v. 03-191001

Webfleet General Terms and Conditions

Webfleet General Terms and Conditions (AU)

1 – Definitions

In these Webfleet General Terms and Conditions and the Product and Service Schedules, unless explicitly stated otherwise, the following words and expressions have the meaning as set out below:

"Affiliates"

means with respect to any Party, any other entity controlling, controlled by or under common control with such Party. The terms "control", "controlling" and "controlled", as used in this definition, shall mean the legal, beneficial or equitable ownership, directly or indirectly, of more than 50% of the issued share capital or more than 50% of the voting rights, or the power, directly or indirectly, to appoint a member of the board of directors or similar governing body of such entity;

"Asset"

means an asset other than a Vehicle (e.g., trailer, electric charger) to be monitored by the WEBFLEET Service;

"Contract"

means collectively the agreement between Webfleet Solutions and the Client for the provision of the WEBFLEET Service and/or Products, consisting of the Order Form and any attachments thereto, including these Webfleet General Terms and Conditions, and to the extent selected on the Order Form, Product and/or Service Schedule(s);

"Client"

means the customer stated in the Order Form;

"Confidential Information"

means (I) all information and documentation that is considered confidential or proprietary at the time of disclosure, and (II) all information and documentation that falls within any of the following categories: information regarding clients, distributors, retailers, agents or Users; financial information (except as may have been publicly disclosed pursuant to regulatory requirements); Product pricing information; Product specifications and designs; and manufacturing processes, and all other information disclosed by either Party, which could be reasonably considered confidential to the extent such Party treats such information as confidential or proprietary;

"Effective Date"

means the date stated in the Order Form;

"Fleet"

means the number of Vehicles to be managed via the WEBLEET Service;

"Force Majeure"

means any cause beyond the reasonable control of the Party affected, which affects the performance of the Contract, including but not limited to prolonged break-down of transport, telecommunication or electric current, Mobile Communication Services, late and/or stagnation of deliveries by Webfleet Solutions' suppliers, incomplete deliveries by Webfleet Solutions' suppliers, failure to obtain all Products and/or (third party) services required for the proper fulfilment of the Contract by Webfleet Solutions caused by circumstances that cannot in fairness be attributed to Webfleet Solutions;

"Mobile Application"

means a Webfleet Solutions software application, accessible through a User's device, which may allow obtaining and transmitting Telematics Data and for sending and receiving such data between such User's device and the WEBFLEET Telematics Service Platform via Mobile Communication Services. A Mobile Application may be used in combination with the Product, where applicable.

"Minimum Contract Period"

means the number of months specified in the Order Form commencing on the date stated therein;

"Intellectual Property Rights"

means all inventions, patents, registered designs, design rights, data base rights, copyrights, know- how, trademarks (including the Trademarks), trade secrets and any other intellectual property rights, and the applications for any of the same and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world;

"Order"

means an order placed by the Client regarding the type and amount of Products to be delivered to the Client including the requested estimated delivery date and/or subscriptions to the WEBFLEET Service to be taken by the Client, in accordance with the Contract;

"Order Form"

means the order form pursuant to which Webfleet Solutions will supply and the Client will purchase or rent the Products and/or subscribe to take the WEBFLEET Service and/or use a Mobile Application in accordance with the terms of the Contract;

"Party/Parties"

means either Webfleet Solutions or Client or jointly;

"Product"

means a device, as referred to on the Order Form item list, either purchased or rented by the Client, that can be used for obtaining Telematics Data and for sending and receiving such data and other messages via Mobile Communication Services (either automatically according to a set procedure or by manual information retrieval);

"Product- or Service Schedules"

means the schedules containing product or service specific terms as indicated on the Order Form to apply together with these Webfleet General Terms and Conditions;

"Telematics Data"

means the data retrieved or captured by the Product and/or User's device, such as, for example, the geographical position of the Fleet, trip information, driving behavior, working time, driver's performance, data retrieved from electric vehicles chargers and, where applicable, any other data, messages and video footage displayed on the WEBFLEET Telematics Service Platform;

"Territory"

means the territory specified in the Order Form;

"Trademarks"

means the Webfleet Solutions names, trademarks and logos (whether registered or applied for) and any other names, trademarks, logos, designs and symbols designated to be used on or in relation to the Products, Mobile Applications or services provided by Webfleet Solutions;

"User"

means a person authorized by the Client to access and use the WEBFLEET Service and/or a Mobile Application;

"User's device"

means mobile phone, tablet or other portable device with similar functionalities.

"Vehicle"

means the single vehicle or single asset to be managed via the WEBFLEET Service, as requested by the Client in accordance with the Contract;

"Webfleet Solutions"

means Webfleet Solutions Sales B.V., Australian branch, a private company with limited liability, incorporated under the laws of the Netherlands, with its registered seat at Beethovenstraat 503, 1083 HK, Amsterdam, the Netherlands, through its Australian branch, with registered office at C/- BDO Perth, 38 Station Street, Subiaco, WA 6008, Australia.

"Webfleet General Terms and Conditions"

means these general terms and conditions that apply to the WEBFLEET Service, Product purchase and Product rental, as applicable;

"WEBFLEET Telematics Service Platform"

means the IT systems that run the WEBFLEET Service;

"WEBFLEET Service"

means the online service, as available via the WEBFLEET Website, designed to enable the Client to monitor and control the Fleet, to the extent that such Fleet is located in the Territory, by displaying and facilitating the transmission of Telematics Data between the WEBFLEET Telematics Service Platform and the Product and/or between the WEBFLEET Telematics Service Platform and User's device by means of a Mobile Application;

"WEBFLEET Website"

means the website www.webfleet.com.

2 – Applicability and Scope

2.1   These Webfleet General Terms and Conditions, including to the extent indicated on the Order Form the relevant Product- and/or Service Schedule(s), shall apply to and are expressly incorporated into the Contract and all subsequent agreements entered into between Webfleet Solutions and the Client in connection with the WEBFLEET Service and/or Products. It is expressly agreed that the general terms and conditions, or any other terms, of the Client do not apply.

2.2   All quotations submitted by Webfleet Solutions shall be non-binding on its part, unless explicitly stipulated otherwise in writing by Webfleet Solutions. A Contract shall be concluded and binding for the Parties thereto, if and when Webfleet Solutions confirms in writing the Order placed by the Client or Webfleet Solutions performs such Order, whichever occurs first.

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3 - Term and Termination

3.1   The term for the subscription to the WEBFLEET Service, Mobile Application, and for, where applicable, the purchase or rental of Products, commences on the Effective Date. Following the Minimum Contract Period, the Contract shall automatically renew for consecutive additional periods of one (1) year each, unless either Party gives the other Party written notice of its intention not to renew at least three (3) months prior to the date on which the Contract would otherwise renew.

3.2 Either Party may, without prejudice to any of its other rights arising hereunder, upon giving written notice, terminate the Contract with immediate effect, if: (I) the other Party fails to observe or perform any material term or condition hereof, including in any event non- or late payment, and such default or breach (if capable of remedy) is not remedied within twenty (20) calendar days after notice in writing, specifying the breach and requiring the same to be remedied, has been given; or (II) any of the following events occur: (a) the presentation of a petition for winding up of the other Party; (b) the other Party is the subject of an order or an effective resolution is passed for winding up the other Party; (c) the application for an order or application for the appointment of a receiver (including an administrative receiver), administrator, trustee or similar officer in respect of the other Party; (d) if a receiver, administrative receiver, administrator or similar office is appointed over all or any part of the assets or undertaking of the other Party; (e) the other Party making a composition or arrangement with its creditors generally or an assignment for the benefit of its creditors or other similar arrangement; (f) the other Party goes into liquidation; (g) the other Party becoming unable to pay its debts or otherwise becoming insolvent; or (h) the other Party ceasing, or threatening to cease, to carry on business.

3.3 Upon: (I) the Client's actual or intended petition for insolvency; or (II) the institution of bankruptcy proceedings; or (III) the appointment of a receiver or administrative receiver in respect of the Client; or (IV) the petition or award of a suspension of payments order; or (V) the Client offering its creditors a private repayment arrangement or should its assets be attached; or (VI) the Client becoming unable to pay its debts or otherwise becoming insolvent; (VII) a default by the Client under any agreement with Webfleet Solutions or any of its Affiliates, then the Client's debts to Webfleet Solutions shall become immediately due and payable. Subsequent to any such events, Webfleet Solutions shall be entitled to suspend performance of the Contract until such time that the Client has fulfilled all of its obligations under the Contract.

3.4 All clauses which are either expressly or by implication intended to survive termination shall continue to apply after termination of this Contract. Only Orders placed and accepted by Webfleet Solutions prior to the termination date shall be fulfilled by Webfleet Solutions.

4 – Prices, Payment and Default

4.1   All prices quoted by Webfleet Solutions are in AUD (unless stated otherwise), exclusive of VAT, any other taxes and incidental costs and expenses.

4.2   Payment of the WEBFLEET Service subscription fees, the rental rates for Products quoted by Webfleet Solutions and the prices quoted by Webfleet Solutions for the purchase of the Products shall be made in AUD monthly in advance within 10 days net from invoice date (unless agreed otherwise). Webfleet Solutions shall collect all payments via credit card/ACH Debit and the Client hereby authorizes Webfleet Solutions to collect the payments due from the Client's credit card as submitted through Webfleet Solutions' webpage or using ACH Debit as authorized by the ACH recurring payment authorization form attached to the Contract. If another payment method is agreed the fees can be subject to a 10% increase.

4.3   The fees and rates may be adjusted by Webfleet Solutions once per calendar year, provided that Webfleet Solutions has given the Client at least two (2) months prior notice.

4.4   If payment is not made on time:

(I) the Client shall be in breach of the Contract, without any notice of default being required and all of Webfleet Solutions' claims against the Client shall become immediately due and payable;

(II) the Client shall be obliged to pay the statutory interest rate for commercial debts on the outstanding amount and all judicial and extra-judicial costs incurred by Webfleet Solutions relating to the recovery and collection of any overdue amount; (III) Webfleet Solutions reserves the right to suspend the Client's access to and use of the WEBFLEET Service until all outstanding amounts (including interest and costs) are settled; and (IV) the costs of suspending and reactivating shall be borne by the Client.

4.5   Webfleet Solutions may impose credit limits on the Client's account or require the Client to provide a sufficient security deposit. If the Client exceeds the credit limit or fails to provide the required security deposit, Webfleet Solutions may terminate this Contract with immediate effect and retain any such funds necessary to cover unpaid invoices by the Client concerning the rates for Products and WEBFLEET Service subscription fees and/or costs related to the failure of the Client to return the rental Products to Webfleet Solutions, as applicable.

4.6   All payments due to Webfleet Solutions by the Client must be made without set-off, discount and/or suspension of any type whatsoever.

5 – Force Majeure

5.1   Except for payment obligations, if a Party is prevented or delayed in the performance of any of its obligations under the Contract by Force Majeure, then that Party will be excused from the performance or punctual performance, as the case may be, of its obligations, to the extent that such Force Majeure continues, and such Party agrees to use all reasonable endeavours to overcome or work around the Force Majeure so as to be able to perform its obligations under the Contract. In no case shall an event of Force Majeure excuse timely payment of fees and charges due by the Client to Webfleet Solutions for the provision of WEBFLEET Service, or for the purchase or rental of Products. For the sake of clarity, the Client shall not be entitled to invoke Force Majeure as an excuse for non-payment of the invoices submitted by Webfleet Solutions.

5.2   Should the period in which a Party cannot fulfil its obligations because of Force Majeure continue for longer than 30 calendar days, either Party shall be entitled to terminate the Contract in writing without there being an obligation to pay any compensation whatsoever arising out of or in connection hereto.

5.3   Notwithstanding clause 5.2 of these Webfleet General Terms and Conditions, if, at commencement of Force Majeure, Webfleet Solutions has partly fulfilled its obligations or is only partly able to fulfil its obligations, it shall be entitled to charge all activities carried out prior to the start of the Force Majeure event and costs incurred in this respect separately to the Customer as if such costs related to a separate Contract.

6 – Intellectual Property

6.1   Webfleet Solutions retains all Intellectual Property Rights vested in the WEBFLEET Service, WEBFLEET Website, WEBFLEET Telematics Service Platform, Webfleet Solutions Mobile Applica- tions and the Products. The Client shall not at any time acquire any rights, title or interest in these Intellectual Property Rights by virtue of any use that the Client may make thereof pursuant to the Contract.

(VII)   The Client shall: (I) not cause or permit any third party to cause any damage or endanger the Intellectual Property Rights of Webfleet Solutions; (II) without prejudice to any other rights of Webfleet Solutions, indemnify Webfleet Solutions for any loss suffered by Webfleet Solutions by reason of any use by the Client or User of Intellectual Property Rights of Webfleet Solutions other than in accordance with the Contract; (III) not in any way alter the packaging or labeling of the Products as supplied by Webfleet Solutions unless such alterations have first been approved by Webfleet Solutions in writing; (IV) not alter, remove, or in any way tamper with the Trademarks or affix any other name, Trademark, logo, design or symbol on a Product or the packaging thereof unless such has been approved by Webfleet Solutions in writing; (V) not use any Trademarks so as to prejudice the distinctiveness or validity or the goodwill of Webfleet Solutions therein; (VI) not in any way use the Trademarks on or in connection with any products or services other than the Products; (VII) not in any way use the Trademarks in any name, Trademark or logo of the Client, whether or not such name, Trademark or logo is used in connection with the performance of a Contract;

(VIII)   not use any name, Trademark, logo, design or symbol so resembling any of the Trademarks as to be likely to cause confusion or deception; (IX) ensure that all references to, and use of, any Trademarks are approved by Webfleet Solutions; (X) not challenge the validity or enforceability of or Webfleet Solutions' entitlement to use any of its intellectual property; (XI) not, and shall not help others, reverse engineer, directly or indirectly, modify the features or functionality of, copy or create derivative works using all or any portion of, analyze or remove components from, decompile, or otherwise reverse engineer or attempt to reverse engineer or derive source code, techniques, algorithms or processes from any Product or any portion of any Product, or permit or encourage any third-party to do so; (XII) promptly notify Webfleet Solutions if Client becomes aware of any attempt to reverse engineer any Product or any portion of any Product.

6.2   In the event the Client at any time whether directly or indirectly contests Webfleet Solutions' ownership of the Intellectual Property Rights, or does anything that would jeopardize or diminish Webfleet Solutions' rights to the WEBFLEET Service, WEBFLEET Website, WEBFLEET Telematics Service Platform, Webfleet Solutions Mobile Applications or the Products, or the value of the Intellectual Property Rights vested therein, Webfleet Solutions has the right to immediately terminate the Contract.

6.3   The Client shall not engage in any conduct which in the opinion of Webfleet Solutions is prejudicial or likely in the future to be prejudicial to Webfleet Solutions' business or marketing of the Products.

7 – Liability

7.1   Subject to clause 7.3 of these Webfleet General Terms and Conditions, Webfleet Solutions' aggregate liability, whether in contract, tort (including in either case negli- gence), misrepresentation (other than fraudulent misrepresentation), breach of statutory duty or otherwise pursuant to the Contract, shall be limited to the net price paid or to be paid by the Client for the WEBFLEET Service in the full year (12 months) in which the loss or damage occurred, the price paid for those Products that actually caused the damage or the rental rates paid or to be paid by the Client for those Products that actually caused the damage over a preceding period of 12 months, whichever is greater. In all other cases Webfleet Solutions' liability shall be excluded.

7.2   Webfleet Solutions shall never be liable for: (I) any loss of profits, anticipated savings, revenue, business, loss or corruption of data, loss of use, loss of goodwill, loss due to delay; or (II) any indirect or consequential loss or damage whatsoever.

7.3   Nothing in this clause 7 and in the entire Contract shall be deemed to exclude or limit the liability of either Party: (I) in respect of loss or damage caused by willful intent or gross negligence of a Party or its officers, employees, agents or contractors; or (II) in respect of injuries to, damages to the health of, or death of any person, caused by a Party or its officers, employees, agents or contractors. (III) in respect of payment of any sums due under this Contract; or (IV) for any other liability which cannot be excluded by law.

7.4   To the fullest extent permitted by Applicable Laws, any claim for loss or damages (except a claim for damages arising out of clause 7.3 of the Webfleet General Terms and Conditions) must be notified to Webfleet Solutions within twelve (12) months as from the date on which the damage was caused, failing which such claim is deemed to be waived.

7.5   All warranties, conditions or other terms implied by statute that are not expressed in the Contract are, to the fullest extent permitted by Applicable laws, excluded from the Contract.

8 – Confidentiality

Neither Party shall at any time during or after the term of the Contract divulge, disclose or otherwise furnish, directly or indirectly, to any third party any Confidential Information unless explicitly permitted herein or required by law. The provisions of this clause 8 shall not ap- ply to any information which the receiving Party can demonstrate (I) is or becomes public knowledge other than by breach of a duty of confidentiality; or (II) is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party; or (III) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or (IV) is independently developed without access to the Confidential Information.

The receiving Party may disclose the Confidential Information disclosed by the disclosing Party as required by law or to comply with an order of a court or other governmental entities or regulatory authorities that have jurisdiction over the receiving Party, provided that the receiv- ing Party: (I) gives the disclosing party reasonable written notice to allow it to seek an

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injunc- tive order or other appropriate remedies and provide any assistance which the disclosing party may require in order to secure such order or remedies;

(II) discloses only such information as is required by the governmental entity or regulatory authority; and (III) uses its reasonable best efforts to obtain confidential treatment for any Confidential Information so disclosed.

9 – Miscellaneous

9.1   Neither Party may assign, sub-contract, transfer or dispose of any of its rights and obligations under the Contract, either in whole or in part, without the prior written consent of the other Party, provided that Webfleet Solutions may assign, sub-contract, transfer or dispose of any of its rights and obligations under the Contract, either in whole or in part, to any of its Affiliates without the Client's prior consent.

9.2. The illegality, invalidity or unenforceability of any provision of the Contract shall not affect the legality, validity or enforceability of the remainder of the clause or paragraph which contains the relevant provision or any other provision of the Contract. If the remainder of the provision is not affected, the Parties shall use all reasonable endeavors to agree within a reasonable time upon any lawful and reasonable variations to the Contract which may be necessary in order to achieve, to the greatest extent possible, the same effect as would have been achieved by the clause, or the part of the clause, in question.

9.2   Except for clause 7.4 of these Webfleet General Terms and Conditions, the rights of either Party under the Contract are without prejudice to all other rights and remedies available to either Party and no failure or delay by either Party to exercise any right under the Contract will operate as a waiver of such right under the Contract.

9.3   Except as expressly otherwise provided for herein, no amendment to the Contract is valid or binding unless made in writing.

9.4   Webfleet Solutions may unilaterally change the provisions of these Webfleet General Terms and Conditions (including the Product and Service Schedules), which amendments shall enter into force on the date that the Client is notified thereof.

9.5   All notices, consents, waivers and other communications under this Contract must be in writing, in English and delivered by hand or sent by regular mail, registered mail, express courier or e-mail to the appropriate addresses set out in the Contract (or to such addresses as a Party may notify to the other Party from time to time). A notice shall be effective upon receipt and shall be deemed to have been received at the time of delivery (if delivered by hand, registered mail or express courier) or at the time of successful transmission (if delivered by e-mail).

9.6   Webfleet Solutions shall provide to the Client on request a copy of all such data held by it under the Contract, and shall promptly inform the Client if any such data is lost or destroyed or becomes damaged, corrupted, or unusable. Webfleet Solutions will restore such data at its own expense.

10 – Disputes and Applicable Laws

Each dispute arising under the Contract shall, in first instance, be settled by the competent Court of the State of Victoria, Australia which will have exclusive jurisdiction in respect of any such disputes. The Contract is subject to the law of the State of Victoria, Australia.