

SAAS Terms

- 1.1 These SAAS Terms govern the legal use of the “software-as-a-service” (also known as “**SAAS software**”) software applications that are proprietary to Ferry Hawk Pty Ltd ACN 656 469 386 (**Ferryhawk, we, us, our**) and used for our automated booking software that is specifically supplied to the Customer and Users (**Customer, you**), pursuant to the Contract the Customer has with us.
 - 1.2 We reserve the right to change these SAAS Terms at any time without notice to you by posting changes on our website at www.ferryhawk.com.au. You are responsible for regularly reviewing information posted online to obtain timely notice of such changes. Your continued use of the software after changes are posted constitutes your acceptance of the amended SAAS Terms.
 - 1.3 These SAAS Terms set out the terms of use on which you may make use of our Ferryhawk Software, whether the software is available on the desktop, laptop or mobile devices.
 - 1.4 Please read these SAAS Terms prior to using the product. By using the Ferryhawk Software, you indicate, and it constitutes that you accept these SAAS Terms and that you agree to abide by these SAAS Terms (which takes effect on the earlier of date on which you commence usage of the software). If you do not agree with these SAAS Terms, you should cease using the Ferryhawk Software immediately.
 - 1.5 Terms used in these SAAS Terms not defined in these SAAS Terms will have the meanings used in the Ferryhawk Terms & Conditions.
- 2. Supply of the Ferryhawk SAAS**
- 2.1 Subject to all limitations and restrictions contained herein and the express terms of the Contract for the supply of the Ferryhawk System, we grant the Customer and its Users a term subscription, software-as-a-service, non-exclusive, and non-transferable right to use the software as described in the Contract, solely for the Permitted Use and solely to perform those functions:
 - (a) as described in the Product Guide; and
 - (b) for the Contract Term.
 - 2.2 The supply of the software does not permit the Customer to sub-licence, develop, modify or adapt our Ferryhawk software or any of our documentation in any way.
 - 2.3 You must not :
 - (a) use or copy any material from the Ferryhawk Software, including, but not limited to, onto other websites or in other mobile applications or software products;
 - (b) frame the Ferryhawk software onto your own or another person's website or software applications (including mobile, tablet or otherwise);
 - (c) allow or enable access to the Ferryhawk Software by any malware, bot or other malicious software; or
 - (d) allow any other software, program or application to frame, syndicate, distribute, replicate, or copy any portion of our Ferryhawk software in them.
 - 2.4 Unless otherwise expressly permitted in your Contract with us, you shall not permit any third parties to access or use our Ferryhawk Software.
- 3. Product Type**
- 3.1 The Customer and each User is responsible for ensuring that access to a User account is deactivated once a staff member has left your employ.
 - 3.2 In no event will the Customer or any User disassemble, decompile, jailbreak or reverse engineer our Ferryhawk Software or any confidential information in it or permit others to do so. Disassembling, decompiling, jailbreaking and reverse engineering include, without limitation:
 - (a) converting the Ferryhawk Software from a machine-readable form into a human-readable form;
 - (b) disassembling or decompiling the Ferryhawk Software by using any means or methods to translate machine-dependent or machine-independent object code into the original human-readable source code or any approximation thereof;
 - (c) examining the machine-readable object code or executable code that controls the software's operation and creating the original source code or any approximation thereof by, for example, studying the software's behaviour in response to a variety of inputs; or
 - (d) performing any other activity related to the Ferryhawk Software that could be construed to be reverse engineering, jailbreaking, disassembling, decompiling or is activity that is malicious in nature.
 - 3.3 To the extent that any such activity may be permitted pursuant to written agreement, the results thereof will be deemed confidential information subject to the requirements of these SAAS Terms and owned by us. The Customer and Users may only use our confidential information solely in connection with our Ferryhawk Software and pursuant to these SAAS Terms.
 - 3.4 Our Ferryhawk Software may contain third party software or the supply of data or information services that requires notices and/or additional terms and conditions. Such required third party software notices and/or additional terms and conditions may be requested by us and the Customer will be bound to such terms (including Users will be bound to end user licence terms).
 - 3.5 We own or have a licence to all rights, title, and interest in and to our Ferryhawk Software subject to any limitations associated with intellectual property rights of third parties. Our rights apply to the Ferryhawk Software, all output and executables of the software in it, excluding any software components developed by the Customer which do not themselves incorporate our software or any output or executables of our software.
 - 3.6 The Customer and Users each irrevocably acknowledge that they have no ownership interest in our Ferryhawk Software, or our documents or materials provided to you in respect of such. We reserve all rights not specifically granted herein.
- 4. Use of our Software**
- 4.1 Each User who uses our Ferryhawk Software will do so with due care and skill, strictly for the Permitted Use and in accordance with the Product Guide for the Software, the instructions and training we provide, and the instructions of third party suppliers of data and inputs for that Product.
 - 4.2 Use of our Ferryhawk Software does not include the provision of a computer, mobile device or other necessary equipment (including hardware and operating software) to access it. To use our Ferryhawk Software you will require Internet connectivity and appropriate telecommunication links. We shall not have any responsibility or liability for any telephone, data or other costs you may incur.
 - 4.3 You shall not in any way use our Ferryhawk Software, or submit to us or to our Software, or to any user of the Ferryhawk Software anything which in any respect:
 - (a) is in breach of any law, statute, regulation or by-law of any applicable jurisdiction;
 - (b) you do not have consent to do so;
 - (c) is wilfully misleading, fraudulent, criminal or unlawful;
 - (d) is inaccurate or out-of-date;
 - (e) may be obscene, indecent, vulgar, profane, racist, sexist, discriminatory, offensive, derogatory, harmful, harassing, threatening, embarrassing, malicious, abusive, hateful, menacing, defamatory, untrue or political;
 - (f) impersonates any other person or body or misrepresents a relationship with any person or body;
 - (g) may infringe or breach the copyright or any intellectual property rights (including without limitation copyright, trademark rights and broadcasting rights) or privacy or other rights belonging to us or any third party;
 - (h) is contrary to any specific rule or requirement under maritime law, standard industry practice or that we stipulate in relation to a particular part of the Ferryhawk Software generally; or
 - (i) adversely impacts the stability of the Ferryhawk System, or adversely impacts the behaviour of other applications using our Software;



- (j) involves your use, delivery or transmission of any viruses, unsolicited emails, trojan horses, trap doors, back doors, easter eggs, worms, time bombs, cancelbots, spyware or computer programming routines that are intended to damage, overwhelm or flood, harvest data from, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information including our Ferryhawk Software and any of our databases.
- 4.4 You agree not to reproduce, duplicate, copy or re-sell the Ferryhawk Software or any part of it, save as may be permitted by these SAAS Terms.
- 4.5 You agree not to access without authority, interfere with, damage or disrupt:
- any part of the Ferryhawk Software;
 - any equipment or network on which the Ferryhawk Software is stored;
 - any software used in the provision of Ferryhawk Software or
 - any equipment or network or software owned or used by any third party.
- 4.6 You assume sole responsibility for results obtained from the use of our Ferryhawk Software, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to us by you in connection with our Ferryhawk Software, or any actions taken by us at your direction.
- 4.7 You agree to comply at all times with any Product Guide Sand instructions for use of the Ferryhawk Software which we make from time to time.
- 4.8 If you choose, or you are provided with, a user identification code, password or any other piece of information as part of our security procedures, you must treat such information as confidential, you must keep it secure and you must not disclose it to any third party. We have the right to disable any user identification code or password, whether chosen by you or allocated by us, at any time, if in our opinion you have failed to comply with any of the provisions of these SAAS Terms.
- 5. Availability of the Software, Security & Accuracy**
- 5.1 We make no warranty that your access to any of our software will be uninterrupted, timely or error-free. Due to the nature of the internet, this cannot be guaranteed. From time to time, we will have IT environment, infrastructure and network maintenance issues to deal with and, additionally, we may occasionally need to carry out repairs, maintenance or introduce new facilities and functions to our Products. These things may cause our Ferryhawk Software to suffer downtime without being a defect or resulting in any refund, loss or damages to you.
- 5.2 Access to our Ferryhawk Software may be suspended or withdrawn to or from you personally or all users temporarily at any time and without notice where your use is in breach of these SAAS Terms or you are no longer appropriately trained, authorised or certified to be a User.
- 5.3 We will use reasonable efforts to maintain the availability of our Ferryhawk Software however we provide to End Users it without any specific service level or uptime level (Customers please refer to the Product Guide).
- 5.4 Except as otherwise expressly provided for Customers in their relevant Contract with us, we may change or update the Ferryhawk Software without notice to you. From time to time we will update the Ferryhawk Software and you will be required to update it at your end accordingly. If you do not update as required, you may still be able to use the Ferryhawk Software however you may not receive optimised service and we do not support or warrant the older versions of our Software. To the full extent of the law, we disclaim the service that you receive in respect of such older version (if you receive it at all).
- 6. Service Availability**
- 6.1 We will use reasonable efforts to maintain the availability of our Ferryhawk Software however we provide them "as is" and without any specific service level or uptime level, except as otherwise expressly provided for Customers in their relevant Contract with us.
- 6.2 Except to the extent the relevant Contract expressly provides otherwise, we may elect to provide the Customer with support or modifications for our Ferryhawk Software, in our sole discretion, and may terminate such support at any time without providing notice to the Customer or any End User.
- 6.3 You acknowledge and agree that we may throttle down or restrict any usage of the Ferryhawk Software or our software where the Customer or Users exceed the usage provided under the relevant Contract.
- 7. Suggestions/Improvements to Software**
- 7.1 Unless otherwise expressly agreed in writing, all suggestions, solutions, improvements, corrections, and other contributions provided by you regarding the Ferryhawk Software, the Ferryhawk System or any of the software in them, or any of our other materials and documents, will be owned by us, and you hereby agree to assign any such rights to us. Nothing in these SAAS Terms will preclude us from using in any manner or for any purpose (we deem necessary) the know-how, techniques, and procedures acquired or used by us in the performance of Services or the supply of our Software.
- 8. Customer Data**
- 8.1 Customer data uploaded by the Customer is owned by or licensed to the Customer and/or the relevant individual User, not by us. Data that you provide to us may include number individuals, vehicles and packages to be travelling (including relevant details for such (eg: dimensions, weight, volume).
- 8.2 The Customer and Users shall:
- be responsible and liable for securing all relevant rights, licences and consents from suppliers and individuals for the purpose of storing, accessing and using their data and personal information with the Ferryhawk Software;
 - collect, upload and update data and personal information in an accurate and up-to-date manner;
 - keep safe and secure all login details, passwords and security of access to the Ferryhawk Software;
 - ensure that only authorized recipients of the Customer use, obtain copies of, or have access to Customer data;
 - comply with any requirements or restrictions imposed on the use of Customer data and personal information by their respective owners, Customer privacy policies, third party supplier terms and conditions, and by law. In all cases, the Customer and its Users are solely responsible for making use of such data in compliance with the applicable Customer's requirements, obligations and restrictions;
 - remove from our Ferryhawk Software any personal information that an individual User asks the Customer to remove within 24 hours;
 - disclose through a privacy policy how it collects, uses, stores and discloses data collected from Users of our Ferryhawk Software;
 - notify us without undue delay (and in any event within 48 hours), of any request for information from or complaint by a regulatory authority in relation to the privacy of Customer or User data on our database.
- 8.3 Where we hold data for you, we will hold it in databases located in Australia. Due to the nature of our Ferryhawk System, it may be the case that data is accessed from areas other than Australia.
- 8.4 The Customer grants us a non-exclusive, royalty-free licence to access, use, reproduce, modify, perform, display and distribute Customer data and personal information:
- as is reasonable or necessary for us to provide the Ferryhawk Software and the Ferryhawk System under your Contract with us; and
 - where we have anonymised or aggregated such data, for research, product development, marketing and business development purposes.
 - for the purpose of product research and development, and generating revenue reports, passenger reports as provided to the Customer under your Contract with us.
- 9. Intellectual Property**
- 9.1 As between you and us, we are the sole and exclusive owner or the licensee of all intellectual property rights in our Ferryhawk



Software, and in the material we publish on them (other than Customer or User data). Those works are protected by copyright and trademark laws and treaties around the world. All such rights are reserved.

- 9.2 You may print off one copy, and may download extracts, of any page(s) from the Ferryhawk Software for your personal reference and you may draw the attention of others within your organisation to material available on the Ferryhawk Software.
- 9.3 You must not modify the paper or digital copies of any materials you have printed off or downloaded in any way.
- 9.4 You must not use any part of the materials on the Ferryhawk Software for commercial purposes without obtaining a licence to do so from us or our licensors.
- 9.5 If you print off, copy or download any part of the Ferryhawk Software in breach of these SAAS Terms, your right to use the Ferryhawk Software will cease immediately and you must, at our option, return or destroy any copies of the materials you have made.
- 9.6 We will have no liability for any claim of intellectual property infringement based on:
 - (a) any version of the Ferryhawk Software or software in it which has been modified by a party other than us where the infringement claim would not have occurred in the absence of such modification;
 - (b) the Customer's or User's use of the Ferryhawk Software or any of our software in conjunction with data where use with such data gave rise to the infringement claim; or
 - (c) the Customer's or User's use of the Ferryhawk Software or our software outside the Permitted Use or outside the scope of these SAAS Terms.
- 9.7 Should the Ferryhawk Software or any of our software become, or in our opinion is likely to become, the subject of a claim of infringement, we may, at our option:
 - (a) obtain the right for the Customer (and its Users) to continue using the Ferryhawk Software;
 - (b) replace or modify the Ferryhawk Software so it is no longer infringing or reduces the likelihood that it will be determined to be infringing; or
 - (c) if neither of the foregoing options is commercially reasonable, terminate the access and use of the relevant Ferryhawk Software. Our liability upon such termination is provided for in the Contract with the Customer.

10. Independence from Platforms and Other Parties

- 10.1 Our Ferryhawk Software is independent of any third party data or information supplier that feeds data or information into or in connection with our Software. Our Ferryhawk Software is not associated with, affiliated with, sponsored by or endorsed by (nor do we sponsor or endorse) such suppliers. Your use of their data or information is subject to their terms and conditions which apply.
- 10.2 We have no control over and accept no responsibility for the content of any website, software program or mobile application which is linked to our Ferryhawk Software. Such linked websites and mobile applications are provided "as is" for your convenience only with no warranty, express or implied, for the information provided within them. We do not provide any endorsement or recommendation of any third party website or mobile application to which our Software is linked. The terms and conditions, terms of use and privacy policies of those third party websites, software programs and mobile Applications will apply to your use of those websites, software programs and mobile applications and any orders you make for goods and services via such websites, software programs and mobile applications. If you have any queries, concerns or complaints about such third party websites or mobile applications (including, but not limited to, queries, concerns or complaints relating to products, orders for products, faulty products and refunds) you must direct them to the operator of that third party website or mobile application.

11. Term and Termination

- 11.1 Unless we terminate these SAAS Terms under a provision of the Contract with the Customer (including these SAAS Terms), the

term of these SAAS Terms will continue until the expiry or termination of the Contract Term.

- 11.2 The Customer's and the User's rights under these SAAS Terms in respect of a User will terminate automatically without notice from us if the Customer or the User fails to comply with any clause of these SAAS Terms. Upon the termination of these SAAS Terms the Customer's and relevant User's use of our Ferryhawk Software, software and Ferryhawk System will be restricted accordingly.

12. General Use

- 12.1 The Ferryhawk Software, software, interfaces, content, fonts, documentation and any data that we provide to the Customer and Users (as may be updated or replaced by software updates or system restore software provided by us whether in firmware on any other media or in any other form) are supplied to the Customer on a non-exclusive, revocable, non-transferable basis for the Customer to make reasonable use of the Ferryhawk Software for the Permitted Use under the terms of the relevant agreed Order Form, these SAAS Terms and the Contract, and not for any other purpose.
- 12.2 We retain all ownership of and licensing rights in the Ferryhawk Software, the software in it and any related documentation, and reserve all rights not expressly granted to the Customer.
- 12.3 We, at our discretion, may make available future updates to the Ferryhawk Software.
- 12.4 The Customer remains solely responsible for implementing adequate and industry standard virus protection measures to all parts of its IT environment in order to protect the Ferryhawk Software from viruses, malware and other malicious action.
- 12.5 Any additional software which is downloaded by the Customer or User, which is not already pre-installed on its system or environment, is solely done at the Customer's risk.
- 12.6 The Customer will receive updates as they become available. The Customer and its Users are responsible for keeping the Ferryhawk Software up-to-date and must accept automatic updates to the Software at all times. You are responsible for keeping the operating system of your devices up-to-date with available patches and upgrades at all times.
- 12.7 From time to time we will deprecate older operating system versions, supporting software, firmware or hardware minimum specifications. We will use reasonable endeavours to give 30 days' notice in such circumstances and after this period the Customer and Users must move away from any such deprecated hardware, software and/or operating systems at the Customer's expense.

13. Permitted Uses and Restrictions

- 13.1 The supply of the Software does not permit the Customer or any User to rent, lease, lend, charge, redistribute, sub-licence, develop, modify or adapt the Ferryhawk Software, software or software updates in any way.
- 13.2 The Customer and the User must not make the Ferryhawk Software (or any software in it) available over a network where it could be used by users who are not subject to the direction or control of the Customer, unless otherwise agreed in writing by us.
- 13.3 These SAAS Terms does not grant the Customer or the User any rights to use our proprietary interfaces or any of our intellectual property rights in our Ferryhawk System, in the design, development, manufacture, licensing or distribution of any other software, third party devices or accessories (whether for use with the Software or not).
- 13.4 Except as and only to the extent expressly permitted in these SAAS Terms or by applicable law, the Customer and each User must not copy, decompile, reverse engineer, jailbreak, disassemble, and attempt to derive the source code of, decrypt, modify, or create derivative works of our Ferryhawk System, the Ferryhawk Software, the Software (or any updates) or any part thereof. Any attempt to do so is a violation of our rights. If the Customer or the User breaches this restriction, it may be subject to prosecution and damages.
- 13.5 USE OF OUR FERRYHAWK SYSTEM, FERRYHAWK SOFTWARE AND/OR SOFTWARE DOES NOT GIVE ANY INDICATION THAT



USERS ARE SAFE OR IN DANGER, NOR DOES IT NECESSARILY RECORD EACH INTERACTION A USER HAS WITH ANY FAUNA, FLORA OR PLACE THAT HE OR SHE IS NEAR OR IN CONTACT WITH. USE OF OUR PRODUCTS AND/OR SOFTWARE DOES NOT MEAN THAT THE USER IS PROTECTED FROM ANY HARM, INJURY, DAMAGE OR LOSS, NOR DOES IT MEAN THAT THE USER IS NOT SOLELY RESPONSIBLE FOR HIS OR HER OWN SHIPPING AND SAFETY PROTOCOLS OR HEALTH AND SAFETY.

14. The Ferryhawk Software relies on your inputs and data, the Customer's standard operating procedures, third party data and changing geographic, climate and weather conditions, inaccuracies may occur. The use of any of the Ferryhawk Software and Ferryhawk System is not a substitute for the Customer undertaking their own diligence, measurements and assessments regarding the individuals, vehicles and packages that will be transiting under the Customer's carriage services. You accept that no responsibility or liability for shipping or carrying individuals, vehicles and packages (including being a common carrier) or for the operations or navigation of any vessel (including making accurate diligence, assessments and measurements in respect of maritime shipping) rests with us.

15. Product Warranty

- 15.1 The warranties for our Software are for the benefit of our Customers and are set out in the Contract with that Customer. To the maximum extent permitted by law, and except as expressly provided for in the Ferryhawk Terms & Conditions, Ferryhawk makes no representation or warranty with respect to our Ferryhawk Software or software in them, especially to the Customer's clients and customers.

- 15.2 Use of our Ferryhawk Software is subject the terms of our Product Guide. Where a non-conformance under these SAAS Terms or under a Product Guide occurs, the Customer (not individual Users) shall:

- (a) notify us promptly in writing of any such non-conformance;
- (b) provide us with a reasonable opportunity to remedy any such non-conformance; and
- (c) provide reasonable assistance in identifying and remedying any such non-conformance.

- 15.3 We do not warrant that our Ferryhawk Software will be compatible with all hardware and software which the Customer, Users or clients and customers to the Customer may use.

- 15.4 Other than where we expressly represent or warrant in the Contract, we make no other representations or warranties, express or implied, in respect of the information and materials on the Software. To the full extent of the law, no warranty or representation (including implied), is given that such information and materials are complete, accurate, up-to-date or fit for a particular purpose and, to the extent permitted by law, we do not accept any liability for any errors or omissions. This shall not affect any express obligation which we may have under any Contract that we may have with a Customer to provide the Ferryhawk System.

- 15.5 To the best of our knowledge, the Ferryhawk Software does not contain any malicious code, program, or other similar internal component (eg: computer virus, computer worm, or similar component), which could damage, destroy, or alter the Software, or which could reveal, damage, destroy, or alter any data or other information accessed through or processed by the Software in any manner other than code we may use to suspend or terminate access to the Software and/or any part of it at any time under these SAAS Terms or any part of the Contract.

- 15.6 Except as expressly stated in the Contract with Customers, the Ferryhawk Software, the software in it and any other technology or materials provided by us to the Customer and Users are provided "as is" and without warranty of any kind. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT AS OTHERWISE EXPRESSLY STATED IN THESE SAAS TERMS, WE MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. NEITHER WE (NOR ANY OF OUR SUBSIDIARIES, AFFILIATES, SUPPLIERS OR LICENSORS) WARRANT OR REPRESENT THAT THE SOFTWARE LICENSATION OR

THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ERRORS WILL BE DETECTED OR CORRECTED. WE DO NOT ASSUME ANY LIABILITY OR RESPONSIBILITY FOR ANY COMPUTER VIRUSES, BUGS, MALICIOUS CODE OR OTHER HARMFUL COMPONENTS, DELAYS, INACCURACIES, ERRORS OR OMISSIONS, OR THE ACCURACY, CURRENCY, COMPLETENESS, RELIABILITY OR USEFULNESS OF THE INFORMATION DISCLOSED OR ACCESSED THROUGH THE SOFTWARE. WE EXCLUDE ANY LIABILITY OR RESPONSIBILITY FOR ANY EVENT OR LIABILITY THAT ARISES DURING OR AS A RESULT OF EXTREME OR UNFORESEEABLE WEATHER, CLIMATIC OR MARITIME CONDITIONS. THE CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER'S PRIVACY, DATA, CONFIDENTIAL INFORMATION, AND/OR PROPERTY. WE HAVE NO DUTY TO UPDATE OR MODIFY THE FERRYHAWK SOFTWARE AND WE ARE NOT LIABLE FOR OUR FAILURE TO DO SO. IF ANY LIMITATION ON REMEDIES, DAMAGES OR LIABILITY IS PROHIBITED OR RESTRICTED BY LAW, WE SHALL REMAIN ENTITLED TO THE MAXIMUM DISCLAIMERS AND LIMITATIONS AVAILABLE UNDER THIS AGREEMENT, AT LAW AND/OR IN EQUITY.

- 15.7 Notwithstanding anything to the contrary in the Contract, any and all warranties under the Contract are VOID if the Customer or any of its Users makes any change to the Ferryhawk Software or the software in it other than by or with our express written approval (executed by one of our officers).

16. Liability

- 16.1 The indemnity and liability provisions in the Contract apply to these SAAS Terms in respect of the Customer. To the maximum extent at law, our liability to Users is excluded and where it cannot be excluded, the limitations in the Contract will apply.

- 16.2 To the maximum extent permitted at law:

- (a) in respect of the SAAS Terms, our liability to any User is agreed at the amount paid for the Ferryhawk Software for that User (as provided for in the Contract relevant to the Customer that the User is associated with);
- (b) IN NO EVENT WILL WE BE LIABLE TO THE CUSTOMER OR USER IN RESPECT OF SOFTWARES, PRODUCT OR SOFTWARE THAT HAS NOT BEEN PAID FOR;
- (c) IN NO EVENT WILL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING DAMAGES WHICH DO NOT NATURALLY ARISE) AND HOWEVER CAUSED INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OR CORRUPTION OF DATA OR INFORMATION, BUSINESS INTERRUPTION OR LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITIES, GOODWILL OR DAMAGE OR INJURY TO THE HEALTH OR SAFETY OF ANY PERSON OR INDIVIDUAL;
- (d) THESE LIMITATIONS SOFTWARELY EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY;
- (e) we shall not be liable for damage to any equipment (including but not limited to your mobile device), software, data or other property as a result of your download, installation, access to or use of the Ferryhawk Software or your obtaining any material from, or as a result of using the Ferryhawk Software; and
- (f) we shall not be liable for the acts or omissions of third parties (including third party data and information suppliers), changes in geographical, climate or weather conditions, the customer's standard operating procedures, standard operating procedures enforced by the harbour master or relevant authority, or user error.

17. Your Representations and Warranties

- 17.1 You represent and warrant that:

- (a) your use of our Ferryhawk Software will be in strict accordance with these SAAS Terms and with all applicable laws and regulations, including without limitation any local laws or regulations in your country, state, city, or other



governmental area, regarding online conduct and acceptable content, and regarding the transmission of technical data exported from the country in which you reside or are using our Software; and

(b) your use of our Ferryhawk Software, and the data or information you upload to it, will not infringe or misappropriate the intellectual property rights of any third party.

17.2 You must comply with any applicable third party terms of agreement when using the Ferryhawk Software (eg: you must ensure that your use of the Software is not in violation of your mobile device agreement or any data service agreement).

18. Indemnity

18.1 You agree to indemnify and hold Ferryhawk and each of our affiliates, successors and assigns, and their respective officers, directors, employees, agents, representatives, licensors, and operational service providers harmless from and against any and all losses, expenses, damages, costs and expenses (including legal fees), resulting from your use of the Ferryhawk Software and/or any violation of the terms of these SAAS Terms. We reserve the right to assume the exclusive defence and control of any demand, claim or action arising hereunder or in connection with the Ferryhawk Software and all negotiations for settlement or compromise. You agree to fully cooperate with us in the defence of any such demand, claim, action, settlement or compromise negotiations, as requested by us.

19. Personal information

19.1 We process personal information (including cookies) in accordance with our Privacy Policy, which is available on our website at www.ferryhawk.com.au. By using the Ferryhawk Software, you consent to such processing and our use of your data (including personal information).

19.2 You warrant that all data provided and used by you with our Ferryhawk Software is accurate and up-to-date.

20. General terms

20.1 These SAAS Terms (and any other document expressly referred to in these SAAS Terms and any other terms and conditions specifically agreed between you and us in writing) contain all of the terms agreed between us and you regarding their subject matter and supersedes and excludes any prior terms and conditions, understanding or arrangement between us and you, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between us and you prior to these SAAS Terms except as expressly stated in these SAAS Terms.

20.2 Clauses in these SAAS Terms which are intended to survive termination or expiration (eg: terms in respect of intellectual property, liability and indemnities) will survive the termination or expiration of these SAAS Terms and the supply of the Software hereunder.

20.3 These SAAS Terms and any access to or use of our Ferryhawk Software will be governed by the laws of Queensland, Australia and subject to the non-exclusive jurisdiction of Queensland, Australia.

20.4 A waiver by either party of any term or condition of these SAAS Terms or any breach thereof, in any one instance, will not waive such term or condition or any subsequent breach thereof.

20.5 You may not assign your rights under these SAAS Terms to any party. We may assign our rights under these SAAS Terms. We may subcontract any part of the services we provide.

20.6 These SAAS Terms makes up part of the Contract with the Customer however separately it binds Users. These SAAS Terms is to be read with the Ferryhawk Terms & Conditions. In respect of the Ferryhawk Software, in the event of any inconsistency with those terms and these SAAS Terms, these SAAS Terms will prevail.

20.7 Terms used in these SAAS Terms not defined in these SAAS Terms will have the meanings used in the Ferryhawk Terms & Conditions.

21. FERRYHAWK INFORMATION

For further information (including relating to the Product Guide), please contact Paula Gill at Ferryhawk 0419 040 492

