

Vessel Tracking Systems TERMS AND CONDITIONS OF SALE

1 Definitions

1.1 In this document unless the context states otherwise, the following terms are used:

“FMS” means **Fulcrum Maritime Systems Limited** (a company registered in England with Company Number 06635456) whose registered office is at Wellesely House, Duke of Wellington Avenue, Royal Arsenal, London, SE18 6SS.

“Client” means the end user of the system;

“VTS” means Vessel Tracking System or Vessel Monitoring System;

“APR” means Automated Position Report;

“Services” means the provision of a VTS, including receipt of APR and a web based application for the display of APRs;

“Confidential Information” means any information that is or has been disclosed by one party (the **“Disclosing Party”**) to the other party (the **“Receiving Party”**) pursuant to or in connection with the terms herein (whether orally or in writing, and whether or not such information is expressly stated to be confidential or marked as such) including, without limitation, all advice, data and information supplied to the Receiving Party, unless the information is public knowledge or already known to the Receiving Party at the time of disclosure or subsequently becomes public knowledge other than by breach of the Terms and Conditions herein or subsequently comes lawfully into the possession of the Receiving Party from a third party;

“Force Majeure” means, in relation to either party, any circumstances beyond the reasonable control of that party including (insofar as beyond such control but without prejudice to the generality of the foregoing expression), without limitation, any strike, lock-out or other form of industrial action, war, riot, civil commotion, military coup, act of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, unavailability of satellite or other communications systems, fire, flood, storm or Act of God, difficulty or increased expense in obtaining workmen, materials, goods or raw materials in connection with the performance of the provision of the Services;

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“Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world; and

“Commencement Date” is the date that the vessel is registered in the VTS.

- 1.2 By logging on to the system with the user id and password provided by FMS, the Client is agreeing to the Terms and Conditions herein.
- 1.3 In these Terms and Conditions (except where the context otherwise requires):
 - 1.3.1 any reference to writing includes facsimile transmission;
 - 1.3.2 any reference to any provision of a statute or statutory instrument shall be construed as a reference to that provision as amended, re-enacted or extended;
 - 1.3.3 the headings herein are for convenience only and shall not affect its interpretation;
 - 1.3.4 any reference to a recital, clause or schedule is to the relevant recital or clause or schedule herein;
 - 1.3.5 use of the singular includes the plural and vice versa;
 - 1.3.6 use of any gender includes the other genders; and
 - 1.3.7 any reference to “persons” includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality).

2 FMS’ responsibilities

- 2.1 FMS shall provide the Services with reasonable skill and care.
- 2.2 FMS shall not, without prior written approval from the Client, issue any marketing, promotional or advertising material relating to the Client. FMS shall publish nothing relating to the Client, the Services or the contents herein which breaches any applicable law or regulation or which infringes the rights of any third party or

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damages the reputation of the Client, the Services or the value of the Clients Intellectual Property Rights.

- 2.3 FMS shall not use any personal data or other data relating to the Client for any purpose other than the delivery of the tracking service to the end user.
- 2.4 FMS shall have no obligation to provide the Services until full payment of fees has been made.
- 2.5 FMS shall not be liable for any fault with equipment that results in a lack of APRs.
- 2.6 FMS shall not be liable for any costs due to over reporting (surplus APRs) that are caused by incorrect functioning of the tracking device.

3 The Client's responsibilities

- 3.1 The Client shall co-operate with FMS in all matters relating to the provision of the Services.
- 3.2 The Client shall provide, in a timely manner, such information as FMS may reasonably require, and ensure that it is accurate in all material respects.
- 3.3 The client shall pay the fees in full, plus any bank charges associated with transfer of funds, prior to the commencement of services.
- 3.4 The Client shall not, without FMS' prior written approval, issue any marketing, promotional or advertising material relating to FMS. The Client shall publish nothing relating to FMS, the Services or the contents herein which breaches any applicable law or regulation or which infringes the rights of any third party or damages the reputation of FMS, the Services or the value of FMS' Intellectual Property Rights.
- 3.5 The client shall be liable for any fault with equipment that results in a lack of APRs.
- 3.6 The client shall be liable for any costs due to over reporting (surplus APRs) caused by incorrect functionality of the tracking device or hardware.

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4 Prices and Payment

- 4.1 In consideration of the provision of the Services by FMS, the Client shall pay the fees as per any invoice issued. Invoices shall have full details of the number of vessels to be tracked, the expected number of APRs to be generated each day, the payment details and the payment due date.
- 4.2 All sums payable to FMS for the provision of the Services shall become due immediately on termination of the Client account.
- 4.3 Payment for immediate position reports or any additional position reports generated by a change in reporting frequency will be invoiced in arrears to the client and shall be paid for by the Client in a timely manner.
- 4.4 Payment for the Services is based on a per calendar year basis and all fees are payable in advance.
- 4.5 FMS reserves the right to charge interest at the rate of 4% above the base rate from time to time of Barclays Bank Plc, such interest to accrue from the date on which payment is due to the date on which payment is actually made.

5 Intellectual Property

- 5.1 All Intellectual Property Rights in materials prepared by or developed by FMS in connection with the supply of the Services shall remain FMS' property.
- 5.2 FMS hereby grants to the Client a royalty-free, non-exclusive and non-transferrable licence to use the VTS in accordance with the Terms and Conditions herein.
- 5.3 Notwithstanding clauses 5.1 and 5.2 above, all Intellectual Property Rights in the information and data contained in the VTS shall vest in the Client and the Client hereby licenses such Intellectual Property Rights to FMS to the extent necessary to enable FMS to provide the Services and carry out associated activities.

6 Confidentiality

- 6.1 Except as provided by clause 6.2, the Receiving Party shall at all times during the continuance of the Services and after termination:

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- 6.1.1 keep all Confidential Information confidential and accordingly not disclose any Confidential Information to any other person; and
 - 6.1.2 not use any Confidential Information for any purpose other than the performance of its obligations in the context of the provision of the Services .
- 6.2 Any Confidential Information may be disclosed by the Receiving Party to:
- 6.2.1 any governmental or other authority or regulatory body having the legal authority to request the Confidential Information or any third party to whom the Receiving Party is required to disclose the Confidential Information in accordance with any applicable national public law; or
 - 6.2.2 any of its employees who it is reasonably necessary to inform in order for that party to fulfil its obligations to such extent only as is necessary for the purpose of the provision of the Services contemplated herein, or as is required by law, and subject in each case to that party using its best endeavours to ensure that the person in question keeps the same confidential and does not use the same except for the purposes for which the disclosure is made.

7 Warranty

- 7.1 FMS warrants that the Services shall be free from material reproducible programming errors and defects in workmanship and materials. If material reproducible programming errors are discovered, FMS shall remedy them as soon as reasonably practicable at no additional cost to the Client. This warranty to the Client shall not apply if the Client is in default under the terms herein or if the non-conformance is due to:
- 7.1.1 failure due to Force Majeure events; or
 - 7.1.2 modification of the software or hardware by any party other than FMS or an appointed representative of FMS; or
 - 7.1.3 misuse by, or negligence or errors of, the Client, its employees or agents in operating the VTS; or
 - 7.1.4 FMS shall not be required to rectify any defect unless the Client notifies it of the existence and nature of such defect promptly upon discovery.
- 7.2 The warranties set out above do not apply in relation to any third party software forming part of the VTS or otherwise used in the provision of the Services (the "**Licensed Material**"), which is provided on an "as is" basis. FMS disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Material or any part thereof, including, without limitation, any

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and all implied warranties of quality, performance, merchantability or fitness for a particular purpose.

7.3 Whilst every precaution is and will be taken, FMS makes no warranties in relation to any harm that may be caused by the transmission of a computer virus or other such computer program.

7.4 FMS does not warrant or represent that any provided equipment or systems are of satisfactory quality, in good working order or fit for purpose and FMS does not accept any liability in this respect.

8 Liability

8.1 This clause 8 sets out the entire financial liability of FMS (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Client in respect of:

8.1.1 any breach of the Terms and Conditions herein;

8.1.2 any use made by the Client of the Services; and

8.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Terms and Conditions herein.

8.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Terms and Conditions.

8.3 Nothing herein limits or excludes the liability of FMS:

8.3.1 for death or personal injury resulting from negligence; or

8.3.2 for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by FMS; or

8.3.3 in any other circumstances where liability may not be so limited under any applicable law.

8.4 Subject to clauses 8.2 and clause 8.3:

8.4.1 FMS shall not be liable for:

(i) loss of profits; or

(ii) loss of business; or

(iii) depletion of goodwill and/or similar losses; or

(iv) loss of anticipated savings; or

(v) loss of goods; or

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- (vi) loss of contract; or
- (vii) loss of use; or
- (viii) loss or corruption of data or information; or
- (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

8.4.2 Subject to clauses 8.2, 8.3 and 8.4, FMS' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the provision of the Services shall be limited for each claim to the lesser of (i) £1,000,000 (one million pounds Sterling); and (ii) the level of insurance cover for the types of liability likely to arise under or in connection to the Services provided that are available to FMS in the market on reasonable commercial terms (assuming that FMS acts as a reasonably prudent business in making insurance arrangements). For the purposes of this clause, any number of acts or omissions whether successive or concurrent which together result in or contribute to substantially the same loss or damage shall be treated as a single claim.

9 Term and Termination

- 9.1 The Services shall commence on the date shown on the Invoice.
- 9.2 The Services will renew automatically on the 1st of January each calendar year for a further one (1) calendar year unless either party gives at least 1 (one) full calendar months written notice of its intention not to renew before the expiration date of the current term.
- 9.3 On termination of the Services, FMS shall delete the client account and remove all client data from the VTS at no additional charge to the Client
- 9.4 Either party may give notice in writing to the other terminating the Services with immediate effect if:
- 9.4.1 the other party commits any material breach of any of the terms herein and that breach (if capable of remedy) is not remedied within 30 days after notice being given requiring it to be remedied (and, for the avoidance of doubt, any failure by a party to make a payment to the other party on the due date for payment will be a material breach of the Terms and Conditions herein capable of remedy);
 - 9.4.2 an order is made or a resolution is passed for the winding-up of the other party or an administrator is appointed by order of the court or by other means to manage the affairs, business and property of the other party or a receiver and/or manager or administrative receiver is validly appointed in respect of all or any of the other party's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a

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- receiver and/or manager or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or the other party takes or suffers any similar or analogous action in consequence of debt; or
- 9.4.3 ceases or threatens to cease business, unless the business is to be sold or taken over as a going concern and the Services will be continued, whereby, in such an event, this shall not be cause for Termination.
- 9.4.4 so directed for reasons of International Law.
- 9.5 Upon termination of the Services for whatever reason, the Client shall:
- 9.5.1 pay to FMS on demand all sums due and payable on the date of termination plus FMS' reasonable charges for all work carried out on behalf of the Client but not invoiced up to the date of termination;
- 9.5.2 cease to hold itself out as having any relationship whatsoever with FMS (save to the extent that FMS and the Client may agree that the Client should be entitled to continue so to hold itself out during a reasonable transition period); and
- 9.5.3 subject to clause 9.5.2, cease to use FMS' Intellectual Property Rights and the "Online Registration Link" on the Website and do nothing to damage, undermine, invalidate or reduce the value of FMS' Intellectual Property Rights (or FMS' rights to its Intellectual Property Rights).

10 Force Majeure

- 10.1 If either party is affected by Force Majeure it shall forthwith notify the other party of the nature and extent thereof.
- 10.2 Neither party shall be deemed to be in breach of the Terms and Conditions herein, or otherwise be liable to the other, by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the other party (and the time for performance of that obligation shall be extended accordingly).
- 10.3 If the Force Majeure in question prevails for a continuous period in excess of two weeks, the parties shall enter into discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.
- 10.4 If the Force Majeure in question continues for 30 days and the parties have been unable satisfactorily to resolve it, either party may terminate the Services by the service of 7 days' written notice upon the other, in which case neither party shall

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have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

11 General

- 11.1 A waiver of any right under the Terms and Conditions herein is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the specific circumstances for which it is given.
- 11.2 Nothing in the Terms and Conditions is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name of or on behalf of otherwise to bind the other in any way.
- 11.3 No variation of these Terms and Conditions or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 11.4 If any provisions of the Services (or part of any provision) or clause herein is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Terms and Conditions for the provision of the Services, and the validity and enforceability of the other provisions herein shall not be affected.
- 11.5 If a provision herein (or part of any provision) is found to be illegal, invalid or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.
- 11.6 The Terms and Conditions herein 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 herein.
- 11.7 The Client shall not, without the prior written consent of FMS, assign, transfer, charge, mortgage, create a trust in, subcontract or deal in any other manner with all or any of its rights or obligations herein.

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- 11.8 FMS may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations herein.
- 11.9 A person who is not the Client or FMS shall have no right under The Contracts (Rights of Third Parties) Act 1999 to enforce any term herein but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 11.10 Any notice given under the Terms and Condition herein shall be in writing, sent for the attention of the person, and to the address or fax number, given herein (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this clause 11.10 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.
- 11.11 If any dispute arises in connection with the provision of the Services as per the terms herein, a senior manager of FMS and a senior manager of the Client shall, within 10 days after a written request from one party to the other, meet (either in person or by telephone conference call) in a good faith effort to resolve the dispute.
- 11.12 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing ("**ADR notice**") to the other party requesting mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.
- 11.13 No party may commence any court proceedings in relation to any dispute arising out of the Terms and Conditions herein until it has attempted to settle the dispute by

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mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

11.14 The Terms and Conditions herein (and any non-contractual obligations or dispute or claim arising out of or in connection with it or its subject matter) shall be governed by and construed in accordance with, the law of England and Wales, and the parties hereby irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the provision of the Services under the Terms and Conditions herein.

*** End of Terms and Conditions ***