

1 INTRODUCTION

The terms and conditions set out in this document and contained within any guidelines (together, our “**Conditions**”) apply to you when accessing or using our software, data feed and/or data (the “**Service**”).

By using the Service, you confirm that you accept, and will comply with, our Conditions.

We may revise our conditions at any time without notice to you by amending this page. It is your responsibility to check this page from time to time to take notice of any changes made. However, we will aim to notify you when any significant changes to our conditions relating to your use of the service is made. Your continued use of the service after a revision to the conditions has been made will be treated as your acceptance of that change.

If you do not agree with our conditions then you must not register to use or otherwise use the service. However, we will be happy to answer any questions about the service that you may have. You can contact us via our webpage, Smartparking.com.

2 INFORMATION ABOUT US

The Service is provided by Smart Parking, 2 Oliver Street Cambridge, New Zealand, 3434 (“**we**”, “**us**” or “**our**”).

3 DEFINITIONS USED IN THESE CONDITIONS

3.1 In our conditions, the following words and phrases have the meaning set opposite them:

Data means the data or information, in whatever form, the provision of which comprises the Service (wholly or in part);

Data Feed means a direct feed of the data by direct technical means from us to you;

Guidelines means all those rules, procedures, policies and guidelines as notified to you by us from time to time;

Intellectual Property Rights or **IPRs** means any patent, know-how, trade mark, or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the New Zealand and anywhere else in the world;

Licence means the licence granted in clause 6;

Manipulate means to dismantle or otherwise amend the data and/or software, combine or aggregate the data (wholly or in part) with other data or information or to adapt the data (wholly or in part);

Software means the software applications provided by us to enable the Service; “**you**” or “**your**” means any person (whether a natural person, corporate or unincorporated body) accessing or using the Service; and

Virus means without limitation, any malicious code, Trojans, worms and viruses, lock, authorisation key or similar device that impairs or could impair the operation of the Service.

3.2 **Interpretation** of any phrase introduced by the words “**including**”, “**includes**”, “**in particular**” or “**for example**”, or any similar phrase, will be construed as illustrative only and will not limit the generality of the related general words.

4 TERM AND TERMINATION

4.1 These conditions (as varied from time to time) apply from the date of acceptance (under clause 1.2) and will continue for the period that the Service is provided by us (the “**Term**”).

4.2 Subject to clause 4.5, we may terminate this agreement at any time for convenience.

4.3 We reserve our right to change, suspend or discontinue all or any aspect of the Service, including its availability, at any time, and may suspend or terminate your use of the Service at any time for any reason.

4.4 Upon the termination or suspension of these conditions for any reason, all rights granted under, or in connection with, these conditions shall terminate, and you will no longer be entitled to use, and will be required to remove, the data, software and our IPR’s.

4.5 Any provision of these conditions that expressly or by implication is intended to come into or continue in force on or after termination or suspension of this agreement shall remain in full force and effect.

5 DISCLAIMER

5.1 You acknowledge that the following limitations and exclusions of liability are reasonable (without limiting the effects of clause 11.1) given that the service is not bespoke to you and is provided by us free of charge.

5.2 We shall use our reasonable endeavors to ensure that the service functions correctly and is accurate and complete in all material respects subject at all times to clause 5.3 below.

5.3 You acknowledge that your use of the Service is subject to the specific conditions prohibiting unauthorised redistribution and publication of our IPRs as further set out within clauses 7 (User Restrictions) and 8 (Intellectual Property Rights Ownership); the use and interpretation of the data may require specialist skill and knowledge and that you shall be solely responsible for any opinions, recommendations, forecasts or other conclusions made or actions taken by you based on the data.

5.4 For the avoidance of doubt, your use of the service is at your own risk and we provide no representations or warranties that;

- a. the data feed will be free from interruption,
- b. the service will run on your computer system,
- c. the data is accurate, complete, reliable, secure, useful, fit for purpose or timely,
- d. the data has been tested for use or that the data will be suitable or be capable of being used by you or any third party,
- e. the service does not contain any viruses (notwithstanding that we may use commercially available virus checking software).

5.4 Notwithstanding the provisions of clause 5.3 and 5.4, we warrant that we have the right to license the receipt and use of the data feed, data and/or software comprising the service.

6 LICENCE

We grant to you a non-exclusive, non-transferable, royalty free and revocable licence to use the data feed, data and/or software only during the term, subject at all times to our conditions and to the user restrictions set out below within clause 7 (User Restrictions).

7 USER RESTRICTIONS

7.1 You warrant and represent that you shall:

- a. ensure that at all times your use of, and display of the data complies with the requirements of these conditions;
- b. only use the service in accordance with these conditions, and not use the data in such a way as to cause detriment to us or otherwise in a way which may bring us into disrepute.

7.2 The rights granted to you under clause 6 (Licence) are limited to accessing and displaying or otherwise making available the data for the purposes stated by you in your registration;

- a. not make the data, data feed or the software available to any third party without first obtaining our prior written consent;
- b. not manipulate the data, data feed and/or software;
- c. not include any advertisements in the data.
- d. be responsible for and pay all costs related to the provision, maintenance, rental and use of all equipment and electronic and other links required for your receipt of the service;
- e. comply with all applicable laws and regulatory requirements in relation to your receipt and use of the service; and
- f. not represent yourself as us or our agent or partner or make any representations, warranties or guarantees in respect of the service except as set out in these conditions or provided for in writing by us.

8 INTELLECTUAL PROPERTY RIGHTS OWNERSHIP

8.1 You acknowledge that:

All IPRs in the data, data feed, software and the service are proprietary to us or our licensors as the case may be;

you will have no rights in or to the data, data feed, software or the service other than a right to use each in accordance with our conditions and where we provide you with written permission to use our trademarks, you will use them only in the form and manner directed or approved by us and will comply with any brand guidelines produced by us from time to time. All goodwill generated through your use of our trade marks accrues to our benefit only.

9 DATA PROTECTION AND PRIVACY

Our privacy policy (available on our website [Smartparking.com](https://www.smartparking.com)) will apply to all personal information collected in connection with your use of the Service.

10 INDEMNITIES

10.1 You will be liable for and agree to indemnify us (including our employees, agents or sub-contractors) against any claims, losses, damages, costs (including all legal fees) and expenses incurred by or awarded against us arising out of or in connection with:

- a. your access to or use, distribution or redistribution of the data, data feed and/or software otherwise than in strict accordance with our conditions;
- b. any data or information provided to us by you;
- c. any personal injury to, or the death of, any person which may arise out of or in the course of or by reason of any act, omission or default committed by you, your employees, subcontractors or agents in the performance, non-performance or part performance of our conditions; and/or
- d. any injury, loss or damage whatsoever to any property real or personal (including property belonging to us for which you are responsible) arising out of or in connection with our conditions (including any loss resulting from any wrongful or deliberate act of any employee agent or sub-contractor other person under your direct control), (together the “**Claims**”).

11 LIMITATION OF OUR LIABILITY TO YOU

11.1 we do not provide any guarantees, conditions or warranties as to the accuracy of the information or content in the data or software nor do we accept liability for loss or damage howsoever occurring, whether direct, indirect or consequential, whether caused by tort, breach of contract or otherwise, in connection with your use of the service. This includes any loss of income or revenue, business, profits or contracts, anticipated savings, data, tangible property or wasted time. To the fullest extent permitted by law, our liability for loss or damage to you is excluded.

12 GENERAL PROVISIONS

12.1 **Basis of Contract:** These conditions apply to the exclusion of any other terms and conditions that you seek to impose or incorporate, or which are implied by trade, custom, practice of course of dealing. These conditions set out the entire agreement between us. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of us which is not set out in these conditions.

12.2 **Third Party Rights:** A person who is not a party to this agreement shall not have rights under the Contract.

12.3 **Waiver:** No delay, act or omission by us in exercising any right or remedy will be deemed a waiver of that, or any other right or remedy.

12.4 **Severability:** The unenforceability of any part of these conditions will not affect the enforceability of any other part.

13 GOVERNING LAW AND JURISDICTION

These Conditions together with any dispute or claim arising out of or in connection with them are governed under the laws of the New Zealand, without regard to its principles of conflicts of law. The parties irrevocably agree that the courts of New Zealand will have exclusive jurisdiction to settle any dispute and for such purposes irrevocably submit to the jurisdiction of the courts of New Zealand.