 All sums payable under this Agreement are exclusive of VAT unless otherwise stated. Where any taxable supply for VAT purposes is made under this Agreement by the Company to the Authority, the Authority shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Traffic Order Suite, at the same time as payment is due for the Charges.

6. INDEMNITY AND LIABILITY

- 6.1 The Company shall keep the Authority indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Authority as a result of or in connection with any claim brought against the Authority for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Traffic Order Suite. For the avoidance of doubt, this excludes actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the use of the Data, the responsibility of which is set out in Clause 6.2.
- 6.2 The Authority shall be responsible for all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Authority as a result of or in connection with any claim brought against the Authority for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Data.
- 6.3 The Authority shall keep the Company indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Company as a result of or in connection with any claim brought against the Company for actual or alleged misuse, infringement, or breach of the Ordnance Survey Open Government Licence, through its use of the Traffic Order Suite.
- 6.4 The Company shall not be liable for penalty charge notices, or other penalties, fines, damages, or reimbursements, including vehicle towing, incurred by third parties.
- 6.5 Subject to clause 6.5 and 6.6, each party's total aggregate liability to the other party under or in connection with this Agreement, including under clauses 6.1 to 6.3 and Schedule 4 (a) clause 1.14, shall in no circumstances exceed the annual contract value.
- 6.5 Nothing in this Agreement shall exclude or in any way limit either party's liability for fraud, fraudulent misrepresentation, death or personal injury caused by its negligence or any other liability to the extent the same may not be excluded or limited as a matter of law.
- 6.6 Neither party shall be liable for any special, indirect or consequential loss, howsoever arising.
- 6.7 For the duration of the Agreement and for a period 12 (twelve) months thereafter, the Company shall maintain in force, with a reputable insurance provider, professional indemnity insurance, employers liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Agreement and shall, on either of the Authority request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 6.8 For the avoidance of doubt, Ordnance Survey shall have no liability to an Authority in respect of this Agreement or the Authority's use of the Traffic Order Suite.
- 6.9 The Authority shall be liable for the acts of its employees, contractors, or any other end user to the Traffic Order Suite in respect of this Agreement.
- 6.10 This Clause 6 shall survive termination of this Agreement.

7. CONFIDENTIALITY

- 7.1 A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 7.2 This Clause 7 shall survive termination of this Agreement.

8. PUBLICITY

- 8.1 Each of Parties shall not:
- (a) make any press announcements or publicise this Agreement or its contents in any way; or
 - (b) use the other Party's names or logos in any promotion or marketing or announcement of orders,
- without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, and except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction.

9. TERM AND TERMINATION

- 9.1 This Traffic Order Suite Licence and Support Agreement shall remain in force from the Start Date for the Term.
- 9.2 After a period of 12 (twelve) months after the start of the Term, either Party may terminate this Agreement by giving written notice to the Company by not giving less than 3 (three) months' notice.
- 9.3 Notice to the Company must be sent to:
- Operations Team
AppyWay
C/O CMS Cameron McKenna Nabarro Olswang LLP Cannon Place
78 Cannon Street 3-11 Eyre Street Hill
London
EC4N 6AF
- 9.2 Without limiting its other rights or remedies, the Authority may terminate this Agreement with immediate effect by giving written notice to the Company if:

- 9.2.1 the Company commits a material or persistent breach of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 (thirty) days of receipt of notice in writing of the breach;
 - 9.2.2 the Company suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a Company);
 - 9.2.3 the Company commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Company with one or more other companies or the solvent reconstruction of the Company;
 - 9.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Company other than for the sole purpose of a scheme for a solvent amalgamation of the Company with one or more other companies or the solvent reconstruction of the Company;
 - 9.2.5 a creditor or encumbrancer of the Company attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 (fourteen) days;
 - 9.2.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Company;
 - 9.2.7 a floating charge holder over the assets of the Company has become entitled to appoint or has appointed an administrative receiver;
 - 9.2.8 a person becomes entitled to appoint a receiver over the assets of the Company or a receiver is appointed over the assets of the Company;
 - 9.2.9 the Company suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
 - 9.2.10 any event occurs, or proceeding is taken, with respect to the Company in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2.1 to clause 9.2.9 (inclusive).
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- 9.4 The Company may terminate the Agreement giving not less than 1 (one) month's written notice where the Authority fail to make payment of correctly rendered invoices in accordance with Clause 5.
 - 9.5 The Company may suspend the Authority's access to the Traffic Order Suite should it have reasonable grounds to suspect that the Authority is in breach of this Agreement.
 - 9.6 The Company may terminate this Agreement giving not less than one month's written notice where: i) the Authority fail to complete their obligations in accordance with Clause 3; ii) are in material breach of this Agreement and such breach is either incapable of being remedied or is not remedied within 30 days of a written request to do so; or iii) are in persistent breach of this Agreement.

10. EQUALITY

- 10.1 The Parties shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 10.2 The Parties shall take all reasonable steps to secure the observance of Clause 10 by all its servants, employees or agents and all Company's and sub-contractors employed in performance of this Agreement.

11. FREEDOM OF INFORMATION

- 11.1 The Company acknowledges that the Authority is subject to the requirements of Freedom of Information Act (FOIA) and the Environmental Information Regulations and shall assist and co-operate the Authority at the Company's expense to enable the Authority to comply with its information disclosure requirements.
- 11.2 The Company shall and shall procure that its Sub-Contractors shall:
 - 11.2.1 transfer any request for information to the Authority as soon as practicable after receipt and in any event within three days of receiving a request for information;
 - 11.2.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within seven days (or such other period as the Council may specify) of the Authority requesting that information; and
 - 11.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a request for information within the time for compliance set out in section 10 of FOIA.
- 11.3 The Authority shall be responsible for determining at their absolute discretion whether any information:
 - 11.3.1 is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations; and
 - 11.3.2 is to be disclosed in response to a request for information, and in no event shall the Company respond directly to a request for information unless expressly authorised to do so by the Authority.
- 11.4 The Company acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public Authority' functions under Part 1 of FOIA (issued under section 45 of FOIA, November 2004), be obliged under FOIA or the Environmental Information Regulations to disclose Information:
 - 11.4.1 without consulting with the Company; or,
 - 11.4.2 following consultation with the Company and having taken its views into account,

provided always that where Clause 11.4 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Company advanced notice, or failing that, to draw the disclosure to the Company's attention after any such disclosure.
- 11.5 The Company shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

- 11.6 The Company acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Company may nevertheless be obliged to disclose Confidential Information in accordance with this Clause.

12. BRIBERY ACT

- 12.1 The Company shall:

- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**); and
- (b) have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate.

- 12.2 Breach of this Clause 12 shall be deemed a breach of a material obligation.

13. AUDIT

- 13.1 Both Parties shall keep in paper and electronic form, at their respective normal place of business detailed, accurate and up-to-date records ("Records") showing, during the previous 3 (three) years the steps taken by each Party to comply with their respective obligations as set out in this Agreement. Each Party shall ensure that their Records are sufficient to enable the other Party to verify their compliance with its obligations under this Agreement.

- 13.2 Both Parties shall permit the other Party and its third-party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of the terms of this Agreement, to:

13.2.1 gain (physical and remote electronic) access to, and take copies of, the Records and any other information held at their premises or system; and

13.2.2 inspect all Records and systems relating to the use, distribution, redistribution, permissions and control of the Data,

in order to audit each Party's compliance with its obligations under this Agreement. Such audit rights shall continue for 3 (three) years after termination of this Agreement. The Parties shall give all necessary assistance to the conduct of such audits.

14. DATA PROTECTION

- 14.1 Both Parties shall comply with the Data Processing Agreement set out in Schedule Four of this Agreement and, in any case, with the UK-General Data Protection Regulation.

- 14.2 The TRO Suite uses the Lucky Orange analytics system to help improve usability and the customer experience. Items and activity Lucky Orange may record and monitor include, but is not limited to the following activities of customers using the TRO Suite: mouse clicks, mouse movements, scrolling activity, assessing usage patterns, content heatmaps, traffic analysis, page usability, and error page detection. Licence User usage, and any other data collected, is anonymised and, as such, no personal sensitive data is shared with Lucky Orange. The Authority, and / or Licence Users, have the ability to opt out of the Lucky Orange service should they wish. Lucky Orange's privacy policy can be found here: <https://privacy.luckyorange.com/>

15. UNAUTHORISED USE

If any unauthorised use is made of the Data or the Traffic Order Suite, and such use is attributable (in whole or in part) to the act or default of, or through, the Authority (including breach of any Authority Obligations) then, without prejudice to the Company's other rights and remedies, the Authority shall immediately be liable to pay the Company an amount equal to the amounts that the Company would have charged (in line with the Charges set out in this Agreement), had the Company authorised the unauthorised use at the beginning of the period of that unauthorised use.

16. SECURITY AND PASSWORDS

- 16.1 The Authority shall ensure that the Data within the Traffic Order Suite is kept secure and in an encrypted form, and shall use the best available security practices and systems applicable to use the Traffic Order Suite and the Data within the Traffic Order Suite, to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Traffic Order Suite and Data.
- 16.2 Where the Company uses security features (including any key, PIN, password, token, authentication credentials, smartcard or other method) in relation to the Traffic Order Suite or Data within the Traffic Order Suite, such security features must be kept confidential and not lent, shared, transferred, uninstalled or otherwise misused.
- 16.3 If the Authority becomes aware of any misuse of any Data or the Traffic Order Suite or any security breach that could compromise the security or integrity of the Data or otherwise adversely affect the Company or if the Authority learns or suspects that any security feature has been revealed to or obtained by any unauthorised person, the Authority shall, at the Authority's expense, notify the Company within 48 hours and fully co-operate with the Company to remedy the issue as soon as reasonably possible.
- 16.4 The Authority agrees to co-operate with the Company's reasonable security investigations. The Company may change the security features on notice to the Authority for security reasons.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1 The Parties acknowledge that:
 - 17.1.1 all Intellectual Property Rights in the Data, remain the property of the Authority;
 - 17.1.2 all Intellectual Property Rights in Derivative Works and the Traffic Order Suite, remain the property of the Company;
 - 17.1.3 the Company or its licensors has or have made and shall continue to make substantial investment in the obtaining, creation, verification, selection, coordination, development, presentation and supply of the Data in the Traffic Order Suite.
- 17.2 Any display, link or reference to, or of, the Traffic Order Suite or Data, by the Authority, shall credit the Company as the source of the Traffic Order Suite in accordance with Clause 8.
- 17.3 The Company undertakes to defend the Authority from and against any claim or action that the provision, receipt or use of the Traffic Order Suite infringes any Intellectual Property Right of a third party ("**IPR Claim**") and shall be responsible for any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Authority as a result of, or in connection with, any such IPR Claim, provided that, if any third party makes an IPR Claim, or notifies an intention to make an IPR Claim against the Authority, the Authority shall:
 - 17.3.1 give written notice of the IPR Claim to the Company within 8 (eight) hours of gaining knowledge of such claim irrespective of weekday or weekend;

- 17.3.2 not make any admission of liability in relation to the IPR Claim without the prior written consent of the Company;
 - 17.3.3 at the Company's request and expense, allow the Company to conduct the defence of the IPR Claim including settlement; and
 - 17.3.4 at the Company's expense, co-operate and assist to a reasonable extent with the Company's defence of the IPR Claim.
- 17.4 Clause 17.3 shall not apply where the IPR Claim in question is attributable to use of the Traffic Order Suite (wholly or in part) in combination with any data or software not agreed or specified by the Company to the extent that the infringement would have been avoided by the use of the Data (wholly or in part) without such other data or software.
- 17.5 If any IPR Claim is made, or in the Company's reasonable opinion is likely to be made, against the Authority, the Company may at its sole option and expense:
- 17.5.1 procure for the Authority the right to continue using the Traffic Order Suite (wholly or in part) in accordance with this Agreement;
 - 17.5.2 modify the Traffic Order Suite (wholly or in part) so that they cease to be infringing;
 - 17.5.3 replace the Traffic Order Suite (wholly or in part) with non-infringing items; or
 - 17.5.4 terminate this Agreement immediately by notice in writing to the Authority and refund any Charges paid by the Authority as at the date of termination (less a reasonable sum in respect of the Authority's use of the Traffic Order Suite to the date of termination) of access to the Traffic Order Suite.
- 17.6 Clauses 17.3 to 17.5 (inclusive) constitute the Authority's sole and exclusive remedy and the Company's only liability in respect of any IPR Claim.

18. FORCE MAJEURE

The parties shall not be liable to the other as a result of any delay or failure to perform its obligations under the Agreement if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Company from providing any of the Services for more than 8 weeks, the Authority shall have the right, without limiting its other rights or remedies, to terminate this Agreement with immediate effect by giving written notice to the Company.

19. ASSIGNMENT AND SUBCONTRACTING

- 19.1 The Company shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement, without the prior written consent of the Authority, except to assign to another group company which, for the avoidance of doubt, shall not require consent of the Authority.
- 19.2 The Authority may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement or subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent, without the prior written consent of the Company.

20. NOTICES

- 20.1 Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office or (in any other case) its principal place of business.

- 20.2 Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 20.3 This Clause 20.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Agreement shall not be validly served if sent by e-mail.

21. WAIVER AND CUMULATIVE REMEDIES

- 21.1 A waiver of any right under this Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a Party in exercising any right or remedy under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 21.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

22. SEVERANCE

- 22.1 If a court or any other competent authority finds that any provision (or part of any provision) of this Agreement is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 22.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

23. NO PARTNERSHIP

Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the Parties, nor constitute any Party the agent of another party for any purpose. No Party shall have authority to act as agent for, or to bind, the other Party in any way.

24. THIRD PARTIES

Except for Ordnance Survey who are expressly permitted to enforce terms of this Agreement, a person who is not a Party to this Agreement shall not have any rights under or in connection with it and may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

25. VARIATION

Any variation, including any additional terms and conditions, to this Agreement shall only be binding when agreed in writing and signed by both Parties. If either Party wish to make a change to this Agreement, the Party requesting the change shall submit the change to the other Party by completing a Change Request Form which shall be agreed by the signing of the Change Request Form by both Parties.

SUPPORT

1. Authority Support

- 1.1 The Company will provide support during Working Days only, to Licence Users of the Authority directly via email at support@appyway.com between the hours of 9.00am to 5.30pm Monday to Friday.
- 1.2 For the avoidance of doubt, the Company will not provide support directly to third parties as a result of any issues arising from the Authority's use of the Traffic Order Suite.
- 1.3 The Authority will be solely responsible for providing support directly to third parties with regards to queries relating to TROs, TMOs and Penalty Charge Notices.
- 1.4 The Company will respond to all requests for support as detailed in Table 1.
- 1.5 The Company shall provide the Authority with a root cause summary of high and medium incidents.
- 1.6 Where a High priority issue is reported during Working Hours the Company will continue working to provide a resolution, workaround or plan to fix irrespective of office hours.

Table 1 Support	Response Periods	Response Times	Resolution or Workaround
High = Examples. a) No data available within the Traffic Order Suite. b) No Traffic Order Suite access at all.	Working Days (9.00am – 5.30pm)	2 hours	8 hours
Medium = Examples. a) Some data types unavailable within the Traffic Order Suite b) Limited access to the Traffic Order Suite	Working Days (9.00am – 5.30pm)	4 hours	16 hours
Low = Examples. a) Intermittent access to one type of data b) Intermittent access to the Traffic Order Suite	Work Days (9.00am – 5.30pm)	12 hours	1-2 weeks

2. Change Management

- 2.1 The Company shall provide 10 (ten) days prior notice to any change that requires a change or update to the Traffic Order Suite .

3. Disaster Recovery

- 3.1 The Company shall provide a full Disaster Recovery plan to the Authority on request and will commits to full annual testing with the Authority.

DATA PROCESSING AGREEMENT

Schedule 4 (a)

Data Protection Legislation: (i) the UK-GDPR (ii) the DPA 2018 subject to Royal Assent to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment: an assessment by the Authority of the impact of the envisaged processing on the protection of Personal Data.

Company Personnel: means all directors, officers, employees, agents, consultants and contractors of the Company and/or of any sub-contractor engaged in the performance of its obligations under this Agreement.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the UK-GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Company under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018: Data Protection Act 2018

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Company is bound to comply

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Sub-processor: any third Party appointed to process Personal Data on behalf of the Company related to this Agreement

UK-GDPR: the UK-General Data Protection Regulation

1. DATA PROTECTION

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Company is the Processor. The only processing that the Company is authorised to do is listed in Schedule 4 (b) by the Authority and may not be determined by the Company.

1.2 The Company shall notify the Authority immediately if it considers that any of the Authority instructions infringes the Data Protection Legislation.

1.3 The Company shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

1.4 The Company shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule 4 (b), unless the Company is required to do otherwise by Law. If it is so required the Company shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:

- i. nature of the data to be protected;
- ii. harm that might result from a Data Loss Event;
- iii. state of technological development; and
- iv. cost of implementing any measures;

(c) ensure that:

i. the Company's Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 4 (b));

ii. it takes all reasonable steps to ensure the reliability and integrity of any Company Personnel who have access to the Personal Data and ensure that they:

- (a) are aware of and comply with the Company's duties under this clause;
- (b) are subject to appropriate confidentiality undertakings with the Company or any Sub-processor;
- (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and
- (d) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

i. The Company has provided appropriate safeguards in relation to the transfer (whether in accordance with UK-GDPR or otherwise) as determined by the Company;

ii. the Data Subject has enforceable rights and effective legal remedies;

iii. the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

iv. the Company complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

(e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority as required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Company shall notify the Authority immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - i. receives a request to rectify, block or erase any Personal Data;
 - ii. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - iii. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - i. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - v. becomes aware of a Data Loss Event.

1.6 The Company's obligation to notify under clause 1.5 above shall include the provision of further information to the Authority in phases, as details become available.

1.7 Taking into account the nature of the processing, the Company shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 above (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

- (a) the Authority with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Authority following any Data Loss Event;
- (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

1.8 The Company shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Company employs fewer than 250 staff, unless:

- (a) the Authority determines that the processing is not occasional;

- (b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the UK-GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK-GDPR; and
- (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

1.9 The Company shall allow for audits of its Data Processing activity by the Authority or the Client's designated auditor.

1.10 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Company must:

- (a) notify the Authority in writing of the intended Sub-processor and processing;
- (b) obtain the prior written consent of the Client;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in Schedule 4 (a) and Schedule 4 (b) such that they apply to the Sub-processor; and
- (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

1.11 The Company shall remain fully liable for all acts or omissions of any Sub-processor.

1.12 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

1.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. the Authority may on not less than 30 Working Days' notice to the Company amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

1.14 The Company agrees to indemnify and keep indemnified the Authority against all costs, claims, damages, fines, penalties or expenses incurred by the Authority or for which the Authority may become liable due to any failure by the Company to comply with any of its obligations under the Data Protection Legislation and in breach of this Agreement. For the avoidance of doubt, any failure by the Company also includes any failure of the Company's Personnel or any Sub-processor.

Schedule 4 (b) Processing, Personal Data and Data Subjects

1. The Company shall comply with any further written instructions with respect to processing by the Company.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	(1) <i>Business contact details of Company Personnel for which the Company is the Controller</i> (2) <i>Business contact details of any directors, officers, employees, agents, consultants and contractors of the Authority (excluding the Company Personnel) engaged in the performance of the Authority's duties under the Contract for which the Authority is the Controller</i> (3) <i>Contact details of any member of the public who provides feedback on TRO consultation requests, for which the Authority is the Controller.</i> (4) <i>Analytics data of usage of the TRO Suite by Licensed Users within the Authority.</i>
Duration of the processing	(1) <i>Processing of personal data will occur during the contract length.</i> (2) <i>Processing of personal data will occur during the contract length.</i> (3) <i>Processing of personal data will occur at times of consultation during the contract length</i> (4) <i>Processing will occur during the contract length whilst using the TRO Suite, unless the Licensed User opts out from the Lucky Orange service.</i>

Nature and purposes of the processing	<i>(1) The data shall be collected at the start of entering into this agreement for the purpose of delivering the services.</i> <i>(2) The data shall be collected at the start of entering into this agreement for the purpose of delivering the services.</i> <i>(3) The data shall be collected upon a member of the public submitting feedback on a consultation, for the purpose of retrieving the information should the Authority need to contact an individual regarding the consultation or, once the applicable Traffic Regulation Order (TRO) is made, to contact an individual regarding the scheme.</i> <i>(4) The data shall be collected by a Lucky Orange, a third party supplier of the Company, who providing an analytics system of Licence Users use of the TRO Suite. Data is processed upon use of the TRO Suite by Licence Users within the Authority. Lucky Orange provide the usage and analytics data to the Company, to help improve usability and the customer experience. Licence Users are able to opt-out of this Lucky orange service.</i>
Type of Personal Data	<i>(1) name, telephone number, email address</i> <i>(2) name, telephone number, email address</i> <i>(3) name, address, email address, phone number</i> <i>(4) Mouse clicks, mouse movements, scrolling activity, assessing usage patterns, content heatmaps, traffic analysis, page usability, and error page detection, within the TRO Suite, by Licensed Users within the Authority. No personal sensitive data shall be processed.</i>

Categories of Data Subject	<i>(1)Personnel of the Company</i> <i>(2)Any directors, officers, employees, agents, consultants and contractors of the Authority (excluding the Company Personnel) engaged in the performance of the Authority's duties under the Contract</i> <i>(3)All residents within the Area.</i> <i>(4) Licence Users within the Authority.</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>(1)Upon termination of the contract the personal data will be destroyed.</i> <i>(2)Upon termination of the contract the personal data will be destroyed.</i> <i>(3)Personal data kept for 30 calendar days after the applicable Traffic Regulation Order, on which a consultation was undertaken, becomes made, and then destroyed.</i> <i>(4) No personal data is kept through the processing of analytics data. The usage and analytics data is retained indefinitely.</i>