

# Trimble Connected Community

## Terms of Use & End User License Agreement

These are the general terms and conditions and end user license agreement (collectively, the “*Terms of Use*” or “*TOU*”) that apply to the Trimble Connected Community software based services accessible via the Internet (the “*Services*”) proprietary to Trimble Navigation Limited and its affiliates (“*Trimble*”, “*we*” or “*us*”) and offered and made available through Trimble portals (the “*Sites*”) to businesses and professionals.

You, an individual or a single company or legal entity and the personnel associated with your business (collectively, “*you*” or “*Customer*”), will be granted access to use the “*Service*” for your internal business purposes, conditioned upon your purchase of one or more Service subscription(s) (each a “*Service Subscription*”), which may allow a user to access the Service and/or a Device (as defined below) to connect to the Service, and your acceptance of these TOU. If you are agreeing to these TOU on behalf of a company or other legal entity, you represent that you have the authority to contractually bind such entity and its personnel.

Whether you purchase or obtain your Service Subscription(s) directly from Trimble through one of our Sites, or indirectly from an authorized vendor of the Services, **BY CLICKING ON “OK,” “ACCEPT,” “AGREE,” “SUBMIT” OR ANY BUTTON INDICATING ACCEPTANCE OF THE TOU AND/OR BY ACCESSING OR USING THE SERVICE OR THE SITE, YOU REPRESENT THAT YOU ARE AUTHORIZED TO USE THE SERVICE AND THAT YOU AGREE TO BE BOUND BY THE CURRENTLY POSTED TOU.** FURTHER, SUBJECT TO SECTION 8.2 BELOW, YOUR CONTINUED USE OF THE SERVICE FOLLOWING THE POSTING OF ANY CHANGES TO THE TOU WILL CONFIRM YOUR ACCEPTANCE OF THOSE CHANGES. These Terms of Use constitute a binding, legal agreement between you and Trimble and are intended to have the same force and affect as if you had signed them.

**USE OF THE SERVICE AND THE SITE ARE OFFERED TO YOU CONDITIONED UPON YOUR ACCEPTANCE OF THE TOU WITHOUT ANY MODIFICATIONS. THE TOU CONTAINS DISCLAIMERS OF WARRANTIES AND LIABILITY (See Sections 5.4, 10, 11, 12 and 14.1 below). THESE PROVISIONS FORM AN ESSENTIAL PART OF OUR BARGAIN.**

A current copy of the TOU can be accessed and viewed at any time from the home page of the Site. We recommend that you print and retain copies of the TOU for your records. If you do not agree to the TOU, you agree not to use or access the Service or the Site nor are you authorized to do so.

## Service Terms of Use & End User Service Agreement

*[Last updated & effective date: March 25, 2014]*

### 1. Application Services

1.1 *General Description* The Service is an application software -based service. The Service application software (including mobile applications) is designed to gather and process data and information (“*Data*”) that you may actively import to the Service or that is automatically transferred from mobile devices (“*Devices*”), that you cause to be activated to be connected to the Service. After activation of a Service Subscription, the Data to provide Authorized Users (defined in Section 3) with content, functionality, reports and services, as may be changed from time to time. Service Subscriptions require activation. To have them activated you must (i) accept the payment terms and conditions applicable to your Service Subscription, (ii) accept these TOU, and (iii) consent to the transmission and use of the Data generated from your Devices as further described in section 6.1 below.

The Service may be offered under a variety of Service Subscription plans (“*Service Plans*”) and, therefore, may be subject to additional terms and conditions either posted at our Trimble Store for the Site or contained in other ordering documentation.

The availability of the Service may be affected, inter alia, by planned and unplanned maintenance periods, technology upgrades and as otherwise set forth in these TOU or any description of the Service.

1.2 **Third Party Communications Systems.** Some features of the Service may require use of a third party communications system, such as that of Internet access, wireless or a satellite-based communication system (each, a “**Communications Service**”). UNLESS THE COMMUNICATION SERVICE IS EXPLICITLY MADE PART OF A SERVICE PLAN, CUSTOMER SHALL PURCHASE THESE COMMUNICATION SERVICES. TRIMBLE HAS NO RESPONSIBILITY FOR THE AVAILABILITY, QUALITY OR PERFORMANCE OF WIRELESS OR SATELLITE-BASED COMMUNICATIONS SERVICES OR EQUIPMENT FURNISHED BY THE COMMUNICATION CARRIERS. THE COMMUNICATIONS CARRIERS ARE EXCLUSIVELY RESPONSIBLE FOR SUCH SERVICES AND EQUIPMENT.

1.3 **Data Exchange and Third Party Interfaces.** The Service may permit the communication, transfer and exchange of data between the Service and certain third-party manufactured devices or systems. Trimble does not exercise control over the form or quality of data generated or transmitted by or to third-party manufactured assets, devices or other third-party developed solutions such as custom reports or interfaces (collectively, “**Third-Party Data**”). Therefore, if your Services Subscription permits use of the Service data exchange component you understand and agree to the following:

- Data may only be exchanged between the Service application and Trimble or third-party manufactured assets, devices or systems approved for use with the Service by Trimble;
- Even though Trimble may have approved such use, Third Party Data may not be in a format that may be processed in the Service, and Data may not be in the format to be processed on the third party assets, devices, or systems, and usability or visualization of the Data may be impaired.
- Trimble is not responsible for the quality or accuracy of, or the ability to receive, access or use Third-Party Data that may be reported into the Services or Data exported to or through third party manufactured devices or systems or other third party solutions (e.g., custom reports or interfaces), whether a deficiency is due to third-party caused service outages, third-party software interface incompatibilities or failures, or otherwise;
- Trimble may control all Data transmitted to and from the Service, and may stop or block any Data that Trimble believes may adversely affect performance of the Service.

## **2. Nature of Application & Hosting**

The Service is hosted by or on behalf of Trimble and includes the Service application software that is licensed under section 5 below, and third party software or services (to the extent permitted by the third party suppliers) (“**Third Party Software/Services**”). The Service also may interact with software, which may include firmware, programs or apps run on your Devices. Via the Site, we may make available software or data services of third party suppliers (“**Third Party Suppliers**”). You acknowledge that the Data and the Service may be transmitted through networks and signals that are not specifically protected or encrypted and where third party interception may be possible. You consent to such transmission and waive any claims that you may have against us with respect to such transmission. Subject to the specifics of the Services Subscription and the Service Plan you may make the Service available to Authorized Users on the basis of several factors including, without limitation, Web access, computer use, assets, operating system, Devices activated and maintained by you, username, password and/or other factors. The Service is subject to change from time to time as further described in Section 8 below, and by accessing or using the Service and the Site, you consent to our adding, changing or removing any services made available in conjunction with or through them.

## **3. Authorized Users and Use; Limitations.**

3.1 **Authorized Users** You agree that the Service will be accessed and used only by you. For that purpose you may designate authorized users whom you authorize to access and use the Service (“**Authorized User**”), always provided that you have purchased or otherwise properly obtained a sufficient number of Services Subscriptions for the Authorized Users or Devices connecting to the Services. You agree that the access credential of one Authorized User can only be used by that Authorized User

and you have to assure that the access credentials of one Authorized User only be used by this Authorized User and no other person. Point of delivery for the Service is the Site and, unless Service Plan explicitly entails connection to the Site, connecting to and accessing the Service through Devices and computers is within your sole responsibility, regardless of the nature of such connection. We are not responsible for the network connection or for issues, problems or conditions arising from or related to the network connection, including but not limited to bandwidth issues, network outages, firewalls and/or other conditions that are caused by the Web and/or network connection.

3.2 Limitations on Use Transmission of information using a Device may be subject to legal requirements that may vary from location to location, including radiofrequency use authorization. You must limit use of any Device to those locations where all legal requirements for the use of the Device and the Service communication network have been satisfied. In the event that a Device is used at a location where (i) legal requirements are not satisfied or (ii) transmitting or processing of such information across multiple locations would not be legal, we disclaim any and all liability related to such failure to comply and Trimble may discontinue the transmission of information from that Asset. **You also understand and acknowledge that the Service is not intended to be used for any emergency, safety or mission critical or safety related use or application or other ultra-hazardous activities and you shall not use the Service in that manner.**

## 4. Registration; Payment

4.1 Customer Account In order to log on to the Site and use the Service, an account for you will be created and activated and you may create access credentials or connections for you and Authorized Users and Devices, always subject to your purchasing or otherwise properly obtaining a sufficient number of Service Subscriptions. In the process of creating the account and access credentials you will be asked to provide Trimble with true, accurate, current and complete registration information in relation to you and your Authorized Users and to update such information as necessary. Should we have reasonable grounds to suspect that any information provided in relation to you or an Authorized User is inaccurate, incomplete or untrue, we have the right to suspend or terminate your or the Authorized User's right to access and use the Service.

4.2 Site Access & Password; Security You are responsible for maintaining, and you shall cause all Authorized Users to maintain, the confidentiality of your and your Authorized Users' usernames and passwords and are fully responsible for all activities that occur on the Site under your designated Authorized Users' usernames and passwords. We may require you to change your designated Authorized Users' usernames in the event we determine, in our sole discretion, that any username is offensive or for any other reason. You agree to immediately notify Trimble of any unauthorized use of any Authorized User's username, password, or any other breach of security, and to ensure that Authorized Users logout at the end of each session. You are responsible for disabling the accounts of any Authorized User no longer authorized to access the Site. You acknowledge that Trimble is not responsible for tracking your Authorized User's use of the Service, and that Trimble cannot and will not be liable for any loss or damage arising from your failure to comply with this Section 4.

4.3 Payment You agree to pay all charges and fees in accordance with the payment terms applicable to the Service Subscriptions that you acquire. If data transmission is included in a Service Plan, such transmission may be subject to certain limits. You agree to reimburse Trimble for any charges for data transmission in excess of these limits as well as any activation and de-activation charges that may be imposed by the transmission service provider because of your conduct in accordance with the service providers terms.

## 5. Grant of License; License Restrictions

5.1 Limited License to Customer Subject to your compliance with the TOU, the terms of your Service Subscription(s) and payment of all applicable fees, Trimble grants you a limited, non-exclusive, non-transferable, non-assignable license (without the right to sublicense) to use the Service application software accessed through the Site for business purposes and purposes otherwise consistent herewith. All rights not expressly granted to you herein are reserved by Trimble and its suppliers and licensors.

**5.2 License Restrictions - No Misuse of Services.** Your use of the Service is limited to those uses expressly permitted under your Service Subscription and these TOU. As a condition of your use of the Service you agree that you will not use it for any purpose that is unlawful or prohibited by the TOU. We may restrict or cancel the Service to you if there is a reasonable suspicion of, or any actual misuse or fraudulent use by you. You will be responsible for any costs incurred by us or any other party (including attorney's fees) as a result of such misuse or fraudulent use. You may not: (i) reproduce, modify, publish, distribute, publicly display, adapt, alter, translate, or create derivative works from the Service, or any Third Party Software/Services; (ii) merge the Service software or Third Party Software/Services with other software; (iii) sublicense, lease, sell, rent, loan, or otherwise transfer the Service or associated software or Third Party Software/Services to any third party; (iv) reverse engineer, de-compile, disassemble, or otherwise attempt to derive the source code for the Service software, Third Party Software/Services or Site; (v) otherwise use or copy the Service or associated software or Third Party Software/Services except as expressly allowed under the TOU, including this Section 5; (vi) use the Service or associated software or Third Party Software/Services in a "service bureau" or similar structure whereby third parties obtain use of the Service or Third Party Software/Services through you absent Trimble's consent; (vii) remove, obscure, or alter any copyright, trademark, or other proprietary notices embedded in, affixed to or accessed in conjunction with the Service, associated software, and/or the Site; (viii) damage, disable, overburden, interfere with, disrupt or impair the Service or Site, or servers or networks connected to them, in any manner; (ix) interfere with any other party's access, use or enjoyment of the Service or the Site in any manner; (x) intentionally or unintentionally violate any applicable local, state, national or international law, including, but not limited to, laws and regulations related to export; or (xi) impersonate any person or entity or misrepresent your affiliation with a person or entity.

**5.3 Third Party Software/Services** You hereby acknowledge and agree that any Third Party Software/Services that may be bundled with the Service (e.g., maps) is/are being provided to you by Third Party Suppliers and not by Trimble. You hereby acknowledge and agree that your access or use of any such Third Party Software/Services is governed by such Third Party Suppliers' terms of use, end user license agreement or other like agreement, and in absence of such terms or agreement, by these TOU. Trimble will use good faith and reasonable efforts to notify you of events affecting the Third Party Software/Services (e.g., down time or maintenance) that may impact your use of the Site. **HOWEVER, TRIMBLE CANNOT BE RESPONSIBLE FOR, AND EXPRESSLY DISCLAIMS ANY LIABILITY IN CONNECTION WITH THE THIRD PARTY SOFTWARE/SERVICES OR YOUR USE (OR ANY AUTHORIZED USER'S USE) THEREOF.**

**5.4 Time Limited Service Subscription** In the event that use of the Service provided to you is time limited (such as that provided on a trial basis or to beta testers, resellers and distributors for sales demonstration purposes or to prospective end user customers for evaluation purposes) (the "**Time Limited Service**"), then you may use the Time Limited Service in accordance with the TOU solely for the purpose for which it is provided to you, and only for the limited period of time specified by Trimble. Trimble may revoke your access to and authorization to use Time Limited Service at any time. In the event that you subsequently acquire a paid Service Subscription, then your continued use of the Service will continue to be governed by the TOU and associated Service Subscription terms and conditions. Resale, transfer or other distribution of the Time Limited Service is prohibited.

## **6. Consent to Transmission and Use of Data; License and Aggregate Data**

**6.1 Consent to Data Transmission and Use.** Once the Service Subscription is activated you may transmit, or cause your Devices to gather and transmit Data to the Service The Data transmitted may include such information that is described in the service description.

Data is processed on your behalf. If you elect to do so you may cause the Service to transfer Data to Authorized Users, third parties or Trimble. If you consent to Trimble using the Data, Trimble shall be entitled to (a) evaluate or improve the Service; (f) comply with legal requirements and valid court orders, as applicable; (g) perform market research; or (h) offer you new products and services.

The Service may require, for optimum use and Trimble may provide to Customer, in a number of formats (feeds, definition files etc.), content that is automatically synchronized or updated from time to time with Trimble's servers or systems ("**Content**"). Such Content may be provided for a limited time, from time to time, in accordance with an applicable Service. Customer

consents that the respective Service will automatically contact Trimble to receive Content and, in addition, if and when any of the following events occur: (i) the Service is successfully installed by Customer; (ii) Customer fails to install the Service successfully; (iii) the Service has been successfully configured and / or (v) the Service is uninstalled. Customer acknowledges and consents that any data collected may be sent to any Trimble office or Trimble Agent for processing in locations throughout the USA or the European Union in accordance with the provisions of these TOU. You may be required to download Software and the Services may automatically update the Software installed on any Device when a new version is available.

By authorizing activation of the Devices, you hereby consent to Trimble processing Data on your behalf. In addition, with the activation of the account, you consent, and you shall cause the Authorized Users to consent, to the transmission, processing and use of your and the Authorized Users personal data solely for purposes of administering the account, access credentials and other purposes anticipated in these TOU.

**6.2 License and Aggregate Data** To the extent that you have any ownership or other interests in the Data, you hereby grant to Trimble and its service providers the necessary rights so that Trimble may provide the Service to you in relation to the Data. All other data and information that is collected, transmitted, recorded, or accessed by or through the Service that is not Data personally identifiable to you and/or your Authorized Users, and all data, reports, derivative works, compilations, modifications and other materials created from or with use of Data (e.g., aggregated Data) will be, in each case, the sole and exclusive property of Trimble; and you, on your behalf and on behalf of your Authorized Users, hereby assign all of your and their right, title and interest, if any, in and to such items to Trimble without any fees and without rights to future royalties.

## **7. Privacy and User Data**

7.1 To understand Trimble's general data privacy practices, please review Trimble's [Privacy Statement](#), which can be viewed at any time from the home page of this Site.

7.2 You acknowledge that the Data may be retraceable to individuals ("**Personal Data**"). Each time an Authorized User logs on to the Service and the Site, certain information, including the username, will be processed in the Service application software. This information is used to manage the Authorized User's account, Services and other personalized features. Trimble may match the username to personally identifiable information in order to provide the Authorized User with Services that the Authorized User is entitled to use and to provide relevant Data and information. Additionally, the Service may permit collection of location-based Data in connection with your Devices and the Services provided ("**Location Data**") so that the geographic location of the user may be identifiable.

You hereby agree that you shall clearly, conspicuously, and regularly notify all Authorized Users and other personnel, persons or entities using the Service and using your Devices of the foregoing collection, transmission and use of the Data, including any Personal Data and Location Data contained therein; that you have obtained and will obtain all necessary consents from your designated Authorized Users and other personnel, persons or entities using the Service, or Devices who may be affected thereby, and that in doing so you have otherwise complied fully with your obligations under applicable law relating to the transmission and use of personal data. You agree to indemnify, defend and hold harmless each of the Trimble Parties (as defined in Section 10 below) from and against all claims, demands, actions or causes of action arising out of your breach of the foregoing obligations.

7.3 The Service may be administered by Trimble from its offices or those of its affiliates or service providers at various locations within or without the United States of America. Consequently, Data may be collected, sent, processed and stored in the United States and may be collected, sent, processed and stored outside the USA. You acknowledge that in the event of conflict of privacy laws or practices in your jurisdiction and those in the domicile of the entity hosting the Service, the law applicable in the domicile of the entity hosting the Service will have precedence at all times.

## **8. Modification of Services**

8.1 Trimble may, at any time, modify, suspend or permanently discontinue the Service or Site, or any portion of them, with or without advance notice. Subject to section 14.2 below, no Trimble Party will be liable to you or to any third party for any such modification, suspension or discontinuance.

8.2 Trimble may modify and update the TOU if circumstances under which the TOU is entered into change following purchase of your Service Subscription, and Trimble will provide you with reasonable notice of any such changes. Your continued use of the Service following the posting of any such changes will constitute confirmation of your acceptance of the updated TOU, unless you notify Trimble in writing within 30 days of the notice that you do not accept them. In that case the TOU in effect at the time of your purchase or last renewal of the Service Subscription (whichever is later) will remain in effect through the remainder of your then current subscription term, unless Trimble, at its option, exercises its right to terminate your Service Subscription(s) in accordance with section 14.2 below.

## **9. Network Coverage, GNSS Satellites, Interruption of Service**

9.1 You acknowledge that the Services and network access may be subject to transmission limitations caused by a variety of factors such as atmospheric conditions, topographical obstructions, limitations or lack of coverage of the underlying carrier service and other natural or manmade conditions. To the extent that Devices or other hardware units receive signals from a Global Navigation Satellite System (“GNSS”) you further acknowledge that Trimble is not responsible for the operation or failure of operation of any GNSS satellites or the availability of GNSS satellite signals.

9.2 Trimble will not be liable to you or any third party for any loss or damage arising from the Service, or its interruption, transmission errors (including Location Data inaccuracies), downtime of the Service due to maintenance or defects or any other cause, including, but not limited to, interruption caused by the underlying communications system carrier. Trimble does not assume and will not have any liability arising from events beyond Trimble’s control or the control of Trimble’s subcontractors, licensors or business partners, including events such as acts of God, acts of any governmental entity, acts of public enemy, strikes or weather conditions.

## **10. No Warranties; Customer Responsibility for Devices, Risk of Loss and “Alert” Feature Configuration.**

TRIMBLE, ITS DIRECTORS, OFFICERS, EMPLOYEES, LICENSORS, SUPPLIERS, DEALERS, AFFILIATES AND AGENTS (EACH A “**TRIMBLE PARTY**” AND COLLECTIVELY THE “**TRIMBLE PARTIES**”) DISCLAIM ANY RESPONSIBILITY FOR ANY HARM RESULTING FROM YOUR USE OF THE SERVICE AND SITE. YOU EXPRESSLY UNDERSTAND AND AGREE THAT: (a) THE APPLICATION, SITE AND SERVICES ARE PROVIDED ON AN “AS IS”, “WITH ALL FAULTS” AND “AS AVAILABLE” BASIS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU; (b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE TRIMBLE PARTIES MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, (i) WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, ACCURACY, QUIET ENJOYMENT, NO ENCUMBRANCES, NO LIENS AND NON-INFRINGEMENT, (ii) WARRANTIES ARISING THROUGH COURSE OF DEALINGS OR USAGE OF TRADE, (iii) WARRANTIES REGARDING THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SERVICE APPLICATION, SITE AND SERVICES, AND (iv) WARRANTIES THAT ACCESS TO OR USE OF THE SERVICE AND SITE WILL MEET YOUR REQUIREMENTS, BE UNINTERRUPTED OR ERROR-FREE; AND (v) THAT YOU WILL ACCESS THE SITE AND USE THE SERVICE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR COMPUTER SYSTEM(S) OR LOSS OF DATA THAT RESULTS FROM SUCH ACCESS AND USE.

YOU FURTHER AGREE THAT, IF THE SERVICES ARE USED TO TRACK THE LOCATION; PERFORMANCE; HEALTH AND STATUS OF YOUR ASSETS YOU ARE SOLELY RESPONSIBLE FOR THE PROPER MAINTENANCE, OPERATION AND SUPPORT OF SUCH ASSETS. NOTWITHSTANDING YOUR USE OF THE SERVICE AND REGARDLESS OF ANY INFORMATION PROVIDED THROUGH IT (WHETHER ACCURATE OR INACCURATE) REGARDING THE OPERATION, MAINTENANCE OR PERFORMANCE STATUS OF THE ASSETS, YOU ASSUME ALL RISK RELATED TO THE PROPER OPERATION, SUPPORT AND MAINTENANCE OF SAID ASSETS. ACCORDINGLY, YOU ARE RESPONSIBLE FOR ANY RISK OF LOSS FOR ANY ASSETS REQUIRED

**TO COMMUNICATE WITH OR THROUGH THE SERVICE, FROM ANY CAUSE, INCLUDING, WITHOUT LIMITATION, VEHICLE AND EQUIPMENT FAILURE, THEFT, FIRE, COLLISION, TAMPERING, AND VANDALISM.**

**THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY GRANTED IN THE TOU.**

### **11. Limitation of Liability**

UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, WILL THE TRIMBLE PARTIES BE LIABLE TO YOU FOR ANY DAMAGES, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, THIRD PARTY OR CONSEQUENTIAL (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF BUSINESS INFORMATION, VIRUS INFECTIONS, SYSTEM OUTAGES AND THE LIKE) ARISING OUT OF, BASED ON OR RESULTING FROM THE TOU OR YOUR ACCESS TO, USE OF, MISUSE OF OR INABILITY TO USE THE SERVICE OR THE SITE, EVEN IF TRIMBLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (INCLUDING DAMAGES INCURRED BY THIRD PARTIES). THE EXCLUSION OF DAMAGES UNDER THIS SECTION 11 IS INDEPENDENT OF ANY REMEDY PROVIDED UNDER THE TOU AND SURVIVES IN THE EVENT SUCH REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS OTHERWISE DEEMED UNENFORCEABLE. THESE LIMITATIONS AND EXCLUSIONS APPLY WITHOUT REGARD TO WHETHER DAMAGES ARISE FROM BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR ANY OTHER CAUSE OF ACTION. TO THE EXTENT THAT APPLICABLE LAW DOES NOT PROHIBIT SUCH EXCLUSIONS AND LIMITATIONS, IN NO EVENT WILL TRIMBLE'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION, WHETHER IN CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AMOUNTS PAID BY YOU TO TRIMBLE WITHIN THE 12 MONTHS PRIOR TO THE MOST RECENTLY ENDED MONTH FOR YOUR ACCESS OR USE OF THE SERVICE.

THE PRECEDING LIMITATIONS OF LIABILITY DO NOT APPLY TO LIABILITIES THAT CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAWS, SUCH AS IN THE EVENT OF STATUTORILY MANDATED LIABILITY (INCLUDING LIABILITY UNDER APPLICABLE PRODUCT LIABILITY LAW) OR IN THE EVENT OF PERSONAL INJURY ARISING SOLELY FROM A TRIMBLE PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

### **12. Customer Indemnification**

UPON OUR REQUEST YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS EACH OF THE TRIMBLE PARTIES FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS, DEMANDS, ACTIONS OR OTHER PROCEEDINGS BROUGHT AGAINST IT BY ANY THIRD PARTY DUE TO, ARISING OUT OF OR RELATED TO YOUR (A) USE OF THE SERVICE OR THE SITE, (B) VIOLATION OF THE TOU, OR (C) YOUR VIOLATION OF ANY LAW, REGULATION OR THIRD PARTY RIGHTS. You shall pay any and all costs, damages and expenses, including, without limitation, reasonable attorneys' fees and costs awarded against or otherwise incurred by Trimble in connection with or arising from any such claim, lawsuit, action, demand or other proceeding. **Trimble may, at its own expense, assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you agree to cooperate with Trimble in asserting any available defenses.**

### **13. Intellectual Property Rights**

13.1 You hereby agree and acknowledge that Trimble and its licensors (and as applicable, Third Party Suppliers) own all right, title and interest in and to all Intellectual Property Rights (defined below) in connection with or relating to the Service and the Site. "**Intellectual Property Rights**" means any and all rights under patent law, copyright law, trade secret law, trademark law, and any and all other proprietary or moral rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide. You will have no right, license, or interest therein, expressly or impliedly, except for any license expressly granted herein. Trimble or its licensors, as the case may be, will own all right, title and interest in and to any replacements, improvements, updates, enhancements, derivative works and other modifications (including, without

limitation, the incorporation of any ideas, methods or processes provided by or through you) to Intellectual Property Rights made by any person, even if paid for by you and regardless of whether or not they are similar to any of your Intellectual Property Rights. You will undertake any and all action necessary to vest such ownership in Trimble, including without limitation assigning (and you hereby assign) to Trimble all rights in and to such Intellectual Property Rights, including, without limitation, patent applications, patents, moral rights and copyrights arising from or relating to the Service or the Site. Notwithstanding the foregoing, Trimble's Intellectual Property Rights as they pertain to the Data, include only the rights granted to Trimble under Section 5 above.

13.2 You acknowledge that all trademarks, service marks, and logos (collectively, "*Marks*") that appear throughout the Service or the Site belong to Trimble or the respective owners of such Marks, and are protected by U.S. and international trademark and copyright laws. Any use of any of those Marks without the express written consent of Trimble or the owner of the Mark, as applicable, is strictly prohibited. Trimble may, in appropriate circumstances and at its sole discretion, disable and/or terminate the accounts of Authorized Users who may be infringing the Intellectual Property Rights of others.

#### **14. Suspension, Discontinuation or Cancellation of Service to Customer; Cancellation Fee**

14.1 Trimble may suspend your access to the Site and terminate your license to use the Services without liability, if

(i) you violate the TOU, or breach the terms of your Service Subscription(s) or any other valid agreement with Trimble for use of the Service;

(ii) fail to pay Service Subscription fees or other amounts owed when due, (whether due to Trimble directly or to the dealer or distributor through whom you acquired your Service Subscription);

(iii) the Communications Carrier through which you are able to access and use the Service terminates your communications service; or

(iv) Trimble has reason to believe that you, your Authorized Users, any of your agents or any third party is abusing the Service or using it fraudulently or unlawfully.

**If you pay Service Subscription fees to the dealer or distributor from whom you acquired your Service Subscription (rather than to Trimble directly) you acknowledge and agree that Trimble may rely in good faith upon the dealer's or distributor's notice to Trimble of your non-payment of Service Subscription fees and as a result may suspend your access to the Service and terminate your license to use it without liability.** In addition, subject to section 14.2 below, Trimble may discontinue the Service in whole or in part, and/or cancel your Service account with or without notice for any reason at any time. YOU AGREE THAT NEITHER TRIMBLE NOR ITS AFFILIATES NOR DEALERS, NOR ANY OTHER INDIVIDUAL OR ENTITY FROM WHOM YOU PURCHASED OR OTHERWISE ACQUIRED YOUR SERVICE SUBSCRIPTION WILL BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ITS CANCELLATION OR TERMINATION FOR ANY OF THE ABOVE-CITED REASONS EXCEPT AS EXPRESSLY PROVIDED HEREIN. IF YOUR ACCOUNT IS CANCELLED FOR ANY REASON, YOU AGREE NOT TO RE-REGISTER FOR AN ACCOUNT TO WITHOUT WRITTEN PERMISSION FROM TRIMBLE.

14.2 If your Services Subscription and Service account are terminated for Trimble's convenience and no fault on your part, then you will have no obligation to pay Service Subscription fees for any period following the date of termination, and you will be reimbursed a proportion of the subscription fees received by Trimble based upon the un-lapsed term of the currently active Service Subscription as of the date of termination. You will, however, remain obligated to pay Service Subscription fees for the term of Service Subscription until the date of termination.

14.3 Should you cancel your account and/or the Service Subscriptions in whole or in part, or if we cancel or terminate your account and Service Subscription(s) due to your violation of the TOU, breach of the terms of your Service Subscription or any other valid agreement with Trimble, or your insolvency, bankruptcy (or similar action or proceeding), or your ceasing to do

business in the ordinary course, you will be charged a cancellation fee equal to the amount of the subscription fee charges payable through the remaining term of your then currently active Service Subscription(s). Any such cancellation charges will become immediately due and payable.

## **15. Deletion of Customer Data**

Trimble customarily maintains a user's Data, Personal Data, Location Data and other information maintained under the user's account (collectively, "**User Data**") during the period in which the account remains active, and then retains such User Data for an indefinite period following inactivation of the user's account in order to permit users to reactivate their accounts and/or to obtain copies of Data or records of their Service usage at a later time. At any time, however, Trimble may permanently delete from its or its external provider's servers any User Data maintained in your Service account, and You may also request deletion of Your User Data maintained by Trimble by contacting Trimble at [Support@Trimble.com](mailto:Support@Trimble.com). It is Your responsibility to maintain copies of Your important User Data and Trimble accepts no responsibility for deleted User Data. Deletion of all User Data from an account will effectively terminate the account.

## **16. International**

The Service is administered by Trimble from its offices or those of its affiliates at various locations within in the United States of America. Trimble makes no representation that Services are appropriate or available for use in locations outside the United States, and accessing them from territories where the Services are illegal is prohibited. You may not use or export or re-export the Service or its content or any copy or adaptation in violation of any applicable laws or regulations including, without limitation, United States export laws and regulations. If you choose to access the Service from locations outside the United States, you do so on your own initiative and are responsible for compliance with applicable local laws.

## **17. Notices and Electronic Communications**

When you visit the Site or send e-mail to us, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices on this site. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. You may update your e-mail address by visiting the location on the Site where you have provided contact information. If you do not provide Trimble with accurate information, Trimble cannot be held liable if it fails to notify you. You may have the right to request that Trimble provide such notices to you in paper format, and may do so by contacting *Trimble Navigation Limited, Attention: Support, 10368 Westmoor Drive, Westminster, CO 80021-2712*, Email: [Support@Trimble.com](mailto:Support@Trimble.com). Any other communications should also be sent to that address.

## **18. U.S. Government Restricted Rights [Applies only to U.S. Government Licensees]**

The Service application, Site and the Services, their content and other materials, are deemed "commercial computer software" and "commercial computer software documentation" pursuant to DFAR Section 227.7202 and FAR Section 12.212 (and any successor sections). Use of the Service and the Site including, but not limited to, its reproduction and display, by the United States of America and/or any of its instrumentalities, regardless of form, is governed by the TOU.

## **19. Choice of Law and Forum**

The TOU is/are governed by and construed in accordance with the laws of the State of California and applicable United States federal law, without reference to "conflicts of laws" provisions or principles. You hereby consent and agree to the exclusive jurisdiction of, and venue in, the state and federal courts located in the County of Santa Clara, California. Notwithstanding the foregoing Trimble may choose to file a complaint against you or take any other legal action (including, without limitation, requesting injunctions or immediate relief in summary proceedings) against you before any competent court in your jurisdiction for any claim or action arising out of or relating to the TOU or your use of the Service.

## **20. Export**

Use of the Service is subject to the U.S. Export Administration Regulations. You agree to the following: (a) you are not a citizen, national or resident of, and are not under the control of, the government of Cuba, Iran, North Korea, Syria, Sudan nor any other country to which the United States has prohibited export; (b) you will not export or re-export materials from the Site, directly or indirectly, neither to the above mentioned countries nor to citizens, nationals or residents of those countries; (c) you are not listed on the United States Department of Treasury lists of Specially Designated Nationals, Specially Designated Terrorists, and Specially Designated Narcotic Traffickers, nor are you listed on the United States Department of Commerce Table of Denial Orders; (d) you will not export or re-export Site materials, directly, or indirectly, to persons on the above mentioned lists; and (e) you will not use the Site and Site materials for, and will not allow the Site and Site materials to be used for, any purposes prohibited by United States law, including, without limitation, for the development, design, manufacture or production of nuclear, chemical or biological weapons of mass destruction.

## **21. General Provisions**

The TOU, the terms of your Service Subscription and/or any other valid agreement between you and Trimble for use of the Service, constitute the entire agreement between you and Trimble and govern your use of the Service and Site, superseding any and all prior agreements, negotiations and communications (whether written, oral or electronic) between you and Trimble with respect to the subject matter hereof. No change, modification, or waiver of the TOU, will be binding on Trimble unless made in writing, with Trimble's approval. Any rights not otherwise expressly granted under the TOU are reserved by Trimble and its licensors. The failure of Trimble to exercise or enforce any right or provision of the TOU shall not constitute a waiver of such right or provision. If any part of the TOU is held invalid or unenforceable, by a court of competent jurisdiction, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of Trimble, and the remaining portions shall remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service and/or your Service Subscription must be filed within one (1) year after such claim or cause of action arose or be forever barred.

## **22. Official Language**

The official language of the TOU is English. For purposes of interpretation, or in the event of a conflict between English and versions of TOU in any other language, the English language version shall be controlling.

Effective Date: March 25, 2014