Terms of Service

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This Agreement ("**Agreement**") is between 30000FEET AUSTRALIA PTY LTD, (ABN 18 600 375 022), whose registered address is 200 Crown St Wollongong NSW 2500 ("**Licensor**") and the company, partnership, individual, governmental body, or other association designated as the "End User" in the Term Sheet (the "**End User**"). This Agreement is a legally binding agreement between the Licensor and the End User and is effective from the Effective Date for the Term.

1. **DEFINITIONS**

In this Agreement, unless otherwise defined expressly within a clause, the following words and phrases with their first letter(s) capitalised will have the meaning ascribed to them as set out below:

"**Acceptance**" means formal Acceptance of this Agreement by the End User by one or more of the following methods: acceptance of this Agreement, or first use of Software, Service, or any other application offered by the Licensor;

"**Additions/Options**" means the various additional and optional services and features provided by the Licensor with respect to the Software, details of which will be provided on request to the End User by the Licensor;

"**Affiliate**" means a related body corporate as defined in section 50 of the *Corporations Act 2001* (Cth) from time to time;

"**Agreement**" means this agreement for the use of the Software;

"**Confidential Information**" means any data, knowledge or information that is not readily publicly available which is in the control of a party, including any technical, business, financial data, knowledge, or information, whether in physical or electronic form, including the Software and the Documentation;

"**Data**" means all End User data, information and images added by the End User to the Service or the Software;

"**Documentation**" means any documentation made available by the Licensor to the End User, whether directly or indirectly, via email or via the Website, from time to time, including, but not limited to information and documentation describing the Service and the Software;

"**Effective Date**" means the date the End User first uses the Software in accordance with this Agreement;

"**End User's Network**" means the End User's computer and network;

"**Essential Module**" means the Freight Tracker Core System + one transport or warehouse Module;

"**Feature Request**" means an unpaid development request of which the Licensor may place in its feature backlog for review at Licensor's sole discretion. Any such Feature Request will be assessed and either placed on an internal roadmap or discarded at the sole discretion of the Licensor. Any such request will also not be given a start or end date, nor will any routine updates be provided by the Licensor;

"**Fees**" means:

    1. the Outright Fees;

    2. the Subscription Fees;

    3. the Other Fees;

"**Initial Term**" means the period ending the month after the Effective Date or any other period agreed between the parties;

"**Module**" means the various modules of the Freight Tracker software system offered by the Licensor from time to time;

"**Network Specifications**" means the computer and network specifications required to run and operate the Software and use and access the Service;

"**Other Fees**" means fees payable for any of the Additions/Options selected by the End User;

"**Outright Fees**" mean the fees payable for each Module for a licence of the Software and/or continuous access to that Module via the Service;

"**Priority Feature Request**" means a paid priority solution, given a start and end date along with a quote per request;

"**Renewal Term**" means the period beginning at the end of the Initial Term, or the end of any previous Renewal Term, during which this Agreement will continue in full force and effect, and unless otherwise agreed will continue monthly;

"**Service**" means the Software hosted on the Website;

"**Software**" means the Essential Module and any other Modules selected by the End User from time to time;

"**Subscription Fees**" means the monthly fees payable for each Module for a monthly licence of the Software or monthly access to that Module via the Service;

"**Term**" means the Initial Term or any Renewal Term(s);

"**Website**" means the website located at <u>www.freighttracker.com.au</u>, or any other domain name/URL of which the Licensor chooses to use from time to time.

1. **UPDATES**

    The terms of this Agreement, from time to time, may be updated by the Licensor. If any such update occurs, the End User's continued access to, and use of, the Software will constitute acceptance of this Agreement (as updated from time to time).

1. **ACCESS AND USE**

    1. The Licensor hereby grants to the End User a personal limited, non-exclusive, non-transferrable right to use and access the Software for the Term in consideration of the payment of the Fee(s) for the Software, on the terms and conditions set out in this Agreement ("**Licence**"). The Licence will be automatically revoked when this Agreement comes to an end for any reason.

    2. In consideration of the payment of the Fees the End User will be permitted to use and access the Software via the Service.

    3. The Licensor is not responsible for the failure of the Software to operate as a result of:

        1. any failures of the End User's Network or any modifications or alterations to the End User's Network;

        2. any failure of the End User's Network to conform with the Network Specifications;

        3. the use of the Service or the Software, other than as described in the Documentation or in accordance with the terms and conditions of this Agreement; and/or

        4. any Force Majeure Event (as referred to in clause 15.11),

and any such failures will not affect the Licensor's rights to receive any amounts due to it in accordance with this Agreement and the End User's obligation to pay such amounts in accordance with this Agreement.

    1. The End User must:

        1. keep any usernames, credentials, and passwords confidential and will not disclose them to persons that are not current employees and/or officers of the End User or its Affiliates; and

        2. notify the Licensor immediately of any unauthorised access to the Services, Software, or the End User's account.

    2. The End User must not:

        1. attempt to copy, modify, duplicate, create a derivative work from, republish, adapt all or any part of the Software, the Service, the Website, and the Documentation;

        2. reverse engineer, reverse compile or disassemble any or part of the Software, the Service or the Website;

        3. access all or part of the Software or the Service in any way in order to build a product or service which competes with the Software and the Service;

        4. tamper with or attempt to bypass functionality that operates to enforce this Agreement, including the unauthorised use of the Software or Service by anyone else;

        5. use the Software in any manner not authorised by the Licensor or which is inconsistent with the purpose of the licence ;

        6. use, post, transmit or introduce any software, routine or device that interferes or attempts to interfere with the operation, integrity, or performance of the Software, or attempts to gain unauthorised access to the Software, the Licensor's systems, or third-party data;

        7. act in a manner that is abusive to an employee, contractor, or other agent of the Licensor;

        8. licence, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software and/or the Service available to any third parties; and/or

        9. attempt to obtain or assist a third party to obtain access to the Service or the Software via the Service.

3. The End User warrants to the Licensor that it:

    1. has made its own enquiries in relation to the Software and the Services and how it can be used by the End User;

    2. has not relied on any representation made by the Licensor, either verbally or in writing, when deciding whether to enter into this Agreement or use the Software or the Services; and

    3. is authorised and has the legal power and capacity to enter into this Agreement.

4. It is an essential term of this Agreement that the End User indemnify the Licensor against any claim made against, or loss or expense suffered by, the Licensor in connection with the End User's breach of this Agreement.

5. The End User must not use the Software in any way that the Licensor, in its absolute discretion, deems to be unreasonable, including but not limited to, for example where:

    1. the End User uses the Software in any manner designed to avoid paying any fees and charges (or any additional fees) under this Agreement;

    2. the End User's use of the Software is considered by the Licensor to be fraudulent, or which adversely affects the operation and/or purpose of the Software; or

    3. the End User uses the Software other than strictly in the manner for which it was designed.

6. If the User breaches clause 3.8, then:

    1. the End User acknowledges and agrees that it may cause errors with respect to the use of the Software and will void any express or implied warranties provided by the Licensor under this Agreement; and

    2. the Licensor, at its option, may:

        a. suspend the End User's use of the Software and the Services;

        b. terminate this Agreement; and/or

        c. demand that the End User pay all fees and charges which the End User would have been liable to pay had the End User not used the Software in a manner which was unreasonable, fraudulent, or designed to circumvent or reduce the amounts payable by the End User under this Agreement.

4. SERVICE

1. In consideration of the payment by the End User of any of the Other Fees, the Licensor will provide the corresponding Additions/Options selected.

2. In part consideration of the payment by the End User of the Subscription Fees, the Licensor will also provide the maintenance and support.

3. The Licensor will use reasonable efforts to make the Service available 24 hours a day, seven days a week except:

    1. planned maintenance carried out during the maintenance window of 2:00am to 3:00am daily;

    2. scheduled maintenance performed by the Licensor's service providers being between 12:00am and 4:00am, provided that End User is given at least 3 days' notice; and

    3. unscheduled maintenance performed outside of normal business hours (being 8:30 am to 5:30pm), provided the Licensor has used reasonable efforts to give the End User at least 2 hours' notice in advance.

- **CHANGE IN FEES**

1. It may be necessary for the Licensor to review the Fees under this Agreement and to increase them from time to time after the Initial Term ends.

2. If the Licensor does increase any Fees after the Initial Term for any reason, the Licensor will provide the User with at least one (1) months' notice of the change in the fees.

- **END USER OBLIGATIONS**

1. The End User must:

    1. obtain all necessary access, data and information required to allow the Licensor to perform its obligations under this Agreement, including such access, data, and information relating to the End User's Network;

    2. ensure that, at all times, the End User's Network complies with the Network Specifications; and

3. permit the Licensor remote access to the End User's Network to allow the Licensor to perform its obligations under this Agreement.

7. END USER DATA

1. The End User will own all right, title, and interest in the Data.

2. The End User and its team will have the sole responsibility for the collection, entry, legality, reliability, integrity, accuracy, and quality of the Data that it enters into the Software.

3. The Licensor bears no responsibility for the collection, entry, legality, reliability, integrity, accuracy, and quality of the Data entered into the Software. The Licensor forms no partnership or connection (as affiliated parties) with the End User or its team in relation to the collection and entry of the Data.

4. The Licensor will ensure that the Data is backed-up (at such intervals at it thinks fit) during the subscription period. End User will be provided with access to the Data stored within the Software for a period of thirty (30) days after this Agreement comes to an end for any reason and after which time the Licensor may delete the Data. .

5. If and when requested during the subscription period, the Licensor may restore the Data to the latest back-up maintained by the Licensor in its archive in the event of loss or damage to the Data.

6. The Licensor and End User must both comply with their obligations under the *Privacy Act 1988* (Cth) in relation to the use of the Data.

7. The Licensor is neither financially liable, nor does it owe the End User, any financial remedy for any incorrect collection and entry of Data.

8. The Licensor is not be responsible for any loss, destruction, alteration, or disclosure of Data from the Service caused by the End User or its Affiliates or by any third party.

- **FINANCIALS**

   1. The End User must pay all Fees under this Agreement to the Licensor in accordance with this clause 8.

   2. The Licensor will invoice the End User for any Fees relating to the Software and any Additional specified Other Fees at the start of the month for the previous month's usage.

 8.3. The Licensor will be entitled to invoice the End User at any time on or after the Effective Date for any Outright Fees in relation to the Essential Module and any other Modules selected by the End User as of the Effective Date and may invoice the End User for any Outright Fees in relation to any additional Module(s) selected by the End User after the Effective Date on or after the date on which the selected Module(s) are made available by the Licensor to the End User.

- The Licensor will be entitled to invoice the End User at any time on or after the Effective Date, and any anniversary thereof during the Term, for any Other Fees in relation to Additions/Options selected by the End User as of the Effective Date, and may invoice the End User for any Other Fees in relation to any additional Additions/Options selected by the End User after the Effective Date on or after the date on which the selected Additions/Options are made available by the Licensor to the End User, and any anniversary thereof during the Term.

- The End User must pay any invoice rendered under this clause 8 within 15 days of the date of the invoice.

- Where the End User fails to pay any fees referred to in this Agreement before or on the date on which they fall due, the Licensor may, at its sole discretion:

   1. suspend the provision of the Service and access to the Software until such time as the Fee(s) is/are paid in full; or

   2. terminate this Agreement; and

   3. charge an administration fee for late or dishonoured payments, as notified by the Licensor from time to time and charge interest at the rate of fifteen percent (15%) per annum on any overdue amount until such time all monies due to the Licensor are paid in full.

- All Fees payable under this Agreement must be paid in Australian Dollars (AUD$).

- All Fees shown in this Agreement are exclusive of GST, or any other taxes, which will be added to the Licensor's invoices at the appropriate rate at the date of the invoice.

- The End User must promptly notify the Licensor or update its billing information through the services provided by the Licensor if there is a change in any account information of the End User.

- All fees payable under this Agreement are non-cancellable and non-refundable in all circumstances. The Licensor does not provide refunds or credits for any partial use or non-use of the Software or the Services.

9. PROPRIETARY RIGHTS AND CONFIDENTIALITY

1. The End User acknowledges that the Licensor and its Affiliates are the owners of the intellectual property rights in the Software, the Service, the Website, and the Documentation, and this Agreement grants no right, title, or interest in any such rights to the End User, other than as

expressly set out in this Agreement.

2. Each party may be given access to Confidential Information from the other party to perform its obligations under this Agreement. A party's Confidential Information will be deemed not to include information that:

    1. is or becomes publicly known other than through any act or omission of the receiving party;

    2. was in the other party's lawful possession before the disclosure;

    3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

    4. is independently developed by the receiving party, provided that such independent development can be shown by written evidence;

    5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

3. Each party must hold the other's Confidential Information in confidence and not make the other Party's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation and performance of its obligations, and enjoyment of its rights, under this Agreement.

4. Each party must make all reasonable efforts and take all reasonable steps to ensure that the other Party's Confidential Information to which it has access is not disclosed or distributed by its employees, officers, or agents in violation of the terms of this Agreement.

1. **LIABILITY**

    1. If the End User is a consumer within the meaning of the Australian Consumer Law, there are certain rights (such as the consumer guarantees implied by the Australian Consumer Law) which cannot by law be excluded ("**Non-Excludable Conditions**"). The provisions of this clause 10 remain subject to those Non-Excludable Conditions.

 10.2. To the full extent possible by law, and except where expressly indicated in this Agreement, the Licensor expressly and impliedly excludes any and all liability under this Agreement and makes no warranties, guarantees, representations, or indemnities in relation to the Software, the Service, the Website, and/or the Documentation.

• To the fullest extent permitted by law, the Licensor expressly and impliedly excludes any indirect loss; consequential loss; loss of goodwill; loss of opportunity; loss of business; or loss of profit, whether arising in contract or tort (including negligence, misrepresentation, or breach of statutory duty), as a result of breach of any of the conditions under this Agreement by the Licensor.

• The Licensor will have no liability for any costs, expenses, losses, or damages incurred by the End User as a result of the suspension or termination of the End User's access and use of the Software or the Service caused through the Licensor's exercise of its rights and obligations under this Agreement, including but not limited to, the right to suspend access to the Software or the Service for non-payment of any Fees or to conduct maintenance in accordance with the terms of this Agreement.

• The Licensor's total aggregate liability to the End User under this Agreement and in relation to the End User's use, or inability to use, the Software, the Service, the Website, and/or the Documentation, must not exceed the total of the amounts paid by the End User to the Licensor in the month period ending on the date on which notice of the liability is received by the Licensor.

• **TERMS AND TERMINATION**

    1. This Agreement will be effective from the Effective Date and will continue unless terminated in accordance with this clause 11.

    2. The Licensor may terminate this Agreement:

        1. immediately upon a material breach by the End User of this Agreement. In this regard, and without prejudice to the foregoing, any breach of any clause which constitutes an essential term of this Agreement, as well as a failure to pay any Fees in any given billing period beginning on the due date of the first late payment, must be deemed to be a material breach for the purposes of this clause 11 giving the Licensor an immediate right to terminate;

        2. the End User becoming insolvent or being unable to pay its debts as and when they fall due; and/or

        3. the End User selling, assigning or transferring their business partially or in-full and attempting to move the Service to the new owner.

 11.3. The End User must notify the Licensor of its intention _NOT_ to renew the Agreement for a Renewal Term at least 30 days from the end of the Initial Term or Renewal Term, such notification to be given in writing and signed by a current director of the End User.

• The End User may terminate this Agreement immediately upon material breach by the Licensor.

• Upon termination of this Agreement, the End User must immediately cease any and all use of the Service or the Software, except where it has paid an Outright Fee.

• The Licensor will, within a reasonable time after termination, and not more than 14 days, return the Data to the End User. After the Data is provided to the End User, the Licensor may delete the End User-specific Data from its systems after which the Data will not be capable of being recovered. The End User cannot make any claim in connection with the deletion of the Data referred to in the preceding clause.

1. **GOVERNING LAW**

    1. This Agreement will be governed by and construed under the laws and regulations of New South Wales, Australia.

    2. Subject to clause 12.3, any party, End User, or person with an interest under this Agreement, agrees to:

        1. submit to the exclusive jurisdiction of the courts of New South Wales, Australia and any courts that may hear appeal from those courts in respect of any proceedings in connection with this Agreement; and

        2. may not seek to have any proceedings removed from the jurisdiction of New South Wales, Australia on the grounds of forum non conveniens.

    3. The Licensor will not be prevented from taking proceedings relating to this Agreement in any other courts of any country or State. To the extent allowed by law, the Licensor may take concurrent proceedings in any number of jurisdictions.

1. **Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it.

1. **No fiduciary relationship**

Nothing in this Agreement will be taken to constitute the Licensor as an employee, agent, partner, or joint venturer of the End User, nor is the End User authorised to represent itself as acting, or to incur any obligation, on behalf of the Licensor.

1. **MISCELLANEOUS**

Assignment

    1. The End User may not assign, transfer, pledge, or otherwise encumber this Agreement without the prior written consent of the Licensor, which will be given at the Licensor's absolute discretion, and any such attempt by the End User to assign this Agreement will be null and void and confer on the assignee no rights to use the Software or possess the Documentation.

    2. The Licensor may assign this Agreement to an Affiliate, or to any third party that acquires the business of the Licensor or the Software.

Consents

    1. Where this Agreement states that the consent or approval of the Licensor is required, the Licensor may give or withhold that consent or approval in its absolute discretion, and which may be subject to conditions.

Inconsistencies

    1. If this Agreement is inconsistent with any other document or agreement, this Agreement prevails to the extent of the inconsistency except to the extent that the Licensor expressly agrees otherwise.

No Partnership or Agency

    1. Each party will be, and will endeavour to act as, the independent contractor of the other party. Nothing in this Agreement will create, or be deemed to imply the creation of, any partnership, joint venture, principal and agent, master and servant or other relationship. Neither party will be the legal agent of the other for any purpose whatsoever and has no right or authority to make or underwrite any promise, warranty, representation, or indemnity to execute any contract or otherwise to assume any obligation or responsibility in the name of or on behalf of the other party.

No Waiver and Amendment

    1. A party's failure in any one or more instances to insist upon strict performance of any of the provisions of this Agreement or to exercise any right herein conferred must not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the provisions of this Agreement.

2. Any express waiver of a provision of this Agreement will not be binding and effective unless made in writing and properly executed by the waiving party. Any waiver under this Agreement will apply only to the party to whom it is addressed and will not survive the transfer of this Agreement.

Entire Agreement

1. This Agreement and any documents expressly incorporated by reference into this Agreement, represent the entire agreement between the parties in relation to the Software, the Service, the Website and Documentation.

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.

Severance

1. If any provision of this Agreement is found by a competent court, or competent administrative body, to be fully or partially invalid or unenforceable for any reason whatsoever, or found to violate any applicable law, such provisions will be deemed to be deleted from this Agreement, and the remainder of this Agreement, to the extent permissible will be valid and binding as if such provisions were not previously included in this Agreement with whatever modifications necessary to give effect to the commercial intention of the parties.

Force Majeure

1. The Licensor will have no liability to the End User 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, lockdowns, epidemics, pandemics, failure of a utility service or transport or telecommunications network, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware or other malicious code, 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.

2. The Licensor will use its reasonable efforts to notify the End User of such an event and its expected duration.

Notices

1. Any notice required to be given under this Agreement must be in writing.

2. A notice delivered by hand will 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 will be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by electronic mail will be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

Survival

1. Notwithstanding termination of this Agreement, any clause which by its nature is intended to survive termination or expiry of this Agreement will survive such termination or expiry, including but not limited to clauses 3.7, 8, 9 , 10, 11,12 and this clause 15.15.

1. **NEW FEATURE AND SYSTEM ALTERATION REQUESTS**

1. If the feature request is required as a priority by the End User, and is a feature which is not readily available or planned to be made available by the Licensor (i.e., not in the Licensor's product roadmap), or the company does not have a service level agreement where this service is offered, then the Licensor may choose to offer a Priority Feature Request which is a paid priority solution where the Priority Feature Request is given a start and end date along with a quote per request.

2. If the feature requested is not readily available or planned to be made available by the Licensor and is an unpaid development Feature Request, then the Licensor may place this Feature Request in its feature backlog for review at the Licensor's sole discretion. Any such Feature Request will be assessed and either placed on an internal roadmap or discarded at the sole discretion of the Licensor. Any such request will also not be given a start or end date, nor will any routine updates be provided by the Licensor.

3. The Licensor holds the right to deny any Priority Feature Request and/or Feature Request and maintain an internal record of any such request. All requests will be denied that:

   1. directly or indirectly impact any products, Software or Service of the Licensor; or

        2. are not in line with the Licensor's products direction, values, or integrity as a software product.

4. Any End User making a request of a feature which is already intended to be implemented or considered by the Licensor as part of its future plans (including in its roadmap), will be advised by the Licensor that the request will be dismissed in favour of the Licensor's original plans to consider the feature.

5. The Licensor holds the right and sole discretion to release an update on any feature when it is deemed suitable by the Licensor by way of release notes or any other standard procedure of the Licensor.

6. The Licensor provides no guarantees of any time frames for completion, and any time frame that is provided is to be considered only an estimate.

7. All approved system alterations and feature requests for development will be subject to a priority set by the Licensor. Any rejected feature requests may be considered for alternatives at the sole discretion of the Licensor.

2. **SUPPORT DESK**

1. The Licensor's support desk in relation to the Software is available to all users of the Software.

2. Tickets can be raised by all users for bugs and questions on how to use the product.

3. The support desk is limited to generic queries and does not include system training (being high volumes of ticket requests or phone calls from a single company about how to use the software or any other request for support that is beyond reasonable support).

4. The Licensor may offer to the End User training for an Other Fee as advised by the Licensor. The End User may also request such paid training by the Licensor.