



# TIERRA SERVICE SUBSCRIPTION AGREEMENT

Last Updated: June 2023

1. This Tierra Service Subscription Agreement is between Tierra S.p.A. ("Tierra") and the individual/entity accepting its terms and conditions and/or accessing the Service ("Customer"). The Service is supplied by Tierra. The Service is directly purchased or provided through Tierra, its Affiliates, such as Topcon Positioning Systems, Inc., or a company acting as sales agent. If the Service is purchased directly from Tierra, Tierra shall be the billing entity. If the Service is purchased through a Tierra Affiliate or a company acting as sales agent, these may be the billing entity.

IF AN INDIVIDUAL IS ACCEPTING THE TERMS OF THIS AGREEMENT ON BEHALF OF AN ENTITY, SAID INDIVIDUAL REPRESENTS THAT IT HAS THE AUTHORITY TO BIND SUCH ENTITY.

## 2. Definitions. As used in this Agreement:

- 2.1. "**Affiliate**" means an entity that controls, is controlled by or is under common control with another entity, where "control" refers to ownership or the right to direct more than 50% of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority of another entity.
- 2.2. "**Agreement**" means this Tierra Service Agreement and the applicable Purchase Certificate(s).
- 2.3. "**Applicable Privacy Laws**" means, in relation to any Personal Information that is processed in the provision of the Services, the applicable legislation on the protection of identifiable individuals.
- 2.4. "**Content**" means the information, documents, reports, software, products and services made available to Customer in the course of using the Service.
- 2.5. "**Customer Data**" means all data submitted, stored, posted, displayed, or otherwise transmitted by or on behalf of Customer, its customers or any User and received and processed by the Service. Customer Data includes Machine Data and may include Personal Information.
- 2.6. "**Derived Data**" means data aggregated, compiled or derived, generated from Processed and Customer Data such that a specific user, machine, or company is no longer identifiable. Derived Data does not consist of, contain or relate to Personal Data.
- 2.7. "**Effective Date**" means the earlier of: (a) the Subscription start date described in the Purchase Certificate, or (b) the date a Subscription is activated.
- 2.8. "**Firmware Updates**" means feature enhancements, corrections and bug fixes to the Telematics Device firmware.
- 2.9. "**High Risk Activities**" means activities where the use or failure of the Services could lead to death, personal injury, or environmental damage, including (a) emergency response services; (b) autonomous and semi-autonomous vehicle or drone control; (c) vessel navigation; (d) aviation; (e) air traffic control; (f) nuclear facilities operation.
- 2.10. "**Intellectual Property Rights**" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

- 2.11. **“Machine Data”** means data concerning the operation of the machine to which a Telematics Device is installed, including location data. Machine Data does not include Personal Information.
- 2.12. **“Mobile Application”** means a form of the Tierra Service that Tierra may make accessible via mobile application.
- 2.13. **“Personal Information”** means any information that by itself or in combination does or can identify a specific individual or as defined in the Applicable Privacy Laws.
- 2.14. **“Privacy Statements”** means the [Tierra Privacy Policy Statement - Tierra S.p.A. \(tierratelematics.com\)](https://www.tierratelematics.com).
- 2.15. **“Processed Data”** means the data created as the result of the processing of Customer Data by the Service, which, in turn, enables the Service to function, including but not limited to the generation and provision of Service features and Content.
- 2.16. **“Purchase Certificate”** means each order form, purchase order, purchase confirmation or other document confirming Customer’s purchase of access to the Service.
- 2.17. **“Remote Command”** means the capability, provided by Telematics Device upon request of the Customer, to send data and/or commands remotely to the machinery.
- 2.18. **“Sensitive Information”** means any confidential or personal information classified as “sensitive data” (or similar term) under Applicable Privacy Laws and that requires the highest level of access control and security protection.
- 2.19. **“Service”** means the Tierra telematics service operated by Tierra. Operation of the Service is dependent on connection with Telematics Devices.
- 2.20. **“Service Usage Data”** means anonymized data gathered as a result of Tierra monitoring the use of the Service by all Users. Such information includes but is not limited to account type, device type, browser version and duration. These data points and similar data points assist Tierra in monitoring the Service for security and infrastructure stability.
- 2.21. **“Subscription”** means the right to access the Service, subject to applicable Usage Limits, purchased by Customer for the applicable Term under the terms of this Agreement as described in the Purchase Certificate. Subscriptions must be activated within 1-year of purchase or shall otherwise expire with no refund available.
- 2.22. **“Support Services”** means remote support for the Services that may be provided by Tierra or its agents from time to time.
- 2.23. **“Telematics Device”** means a device that collect Machine Data from the equipment and transmit them through a connectivity provider to the Service.
- 2.24. **“Term”** means the initial term of a Subscription, or any renewal thereof as set forth on the applicable Purchase Certificate or renewal confirmation.
- 2.25. **“Usage Limits”** means the specific number of Users, licenses and license configurations specifically ordered and paid for by Customer as described in the Purchase Certificate(s) eventually associated with a Subscription. Usage Limits may be increased subject to a separate written agreement in writing.
- 2.26. **“User(s)”** means Customer’s employees, representatives, contractors or agents who are authorized to use the Service for Customer’s internal business purposes and have been supplied access credentials by Customer.

### 3. **Service Access License Grant and Restrictions.**

- 3.1. **Access License Grant.** Tierra hereby grants to Customer a non-exclusive, non-transferable, right to access and use the Service during the Term, in countries/locations where the Service is made available by Tierra, solely for Customer’s own internal business purposes. All rights not expressly granted to Customer herein are reserved by Tierra and its licensors.
- 3.2. **Restrictions.** Unless otherwise agreed-upon in writing between the parties Customer shall not: (i) modify or make derivative works of the Service or the Content; (ii) create Internet “links” to the Service or “frame” or “mirror” any Content on any other server or wireless or Internet-based device; (iii) access the Service for purposes of monitoring

its availability, performance or functionality, or for any other benchmarking or competitive purposes; (iv) access the Service or its underlying code in order to (a) build a competitive product or service, (b) build a product using similar features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service; (v) loan, or share its passwords, or allow third party access to the Service, other than its Users, or any related materials; or (vi) access or use the Services: (a) for High Risk Activities; (b) in a manner intended to avoid incurring fees; (c) for activities that are subject to the International Traffic in Arms Regulations (ITAR) maintained by the United States Department of State; or (d) on behalf of or for the benefit of any entity or person who is legally prohibited from using the Services.

Customer shall not: (i) upload or store spam or otherwise contents in violation of applicable laws or violative of third party privacy rights; (ii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iii) interfere with or disrupt the integrity or performance of the Service or the data contained therein; (iv) attempt to gain unauthorized access to the Service or its related systems or networks; or (v) use the Service in any manner that infringes the intellectual or proprietary rights of, rights of publicity or privacy or other rights of any party.

#### **4. Customer Responsibilities.**

- 4.1. Customer is responsible for all activity in connection with its use of the Service, including but not limited to the use of the Service by its Users, and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with its use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. Customer shall: (i) notify Tierra immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Tierra immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Customer or its Users to be in violation of the restrictions in Section 3.2.
- 4.2. Transmission of information using a telematics device is subject to legal requirements that may vary from location to location, including radiofrequency use authorization. Customer is responsible for limiting use of any telematics device to those locations where all legal requirements for their use and the service communication network have been satisfied. In the event that a telematics device or otherwise is located in or relocated to a location where (i) legal requirements are not satisfied or (ii) transmitting or processing of such information across multiple locations would not be legal, Tierra disclaims any and all liability related to such failure to comply, and may discontinue the transmission of information from that device.
- 4.3. Enabling of Service functionalities aimed at sending data and/or commands remotely to the machinery. The Customer can activate specific capabilities (“**Remote Command**”) of the Telematics Device which enable the Service functionalities aimed at sending data and/or commands remotely to the machinery (e.g., File Transfer). Customer acknowledges and agrees that these functions must be used by operators who are adequately trained and prepared on their use and potential risks. It is the Customer's responsibility to assess the risks deriving from the use of these features to ensure that the machinery always operates safely under all possible conditions, such as: i) temporary lack or loss of connection; ii) sending or receiving by the machinery of corrupted or incorrect data and/or commands also as a result of compromises and intrusions into the systems. Tierra is not responsible for any content, action, effect, consequence deriving from the use of such features. The Customer undertakes to i) use them by arranging and assuming responsibility for adopting all the necessary safety measures and evaluating all the possible risks deriving for himself/herself and for his potential customers, in compliance with the regulations in force; ii) hold Tierra harmless from any request, charge, liability, for damage to property and people and, in general, from all consequences deriving from the improper use of the functions designed to send data and/or commands remotely to the machine, assuming, consequently, liability also towards third parties. Use of the features is conditioned on acceptance of these terms of use.
- 4.4 **Customer expressly consents to the provision and collection of location-based information in connection with the use and operation of the Service. Customer hereby represents that any Personal Information uploaded or otherwise made available through the Service has been collected and processed in a lawful and legitimate manner, in accordance with the requirements of Applicable Privacy Laws and any others legal protection obligations. Customer shall clearly and conspicuously, and upon a regular and ongoing basis, notify all customers and Users of the Service that location information is gathered and processed in connection with the operation of the Service and shall obtain the express consents from customers and Users of the Service**



**for the collection and process of location information, as required by Applicable Privacy Laws and any others legal protection obligations. Such information is processed and managed as described in Section 20 below.**

- 5. Modifications.** Tierra reserves the right, in its sole discretion, to make changes to this Agreement, the Privacy Statements and other published policies, including, without limitation, changes required to comply with applicable law. It is Customer's responsibility to regularly check the applicable Tierra website for updates. Tierra shall provide prior notice of any such changes in the manner indicated in Section 21 herein. Customer's continued use of the Services after their implementation constitutes acceptance of relevant changes. Tierra may make new applications, tools, features or functions available from time to time through the Service, the use of which may be conditioned on Customer's agreement to additional terms.
- 6. Telematics Devices; Updates.** Use of the Service is dependent on connection with properly functioning and updated Telematics Devices. Tierra may, from time to time make Firmware Updates available for download. The Telematics Device may periodically check with Tierra for Firmware Updates. If Tierra makes a Firmware Update available, it may automatically download and install onto the Device. **Customer acknowledges and agrees that: (i) full and complete functionality of the then-current form of the Service will require that Customer ensure that relevant Telematics Devices are installed with the most current form of the relevant firmware and Firmware Updates; and (ii) Tierra may download and install automatic Firmware Updates onto its Telematics Devices.**
- 7. Maintenance/Support.** Tierra will use commercially reasonable efforts to ensure that the Service is available to Customer at all times (other than during the times which Tierra may conduct scheduled maintenance, Telematics Device updates and times of unavailability due to Force Majeure events and/or third-party conduct or services). From time-to-time Tierra may connect to the Tierra web-based license manager to validate Customer's right to use the Service, Support Services and/or any other related activities. From time-to-time Tierra may need to impersonate a User in order to support a request for maintenance or support made by Customer and/or User. Tierra warrants that such action will be completed in compliance with Sections 16 and 20 and Customer specifically accepts the need of such action.
- 8. Security.** Tierra will use commercially reasonable efforts to prevent unauthorized access to Customer Data by third parties (except where such access is required by applicable law, or an order of a court of competent jurisdiction).
- 9. Ownership.**
  - 9.1. Service. As between Tierra and Customer, all right, title and interest in the Service, and all suggestions, ideas and feedback proposed by Customer regarding the Service, including all Intellectual Property Rights and Confidential Information, belong to and are retained solely by Tierra or its licensors, as applicable. Customer hereby irrevocably assigns to Tierra all evaluations, ideas, feedback and suggestions made by Customer to Tierra regarding the Service (collectively, "**Feedback**") and all Intellectual Property Rights in the Feedback. The assignment set forth herein expressly includes the right to reproduce, use, disclose, exhibit, display, adapt, market, create derivative works and distribute such Feedback to others without limitation. To the extent required by applicable laws, Customer undertakes to execute any assignments, licenses or other instruments reasonably required by Tierra to secure Tierra's rights over the Feedback.
    - 9.1.1. Processed Data, Derived Data, Content, and Service Usage Data. As between Tierra and Customer, all right, title and interest in the Processed Data, Derived Data, Content and Service Usage Data, including all Intellectual Property Rights therein, belong to and are retained solely by Tierra.
    - 9.1.2. License to Processed Data, Derived Data, and Content. Tierra hereby grants to Customer a limited, non-exclusive license to use and copy the Processed Data, Derived Data, and Content solely for Customer's internal business purposes in connection with the use of the Service.
  - 9.2. Customer Data. As between Tierra and Customer, all right, title and interest in the Customer Data and all Intellectual Property Rights therein, belong to and are retained solely by Customer. Customer, not Tierra, shall have sole responsibility for the accuracy, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Tierra shall not be responsible or liable for the Customer's activities that may cause deletion, correction, destruction, damage, loss or failure to store any Customer Data.
    - 9.2.1. License to Customer Data. Customer hereby grants to Tierra a limited, non-exclusive, royalty-free, worldwide license to use, copy, modify and create derivatives of the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Tierra to provide the Service and generating Content to



Customer, including but not limited to the processing of the Customer Data to create and make use of the Processed Data.

10. **Use of Derived Data.** Notwithstanding anything else in this Agreement or otherwise, Tierra may, in accordance with Applicable Privacy Laws, use Derived Data, in the pursuit of its legitimate commercial interests, including for industry analysis, benchmarking, research, analytics, product development, product improvement and marketing and in collaboration with research institutions and universities.
11. **Third-Party Features; Services.**
  - 11.1. The Service may include features/services available under license from certain third parties ("**Third-Party Features**"). Tierra cannot and does not guarantee the ongoing availability of any Third-Party Features, which are subject to immediate discontinuation at the discretion of Tierra. In the event that any Third-Party Feature is discontinued Customer's access to such Third-Party Feature may be permanently disabled. Tierra shall undertake reasonable efforts to provide prior notice of any such discontinuation. Notifications of availability/termination of Third-Party Features may be posted from time to time on the Service website.
  - 11.2. Customer may choose to have the Service communicate, transfer, make calls and exchange data between certain third-party devices, systems or software (including application programming interfaces, known as APIs) to generate reports, data or other features ("**Third-Party Services**"). Tierra does not exercise control over the form or quality of data received and reports generated by such Third-Party Services. Customer acknowledges and agrees to the following: i) Customer consents to Tierra to transfer and exchange the data with relevant Third-Party Services; (ii) the use of and exchange of data with Third Party Services is governed by the applicable Third Party Service terms and conditions, including privacy policies; (iii) Tierra is not responsible for the quality or accuracy of or the inability to receive, access or use such Third Party Services; (iv) Tierra may block or limit the use of Third-Party Services and the number of API calls, or otherwise restrict data flow through the APIs immediately and without notice in the event that use of the Third-Party Services or APIs is adversely affecting the Tierra Service and or violate the terms of this Agreement.
  - 11.3. Application Mobile Providers. Tierra reserves the right to change or withdraw the Mobile Application and/or the form and content of the information provided through the Mobile Application without prior notice, except to the extent directly prohibited by the applicable app store through which Customer purchases/downloads the Mobile Application. Customers acknowledge that the terms of its agreement with its mobile network provider will continue to apply when using the application. As a result, Customers may be charged by the mobile provider for access to network connection services for the duration of the connection while accessing the Mobile Application or any other third-party charges as may arise. Moreover, additional terms, conditions and policies of the app store may also apply, and it is Customer's responsibility to read and comply with them. The Mobile Application is provided over the internet and mobile networks; therefore, the quality and availability may be affected by factors beyond Tierra's control. Customer agrees that Tierra has no responsibility for the availability or unavailability of the Mobile Application or information therefrom due to interruption of service, difficulty or inability to download or access content, any bug or virus, or any communication system failure or any factors beyond Tierra's control.
12. **Fees and Payment; Renewal.** Customer will be billed for fees and related costs/charges on a monthly, quarterly or annual basis, as described in the Purchase Certificate or as otherwise agreed. Costs and charges may include roaming charges, applicable taxes or duties and any charges that result directly or indirectly from government regulations or mandates. Tierra will endeavor to give Customer reasonable prior written notice if any additional costs and/or charges are implemented after activation of a Subscription. If applicable, a reasonable overage charge may be billed for extra cost due to use in countries not covered by subscription or every MB exceeding each a plan's maximum (as posted in the most current Purchase Certificate or price book). Unless stated otherwise, all prices are stated and shall be paid in Euro or in U.S. Dollars if the Service is purchased through a Tierra Affiliate, such as Topcon. Tierra may, at any time after the commencement of the initial Term, change the price for Subscriptions by giving Customer at least 30 days prior notice. In addition to all other rights, if any fees are not paid when due Customer may be charged a late fee equal to 1.5% per month or the maximum rate permitted by law on unpaid balances. If a Subscription is suspended due to Customer's failure to timely pay and subsequently reactivated, Customer will be billed a reactivation fee equal to 2 months of the annual Subscription rate and related charges. The Term of a reactivated Subscription will not be extended.



### 13. **Term and Termination.**

- 13.1. Term. This Agreement commences on the Effective Date and will remain in effect for the Term of the relevant Subscription(s).
- 13.2. Termination for Cause. Either party may terminate a Subscription and/or this Agreement for cause (i) on 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period or immediately if, in the reasonable opinion of the non- defaulting party it considers that the material breach is not capable of being remedied; or (ii) immediately upon written notice if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or an assignment for the benefit of creditors. In addition, Tierra may terminate a Subscription and/or this Agreement, on written notice in the event (A) Customer fails to pay any amounts due hereunder or in Purchase Certificate and such failure continues more than 10 days after notice by Tierra; or (B) Customer infringes Tierra's Intellectual Property Rights, including without limitation through use of a Service in excess of the license to use or access granted in this Agreement. Customer is solely responsible for its actions and the actions of its Users.
- 13.3. Discontinuation of Service/Termination for Convenience. Tierra may discontinue the Service, in whole or in part, and/or terminate this Agreement with or without notice for any reason at any time. Tierra shall undertake reasonable efforts to provide prior notice of discontinuation. If the Service is discontinued or this Agreement is terminated by Tierra other than for cause, Customer, so long as it is not in default under this Agreement, shall be entitled to be reimbursed in an amount equal to the amount of fees paid by Customer for the number of full months remaining in the subject Term. For example, if a customer purchases and pays in advance for a 1-year Term for the Service and Tierra discontinues the Service in the 7<sup>th</sup> month of the 1-year Term the customer would be entitled to be reimbursed for the amounts paid for the remaining 5 months of the Term. Such reimbursement shall not be available for instances where a Subscription is not activated within 1 year of the date of purchase. If the Customer cancel the Service, in whole or in part, before the end of the Subscription, must pay all remaining monthly payments due until the end and are not entitled to any refund; also, in case of advance payment made at the start of the subscription no refund is due.
- 13.4. Effect of Termination or Expiration. On termination or expiration of a Subscription Customer's right of access to the Service will terminate. So long as Customer is not in default of any obligation hereunder, Tierra will make any data stored in the Service available on request by Customer in the format in which it is stored in the Service for twelve (12) months following the effective date of termination. After such 12-month period, Tierra will have no obligation to maintain or provide any data and may thereafter, unless legally prohibited or unless otherwise agreed-upon in writing between the parties, delete all data in its systems or otherwise in its possession or under its control. For active Subscriptions, Tierra will store data in such a way that access is available for the preceding thirty-six (36) months, unless otherwise agreed-upon between Tierra and Customer; beyond 36 months, unless agreed between the parties, Tierra may proceed with the deletion of upon notice (Section 21) provided at least 90 days in advance.
- 13.5. Survival. Sections 9, 10, 13.4, 14, 15, 16 and 17 shall survive termination or expiration of this Agreement.

### 14. **Disclaimer of Warranties; Customer Responsibilities.**

THE SERVICE AND ALL CONTENT IS PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS" BASIS AND USE OF THE SERVICE IS AT CUSTOMER'S SOLE RISK. TIERRA, ITS LICENSORS AND WIRELESS SERVICE PROVIDERS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. TIERRA AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CUSTOMER THROUGH THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A





PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY TIERRA AND ITS LICENSORS.

THE SERVICE(S) MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC/WIRELESS COMMUNICATIONS. TIERRA IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

CUSTOMER IS RESPONSIBLE TO ASSURE THE SUITABILITY OF THE SERVICE FOR ITS OWN SPECIFIC PURPOSES AND TO CREATE THE NECESSARY HARDWARE AND SOFTWARE ENVIRONMENT FOR THE USE OF THE SERVICE. CUSTOMER FURTHER AGREES THAT IT IS SOLELY RESPONSIBLE FOR THE PROPER MAINTENANCE, OPERATION AND SUPPORT OF HARDWARE/EQUIPMENT (e.g., consoles, connectivity hardware, mobile phones, tablets, monitors, etc.) THAT IT MAY USE IN CONNECTION WITH THE SERVICE AND, NOTWITHSTANDING CUSTOMER'S USE OF THE SERVICE AND REGARDLESS OF ANY INFORMATION PROVIDED THROUGH IT (WHETHER ACCURATE OR INACCURATE) REGARDING THE OPERATION, MAINTENANCE OR PERFORMANCE STATUS OF THE HARDWARE/EQUIPMENT, CUSTOMER ASSUMES ALL RISK RELATED TO THE PROPER OPERATION, SUPPORT AND MAINTENANCE OF THE HARDWARE/EQUIPMENT.

**CUSTOMER IS RESPONSIBLE FOR ANY RISK OF LOSS FOR ANY HARDWARE/EQUIPMENT REQUIRED TO COMMUNICATE WITH OR THROUGH THE SERVICE FROM ANY CAUSE, INCLUDING, WITHOUT LIMITATION, VEHICLE, EQUIPMENT AND DEVICE FAILURE, THEFT, FIRE, COLLISION, TAMPERING, AND VANDALISM.**

15. **Indemnification.** CUSTOMER SHALL INDEMNIFY AND HOLD TIERRA, ITS LICENSORS AND EACH SUCH PARTY'S PARENT ORGANIZATIONS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS AND AGENTS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, COSTS, DAMAGES, LOSSES, LIABILITIES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS) ARISING OUT OF OR IN CONNECTION WITH: (I) ANY ALLEGATION THAT USE OF THE CUSTOMER DATA INFRINGES, MISAPPROPRIATES OR VIOLATES THE PRIVACY OR INTELLECTUAL PROPERTY RIGHTS OF, OR HAS CAUSED HARM TO, A THIRD PARTY; (II) CUSTOMER'S AND/OR ITS USERS USE OF THE SERVICE; (III) A BREACH BY CUSTOMER OR CUSTOMER'S USERS OF ANY TERM, OBLIGATION AND/OR COVENANT UNDER THIS AGREEMENT; (IV) CUSTOMER AND/OR ITS'S USERS NEGLIGENCE OR MISCONDUCT; (V) ANY USE OR MISUSE OF THE SERVICE.

16. **Confidentiality.**

- 16.1. Confidential Information. "Confidential Information" means any and all non-public information disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") in any form or medium, whether oral, written, graphical or electronic, pursuant to this Agreement, that is designated confidential or proprietary, or that a reasonable person should understand is confidential or proprietary. Confidential Information includes but is not limited to: information related to either party's technology, products, know-how, trade secrets, whether or not patentable or copyrightable, specifications, customers, business plans, pricing information, promotional and marketing activities, finances and other business affairs, Tierra products and anything else created or developed by Tierra in connection with this Agreement and the Services. Customer will not remove or destroy any proprietary markings or restrictive legends placed upon or contained in the Service and/or related materials.
- 16.2. Nondisclosure Obligations. The Receiving Party will not use the Confidential Information of the Disclosing Party for any purpose other than as necessary to fulfill its obligations or to exercise its rights under this Agreement and by Tierra to improve the Service (the "Purpose"). The Receiving Party will not disclose Confidential Information of the Disclosing Party to any third party; provided that the Receiving Party may disclose Confidential Information to its partners, officers, directors, employees, contractors, Affiliates, agents, advisors, or representatives who need access to such Confidential Information for the Purpose and who are subject to written confidentiality obligations at least as stringent as the obligations set forth in this [Section 16](#). Each party accepts responsibility for the actions of its partners, officers, directors, employees, contractors, Affiliates, agents, advisors and representatives, and will protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but with no less than reasonable care. The Receiving Party will promptly notify the Disclosing Party upon becoming aware of a breach or threatened breach hereunder and will cooperate with any reasonable request of the Disclosing Party in enforcing its rights.
- 16.3. Exceptions to Confidential Information. "Confidential Information" does not include information which: (i) is known by the Receiving Party prior to receipt from the Disclosing Party, without any obligation of confidentiality; (ii)



becomes known to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (iii) lawfully becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the Receiving Party without use of or access to the Disclosing Party's Confidential Information. The Receiving Party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, but only after it notifies the Disclosing party (if legally permissible) to enable the Disclosing party to seek a protective order or otherwise to contest such required disclosure, at Disclosing Party's expense.

- 16.4. **Injunctive Relief.** The Parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Receiving Party will be entitled, in addition to any other available remedies, to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.

## 17. **Limitation of Liability.**

IN NO EVENT WILL TIERRA, OR ITS AFFILIATES, AGENTS, EMPLOYEES, OR LICENSORS (INCLUDING THIRD PARTY PROVIDERS) BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY TORT, CONTRACT OR ANY OTHER LIABILITY ARISING IN CONNECTION WITH THIS AGREEMENT AND/OR THE USE OF THE SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION (REGARDLESS OF CAUSE) IN THE CONTENT, REGARDLESS OF THE FORM OF ACTION, INCLUDING, WITHOUT LIMITATION, FOR ANY LOSS OF PROFITS, GOODWILL OR OTHER INTANGIBLE LOSSES, OR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES WHATSOEVER, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

UNDER NO CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO A NEGLIGENT ACT, WILL TIERRA OR ITS AFFILIATES, AGENTS, EMPLOYEES, OR LICENSORS (INCLUDING THIRD PARTY PROVIDERS) BE LIABLE FOR ANY DAMAGES OF ANY KIND THAT RESULT FROM (i) THE USE, UNAUTHORIZED USE OR THE INABILITY TO USE THE SERVICE; (ii) THE TIMELINESS, DELETION, MIS-DELIVERY, OR FAILURE TO STORE ANY CUSTOMER DATA; OR (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF CUSTOMER DATA.

TO THE GREATEST EXTENT ALLOWED BY APPLICABLE LAWS, IN NO EVENT SHALL TIERRA'S AND ITS AFFILIATES, AGENTS, EMPLOYEES, OR LICENSORS (INCLUDING THIRD PARTY PROVIDERS) TOTAL LIABILITY TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT AND/OR, THE USE OF THE SERVICE WHETHER BASED ON CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE RELEVANT SUBSCRIPTION TO THE SERVICE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS SET FORTH HEREIN ARE AN ESSENTIAL PART OF THIS AGREEMENT AND REFLECT A FAIR ALLOCATION OF RISK BETWEEN THE PARTIES AND THAT, ABSENT SUCH TERMS, THE PROVISIONS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

Certain jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to Customer.

18. **Force Majeure.** Any delay in or failure of performance by Tierra under this Agreement shall not be considered a breach of this Agreement if and to the extent caused by events beyond the reasonable control of Tierra, including, but not limited to, acts of God, embargoes, governmental restrictions, strikes, riots, terrorist attacks, wars, or other military action, civil disorders, rebellion, fires, floods, vandalism, power outages, sabotage, epidemic, or pandemic (specifically including COVID-19).
19. **Local Laws and Export Control.** The Service provides services and uses software and technology that may be subject to United States export controls, administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies, as well as to European and/or Australian export controls. Customer agrees that the Service shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States, the E.U. and/or Australia maintains an embargo (collectively, "**Embargoed Countries**"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "**Designated Nationals**"). The lists of Embargoed Countries and





Designated Nationals are subject to change without notice. By using the Service, Customer represents and warrants that Customer is not subject to restrictions as located in, under the control of, or a national or resident of an Embargoed Country or Designated National. Customer agrees to comply strictly with all applicable export laws and assumes sole responsibility for obtaining licenses to export or re-export as may be required.

Tierra and its licensors make no representation that the Service is appropriate or available for use in locations other than the locations which it has made the Service available as of date of the Effective Date of the relevant Subscription.

## 20. Data Protection and Security.

- 20.1. As between Tierra and Customer, Customer is the data controller of the Personal Information included in the Customer Data and Tierra shall process Personal Information only as a data processor acting on behalf of Customer in supplying the Service and order to perform its obligations under this Agreement.
- 20.2. If applicable, solely in connection with the sale and provision of the Service and or in connection services such as maintenance or support (Section 7), Tierra may, from time to time, collect, maintain, process and use Personal Information including customers' names, Users' names, addresses, email addresses, credit card information, login credentials (username, password), IP address, diagnostic, technical, location, usage and related information.
- 20.3. Tierra will process Personal Information in accordance with the terms of this Agreement and as data controller, in accordance with its Privacy Statements, only in relation to the data referred in Section 20.2. The parties agree that the Customer's complete and final instructions are set out in this Agreement. Processing outside the scope of these instructions (if any) will require prior written agreement between Customer and Tierra with additional instructions for processing. In the event of a conflict between the terms of this Agreement and the Privacy Statements, the terms of this Agreement will control with respect to the Service being purchased under this Agreement.
- 20.4. Tierra has implemented and will maintain and follow appropriate technical and organizational measures intended to protect Personal Information against accidental, unauthorized or unlawful access, disclosure, damage, alteration, loss, or destruction. Notwithstanding the above, Customer is responsible for its secure use of the Service, including securing its account authentication credentials, protecting the security of Personal Information when in transit to and from the Service and taking any appropriate steps to securely encrypt or backup any Personal Information uploaded to the Service.
- 20.5. If Tierra becomes aware of any unlawful access to any Personal Information stored on Tierra equipment or in a Tierra facility, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Personal Information (each a "**Security Incident**"), Tierra will (1) promptly notify Customer of the Security Incident (provided that such notification may be delayed as required by a law enforcement agency); (2) take reasonable steps to address any Security Incident and prevent any further Security Incident; and (3) at Customer's request and cost, take commercially reasonable steps to assist Customer in complying with its obligations under Applicable Privacy Laws pertaining to responding to a Security Incident.
- 20.6. Notification(s) of Security Incidents will be delivered to one or more of Customer's administrators by any means Tierra selects including via email. It is Customer's sole responsibility to ensure Customer's administrators maintain accurate contact information on the online portal or as otherwise required by Tierra in a written notice to Customer's administrator(s). Tierra's obligation to report or respond to a Security Incident under this Section is not an acknowledgement by Tierra of any fault or liability with respect to the Security Incident. Customer must notify Tierra promptly about any possible misuse of its accounts or authentication credentials or any security incident related to the Service.
- 20.7. Tierra may transfer Customer Personal Information to its Affiliates entities in connection with the performance of its obligations under this Agreement. Customer expressly acknowledges that Personal Information may be transferred to the United States, and Customer authorizes Tierra (where applicable) to transfer Personal Information to and process it in the United States or any other country as set forth above, which may not have the same level of data protection as the country from which the Personal Information originated and represents and warrants that it has obtained the consent of its Users, where applicable, as required by Applicable Privacy Laws.

- 20.8. Customer represents and warrants that it has the authority to provide the Personal Information to Tierra for processing as contemplated by this Agreement as required by the Applicable Privacy Laws. If any applicable law requires a data subject to receive notice of or to provide consent to the processing and/or transfer of his/her Personal Information, Customer will provide such notice and obtain such consent from the applicable data subjects.
- 20.9. Tierra will abide by Applicable Privacy Laws pertaining to any relevant individual's exercise of his or her rights to access, correct, or object to the processing of Personal Information. Notwithstanding the foregoing, unless otherwise required by Applicable Privacy Laws, Tierra will promptly notify Customer if Tierra receives a request from a data subject to have access to Personal Information or any other complaint or request relating to Customer's obligations under Applicable Privacy Laws. Tierra will provide reasonable assistance to Customer to facilitate Customer's ability to respond to such request or complaint (including, without limitation, by allowing data subjects to have access to their Personal Information if such access is required by the applicable data protection laws, and where the Personal Information is not already available to the Customer).
- 20.10. Customer consents to Tierra engaging third party sub-processors to process the Personal Information for the permitted purpose. Tierra maintains an up-to-date list of its sub-processors which is available upon request to [privacy@tierratelematics.com](mailto:privacy@tierratelematics.com).
- 20.11. Customer only will provide Tierra with the Personal Information necessary for Tierra to perform its obligations under this Agreement. Customer acknowledges that the Service does not require the need to process Sensitive Information; therefore, under no circumstances will Customer upload or otherwise provide to the Service any Sensitive Information. In the event that Customer uploads Sensitive Information inadvertently, it will be treated in the same manner that Personal Information is treated under this Agreement and Customer will be liable before Tierra for any damages, losses, penalties or other costs associated with the unauthorized processing of Sensitive Information.
- 20.12. Following termination or expiry of the Service, Tierra will, where required by Applicable Privacy Laws and at the option of the Customer, return to Customer or securely delete all Personal Information processed in connection with the Service. This requirement shall not apply to the extent that Tierra is required by applicable law to retain some or all of the Personal Information, or to Personal Information it has archived on back-up systems, in which event Tierra shall securely isolate and protect from any further processing except to the extent required by such law.
- 20.13. If there is new guidance or a change in the Applicable Privacy Laws that renders all or part of the Service and/or this Agreement illegal, Tierra may notify Customer of such modifications to this [Section 21](#) as it reasonably deems necessary in light of such new guidance or change in Applicable Privacy Laws. If the Customer does not wish to accept the new terms in this [Section 20](#), the Customer may terminate this Agreement within 15 days of the date such notice is given.
21. **Notice.** Tierra may give notice by means of a general notice on the Service, electronic mail to Customer's e-mail address on record in the Customer Account, or by written communication sent by first class mail or pre-paid post to Customer's address on record in the Customer Account. Such notice shall be deemed to have been given upon the expiration of thirty days (30) if posted on the Service, forty-eight (48) hours after mailing or posting (if sent by first class mail or pre-paid post) or twelve (12) hours after sending (if sent by email). Customer may give notice to Tierra (such notice shall be deemed given when received by Tierra) at any time by letter, delivered by internationally recognized overnight delivery service or first-class postage prepaid mail, to Tierra, Attn: "Tierra Service Notice" at C.so Ferrucci, 112 10138 Torino, Italy; with a copy to Topcon "General Counsel" at 111 Bauer Drive Oakland, New Jersey 07436 if the Service is purchased through Topcon Positioning System Inc.
22. **Assignment; Change in Control.** This Agreement may not be assigned by Customer without the prior written approval of Tierra. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of Customer that results or would result in a direct competitor of Tierra directly or indirectly owning or controlling 50% or more of Customer shall entitle Tierra to terminate this Agreement for cause immediately upon written notice. Tierra may assign this Agreement at any time. Further, Customer is responsible for the request to disable the accounts of any User no longer employed by the Customer. Customer also acknowledge that the authorized use of this Service is conditioned upon lawful ownership or permission to use the machinery from which the data is generated. In the event the unit is sold or otherwise



transferred to a different lawful owner, Customer is responsible to move the device to another machinery owned or interrupt subscription and remove any Users access which was created, prior to the time of ownership transfer.

### 23. **Applicable Law.**

- 23.1. Customers Located in the Americas. For Customers located in the Americas this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to conflicts of laws provisions. Any action concerning this Agreement shall take place in state or federal courts located in Alameda County, California. For purposes of determining applicable laws, the parties acknowledge that Tierra is the proponent of this Agreement.
- 23.2. Customers Located in the European Union and in the rest of the world, except Americas and Australia. For Customers located in the European Union and in the rest of the world, except Americas and Australia (Section 26), this Agreement is governed by Italian law. Any action concerning this Agreement shall be remitted to the exclusive jurisdiction of the courts of Turin, Italy.

24. **General.** If for any reason any provision of this Agreement, or a portion thereof, shall be unenforceable, that provision shall be enforced to the maximum extent permissible so as to affect the intent of this Agreement, and the remainder of this Agreement shall continue in full force and effect. This Agreement constitutes the entire agreement between Tierra and Customer with respect to the Service and it supersedes all prior or contemporaneous communications, agreements and understandings between Tierra and Customer with respect to the subject matter hereof. No joint venture, partnership, employment, or agency relationship exists between Customer and Tierra as a result of this agreement or use of the Service. The failure of Tierra to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Tierra in writing. A printed version of this Agreement shall be admissible in judicial or administrative proceedings.

### 25. **Wireless Data Transmission Services.**

- 25.1. Wireless Data Usage. The Service contemplates that users' data consumption rates will be typical/similar to the data consumption rates experienced by services similar to the Services. In the event that Tierra determines that Customer's data consumption exceeds a reasonable level it shall notify Customer and may, in the exercise of its absolute and sole discretion, suspend Customer's access to the Service for as long as deemed necessary by Tierra. Tierra reserves the right to charge Customer for overage charges it may incur associated with Customer's excessive data consumption. Invoices for overage charges shall be paid within 30 days of the date of the subject invoice. Customer shall not be entitled to suspend any payments or to offset any amounts due.
- 25.2. Wireless Network Changes; Equipment Upgrades. Customer acknowledges that, over time, wireless service provider requirements may change and, as a result, equipment used in connection with the Service (such as Telematics Devices) may need to be upgraded to accommodate such changed requirements. Customer will be charged for all costs related to any such upgrades, and for equipment that is not upgraded, Tierra cannot provide assurance that the Service will continue to be available (without any errors, defects or breakdowns). Tierra will notify Customer in writing as soon as reasonably practical after receiving notice from the wireless service provider that upgrades will be required.
- 25.3. User Registration. As a condition to use applicable wireless data transmission services, Customer may be required to register with the relevant supplier and accept a password and username ("User ID") for each User. In the event such registration is required Customer shall be responsible to provide accurate, complete and updated registration information in such instances and to update such information when outdated. Customer may not: (i) select or use as a User ID a name of another person with the intent to impersonate that person; or (ii) use as a User ID a name subject to any rights of a person other than such user without appropriate authorization. Where required, a User ID shall be assigned to (and may only be used by) one unique Telematics Device /User and Customer shall ensure that each such User ID is not shared with or used by any entity other than the unique Telematics Device /User to which it is assigned.
- 25.4. Wireless Carrier Disclaimer. CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT IT HAS NO CONTRACTUAL RELATIONSHIP WHATSOEVER WITH THE UNDERLYING WIRELESS SERVICE PROVIDER OR ITS AFFILIATES OR CONTRACTORS AND THAT CUSTOMER IS NOT A THIRD-PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN TIERRA (OR ANY OF ITS AFFILIATES) AND THE UNDERLYING CARRIER. IN



ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE UNDERLYING CARRIER AND ITS AFFILIATES AND CONTRACTORS SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO CUSTOMER AND CUSTOMER HEREBY WAIVES ANY AND ALL CLAIMS OR DEMANDS THEREFOR, TO THE EXTENT POSSIBLE UNDER APPLICABLE LAW.

**26. For Customers located in Australia the following additional terms apply:**

- 26.1. Applicable Law. For customers located in Australia the agreement will be governed by and construed in accordance with the laws for the time being in force in South Australia and the parties agree to submit to the jurisdiction of the courts and tribunals of South Australia.
- 26.2. Implied terms and consumer guarantees (Laws of Australia). If the laws of Australia apply to this Agreement, then, any condition or warranty which would otherwise be implied in this Agreement is excluded. Liability of Tierra for breach of a guarantee conferred by the Australian Consumer Law ("ACL") other than those conferred by sections 51 to 53 of the ACL is limited: in the case of services, to any one of the following as determined by Tierra i) the supplying of the services again ii) or the payment of the cost of having the services supplied again.