



**BADGER**

**SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT**

Effective: July 05, 2019

*The most current version of this Agreement will supersede all previous versions.*

**PLEASE READ THIS SUBSCRIPTION AGREEMENT CAREFULLY.**

This Software as a Service Subscription Agreement (this "**Agreement**") is entered into by and between **Badger Maps, Inc.**, a Delaware company, having a place of business at 539 Broadway, San Francisco, CA 94133, USA (the "**Provider**") and the individual or entity agreeing to these terms (the "**Customer**").

This Agreement is executed by Customer checking a box referencing this Agreement and this Agreement is effective from the date Customer checks that box (the "**Effective Date**").

This is a legal agreement that governs Customer's use and Provider's supply of the Badger Maps Services.

**Customer must read and accept the terms of this Agreement before Customer may access or use the Services. Provider is willing to supply the Services only on the condition that Customer accepts all the terms in this Agreement. BY USING THE SERVICES, CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS.**

**If Customer is acting on behalf of a company, Customer represents and warrants to Provider that Customer has the authority to enter into this Agreement and that the execution, delivery and performance by Customer of this Agreement have been duly authorized by all necessary corporate action.**

The parties agree as follow:

## **1. SERVICES PROVIDED**

- 1.1. Services mean software, content and related electronic documentation and media supplied by Provider (the “**Services**”).
- 1.2. **License.** Subject to the terms and conditions of this Agreement, Provider grants Customer a non-exclusive, nontransferable worldwide right to access and use the Services during the subscription term.
- 1.3. **Use of services.** Customer’s use of the Services is subject to this Agreement, along with the binding terms of [Provider’s Terms of Use](#) and [Provider’s Privacy Policy](#), as may be amended from time to time. In the event of any conflict or inconsistency, the provisions that will best allow Provider to economically satisfy its obligations and responsibilities to itself and Customer shall prevail.
- 1.4. **Term.** The term of this Agreement will begin on the Effective date of this Agreement and last until this Agreement expires or is terminated pursuant to Section 5 of this Agreement.
- 1.5. **Future Functionality.** Customer agrees that Customer’s purchase is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Provider regarding future functionality or features.
- 1.6. **Subscriptions.** Provider’s services are billed on a subscription basis (the “**Subscription**”). Accordingly, Customer will be billed in advance on a recurring, periodic basis (the “**Billing Cycle**”). Billing Cycles are monthly or annual, depending on what subscription plan Customer selects when purchasing a Subscription.
- 1.7. **Auto-Renewal.** **At the end of each Billing Cycle, Customer’s subscription will automatically renew for an additional Billing Cycle or 12 months, whichever is shorter, unless either party terminates this Agreement in accordance with Section 5. Any such renewal will be on the terms and conditions of this Agreement.**

## **2. PAYMENT**

- 2.1. Customer agrees to pay Provider any fees for the Services Customer subscribes to, in accordance to the pricing and payment terms presented to Customer for those Services (the “**Fees**”).
  - (a) The Fees are in US dollars and non-refundable.
  - (b) The Fees are based on the Services purchased, and not actual usage.
  - (c) Provider may amend the Fees for the Services and the availability and features included in subscription plans at any time by sending 30 days written notice to Customer.
- 2.2. **Payment.**
  - (a) Customer will be billed monthly or annually, according to the subscription plan Customer subscribed to.

(b) The payment method is by credit card. By providing credit card information to Provider, Customer authorizes Provider to charge such credit card or bank account for all Fees payable during the Billing Cycle. Customer further authorizes Provider to use a PCI-compliant third party to process payments, and consent to the disclosure of Customer's payment information to such third-party.

(c) Customer is responsible for providing complete and accurate billing and contact information to Provider; and for notifying Provider of any changes to such information.

**2.4. Taxes.** Unless otherwise stated, Customer is responsible for any taxes (*other than Provider's income tax*) or duties associated with the sale of the Services, including any related penalties or interest (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with the Services Customer subscribed to and will pay Provider for the Services without any reduction for Taxes. If Provider is obliged to collect or pay Taxes, the Taxes will be invoiced to Customer, unless Customer provides Provider with a valid tax exemption certificate authorized by the appropriate taxing authority or other documentation providing evidence that no tax should be charged. Provider will not charge Customer VAT if Customer provides Provider with a valid VAT number issued by a taxing authority in the European Union.

**2.5. Late Payments.** If Customer's payment is not received by the due date, then, without limiting Provider's rights or remedies, a late payment charge of 1.5% of the outstanding balance, or the maximum rate permitted by law, whichever is lower, may be added to Customer's charges. Customer agrees to pay all reasonable attorney's fees and costs incurred by Provider to collect any past due amounts.

### **3. MODIFICATIONS TO SUBSCRIPTION**

**3.1.** Customer may modify the number of purchased subscriptions at any time without requiring an Amendment of this Agreement directly through the Services or by emailing Provider.

**3.2.** By adding a user, Customer agrees to be charged for this additional subscription. Added users will be subject to the current subscription plan and fees subscribed to by Customer and Customer will be charged in accordance with Section 2 of this Agreement.

(a) If Customer's Billing Cycle is monthly and a user is added during the month, Customer will be charged for the additional users at the next Billing Cycle.

(b) If Customer's Billing Cycle is annual and a user is added during the billing cycle, Customer will be charged the prorated amount for the period beginning when the user is added and ending when the on-going Billing Cycle ends.

**3.3** Any such modification will be on the terms and conditions of this Agreement. The updated subscriptions will automatically renew in accordance with Section 1.7 of this Agreement, unless terminated by either party in accordance with Section 5 of this Agreement.

**4. SUSPENSION.** Provider reserves the right to suspend Customer's access to the Services without notice in the event of late payments, regardless of the dollar amount.

### **5. TERMINATION**

**5.1. Termination.** Either party may terminate this Agreement

(a) at any time during the Pilot Period, at no cost to Customer; or

(b) by giving the other party 30 days written notice. Customer will be billed for the next Billing Period in the event the notice is not given 30 days before the end of the current Billing Period.

**5.2. Material breach.** If Customer terminates this Agreement for a material breach by Provider who failed to cure the breach within 30 days of notice from the non-breaching party, Provider will refund Customer, on a pro rata basis, for any prepaid subscription fees associated with that portion of the then-current term that has been terminated.

**5.3. Effect of Termination.** Upon the termination of this Agreement in accordance with this Section 6, this Agreement is automatically void and of no further force or effect, except that:

(a) any amount accrued but not paid as of the effective date of termination shall be paid in full by the party owing such amount within 30 days of the effective date of termination;

(b) Sections 2, 6.2, 7, 8, 9, and 10 survive the termination of this Agreement and remain in full force and effect; and

(c) neither party is relieved from liability for any inaccuracy of any representation or breach of any warranty or covenant contained in this Agreement prior to such termination and each party shall have all the rights and remedies in respect of such inaccuracy or breach that law or equity may provide.

**6. PUBLICITY.** Customer consents to Provider's inclusion of Customer's name, together with any identifying logo or mark, in a customer list and can be disclosed by Provider, including for, but not limited to, marketing and PR purposes. Other than this, neither party will make any public statement regarding the relationship contemplated by this Agreement without the consent of the other party.

**7. DISPUTE RESOLUTION AND ARBITRATION.** ANY CONTROVERSY, DISPUTE OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ITS INTERPRETATION, APPLICATION, IMPLEMENTATION, BREACH OR ENFORCEMENT SHALL BE SETTLED IN ACCORDANCE WITH THE PROCEEDINGS DETAILED IN [PROVIDER'S TERMS OF USE](#).

**9. GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to choice or conflicts of law rules.

## **10. MISCELLANEOUS**

**10.1. Export Compliance.** The Services, Content, other technology Provider makes available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not permit users to access or use any Services in a U.S. embargoed country or in violation of any U.S. export law or regulation.

**10.2. Successors and Assigns.** This Agreement is binding upon, and inures to the benefit of, the parties and their respective successors and assigns. Customer may not assign any of its rights under this Agreement, whether voluntarily or involuntarily, by operation of law or in any other manner, nor delegate the performance of any of its obligations, except with the previous written consent of Provider. Any such assignment or delegation, or purported assignment or delegation, without the previous written consent of Provider, is void.

- 10.3. Modification of Agreement.** Provider reserves the right to supplement, amend, or modify this Agreement, at Provider's discretion, and Provider will inform Customer of any upcoming changes by notice. If Customer does not agree to be bound by the upcoming changes of terms and conditions, Customer shall not access or use the Services. only by the mutual agreement of the parties.
- 10.4. Notices.** Provider may give notice to Customer by means of (i) a general notice in Customer's account, (ii) by email to Customer's e-mail address on record, or (iii) by written communication sent by first class mail to Customer's address on record. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail) or 12 hours after sending (if sent by email).
- 10.5. Waivers.** No term of this Agreement may be changed, waived, discharged or terminated, except if an authorized representative of the party against whom it is sought to be enforced approves such change, waiver, discharge or termination in writing. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
- 10.6. Severability.** If any provision of this Agreement is found to be illegal or otherwise unenforceable in any respect, that provision will be deemed to be restated to reflect as nearly as possible the original intent of the parties in accordance with applicable law and the remaining provisions of this Agreement will remain in full force and effect.
- 10.7. Entire agreement.** This Agreement, together with our [Privacy Policy](#), our [Terms of Use](#) and any other agreements expressly incorporated by reference herein, constitutes the entire and exclusive understanding and agreement between Customer and Provider regarding Customer's use of and access to the Services.