

Last Updated: August 27, 2015

## Mobile Application Distribution Agreement

This Mobile Application Distribution Agreement, including all exhibits and attachments hereto (collectively, this “**Agreement**”) is made by and between Trimble Navigation Limited, a California, USA corporation (which, with its Affiliates, including Trimble Europe B.V., is referred to herein as “**Trimble**”), and you or, in the case that you represent and are providing a mobile application to Trimble on behalf of a company or other entity, that company or other entity (in either case, “**Company**” or “**You**”). This Agreement sets forth the terms under which Company will provide its mobile application to Trimble for distribution with certain Trimble devices or through Trimble’s Ag Developer Network Website (the “**Site**”).

**BY PROVIDING A MOBILE APPLICATION THROUGH THE SITE OR CLICKING THE CHECK BOX INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT, YOU ARE AGREEING TO BE BOUND BY ALL TERMS, CONDITIONS, AND NOTICES CONTAINED OR REFERENCED IN THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS, PLEASE DO NOT PROVIDE A COMPANY APPLICATION TO TRIMBLE FOR USE OR DISTRIBUTION WITH A DEVICE.**

**1. Definitions.** The following capitalized terms shall have the meanings set forth below:

**1.1 “Affiliate”** means a party’s parent or subsidiary company or a corporate affiliate that controls, is controlled by or under common control with such party.

**1.2 “Company Application”** means the machine-readable binary code version of the Company Application or Company Applications which are provided to Trimble through the Site in accordance with this Agreement, and any modifications or updates to the Company Application that Company may make available to Trimble hereunder from time to time, or that Company makes generally available.

**1.3 “Company Application Service”** means the Web-based service which is hosted and made available by Company to End Users accessing the Company Application through a Device.

**1.4 “Device”** means the TMX-2050 which is enabled by Trimble to display the Company Application and used by an End User to access the Company Application.

**1.5 “End User(s)”** means an end user customer of the Device.

**1.6 “End User Data”** means any information relating to an End User’s identity, account information, billing or credit information, usage of Web-based services including the Company Application Service or location-based information, any other personally identifying information relating to an End User, any information about another person or persons that an End User provides or that a party to this Agreement otherwise obtains in connection with an End User’s use of the Device, Company Application or Company Application Service, and any other information that, either individually or when combined with other information, could be used to derive information specific to a particular person.

**1.7 “End User License Agreement” or “EULA”** means the written terms of use, terms of service or other end user license agreement constituting the agreement between Company and an End User under which Company authorizes and licenses End User’s use of the Company Application.

**1.8 “Intellectual Property Rights”** means any and all rights existing from time to time under patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other like proprietary rights, as well as, any and all applications, renewals, extensions, restorations and re-instatements thereof, now or hereafter in force and effect worldwide.

**1.9 “ODM”** means an original device manufacturer that manufactures the Device for Trimble.

**1.10 “Territory(ies)”** means the country or countries in which distribution of the Company Application is permitted under the applicable Launch Addendum (as defined in Section 2.1.1 below).

**1.11 “Trademarks”** means the trade names, trademarks, service marks, logos, domain names and other distinctive brand features of each party as owned by such party from time to time.

## 2. Company Applications.

## **2.1 License Grant.**

**2.1.1 Applications.** Subject to the terms and conditions of this Agreement, Company hereby grants to Trimble a non-transferable, non-sublicensable (except as otherwise provided for herein), nonexclusive license during the Term to: (a) use, demonstrate, display and reproduce each of (and/or any total number of) the Company Applications to the extent necessary to exercise the right granted in (b), (b) distribute each of (and/or any total number of) the Company Applications for no cost to End Users directly or indirectly via multiple tiers of Trimble's distribution channel (which may include Trimble customers of the Device). Company Applications may be distributed through the Site or pre-loaded on a Device. The pre-loading of a Device with Company Applications shall be pursuant to an applicable launch addendum provided by Trimble ("**Launch Addendum**"). The parties will work in good faith and in a timely manner with each other with respect to the implementation of Company Applications on Trimble's Devices for distribution.

**2.1.2 Documentation License and Documentation Derivatives.** Subject to the terms and conditions of this Agreement Company grants to Trimble a nontransferable, non-sublicensable (except as provided for herein), nonexclusive license to reproduce, and create derivative works of: (a) Company documentation for the Company Applications, which may be provided by Company to Trimble for (i) distribution with the Company Application or (ii) insertion into Trimble written or electronic manuals or documentation related to the operation of a Device; and (b) Company Applications in the form of screen shots of Company Applications on Devices for insertion into Trimble written manuals or documentation related to the operation of Devices.

**2.1.3 Sublicensing.** Notwithstanding anything herein to the contrary, (i) Trimble may sublicense the licenses granted to it by Company pursuant to Section 2.1.1 to its ODMs for manufacturing; (ii) Trimble may sublicense the documentation licenses granted to it by Company pursuant to Section 2.1.2 to its vendors and suppliers, provided that such ODMs, vendors or suppliers, as the case may be, are deemed to be and subject to the same requirements as described in Section 2.1.4 with respect to Contractors.

**2.1.4 Delegation to Contractors.** Except as otherwise specifically set forth in this Agreement, Trimble may delegate the exercise and/or performance of all or a portion of its rights and/or obligations set forth in this Agreement to its contractors and/or ODMs (each, a "**Contractor**"), provided that such Contractors are each bound in writing to an agreement with Trimble where each such agreement is at least as protective of Company as this Agreement. For clarity, it is understood that Trimble need not mention Company by name in any such written agreement.

**2.2 License Grant Restrictions.** Trimble shall not, and shall not authorize any third party to: (a) disassemble, de-compile or otherwise reverse engineer the Company Applications or otherwise attempt to learn the source code or algorithms underlying the Company Applications absent Company's consent to do so (except and to the extent applicable law prohibits or restricts reverse engineering restrictions); (b) create derivative works from or based on the Company Applications; (c) except as expressly set forth in this Agreement, provide, sell, license, distribute, lease, lend, or disclose the Company Applications to any third party; or (d) ship, divert, transship, transfer, export or re-export the Company Applications, or any component thereof, into any country or use it in any manner prohibited by any export control laws, restrictions, or regulations administered by the U.S. Commerce Department's Bureau of Export Administration, the U.S. Department of Treasury's Office of Foreign Assets Control or any other applicable government agency.

**2.3 Delivery.** Company will provide the Company Application with all of the information requested the app submission guidelines provided by Trimble. Trimble may display information provided by Company in the app submission guidelines (e.g., name, phone and email) in connection with the distribution of the Company Application on the Site. If the Company Application will be pre-loaded on a Device, Company shall deliver the Company Applications to Trimble for integration with the Device in the manner and timeframes as mutually agreed. For the sake of clarity, the parties acknowledge and agree that Company has no obligation to develop or deliver any Company Application and Trimble has no obligation to distribute the Company Application through the Site or integrate any Company Application into a Device, and that any such development, distribution or integration, as the case may be is at each party's sole discretion.

## **2.4 Integration, Verification Testing and Approval.**

Company will be responsible for development, production and verification testing of the Company Applications in accordance with applicable specifications, and for furnishing complete versions of the Company Applications complying

with those specifications to Trimble. To the extent required and as agreed by Trimble, Trimble will be responsible for modifying its Device to allow End Users to access and use the Company Application through the Device.

Company will provide free access to all necessary Application Programming Interfaces (“API”s) and associated data in order to allow Trimble to integrate the Company Application with its Device and to optimize the operation and presentation of the Company Application with the Device. In addition to providing any specific materials, information or services as may be requested by Trimble, each party agrees to provide the other party with such reasonable engineering assistance or access to technical information or resources within its respective area of technical expertise relative to the Company Application or Device (as the case may be) as may be necessary or reasonable to enable the other party’s efficient performance of its integration and verification testing activities hereunder. A party’s technical assistance may be provided primarily via email and telephone.

## **2.5 Final Acceptance and Launch**

Approval of any final release version of the Company Application as integrated with the Device or otherwise used with a Device (“**Final Approval**”) is in the sole discretion of Trimble. Trimble shall exercise its approval authority in good faith and within a reasonable time following delivery of the final, fully operational Company Application conforming to applicable specifications and the requirements of this Agreement. Trimble will provide Company with written notification of its Final Approval of the Company Application for distribution with a Device or distribution through the Site, as applicable. Following Final Approval, Trimble will begin distribution and implementation in accordance with the terms of this Agreement (each, “**Launch**” or “**Launch Date**”). If a Company Application will just be distributed through the Site, Trimble’s placement of the Company Application on the Site will be deemed Final Approval.

**2.6. Fixes and Updates.** Company will deliver all bug fixes, patches, and other updates to the Company Application, together with any related Company documentation, as soon as they become available to Trimble. Approval of any update to the Company Application will be in Trimble’s sole discretion. If Trimble receives an updated version of a Company Application and approves its use with the Device, Trimble will place the updated Company Application on the Site for distribution. If Trimble approves the updated version of the Company Application for integration and distribution with the Device, Trimble will use commercially reasonable efforts to integrate and distribute the updated version of the Company Application with the next release of Device firmware, provided that the Company Application is received no less than six (6) months prior to the firmware release. Should future versions of the Devices be enabled to accept over-the-air updates then the parties will cooperate to establish a process by which the Company Application may be updated in that manner and by which advance notice thereof is given to Trimble.

**2.7 Privacy.** To the extent that the Company Application or Company Application Service stores, tracks or transmits End User Data, the Company shall clearly and conspicuously notify the End Users that Company will collect, use and transmit such information and Company shall post its privacy rights policies in an easily customer-findable location (e.g., on Company’s Website home page) and note both the existence of such policy and location in the End User License Agreement, as well as on any other mutually agreed to location. Company will (in the manner described under Section 10 below) defend, indemnify and hold Trimble harmless against any liability (including reasonable attorneys’ fees) arising out of Company’s failure to comply with the terms of this Section 2.7.

**2.8 Discontinuing Company Applications.** To the extent that Company wishes to discontinue or make inoperable any Company Application previously provided hereunder, (“**Discontinued Software**”), Company shall provide Trimble with no less than six (6) months advance written notice of such Discontinued Software and shall continue to support the Discontinued Software during such notice period; provided, however, that Company may support the Discontinued Software for a shorter period if the decision to discontinue or make inoperable such the Discontinued Software arises from applicable law or other factors outside of Company’s control. The parties will discuss in good faith the timing for the discontinuation of any distribution of Company Applications that are licensed pursuant to this Agreement, however, Company acknowledges and agrees that where the Discontinued Software has been integrated into Device firmware Trimble shall not be required to remove or cease distribution of the Discontinued Software prior to commercial release of the next Device firmware release. Additionally, should Company cease supporting prior versions of a Company Application Trimble may notify End Users of such discontinued support.

## **3. Additional Responsibilities of the Parties.**

**3.1 Costs and Payments.** Each party will be responsible for its own costs associated with the performance of its activities under this Agreement except as otherwise mutually agreed to by the parties in writing. Trimble and Company shall each retain any and all revenue generated from provision of their respective products or services. For the sake of clarity, except as expressly set forth in this Agreement, neither party shall be required to account to the other or otherwise make any payment to the other regarding the Company Applications, the Device or any revenue generated from them.

**3.2 Data Collection and Reporting.** Each party's applicable privacy and security policies shall apply with respect to any End User Data or other user information collected by it. And each party shall comply with all applicable data privacy legislation in respect to its use of such data and information. Neither party will be obliged to share any End User Data it collects with the other party.

**3.3 Points of Contact.** Trimble and Company shall each appoint one or more of its personnel who will be the point(s) of contact for all issues concerning this Agreement ("**Contact(s)**"), and each shall notify the other party of its designated Contact(s) in writing. A party's Contacts may be changed at any time upon notice to the other party.

**3.4 Periodic Review Meetings.** The parties' Contacts or their designees will meet on a periodic basis during the Term for the purposes of reviewing the general business relationship and the performance by each party of its activities and obligations under the Agreement, implementing changes, business planning, sharing Product and other business information, and for such other purposes as the parties may agree. The timing, frequency and location of these periodic review meetings between Trimble and Company will be determined by the parties. Meetings may be telephonic.

#### **4. Term and Termination.**

**4.1 Term.** The term of this Agreement will be a period of two (2) years commencing on the Effective Date, and will automatically renew for additional one (1) year renewal periods thereafter (the "**Term**"), unless earlier terminated as provided in this Agreement.

#### **4.2 Termination.**

(a) Either party may suspend performance or terminate this Agreement if (i) the other party is in material breach of the Agreement and fails to cure that breach within 30 days after written notice; or (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety (90) days.

(b) Notwithstanding the foregoing, either party may terminate this Agreement immediately upon written notice upon a breach of Sections 2.1 to 2.2 (License Grant and Restrictions), Section 5.1 (Confidentiality) or Section 6 (Trademarks), or as set forth in Section 11.5 (Change of Control).

(c) Notwithstanding anything to the contrary, in the event that the government or controlling body of any country or territory in which the Company Applications are distributed or made available imposes any law, restriction or regulation that makes it illegal to distribute or make available the Company Applications, or any portion thereof, into such country or territory, or if any such law, restriction or regulation places a substantial commercial burden on a party, then either party shall have the right to suspend the distribution and/or availability of such Company Application in such country or territory.

(d) In addition, either party may terminate distribution of a Company Application and/or this Agreement for its convenience upon not less than 60 days prior written notice to the other party.

#### **4.3 Effect of Termination.** Upon expiration or termination of this Agreement:

(a) except as otherwise set forth herein, all rights and licenses granted hereunder will immediately cease (provided that all rights granted to End Users will not be terminated);

(b) Trimble will stop reproducing, offering or distributing the Company Applications, except as set forth in Section 4.4 below); and

(c) each party shall return or destroy (and certify such destruction in writing) all copies of the Company Application (in the case of Trimble) and any other Confidential Information in its possession which it is aware and to which it has access and is reasonably able to destroy or delete (which, for the avoidance of doubt, does not include archived back-up copies which are not in live working use and which are no longer easily accessible or retrievable), including from all hard disks and memory.

Neither party will be liable to the other for any damages resulting solely from termination of this Agreement as permitted hereunder.

**4.4 Wind-down Period.** Notwithstanding the provisions of Section 4.3 above, for a period of six (6) months following expiration or termination of this Agreement ("**Wind-down Period**"), Trimble shall have the continuing right to distribute all Company Applications with Devices and use the Company Trademarks in connection therewith, each in accordance with the terms and conditions of this Agreement.

**4.5 Survival.** The provisions of Sections 1 (Definitions), 2.2 (License Grant Restrictions), 4.5 (Survival), 5 (Confidentiality and Publicity), 7 (Proprietary Rights), 8.2 (Disclaimer), 9 (Limitation of Liability), 10 (Indemnification) and 11 (Miscellaneous Terms) shall survive expiration or termination of this Agreement.

## **5. Confidentiality and Publicity.**

### **5.1 Confidentiality.**

(a) Definition. "**Confidential Information**" is information disclosed by one party to the other party under this Agreement that is marked as confidential or would normally under the circumstances be considered confidential information of the disclosing party. Confidential Information does not include information that the recipient already knew, that becomes public through no fault of the recipient, that was independently developed by the recipient, or that was rightfully given to the recipient by another party. In addition Confidential Information does not include Company Applications that are submitted for distribution or information submitted with the app submission guidelines (discussed in Section 2.3).

(b) Confidentiality Obligations. The recipient will not disclose the Confidential Information, except to Affiliates, employees, and agents who need to know it and who have agreed in writing to keep it confidential. The recipient, its Affiliates, employees, and agents may use Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to protect it. The recipient may also disclose Confidential Information when required by law after giving reasonable notice to discloser.

**5.2 Publicity.** Neither party shall make public statements about the other party, without the other party's prior written consent, except to the extent such information is required to be disclosed under operation of law, by a court order, or by a governmental agency with jurisdiction, provided that the announcing party notifies the other party promptly in writing and cooperates with the other party, at the other party's request and expense, to contest or limit the scope of such required disclosure.

## **6. Trademarks.**

**6.1 General.** Each party shall own all right, title and interest, including without limitation all Intellectual Property Rights, relating to its Trademarks. Except to the limited extent expressly provided in this Agreement, neither party grants, and the other party shall not acquire, any right, title or interest (including, without limitation, any implied license) in or to any Trademarks of the first party; and all rights not expressly granted herein are deemed withheld. All use by a party of the other party's Trademarks (including any goodwill associated therewith) shall inure to the benefit of owning party. No party shall challenge or assist others to challenge the Trademarks of the other party (except to protect such party's rights with respect to its own Trademarks) or the registration thereof by the other party, nor shall either party attempt to register any Trademarks or domain names that are confusingly similar to those of the other party.

**6.2 License to Company Trademarks.** Subject to the terms and conditions of this Agreement, Company grants to Trimble a limited, nonexclusive and non-sublicensable (except as otherwise provided for herein, e.g., Section 2.1.4) license during the Term to use and display those Company Trademarks provided by Company to Trimble (whether as part of the Company Application or otherwise), solely for the purposes expressly set forth in this Agreement as well as for advertising and marketing the Company Applications on Devices, subject to any restrictions listed in each Launch Addendum.

## **7. Proprietary Rights.**

(a) Trimble acknowledges that, as between the parties, Company (and/or its licensors) retains all right, title and interest, including without limitation all rights in copyrights, trademarks, trade secrets, patents and knowhow, in and to the Company Applications and the Company Trademarks. Trimble has, and shall acquire, no rights in the foregoing except those

expressly granted by this Agreement. Company shall not be restricted from selling, licensing, modifying, or otherwise distributing the Company Applications and/or the Company Trademarks to any third party.

(b) Company acknowledges that, as between the parties, Trimble (and/or its licensors) retains all right, title and interest, including without limitation all rights in copyrights, trademarks, trade secrets, patents and know-how, in and to the Device and the Trimble Trademarks. Company has, and shall acquire, no rights in the foregoing except those expressly granted by this Agreement. Except as set forth in this Agreement, Trimble shall not be restricted from selling, licensing, modifying, or otherwise distributing the Device and/or the Trimble Trademarks to any third party.

## **8. Representations, Warranties and Disclaimer.**

**8.1 Representations and Warranties.** Each party represents and warrants to the other that it has full power and authority to enter into this Agreement, and that the execution and delivery of this Agreement, and the performance of its obligations hereunder, will not constitute a breach or default of or otherwise violate any agreement to which such party or any of its Affiliates are a party or violate any rights of any third parties arising therefrom. Company warrants that the Company Application(s) will operate substantially in accordance with and conform to its/their applicable specifications when used with the Device and in accordance with Company's documentation for the Company Applications (as delivered to Trimble). Company further represents and warrants that it has and will maintain throughout the Term all rights, authorizations and licenses that are required with respect to the Company Application and any Company content or services, and that their use, distribution, sale and license, do and shall continue to comply with all applicable national, federal, state, provincial and local laws, rules and regulations in the Territories.

**8.2 Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EITHER EXPRESS OR IMPLIED, AND EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

## **9. Limitation of Liability.**

**9.1 Limitation on Indirect Liability.** NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE 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 THE PARTY IS AWARE OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE, AND EVEN IF ANY LIMITED REMEDY IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

**9.2 Exceptions to Limitations.** The preceding limitations of liability do not apply to (a) a party's breach of its confidentiality obligations, (b) a party's indemnity obligations under this Agreement, or (c) to any 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 from a party's gross negligence or willful misconduct.

## **10. Indemnification.**

**10.1 By Company.** Upon the request of Trimble, Company will at its own expense defend any third party lawsuit or proceeding brought against Trimble based upon or otherwise arising out of: (a) any breach or claimed breach of the first sentence of Section 8.1; (b) any claim in a Territory that the Company Applications or associated services provided by Company, Company Trademarks, or Company's server-side technology used to deliver a Company Application to a Device (if applicable) infringe or misappropriate any Intellectual Property Right of such third party, or (c) personal injury or property damage arising from the use, sale or distribution of the Company Application or associated services provided by Company; and will indemnify and hold Trimble harmless from and against any and all costs, expenses, losses, liability and damages (collectively, "**Damages**") incurred as a result thereof. Company shall have full control over and authority over the defense, provided that it shall not settle any claim without Trimble's prior written consent if the settlement requires the Trimble to take any action, refrain from taking any action, or admit any liability. If Company does not diligently pursue resolution of any such claim or provide Trimble will reasonable assurances that it will do so, Trimble may defend against the claim at Company's expense without limiting its other rights and remedies hereunder. In addition, Trimble may join in the defense with its own counsel at its own expense.

Notwithstanding the foregoing, in no event shall Company have any obligations or liability under this Section 10.1 arising from: (i) Trimble's breach or claimed breach of the first sentence of Section 9.1, (ii) modifications of the Company Applications or the Company Trademarks by any party other than Company or combination of the Company Applications or the Company Trademarks with any other software or products if the claimed infringement or misappropriation would not have occurred but for such modifications or combination; and (iii) third party claims and associated Damages to the extent that they arise from Trimble's negligence or willful misconduct.

**10.2 Distribution Remedy.** If any Company Application or Company Trademark furnished under this Agreement: (i) is held to constitute an infringement and its use enjoined; or (ii) in Company's good faith opinion or, in the case of a Company Trademark, in Trimble's good faith opinion, is likely to become the subject of a claim of intellectual property infringement then Company or Trimble, as the case may be, shall provide written notice indicating the affected or potentially affected Company Application, or Company Trademark to the other party, and, at Company's own expense and option (as relates to options (a) and (b) below), Company may: (a) procure for Trimble the right to continue using the affected or potentially affected Company Application or Company Trademark; (b) replace or modify the affected or potentially affected Company Application or Company Trademark with a functional, non-infringing, substantially equivalent version, where the parties agree that this indemnity will extend to any such replacement or modified version; or (c) terminate the affected license(s) granted under this Agreement only for those jurisdictions where the use of the affected or potentially affected Company Application or Company Trademark constitutes or allegedly constitutes an infringement.

## **11. Miscellaneous Terms.**

**11.1 Independent Development.** The parties acknowledge and agree that this Agreement shall not preclude a party from independently developing and marketing products or services involving technology or ideas similar to those disclosed, provided that the receiving party does not violate any of its obligations under this Agreement in connection with such activities. The parties agree that nothing in this Agreement prohibits competition of the parties in the marketplace.

**11.2 Notices.** Any notice which may be or is required to be given under this Agreement must be in writing and addressed to the other party. Notice will be deemed to have been received: a) when delivered personally, b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or c) when verified by written receipt if sent by reputable international courier or overnight courier with written verification of receipt. Notices to Trimble should be sent to Trimble Navigation Limited, Attn: General Counsel, 935 Stewart Drive, Sunnyvale, CA 94085 USA. Either party may change its notice address by written notice to the other party.

**11.3 Force Majeure.** Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, failure or diminishment of power or of telecommunications or data networks or services or Internet disturbance) that was beyond the party's reasonable control, provided that the non-performing party promptly notifies the other party of the force majeure event and acts diligently to remedy the delay or failure.

**11.4 Assignment.** The rights and obligations of each party under this Agreement may not be transferred or assigned directly or indirectly without the prior written consent of the other party; except that either party may assign its rights and obligations hereunder, in whole or in part, (i) to an Affiliate, or (ii) in the event of a sale of all, or substantially all of such party's assets related to this Agreement, whether by merger, reorganization, operation of law or otherwise, provided that such assignee or transferee assumes or is otherwise fully bound by all of the obligations of the assigning party under this Agreement and provides written notice of such assignment to the other party. An assigning party shall give prompt written notice of the permitted assignment to the other party. Any attempt to assign this Agreement other than as permitted above will be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

**11.5 Change of Control.** Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction), (a) the party experiencing the change of control will provide written notice to the other party within 30 days after the change of control, and (b) the other party may immediately terminate this Agreement any time between the change of control and 30 days after it receives the written notice in subsection (a) of this Section 11.4.

**11.6 No Waiver; Severability; No Agency; No Third-Party Beneficiaries.** Failure to enforce any provision will not constitute a waiver. If any provision is found unenforceable, it and any related provisions will be interpreted to best accomplish the

unenforceable provision's essential purpose and will not affect the validity or enforceability of the remaining provisions of this Agreement. The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture. There are no third-party beneficiaries to this Agreement.

**11.7 Governing Law; Dispute Resolution.** This Agreement and any dispute, controversy, or claim arising out of or in connection with this Agreement (a "**Dispute**") will be governed by and construed in accordance with the laws of the State of California, USA, without reference to conflict of laws and provisions or principles or the United Nations Convention on Contracts for the International Sale of Goods. In the event of Dispute, the parties agree to work together in good faith to resolve the matter internally by reference to their respective senior management promptly following written notice given by any party to the other party. If the parties are unable to internally resolve the dispute within 30 days after such notice, either party may submit such dispute to the International Centre for Dispute Resolution ("**ICDR**") of the American Arbitration Association ("**AAA**") and shall be finally settled under the Rules of Arbitration of the AAA in effect at the time of applying for arbitration. The place of arbitration will be San Francisco, California. The arbitration tribunal will comprise one (1) arbitrator. The language to be used in the arbitral proceedings will be English. The arbitrator's award will be final and binding and enforceable in any court of competent jurisdiction. The parties, their representatives, and any other participants shall hold the existence, content, and result of arbitration in confidence, without prejudice, however, to the right to a party to submit petition and documents to a judicial court to obtain an interim relief or to enforce the arbitral award. The foregoing notwithstanding, neither party will be precluded from seeking interim relief (including, but not limited to, interlocutory injunctive relief) in any court of competent jurisdiction. After the institution of the arbitration, however, any request for interim relief must be first presented to the arbitration tribunal. Jurisdiction and venue in any action for interim relief will lie exclusively in, or be transferred to, the courts of the City and County of San Francisco, California and/or the United States District Court for the Northern District of California. Each party hereby submits, consents, and agrees not to contest such jurisdiction and venue. The prevailing party in any legal proceeding brought by one party against the other party in a Dispute shall be entitled to recover its legal expenses including, but not limited to, the costs of any court or arbitration proceeding and reasonable attorneys' fees.

**11.8 Entire Agreement; Amendments; Counterparts.** This Agreement is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. Any amendment must be in writing and expressly state that it is amending this Agreement. The parties may execute this Agreement in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument.

**11.9 Official Language.** The official language of this Agreement is English. For purposes of interpretation, or in the event of a conflict between English and versions of this Agreement in any other language, the English language version shall be controlling.

###

---

## EXHIBIT A – Company Applications and Device Requirements

In addition to the requirements set forth in the body of this Agreement the following terms set forth in this Exhibit A will apply to each Company Application.

### 1. Company Applications and Requirements:

- (a) For use of the Company Applications, Company shall ensure that the appropriate prompts are displayed to the End User seeking the End User's acceptance of the terms of use or service and End User License Agreement for the Company Application Service as provided by Company.
- (b) Company shall ensure that the End User License Agreement for the Company Application Service includes at a minimum the terms set forth in Attachment 1 to Exhibit A below.

- (c) Company shall further ensure that Company's contact information be displayed in each Company Application and displayed on the Company Application Service detail page in order to make it available to End Users for customer support purposes.
- (d) Where Company specifies a specific version of a Company Application to be distributed in a certain Territory, Company shall be solely responsible for translation of the Company Application and associated documentation into the local language, and for all costs in connection therewith.

## **2. Devices and Requirements**

- (a) Trimble shall distribute the approved Company Applications via the following distribution methods: Trimble shall preload the Company Applications on the Devices and after preload, an icon representing each Company Application will appear on the Device display, or Trimble will distribute the Company Application through the Site.
- (b) Branding on the hardware (including user interface) of the Devices will be determined by Trimble, and will not include any Company branding or Company Trademarks, unless specifically agreed to in writing by the parties.

## **3. Additional Terms**

- (a) Limitations. Company acknowledges that preload by Trimble of a Company Application will be limited to installation by Trimble of the Company Application, and shall not involve launch or activation of the Company Application Service. End User selection on the Device of an icon representing an already preloaded Company Application will effect launch/activation of the Company Application Service by enabling Internet access via the Device modem. Company will remain solely responsible for operation and maintenance of the Customer Application Service.
- (b) Coverage and Data Transmission. Company acknowledges that an End User's use of the Company Application via a Device is dependent on the availability and coverage of wireless networks and the availability of the Internet, which are owned and operated by third parties. Wireless coverage areas are approximate and do not cover significant portions of the United States and/or other countries. The accessibility of the Company Application and thus the Company Application Service is conditioned upon the availability of the wireless network and positioning system with which the Devices are designed to operate. Wireless networks and coverage areas may be interrupted, terminated or restricted or the quality of the transmission may be diminished at any time. Actual coverage and operation of the Company Application may depend on system availability and capacity, system and equipment upgrades, repairs, maintenance, modifications and relocation, terrain, signal strength, structural conditions, weather and atmospheric conditions, governmental regulations, acts of God and other conditions beyond Trimble's reasonable control. Trimble will not be responsible for the unavailability, termination or performance degradation of or limits in wireless networks, wireless coverage, positioning systems or the Internet which may affect use of Company's Application Service by an End User.
- (c) Support. Company is solely responsible for customer care and support of End Users using the Company Application Service and Company Application, and acknowledges and agrees that Trimble shall have no responsibility to support End Users in connection with their use. Company shall provide such End Users support for Company Applications and the associated Company Application Service as is made available to users of the Company Application Service generally, and shall do so in a timely and workmanlike manner. Further, during the Term and any Wind-down Period Company shall provide Trimble with direct technical assistance and support services for the Company Application as may be necessary or appropriate to enable continued interoperability of the Company Applications with the Devices.

Without limiting the foregoing, Company's support for the Customer Application and Customer Application Service will include the following:

- (i) Telephone and Email. Company will provide 24 hours a day/7 days a week telephone assistance and email assistance at for general advice and technical support, as well as technical assistance and remediation for operational issues as further described below;
- (ii) Service Problems. Company will use best efforts to promptly correct all Company Application and Company Application Service operational problems that are reported by Trimble or of which Company otherwise becomes aware;
- (iii) Monitoring. Company will monitor Company's servers and network environment through which Company furnishes the Company Application Service and Company Application twenty-four (24) hours a day and seven (7) days a week by trained personnel and automated monitoring systems. Appropriate personnel from Company and Trimble will be notified if there are errors in the Company Application Service, Company Application or supporting systems that may adversely affect End User access and use of the Company Application and Company Application Service, and in any event Company shall notify Trimble promptly if at any time there is a failure of service availability.
- (iv) Downtime. Company will use best efforts to inform Trimble of any Company Application Service outages or downtime promptly and, to the extent possible, in advance. From time to time, Company may schedule downtime periods in which maintenance to the Company Application Service or associated servers and network is performed. Planned upgrades and maintenance shall be detailed to Trimble, and Company will provide Trimble with at least seven (7) days prior written notice of any such planned outage. Such notice will be provided to End-Users in a designated location in the Company Application Service user interface and shall also be sent via email to Trimble's designated representative. Such notice shall set forth the planned completion time for the maintenance performed during the Scheduled Downtime. Company shall use its good faith efforts to schedule and perform scheduled downtime on days and times appropriate for the global region being served.

## **Attachment 1 to Exhibit A**

### **Minimum Company Application End User License Agreement Terms**

1. **Acknowledgement:** Company and the End User of the Company Application and Company Application Service must acknowledge that the EULA for the Company Application and Company Application Service is concluded between the Company and the End User only, not with Trimble; and that the Company, not Trimble, is solely responsible for the Company Application or Company Application Service and their content.
2. **Scope of License:** The license granted to an End User for use of the Company Application and Company Application Service must be limited to a non-transferable license to use the Company Application and Company Application Service on any applicable device that the End User owns or controls.
3. **Maintenance and Support:** The Company must be solely responsible for providing any maintenance and support services with respect to the Company Application and Company Application Service, as specified in the EULA, or as required under applicable law. The Company and the End User must acknowledge that Trimble, as a third party licensee, has no obligation whatsoever to furnish any maintenance and support services with respect to the Company Application and Company Application Service.
4. **Warranty:** The Company must be solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. The EULA must provide that, Trimble will have no warranty obligation whatsoever with respect to the

Company Application and Company Application Service, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the Company's sole responsibility.

5. **Product Claims:** The Company and the End User must acknowledge that the Company, not Trimble, is responsible for addressing any claims of the End User or any third party relating to the Company Application and Company Application Service or the End User's possession and/or use of the Company Application and Company Application Service, including, but not limited to: (i) product liability claims; (ii) any claim that the Company Application or Company Application Service fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. The EULA may not limit the Company's liability to the End User beyond what is permitted by applicable law.

6. **Intellectual Property Rights:** The Company and the End User must acknowledge that, in the event of any third party claim that the Company Application or Company Application Service or the End User's possession and use of them infringes that third party's intellectual property rights, the Company, not Trimble, shall be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

7. **Company Name and Address:** The Company must state in the EULA the Company's name and address, and the contact information (telephone number; E-mail address) to which any End User questions, complaints or claims with respect to the Company Application and Company Application Service should be directed.