

## SITECH SOFTWARE SOLUTIONS STORE TERMS OF USE FOR DEALER PORTAL

[Last updated 3 March 2015]

**WELCOME TO THE SITECH SOFTWARE SOLUTIONS STORE.** Before you begin using this Trimble Store (the "**Store**") we ask that you read and agree to the following terms and conditions of use (the "**Store TOU**"). As used herein, "**you**" means an individual or a single company or legal entity and the personnel associated with your business. "**Trimble**", "**we**" or "**us**" means Trimble Inc. and its affiliated companies. If you agree to the Store 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.

**PLEASE NOTE THAT BY ACCESSING AND USING THE STORE SITE AND SERVICES YOU AGREE TO BE BOUND BY THE CURRENTLY POSTED STORE TOU.** TRIMBLE MAY UPDATE THESE STORE TOU AT ANY TIME WITH OR WITHOUT NOTICE. YOUR CONTINUED USE OF THE STORE SERVICES FOLLOWING THE POSTING OF ANY CHANGES TO THE STORE TOU WILL CONFIRM YOUR ACCEPTANCE OF THOSE CHANGES. These Store TOU 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. If you do not agree, you may not use the Store site or services.

A current copy of the Store TOU can be accessed and viewed at any time from the home page of the Store site. We recommend that you print and retain copies of the Store TOU for your records.

These Store TOU apply to your use of the Store including all transactions processed through this transaction portal. Your use of the application-based Trimble Connected Community and VisionLink asset management services (individually and collectively, the "**Services**"), which are accessed through the respective VisionLink and Trimble Connected Community Service portals, is governed by a separate Terms of Use & End User License Agreement which can be viewed at any time from the home page of the applicable Service's portal.

### DESCRIPTION OF STORE SERVICES

This Store allows you to submit electronic purchase orders for Trimble Connected Community and VisionLink Services subscriptions as well as for any future services that may be offered through this Store ("**Service Subscriptions**"). In addition, this Store allows you to effect activation of your Service Subscriptions with your machines, equipment and devices ("**Assets**") equipped with our Trimble Connected Community or VisionLink system supported telematics devices ("**Devices**") or enabling software, and to track the status of your purchase orders.

To use these Store services, you must be an authorized reseller of the products and Services offered for sale or license through this Store under a valid agreement with Trimble and/or with the manufacturer of the Assets for which Service Subscriptions are acquired (an "**Authorized Reseller Agreement**").

Our Store services also permit you to (i) initiate the opening of Store accounts for your end user customers, (ii) initiate purchase orders for Products and Service Subscriptions from the Store on behalf of your end user customers, (iii) view the Store purchase orders of your end user customers, whether purchase orders are placed by you or the end user, (iv) with your end user customer's acceptance and consent, change the party responsible for payment for active Service Subscriptions from yourself to the end user customer, and (iv) view the Services activation status of your and/or your end user customers' Assets and Devices.

### TERMS AND CONDITIONS OF SALE

**GENERAL.** Products and Services Subscription purchase orders placed by you through the Store will be subject to the terms and conditions of sale under the Trimble Reseller Agreement that authorizes you to purchase and resell Products and Service Subscriptions sold through this Store, plus any additional terms set forth in these TOU.

**CHANGING BILLING RESPONSIBILITY.** If you use the Store's "Change Billing Responsibility" feature to change the party responsible for payment for active Service Subscriptions (the "Bill To" party) from yourself to

your end user customer, you acknowledge and agree that you remain responsible for all fee payments to Trimble for any such Service Subscriptions if the end user customer, as the new Bill To party, defaults in its payment obligations. This continuing obligation will apply notwithstanding the end user customer's acceptance of payment responsibility.

## **PRIVACY, USER DATA AND DEALER OBLIGATIONS**

*GENERAL.* 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 Store site.

The Store and Store services are administered by Trimble from its offices or those of its affiliates at various locations within in the United States of America. Trimble may also make use of an affiliate or one or more external service providers to host the Store and Store services. Consequently, user data gathered from the Store is 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 Store, the law applicable in the domicile of the hosting entity will have precedence at all times.

***DATA PRIVACY OBLIGATIONS OF DEALER.*** You acknowledge your obligations to treat information relating to your end user customers or other individuals that you may obtain by reason of your relationship with Trimble and/or use of the Store services ("User Data") as confidential information, and you agree to use such User Data solely for the purpose for which you receive it. You agree that your collection, use and disclosure of User Data, if any, will at all times, provide at least the same level of privacy protection for such information as is required under Trimble's current data privacy policy (as expressed in its Privacy Statement , and shall comply with all applicable laws, rules and regulations including, without limitation, (a) all laws, rules and regulations governing data privacy and data security, and (b) all laws, rules, and regulations governing any form of marketing (e.g., by telephone, direct mail, e-mail, wireless text messaging, SMS, fax, or any other mode of communication), and that you shall not sell, trade, rent or disclose such individual identifying information to third parties in contravention thereof. You further understand and agree that Trimble may disclose your Store user ID(s) (but never your passwords) to your end user customers in the course of offering or providing Store services or service options (e.g., change billing responsibility option, end customer-dealer authorizations, etc.).

## **STORE ACCOUNT; PASSWORD PROTECTED ACCESS**

To access and use this Store you are required to open an account by completing the Store registration process and providing us with current, complete and accurate information as prompted by the applicable registration form. This will include designation of contacts among your personnel who will be authorized by you and Trimble to access and use the Store site and service ("Authorized Users"). You will manage designation of your Authorized Users through the Store site contact management profile function. Only Authorized Users will be permitted access to the Store.

At registration you will be provided an initial password for your Store account. You are entirely responsible for maintaining the confidentiality of your Store account and password and any additional passwords of your Authorized Users. You agree that Trimble may terminate your access to the Store site and services, in whole or in part, if you fail to do so. Additionally, you are fully responsible for any and all activities that occur under your account. You agree to notify Trimble immediately of any unauthorized use of your account or any other breach of security. Trimble will not be responsible for any loss or damage that may incur as a result of someone else using your password(s) or account, either with or without your knowledge.

## **OWNERSHIP OF STORE SERVICES**

The Store (inclusive of all content) is the property of Trimble, its licensors and suppliers, if any, and is protected by worldwide copyright and other intellectual property rights laws and treaties. The Store is made available solely for your personal or internal business use. All rights in the Store not expressly granted under the Store TOU are reserved to Trimble, its licensors and suppliers, as applicable.

You acknowledge that all trademarks, service marks, and logos (collectively, "**Marks**") that appear on the Store 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.

## **LIMITED LICENSE TO USE STORE SERVICES AND CONTENT**

Subject to your compliance with these Store TOU and your completion of the applicable registration form to establish a Store account, Trimble grants you a non-exclusive right to access and use the Store services, but solely for your internal business needs and, if you are an Authorized Dealer, for your internal business needs in connection with your sale, distribution, service and support of Trimble products and the Services Subscriptions distributed to your End User customers. You may authorize a limited number (determined by Trimble in its sole discretion) of the personnel associated with your business to access and use the Store services. You agree to inform all personnel whom you authorize to use the Store services of the terms, conditions and restrictions of the Store TOU, and you remain responsible under law for their compliance with the Store TOU.

Under this limited license you are permitted to view, use and reasonably print and copy information pertaining to the status of your purchase orders and those of your End User customers for Trimble products and Services Subscriptions ("**Order Status Information**") provided that you do not modify or attempt to modify the Order Status Information. If you are an Authorized Dealer you shall not (i) disclose or transfer the Order Status Information to any third party that is not the End User customer to which the information pertains, or (ii) use, disclose, display or distribute Order Status Information for any purpose other than the sale, distribution, service and support of Trimble products and Services Subscriptions within the normal course of your own business. You may not authorize or permit any person or entity other than an Authorized User or your End User customer(s) to access or use the Store service or content.

**You further agree to adhere to any posted instructions, directions or limitations on usage and reproduction of the Store service and content; and to use best efforts to maintain the security and confidentiality of the Store services and content and to prevent any unauthorized use, copying or distribution thereof.**

## **NO MISUSE OF THE STORE**

As a condition of your use of the Store service you agree that you shall not use it for any purpose that is unlawful or prohibited by the Store TOU. We may restrict or cancel the Store 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 (including attorney's fees) incurred by us or any other party as a result of such misuse or fraudulent use. Except as otherwise expressly provided in these Store TOU or other valid agreement between you and Trimble, you shall not: (i) reproduce, modify, publish, distribute, transmit, publicly display or perform, adapt, alter, translate, or create derivative works from, any information, services or other content obtained from the Store; (ii) sublicense, lease, sell, rent, loan, or otherwise transfer your Store account or any information, services or other content obtained from the Store to any third party; (iii) remove, obscure, or alter any copyright, trademark, or other proprietary notices occurring on the Store site; (iv) damage, disable, overburden, interfere with, disrupt or impair the Store service, or servers or networks connected to the Store in any manner; (v) interfere with any other party's access, use or enjoyment of the Store in any manner; (vi) use the Store site to gain access to Trimble's other records, computers or networks or non-public information pertaining to other users, customers or dealers, or otherwise attempt to bypass Trimble's security systems; (vii) intentionally or unintentionally violate any applicable local, state, national or international law, including, but not limited to, laws and regulations related to export; or (viii) impersonate any person or entity or misrepresent your affiliation with a person or entity.

## **LINKS TO THIRD PARTY SITES**

This Store site may contain links to third party sites. Access to any other Internet site linked to this Store site is at the user's own risk. Trimble does not control, and is not responsible for the accuracy or reliability of any information, materials, data, opinions, advice or statements made on those sites, or about any products found at those sites, or about any search results that may be obtained from using them. Trimble provides these links merely as a convenience and the inclusion of such links does not imply an endorsement.

## **DELETION OF DATA**

Trimble customarily deletes customer-generated information and data maintained in Store accounts after 13 months. Trimble may permanently delete any and all information, data and content maintained in or under your or your end user customers' accounts from its servers after that period of time and upon any termination of the Store services, the Services or your Service Subscription. Trimble accepts no responsibility for such deleted information, data or content.

## **MODIFICATION OR DISCONTINUATION OF STORE SERVICE; SUSPENSION OR TERMINATION OF AUTHORIZATION TO USE STORE**

Trimble may, at any time, modify, suspend or permanently discontinue the Store and Store services, or any portion of them with or without advance notice and without liability to you,

Trimble may suspend your access to the Store and terminate your license to use the Store services without liability, if

- (i) if you violate the Store TOU, or breach the terms of your Service Subscription(s) or any other valid agreement with Trimble for purchase of products or use of the Services;
- (ii) if you fail to pay for products purchased, Service Subscription fees or other amounts owed when due,;
- (iii) upon termination of Services to you in accordance with the applicable Service Terms of Use & End User License Agreement ;
- (iv) Trimble has reason to believe that you, your Authorized Users, any other of your personnel or agents or any third party using your account is abusing the Store or Store services or using them fraudulently or unlawfully.

YOU AGREE THAT NO TRIMBLE PARTY (as defined below) WILL BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR SUSPENSION OR TERMINATION OF THE STORE OR STORE SERVICES OR YOUR ACCESS OR LICENSE TO USE THEM FOR ANY OF THE ABOVE-CITED REASONS EXCEPT AS EXPRESSLY PROVIDED HEREIN. IF YOUR ACCOUNT IS TERMINATED FOR ANY REASON, YOU AGREE NOT TO RE-REGISTER FOR AN ACCOUNT TO THE STORE WITHOUT WRITTEN PERMISSION FROM TRIMBLE.

## **GENERAL DISCLAIMER**

Although Trimble attempts to provide accurate information and data through the Store site, Trimble assumes no responsibility for the accuracy of such information and data or other site content; nor does Trimble warrant that the information or Store content are up to date; that the Store will be available at any particular time or location; that any defects or errors will be corrected; or that the Store content or services are free of viruses or other harmful components. Your use of the Store is at your sole risk. Trimble may change the Store content or products mentioned at any time without notice. Mention of non-Trimble products or services is for information purposes only and constitutes neither an endorsement nor a recommendation.

TRIMBLE, ITS DIRECTORS, OFFICERS, EMPLOYEES, LICENSORS, SUPPLIERS, AUTHORIZED DEALERS AND OTHER DEALERS, AFFILIATES AND AGENTS (each a "**TRIMBLE PARTY**") and together the "**TRIMBLE PARTIES**") DISCLAIM ANY RESPONSIBILITY FOR ANY HARM RESULTING FROM YOUR USE OF THE STORE AND STORE SERVICES. YOU EXPRESSLY UNDERSTAND AND AGREE THAT: (a) THE STORE AND STORE 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 STORE AND STORE SERVICES, AND (iv) WARRANTIES THAT ACCESS TO OR USE OF THE STORE AND STORE SERVICES WILL MEET YOUR REQUIREMENTS, BE UNINTERRUPTED OR ERROR-FREE; AND (v) THAT YOU WILL ACCESS THE STORE SITE AND USE THE STORE SERVICES 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.

### **LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, WILL THE TRIMBLE PARTIES BE LIABLE TO YOU OR A THIRD PARTY 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 VISIONLINK 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 10 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 VISIONLINK.

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 LIABILITYLAW) OR IN THE EVENT OF PERSONAL INJURY ARISING SOLELY FROM A TRIMBLE PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

### **CUSTOMER INDEMNIFICATION**

UPON TRIMBLE'S 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/THEM BY ANY THIRD PARTY DUE TO, ARISING OUT OF OR RELATED TO YOUR (A) USE OF THE STORE OR THIS SITE, (B) VIOLATION OF THE STORE 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.

### **U.S. GOVERNMENT RESTRICTED RIGHTS [Applies only to U.S. Government Licensees]**

Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in these Store TOU, and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013(c)(1)(ii) (OCT 1988), FAR 12.212(a) (1995), FAR 52.227-19, or FAR 52.227-14(ALT III), as applicable. Use of the Store services and content by the Government constitutes acknowledgment of Trimble's proprietary rights in them.

### **INTERNATIONAL**

The Store 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 the Store and its services are appropriate or available for use in locations outside the United States, and accessing them from territories where the Store and its services are illegal is prohibited. You may not use or export or re-export the Store 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 Store site from locations outside the United States, you do so on your own initiative and are responsible for compliance with applicable local laws.

## **NOTICES AND ELECTRONIC COMMUNICATIONS**

When you visit the Store 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 Store 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 Inc., Attention: VisionLink/Trimble Connected Community Services Customer Service, 10368 Westmoor Drive, Westminster, CO 80021, Email: [store\\_inquiries@trimble.com](mailto:store_inquiries@trimble.com). Any other communications should also be sent to that address.

## **CHOICE OF LAW AND FORUM**

These Store TOU shall be 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 expressly agree that the exclusive jurisdiction for any claim or action arising out of or relating to these Store TOU or your use of this site shall lie exclusively in, or be transferred to the courts of the County of Santa Clara and/or the Northern District of California; and you further agree and submit to the exercise of personal jurisdiction of such courts for the purpose of adjudicating any such claim or action.

## **EXPORT**

Use of the Store site 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 am 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 Store site or site content or materials for, and will not allow them 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.

## **General Provisions**

Except as otherwise specified herein, these Store TOU constitute the entire agreement between you and Trimble with respect to your use of this Store and site and supersedes all prior or contemporaneous communications and proposals (whether oral, written, or electronic) between you and Trimble with respect to its use. The VisionLink or Trimble Connected Community Service Terms of Use & End User License Agreement will apply to your use of the Services as applicable, and you may also be subject to additional contractual terms and conditions that may apply when you use other content or services provided by third party providers to this Store site. The failure of Trimble to exercise or enforce any right or provision of the Store TOU does not constitute a waiver of such right or provision. If any part of the Store 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 VisionLink and/or your Service Subscription must be filed within one (1) year after such claim or cause of action arose or be forever barred.

## **Official Language**

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

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