

Terms of Service

Terms of Service: Trimble Online Platform and Services

Last Updated: [October 21, 2015]

These terms of service (these “**Terms**”) govern access and use of the subscription based online platform and services provided by Trimble (as defined below) for online storage, sharing and processing of files, materials, data, text, images or other content (such content and any modification, updates and other updates by or on behalf of the Customer collectively, “**Content**”). In these Terms, the word “**Service**” is used to refer to the online platform and services provided by Trimble as well as any written or electronic documentation provided or made available by Trimble (the “**Documentation**”).

These Terms and the Order Form concerning subscription of the Service form a binding agreement between the Trimble Navigation legal entity indicated on the Order Form (“**Trimble**”), or an authorized reseller of Trimble (“**Reseller**”), on the one hand, and the organization subscribing the Service (“**Customer**”) on the other hand (“**Agreement**”). Notwithstanding the foregoing, any use of the Service by an Administrator or a Licensed User of the Customer shall be deemed to constitute an acceptance of the Agreement by the Customer.

Trimble reserves the right to update and change these Terms from time to time in its discretion, subject to prior notice to the Customer. Continued use of the Service by the Customer following such notice of changes to these Terms will be deemed to constitute the Customer’s acceptance of such changes.

1. Access to the Service

1.1. **Accessing the Service.** Access to the Service is granted to Licensed Users by the Administrators (as defined below) subject to these Terms of Use. Licensed Users may access and use the Service solely for the Customer’s benefit and in accordance with these Terms of Use, the Documentation, and any scope of use restrictions designated in the applicable Order Form.

1.2. **Administrator Rights.** Each Customer shall designate one or more administrators who will act as the Customer organization’s primary contact persons towards Trimble and/or the Reseller, and administer grants of access to the Service for Licensed Users (“**Administrator**”). An Administrator may designate Licensed Users to access the Service on a subscription basis either (1) during the Trial Period (as defined below) or (2) for a set term designated on the Order Form (a “**Paid Subscription Term**”). Upon the expiration or cancellation of the Trial

Period or a Paid Subscription Term, as applicable, the rights of an Administrator and a Licensed User set forth herein shall terminate. Administrator may manage the status of any Licensed User at any time through the Service settings and, shall remain solely responsible for changing such status.

1.3. **Licensed Users.** A “Licensed User” is an employee or other designee of the Customer’s organization, whom the Administrator has authorized during a Paid Subscription Term to have access to the Service, subject to the Customer’s security settings and other applicable terms and conditions.

1.4. **Trimble Account.** Each Administrator and Licensed User will be required to register a personal Trimble account before being granted access to the Service. The Customer shall remain solely responsible and liable for any and all actions taken using the accounts and passwords of the Customer’s Administrator(s) and Licensed Users (including any damages caused by unauthorized use).

1.5. **Contractors and Affiliates.** The Customer may permit its independent contractors and consultants who are not competitors of Trimble (“**Contractors**”) and Affiliates (as defined below) to serve as Licensed Users, provided the 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 the Customer and in accordance with this Agreement. “**Affiliate**” means any entity under the control of the Customer where “control” means ownership of or the right to control greater than 50% of the voting securities of such entity.

1.6. **Unpaid Subscription Trial Period.** For a period designated in the Order Form or otherwise by Trimble (and if not designated, then for thirty (30) days) (“**Trial Period**”), the Administrator may designate Licensed Users to have free access or a “freemium”, trial or evaluation subscription to use the Service in accordance with the terms and conditions of this Agreement (an “**Unpaid Subscription**”). Unpaid Subscriptions are permitted solely for the Customer’s use to determine whether to purchase a full subscription to the Service. The Customer may not use an Unpaid Subscription for any other purposes, including without limitation for competitive analysis. At the end of the Trial Period, the Unpaid Subscription will expire and the Customer will have the option to purchase a full subscription to the Service. If the Customer purchases a full subscription, all of the terms and conditions of this Agreement with respect to Administrators and Licensed Users will apply to such purchase and the use of the Service for such number of Administrators and Licensed Users as specified in the Order Form for the Paid Subscription Term. Trimble has the right to terminate an Unpaid Subscription at any time for any reason upon notice to the Customer. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, TRIMBLE WILL HAVE NO WARRANTY OR OTHER OBLIGATIONS WITH RESPECT TO UNPAID SUBSCRIPTIONS.

1.7. **Service Level Agreements.** If specified on the Order Form and subject to payment by the Customer of the related service fees, the Customer’s paid subscription may include a Service Level Agreement applicable to the provision of the Service. Trimble will use reasonable commercial endeavors to provide the Service in accordance with the Service Level Agreement.

1.8. **General Restrictions.** The Customer shall not (and shall not permit any Administrator, Licensed User, or any third party to): (a) rent, lease, copy, 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 application programming interfaces to the Service, except to the extent expressly permitted by applicable law (and then only upon advance notice to Trimble); (d) 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. Content and Content License

2.1. **Rights in Content.** As between the parties, the Customer shall retain all right, title and interest (including any and all intellectual property rights) in and to the Content provided to the Service. Subject to the terms of this Agreement, the Customer hereby grants to Trimble the right to use the Customer's Content to the extent necessary to provide the Service to the Customer and, to the Customer's Administrators, Licensed Users, Contractors and Affiliates the right to access the Customer's Content through the Service, and to modify and edit such Content, each as permitted through the functionality of the Service and under the terms of this Agreement.

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

3. Customer Obligations.

3.1. **In General.** The Customer shall ensure that the Customer's Administrators' and Licensed Users' use of the Service is at all times compliant with all applicable laws including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data. The Customer is solely responsible for the accuracy, content and legality of all Content. The Customer represents and warrants to Trimble that the Administrator and the Licensed Users have sufficient rights in the Content to grant the rights granted in Section 2 (Content and Content License), and that the Content does not infringe or violate the intellectual property, publicity, privacy or other rights of any third party.

3.2. **Indemnification by the Customer.** The Customer shall 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 Content, or breach or alleged breach by the Customer of Section 3 (Customer Obligations) or (b) any service or product offered by the Customer in connection with or related to the Service. This indemnification obligation is subject to the Customer receiving (i) prompt written notice of such claim (but in any event notice in sufficient time for the Customer to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (iii) all reasonable necessary cooperation of Trimble at the Customer's expense.

4. Security.

4.1. Trimble agrees to use commercially reasonable technical and organizational measures designed to prevent unauthorized access, use, alteration or disclosure of the Service or Content. However, Trimble shall have no responsibility for errors in transmission, unauthorized third-party access or other causes beyond Trimble's control.

5. Ownership of the Service

5.1. **Trimble Technology.** This is a subscription agreement for access to and use of the Service. The 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 the Customer or any Administrator or Licensed User under this Agreement. The 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 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 (as defined below) (collectively, "**Trimble Technology**"). Further, the Customer acknowledges that the Service is offered as an online, hosted solution, and that the Customer has no right to obtain a copy of any computer code underlying the Service.

5.2. **Feedback.** The 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.

6. Paid Subscriptions

6.1. **Paid Subscription Term and Renewals.** Unless otherwise specified on the applicable Order Form, each Paid Subscription Term shall automatically renew for subsequent periods of equal length at Trimble's then-current paid subscription price unless either party gives the other written notice of termination at least ninety (90) days prior to expiration of the then-current Paid Subscription Term.

6.2. **Fees and Payment.** All fees are as set forth in the applicable Order Form and shall be paid by the Customer within thirty (30) days of the effective date of the applicable Order Form, unless otherwise specified in the applicable Order Form. The Customer is required to pay any sales, use, value-added, withholding, or similar taxes or levies, whether domestic or foreign, other than taxes based on the income of Trimble and/or the Reseller. Any late payments shall 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 payment of the fees 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 the Customer's paid subscription access to the Service, including without limitation the Administrator's and the Licensed User's rights to Content, without liability to Trimble, until such amounts are paid in full.

7. Term and Termination

7.1. **Term.** This Agreement is effective as of the Effective Date and will remain in effect for so long as the Customer complies with the terms and conditions of this Agreement, subject to this Section 7.

7.2. **Termination.** The Customer or Trimble 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). In the event at any time, the Customer does not have a Paid Subscription, then either party may terminate this Agreement and the Customer's access to the Service at any time, for any reason, immediately upon notice to the other party.

7.3. **Effect of Termination.** Upon any expiration or termination of this Agreement, the Customer shall immediately cease (and shall cause any and all Administrators and Licensed Users to 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 passwords or access codes and any other Trimble Confidential Information in its possession. Provided this Agreement was not terminated for the Customer's breach, Administrator may retain and use internally hard copies of all reports and Content generated by the Customer from the Service which the Customer printed in hardcopy form prior to termination. The Customer acknowledges that following termination it shall have no further access to any Content in the Service, and that Trimble may delete any such data as may have been stored by Trimble at any time. For clarity, Administrators and Licensed Users will no longer be able to access Content in the Service after termination of this Agreement. 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. **Survival.** The following Sections shall survive any expiration or termination of this Agreement: 1.4 (Trimble Account), 1.7 (General Restrictions), 3.2 (Indemnification by the Customer), 5 (Ownership of the Service), 6.2 (Fees and Payment), 7 (Term and Termination), 8.2 (Warranty Disclaimer), 9 (Limitation of Remedies and Damages), 10 (Indemnification), 11 (Confidential Information) and 12 (General Terms).

8. LIMITED WARRANTY

8.1. **Limited Warranty.** Trimble warrants that the Service, when used by the Customer during the Term, will operate in substantial conformity with its applicable Documentation. Trimble does not warrant that the Customer's use of the Service will be uninterrupted or error-free, nor does Trimble warrant that it will review the Content for accuracy or that it will preserve or maintain the Content without loss. Trimble's sole liability and the Customer's sole and exclusive remedy for any breach of this warranty shall be, at no charge to the Customer, for Trimble to use commercially reasonable efforts to correct the reported nonconformity and, if applicable in accordance with the Service Level Agreement, or if Trimble determines such remedy to be impracticable, either party may terminate the Agreement with respect to the affected Service and if such Service is part of a paid subscription, the Customer shall receive as its sole remedy a refund of any fees the Customer has pre-paid for use

of such Service for the terminated portion of the applicable Paid Subscription Term. The limited warranty set forth in this Section 7.1 shall not apply: (i) unless the Customer makes a claim within thirty (30) days of the date on which the Customer first noticed the non-conformity, (ii) if the error was caused by misuse, unauthorized modifications, (iii) if the error was caused by Administrator or third-party hardware, software or services, or (iv) to use provided on a no-charge or evaluation basis.

8.2. **Warranty Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY IN SECTION 8.1, 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. THE CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW. TRIMBLE SHALL 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.

9. Limitation of Remedies and Damages

9.1. **Consequential Damages.** EXCEPT FOR EXCLUDED CLAIMS (DEFINED BELOW), NEITHER PARTY NOR ITS SUPPLIERS SHALL 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.

9.2. **Liability Cap.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, TRIMBLE’S ENTIRE LIABILITY TO THE CUSTOMER SHALL NOT EXCEED THE GREATER OF THE AMOUNT ACTUALLY PAID BY ADMINISTRATOR TO TRIMBLE DURING THE PRIOR TWELVE (12) MONTHS UNDER THIS AGREEMENT OR TWO HUNDRED FIFTY DOLLARS (\$250).

9.3. **Excluded Claims.** “Excluded Claims” means any claim arising from the Customer’s breach of Section 1.7 (General Restrictions), Section 2 (Content) or Section 11 (Confidential Information).

10. INDEMNIFICATION.

10.1. In the event that the use of the Service in accordance with this Agreement by the Customer, its Administrators or Licensed Users infringes or is alleged to infringe a third party's intellectual property rights, Trimble may, at its sole option and expense, either (i) procure for the Customer the right to continue to use the Service; or (ii) modify the Service as to or substitute it with a functionally equivalent Service; or (iii) terminate the Agreement and refund to the Customer the fees paid by the Customer for the portion of the Paid Subscription Term which was paid by the Customer but not rendered by Trimble. Subject to the Customer notifying Trimble in

writing within 15 days from the Customer's knowledge of the infringement claim, and granting Trimble with the authority, information and assistance reasonably required to enable Trimble to effectively defend and negotiate the settlement of the claim, Trimble shall pay all direct damages and costs awarded against the Customer for such infringement, except any cost or damage due to settlement agreed to by the Customer without Trimble's written consent. THIS SECTION SETS FORTH THE SOLE OBLIGATIONS OF TRIMBLE AND THE SOLE AND EXCLUSIVE REMEDIES OF THE CUSTOMER IN RESPECT OF ANY ACTUAL OR ALLEGED INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF ANY USE OF THE SERVICE.

11. Confidential Information

11.1. 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. Any Trimble Technology, performance information relating to the Service, and the terms and conditions of this Agreement shall 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 12.8), provided that such representatives are bound to confidentiality obligations no less protective of the Disclosing Party than this Section 11 and that the Receiving Party remains responsible for compliance by any such representative with the terms of this Section 11. The Receiving Party's nondisclosure obligation shall not apply to information which 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 shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

12. General Terms

12.1. **Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. The Customer may not assign this Agreement except upon the advance written consent of Trimble and

the Reseller, if applicable. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 12.1 will be null and void.

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

12.3. **Governing Law.** This Agreement is interpreted, construed and governed exclusively in accordance with the laws of Finland, without reference to its choice of law rules. Application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

12.4. **Dispute Resolution.** Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity thereof, shall be finally settled by arbitration in accordance with the Rules for Expedited Arbitration of the Finland Chamber of Commerce. The place of arbitration shall be Helsinki, Finland. The Parties agree that the arbitration procedure and all thereto related material and information shall be treated as Confidential Information in accordance with section 11 of this Agreement. This Section shall not preclude a Party from obtaining interim injunctive relief on an immediate basis from a court of competent jurisdiction where such relief is necessary to protect that Party's interests in pending completion of the legal proceedings.

12.5. **Amendments; Waivers.** Except as may be otherwise expressly set forth herein, no supplement, modification, or amendment of this Agreement shall 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 Administrator will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

12.6. **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. The Customer acknowledges that the Service is an online, subscription-based product, and that in order to provide improved customer experience Trimble may make changes to the Service, and Trimble will update the applicable Documentation accordingly.

12.7. **Force Majeure.** Neither party shall 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 which occur after the signing of this Agreement and which 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.

12.8. **Subcontractors.** Trimble may use the services of subcontractors and permit them to exercise the rights granted to Trimble in order to provide the Service 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.

12.9. **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.

12.10. **Export Control.** In its use of the Service, the Customer agrees to comply with all export and import laws and regulations of the European Union, the United States and other applicable jurisdictions. Without limiting the foregoing, (i) the 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, (ii) the Customer shall not (and shall not permit any of its users to) access or use the Service in violation of any U.S. export embargo, prohibition or restriction, and (iii) the Customer shall not submit to the Service any information that is controlled under the U.S. International Traffic in Arms Regulations.