

Terms of Purchase and Use

Last updated 9 July 2019

1 OVERVIEW

- 1.1 These Terms of Purchase and Use (*Terms*) govern each Accepted Quote. The Accepted Quote and these terms form a contract between you (the purchaser named in the Accepted Quote) and Fishserve Innovations New Zealand Limited (referred to in these Terms as *we/us* or *FINNZ*).
- 1.2 We may change these Terms from time to time. A change will not apply retrospectively, but may apply to your ongoing use of Software on (and our support for) Devices that you have already purchased, in which case we will give you at least 90 days' advance notice of the change, and if the change is a Major Change, you may terminate in accordance with clause 13.3. We may shorten the 90 day notice period where we reasonably consider the change is more urgently required to comply with Law or to address the impact on us of a change in Law.

2 PURCHASE OF DEVICES

- 2.1 The Devices specified in the Accepted Quote are sold to you in accordance with these Terms.
- 2.2 Risk in the Devices will pass to you when delivered to or collected by you or installed on a vessel owned or used by you (whichever occurs first). Title in the Devices will pass to you once you have paid us the total amount of the Accepted Quote.
- 2.3 Unless we agree otherwise in writing, you are responsible for collecting the Devices from us. If we agree to deliver the Devices, we may charge you for the reasonable costs of delivery in addition to any amounts specified in the Accepted Quote. We will use reasonable efforts to ensure delivery within a reasonable time, but any delivery dates communicated to you or accepted by us are estimates only.
- 2.4 You are responsible for installing the Solar VMS on each vessel. We are not responsible for any errors or defects caused by incorrect installation, or by your failure to follow any guidance or recommendations provided in the documentation accompanying the Solar VMS.
- 2.5 We may carry out remote updates and configuration changes to the Software on the Devices. You agree not to interfere with our remote access for this purpose.

3 SOFTWARE SUBSCRIPTION

- 3.1 We will provide you with a Subscription for the Application as specified in the Accepted Quote. The Subscription entitles you to use the Application in accordance with these Terms.
- 3.2 Your Subscription starts when you have paid us the total amount quoted in the Accepted Quote, and continues for the Initial Term, unless terminated earlier in accordance with these terms.

- 3.3 Your Subscription will renew for successive 12 month terms (each a *Renewal Term*) at the end of the Initial Term and the end of each Renewal Term, unless you or we give notice opting out of the next renewal at least 30 days before the start of the upcoming Renewal Term.
- 3.4 When your Subscription comes to an end, you will cease all use of the Application, and we may disable the Application remotely.

4 **USE OF THE SOLUTION**

- 4.1 We grant you a non-exclusive, non-transferable licence for the term of your Subscription, authorising you to use the Application in accordance with these Terms for the purpose of collecting, recording and transmitting Reporting Data.
- 4.2 To use the Solution, you must register the Solar VMS by following the process outlined in the Application and associated documentation, and each of your Users must create an account in the Application by providing a valid email address and password and any other information we request for that purpose. You must ensure all Users' account details are accurate and kept up to date.
- 4.3 To commence use of the Application your Users must logon using their Fishserve username and password. For the Solar VMS to be activated, you must first register the Device with Fishserve (following the process outlined in the documentation accompanying the Device) and then advise SnapIT of that registration.
- 4.4 You must ensure that all Users comply with these Terms. You are responsible for all actions taken through your Users' profiles within the Application. You must ensure all Users keep their passwords secure and do not share them with any other person. You must notify us immediately if you have reason to believe any of your Users' passwords or devices have been compromised.
- 4.5 You must use the Solution only for its intended purpose of capturing and transmitting Reporting Data in accordance with applicable Laws, and you must follow all reasonable guidance and recommendations provided in the documentation accompanying the Solution.
- 4.6 On every occasion before leaving port, you must check that the Solution is operating correctly. You must follow FINNZ's reasonable recommendations for putting in place business continuity arrangements designed to protect against errors or interruptions in the operation of the Solution. You must notify MPI and FINNZ promptly on becoming aware of any issues affecting the operation of the Solution, and you must follow any instructions given by MPI in response.

5 **SUPPORT**

We will use reasonable endeavours to correct defects in the Software by releasing a software fix or update, to repair or replace faulty Devices, and to respond to your enquiries on how to install and configure the Solution (*Support*). However, we are not obliged to provide assistance with any issues that arise due to your failure to comply with these Terms. In addition, any Support for issues not covered by the warranty in clause 11 will be provided only if you agree to pay our Charges for that Support.

6 **PAYMENT**

- 6.1 The Charges for the purchase of the Devices and the Subscription for the Initial Term are set out in the Accepted Quote.
- 6.2 The Charges for the use of the Software for each Renewal Term will be as notified to you no later than 90 days prior to the start of that Renewal Term. If you do not wish to accept those Charges, you may cancel your Subscription in accordance with clause 3.3. If no Charges are notified under this clause 6.2, the Charges for the next Renewal Term are the same as for the preceding Initial Term or Renewal Term.
- 6.3 The Charges for satellite data transmission is charged on a monthly account plan of \$75 plus GST which provides 12kb of data and GPR services. Monthly data usage above the 12kb provided is charged at \$2.20 plus GST per Kb. We may invoice these Charges on a monthly basis. We may revise these Charges from time to time by giving not less than 30 days' notice.
- 6.4 Any additional Charges for Support payable under clause 5 will be calculated at our standard time-and-materials rates, as most recently advised or published by us before the Support was provided.
- 6.5 You must pay the Charges into our designated bank account no later than 10 Business Days after we invoice you.
- 6.6 If you are overdue in paying amounts owing under these Terms, you must pay us interest on demand at the Default Rate on all overdue amounts until paid.
- 6.7 We may set off any amounts we owe you against any amounts you owe us under or in connection with the transaction(s) contemplated by these Terms.
- 6.8 Unless clearly stated otherwise, all amounts payable under these Terms are stated before the addition of any GST. If GST is chargeable in respect of a supply made by us under these Terms, you must pay us an amount equal to the GST amount. The GST amount must be paid in the same way and at the same time as the amount payable for the supply, but only on receipt of a valid tax invoice.

7 **INTELLECTUAL PROPERTY**

- 7.1 We and our third-party licensors own all intellectual property in all components of the Solution. Where you provide us with feedback or suggestions about any component of the Solution, you promise us that this information is not confidential to you or any other person, and you agree that we (or our third party licensors) can use it as we see fit, without any obligation to you.
- 7.2 You must not use, copy, modify, adapt, reverse engineer, reproduce, or republish any element of the Solution except as expressly permitted by these Terms. You must immediately notify us if you become aware that anyone else is infringing or claiming ownership of intellectual property in a component of the Solution.
- 7.3 We will indemnify you against any damages finally awarded against you as a result of any third party claim that a component of the Solution infringes that party's intellectual property, and any costs reasonably incurred in defending or settling the claim, but only if: (a) you notify us promptly on becoming aware of the claim, and you avoid making any admission or settlement without our consent; (b) you allow us to control the conduct of the claim, and, and you provide us all necessary assistance and co-operation for this purpose; and (c) the alleged infringement is not due to

your breach of these Terms, and our ability to defend the claim has not been prejudiced by your breach of these Terms.

8 DATA

- 8.1 As between you and us, you own all rights in the Customer Data. You grant us a licence to use the Customer Data for all purposes necessary to provide you the Solution and Support, and to perform our obligations and exercise our rights under these Terms.
- 8.2 You acknowledge that the way you are able to transmit Reporting Data to MPI via the Solution will depend on your location. If you are within signal range of a WiFi connection or a 3G/4G cell tower, the Solution will attempt to use these sources to transmit your Reporting Data. If you are out of signal range of a WiFi connection or a 3G/4G cell tower, the Solution will attempt to transmit your Reporting Data via satellite using the Solar VMS.
- 8.3 During the term of your Subscription, we will provide satellite data connectivity for your Solar VMS, subject to your payment of the applicable Charges. We can terminate this connectivity if you are late in paying the Charges. We will not be held responsible for any problems with the satellite data connectivity due to atmospheric conditions or other circumstances beyond our reasonable control.
- 8.4 Aside from the satellite data connectivity provided under clause 8.3, you are responsible for arranging and paying for any other telecommunications services needed to transmit Reporting Data from the Devices.

9 CONFIDENTIALITY

- 9.1 Each party will keep the other party's Confidential Information in confidence and will not use it except as reasonably necessary for the purpose of these Terms.
- 9.2 Clause 9.1 will not prevent a party from using or disclosing information:
- (a) with the other party's prior consent;
 - (b) to its employees, contractors or representatives for the purposes of these Terms, provided the recipient is subject to confidentiality obligations no less restrictive than in these Terms;
 - (c) to a bona fide potential purchaser of that party's business, assets or shares, as reasonably required for due diligence, provided the recipient is subject to confidentiality obligations no less restrictive than in these Terms; and/or
 - (d) if required by Law or the rules of a stock exchange, although to the extent permitted by Law the disclosing party must give the other party as much advance notice as reasonably practicable of any such disclosure.

10 DISPUTE RESOLUTION

- 10.1 Where a dispute arises, a party may notify the other party requesting that the parties resolve the matter by negotiation, in which cases the parties will attempt to resolve the dispute accordingly.
- 10.2 If the dispute is not resolved within 30 days from the notice described in clause 10.1, either party may give notice to the other referring the dispute to mediation

(*Mediation Notice*). The mediation will be conducted in Wellington, in accordance with the then-current Standard Mediation agreement of The Resolution Institute. The mediator and his or her fee will be as agreed by the parties or, failing agreement within 5 Business Days of receipt of the Mediation Notice, determined by the Chair for the time being of The Resolution Institute (or his or her nominee).

- 10.3 If the parties cannot resolve the dispute within 60 days of a party giving a Mediation Notice, either party may pursue any legal remedies available to them.
- 10.4 Nothing in this clause 10 will prevent either party from seeking urgent interim relief from a court of competent jurisdiction, or require either party to refrain from exercising any rights or remedies available in connection with these Terms.

11 **WARRANTIES**

- 11.1 Subject to the other provisions of these Terms, we warrant that for a period of 30 days following delivery, the Devices will be substantially free of defects in materials and workmanship, although we will not be taken to be in breach of this warranty by reason of any damage to the Devices arising from your negligence, recklessness or wilful abuse, or your failure to follow any guidance or recommendations provided in the documentation accompanying the Devices.
- 11.2 Subject to the other provisions of these Terms, we warrant that during the term of your Subscription the Application will operate substantially in accordance with its standard documentation as updated from time to time, so long as the Devices are installed and functioning normally in accordance with their own standard documentation.
- 11.3 Subject to the other provisions of these Terms, we warrant that we will provide the Support services with reasonable due skill and care.
- 11.4 Except as expressly provided in these Terms and to the extent permitted by Law, we exclude all other warranties, including any warranties that would otherwise be implied by law. We do not warrant that any element of the Solution will be available without errors or interruptions, or that your use of the Solution will ensure your compliance with any Laws.

12 **LIABILITY**

- 12.1 We will not be liable to you for any loss or liability that arises in connection with your failure to comply with these Terms or any Law, or due to your misuse of, or damage to, the Solution, or due to your negligence.
- 12.2 Neither Party will be liable in connection with the Solution or these Terms for any loss of profits, revenue, reputation, opportunity, any business interruption, any loss of economic value through loss or corruption of data, any special or punitive damages, or any indirect or consequential loss.
- 12.3 Our total aggregate liability to you in connection with the Solution or these Terms will not exceed the value of the Charges you have paid us.
- 12.4 The exclusions and limitations in clauses 12, 12.2 and 12.3 do not apply to or take into account: (a) any liability that cannot lawfully be limited or excluded by contract; (b) any liability either party may have for fraud, deceit or breach of confidentiality; (c) any liability either party may have to an owner or exclusive licensee of

intellectual property rights for infringement of those rights; (d) any liability we may have under clause 7.3.

- 12.5 Except as stated in clause 12.4, the exclusions and limitations in clauses 12, 12.2 and 12.3 apply to all liability arising in connection with the Solution or these Terms, in contract, in tort (including negligence), in equity, or on any other legal basis.

13 **SUSPENSION, TERMINATION AND EXPIRY**

- 13.1 We or you may terminate your Subscription by giving notice if the other party:

- (a) has committed a material breach of these Terms, or has failed to remedy a breach of these Terms within 30 days of the terminating party notifying them of the breach;
- (b) has committed a breach of clauses 7 (Intellectual Property) or 9 (Confidentiality);
- (c) is subject to a Force Majeure Event that continues for more than 60 days; or
- (d) undergoes an Insolvency Event.

- 13.2 We may terminate your Subscription by giving you notice if:

- (a) you are more than 30 days overdue paying any amounts owing to us;
- (b) we reasonably consider a change of Law means our continued provision of any element of the Solution would be illegal or commercially unworkable; or
- (c) you breach clauses 4.2 or 4.5.

- 13.3 If we notify you of a change in accordance with clause 3.4, and that change would substantially increase the burden, or substantially decrease the benefit, of your Subscription for you (*Major Change*), you may terminate your Subscription by notifying us within 20 days after we notify you of the Major Change, in which case your Subscription will terminate on the date the change would otherwise take effect.

- 13.4 We may suspend your access to the Software if we are entitled to terminate your Subscription under clauses 13.1 or 13.2. Suspension will not limit or waive our rights of termination.

- 13.5 Termination or expiry of your Subscription will not affect any liabilities already accrued. Clauses 7, 8, 9, 10, 11, 12, 13 and 14 of these Terms will survive termination or expiry.

14 **GENERAL**

- 14.1 Non-performance by a party of any of its obligations under these Terms will be excused during the time and to the extent that performance of the obligation is delayed or prevented by a Force Majeure Event, provided the affected party has promptly given the other party notice of the Force Majeure Event. During this time, the affected party will take all reasonable steps to remedy, abate and mitigate the effect of the Force Majeure Event.

- 14.2 Notices under these Terms must be given in writing. Notices may only be given by hand, registered mail or email. Notices by post will be deemed delivered no later

than 5 Business Days after posting within New Zealand, and notices by email will be deemed delivered no later than when the recipient acknowledges receipt (excluding automated "out-of-office" responses or "read receipts").

- 14.3 We may assign our rights under these Terms at our discretion. You may assign your rights under these Terms with our written approval (not to be unreasonably withheld).
- 14.4 The parties are independent contractors. Nothing in these Terms creates or implies any legal relationship of agency, partnership, or joint venture.
- 14.5 A party will do all things reasonably required by the other party so that the other party can perform its obligations and the take full benefit of these Terms according to their intent.
- 14.6 These Terms are governed by New Zealand Law. Each party submits to the non-exclusive jurisdiction of the courts of New Zealand in relation to any matter under these Terms.
- 14.7 No failure, delay or indulgence by a party in exercising its rights under these Terms will waive those rights, except where a party expressly waives its rights in writing.
- 14.8 These Terms incorporate any additional terms specified in the Accepted Quote. These Terms constitute the sole and entire understanding with respect to their subject matter and supersedes all prior discussions, representations and understandings, written or oral. The parties agree to contract out of sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 and agree that it is fair and reasonable for the parties to be bound by this clause.
- 14.9 The provisions of clauses 7, 8 and 11 that are for our benefit are also enforceable under the Contract and Commercial Law Act 2017 by our related companies, and by any supplier that contributes to the products or services provided under these Terms, although any of those provisions may be amended without their consent.
- 14.10 If any part of these Terms are held to be illegal, void or unenforceable, such determination will not impair the enforceability of the remaining parts of these Terms.
- 14.11 The rights, powers and remedies of a party in these Terms are cumulative with and are not exclusive of any other rights, powers or remedies at law or in equity that party may have, unless specifically stated otherwise.

15 **DEFINITIONS AND INTERPRETATION**

- 15.1 Unless the context requires otherwise:

Accepted Quote means a written quote, as provided by us and signed and returned by you, for electronic reporting and/or global position reporting software and/or hardware.

Application means the software known as Deckhand, developed to enable users to collect, record and transmit Reporting Data to MPI (and includes any updates to it from time to time).

Business Day means any day other than a Saturday, Sunday, a statutory public holiday, or a day on which banks are shut in Wellington.

Charges means the charges for the Devices and Subscription.

Confidential Information of a party, means the contents of these Terms, any information received from that party in connection with the transaction(s) contemplated by these Terms that is expressly marked or specified as confidential, and any information received from that party in connection with the transaction(s) contemplated by these Terms which reasonably ought to be understood to be confidential; but does not include information which the other party can show was lawfully acquired or developed entirely independently of the transaction(s) contemplated by these Terms and without reference to the other party's Confidential Information.

Customer Data means any data or information recorded in the Application concerning your operations or activities, and includes the Reporting Data and any personal information about your staff.

Default Rate means a daily rate of two percentage points above the average buying rate for 90 day bank bills published on Reuters page BKBM, or a reasonable analogue of it, at 3pm on the relevant day, calculated daily and compounding monthly.

Device means an iPad, Solar VMS or other electronic device specified in the Accepted Quote, together with any associated accessories or fittings included with such devices.

Force Majeure Event means any event beyond the reasonable control of the party claiming relief, excluding: (a) any event which that party could have avoided or overcome by exercising a reasonable standard of care at a reasonable cost; and (b) any lack of funds for any reason.

Initial Term means the initial subscription term set out in the Accepted Quote (12 months unless stated otherwise).

Law means all applicable statutes, regulations, and bylaws, and all mandatory codes, rules, orders and circulars enacted under such statutes, regulations or bylaws

MPI means the Ministry of Primary Industries, and includes Fisheries New Zealand.

Reporting Data means geospatial and fishing-related data required by Law to be recorded at sea and transmitted to MPI using registered equipment.

Software means the Application, and any other software that we install on the Devices from time to time.

Solar VMS means a solar vessel monitoring system that is designed to record and transmit the geospatial position of a vessel.

Solution means the Software and Devices.

Subscription means a subscription entitling you to use the Software under these Terms.

User means any employee or agent of yours who accesses the Application, any other person who accesses the Application under a user account associated with an email address from an email domain that you control, and any other person who accesses the application through any user profile created by any other User.

15.2 Unless the context requires otherwise:

- (a) each reference to the giving of any notice, approval, consent, agreement or authorisation is a reference to giving the same in writing;
- (b) a reference to a party is a reference also to that party's successors and permitted assigns;
- (c) a reference to "includes" is a reference to "includes without limitation" and "include", "included" and "including" have corresponding meanings;
- (d) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) ambiguity will not be construed against a party merely because that party drafted the relevant provision of these Terms; and
- (f) a reference to a "person" includes an individual, firm, company, corporation or unincorporated body of persons, in each case with or without separate legal personality.