



# Air Operations Management Terms & Conditions

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These Air Operations Management Terms & Conditions constitutes a legal agreement (“Agreement”) between you (“User”) and Apex Flight Operations Pty Ltd (“Apex Flight Ops”). The parties agree to the following terms and conditions:

## 1. Grant

Apex Flight Ops grants the User a non-exclusive, non-transferable license to install and use the Air Operations Management software program and services, access to the restricted sections of the Apex Flight Operations website ([www.apexflightops.com](http://www.apexflightops.com)), as well as access to the Air Operations Management Web Services and KML feeds (collectively referred to hereafter as “AOM”). All title, copyright and intellectual property to AOM components remains the property of Apex Flight Ops – this agreement is not a sale. All access to these components is subject the User retaining a current software License (see below).

## 2. Software Licenses

The User agrees to purchase a software access license (“License”) covering each asset that they require to track; these Licenses are available through the Apex Flight Operations Online Shop. Access to unlicensed assets will be restricted by AOM. Apex Flight Ops reserves the right to restrict any and all access to functionality in AOM that is not covered by a current and paid for software license.

## 3. Airtime

Assets fitted with Apex Flight Ops tracking equipment also require a positive fleet airtime balance (“Airtime”), and the User agrees to keep the Airtime balance positive in order to enjoy continued access to AOM. Apex Flight Ops reserves the right to restrict any and all access to functionality in AOM that requires the asset to have a positive airtime balance.

## 4. Number of Installations

The User is granted the right to install AOM on any number of computers.

## 5. Security Access

The User will be provided with a Client Administrator login to the AOM system, and is responsible for the protection of these credentials. The User may also create additional logins to AOM and allocate security rights and asset access within their organization. Apex Flight Ops will not disclose access



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details to any party, and the User acknowledges that it is their sole responsibility to protect their access to AOM.

## 6. Privacy

Apex Flight Ops will endeavour to keep all data associated with the User's account private and secure. Only AOM users who have been granted access to the User's assets will be able to view the data; the User is responsible for controlling access to their data.

The User acknowledges and permits Apex Flight Ops employees to access this data in the normal course of their duty. Apex Flight Ops warrants that it has taken all reasonable measures to secure the data on behalf of the User.

Under certain circumstances Apex Flight Ops may be required by law to release data owned by the User; the User will be notified and the data required by law will be released.

AOM provides a facility to make data available to Third-Parties via Automatic Flight Following (AFF) XML web services; the User acknowledges that they are responsible for controlling access to their data availability on the AFF Portal.

## 7. Communication

AOM provides functionality for communication to the User and their approved contacts by means of SMS and/or Email. The User acknowledges that it is their responsibility to maintain the contact details for each type of communication required as Apex Flight Ops will not be responsible for sending communication to incorrect/outdated email addresses or mobile phone numbers.

## 8. Ownership of Data

The User acknowledges that the legal ownership of the data used by AOM and services resides with the originator of the data. For Apex Flight Ops equipment owners, legal ownership of the data resides with the commercial entity that paid for the airtime. For Third-Party equipment owners, legal ownership is determined by the agreement between the User and that Third-Party.

## 9. Commercial Rights

The User has no right to use AOM or accompanying materials in a commercial product or to redistribute AOM in any form to any person or to any entity.

## 10. System Requirements

AOM software and services rely on access to our Data servers via the Internet, as well as requiring hardware meeting the minimum requirements specified. The User acknowledges that the provision of Internet connectivity and hardware platforms are outside of Apex Flight Ops' control and remain the User's responsibility.



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## 11. Availability

Apex Flight Ops endeavours to keep the AOM software and services available at all times, but the User acknowledges that due to factors outside of Apex Flight Ops' control, the software and services may not be available 100% of the time. Further, as AOM depends on a number of external feeds from 3<sup>rd</sup> Party Data Providers, there is no guarantee that tracking data will be available at all times.

## 12. Warranty and Disclaimer

AOM and accompanying materials are provided "as is" and Apex Flight Ops makes no representations and extends no warranties of any kind, expressed or implied, including but not limited to, warranties of merchantability or fitness for a particular purpose or that the use of the program will not infringe any patent, trade-mark, copyright or other legal rights. The User assumes the entire risk as to the results and performance of the program and/or accompanying materials. The User agrees that Apex Flight Ops shall not be held liable for any direct, indirect, consequential, or incidental damages with respect to any claim by the User or any third party on account of or arising from this agreement or use of AOM and/or accompanying materials. Apex Flight Ops does not warrant that the functions contained in AOM will meet the User's requirements or that the operation will be uninterrupted or error free.

## 13. Limitation of Liability

In no event will Apex Flight Ops be liable for any damages, including loss of data, lost profits, cost of cover or other special, incidental, consequential or indirect damages arising from the use of AOM or accompanying materials, however caused and on any theory of liability. This limitation will apply even if Apex Flight Ops or any unauthorized dealer has been advised of the possibility of such damage. The User acknowledges that the License fee reflects this allocation of risk.

## 14. Governing Law

This Agreement shall be interpreted in accordance with the laws of the New South Wales, AUSTRALIA.

## 15. Entire Agreement

This Agreement is the entire agreement between the User and Apex Flight Ops and supersedes any other communication with respect to AOM and accompanying materials. If any provision of this Agreement is held to be unenforceable, the remainder of this agreement shall continue in full force and effect. This Agreement may not be assigned, amended or extended except by further specific written agreement of the parties signed by their respective duly authorized representatives.