

# SPEED LIMIT UPDATER

## Terms and Conditions of Supply

Supplier
Basemap Ltd  Registered Office Address: Surrey Technology Centre 40 Occam Road GUILDFORD Surrey GU2 7YG  Company No: 04121166

### BACKGROUND

- (A) The Supplier has developed certain software applications which allow the analysis and the ability to recommend updates and changes to the speed limit data on roads held on the Supplier's database
- (B) The Customer wishes to use the Supplier's services and be permitted to view and make changes to certain selected data.
- (C) The Supplier has agreed to provide and the Customer has agreed to take the Supplier's services subject to the terms and conditions of this agreement.

### BY USING THIS PRODUCT YOU AGREE TO THESE TERMS AND CONDITIONS

#### 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Data, as further described in clause 2.3(d).

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Change of Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly and **controls, controlled** and the expression **change of control** shall be construed accordingly.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 6.5.

**Customer Data:** any data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

**Data:** the certain selected data sets made available to the Customer by the Supplier as a result of the Services.

**Effective Date:** the date of this agreement.

**Initial Term:** the initial term of this agreement.

**Normal Business Hours:** 9.00 am to 5.30 pm local UK time, each Business Day.

**Proposal:** the information and content of documents provided to the Customer by the Supplier that set out a description of the Services and the user instructions for the Services.

**Renewal Period:** the period described in clause 9.1.

**Services:** the services provided by the Supplier to the Customer under this agreement as more particularly described in the Proposal.

**Software:** the online software applications provided by the Supplier as part of the Services.

**Subscription Term:** has the meaning given in clause 9.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Support Services Policy:** the Supplier's policy for providing support in relation to the Services details of which can be made available on request.

**Third Party Data:** any data inputted by the Supplier or any third party for the Customer's benefit to enable the Customer to use the Services in accordance with the Proposal.

**User Subscriptions:** the user subscriptions granted to the Customer pursuant to clause 1 which entitle Authorised Users to access and use the Services and the Data in accordance with this agreement.

**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 network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.3 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement and shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.

## **2. USER SUBSCRIPTIONS**

2.1 The Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and access the Data during the Subscription Term in accordance with the Proposal.

2.2 Under certain circumstances the Customer may download Data, as provided for in the Proposal.

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

- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Data shall not exceed the number of User Subscriptions it has agreed with the Supplier;
- (b) 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, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Data;
- (c) each Authorised User shall keep a secure password for his use of the Services, that such password shall be changed frequently and that each Authorised User shall keep his password confidential;
- (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
- (e) it shall permit the Supplier to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per calendar year, at the Supplier'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;
- (f) if any of the audits referred to in clause 2.3(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual;

2.4 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;

and the Supplier 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.

2.5 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
  - (i) and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Data (as applicable) in any form or media or by any means; or
  - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Data in order to build a product or service which competes with the Services and/or the Data; or
- (c) use the Services and/or Data to provide services to third parties; or
- (d) subject to clause 17.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Data available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Data, other than as provided under this clause 2; and

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

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

### **3. SERVICES**

- 3.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Data to the Customer on and subject to the terms of this agreement.
- 3.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance; and
  - (b) unscheduled maintenance performed outside Normal Business Hours, the Supplier will use reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance of any maintenance.
- 3.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

### **4. CUSTOMER'S OBLIGATIONS**

The Customer shall:

- (a) provide the Supplier with:
  - (i) all necessary co-operation in relation to this agreement; and
  - (ii) all necessary access to such information as may be required by the Supplier;to enable the Supplier to provide the Services, including but not limited to permission to access and download Third Party Data;
- (b) comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

- (d) ensure that the Authorised Users use the Services and the Data in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## **5. PROPRIETARY RIGHTS**

The Customer acknowledges and agrees that the Supplier and/or its licensors, and Third Party Data providers (as the case may be), own all intellectual property rights in the Data and that the Supplier owns all intellectual property rights in the Services. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services, the Data, or Third Party Data.

- 5.1 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 5.2 Subject to the permissions that the Client is required to obtain for the benefit of the Supplier in relation to Third Party Data, the Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

## **6. CONFIDENTIALITY**

- 6.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
  - (a) is or becomes publicly known other than through any act or omission of the receiving party;

- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

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

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

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

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

6.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

6.7 This clause 6 shall survive termination of this agreement, however arising.

6.8 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

## **7. INDEMNITY**

7.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Data, provided that:

- (a) the Customer is given prompt notice of any such claim;

- (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

7.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services infringe any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (a) the Supplier is given prompt notice of any such claim;
- (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
- (c) the Supplier is given sole authority to defend or settle the claim.

7.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

7.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Services or Data by anyone other than the Supplier; or
- (b) the Customer's use of the Services or Data in a manner contrary to the Proposal; or
- (c) the Customer's use of the Services or Data after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

7.5 The foregoing and clause 8.4(b) state the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## **8. LIMITATION OF LIABILITY**

8.1 This clause 8 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

- (a) arising under or in connection with this agreement;



- (b) in respect of any use made by the Customer of the Services and Data or any part of them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

8.2 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Data by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Services and the Data are provided to the Customer on an "as is" basis.

8.3 Nothing in this agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

8.4 Subject to clause 8.2 and clause 8.3:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 7.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to 50% of the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

## **9. TERM AND TERMINATION**

9.1 This agreement shall, unless otherwise terminated as provided in this clause 9, commence on the Effective Date and shall continue for the Initial Subscription Term

and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

9.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 60 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;
- (e) the other party 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 that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) 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 that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) 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 other party;

- (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party 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 the other party's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party 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(d) to clause 9.2(j) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

9.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate;
- (b) each party shall return and make no further use of any data or other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession and the Customer shall pay all reasonable expenses incurred by the Supplier in disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

## **10. FORCE MAJEURE**

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

**11. CONFLICT**

If there is an inconsistency between any of the provisions in the main body of this agreement and the Supplier's quotations and invoices, the provisions in the main body of this agreement shall prevail.

**12. VARIATION**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**13. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**14. RIGHTS AND REMEDIES**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**15. SEVERANCE**

15.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

15.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**16. ENTIRE AGREEMENT**

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

16.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to

this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

**17. ASSIGNMENT**

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

17.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

**18. NO PARTNERSHIP OR AGENCY**

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**19. THIRD PARTY RIGHTS**

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

**20. NOTICES**

20.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at such address as may have been notified by that party for such purposes.

20.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

**21. GOVERNING LAW**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**22. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).