

## TRIMBLE CONNECT TERMS OF SERVICE

**[Last Updated: Jan 16, 2018]**

These Trimble Connect Terms of Service (“**Agreement**”) are entered into as of the Effective Date between Trimble Inc., a Delaware corporation, and its affiliates (“**Trimble**”) and you (“**Customer**” or “**you**”), an entity accessing or using the Trimble Connect Service.

Entry into the Agreement. The “**Effective Date**” of this Agreement is the date which is the earlier of (a) Customer’s initial access to the Service or (b) the effective date of the Order Form referencing this Agreement. This Agreement governs use of the Service no matter how accessed, including without limitation via a mobile, tablet, web or virtual/mixed reality application. If the individual entering into this Agreement is an employee or agent of Customer, then such individual must be authorized to, and by agreeing to the terms of this Agreement hereby does, bind Customer to this Agreement.

Order Forms. Customer and Trimble may enter into order forms, quotations, change orders, sales agreements, or any other document referencing this Agreement (which may consist of online registration or separate Trimble order forms) (each, an “**Order Form**”) for Customer’s purchase of a subscription to the Service from Trimble. The version of this Agreement referenced in the Order Form will govern Customer’s purchase of the Services specified therein.

Personal User. If you are a Personal User (as defined below), then certain provisions of this Agreement will not apply to your use of the Service. Section 2.7 (Personal User) provides more details.

Changes to these Terms. **From time to time, Trimble may modify this Agreement.** Any changes will be effective upon the next renewal of Customer’s Subscription Term (as defined below). Customer may elect not to renew its Subscription Term if it does not agree to such changes (but use of the Service during the renewal Subscription Term will constitute acceptance of the amended Agreement). Trimble will use reasonable efforts to notify Customer of the changes through communications via Customer’s account, email or other means. Customer may be required to click to accept or otherwise agree to the modified Agreement before continuing to use the Service.

**BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT OR ACCESSING OR USING THE SERVICE, YOU ARE AGREEING TO BE BOUND BY ALL TERMS, CONDITIONS, AND NOTICES CONTAINED OR REFERENCED IN THIS AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, PLEASE DO NOT USE THE SERVICE. FOR CLARITY, EACH PARTY EXPRESSLY AGREES THAT THIS AGREEMENT IS LEGALLY BINDING UPON IT.**

### 1. DEFINITIONS:

“**Affiliate**” means any entity under the control of Customer where “control” means ownership of or the right to control greater than 50% of the voting securities of such entity.

“**Content**” means text, drawings, blueprints, models, information, records, maps, or other content.

“**Contractor**” means an independent contractor or consultant who is not a competitor of Trimble.

“**Documentation**” means the end user technical documentation provided with the Service.

“**Permitted User**” means an employee of Customer who is permitted to use the Service. Customer may also permit its Affiliates and Contractors to be Permitted Users in accordance with Section 2.4 (Contractors and Affiliates).

“**Personal User**” means an individual using the Service on a free basis under a “Personal” plan or similar plan offered by Trimble.

**“Project”** means a repository created by a Permitted User to share and store Content provided by Customer and Third Party Collaborators for use on a construction project.

**“Service”** means Trimble’s proprietary Trimble Connect software-as-a-service solution, as described in the applicable Order Form.

**“Third Party Collaborator”** means an unaffiliated third party that Customer invites to participate on a Project. A Third Party Collaborator may be another enterprise customer of the Service or a Personal User.

## **2. THE SERVICE**

**2.1. Service Overview.** The Service is designed to enable Customer to create one or more Project(s) consisting of assorted Content and to collaborate internally and with outside contributors on such Projects. As further described in Section 4.1, a Permitted User (acting as the manager of a Project) may invite other Permitted Users and Third Party Collaborators to submit and review Content in, and retrieve Content from, Projects.

**2.2. Access to the Service.** The Service is provided on a subscription basis for a set term designated on the applicable Order Form (each, a **“Subscription Term”**). Customer may access and use the Service solely for its own benefit and in accordance with the terms and conditions of this Agreement, the Documentation and any scope of use restrictions designated in the applicable Order Form. Use of and access to the Service is permitted concurrently only by the number of Permitted Users of Customer specified in the applicable Order Form. Each Permitted User must be at least 13 years of age. If Customer is given passwords to access the Service, Customer will require that all Permitted Users keep user ID and password information strictly confidential and not share such information with any unauthorized person. User IDs are granted to individual, named persons and may not be shared. Customer will be responsible for any and all actions taken using Customer’s accounts and passwords. In the event that any Permitted User who has access to a user ID is no longer an employee of Customer, Customer will be solely responsible for de-activating such Permitted User’s access, and may re-allocate such Permitted User’s access to a different employee. Further, Customer may transfer Permitted User status from one employee to another at any time, provided that Customer remains compliant with this Section 2.2, including without limitation by limiting the number of Permitted Users to the number specified in the applicable Order Form.

**2.3. Client Software.** If applicable for use of the Service, Customer may download certain desktop, mobile and/or virtual/mixed reality software made available by Trimble (**“Client Software”**). Subject to all of the terms and conditions of this Agreement, Trimble grants to Customer a limited, non-transferable, non-sublicensable, non-exclusive license during any applicable Subscription Term to use the object code form of the Client Software internally, but only in connection with Customer’s use of the Service and otherwise in accordance with the Documentation and this Agreement. The Client Software is deemed to be part of the Service.

**2.4. Contractors and Affiliates.** Customer may permit its Contractors and Affiliates to serve as Permitted Users, provided Customer remains responsible for compliance by each such Contractor or Affiliate with all of the terms and conditions of this Agreement and any such use of the Service by such Contractor or Affiliate is for the sole benefit of Customer. Use of the Service by the Affiliates, Contractors and Customer in the aggregate must be within the restrictions in the applicable Order Form. The Affiliate rights granted in this section will not apply to any “enterprise wide” licenses unless Affiliate usage is designated in the applicable Order Form.

**2.5. General Restrictions.** Customer will not (and will not permit any third party to): (a) rent, lease, provide access to or sublicense the Service to a third party; (b) use the Service to provide, or incorporate the Service into, any product or service provided to a third party; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the Service, except to the extent expressly permitted by applicable law (and then only upon advance notice to Trimble); (d) copy or modify the Service or any Documentation, or create any derivative work from any of the foregoing; (e) remove or obscure any proprietary or other notices contained in the Service (including any reports or data printed from the Service); or (f) publicly disseminate information regarding the performance of the Service.

**2.6. Third Party Terms.** Trimble may use third party products and services (including without limitation software subject to open source and third party license terms that is incorporated in the Client Software) in its provisioning of the Service, including without limitation for hosting Customer Data (**“Third Party Offerings”**). If Trimble notifies

Customer of any additional end user terms or open source or third party licenses for use of such products and services (“**Third Party Terms**”), then Customer agrees to comply with such Third Party Terms. Any noncompliance by Customer with any Third Party Terms will be deemed a material breach of this Agreement. Neither Trimble nor Trimble’s suppliers offer any warranty in connection with any Third Party OFFERINGS and neither Trimble nor ITS Suppliers will be liable to CUSTOMER for such Third Party OFFERINGS. In the event of a conflict between this Agreement and any Third Party Terms, the Third Party Terms will control with regard to Customer’s use of the relevant Third Party Offerings. The applicable Third Party Terms with respect to the Service (including, without limitation, any open source software utilized in the Client Software and the applicable license terms) are listed at [Trimble Connect Third Party Terms and Attributions](#), as may be updated from time to time and which are incorporated into this Agreement by this reference.

**2.7. Personal User.** If Customer is a Personal User, then Customer’s use of and access to the Service is limited as set forth in the applicable Order Form, and the following Sections of this Agreement are not applicable to Customer: 2.4 (Contractors and Affiliates), 2.8 (Trial Subscriptions), and 8.1 (Limited Warranty). Further, if Customer is a Personal User, then in addition to any other termination rights Trimble may have under this Agreement, Trimble may terminate this Agreement at any time upon thirty (30) days’ notice to Customer. For the avoidance of doubt, if Customer is a Personal User, then the applicable provisions of this Agreement that apply to Permitted Users apply to Customer as well in its individual capacity.

**2.8. Trial Subscriptions.** Where indicated in the applicable Order Form, Customer may receive free access or a trial or evaluation subscription to the Service (a “**Trial Subscription**”). If Customer receives a Trial Subscription, then Customer may use the Service in accordance with the terms and conditions of this Agreement and the applicable Order Form for the period designated in such Order Form or otherwise by Trimble (and if not designated, then for thirty (30) days) (“**Trial Period**”). Trial Subscriptions are permitted solely for Customer’s use to determine whether to purchase a full subscription to the Service. Customer may not use a Trial Subscription for any other purpose, including without limitation for competitive analysis. At the end of the Trial Period, the Trial Subscription will expire and Customer will have the option to purchase a full subscription to the Service. If Customer purchases a full subscription, all of the terms and conditions in this Agreement will apply to such purchase and the use of the Service unless otherwise specified in the Order Form for the Trial Subscription. Trimble has the right to terminate a Trial Subscription at any time for any reason. The Service may have a mechanism that limits access during the Trial Period and Trimble may otherwise restrict certain product functionality during the Trial Period. Customer will not attempt to circumvent any such mechanism or restriction. Trimble has no obligation to retain Customer Data used with a Trial Subscription during or after the Trial Period. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, DURING THE TRIAL PERIOD THE SERVICE IS PROVIDED “AS IS” AND TRIMBLE WILL HAVE NO WARRANTY OR OTHER OBLIGATIONS WITH RESPECT TO TRIAL SUBSCRIPTIONS UNLESS OTHERWISE SPECIFIED IN THE APPLICABLE ORDER FORM.

### **3. Customer DATA**

**3.1. Definition.** “**Customer Data**” means any Content, business information or other data of any type that is input by or on behalf of Customer into the Service, including without limitation information manually input by Permitted Users or imported via a third party product or service.

**3.2. Rights in Customer Data.** As between the parties, Customer will retain all right, title and interest (including any and all intellectual property rights) in and to the Customer Data as provided to Trimble. Subject to the terms of this Agreement, Customer hereby grants to Trimble a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of and publicly perform and display the Customer Data solely to the extent necessary to provide the Service to Customer (including making Content available to Customer’s Third Party Collaborators).

**3.3. Storage of Customer Data.** Trimble does not provide an archiving service. Trimble agrees only that it will not intentionally delete any Customer Data from the Service prior to termination of Customer’s applicable Subscription Term. Trimble expressly disclaims all other obligations with respect to storage.

**3.4. Customer Obligations.**

a) In General. Customer will ensure that Customer's use of the Service and all Customer Data is at all times compliant with Customer's privacy policies and all applicable local, state, federal and international laws, regulations and conventions, including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data. Customer is solely responsible for the accuracy, content and legality of all Customer Data. Customer represents and warrants to Trimble that Customer has sufficient rights in the Customer Data to grant the rights granted to Trimble in Section 2 above and that the Customer Data does not infringe or violate the intellectual property, publicity, privacy or other rights of any third party.

b) Health Information. Customer specifically agrees not to submit to the Service any patient, medical or other protected health information regulated by HIPAA or any similar federal or state laws, rules or regulations ("**Health Information**") and acknowledges that Trimble is not a Business Associate or subcontractor (as those terms are defined in HIPAA) and that the Service is not HIPAA compliant. "**HIPAA**" means the Health Insurance Portability and Accountability Act, as amended and supplemented. Trimble will have no liability under this Agreement for Health Information, notwithstanding anything to the contrary herein.

c) Misuse. Customer agrees that Customer will not misuse the Service, including without limitation in the submission of Customer Data. Misuse includes, but is not limited to:

- Using the Service to disseminate or convey inappropriate, defamatory, obscene, salacious, or unlawful information, images or materials; or to defame, harass, stalk, threaten or otherwise violate the legal rights of others.
- Using the Service in such a manner so as to interfere unreasonably with its use by others; or attempting or assisting another to access, alter, or interfere with the communications and/or information of another user.
- Subscription fraud or unauthorized access.
- Uploading, or otherwise making available, files that contain text, images, photographs, software or other materials owned by others that are protected by intellectual property laws (e.g., copyright, trademark, rights of privacy or publicity) and for which Customer has not received all necessary and legal consents for their use.
- Using any information, images or other materials available through the Service in any manner that infringes any copyright, trademark, patent, trade secret or other proprietary right of any party.
- Advertising, offering to sell or buy goods, or using the Service for business promotional purposes.
- Violating any code of conduct associated with the Service, or any applicable laws or regulations.
- Taking any action that imposes an unreasonable or disproportionately large load on the Service infrastructure; or uploading files that contain viruses, Trojan horses, worms, or other similar software or programs that cause damage to computers or property of others.

**3.5. Indemnification by Customer.** Customer will indemnify, defend and hold harmless Trimble and its affiliates from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with any claim arising from or relating to (a) any Customer Data, (b) any breach or alleged breach by Customer of Section 2.6 (Third Party Terms) or Section 4 (Customer Obligations), or (c) any service or product offered by Customer in connection with or related to the Service. This indemnification obligation is subject to Customer receiving (i) prompt written notice of such claim (but in any event notice in sufficient time for Customer to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (iii) all necessary cooperation of Trimble at Customer's expense. Customer will not settle any claim without Trimble's prior written consent, unless the settlement fully and unconditionally releases Trimble and does not require Trimble to pay any amount, take any action, or admit any liability.

**3.6. Content Format.** Customer acknowledges and agrees that the Service will only process Content submitted in formats that are currently interoperable with the Service, as further set forth in the Documentation.

## **4. COLLABORATION**

**4.1. Project Invitations.** The Permitted User who creates a Project may invite other Permitted Users and Third Party Collaborators to access and contribute Content to, and retrieve Content from, the Project. Such Permitted User will have sole discretion as to the access rights for each other Permitted User or Third Party Collaborator with respect to

the Project. If Customer is a Personal User, then the number of other Permitted Users and Third Party Collaborators whom Customer may invite to collaborate on a Project is limited as set forth in the applicable Order Form.

**4.2. Third Party Collaborators.** If a Third Party Collaborator is not a customer of the Service that has agreed to this Agreement and created its own account, then such Third Party Collaborator will not be able to access any Project. For the avoidance of doubt, Trimble is not responsible for any actions taken by Third Party Collaborators.

**4.3. Participation in Other Projects.** Customer and its Permitted Users may collaborate on projects managed by other Trimble customers using the Service ("**Other Customers**"). Use of the Service by Customer in connection with such collaboration remains governed by this Agreement between Trimble and Customer. Without limiting the generality of the foregoing, Customer is responsible for any Content that Customer or its Permitted Users submit to any Other Customer's project.

**4.4. No Expectation of Privacy.** Customer acknowledges that any Content submitted to a Project may be accessed by Third Party Collaborators and their permitted users and Customer has no expectation of privacy with respect to any such Content. Further, if Customer submits Content to a project managed by an Other Customer, Customer (a) grants such Other Customer the right to use and share such Content within its project and (b) acknowledges and agrees that such Content may be accessed and retrieved by the Other Customer's permitted users and other collaborators, and Customer will have no expectation of privacy with respect to such Content.

## 5. OWNERSHIP

**5.1. Trimble Technology.** This is a subscription agreement for access to and use of the Service. Customer acknowledges that it is obtaining only a limited right to the Service and that irrespective of any use of the words "purchase", "sale" or like terms in this Agreement no ownership rights are being conveyed to Customer under this Agreement. Customer agrees that Trimble or its suppliers retain all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to all of the Service, Documentation, Professional Services deliverables and any and all related and underlying technology and documentation, and any derivative works, modifications or improvements of any of the foregoing, including as may incorporate Feedback (collectively, "**Trimble Technology**"). Except as expressly set forth in this Agreement, no rights in any Trimble Technology are granted to Customer. Further, Customer acknowledges that the Service is offered as an on-line, hosted solution, and that Customer has no right to obtain a copy of the Service, except for the Client Software.

**5.2. Feedback.** Customer, from time to time, may submit comments, questions, suggestions or other feedback relating to any Trimble product or service to Trimble ("**Feedback**"). Trimble may freely use or exploit Feedback in connection with any of its products or services.

**5.3. Aggregated Anonymous Data.** Notwithstanding anything to the contrary herein, Customer agrees that Trimble and its affiliates may use, process, manipulate, modify, copy, publicly perform and display, compile, and create derivative works from Customer Data and any other data related to the Service, including, but not limited to, using such data for any internal business purpose, and for the improvement, support, and operation of the Service, and/or the development of other products or service capabilities. Customer hereby acknowledges and agrees that Trimble and its affiliates may disclose to third parties aggregate data derived from Customer Data or from any other data related to the Service, so long as such aggregate data is not personally identifiable with respect to Customer. Further, all service data, usage data, and other data that does not identify Customer and any data that is derived from the Customer Data and all data, reports, derivative works, compilations, modifications and other materials created by Trimble from or with use of such data will be, in each case, the sole and exclusive property of Trimble; and Customer, on Customer's behalf and on behalf of Customer, hereby assigns all of Customer's, title and interest, if any, in and to such items to Trimble without any fees and without rights to future royalties.

## 6. Subscription Term, FEES & PAYMENT

**6.1. Renewals.** Unless otherwise specified on the applicable Order Form, each Subscription Term shall automatically renew for additional periods equivalent in length to the initial Subscription Term unless either party gives the other written notice of termination at least thirty (30) days prior to expiration of the then-current Subscription Term.

**6.2. Fees and Payment.** All fees are as set forth in the applicable Order Form and will be paid by Customer within thirty (30) days of invoice, unless otherwise specified in the applicable Order Form. Except as expressly set forth in

Section 8 (Limited Warranty), all fees are non-refundable. The rates in the Order Form are valid for the initial Subscription Term. Customer is required to pay all sales, use, GST, value-added, withholding, or similar taxes or levies, whether domestic or foreign, other than taxes based on the income of Trimble. Any late payments will be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.

**6.3. Suspension of Service.** If Customer's account is thirty (30) days or more overdue, in addition to any of its other rights or remedies (including but not limited to any termination rights set forth herein), Trimble reserves the right to suspend Customer's access to the Service (and any related services) without liability to Customer until such amounts are paid in full.

## 7. TERM AND TERMINATION

**7.1. Term.** This Agreement is effective as of the Effective Date and expires on the date of expiration or termination of all Subscription Terms.

**7.2. Termination for Cause.** Either party may terminate this Agreement (including all related Order Forms) if the other party (a) fails to cure any material breach of this Agreement (including a failure to pay fees) within thirty (30) days after written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter).

**7.3. Effect of Termination.** Upon any expiration or termination of this Agreement, Customer will immediately cease any and all use of and access to the Service (including any and all related Trimble Technology) and delete (or, at Trimble's request, return) any and all copies of the Documentation, any Trimble passwords or access codes and any other Trimble Confidential Information in its possession. Except where an exclusive remedy is specified, the exercise of either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise.

**7.4. Post-Termination Data Access.** Provided this Agreement was not terminated for Customer's breach, Trimble may continue to provide Customer with read-only access to Customer Data submitted to the Service prior to termination or expiration. Trimble shall determine whether to allow this read-only access, and the duration during which it allows such access, in its sole discretion. Further, after termination or expiration of this Agreement, Trimble may suspend or terminate Customer's access to Customer Data and/or delete any Customer Data on the Service at any time and for any or no reason, with or without notice to Customer.

**7.5. Survival.** The following Sections of this Agreement will survive any expiration or termination of this Agreement: 2.5 (General Restrictions), 3 (Storage of Customer Data), 3.5 (Indemnification by Customer), 5 (Ownership), 6.2 (Fees and Payment), 7 (Term and Termination), 8.2 (Warranty Disclaimer), 8.3 (Warnings; Additional Disclaimers), 11 (Limitation of Remedies and Damages), 12 (Confidential Information) and 14 (General Terms).

## 8. LIMITED WARRANTY

**8.1. Limited Warranty.** Trimble warrants, for Customer's benefit only, that the Service, when used by Customer during the Term, will operate in substantial conformity with its applicable Documentation. Trimble does not warrant that Customer's use of the Service will be uninterrupted or error-free, nor does Trimble warrant that it will review the Customer Data for accuracy or that it will preserve or maintain the Customer Data without loss. Trimble's sole liability (and Customer's sole and exclusive remedy) for any breach of this warranty will be, at no charge to Customer, for Trimble to use commercially reasonable efforts to correct the reported non-conformity, or if Trimble determines such remedy to be impracticable, either party may terminate the applicable Subscription Term and Customer will receive as its sole remedy a refund of any fees Customer has pre-paid for use of such Service for the terminated portion of the applicable Subscription Term. The limited warranty set forth in this Section 1 will not apply: (i) unless Customer makes a claim within thirty (30) days of the date on which Customer first noticed the non-conformity, (ii) if the error was caused by misuse or unauthorized modifications of the Service, (iii) if the error was caused by Customer or third-party hardware, software or services, or (iv) to use and access provided during a Trial Period.

**8.2. Warranty Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY IN SECTION 1, THE SERVICE IS PROVIDED "AS IS". NEITHER TRIMBLE NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED,

STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. Trimble does not warrant that Customer's use of the Service will be uninterrupted or error-free, nor does Trimble warrant that it will review the Customer Data for accuracy or that it will preserve or maintain the Customer Data without loss. Trimble WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF Trimble. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, WILL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

**8.3. Warnings; Additional Disclaimers.** TRIMBLE SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER FOR THE OUTPUT OBTAINED THROUGH THE USE OF THE SERVICE OR CUSTOMER'S RELIANCE ON SUCH OUTPUT. CUSTOMER IS RESPONSIBLE FOR THE SUPERVISION, MANAGEMENT, AND CONTROL OF CUSTOMER'S USE OF THE SERVICE. THIS RESPONSIBILITY INCLUDES, BUT IS NOT LIMITED TO, THE DETERMINATION OF APPROPRIATE USES FOR THE SERVICE AND THE SELECTION OF THE SERVICE AND OTHER PROGRAMS TO ACHIEVE INTENDED RESULTS. CUSTOMER IS ALSO RESPONSIBLE FOR ESTABLISHING THE ADEQUACY OF INDEPENDENT PROCEDURES FOR TESTING THE RELIABILITY AND ACCURACY OF ANY OUTPUT OF THE SERVICE. TRIMBLE MAKES NO WARRANTY THAT THE SERVICE WILL MAINTAIN INTEROPERABILITY WITH ANY PARTICULAR CONTENT FORMAT.

**9. Support AND SERVICE LEVELS.** During the Subscription Term, (a) Trimble will provide end user support in accordance with the Trimble Connect Support Policy, available at [Support Policy – Trimble Connect](#) or a successor URL, and (b) the Service will be subject to the Trimble Connect Service Level Agreement, available at [Trimble Connect Service Level Agreement](#) or a successor URL.

**10. Professional Services.** If the applicable Order Form indicates that Trimble will provide any professional consulting services ("Professional Services") to Customer, then Trimble's provision of and Customer's receipt of such Professional Services will be governed by Trimble's standard Professional Services terms, available at <http://www.trimble.com/legal/tandcforservices> or a successor URL, unless otherwise mutually agreed by the parties in writing.

## **11. Limitation of Remedies and Damages**

**11.1. Consequential Damages Waiver.** EXCEPT FOR EXCLUDED CLAIMS (DEFINED BELOW), NEITHER PARTY Nor its suppliers WILL BE LIABLE FOR ANY LOSS OF USE, LOST or INACCURATE DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

**11.2. Liability Cap.** EXCEPT FOR EXCLUDED CLAIMS, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, TRIMBLE'S AND ITS SUPPLIERS' ENTIRE LIABILITY TO CUSTOMER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, WILL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO TRIMBLE DURING THE PRIOR TWELVE (12) MONTHS UNDER THIS AGREEMENT.

**11.3. Excluded Claims.** "Excluded Claims" means any claim arising (a) from Customer's breach of Section 5 (General Restrictions), Section 2.6 (Third Party Terms), or Section 12 (Confidential Information); or (b) under Section 3 (Customer Data).

**11.4. Failure of Essential Purpose.** The parties agree that the limitations specified in this Section 11 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

**12. CONFIDENTIAL INFORMATION.** Each party (as “**Receiving Party**”) agrees that all code, inventions, know-how, business, technical and financial information it obtains from the disclosing party (“**Disclosing Party**”) constitute the confidential property of the Disclosing Party (“**Confidential Information**”), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. The Trimble Technology, performance information relating to the Service, and the terms and conditions of this Agreement will be deemed Confidential Information of Trimble without any marking or further designation. Except as expressly authorized herein, the Receiving Party will (1) hold in confidence and not disclose any Confidential Information to third parties and (2) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement. The Receiving Party may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know (including, for Trimble, the subcontractors referenced in Section 14.8), provided that such representatives are bound to confidentiality obligations no less protective of the Disclosing Party than this Section 12 and that the Receiving Party remains responsible for compliance by any such representative with the terms of this Section 12. The Receiving Party’s confidentiality obligations will not apply to information that the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may make disclosures to the extent required by law or court order, provided the Receiving Party notifies the Disclosing Party in advance and cooperates in any effort to obtain confidential treatment. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law. For the avoidance of doubt, unauthorized access by third parties to any Confidential Information will not be deemed a breach of this Section 12.

**13. CO-MARKETING.** Customer agrees that Trimble may disclose Customer as a customer of Trimble. Customer and Trimble may participate in joint marketing activities (including, without limitation, issuance of a joint press release) as mutually agreed by the parties.

#### **14. GENERAL TERMS**

**14.1. Assignment.** This Agreement will bind and inure to the benefit of each party’s permitted successors and assigns. Customer may not assign this Agreement, by operation of law or otherwise, except upon the advance written consent of Trimble. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 1 will be null and void.

**14.2. Severability.** If any provision of this Agreement will be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect.

**14.3. Governing Law; Venue.** This Agreement will be construed in accordance with the laws of the State of California, USA without reference to its choice of law provisions and without regard to the United Nations Convention on the International Sale of Goods. The Federal and State courts located in Santa Clara County, California will be the exclusive venue for any claim or dispute between the parties or against any agent, employee, successor or assign of the other related to this Agreement and the parties hereby consent to the personal jurisdiction of those courts for such purposes.

**14.4. Notices and Electronic Communications.** By registering with Trimble, Customer understands that Trimble may send Customer communications or data regarding the Service, including but not limited to (a) notices about Customer’s use of the Service, including any notices concerning violations of use, (b) updates, and (c) promotional information and materials regarding Trimble’s products and services, via electronic mail. Trimble provides Customer the opportunity to opt-out of receiving promotional and marketing-related electronic mail from us by following the opt-out instructions provided in the message. Any notice or other communication given by Customer to Trimble

regarding this Agreement will be deemed given and served when personally delivered, delivered by reputable international courier requiring signature for receipt, or five (5) business days after mailing (postage prepaid), addressed to Trimble at its notice address. Trimble's notice address is: Trimble Navigation Limited, Attn: General Counsel, 935 Stewart Drive, Sunnyvale, CA 94085, USA.

**14.5. Amendments; Waivers.** No supplement, modification, or amendment of this Agreement will be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement will be for administrative purposes only and will have no legal effect.

**14.6. Entire Agreement.** This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. Customer acknowledges that the Service is an on-line, subscription-based offering, and that in order to provide improved customer experience Trimble may make changes to the Service, and Trimble will update the applicable Documentation accordingly. Any support terms described in the applicable Order Form may be updated from time to time upon reasonable notice to Customer to reflect process improvements or changing practices (but the modifications will not materially decrease Trimble's obligations as compared to those reflected in such terms as of the Effective Date). Any contrary terms or conditions appearing on Customer orders or associated purchase documentation will be of no effect.

**14.7. Force Majeure.** Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events that occur after the signing of this Agreement and that are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.

**14.8. Subcontractors.** Trimble may use the services of subcontractors and permit them to exercise the rights granted to Trimble in order to provide the Service and Professional Services under this Agreement, provided that Trimble remains responsible for (i) compliance of any such subcontractor with the terms of this Agreement and (ii) for the overall performance of the Service as required under this Agreement.

**14.9. Subpoenas.** Nothing in this Agreement prevents Trimble from disclosing Customer Data to the extent required by law, subpoenas, or court orders, but Trimble will use commercially reasonable efforts to notify Customer where permitted to do so.

**14.10. Independent Contractors.** The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

**14.11. Export Control.** The Service is administered by Trimble from its offices or those of its affiliates at various locations within the United States of America. In Customer's use of the Service, Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing: (a) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country; (b) Customer will not (and will not permit any of its users to) access or use the Service in violation of any U.S. export embargo, prohibition or restriction; and (c) Customer will not submit to the Service any information that is controlled under the U.S. International Traffic in Arms Regulations. Trimble may also make use of its U.S. or foreign affiliates or one or more external service providers to host the Service. Consequently, data is collected, sent, processed and stored in the United States and may be collected, sent, processed and stored outside the United States. Customer acknowledges that in the event of conflict of privacy laws or practices in the Customer's jurisdiction and those in the domicile of the entity hosting Service the law applicable in the domicile of the hosting entity will have precedence at all times. Trimble makes no representation that the Service is appropriate or available for use in locations outside the United States, and

accessing them from territories where they are illegal is prohibited. Customer may not use or export or re-export the Service or any copy or adaptation in violation of any applicable laws or regulations including, without limitation, United States export laws and regulations. If Customer chooses to access the Service from locations outside the United States, Customer does so on its own initiative and is responsible for compliance with applicable local laws.

In addition to the foregoing, if Customer is located in a country identified in the U.S. Department of Commerce Country Group D list, then it (1) acknowledges that the Service is subject to the Export Administration Regulations (EAR) and the jurisdiction of the U.S. Department of Commerce or subject to the International Traffic in Arms Regulations (ITAR) and the jurisdiction of the U.S. Department of State; (2) certifies that the export, re-export, resale, and/or transfer to any party who is listed by the government of the United States as prohibited from receiving the Service or other restrictions to any destination, end-user, or for any end use prohibited by the laws of the United States, or any other applicable law where such law does not conflict with the laws of the United States, will not be violated; (3) certifies that the Service will not be resold, transferred, or re-exported without prior authorization from the U.S. Government, to any military entity on the U.S. Department of Commerce Country Group D list; (4) certifies that the Service will not be used in designing, developing, production of or using rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems (including cruise missile systems, target drones and reconnaissance drones); (5) certifies that the Service will not be used in the design, development, production, stockpiling, or using chemical or biological weapons, or precursors; (6) certifies that the Service will not be used in the design, development, production, or testing of nuclear weapons or nuclear explosive devices; (7) certifies that the Service will not be exported/re-exported to Cuba, Iran, North Korea, Sudan and Syria or any other country under an export embargo/sanction by the U.S. Department of Treasury or U.S. Department of Commerce at the time of export; (8) acknowledges that U.S. law prohibits the sale, transfer, export, or re-export or other participation in any transaction involving products with individuals or companies listed in the U.S. Commerce Department's table of Denial Orders, the U.S. Department of State's list of individuals debarred from receiving Munitions List items or other entity lists published by agencies of the U.S. Government; and (9) agrees that the export control requirements in this Section 14.11, including without limitation (1)-(8) above, will survive the completion, early termination, cancellation or expiration for this Agreement.

Customer will defend, indemnify and hold Trimble and its affiliates harmless against any liability (including attorneys' fees) arising out of Customer's failure to comply with the terms of this Section 14.11. Customer's failure to comply with any term of this Section 14.11 constitutes a material breach of this Agreement and entitles Trimble to immediately terminate this transaction for Customer's use of the Service in addition to any other remedy available at law or equity.

**14.12. Government End-Users.** Elements of the Service are commercial computer software. If the user or licensee of the Service is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Service, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Service was developed fully at private expense. All other use is prohibited.

**14.13. Digital Millennium Copyright Act.** If Customer believes that any content submitted to the Services by another user copies Customer's work in a manner that constitutes copyright infringement, Customer will provide Trimble's DMCA administrator the written information specified below, as required by the Online Copyright Infringement Liability Limitation Act of the Digital Millennium Copyright Act, Title 17, United States Code, Section 512(c)(2):

- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- A description of the copyrighted work that Customer claims has been infringed upon;
- A description of where the material that Customer claims is infringing is located on the Services;
- Customer's address, telephone number, and e-mail address;

- A statement by Customer that Customer has a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- A statement by Customer, made under penalty of perjury, that the above information in Customer's notice is accurate and that Customer is the copyright owner or authorized to act on the copyright owner's behalf.

Trimble's DMCA administrator for notice of claims of copyright infringement on the Services can be reached as follows:

DMCA Administrator

Legal Department

Trimble Inc.

935 Stewart Drive

Sunnyvale, CA 94085

Fax: 408-481-7780

[DMCA@trimble.com](mailto:DMCA@trimble.com)