



Terms of Use

Last updated: July 05, 2019

The most current version of these Terms of Use will supersede all previous versions.

PLEASE READ THESE TERMS OF USE CAREFULLY.

The Terms of Use (this “**Agreement**”) are entered by and between Badger Maps, Inc, a Delaware corporation having a principal place of business at 539 Broadway, San Francisco, CA 94133 (“**Badger**”, “**We**” or “**Us**”) and the individual or entity agreeing to these terms (“**You**”) and is executed as of the date You agree to this terms by checking the box on our website or mobile application (“**Effective Date**”).

This Agreement, together with our [Privacy Policy](#), our [SaaS Subscription Agreement](#) and any other agreements expressly incorporated by reference herein, constitute the entire and exclusive understanding and agreement between you and Badger regarding your use of and access to the Services. We reserve the right, at our discretion, to change the terms and conditions of these agreements at any time and will inform you of any upcoming change by sending you a notice. If you do not agree to be bound by these terms and conditions, or any upcoming change, you shall not access or use the Services.

1. SERVICES

1.1 Services. Services mean software, content and related electronic documentation and media supplied by Badger through the websites on which a link to this Agreement is displayed and any mobile app made available to you (the “**Services**”).

1.2 Grant of License. Subject to this Agreement, Badger’s [privacy policy](#) and Badger’s [SaaS Subscription Agreement](#), (a) Badger will use commercially reasonable efforts to provide the Services to you, and (b) Badger grants you a limited, non-exclusive, non-transferable, non-sublicensable right to (i) access and use the Services and (ii) implement, configure, and permit

your users to access and use the Services (to the extent you have purchased subscriptions or obtained licenses for such users in accordance with this Agreement).

1.3 Term. The term of this Agreement will begin on the Effective Date and will last until it expires or is terminated by either party in accordance with Sections 2.1(b) or 14.2 of this Agreement.

1.4 Eligibility. By agreeing to this Agreement, you represent and warrant to us that (i) you have not previously been suspended or removed from the Services, and (ii) your registration and your use of the Services are in compliance with any and all applicable laws and regulations.

1.5 Badger's Responsibilities. Badger shall use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, provided that Badger shall not be responsible for:

- (a) planned downtime that will be communicated to you prior to such downtime;
- (b) downtime due to acts of you, your Users, your vendor(s) or any other customers, users or third parties;
- (c) downtime due to any connections, utilities, equipment or service outside of Badger's control;
- (d) unavailability caused by circumstances beyond Badger's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving Badger's employees), or Internet service provider failures or delays;
- (e) failures in the Badger Maps technology that are related to your Data (including any failure caused by delay or failure in providing your Data), or your systems or
- (f) unauthorized access, breach of firewalls or other hacking by third parties of your systems.

1.6 Updates. Badger reserves the right, in its sole discretion, to automatically apply certain upgrades or updates to our Services and push such upgrades or updates to you, which may alter existing features. Notwithstanding the foregoing, no update to our Services provided to you hereunder will materially degrade the security, availability, or capabilities of such Services (as compared to the version immediately prior to the release of such update), unless (i) we have notified you of such update in advance or (ii) such update is necessary for compliance with applicable Law or to protect the security of Badger, the Services, you, your Users or any other parties.

1.7 Mobile Access to Badger. Users may access certain the Services through mobile applications obtained from third-party websites such as Android or Apple app store. The use of mobile applications may be governed by the terms and conditions presented upon download/access to the mobile application and not by the terms of this Agreement.

1.8 Availability of features. Badger reserves the right to limit the availability of its features for any of its users, no matter the subscription plan, and for any reason, including but not limited to compliance with local laws and regulations.

2. FREE TRIAL, PILOT PERIOD AND TESTED SERVICES.

2.1 Free Trial and Pilot Period.

- (a) Badger may from time to time grant you and your Users access to the Services at no cost for a defined period of time ("**Free Trial**" or "**Pilot Period**").
- (b) Either party may suspend, limit or terminate the Free Trial or Pilot Period for any reason at any time without notice.
- (c) ANY OF YOUR DATA ENTERED INTO THE FREE TRIAL SERVICES AND/OR PILOT PERIOD SERVICES MAY BE PERMANENTLY LOST UNLESS YOU: (i) PURCHASE A SUBSCRIPTION TO OUR

SERVICES AS THOSE COVERED BY THE FREE TRIAL OR PILOT PERIOD SERVICES; (ii) PURCHASE UPGRADED SERVICES, OR (iii) EXPORT SUCH DATA PRIOR TO TERMINATION OF THE TRIAL SERVICES AND/OR PILOT SERVICES.

2.2 Tested Services.

(a) From time to time, Badger may invite you to try, at no charge, Badger products or services that are not generally available to our customers (“**Tested Services**”). You may accept or decline any such trial in your sole discretion. Any Tested Services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import.

(b) Tested Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. Tested Services are not considered as “the Services” hereunder and are provided solely and exclusively “AS IS” with no express or implied warranty of any kind. YOU ASSUME AND UNCONDITIONALLY RELEASE BADGER FROM ALL RISKS ASSOCIATED WITH THE USE OF ANY TESTED SERVICES. Badger may discontinue the Tested Services at any time in its sole discretion. Badger does not promise or represent that Tested Services will be made generally available.

2.3 LIMITED LIABILITY. BADGER’S ENTIRE LIABILITY IN CONNECTION WITH FREE TRIALS, PILOT PERIODS AND TESTED SERVICES WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WILL NOT, AS TO ANY INDIVIDUAL CLAIM OR IN THE AGGREGATE, EXCEED \$100. IF CLIENT DOES NOT AGREE TO THE ALLOCATION OF RISK IN THIS SECTION, ITS SOLE RECOURSE IS TO IMMEDIATELY DISCONTINUE THE USE OF THE FREE TRIAL SERVICES, PILOP PERIOD SERVICES OR TESTED SERVICES.

3. USERS

3.1 You may authorize a person for whom a subscription to the Services has been purchased to access and use the Services pursuant to this Agreement (a “**User**”).

3.2 The Services are User subscription-based and may be accessed by no more than the number of Users specified subscribed for by you.

3.3 You may authorize User(s) to access and use the Services solely on behalf of and for your benefit. You will remain liable for the compliance of Users with the terms and conditions of this Agreement.

4. USER ACCOUNTS

4.1 To access the Services, you are required to register for an account. When you register for an account, you may be required to provide us with some information about yourself (such as your e-mail address or other contact information). You agree that the information you provide to us is and will be accurate and up-to-date at all times.

4.2 By registering for the Services, you agree that (i) you will not create more than one personal profile; and (ii) if we disable your account, you will not create another account without our permission.

4.3 When you register for an account, Badger will provide you with a unique user ID. You agree that everyone using the Services will have a personal user ID and will not share or allow your users to share user IDs nor will you allow any unauthorized individual or third-party to use such IDs to access and use the Services under any circumstances. You expressly agree to accept responsibility

for all activities that occur under your account, including for any and all activities engaged in using your Users' IDs, and for their compliance with this Agreement.

4.4 When you register, you will be asked to provide a password. You are solely responsible for maintaining the confidentiality of your account and password.

5. ACCEPTABLE USE POLICY. BY USING THE SERVICES, YOU AGREE NOT TO, and not to allow third parties to use our Services:

- (A) for any illegal purpose, or in violation of any local, state, national, or international law;
- (B) to violate, or encourage others to violate, the rights of third parties, including by infringing or misappropriating third party intellectual property rights;
- (C) to disable any licensing or control features associated with our Services;
- (D) to intentionally distribute viruses, worms, Trojan horses, corrupted files, hoaxes, or other items of a destructive or deceptive nature;
- (E) to post, upload, or distribute any content that is unlawful, defamatory, libelous, inaccurate or that a reasonable person could deem to be objectionable, profane, indecent, pornographic, harassing, threatening, embarrassing, hateful, or otherwise inappropriate;
- (F) to interfere with security-related features of the Services, including by
 - (i) disabling or circumventing features that prevent or limit use or copying of any content, or
 - (ii) reverse engineering or otherwise attempting to discover the source code of the Services or any part thereof except to the extent that such activity is expressly permitted by applicable law;
- (G) to make or prepare any derivative work with respect to our Services or any derivative work using content associated with the Services, other than as expressly permitted by us
- (H) in a manner that gives any party access to mass downloads or bulk feeds of any content, including but not limited to numerical latitude or longitude coordinates, imagery, visible map data, or places data (including business listings);
- (I) to post on any website or otherwise make available to the public any interactive maps; or a component of our Services, in a manner not authorized by us; or
- (J) to remove, modify, or obscure any of our brand features, links, or notices appearing in our Services or other content.
- (K) to interfere with the operation of the Services or any user's enjoyment of the Services, including by
 - (i) uploading or otherwise disseminating viruses, adware, spyware, worms, or other malicious code,
 - (ii) making unsolicited offers or advertisements to other users of the Services, or
 - (iii) attempting to collect, personal information about users or third parties without their consent;
- (L) to perform any fraudulent activity including impersonating any person or entity, claiming false affiliations, accessing the Services accounts of others without permission, or falsifying your age or date of birth; or
- (M) to sell or otherwise transfer the access granted herein or any Materials (as defined in this Agreement).

6. YOUR DATA

6.1 Data. For the purpose of this Agreement, "Data" means all electronic data or information submitted by or on your behalf or any of your Users to or through the Services or otherwise provided to Badger in connection with the Services

6.2 Your Content. Badger claims no ownership over content submitted, posted or displayed or otherwise provided by you and your Users through the Services, including Data, images, video or software, and you retain any copyright and other rights it holds in such content. By submitting, posting or displaying content in the Services, you and your Users grant us and our suppliers and licensors the right to use such content for the purpose of enabling us and our suppliers and licensors to provide you with the Services in accordance with both [our privacy policy](#) , and [Google's privacy policy](#), both as amended by us or Google (as applicable) from time to time. You acknowledge that you are responsible for obtaining any necessary consents from your Users to allow you, Badger and our suppliers and licensors to access, monitor, use or disclose any data submitted through the Services.

6.3 Your Responsibilities. You shall (i) be solely responsible for the accuracy, quality, integrity and legality of your Data and of the means by which you acquired your Data; (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and immediately notify Badger of any such unauthorized access or use; and (v) use the Services only in accordance with applicable laws and the applicable agreements referenced herein.

6.4 Protection of Your Data. Badger shall maintain industry standard administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of your data.

6.5 HIPAA- covered entities. The Health Insurance Portability and Accountability Act of 1996 (the "HIPAA") is a United States legislation that provides data privacy and security provisions for safeguarding medical information. If you are working for or acting for a covered entity as defined by the HIPAA, Badger will be considered a business associate per HIPAA regulations. Before any protected health information are uploaded or communicated to Badger, you shall be responsible for disclosing your HIPAA-covered entity status and for completing the necessary steps to ensure the security of your data, including entering a Business Associate Addendum with Badger.

7. USE OF CONTENT.

7.1 Content incorporated within, accessible through and generated by the Services may include street maps, topographic maps, population demographics, business data, imagery and other information. In accessing and using the Services, you acknowledge and agree that Badger makes no warranties and provides no guarantees with respect to the accuracy and completeness of such content.

7.2 Certain content is made available through licenses with third parties, including Google, Inc. ("Google"), and is subject to copyright and other intellectual property rights owned by or licensed to such third parties. As a result, your access and use of the Services is expressly subject to and you agree to be bound by [Google Maps and Earth Enterprise Universal Acceptable Use Policy](#), Google's [Privacy Policy](#), Google's [Terms of Service](#), [Google Maps/Google Earth Additional Terms of Service](#) and the additional restrictions set forth in Google's [Legal Notices for Google Maps/Google Earth and Google Maps/Google Earth APIs](#). You are responsible for your Users' compliance with aforementioned terms. Other than the limited license set forth in Section 1, nothing in this Agreement may be construed to grant you any rights, by license or otherwise, to any content associated with the Services.

8. THIRD-PARTY PROVIDERS

8.1 Third-Party Services. Badger may provide integrations to the Services with web services made available by third parties that enable you to export information to and from said services (the "Third-Party Services"). These integrations are subject to the terms and conditions of those third

parties and by using these integrations, you agree that we may transfer such information to and from the applicable Third-Party Services. The Third-Party Services are not under our control, and we are not responsible for their use of your exported information. Third-Party Services are provided to you only as a convenience and the availability of any Third-Party Services does not mean we endorse, support or warrant the Third-Party Services.

8.2 CRM integrations.

(a) Badger may be connected to third-party CRMs (“**CRM Integrations**”). CRM integrations can be unidirectional or bidirectional.

(b) Unidirectional CRM Integrations.

(i) If the CRM Integration is unidirectional, the integration will send predefined data from the origin platform to the targeted platform.

(iii) Unidirectional CRM Integrations will be deemed successful whenever the predefined data is successfully transferred to the targeted platform.

(c) Bidirectional CRM Integrations.

(i) If the CRM Integration is bidirectional, the integration will synchronise selected fields of data from your CRM and your Data in Badger. Any creation, modification or deletion of data in Badger will be mirrored in your CRM, and vice versa.

(ii) Bidirectional CRM Integrations will be deemed successful whenever it enables Users to have access to their data from the CRM in the field and have the ability to capture new data in the field and send it back to the CRM.

(d) You understand that the synchronisation of data between the CRMs and Badger is not instantaneous and can be subject to short delays.

8.3 Third-Party Websites. The services may also contain links to third-party websites and services (the “**Linked Sites**”). Badger provides these links as a convenience, but we neither control nor endorse these Linked Sites, nor has Badger reviewed or approved the content, advertising, products, service or other materials that appear on the Linked Sites. Badger is not responsible for the Linked Sites, including the legality, accuracy or appropriateness of any content, advertising, products, service or other materials on or available from any Linked Sites. You acknowledge and agree that Badger shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of any of the Linked Sites, including the advertising, products, service or other materials available on or through the Linked Sites.

9. OWNERSHIP AND INTELLECTUAL PROPERTY

9.1 Proprietary Rights. The Services are owned and operated by Badger. Subject to the limited rights expressly granted to you under this Agreement, Badger retains all right, title and interest, including but not limited to all rights of copyright, trademark, trade secret, patent, or other intellectual property right, in the Services. The visual interfaces, graphics, design, reports, analyses, informational content, computer code (including source code or object code) and any other copyrighted materials, products, software, services, and all other elements or contents of the Services provided by or on behalf of Badger (the “**Materials**”) are protected by all applicable American and international intellectual property, proprietary rights, copyrights, patent and trade secret laws. All Materials contained in the Services or as presented on any Badger website, are the property of Badger or our third-party licensors.

9.2 Restrictions. All rights not expressly granted to you are reserved by Badger. Without limitation, you will not (and will not allow your end users or any other third party to):

- (A) resell, rent, lease, sublease, lend, timeshare, sublicense or otherwise distribute or operate the Services or any content associated with the Services to or for the benefit of any third party;
- (B) adapt, modify, translate, reverse engineer, decompile, disassemble, or otherwise attempt to extract the source code of the Services or any part thereof;
- (C) make or prepare any derivative work with respect to the Services;
- (D) make or prepare any derivative work using content associated with the Services, other than as expressly permitted by this Agreement;
- (E) disable any licensing or control features associated with the Services;
- (F) upload or use any content in a way that infringes any patent, trademark, copyright trade secret or other proprietary right of a third party;
- (G) use the Services in a manner that gives you or any other party access to mass downloads or bulk feeds of any content, including but not limited to numerical latitude or longitude coordinates, imagery, visible map data, or places data (including business listings);
- (H) post on your website or otherwise make available to the public or any parties other than your authorized Users any interactive maps;
- (I) access or use the Services through any technology or means other than those provided in the Services; or
- (J) use or assist any party in using any information, material or know-how obtained through the use of the Services to supply products, content or Services to compete with the products or Services offered by Badger.

Nothing in this Agreement will be construed to grant you any right to market or commercially exploit the Services or use the Services for the benefit of any parties other than you.

9.3 Permissions. If we determine, at our sole discretion, to grant you permission to republish the Materials, this permitted use of the Materials must cite Badger (or its licensors) as the source and copyright holder of the Materials in accordance with attribution and copyright guidelines provided to you by Badger. If we grant you republication rights, you are not able to use the Materials in any manner inconsistent with the written approval provided to you by Badger. Badger reserves all rights to the Materials not expressly granted in this Agreement. Badger does not grant any license or other permission for links or other use of the Site or its Content if such use or link: (a) suggests that the Badger promotes or endorses any third party's causes, ideas, political campaigns, web sites, products or services, (b) copies, displays, disseminates or otherwise uses the Content without Badger's express written consent, or (c) uses the Content for commercial purposes. Furthermore, Badger does not grant its consent for links to the Site where the linking party engages in any prohibited conduct (as described in this Agreement). Badger reserves the right to withdraw permission for any link at any time.

9.4 Perfection of Intellectual Property Rights. You shall cooperate with Badger as necessary for Badger to perfect, defend, record, evidence and maintain the intellectual property rights assigned or granted under this Section 9, including without limitation, executing any and all documents and legal instruments as may be requested by Badger, from time to time. You shall pay Badger's out of pocket expenses in connection with perfecting our intellectual property rights pursuant to this Section 9.

10. CONFIDENTIALITY

10.1 Confidential Information. For purposes of this Agreement "Confidential Information" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that

reasonably should be understood to be confidential given the nature of the information and circumstances of disclosure. Your Confidential Information includes your data and Badger Confidential Information includes its software and tools, models, algorithms, technical data, documentation, and research with respect to our Services and products. Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. Confidential Information does not include, and this Section does not apply to, information that (A) is or subsequently becomes published or available to the public through no fault of Receiving Party, (B) is received by Receiving Party from a third party without a duty of confidentiality; (C) is independently developed by Receiving Party without reference to Disclosing Party's Confidential Information, or (D) was in Receiving Party's possession or was known to Receiving Party before it was disclosed to Receiving Party by Disclosing Party.

10.2 Restrictions on Disclosure and Use. Receiving Party agrees that it will not use any of Disclosing Party's Confidential Information or any copies thereof, for any purpose other than those contemplated by this Agreement and will not disclose or provide access to such Confidential Information without Disclosing Party's prior written consent, provided that Receiving Party may share Confidential Information with its responsible employees, contractors and agents who have a need to know such Confidential Information to perform their duties. Receiving Party will take security precautions at least as great as the precautions it takes to protect its own confidential information, and at any rate will take commercially reasonable security precautions to ensure that no one, other than a person authorized pursuant to this Section, gains access to Disclosing Party's Confidential Information without Disclosing Party's prior written consent. In the event that Receiving Party becomes aware of any unauthorized use or disclosure of Disclosing Party's Confidential Information, Receiving Party will immediately give notice to Disclosing Party and will assist Disclosing Party in remedying such unauthorized use or disclosure. Confidential Information is and will remain the exclusive property of Disclosing Party and nothing contained in this Agreement will be construed to grant Receiving Party any rights, by license or otherwise, to any Confidential Information disclosed pursuant to this Agreement.

11. WARRANTIES AND DISCLAIMERS

11.1 Mutual warranties. Each party represents and warrants that: (i) if it is an entity, that it is a duly organized, validly existing and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization; (ii) the execution of this Agreement by its representative has been duly authorized by all necessary corporate or organizational action of such party; and (iii) when executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such party in accordance with its terms.

11.2 Your Warranties. You represent and warrant that (i) you owns all right, title and interest in and to your data or otherwise has all rights and authorizations necessary to provide your data to Badger for use as contemplated hereunder and (ii) the use of the your data by Badger as contemplated hereunder does not and shall not violate the privacy rights, publicity rights, copyright rights, contract rights, intellectual property rights, or any other rights of any person.

11.3 Disclaimer of warranty. THE SERVICES ARE DISTRIBUTED ON AN "AS IS, AS AVAILABLE" BASIS AND WE MAKE NO WARRANTY OF ANY KIND AS TO ITS USE OR PERFORMANCE OR THE ACCURACY OR COMPLETENESS OF ANY CONTENT ASSOCIATED WITH THE SERVICES. NEITHER BADGER, THIRD PARTY CONTENT PROVIDERS NOR THEIR RESPECTIVE AGENTS MAKE ANY WARRANTIES OF ANY

KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SITE, ANY CONTENT OR ANY PRODUCTS OR SERVICES SOLD OR DISTRIBUTED THROUGH THE SITE. YOU EXPRESSLY AGREE THAT THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SITE AND THE ACCURACY OR COMPLETENESS OF THE CONTENT IS ASSUMED SOLELY BY YOU. NEITHER BADGER NOR ANY PROVIDER OF THIRD-PARTY CONTENT OR THEIR RESPECTIVE AGENTS WARRANTS THAT THE SITE WILL BE UNINTERRUPTED, TIMELY OR ERROR-FREE; NOR DOES BADGER, ANY THIRD-PARTY CONTENT PROVIDER, OR THEIR RESPECTIVE AGENTS MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SITE OR THE CONTENT. IF YOU ARE A CALIFORNIA RESIDENT, YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 THAT PROVIDES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MIGHT HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." THE SERVICES ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR HIGH RISK ACTIVITIES SUCH AS THE OPERATION OF EMERGENCY SERVICE, NUCLEAR FACILITIES, AIR TRAFFIC CONTROL OR LIFE SUPPORT SYSTEMS, WHERE THE USE OR FAILURE OF THE SERVICE COULD LEAD TO DEATH, PERSONAL INJURY OR ENVIRONMENTAL DAMAGE.

12. INDEMNIFICATION

12.1 Badger Indemnity.

(a) Badger shall indemnify, defend and hold you harmless from and against any loss, claim, judgment liability, damage, action or cause of action (including reasonable attorneys' fees and court costs) finally awarded in connection with (i) a third party claim that use of the Services provided to you pursuant to this Agreement by a User infringes or misappropriates valid intellectual property rights of the third party, and (ii) gross negligence or willful misconduct by Badger in performing its obligations hereunder.

(b) Badger shall not have any obligations hereunder with respect to portions or components of the Services (i) not created by Badger; (ii) that are modified after delivery by Badger; (iii) combined with third-party software not provided by Badger where the alleged infringement relates to such combination; (iv) where you continue allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement or (v) where your use is not strictly in accordance with this Agreement and any agreement referenced herein.

12.2 Your Indemnity. You agree to defend, indemnify and hold harmless Badger and its officers, directors, employees, consultants, affiliates, subsidiaries and agents from and against any and all claims, liabilities, damages, losses and expenses, including reasonable attorneys' and accounting fees and costs, arising out of or in any way connected with

- (i) your access to, use of or alleged use of the Services;
- (ii) your violation of this Agreement or any representation, warranty, or agreements referenced herein, or any applicable law or regulation, including your unauthorized use or processing of your Data;
- (iii) your unauthorized use of Third-Party Services by you or your Users
- (iv) your violation of any third-party right, including without limitation any intellectual property right, publicity, confidentiality, property or privacy right;
- (v) any disputes or issues between you and any third-party; or

(vi) gross negligence or willful misconduct by you or your Users

12.3 Requirements. The indemnifying party's obligations in this Section 12 are conditioned on the indemnified party (a) giving the indemnifying party prompt notice of any such claim or action; (b) providing reasonable assistance and information to the indemnifying party, at the indemnifying party's expense, for the defense of the claim; and (c) allowing the indemnifying party to control the defense of any applicable claim or action, except that the indemnified party may engage counsel of its choice at its own expense and the indemnifying party will have no right to bind the indemnified party to terms other than the terms and conditions in this Agreement or admit liability by the indemnified party in any claim, or settlement thereof, without the indemnified party's prior written consent, which will not to be unreasonably withheld or delayed.

12.4 Infringement. If your use of any of the Services hereunder is, or in Badger's opinion is likely to be enjoined pursuant to Section 12.1 above, then Badger may, at its sole option and expense:

(i) procure for you the right to continue using the infringing items under the terms of this Agreement;

(ii) replace or modify the infringing items so that they are non-infringing and substantially equivalent or better in function to that of the enjoined items; or

(iii) if options (i) and (ii) above cannot be accomplished despite Badger's commercially reasonable efforts, then Badger may terminate your rights and Badger's obligations hereunder with respect to such infringing items and remit to you the pro-rata portion of prepaid fees received by Badger for the remaining subscription term.

12.5 Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 12 SET FORTH THE INDEMNIFYING PARTY'S SOLE AND EXCLUSIVE OBLIGATIONS, AND THE INDEMNIFIED PARTY'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO THE APPLICABLE INDEMNIFIABLE CLAIMS.

13. LIMITATION OF LIABILITY

13.1 UNDER NO CIRCUMSTANCES SHALL BADGER NOR ANY THIRD PARTY CONTENT PROVIDER NOR THEIR RESPECTIVE PREDECESSORS, SUCCESSORS, PARENTS, SUBSIDIARIES, AFFILIATES, PAST OR PRESENT OFFICERS, DIRECTORS, SHAREHOLDERS, INVESTORS, EMPLOYEES, AGENTS, REPRESENTATIVES ATTORNEYS, LICENSORS OR INFORMATION PROVIDERS BE LIABLE FOR ANY LOST REVENUES OR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF DATA, LOSS OF GOODWILL, OR BUSINESS INTERRUPTION), WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE THE SITE, IN AN ACTION OF CONTRACT, NEGLIGENCE, OR OTHERWISE EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT THESE DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

13.2 IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS AFFILIATES, SUPPLIERS OR LICENSORS BE HELD LIABLE UNDER THIS AGREEMENT FOR AN AMOUNT EXCEEDING THE FEES PAID BY YOU TO BADGER DURING THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

13.3 Some jurisdictions do not allow the limitation or exclusion of certain damages, so the limitations and exclusions set forth above may not apply to you in full, but shall be interpreted to apply to the maximum extent permissible under applicable law.

14. SUSPENSION AND TERMINATION

14.1 Suspension. Badger reserves the right to immediately suspend the Services from you or any User in the event that any Users (a) violate this Agreement, or (b) use the Services (i) to harm or

harass any individual or entity; (ii) to disrupt our provision of the Services or impede the ability of others to use the Services; or (iii) to engage in any unlawful conduct or activity.

14.2 Termination. Badger, in its sole discretion, may terminate your and your users' access to the Services at any time, with a 30-day notice, if you violate the terms contained in this Agreement, our Privacy Policy or our Subscription Agreement. You may terminate your subscription to the Services at any time for any reason with a 30-day notice by contacting our customer service at support@badgermapping.com.

14.3 Upon termination of your account, your access to your Data will be removed and any of your data shall be permanently removed from the servers they are stored on in the months following the termination of this Agreement. Requests for export of such data must be made within 3 months of the termination of this Agreement and will be processed after verification of your personal information.

14.4 Surviving provisions. Upon termination of your account, our Privacy Policy, the surviving sections of the Subscription Agreement, and Sections 2.3, 9, 10, 11, 12, 13, 14.3, 14.4 and 15 of this Agreement survive the termination or expiration of your subscription to the Services and remain in full force and effect.

15. MISCELLANEOUS

15.1 Export Compliance. The Services, Content, other technology Badger 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. You 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.

15.2 Non-Compete. You may not use the Site to solicit subscribers to join other online information services that are competitive with the Site.

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

15.4 Waiver. 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.

15.5 Headers. Use of paragraph headers in this Agreement is for convenience only and shall not have any impact on the interpretation of particular provisions.

15.6 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, unenforceable, or contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

15.7 Governing law. This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to its choice of law principles.

15.8 Venue; Waiver of Jury Trial. Except as expressly set forth in Section 15.9 below, the state and federal courts located in San Francisco, California shall have exclusive jurisdiction to

adjudicate any dispute arising out of or relating to this Agreement, and in such event, each Party hereby consents to the exclusive jurisdiction of such courts. Each Party also hereby waives any right to a jury trial in connection with any claim or cause of action in any way arising out of or related to, directly or indirectly, this Agreement.

15.9 Dispute Resolution and Arbitration.

(a) Dispute Resolution: You and Badger agree that any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, or to the use of the Services or use of the Site, Application or Collective Content (collectively, "Disputes") will be settled by binding arbitration, except that each party retains the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights. You acknowledge and agree that you are waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action lawsuit, class-wide arbitration, private attorney-general action, or any other representative proceeding. Further, unless both you and Badger otherwise agree in writing, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this "Dispute Resolution" section will be deemed void. Except as provided in the preceding sentence, this "Dispute Resolution" section will survive any termination of this Agreement.

(b) Arbitration Rules and Governing Law: This agreement to arbitrate evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "AAA Rules") then in effect, except as modified by this "Dispute Resolution" section. (The AAA Rules are available at www.adr.org/arb_med or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this section.

(c) Arbitration Process: A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a form Demand for Arbitration.) The arbitrator will be either a retired judge or an attorney licensed to practice law in the state of California and will be selected by the parties from the AAA's roster of consumer dispute arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

(d) Arbitration Location and Procedure: Unless you and Badger otherwise agree, the arbitration will be conducted in the San Francisco county. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of documents you and Badger submit to the arbitrator, unless you request a hearing, or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

(e) Arbitrator's Decision: The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award damages must be

consistent with the terms of the “Limitation of Liability” section above as to the types and the amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant’s individual claim. If you prevail in arbitration you will be entitled to an award of attorneys’ fees and expenses, to the extent provided under applicable law. Badger will not seek, and hereby waives all rights it may have under applicable law to recover, attorneys’ fees and expenses if it prevails in arbitration.

(f) Fees: Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules.

(g) Changes: Notwithstanding the provisions regarding the modification of this Agreement above, if Badger changes this “Dispute Resolution” section after the date you first accepted this Agreement (or accepted any subsequent changes to this Agreement), you may reject any such change by sending us written notice (including by email) within 30 days of the date such change became effective, as indicated in the “Last Updated” date above or in the date of Badger’s email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Badger in accordance with the provisions of this “Dispute Resolution” section as of the date you first accepted this Agreement (or accepted any subsequent changes to this Agreement).

Contact Information. If you have any questions regarding Badger, the Services, this Agreement or any other agreement, please contact us at support@badgermapping.com.