

# SMART 610 Terms of Services

Carbon Exchange (Hong Kong) Limited

**IMPORTANT - PLEASE READ CAREFULLY BEFORE YOU DOWNLOAD OR USE THE SERVICE**

**BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT OR ACCESSING OR USING THE SERVICE, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT USE THE SERVICE. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU.**

**IF YOU ARE USING THE SERVICE AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP OR SIMILAR ENTITY, THEN YOU MUST BE AUTHORIZED TO SIGN FOR AND BIND THE ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT, AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO DO SO. THE RIGHTS GRANTED UNDER THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON ACCEPTANCE BY SUCH AUTHORIZED PERSONNEL.**

This Terms of Services including all Quotations and all documents linked to herein and therein (collectively, this "Agreement") is a legal agreement between Carbon Exchange (Hong Kong) Limited, a corporation with its principal place of business at Unit 535A, 5/F, Core Building 2, No. 1 Science Park West Avenue, Hong Kong Science Park, Shatin, Hong Kong ("CEX"), and you ("Customer" or "you"), an individual or entity accessing or using CEX's online software-as-a-service solution (in each case, the "Service"), directly from CEX or indirectly through a CEX authorized reseller or distributor (a "Reseller"). It is effective between you and CEX as of the Effective Date. Your execution of a Quotation constitutes a binding noncancelable commitment set forth in the Quotation under the terms and conditions of this Agreement. All Quotation and all documents linked to herein and therein are incorporated into this Terms of Services by reference.

## **1. Definitions.**

1.1 "**Affiliate**" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes hereof, means (a) the legal power to direct or cause the direction of the general management and policies of an entity whether directly or indirectly and whether through the ownership of voting securities, by contract, or otherwise, or (b) the beneficial ownership, whether direct or indirect, of fifty percent (50%) or more of the voting securities or other ownership interest or other comparable equity interests of an entity.

1.2 "**Confidential Information**" is any information provided to it by the other party and designated in writing as proprietary or confidential to be confidential. Confidential Information shall also include information which, to a reasonable person familiar with the disclosing party's business and the industry in which it operates, is of a confidential or proprietary nature.

1.3 "**Quotations**" means CEX's quotations which is separately executed by you and CEX and which lists the service subscribed by you, the subscription fees payable for such Service, the Subscription Term, and any additional terms and conditions agreed to by the parties. All Quotations, executed by the parties and their respective Affiliates, are incorporated herein by reference.

1.4 "**Subscription Term**" means the period of time set forth on the Quotation during which you are licensed to use the Service in accordance with this Agreement and the Quotation and which period of time commences on the Effective Date.

1.5 "**Effective Date**" means the date which is the earlier of (a) Customer's initial access to the Service or (b) the effective date of the Quotation referencing this Agreement.

1.6 "**Support Services**" mean the technical support services for the Service made generally commercially available by CEX to its customers or as specified by the Quotation.

1.7 "**Update**" means any subsequent release of the Service that CEX makes generally commercially available to its customers. Updates do not include any Service that is marketed and priced separately by CEX.

1.9 "**User**" means an individual who is authorized by you or your Affiliates to use the Service, has been given access credentials by you to access and use the Service.

1.10 "**Customer Data**" means, collectively, (a) any business information or other data of any type that is input by or on behalf of Customer into the Service and (b) any energy audit compliance forms, diagrams and reports created by using the Service ("Outputs").

## **2. The Service.**

### **2.1 Overview**

The Service is intended to help users to organize and analyze data from energy audits and to create any Outputs.

### **2.2 Access to the Service**

The Service is provided on a subscription basis for a Subscription Term. Customer may access and use the Service during the term of this Agreement, but only for its own benefit and in accordance with (a) any user or similar scope of use restrictions specified by CEX, (b) the terms and conditions of this Agreement, (c) the end user technical documentation provided with the Service ("Documentation") and (d) any applicable subscription policies. Customer may permit its employees and contractors acting on its behalf ("Permitted Users") to use the Service as permitted herein and subject to any limits on the number of Permitted Users specified in the applicable Quotation, provided that Customer remains responsible for its Permitted Users' compliance with the terms and conditions of this Agreement. Customer will ensure that all Permitted Users keep their user IDs and passwords for the Service strictly confidential and will remain responsible for any and all actions taken using Customer's accounts. CEX will not be liable for any loss or damage that Customer may incur as a result of someone else using its user IDs, passwords or accounts, either with or without its knowledge. If any Permitted User no

longer works for Customer, Customer is responsible for removing such Permitted User's access to the Service.

## **2.3 General Restrictions**

Customer will not (and will not permit 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, create or develop, or incorporate the Service into, any other product or service; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the Service, except to the extent expressly permitted by applicable law (and then only upon advance notice to CEX); (d) modify the Service or the Documentation, or create any derivative product 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); (f) publicly disseminate information regarding the performance of the Service; (g) attempt to gain unauthorized access to any systems, networks or data of Trimble or interfere with or disrupt the integrity or performance of any such systems, networks or data; or (h) create more than one account for any individual Permitted User.

## **2.4 Third Party Providers**

CEX may make available content ("Third Party Content") provided through services operated by third parties (each, a "Third Party Provider") through the Service. Subject to payment of any applicable fees, Customer may use Third Party Content with the Service during the term of this Agreement, but only in accordance with (a) any quota or other restrictions specified by CEX, and (b) any terms for such use specified by the applicable Third Party Provider. Customer acknowledges that CEX has no obligation to continue to make available Third Party Content from any particular Third Party Provider. CEX may cease offering any Third Party Content at any time for any reason or no reason in CEX's sole discretion, without liability.

## **2.5 Usage Data**

Customer acknowledges that CEX may collect information about Customer's use of the Service, e.g. features used and session length ("Usage Data"). Usage Data is anonymized and does not contain any personally-identifiable information of any individual. CEX may use Usage Data to provide the Service and related services, improve its products and services and develop aggregate statistics under the restriction of CEX's Personal Information Collection Statement, CEX's Privacy Policy Statement and Personal Data (Privacy) Ordinance (Cap. 486).

## **2.6 Free Offerings and Subscription**

### **2.6.1 Free Offerings**

Where indicated in the applicable Quotation, Customer may receive access to a free version of the Service (a "Free Offering") under a "Free Subscription." There is no fee for use of Free Offerings in accordance with this Agreement. Without limiting any other restrictions in this Agreement, Customer may only use a Free Offering in a non-production environment for non-commercial purposes. Either party may terminate a Free Subscription, for any reason or no reason, immediately upon written notice to the other party.

### **2.6.2 Subscriptions**

Where indicated in the applicable Order Form, Customer may receive a subscription to the Service (a "Subscription"). If Customer receives a Subscription, then Customer may use the Service in accordance with the terms and conditions of this Agreement and the applicable Quotation for the period designated in such Quotation or otherwise by CEX, or if not designated, then for twelve (12) months (the "Subscription Period"). Subscriptions are permitted solely for Customer's use to determine whether to purchase a paid subscription to the Service. Customer may not use a Subscription for any other purpose, including without limitation for competitive analysis. CEX has the right to terminate a Subscription at any time for any reason. CEX has no obligation to retain Customer Data used with a Subscription during or after the Subscription Period. ANY USE OF SUBSCRIPTION IS AT CUSTOMER'S SOLE DISCRETION AND RISK. CUSTOMER ACKNOWLEDGES AND AGREES THAT: (A) SERVICE MAY NOT BE COMPLETE OR FULLY FUNCTIONAL AND MAY CONTAIN BUGS, ERRORS, OMISSIONS AND OTHER PROBLEMS THAT COULD CAUSE SYSTEM FAILURES, DATA LOSS OR OTHER PROBLEMS; AND (B) CEX HAS NO EXPRESS OR IMPLIED OBLIGATION TO DEVELOP OR OFFER TO CUSTOMER ANY PRODUCTION OR COMMERCIAL VERSION OF THE BETA RELEASES AND ANY FUTURE OR COMMERCIAL VERSION MAY DIFFER FROM THE BETA RELEASES.

#### **2.6.4 Disclaimers for Free Offerings and Subscriptions**

The Service may have a mechanism that limits access, and CEX may otherwise restrict certain product functionality, for Free Offerings or Subscriptions. Customer will not attempt to circumvent any such mechanism or restriction. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, DURING ANY SUBSCRIPTION PERIOD OR FREE OFFERINGS THE SERVICE IS PROVIDED "AS IS" AND CEX WILL HAVE NO WARRANTY, SUPPORT, OR OTHER OBLIGATIONS WITH RESPECT TO FREE OFFERINGS OR TRIAL SUBSCRIPTIONS (INCLUDING BETA RELEASES) UNLESS OTHERWISE SPECIFIED IN THE APPLICABLE QUOTATION.

### **3. Customer Data.**

#### **3.1 Rights in Customer Data**

As between the parties, Customer shall retain all right, title and interest (including any and all intellectual property rights) in and to the Customer Data as provided to CEX. Subject to the terms of this Agreement, CEX's Personal Information Collection Statement, CEX's Privacy Policy Statement and Personal Data (Privacy) Ordinance (Cap. 486), Customer hereby grants to CEX a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of and publicly perform and display the Customer Data solely to the extent necessary to provide the Service to Customer.

#### **3.2 Storage of Customer Data**

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

#### **3.3 Customer Obligations**

Customer shall ensure that Customer's use of the Service and all Customer Data is at all times compliant with Customer's privacy policies and all applicable laws, regulations and conventions, including, without limitation, those related to data privacy, data transfer, international communications and the exportation of technical or personal data. Customer is solely responsible for the accuracy, content and legality of all Customer Data. Customer represents and warrants to CEX that Customer has sufficient rights in the Customer Data to grant the rights granted to CEX in Section 3.1 (Rights in Customer Data) above and the Customer Data does not infringe or violate the intellectual property, publicity, privacy or other rights of any third party. In addition, Customer specifically agrees not to submit to the Service any personal data other than ones specified in CEX's Personal Information Collection Statement.

### **3.4 Indemnification by Customer**

Customer will indemnify, defend and hold harmless CEX and its subsidiaries, affiliates, officers, agents, and employees from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with any claim arising from or relating to (a) any Customer Data, (b) any breach or alleged breach by Customer of Section 3.3 (Customer Obligations), or (c) any service or product offered by Customer in connection with or related to the Service. This indemnification obligation is subject to Customer receiving (i) prompt written notice of such claim (but in any event notice in sufficient time for Customer to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (iii) all necessary cooperation of CEX at Customer's expense.

### **4. Support Services.**

During a Subscription Term, for the fee, if any, set forth in the applicable Quotation, CEX will provide you (through your designated representatives) with Support Services, including Updates. CEX may use technical information provided by you relating to the Software as part of the Support Services, including for product support and development. As part of the Support Services, CEX may make available bug lists, planned feature lists, and other supplemental materials, all of which are Confidential Information of CEX and for which CEX makes no representations or warranties of any kind.

### **5. Confidential Information.**

The parties may disclose to each other Confidential Information, which may include information concerning their respective businesses and technology. The Service (including the performance characteristics of the Service) and the Documentation are Confidential Information of Trimble. Except as authorized herein, the receiving party will (i) hold in confidence and not disclose any Confidential Information to third parties and (ii) 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 need to know, provided that such representatives are bound to confidentiality obligations no less protective of the disclosing party than this Section 5 and that the receiving party remains responsible for compliance by any such representative with the terms of this Section 5. These restrictions on disclosure will not apply to any information that: (a) is or becomes generally known or publicly available through no act or omission of the receiving party; (b) is known by the receiving party without

confidentiality restriction at the time of receiving such information, as shown by written records; or (c) is furnished to the receiving party by a third party without confidentiality restriction. The receiving party may make disclosures to the extent required by law or court order, provided the receiving party notifies the disclosing party in advance and cooperates in any effort to obtain confidential treatment. The receiving party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the receiving party the disclosing party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

## **6. Ownership.**

**6.1 Intellectual Property Rights.** Customer acknowledges that it is obtaining only a limited right to the use the Service and that no ownership rights are being conveyed to Customer. CEX or its suppliers retain all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Service, all related and underlying technology and documentation, and any derivative works or modifications of any of the foregoing, including without limitation as may incorporate Feedback (collectively, "CEX Technology"). Further, Customer acknowledges that the Service is offered as an on-line, hosted solution, and that Customer has no right to obtain a copy of any code underlying the Service. Customer, from time to time, may submit comments, questions, suggestions or other feedback relating to CEX's products and services to CEX ("Feedback"). CEX may freely use, copy, disclose, prepare derivative works based on, publicly perform or display, distribute and exploit any Feedback, bug reports or suggestions Customer provides to Trimble regarding the Service or other CEX products and services, without any obligation, royalty or restriction based on intellectual property rights or otherwise. If Customer elects to participate in beta or usability test sessions led or guided by CEX personnel, Customer acknowledges and agrees that CEX may make audio or visual recordings of Customer's participation in such test sessions. "Feedback" includes Customer's responses to CEX personnel and interactions with the Beta Releases captured in such recordings.

**6.2 Aggregated Anonymous Data.** Notwithstanding anything to the contrary herein, Customer agrees that Trimble and its affiliates may use, process, manipulate, modify, copy, publicly perform and display, compile, and create derivative works from Customer Data and any other data related to the Service, including, but not limited to, using such data for any internal business purpose, and for the improvement, support, and operation of the Service, and/or the development of other products or service capabilities. Customer hereby acknowledges and agrees that CEX and its affiliates may disclose to third parties aggregate data derived from Customer Data or from any other data related to the Service (including information regarding Customer's interaction with the Service), so long as such aggregate data is not personally identifiable with respect to Customer following definition of personal data in Personal Data (Privacy) Ordinance (Cap. 486). Further, all service data, Usage Data and other data that does not identify Customer and any data that is derived from the Customer Data and all data, reports, derivative works, compilations, modifications and other materials created by Trimble from or with use of such data will be, in each case, the sole and exclusive property of Trimble; and Customer hereby assigns all of Customer's title and interest, if any, in and to such items to Trimble without any fees and without rights to future royalties.

## **7. Limitation of Liability, Remedies and Damages.**

**7.1 Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, COVER, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF USE, LOSS OR CORRUPTION OF DATA, INABILITY TO ACCESS OR USE EQUIPMENT, SOFTWARE OR DATA, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, BUSINESS INTERRUPTION, FAILURE OF SECURITY MECHANISMS OR THE LIKE), ARISING OUT OF THIS AGREEMENT OR THE USE OF, OR INABILITY TO USE, THE SOFTWARE, OR BASED ON ANY THEORY OF LIABILITY INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR ANY CAUSE WHATSOEVER WILL NOT EXCEED THE AMOUNT PAID TO CEX FOR THE SERVICE THAT CAUSED SUCH DAMAGE IN THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION AROSE.

**7.2 Exclusions.** The foregoing limitations in Section 7.1 shall not apply to (i) gross negligence, willful misconduct, or fraud, or (ii) violation or misappropriation of a party's intellectual property rights. Further, the foregoing limitations shall not apply to a party's indemnification obligations in Section 7 for which a party's total aggregate liability shall be limited to three times (3x) the fees paid to CEX for the Software that is the subject of the Third Party Claim in the twelve months immediately preceding the date the claim arose. Further, nothing Section 7.1 shall limit your obligation to pay the applicable fee(s) for all authorized and unauthorized use of the Service.

## **8. Subscription Term, Fees and Payment.**

**8.1 Subscription Term and Renewals.** Unless otherwise specified on the applicable Quotation, each Subscription Term shall automatically renew for a term of equal duration at the then-current price unless (A) either party gives the other written notice of termination (which may be submitted through the Service) at least thirty (30) days prior to expiration of the then-current Subscription Term, or (B) Customer opts out of automatic renewals in a timely manner through another process, if any, prescribed by CEX applicable to the Service; provided that if the initial Subscription Term was pro rated to be less than 12 months, then any renewal Subscription Terms shall be 12 months.

**8.2 Return Policy.** Without limiting Section 10.1 (Limited Warranty), Customer may terminate its initial Subscription Term under this Agreement, for no reason or any reason, by providing notice of termination to Trimble no later than fourteen (14) days after the Effective Date. In the event Customer terminates its initial Subscription Term under this Section 8.2, at Customer's request, CEX will refund Customer any amounts paid for the initial Subscription Term. This termination and refund right applies only if Customer exercises its termination right within the period specified above.

**8.3 Fees and Payment.** All fees are as set forth in the applicable Quotation and will be paid by Customer within thirty (30) days of invoice, unless otherwise specified in the applicable Quotation. Except as expressly set forth in Sections 8.2 (Return Policy) and 10.1 (Limited Warranty), all fees are non-refundable. The rates in the Quotation are valid for the initial Subscription Term. Customer is required to pay all sales, use, GST, value-added, withholding, or similar taxes or levies, whether domestic or foreign, other than taxes based on the income of Trimble. Any late payments will be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.

**8.4 Suspension of Service.** If Customer's account is five (5) days or more overdue, in addition to any of its other rights or remedies (including but not limited to any termination rights set forth herein), Trimble reserves the right to suspend Customer's access to the Service (and any related services) without liability to Customer until such amounts are paid in full.

**8.5 Fee Adjustments.** CEX may increase the fees it charges for its subscriptions at any time, but any increase in the fees will not take effect until the beginning of your next Subscription Term. CEX may provide notice of such increases through the Service, by e-mail, and/or other reasonable means. Your renewal of your subscription following such a pricing increase (including automatic renewal) will constitute confirmation of your acceptance of the pricing increase.

## **9. Term and Termination.**

**9.1 Term.** This Agreement shall remain in full force and effect until the Subscription Term or the free trial period set forth therein have terminated or expired or unless earlier terminated in accordance herewith. Unless either party provides the other party of written notice of termination at least 30 days prior to the end of the then current Subscription Term, the Subscription Term will be extended for an additional twelve months on each anniversary of the Effective Date. Prior to the commencement of the renewal Subscription Term, you shall either submit a purchase order or make payment in full of the applicable annual license fees for such renewal Subscription Term. If you do not submit a purchase order or make payment in full on or before the commencement of the renewal Subscription Term, the Subscription Term will immediately terminate without further action by the parties.

**9.2 Termination.** This Agreement or an individual Quotation may be terminated (a) in the case of CEX, if you fail to pay any amount due hereunder within ten (10) business days after written demand by CEX for payment thereof, (b) by either party if the other party becomes insolvent, resolves to file bankruptcy, is adjudicated as bankrupt, or if a petition in bankruptcy is filed against the other party and such petition is not discharged within sixty (60) days of such filing, (C) by mutual written agreement of the parties, or (d) by either party if the other party materially breaches this Agreement and fails to cure such breach to such party's reasonable satisfaction within thirty (30) days following receipt of written notice thereof.

**9.3 Effect of Termination.** Upon any termination of this Agreement or the affected Quotation, You and your Users shall immediately cease all use of the Service and certify in writing to CEX within thirty (30) days after termination that such Service and Documentation and all copies thereof have been destroyed, purged, or returned to CEX at CEX's request. Termination of this Agreement or a license granted hereunder shall not limit either party from pursuing any remedies available to it, including injunctive relief, or relieve you of your obligation to pay all fees that have accrued or have become payable hereunder, without right of refund. Sections 1,



3.3, 3.4, 5, 6, 7, 8.3, 10.2, 10.3, 10.4, 11 shall survive any expiration or termination of this Agreement.

## **10. Warranty and Disclaimers.**

**10.1 Limited Warranty.** CEX warrants, for Customer's benefit only, that the Service, when used by Customer during the applicable Subscription Term, will operate in substantial conformity with its applicable Documentation. CEX's sole liability (and Customer's sole and exclusive remedy) for any breach of this warranty will be, at no charge to Customer, for CEX to use commercially reasonable efforts to correct the reported non-conformity, or if CEX determines such a remedy to be impracticable, either party may terminate the applicable Subscription Term and Customer will receive as its sole remedy a refund of any fees Customer has pre-paid for use of the Service for the terminated portion of the applicable Subscription Term. The limited warranty set forth in this Section 10.1 will not apply: (i) unless Customer makes a claim within thirty (30) days of the date on which Customer first noticed the non-conformity, (ii) if the error was caused by misuse or unauthorized modifications of the Service, (iii) if the error was caused by Customer or third-party hardware, software or services, or (iv) to use and access provided as part of a Free Offering or Trial Subscription.

**10.2 Warranty Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY IN SECTION 10.1, THE SERVICE IS PROVIDED "AS IS". NEITHER CEX NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. CEX DOES NOT WARRANT THAT CUSTOMER'S USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, NOR DOES CEX WARRANT THAT IT WILL REVIEW THE CUSTOMER DATA FOR ACCURACY OR THAT IT WILL PRESERVE OR MAINTAIN THE CUSTOMER DATA WITHOUT LOSS. CEX WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF CEX. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS; HOWEVER, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, WILL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

**10.3 High Risk Use.** THE SERVICE IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE IN LIFE SUPPORT, MEDICAL, EMERGENCY, MISSION CRITICAL OR OTHER STRICT LIABILITY OR HAZARDOUS ACTIVITIES ("HIGH RISK ACTIVITIES"). TRIMBLE SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. CUSTOMER REPRESENTS AND WARRANTS THAT CUSTOMER WILL NOT USE THE SERVICE (OR PERMIT IT TO BE USED) FOR HIGH RISK ACTIVITIES, AND AGREES THAT TRIMBLE WILL HAVE NO LIABILITY FOR USE OF THE SERVICE IN HIGH RISK ACTIVITIES.

**10.4 Other Disclaimers.** CEX SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER FOR THE OUTPUTS CREATED THROUGH THE USE OF THE SERVICE OR CUSTOMER'S RELIANCE ON OR USE OF SUCH OUTPUTS.

## **11. General.**

**11.1 Governing Law; Jurisdiction.** This Agreement shall be governed by the internal laws of the Hong Kong Special Administrative Region, without giving effect to principles of conflict of laws. Each party hereby irrevocably consents to the exclusive jurisdiction and venue of the state courts sitting in Hong Kong Special Administrative Region to resolve any disputes arising under this Agreement. **To the fullest extent permitted, each party waives the right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.**

**11.2 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Quotations), without consent of the other party, to its Affiliate or to its successor in a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets, stock, or business to which this Agreement relates. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**6.3 Entire Agreement.** This Agreement (including all Quotations entered into by the parties and all documents linked to herein and therein) contain the complete agreement between the parties with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, whether oral or written. You agree that any varying or additional terms contained in any purchase order or other written notification or document issued by you in relation to the Software licensed hereunder shall be of no effect and all such terms or conditions shall be null and void. You acknowledge and agree that your agreement hereunder is not contingent upon the delivery of any future functionality or features not specified herein or in a Quotation or dependent upon any oral or written, public or private comments made by CEX with respect to future functionality or features for the Service. In the event of any conflict between this Agreement, any Quotation or any document linked to herein or therein, this Agreement shall govern; provided, however, that notwithstanding the foregoing and for the avoidance of doubt: the license limitations and entitlements set forth in an Quotation shall supplement this Agreement and shall supersede any conflicting terms for purposes of determining the license limitations and entitlements applicable to your and your Users use of the Service.

**11.4 Waiver.** The failure or delay of a party to exercise any of its rights under this Agreement or upon any breach of this Agreement shall not be deemed a waiver of those rights or of the breach. No Reseller or CEX dealer or agent is authorized to make any amendment to this Agreement. The parties may amend this Agreement by mutual written agreement executed by duly authorized representatives of the parties. The parties agree that there are no third party beneficiaries to this Agreement. Neither party shall be deemed to be an employee, agent, or other legal representative of the other party for any purpose whatsoever, or have the right or authority to assume or otherwise create any obligation or responsibility, express or implied, on behalf of the other party or to bind the other party in any manner whatsoever.

**11.5 Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof.

**11.6 Notices.** Notices must be in English or Chinese, in writing, and will be deemed given upon receipt, after being sent using a method that provides for positive confirmation of delivery to the physical address or email address set forth in the Quotation, including without limitation through automated receipt or by electronic log.

**11.7 Counterparts; Electronic Signatures; Construction.** This Agreement and any Quotation may be executed in counterparts, which taken together shall form one legal instrument. A manually or electronically signed copy of this Agreement or any Quotation delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of the Agreement or the Quotation. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (i) references to the plural include the singular, the singular the plural, and the part the whole, (ii) "or" has the inclusive meaning frequently identified with the phrase "and/or," (iii) "including" has the inclusive meaning frequently identified with the phrase "including but not limited to" or "including without limitation," and (iv) references to "hereunder," "herein" or "hereof" relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time. The parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and that ambiguities shall not be interpreted against the drafting party.

Revised on 2022/01/12