

SONAR User Agreement

THIS DOCUMENT IS THE USER AGREEMENT BETWEEN TRANSRISK, INC. D/B/A FREIGHTWAVES (“FREIGHTWAVES”) AND THE SECOND PARTY TO THIS AGREEMENT (“RECIPIENT”). RECIPIENT SHOULD READ CAREFULLY THE FOLLOWING TERMS AND CONDITIONS BEFORE UTILIZING SONAR.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF AN ORGANIZATION, ALL REFERENCES TO “RECIPIENT” IN THIS AGREEMENT SHALL MEAN COLLECTIVELY THE ORGANIZATION AND THE USER. IN SUCH INSTANCE, BY ACCESSING AND USING SONAR YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE ORGANIZATION, AND THAT THE ORGANIZATION AGREES TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT.

BY CLICKING THE “ACCEPT” BUTTON BELOW, OR BY DOWNLOADING, INSTALLING OR OTHERWISE ACCESSING OR USING THE SOFTWARE, RECIPIENT AGREES TO BE BOUND BY THIS AGREEMENT. IF RECIPIENT DOES NOT AGREE TO BE BOUND BY THIS AGREEMENT, RECIPIENT MAY NOT ACCESS OR USE SONAR.

1. Grant of Rights

- a. **License.** FreightWaves hereby grants Recipient a non-exclusive, revocable, non-transferable right to access and use the SONAR data solution as such solutions is described at www.sonar.surf (“SONAR”), and Recipient hereby subscribes to SONAR in accordance with this Agreement. This license is personal to Recipient and only permits Recipient to access and use SONAR.
- b. **Restrictions on Use.** Recipient may use SONAR solely for its internal business purposes and may not use SONAR for any development purposes or to develop any applications, software or otherwise that could in any way interact or interfere with the performance of SONAR or compete with SONAR. Recipient may not sub-license SONAR to or share SONAR with any third parties without FreightWave’s express, prior written permission. Recipient shall not access SONAR through any medium that FreightWaves has not authorized in writing. Unauthorized access or use of SONAR is unlawful and FreightWaves and its suppliers shall have all rights provided by applicable laws and regulations to prevent such access or use and to collect damages in any such event. Recipient agrees to notify FreightWaves in writing promptly upon becoming aware of any unauthorized access or use. Recipient shall not share, recompile, decompile, disassemble, reverse engineer, or make or distribute any other form of, or any derivative work from, SONAR. The analysis and presentation included in SONAR shall not be recirculated, redistributed or published by Recipient without the prior written consent of FreightWaves and, where necessary, with certain sources of the information included in SONAR.
- c. **Updates.** FreightWaves may from time to time in its sole discretion develop and provide updates to SONAR, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation,

“Updates”). Updates may also modify or delete in their entirety certain features and functionality. Recipient agrees that FreightWaves has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality.

2. Term

- a. **Term and Termination.** The date on which Recipient has accepted this Agreement by clicking the “accept” button and has been issued access credentials for SONAR by FreightWaves is referred to as the “Effective Date.” Unless an initial trial use period has been authorized by FreightWaves, this Agreement shall be effective for twelve (12) months beginning as of the Effective Date (the “**Term**”), unless earlier terminated or renewed during the Term, as follows: (i) Recipient shall have the right to terminate this Agreement at any time upon not fewer than sixty (60) days prior written notice to FreightWaves and upon payment of any unpaid fees, in which case FreightWaves shall refund Recipient for any full month of services not used; and (ii) FreightWaves shall have the right to terminate this Agreement at any time immediately upon written notice to Recipient if Recipient breaches any provision of this Agreement. Upon termination of this Agreement for any reason whatsoever, Recipient shall immediately cease use of SONAR.
- b. **Renewal.** The Term shall be automatically renewed for successive twelve (12) month periods unless Recipient or FreightWaves elects not to renew by giving not fewer than sixty (60) days written notice to the other. If this Agreement is renewed for an additional period beyond the initial twelve-month Term, the fees payable for such renewal period shall be calculated at the rates specified by FreightWaves in an updated Order Form.

3. Fees

- a. **Fees and Payment Terms.** Recipient agrees to pay FreightWaves the fees set forth on FreightWave’s Order Form or invoices together with (i) any applicable taxes for SONAR, and (ii) any levies or fees imposed or charged by exchanges or other information services or sources displayed at Recipient’s request through SONAR, all of which shall be payable within ten (10) days of FreightWave’s invoice date. Delinquent amounts shall bear interest at the lower of 1.5% per month or the highest rate permitted by applicable law. FreightWaves reserves the right to suspend or terminate Recipient’s access to SONAR if Recipient fails to pay any required amounts within twenty-one (21) days of the due date for payment. All Subscription Fees are non-refundable.
- b. **Third Party Services.** Recipient shall pay for each third-party information service accessed for display through SONAR. The total monthly charge does not include monthly fees for additional third-party information services. If Recipient selects any of these services, FreightWaves shall submit the appropriate applications for such services, a price list, and bill accordingly. Recipient shall pay any taxes, assessments, fees or penalties in respect of SONAR that are Recipient’s legal responsibility to pay.

4. Distribution of Recipient's Data to Others

- a. **Prohibition on Distribution.** Without FreightWaves' prior written consent, Recipient

shall not share or distribute SONAR related data or reference FreightWaves or any of FreightWaves' Affiliates in any print, electronic or other medium.

5. Warranties and Limitations of Liabilities

- a. **Recipient's Representations.** Each time Recipient uses SONAR, Recipient shall be deemed to represent, warrant and covenant to FreightWaves and its Affiliates that: (i) it has all requisite regulatory and legal authority to enter into and be bound by this Agreement; and (ii) its use of SONAR complies with all applicable laws, rules and regulations.
- b. **Third Party Material.** SONAR contains information and data from third party sources ("**Third Party Content**"). Recipient acknowledges and agrees that FreightWaves is not responsible for any such Third Party Content, including its accuracy, completeness, timeliness, validity, copyright compliance, legality, quality, or any other aspect thereof. FreightWaves does not assume and will not have any liability or responsibility to Recipient or any other person or entity for any Third Party Content. Third Party Content is provided solely as a convenience to Recipient.
- c. **Disclaimer of Warranties.** FreightWaves and its Affiliates make no warranty, express or implied, as to results to be attained by the recipient or others from the use of SONAR and FreightWaves shall have no liability for any use Recipient makes of data from SONAR. To the maximum extent permitted by law, FreightWaves and its Affiliates shall not be responsible for or have any liability for any injuries or damages caused by delays or interruptions of SONAR, from whatever cause. Recipient is solely responsible for the accuracy and adequacy of the data and information used by it and the resultant output thereof. RECIPIENT AGREES AND ACKNOWLEDGES THAT ACCESS TO SONAR IS PROVIDED ON AN "AS-IS", BASIS AND ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION ANY REPRESENTATIONS OR WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY DISCLAIMED.
- d. **Limitation of Liability.** NEITHER PARTY TO THIS AGREEMENT NOR ITS AFFILIATES SHALL BE LIABLE FOR CONSEQUENTIAL, INDIRECT, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST REVENUE AND LOST SAVINGS IN ANY THEORY OF LIABILITY. FREIGHTWAVES' AND ITS AFFILIATES' MAXIMUM LIABILITY FOR DAMAGES UNDER THIS AGREEMENT SHALL BE THE TOTAL AMOUNT OF FEES PAID BY RECIPIENT TO FREIGHTWAVES DURING THE NINE (9) MONTHS PRIOR TO THE DATE SUCH LIABILITY OR DAMAGES ARE ASSESSED. IF ANY PORTION OF THIS SECTION, OR SECTION 5(b) IS RULED TO BE UNENFORCEABLE BY AN APPLICABLE AUTHORITY THEN FREIGHTWAVES' LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.
- e. **Indemnification.** Recipient shall indemnify, hold harmless and at Recipient's expense defend FreightWaves and the Covered Entities (as defined in Section 7) against any loss,

claim, demand, fine, penalty, damages or expense (including reasonable attorneys' fees) arising in connection with a breach of this Agreement by Recipient or the use of SONAR by Recipient.

- f. **Force Majeure.** Neither party shall be liable to the other for any default resulting from force majeure, which shall be deemed to include any circumstances beyond the reasonable control of the party or parties affected. No action, regardless of form, arising out of or pertaining to SONAR may be brought by Recipient more than one year after the cause of action has accrued. This Agreement shall not limit any liability for death or personal injury directly resulting from negligence if and to the extent such limitation would violate applicable law.

6. Remedies

- a. **Remedies.** If Recipient or any of its employees, representatives or Affiliates breaches or threatens to breach any provision of this Agreement, FreightWaves shall be entitled to injunctive relief to enforce the provisions of this Agreement, but nothing in this Agreement shall preclude FreightWaves from pursuing any action or other remedy for any breach or threatened breach of this Agreement, all of which shall be cumulative. If FreightWaves prevails in any such action, FreightWaves shall be entitled to recover from Recipient all reasonable costs, expenses and attorneys' fees incurred in connection with such action. As reasonable protection of the proprietary rights of FreightWaves and others in the information provided through SONAR, to avoid breach of FreightWaves' obligations to providers of such information, and to avoid unnecessary uncertainty, burden, and expense for all parties, Recipient acknowledges and agrees that the dissemination or distribution by Recipient of information identical or similar to that provided through SONAR shall be deemed a breach of the terms of Sections 10(a) through 10(d) and shall give rise to an immediate right of FreightWaves to terminate this Agreement and Recipient's rights to SONAR.

7. Parties

- a. **Relevant Parties.** Recipient recognizes that (i) FreightWaves, (ii) its Affiliates, (iii) the respective partners and suppliers of FreightWaves and its Affiliates, and (iv) the respective affiliates of the entities covered in subparagraph (iii) ((iii) and (iv) together, the "**Covered Entities**"), each have rights with respect to SONAR, including the software, data, information and other items provided by FreightWaves and its Affiliates by reason of Recipient's use of SONAR. References to an entity's "**Affiliates**" in this Agreement shall refer to any entity that is controls, is controlled by or is under common control with the first entity.
- b. **Use of Third Parties.** Recipient acknowledges and agrees that FreightWaves may delegate certain of its responsibilities, obligations and duties under or in connection with this Agreement to one or more third parties or to an Affiliate.

8. Proprietary Rights

- a. **Proprietary Rights to SONAR.** The Recipient acknowledges that the data associated with SONAR was developed, compiled, prepared, revised, selected and/or arranged by FreightWaves and others (including certain information sources) through the application of methods and standards of judgment developed and applied through the expenditure of substantial time, effort and money and constitute valuable industrial and Intellectual Property of FreightWaves and such others. “**Intellectual Property**” shall mean patents, copyrights, trademarks, trade secrets and other intellectual property and proprietary rights. Recipient agrees to protect the Intellectual Property of FreightWaves and all others having rights in SONAR during and after the Term. Recipient acknowledges and agrees that it has no ownership rights in and to SONAR and that no such rights are granted under this Agreement. Recipient shall honor and comply with all written requests made by FreightWaves or its suppliers to protect their and others’ contractual, statutory and common law rights and Intellectual Property in SONAR with the same degree of care used to protect its own proprietary rights, which in no event shall be less than reasonable efforts. Recipient agrees to notify FreightWaves in writing promptly upon becoming aware of any unauthorized access or use by any party or of any claim that SONAR infringe upon any copyright, trademark, or other contractual, statutory or common law rights.
- b. **Use of Marks.** The Recipient shall not use any of FreightWaves’ or its Affiliates’ trademarks, trade names, or service marks in any manner which creates the impression that such names and marks belong to or are identified with Recipient, and Recipient acknowledges that it has no ownership rights in and to any of these names and marks. Recipient acknowledges that it has no ownership rights in and to any of these names and marks.

9. Assignment

- a. **Assignment by Recipient.** Recipient shall have the right to assign this Agreement or the rights hereunder only with the prior, written consent of FreightWaves, which consent will not be unreasonably withheld or delayed. Notwithstanding any assignment, Recipient will remain responsible for any act or omission by any assignee.

10. Composition of Agreement

- a. **Complete Agreement.** This Agreement, together with the Schedule(s), is the complete and exclusive statement of the agreements between the parties with respect to the subject matter and supersedes any oral or written communications or representations or agreements. No changes, modifications or waivers regarding this Agreement shall be binding unless in writing and signed by both parties.
- b. **Severability.** FreightWaves and Recipient intend this Agreement to be a valid legal instrument. If any provision of this Agreement shall be held invalid, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent permitted by law. The invalid provision shall be reformed to the minimum extent necessary to correct any invalidity while preserving to the maximum extent the rights and commercial expectations of the parties. The headings in this Agreement are intended for convenience of reference and shall not affect its interpretation.

11. Governing Law and Venue

- a. **Governing Law.** This Agreement and the legal relations among the parties shall be governed by and construed in accordance with the laws of the State of Tennessee regardless of the laws that might otherwise govern under applicable choice-of-law principles.
- b. **Venue for Dispute Resolution.** The parties agree to submit to the jurisdiction of the state courts of Tennessee located in Hamilton County or the United States District Court for the Eastern District of Tennessee in connection with any matters arising out of this Agreement and not to assert a defense of forum non-conveniens or sovereign immunity doctrines in connection with any action.

12. Electronic Signatures

- a. This Agreement, including any Schedule(s), and any modifications, waivers or notifications may be executed and delivered by facsimile, electronic mail, or other electronic means, including via a website designated by FreightWaves by completing the procedures specified on that website. Any such facsimile, electronic mail transmission, or communication via such electronic means, including any communication implementing the procedures in such website, shall constitute the final agreement of the parties and conclusive proof of such agreement. Any such facsimile, electronic mail transmission, or communication via such electronic means shall be deemed to be in writing. If Recipient's signature or acknowledgement is required or requested with respect to any document in connection with this Agreement and any employee or representative authorized by Recipient "clicks" in the appropriate space on a website designated by FreightWaves or takes such other action as may be indicated by FreightWaves, Recipient shall be deemed to have signed or acknowledged the document to the same extent and with the same effect as if Recipient had signed the document manually. Recipient acknowledges and agrees that it has the ability and knowledge to print information delivered to Recipient electronically, or otherwise knows how to store that information in a way that ensures that it remains accessible to Recipient in an unchanged form.

13. Survival of Terms

- a. **Survival.** All provisions of this Agreement that do not by the express terms of this Agreement terminate or expire at any point in time shall survive any termination or expiration of this Agreement.