

## VISIONLINK™ SERVICE TERMS OF USE & END USER LICENSE AGREEMENT

WELCOME TO THE VISIONLINK™. These are the general terms and conditions and end user license agreement (collectively, the “*Terms of Use*” or “*TOU*”) that apply to the application-based asset management service (together with all related mobile applications, software downloads, services and APIs, the “*VisionLink Service*”) produced by VirtualSite Solutions LLC (“*VSS*”, “*we*” or “*us*”) and hosted and distributed by either Trimble Inc. and its affiliates (“*Trimble*”) or Caterpillar Inc. and its affiliates (“*Caterpillar*”) and made available through this VisionLink website (the “*Site*”) to businesses and professionals.

You, an individual or a single company or legal entity and the personnel associated with your business (collectively, “*you*” or “*Customer*”), will be granted access to use the “*VisionLink Service*” for your internal business purposes, conditioned upon your purchase of one or more VisionLink Service subscription(s) (each a “*Service Subscription*”) and your acceptance of these TOU. If you are agreeing to these TOU on behalf of a company or other legal entity, you represent that you have the authority to contractually bind such entity and its personnel.

Whether you purchase or obtain your VisionLink Service Subscription(s) directly from Caterpillar or from Trimble through its VisionLink Store transaction portal, or indirectly from an authorized reseller of the VisionLink Service or the manufacturer of your machines and equipment (collectively “*Assets*”), **BY CLICKING ON “OK,” “ACCEPT,” “AGREE,” “SUBMIT” OR ANY BUTTON INDICATING ACCEPTANCE OF THE TOU AND/OR BY ACCESSING OR USING VISIONLINK AND/OR THE SITE, YOU REPRESENT THAT YOU ARE AUTHORIZED TO USE THE ASSETS AND THE VISIONLINK SERVICE AND THAT YOU AGREE TO BE BOUND BY THE CURRENTLY POSTED TOU.** FURTHER, SUBJECT TO SECTION 8.2 BELOW, YOUR CONTINUED USE OF THE VISIONLINK SERVICE FOLLOWING THE POSTING OF ANY CHANGES TO THE TOU WILL CONFIRM YOUR ACCEPTANCE OF THOSE CHANGES. These Terms of Use constitute a binding, legal agreement between you and VSS and are intended to have the same force and affect as if you had signed them.

**USE OF THE VISIONLINK SERVICE AND THE SITE ARE OFFERED TO YOU CONDITIONED UPON YOUR ACCEPTANCE OF THE TOU WITHOUT ANY MODIFICATIONS. THE TOU CONTAINS DISCLAIMERS OF WARRANTIES AND LIABILITY (See Sections 5.4, 10, 11, 12 and 14.1 below). THESE PROVISIONS FORM AN ESSENTIAL PART OF OUR BARGAIN.** If you are a customer of another asset management service furnished to you by Trimble, Caterpillar or the manufacturer of the Assets and are migrating to VisionLink as a replacement for that other service, you understand that the terms of use, terms of service or license agreement applicable to the other service do not apply to your use of the VisionLink Service.

A current copy of the TOU can be accessed and viewed at any time from the home page of the Site. We recommend that you print and retain copies of the TOU for your records. If you do not agree to the TOU, you agree not to use or access the VisionLink Service or the Site nor are you authorized to do so.

### VisionLink Service Terms of Use & End User License Agreement

#### 1. Application Services

- 1.1 General Description. The VisionLink Service is an application software based service. The VisionLink Service application software gathers data and information (“*Data*”) that you make available with respect to your Assets, including data and information from Assets equipped with VisionLink system supported telematics devices (“*VL Devices*”) or otherwise generated by or relating to such Assets made available through the VisionLink Service user interface, API feeds from you or others, VPN connections, or other similar information systems interface technologies. After activation of the VL Devices, VSS, and its distributors and their affiliates and their licensors, service providers and suppliers process, use, disclose and transfer the gathered Data to provide Authorized Users (defined in Section 3) with content, functionality, reports and services, as may be changed from time to time. VL Devices require activation in order for them to be used with the VisionLink Service. To have them activated you must (i) accept the payment terms and conditions applicable to your Service Subscription, (ii) accept these TOU, and (iii) consent to the transmission and use of the Data generated from your Assets as further described in section 6.1 below.

The VisionLink Service is offered under a variety of Service Subscription plans (“*Service Plans*”) and, therefore, may be subject to additional terms and conditions either posted at the Trimble Store for VisionLink portal or contained in other ordering documentation or agreements with Caterpillar or your authorized reseller of the VisionLink Service.

## 1.2 Third Party Communications Systems

Some features of the VisionLink Service require use of a proprietary third party communications system, such as that of a telephonic wireless communications carrier or a satellite-based communication system (each, a "**Communications Carrier**"). NONE OF THE VSS PARTIES HAS ANY RESPONSIBILITY FOR THE AVAILABILITY, QUALITY OR PERFORMANCE OF WIRELESS OR SATELLITE-BASED COMMUNICATIONS SERVICES OR EQUIPMENT FURNISHED BY THE COMMUNICATION CARRIERS. THE COMMUNICATIONS CARRIERS ARE EXCLUSIVELY RESPONSIBLE FOR SUCH SERVICES AND EQUIPMENT.

## 1.3 Data Exchange and Third Party Interfaces

The VisionLink Service data exchange component also permits the communication, transfer and exchange of data between the VisionLink Service application software and certain third-party manufactured Assets, devices or systems. None of the VSS Parties exercise control over the form or quality of data generated or transmitted by or to third-party manufactured Assets, devices or other third-party developed solutions such as custom reports or interfaces (collectively, "**Third-Party Data**"). Therefore, if your Services Subscription permits use of the VisionLink Service data exchange component you understand and agree to the following:

- Data may be exchanged between the VisionLink Service application and third-party manufactured Assets, devices or systems approved for use with the VisionLink Service by VSS;
- You accept any and all limitations in the display and use of Third-Party Data imported via third-party manufactured devices or other third party solutions as well as those in the display of Data generated by VL Devices exported to third-party manufactured devices or systems;
- VSS is not responsible for the quality or accuracy of, or the inability to receive, access or use Third-Party Data or Data exported to or through third party manufactured devices or systems or other third party solutions (e.g., custom reports or interfaces), whether a deficiency is due to third-party caused service outages, third-party software interface incompatibilities or failures, or otherwise;
- VSS may control all Third-Party Data transmitted to and from the VisionLink Service, and may stop or block any Third-Party Data that VSS believes may adversely affect performance of the VisionLink Service.

## 2. **Nature of Application & Hosting**

The VisionLink Service is hosted by VSS, Trimble and Caterpillar, or any one or two of them, or their service providers and includes VisionLink Service application software that is licensed under section 5 below, and third party software or services (to the extent permitted by the third party suppliers) ("**Third Party Software/Services**"). The VisionLink Service also harnesses use of firmware in Assets and VL Devices. The VisionLink Service is made available to Authorized Users by us, our licensors and by third party suppliers who provide content and services in conjunction with or through the VisionLink Service software application ("**Third Party Suppliers**"). You acknowledge that the Data and the VisionLink Service will be transmitted through the media of radio waves, cellular, satellite, GPS, Web and similar technology. You consent to such transmission and waive any claims that you may have against us with respect to such transmission. The VisionLink Service may be made available to Authorized Users on the basis of several factors including, without limitation, Web access, computer use, Assets, operating system, VL Devices activated and maintained by you, the level of Services purchased, username, password and/or other factors. The VisionLink Service is subject to change from time to time as further described in Section 8 below, and by accessing or using the VisionLink Service and the Site, you consent to our adding, changing or removing any services made available in conjunction with or through them.

## 3. **Authorized Users and Use; Limitations.**

- 3.1 Authorized Users. You agree that the VisionLink Service will be accessed and used only by you. For that purpose you will designate authorized users whom you authorize to access and use the VisionLink Service ("**Authorized User**"). The VisionLink Service may only be accessed and used in connection with Assets equipped with VL Devices necessary to access the Web and you must pay any necessary access fees. You are responsible for the acquisition, configuration, monitoring, maintenance and management of your software and hardware related to your use of the Web, including LAN, computers, modems, telecommunications devices, and your network connection to the Site. We are not responsible for the network connection or for issues, problems or conditions arising from or related to the network connection, including but not limited to bandwidth issues, network outages, and/or other conditions that are caused by the Web and/or network connection.

3.2 Limitations on Use. Transmission of information using a VL Device, or otherwise, is subject to legal requirements that may vary from location to location, including, but not limited to, radiofrequency use authorization. You must limit use of any VL Device to those locations where all legal requirements for the use of the VL Device and the VisionLink Service communication network have been satisfied. In the event that an Asset outfitted with a VL Device 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, we disclaim any and all liability related to such failure to comply and we may discontinue the transmission of information from that Asset. **You also understand and acknowledge that the VisionLink Service is not intended to be used for any emergency, safety or mission critical or safety related use or application or other ultra-hazardous activities and you shall not use the VisionLink Service in that manner.**

3.3 Third-Party Data. You represent that you have the right to make Third-Party Data available to VisionLink for use, processing, sharing, etc. in accordance with these TOU and that you have provided all necessary notices and obtained all necessary consents with respect to any personally identifiable information contained therein in such data.

#### 4. **Registration; Payment**

4.1 Customer Account. In order to log on to the Site and use the VisionLink Service, you and your Authorized Users will be asked to provide us with true, accurate, current and complete registration information and to update such information as necessary. Should we have reasonable grounds to suspect that any information provided by an Authorized User is inaccurate, incomplete or untrue, we have the right to suspend or terminate your or the Authorized User's right to access and use the VisionLink Service. At completion of your registration you will receive an initial log-on code to enable access and use the VisionLink Service.

4.2 Site Access & Password; Security. Upon the initial log-on to the Site, Authorized Users will create a username and password, which will be needed to access certain features of the VisionLink Service. You are responsible for maintaining the confidentiality of your designated Authorized Users' usernames and passwords and are fully responsible for all activities that occur on the Site under your designated Authorized Users' usernames and passwords. We may require you to change your designated Authorized Users' usernames in the event we determine, in our sole discretion, that any username is offensive or for any other reason. You agree to immediately notify VSS of any unauthorized use of any Authorized User's username, password, or any other breach of security, and to ensure that Authorized Users logout at the end of each session. You are responsible for disabling the accounts of any Authorized User no longer employed by you. You acknowledge that VSS is not responsible for tracking your Authorized User's use of the VisionLink Service, and that VSS cannot and will not be liable for any loss or damage arising from your failure to comply with this Section 4.

4.3 Payment. You agree to pay all charges and fees in accordance with the payment terms applicable to the Service Subscriptions that you acquire.

#### 5. **Grant of License; License Restrictions**

5.1 Limited License to Customer. Subject to your compliance with these TOU, the terms of your Service Subscription(s) and payment of all applicable fees, VSS grants you a limited, non-exclusive, non-transferable, non-assignable license (without the right to sublicense) to use the VisionLink Service application software accessed through the Site for business purposes and purposes otherwise consistent herewith. All rights not expressly granted to you herein are reserved by VSS and its suppliers and licensors. Additional terms may apply to APIs (Application Protocol Interface(s)) made available in connection with the VisionLink Service.

5.2 License Restrictions - No Misuse of Services. Your use of the VisionLink Service is limited to those uses expressly permitted under your Service Subscription and these TOU. As a condition of your use of the VisionLink Service you agree that you will not use it for any purpose that is unlawful or prohibited by these TOU. We may restrict or cancel the VisionLink Service to you if there is a reasonable suspicion of, or any actual misuse or fraudulent use by you. You will be responsible for any costs incurred by us or any other party (including attorney's fees) as a result of such misuse or fraudulent use. You may not: (i) reproduce, modify, publish, distribute, publicly display, adapt, alter, translate, or create derivative works from the VisionLink Service, or any Third Party Software/Services; (ii) merge the VisionLink Service software or Third Party Software/Services with other software; (iii) sublicense, lease, sell, rent, loan, or otherwise transfer the VisionLink Service or associated software or Third Party Software/Services to any third party; (iv) reverse engineer, de-compile, disassemble, or otherwise attempt to derive the source code for the VisionLink Service software, Third Party Software/Services or Site; (v) otherwise use or copy the VisionLink Service or associated software or Third

Party Software/Services except as expressly allowed under the TOU, including this Section 5; (vi) use the VisionLink Service or associated software or Third Party Software/Services in a "service bureau" or similar structure whereby third parties obtain use of the VisionLink Service or Third Party Software/Services through you; (vii) remove, obscure, or alter any copyright, trademark, or other proprietary notices embedded in, affixed to or accessed in conjunction with the VisionLink Service, associated software, and/or the Site; (viii) damage, disable, overburden, interfere with, disrupt or impair the VisionLink Service or Site, or servers or networks connected to them, in any manner; (ix) interfere with any other party's access, use or enjoyment of the VisionLink Service or the Site in any manner; (x) intentionally or unintentionally violate any applicable local, state, national or international law, including, but not limited to, laws and regulations related to export; or (xi) impersonate any person or entity or misrepresent your affiliation with a person or entity.

5.3 Third Party Software/Services. You hereby acknowledge and agree that any Third Party Software/Services bundled with the VisionLink Service (e.g., maps) is/are being provided to you by Third Party Suppliers and not by VSS. You hereby acknowledge and agree that your access or use of any such Third Party Software/Services is not governed by these TOU, but may be governed by such Third Party Suppliers' terms of use, end user license agreement or other like agreement. VSS will use good faith and reasonable efforts to notify you of events affecting the Third Party Software/Services (e.g., down time or maintenance) that may impact your use of VisionLink. HOWEVER, VSS CANNOT BE RESPONSIBLE FOR, AND EXPRESSLY DISCLAIMS ANY LIABILITY IN CONNECTION WITH THE THIRD PARTY SOFTWARE/SERVICES OR YOUR USE (OR ANY AUTHORIZED USER'S USE) THEREOF.

5.4 Time Limited Service Subscription. In the event that use of the VisionLink Service provided to you is time limited (such as that provided to beta testers, resellers and distributors for sales demonstration purposes or to prospective end user customers for evaluation purposes) (the "**Time Limited Service**"), then you may use the Time Limited Service in accordance with these TOU solely for the purpose for which it is provided to you, and only for the limited period of time specified by VSS or the party from whom you have procured the Time Limited Service. VSS may revoke your access to and authorization to use Time Limited Service at any time. In the event that you subsequently acquire a paid Service Subscription, then your continued use of VisionLink will continue to be governed by these TOU and associated Service Subscription terms and conditions. Resale, transfer or other distribution of the Time Limited Service is prohibited.

## 6. Consent to Transmission and Use of Data; License and Aggregate Data

6.1 Consent to Data Transmission and Use. Once activated, Assets equipped with our VL Devices gather and transmit Data concerning those Assets, their conditions and their operation. Data may also be gathered and transmitted to VSS via other means, including but not limited to physical inspections, oil sampling and off board diagnostic tools. The Data transmitted may include: machine serial number, machine location and operational data, including without limitation: fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers, payload, cycle times and installed attachments.

The Data is transmitted to VSS, Trimble, Caterpillar or one or more of their affiliates, licensors, service providers, or suppliers; and/or your local dealers. In some cases, such as when you acquire your VisionLink Service Subscription from the manufacturer of your Assets or its dealers, Data may also be transmitted to the Asset manufacturer or its dealers.

We may share some or all of the collected Data with our dealer(s); our affiliates and their dealers; Trimble and its affiliates, and their licensors, service providers, and suppliers; Caterpillar and its affiliates, and their licensors, service providers, and suppliers; the manufacturer of your Assets and its dealers; and VSS, Trimble or Caterpillar's business partners worldwide who provide the VisionLink Services, Assets or related products and services to you.

Data is transmitted to and used by Trimble and its affiliates, licensors, service providers, suppliers and dealers for the following purposes: (a) providing VisionLink Services to you and the Assets; (b) checking or maintaining VisionLink system supported Assets and VL Devices; (c) monitoring an Asset's health or performance; (d) helping maintain an Asset and/or improve the Asset's efficiency; (e) evaluating or improving the VisionLink Service and/or other products and services; (f) complying with legal requirements and valid court orders, as applicable; (g) performing market research; (h) offering you new products and services; or (i) any other business purposes, including use with other applications.

Data is transmitted to and used by Caterpillar in accordance with its data governance statement, a current copy of which may be found at the following url: <http://www.caterpillar.com/en/legal-notices/datagovernancestatement.html> (the "**Caterpillar Data Governance Statement**").

**By authorizing activation of the VL Devices with your Assets, you hereby consent to the transmission, use and transfer of the Data for the purposes and in the manners described above.**

- 6.2 *License and Aggregate Data.* To the extent that you have any ownership or other interests in the Data, you hereby grant to VSS, Trimble, and Caterpillar and each of their affiliates, and their dealers, and their licensors, service providers, and suppliers a non-exclusive, perpetual, worldwide, paid-up, and irrevocable license to use, process, manipulate and/or modify, copy, perform, compile and create derivative works from the Data for any business purpose, including for the analysis and improvement of VL Devices, Assets and other products or service capabilities and in Caterpillar's case, use in accordance with the Caterpillar Data Governance Statement. You hereby acknowledge and agree that each of VSS, Trimble and its affiliates, and Caterpillar and its affiliates, their licensors, service providers, and suppliers may disclose to third parties aggregate data based upon Data, so long as you and your Authorized Users are not identifiable from the disclosed aggregate data. You further consent to each of VSS' and Trimble's, its affiliates', their subcontractors', and its business partners and third party providers', and Caterpillar's, and its affiliates', and their licensors', service providers' and suppliers' disclosure of the Data, provided that neither you nor any of your designated Authorized Users will be identifiable from any disclosed Data. All other Data and information that is collected, transmitted, recorded, or accessed by or through the VisionLink Service that is not Data identifiable to you and/or your Authorized Users, and all data, reports, derivative works, compilations, modifications and other materials created from or with use of Data will be, in each case, the sole and exclusive property of VSS; and you, on your behalf and on behalf of your Authorized Users, hereby assign all of your and their right, title and interest, if any, in and to such items to VSS without any fees and without rights to future royalties.

## 7. Privacy and User Data

- 7.1 You acknowledge that the Data stored and collected by and through the VisionLink Service may be retraceable to individuals ("**Personal Data**") as further described in the [VisionLink Privacy Notice](https://s3.amazonaws.com/visionlinkassets/visionlink-docs/en_US/GDPR_Statement.pdf), which is available at [https://s3.amazonaws.com/visionlinkassets/visionlink-docs/en\\_US/GDPR\\_Statement.pdf](https://s3.amazonaws.com/visionlinkassets/visionlink-docs/en_US/GDPR_Statement.pdf). The VisionLink Privacy Notice is consistent with Caterpillar's Global Privacy Statement and Trimble's International Privacy Policy, which describe how Caterpillar and Trimble, respectively collect, process and share personal data, the rights that you may have under privacy laws, and other information relevant to their processing of personal information. Caterpillar's Global Privacy Statement is available at <http://www.caterpillar.com/dataprivacy>. Trimble's International Privacy Policy is available at <https://www.trimble.com/Corporate/Privacy.aspx>. Depending on the configuration of the telematics hardware installed on your assets, much of the personal information used by VisionLink is collected, processed, used and shared by Caterpillar and Trimble through their respective IoT platforms. Therefore, you should review the Caterpillar Global Privacy Policy and Trimble International Privacy Policy together with this Privacy Notice to more fully understand your rights and choices with respect to personal information. The Caterpillar Data Governance Statement, VisionLink Privacy Notice, Trimble International Privacy Policy and Caterpillar Global Privacy Statement (the "**Data Governance Documentation**") may change from time to time, so review them with regularity and care. Changes will be noted in the applicable URL, including the date that any such changes are made and/or when they become effective. In some instances, if the changes are material, we (or Caterpillar or Trimble) may also send you an e-mail message or other communication telling you about such changes and any choices you may have or actions you can take before they go into effect. Your continued use of the VisionLink Service following such changes becoming effective will demonstrate your acceptance of those changes.

- 7.2 Each time an Authorized User logs on to the VisionLink Service and the Site, certain information, including the username, will be sent in communications with the servers hosted by us. This information is used to access the Authorized User's account, VisionLink Services and other personalized features. VSS, Trimble or Caterpillar may match the username to personally identifiable information in order to provide the Authorized User with VisionLink Services that the Authorized User is entitled to use and to provide relevant Data and information. Additionally, the VisionLink application permits collection of location-based Data in connection with the operation of Assets and the VisionLink Services provided ("**Location Data**") so that the geographic location of the operator of the Asset or VL Device may be identifiable.

**You hereby agree that you shall clearly, conspicuously, and regularly notify all Authorized Users and other personnel, persons or entities using the VisionLink Service and operating Assets of the foregoing collection, transmission and use of the Data, including any Personal Data and Location Data contained therein; that you have obtained and will obtain all necessary consents from your designated Authorized Users and other personnel, persons or entities using the VisionLink Service, Assets and VL Devices who may be affected thereby, and that in doing so you have otherwise complied fully with your obligations under applicable law**

relating to the transmission and use of the Data. You agree to indemnify, defend and hold harmless each of the VSS Parties (as defined in Section 10 below) from and against all claims, demands, actions or causes of action arising out of your breach of the foregoing obligations.

7.3 The VisionLink Service is administered by VSS from its offices or those of its affiliates at various locations within in the United States of America. VSS may also make use of an affiliate or one or more external service providers to host the VisionLink Service. Consequently, Data is collected, sent, processed and stored in the United States and may be collected, sent, processed and stored outside the USA. You acknowledge that in the event of conflict of privacy laws or practices in your jurisdiction and those in the domicile of the entity hosting VisionLink, the law applicable in the domicile of the entity hosting the VisionLink Service will have precedence at all times.

## 8. Modification of Services

8.1 VSS may, at any time, modify, suspend or permanently discontinue the VisionLink Service or Site, or any portion of them, with or without advance notice. Subject to section 14.2 below, no VSS Party will be liable to you or to any third party for any such modification, suspension or discontinuance.

8.2 VSS may modify and update these TOU if circumstances under which these TOU are entered into change following purchase of your Service Subscription, and VSS will provide you with reasonable notice of any such changes. Your continued use of the VisionLink Service following the posting of any such changes will constitute confirmation of your acceptance of the updated TOU, unless you notify VSS in writing within 30 days of the notice that you do not accept them. In that case the TOU in effect at the time of your purchase or last renewal of the Service Subscription (whichever is later) will remain in effect through the remainder of your then current subscription term, unless VSS, at its option, exercises its right to terminate your Service Subscription(s) in accordance with section 14.2 below.

## 9. Network Coverage, GNSS Satellites, Interruption of Service

9.1 You acknowledge that the VisionLink Services and network access are subject to transmission limitations caused by a variety of factors such as atmospheric conditions, topographical obstructions, limitations or lack of coverage of the underlying carrier service and other natural or manmade conditions. Additionally, motor and ignition noise, metal shielding, interference by users of the same or adjacent radio channels may limit or interfere with coverage. You further acknowledge that VSS is not responsible for the operation or failure of operation of Global Navigation Satellite System (“GNSS”) satellites or the availability of GNSS satellite signals.

9.2 No VSS Party will be liable to you or any third party for any loss or damage arising from the VisionLink Service, or its interruption, transmission errors (including Location Data inaccuracies), defects or any other cause, including, but not limited to, interruption caused by the underlying communications system carrier. The VSS Parties do not assume and will not have any liability arising from events beyond the VSS Party's control or the control of the VSS Party's subcontractors, licensors or business partners, including events such as acts of God, acts of any governmental entity, acts of public enemy, strikes or weather conditions.

## 10. No Warranties; Customer Responsibility for Assets, Risk of Loss and “Alert” Feature Configuration.

VSS, TRIMBLE, CATERPILLAR AND EACH OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, LICENSORS, SERVICE PROVIDERS, SUPPLIERS, DEALERS, AFFILIATES AND AGENTS (EACH A “VSS PARTY” AND COLLECTIVELY THE “VSS PARTIES”) DISCLAIM ANY RESPONSIBILITY FOR ANY HARM RESULTING FROM YOUR USE OF THE VISIONLINK SERVICE AND SITE. YOU EXPRESSLY UNDERSTAND AND AGREE THAT: (a) THE VISIONLINK APPLICATION, SITE AND SERVICES ARE PROVIDED ON AN “AS IS”, “WITH ALL FAULTS” AND “AS AVAILABLE” BASIS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU; (b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE VSS PARTIES MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, (i) WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, ACCURACY, QUIET ENJOYMENT, NO ENCUMBRANCES, NO LIENS AND NON-INFRINGEMENT, (ii) WARRANTIES ARISING THROUGH COURSE OF DEALINGS OR USAGE OF TRADE, (iii) WARRANTIES REGARDING THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE VISIONLINK APPLICATION, SITE AND SERVICES, AND (iv) WARRANTIES THAT ACCESS TO OR USE OF THE VISIONLINK SERVICE AND SITE WILL MEET YOUR REQUIREMENTS, BE UNINTERRUPTED OR ERROR-FREE; AND (v) THAT YOU WILL ACCESS THE SITE AND USE THE VISIONLINK SERVICE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY

RESPONSIBLE FOR ANY DAMAGES TO YOUR COMPUTER SYSTEM(S) OR LOSS OF DATA THAT RESULTS FROM SUCH ACCESS AND USE.

YOU FURTHER AGREE THAT YOU, YOUR AUTHORIZED DEALER AND/OR THE APPLICABLE THIRD-PARTY ARE SOLELY RESPONSIBLE FOR THE PROPER MAINTENANCE, OPERATION AND SUPPORT OF THE ASSETS. NOTWITHSTANDING YOUR USE OF THE VISIONLINK SERVICE AND REGARDLESS OF ANY INFORMATION PROVIDED THROUGH IT (WHETHER ACCURATE OR INACCURATE) REGARDING THE OPERATION, MAINTENANCE OR PERFORMANCE STATUS OF THE ASSETS, YOU ASSUME ALL RISK RELATED TO THE PROPER OPERATION, SUPPORT AND MAINTENANCE OF THE ASSETS. **ACCORDINGLY, YOU ARE RESPONSIBLE FOR ANY RISK OF LOSS FOR ANY ASSETS REQUIRED TO COMMUNICATE WITH OR THROUGH THE VISIONLINK SERVICE, FROM ANY CAUSE, INCLUDING, WITHOUT LIMITATION, VEHICLE AND EQUIPMENT FAILURE, THEFT, FIRE, COLLISION, TAMPERING, AND VANDALISM.**

Without limiting the foregoing, due to variables beyond the VSS Parties' reasonable control in respect to your configuration of any "alert" feature of the VisionLink Software, your use and maintenance of associated Assets and VL Devices, and inherent positional inaccuracies of global navigation satellite systems (GNSSs), No VSS Party will have any responsibility or liability arising from any theft or other casualty resulting from the erroneous transmission or non-transmission of alert messages.

THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY GRANTED IN THE TOU.

**11. Limitation of Liability**

UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, WILL THE VSS PARTIES BE LIABLE TO YOU OR A THIRD PARTY FOR ANY DAMAGES, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, THIRD PARTY OR CONSEQUENTIAL (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF BUSINESS INFORMATION, VIRUS INFECTIONS, SYSTEM OUTAGES AND THE LIKE) ARISING OUT OF, BASED ON OR RESULTING FROM THE TOU OR YOUR ACCESS TO, USE OF, MISUSE OF OR INABILITY TO USE THE VISIONLINK SERVICE OR THE SITE, EVEN IF A VSS PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (INCLUDING DAMAGES INCURRED BY THIRD PARTIES). THE EXCLUSION OF DAMAGES UNDER THIS SECTION 11 IS INDEPENDENT OF ANY REMEDY PROVIDED UNDER THE TOU AND SURVIVES IN THE EVENT SUCH REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS OTHERWISE DEEMED UNENFORCEABLE. THESE LIMITATIONS AND EXCLUSIONS APPLY WITHOUT REGARD TO WHETHER DAMAGES ARISE FROM BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR ANY OTHER CAUSE OF ACTION. TO THE EXTENT THAT APPLICABLE LAW DOES NOT PROHIBIT SUCH EXCLUSIONS AND LIMITATIONS, IN NO EVENT WILL THE VSS PARTIES' TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION, WHETHER IN CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AMOUNTS PAID BY YOU TO THE VSS PARTIES FOR THE VISIONLINK SERVICE WITHIN THE 12 MONTHS PRIOR TO THE MOST RECENTLY ENDED MONTH FOR YOUR ACCESS OR USE OF THE VISIONLINK SERVICE.

THE PRECEDING LIMITATIONS OF LIABILITY DO NOT APPLY TO LIABILITIES THAT CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAWS, SUCH AS IN THE EVENT OF STATUTORILY MANDATED LIABILITY (INCLUDING LIABILITY UNDER APPLICABLE PRODUCT LIABILITY LAW) OR IN THE EVENT OF PERSONAL INJURY ARISING SOLELY FROM A VSS PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

**12. Customer Indemnification**

UPON OUR REQUEST YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS EACH OF THE VSS PARTIES FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS, DEMANDS, ACTIONS OR OTHER PROCEEDINGS BROUGHT AGAINST IT BY ANY THIRD PARTY DUE TO, ARISING OUT OF OR RELATED TO YOUR (A) USE OF THE VISIONLINK SERVICE OR THE SITE, (B) VIOLATION OF THE TOU, OR (C) YOUR VIOLATION OF ANY LAW, REGULATION OR THIRD PARTY RIGHTS. You shall pay any and all costs, damages and expenses, including, without limitation, reasonable attorneys' fees and costs awarded against or otherwise incurred by a VSS Party in connection with or arising from any such claim, lawsuit, action, demand or other proceeding. **The relevant VSS Party may, at its own expense, assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you agree to cooperate with such VSS Party in asserting any available defenses.**

### 13. Intellectual Property Rights

- 13.1 You hereby agree and acknowledge that VSS (and as applicable, Trimble, Caterpillar and Third Party Suppliers) own all right, title and interest in and to all Intellectual Property Rights (defined below) in connection with or relating to the VisionLink Service and the Site. ***“Intellectual Property Rights”*** means any and all rights under patent law, copyright law, trade secret law, trademark law, and any and all other proprietary or moral rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide. You will have no right, license, or interest therein, expressly or impliedly, except for any license expressly granted herein. VSS or its licensors, as the case may be, will own all right, title and interest in and to any replacements, improvements, updates, enhancements, derivative works and other modifications (including, without limitation, the incorporation of any ideas, methods or processes provided by or through you) to Intellectual Property Rights made by any person, even if paid for by you and regardless of whether or not they are similar to any of your Intellectual Property Rights. You will undertake any and all action necessary to vest such ownership in VSS, including without limitation assigning (and you hereby assign) to VSS all rights in and to such Intellectual Property Rights, including, without limitation, patent applications, patents, moral rights and copyrights arising from or relating to the VisionLink Service or the Site. Notwithstanding the foregoing, VSS’s Intellectual Property Rights as they pertain to the Data, include only the rights granted to VSS under Section 5 above.
- 13.2 You acknowledge that all trademarks, service marks, and logos (collectively, ***“Marks”***) that appear throughout the VisionLink Service or the Site belong to VSS or the respective owners of such Marks, and are protected by U.S. and international trademark and copyright laws. Any use of any of those Marks without the express written consent of VSS or the owner of the Mark, as applicable, is strictly prohibited. VSS may, in appropriate circumstances and at its sole discretion, disable and/or terminate the accounts of Authorized Users who may be infringing the Intellectual Property Rights of others.

### 14. Suspension, Discontinuation or Cancellation of Service to Customer; Cancellation Fee

- 14.1 VSS may suspend your access to the Site and terminate your license to use the VisionLink Services without liability, if
- (i) you violate the TOU, or breach the terms of your Service Subscription(s) or any other valid agreement for use of the VisionLink Service;
  - (ii) fail to pay Service Subscription fees or other amounts owed when due, (whether due to a VSS Party directly or to the dealer or distributor through whom you acquired your Service Subscription);
  - (iii) the Communications Carrier through which you are able to access and use the VisionLink Service terminates your communications service; or
  - (iv) VSS has reason to believe that you, your Authorized Users, any of your agents or any third party is abusing the VisionLink Service or using it fraudulently or unlawfully.

**If you pay Service Subscription fees to the dealer or distributor from whom you acquired your Service Subscription (rather than to a VSS Party directly) you acknowledge and agree that VSS may rely in good faith upon the dealer’s or distributor’s notice to VSS of your non-payment of Service Subscription fees and as a result may suspend your access to the VisionLink Service and terminate your license to use it without liability.** In addition, subject to section 14.2 below, VSS may discontinue the VisionLink Service in whole or in part, and/or cancel your VisionLink Service account with or without notice for any reason at any time. YOU AGREE THAT NO VSS PARTY NOR ANY VSS PARTIES’ AFFILIATES OR DEALERS, NOR ANY OTHER INDIVIDUAL OR ENTITY FROM WHOM YOU PURCHASED OR OTHERWISE ACQUIRED YOUR SERVICE SUBSCRIPTION WILL BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ITS CANCELLATION OR TERMINATION FOR ANY OF THE ABOVE-CITED REASONS EXCEPT AS EXPRESSLY PROVIDED HEREIN. IF YOUR ACCOUNT IS CANCELLED FOR ANY REASON, YOU AGREE NOT TO RE-REGISTER FOR AN ACCOUNT TO VISIONLINK WITHOUT WRITTEN PERMISSION FROM VSS.

- 14.2 If your Services Subscription and VisionLink Service account are terminated for VSS’s convenience and no fault on your part, then you will have no obligation to pay Service Subscription fees for any period following the date of termination, and you will be reimbursed a proportion of the subscription fees received by VSS based upon the elapsed term of the currently active Service Subscription as of the date of termination. You will, however, remain obligated to pay Service Subscription fees for the term of Service Subscription until the date of termination.



14.3 Should you cancel your account and/or the Service Subscriptions in whole or in part, or if we cancel or terminate your account and Service Subscription(s) due to your violation of the TOU, breach of the terms of your Service Subscription or any other valid agreement with a VSS Party, or your insolvency, bankruptcy (or similar action or proceeding), or your ceasing to do business in the ordinary course, you will be charged a cancellation fee equal to the amount of the subscription fee charges payable through the remaining term of your then currently active Service Subscription(s). Any such cancellation charges will become immediately due and payable.

**15. Deletion of Customer Data and Other Information**

VSS may delete any and all information, Data and other content maintained in VisionLink Service accounts from time to time. VSS accepts no responsibility for such deleted information, Data or content.

**16. International**

VisionLink is administered by VSS from its offices or those of its affiliates at various locations within in the United States of America. VSS makes no representation that VisionLink Services are appropriate or available for use in locations outside the United States, and accessing them from territories where the VisionLink Services are illegal is prohibited. You may not use or export or re-export the VisionLink Service or its content or any copy or adaptation in violation of any applicable laws or regulations including, without limitation, United States export laws and regulations. If you choose to access the VisionLink Service from locations outside the United States, you do so on your own initiative and are responsible for compliance with applicable local laws.

**17. Notices and Electronic Communications**

When you visit the Site or send e-mail to us, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices on this site. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. You may update your e-mail address by visiting the location on the Site where you have provided contact information. If you do not provide VSS with accurate information, VSS cannot be held liable if it fails to notify you. You may have the right to request that VSS provide such notices to you in paper format, and may do so by contacting *VirtualSite Solutions LLC, Attention: VisionLink Services Customer Service, 10368 Westmoor Drive, Suite 100, Westminster, CO 80021 USA*, Email: [VL\\_Support@Trimble.com](mailto:VL_Support@Trimble.com). Any other communications should also be sent to that address.

**18. U.S. Government Restricted Rights [Applies only to U.S. Government Licensees]**

The VisionLink application, Site and the Services, their content and other materials, are deemed "commercial computer software" and "commercial computer software documentation" pursuant to DFAR Section 227.7202 and FAR Section 12.212 (and any successor sections). Use of VisionLink and the Site including, but not limited to, its reproduction and display, by the United States of America and/or any of its instrumentalities, regardless of form, is governed by the TOU.

**19. Choice of Law and Forum**

The TOU is/are governed by and construed in accordance with the laws of the State of California and applicable United States federal law, without reference to "conflicts of laws" provisions or principles. You hereby consent and agree to the exclusive jurisdiction of, and venue in, the state and federal courts located in the County of Santa Clara, California. Notwithstanding the foregoing VSS may choose to file a complaint against you or take any other legal action (including, without limitation, requesting injunctions or immediate relief in summary proceedings) against you before any competent court in your jurisdiction for any claim or action arising out of or relating to the TOU or your use of VisionLink.

**20. Export**

Use of VisionLink is subject to the U.S. Export Administration Regulations. You agree to the following: (a) you are not a citizen, national or resident of, and am not under the control of, the government of Cuba, Iran, North Korea, Syria, Sudan nor any other country to which the United States has prohibited export; (b) you will not export or re-export materials from the Site, directly or indirectly, neither to the above mentioned countries nor to citizens, nationals or residents of those countries; (c) you are not listed on the United States Department of Treasury lists of Specially Designated Nationals, Specially Designated Terrorists, and Specially Designated Narcotic Traffickers, nor are you listed on the United States Department of Commerce Table of Denial Orders; (d) you will not export or re-export Site

materials, directly, or indirectly, to persons on the above mentioned lists; and (e) you will not use the Site and Site materials for, and will not allow the Site and Site materials to be used for, any purposes prohibited by United States law, including, without limitation, for the development, design, manufacture or production of nuclear, chemical or biological weapons of mass destruction.

**21. Remote Services**

To the extent not prohibited by applicable Laws, we (or Caterpillar or Trimble) may perform remote diagnostics and make available remote software and firmware updates and upgrades for VL Devices and, in the case of Caterpillar, the CAT® Assets on which VL Devices may be installed. Caterpillar's processes for delivering remote updates and upgrades are described in the Cat® Remote Services – Software Update Process for Cat Branded Product available at [www.cat.com/remoteservicesprocess](http://www.cat.com/remoteservicesprocess). You acknowledge and agree that you choose to participate in Remote Services (including, remote diagnostics and remote updates and upgrades) for such Assets and VL Devices and authorize us (and Caterpillar and Trimble) to remotely access, program and install updates and upgrades for such VL Devices and Assets in accordance with this Agreement, and in the case of updates and upgrades provided by Caterpillar, the Caterpillar Data Governance Statement and the processes described in the Cat® Remote Services – Software Update Process for Cat Branded Product. We cannot guarantee that user preferences and configuration settings that have been established by you or your Authorized Users will be preserved following an update or upgrade to such Assets or VL Devices, whether performed remotely or otherwise.

**22. General Provisions**

The TOU, the terms of your Service Subscription and/or any other valid agreement between you and a VSS Party for use of the VisionLink Service, constitute the entire agreement between you and VSS and govern your use of the VisionLink Service and Site, superseding any and all prior agreements, negotiations and communications (whether written, oral or electronic) between you and VSS with respect to the subject matter hereof. No change, modification, or waiver of the TOU, will be binding on VSS unless made in writing, with VSS's approval. Any rights not otherwise expressly granted under the TOU are reserved by VSS and its licensors. The failure of VSS to exercise or enforce any right or provision of the TOU shall not constitute a waiver of such right or provision. If any part of the TOU is held invalid or unenforceable, by a court of competent jurisdiction, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of VSS, and the remaining portions shall remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the VisionLink Service and/or your Service Subscription must be filed within one (1) year after such claim or cause of action arose or be forever barred.

**23. Official Language**

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

Rev. 7 June 2018