

## TEREX TELEMATICS TERMS OF USE

These terms of use (“Terms” or “TOU”) are between you (“you” or “Customer”) and Terex Corporation and its subsidiaries and affiliated companies (“Terex,” “we” or “us”) and apply to the telematics software and devices (the “Service”) provided by Terex which are connected to your Terex machines or equipment (“Equipment”), and available to be monitored to generate reports through Terex and other portals (the “Sites”). You and/or the personnel associated with your business (collectively, “you” or “Customer”) will be granted access to use the Service for your internal business purposes, conditioned upon 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. BY AGREEING AND/OR BY ACCESSING OR USING THE SERVICE OR THE SITES, YOU REPRESENT THAT YOU ARE AUTHORIZED TO USE THE SERVICE AND THAT YOU AGREE TO BE BOUND BY THE CURRENTLY POSTED TOU. YOU ALSO AGREE TO BE BOUND BY TEREX’S PRIVACY POLICY, WHICH CAN BE VIEWED AT ANY TIME AT <https://www.terex.com/en/privacy-policy>. SUBJECT TO SECTION 7.2 BELOW, CONTINUED USE OF THE SERVICE FOLLOWING POSTING OF ANY CHANGES TO THE TOU CONFIRM ACCEPTANCE OF THOSE CHANGES. USE OF THE SERVICE AND THE SITE ARE OFFERED TO YOU CONDITIONED UPON YOUR ACCEPTANCE OF THESE TOU WITHOUT ANY MODIFICATIONS. THE TOU CONTAIN DISCLAIMERS OF WARRANTIES AND LIABILITY. THESE PROVISIONS FORM AN ESSENTIAL PART OF OUR BARGAIN.

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

#### 1. Service

1.1 General Description. The Service is designed to gather, process and report data and information (“Data”) transferred from Terex-supplied monitoring devices (“Devices”) installed in your Equipment. Your access to the Service takes effect when you have accepted these TOU and will continue in effect until terminated by you or Terex as permitted in these TOU. The Service may be subject to additional terms and conditions either posted on the Sites or contained in other ordering documentation.

1.2 Third Party Communications Systems. Some features of the Service may require use of third party communications systems, such as Internet access and/or wireless or satellite-based communication systems (each, a “Communications Service”). UNLESS THE COMMUNICATION SERVICE IS EXPLICITLY MADE PART OF A SERVICE PLAN, CUSTOMER SHALL PURCHASE THESE COMMUNICATION SERVICES SEPARATELY. TEREX HAS NO RESPONSIBILITY FOR THE AVAILABILITY, QUALITY OR PERFORMANCE OF ANY COMMUNICATIONS SERVICE NOT FURNISHED BY TEREX.

1.3 Data Exchange and Third Party Interfaces. The Service may permit the communication, transfer and exchange of data between the Service and Terex devices or systems as well as certain third-party manufactured devices or systems (“Third-Party Assets”). Terex does not 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”). You understand and agree to the following: Data may only be exchanged between the Service and Third-Party Assets approved by Terex; Terex’s approval of a Third-Party Asset does not guarantee that it will operate properly with the Service; Terex is not responsible for the quality or accuracy of, or the ability to receive, access or use Third-Party Data that may be sent from or received by Third-Party Assets; Terex may control all Third-Party Data transmitted to and from the Service, and may stop or block any Third-Party Data that Terex believes may adversely affect performance of the Service.

#### 2. Authorized Users and Use; Limitations

2.1 Authorized Users. You agree that the Service will be accessed and used only by you and those personnel of yours whom you authorize to access and use the Service (“Authorized User”). You are responsible to assure that the access credentials of one Authorized User are used only by that Authorized User and no other person.

2.2 Limitations on Use. Transmission of information using a Device may be subject to legal requirements that may vary from location to location, including radiofrequency use authorization. You must limit use of any Device to those locations

where all legal requirements for the use of the Device and the Service communication network have been satisfied. In the event that a Device is used at 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 Terex may discontinue the transmission of information from that Device. You also understand and acknowledge that the Service is not intended to be used for any emergency, safety or mission critical or safety related use or application or ultra-hazardous activities and you shall not use the Service in that manner.

### 3. Registration; Payment

3.1 Customer Account. In order to log onto the Site and use the Service, an account for you will be created and activated and you may create access credentials or connections for you and Authorized Users and Devices. In the process of creating the account and access credentials you will be asked to provide Terex with true, accurate, current and complete registration information in relation to you and your Authorized Users and to update such information as necessary. Should we have reasonable grounds to suspect that any information provided in relation to you or 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 Service.

3.2 Site Access & Password; Security. You are responsible for maintaining, and you shall cause all Authorized Users to maintain, the confidentiality of your Authorized Users' usernames and passwords. You 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 Terex of any unauthorized use of any Authorized User's username, password, or any other breach of security, and you will 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 Terex is not responsible for tracking your Authorized Users' use of the Service, and that Terex cannot and will not be liable for any loss or damage arising from your failure to comply with this Section 3.2.

3.3 Payment. You agree to pay all charges and fees in accordance with the payment terms applicable. Your subscription to the Service shall be for the period, the approved region and at the rate selected by you when subscribing. You may cancel your subscription to the Service at any time, but any cancellation of your subscription will only become effective at the end of the term during which it was submitted. In the event of early cancellation of your subscription, you agree that we shall be entitled to retain as liquidated damages, and not as a penalty, any fees paid in advance, which you agree reasonably approximate our actual damages. You will continue to have access to your subscription until the end of the term during which you canceled the subscription. If you move the Equipment outside the approved region, we may at our option charge you additional fees or deactivate the Service.

### 3.4 AUTOMATIC RENEWAL OF SUBSCRIPTION

**Consent; Charges.** To subscribe to the Service as a new customer, or to continue subscribing to the Service as an existing customer, you may be required to consent to automatic renewal of your subscription. By consenting to automatic renewal, you acknowledge and agree that your subscription to the Service will automatically renew for additional one-year renewal terms at the end of each term. To stop your subscription from automatically renewing for additional one-year renewal terms, you must notify us that you wish to cancel your subscription to the Service before the end of your then-current term. The cancellation policy and instructions are described below in the "Cancellation" paragraph.

**BY CONSENTING TO AUTOMATIC RENEWAL OF YOUR SUBSCRIPTION TO THE SERVICE, YOU ACKNOWLEDGE AND AGREE THAT YOUR SUBSCRIPTION WILL BE AUTOMATICALLY RENEWED AND, UNLESS YOU CANCEL YOUR SUBSCRIPTION TO THE SERVICE BEFORE THE END OF THE THEN-CURRENT TERM, YOU AUTHORIZE US TO AUTOMATICALLY INVOICE YOU FOR EACH RENEWAL TERM.**

**Confirmation.** If you consent to automatic renewal of your subscription, you will receive an email confirming your selection. The confirmation email will include a description of your automatic renewal selection, the subscription fee for the selected subscription term, the start and end dates for the selected subscription term, a description of the policy for canceling your subscription to the Service, instructions for how to cancel your subscription to the Service, and a hyperlink to these Terms.

**Fee Increases.** The subscription fees for each one-year renewal term are subject to increase over the previous year's term, but, as described below in the "Renewal Notification" and "Cancellation" paragraphs, you will be notified of any change in your subscription fee before it takes effect and have the option to cancel your subscription in accordance with these Terms.

**Renewal Notification.** You will be sent a notice no less than 30 days in advance of your automatic renewal date. The notice will inform you that your subscription will automatically renew for an additional one-year renewal term unless you provide us with notice that you wish to cancel your subscription to the Service before the end of the then-current term. The notice will also include the subscription fee for your upcoming renewal term, the date on which your then-current subscription term will end, the date on which your new renewal subscription term will begin, and instructions for how to cancel your subscription to the Service.

**Cancellation.** You may cancel your subscription to the Service at any time simply by emailing your cancellation request to [AWP.LiftConnectSubscriptions@terex.com](mailto:AWP.LiftConnectSubscriptions@terex.com). **Any cancellation of your subscription will only become effective at the end of the term during which it was submitted.** You agree that we shall be entitled to retain as liquidated damages, and not as a penalty, any fees paid in advance for the then-current term, which you agree reasonably approximate our actual damages. You will continue to have access to your subscription until the end of the term during which it was canceled.

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

4.1 Limited License to Customer. Subject to your compliance with these TOU and payment of all applicable fees, Terex grants you a limited, non-exclusive, non-transferable, non-assignable, revocable license (without the right to sublicense) to use the Service for your business purposes and not for resale or other distribution. All rights not expressly granted to you herein are reserved by Terex.

4.2 License Restrictions - No Misuse of Services. Your use of the Service is limited to those uses expressly permitted under these TOU. As a condition of your use of the 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 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 Service, or any Third Party Software/Services; (ii) merge any Service-related software or Third Party Software/Services with other software; (iii) sublicense, lease, sell, rent, loan, or otherwise transfer the 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 any Service-related software or Sites, including any Third Party Software/Services; (v) otherwise use or copy the Service or associated software or Third Party Software/Services except as expressly allowed under the TOU, including this Section 4; (vi) use the Service or associated software or Third Party Software/Services in a "service bureau" or similar structure whereby third parties obtain use of the 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 Service, associated software, and/or the Sites; (viii) damage, disable, overburden, interfere with, disrupt or impair the Service or Sites, or servers or networks connected to them, in any manner; (ix) interfere with any other party's access, use or enjoyment of the Service or the Sites 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 data privacy; or (xi) impersonate any person or entity or misrepresent your affiliation with a person or entity.

4.3 Third Party Software/Services. You hereby acknowledge and agree that any Third Party Software/Services that may be bundled with the Service is/are being provided to you by Third-Party suppliers and not by Terex. You hereby acknowledge and agree that your access or use of any such Software/Services is governed by such Third Party Suppliers' terms of use, end user license agreement or other like agreement, and in absence of such terms or agreement, by these TOU. TEREX EXPRESSLY DISCLAIMS ANY LIABILITY IN CONNECTION WITH ANY THIRD PARTY SOFTWARE OR SERVICES OR YOUR USE (OR ANY AUTHORIZED USER'S USE) THEREOF.

#### **5. Consent to Transmission and Use of Data; License and Aggregate Data; Compliance with Laws**

5.1 Consent to Data Transmission and Use. You acknowledge that Terex retains all rights, title and interest in and to the Data transmitted and any interest you may have shall be assigned to Terex. The Data transmitted may include such information that is described in the service description and the Terex Corporation Privacy Policy.

Data is processed on your behalf. You agree to permit the Service to transfer Data to Terex Parties (defined below). If you elect to do so, you may cause the Service to transfer Data to Authorized Users.

You acknowledge and consent that any Data collected may be sent to any Terex office or any Terex Party (as defined below) for processing in locations, depending on your location, throughout the world in accordance with the provisions of these TOU. You may be required to download Software (Service-related or otherwise) and the Service may automatically update the Software installed on any Device when a new version is available.

Data may be transmitted and used via the Service for the following purposes: (a) providing the Service to you; (b) checking or maintaining Devices and/or Equipment supported by the Service; (c) monitoring the movement, location, operation, health, performance, fuel consumption, up/down times, parts replacement, and other pertinent machine and warranty information regarding your Service-connected Equipment; (d) evaluating, improving and/or marketing the Service and/or other products and services; and (e) complying with legal requirements and valid court orders, as applicable. Terex also may (but is not required to) combine the Data imported from your Devices/Equipment with that of other users of the Service to create aggregated data ("Aggregated Data") for the principal purposes of tracking market trends and developing new or improved service offerings. Terex may transmit and share some or all of the collected Data with its dealer(s), its Affiliates and their dealers, Terex's licensors, the manufacturer of your Devices and its dealers, and Terex's business partners worldwide who provide the Service, Devices, Equipment or related products and services to you. Terex may transmit and share Aggregated Data with other companies, governmental entities and business partners.

5.2 License and Aggregate Data. To the extent that you have any ownership or other interests in the Data, you hereby grant to Terex and its dealers, service providers, licensors, affiliates and their dealers, 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, including using the Data for any business purpose. All other data and information that is collected, transmitted, recorded, or accessed by or through the 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 Terex; 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 Terex without any fees and without rights to future royalties.

5.3 You agree that you shall not (directly or indirectly) export, re-export, import, transfer, or divert the Devices, Equipment, Service or Data in whole or in part (i) without all necessary authorizations required by law, or (ii) to any prohibited destination or to any prohibited person, entity or end user as specified by U.S. export control laws. You agree to comply with all applicable local laws of the jurisdictions in which you conduct business, including the laws and regulations of the United States and of other jurisdictions (national, state and local) to the extent that they may govern your use of the Devices, Equipment, Service, and Data and performance of your other activities under this Agreement. You will indemnify and hold Terex harmless for all costs, damages, fines, or other expenses and liabilities (including attorney fees) incurred by Terex arising from your failure to comply with the terms of this section, which shall also be considered a material default hereof entitling Terex to immediately terminate this Agreement in addition to any other remedy available at law or equity. Your obligations under this provision shall survive the termination of this Agreement for any reason whatsoever.

## **6. Privacy and User Data**

6.1 To understand Terex's general data privacy practices, please review Terex's Privacy Policy, which can be viewed at any time at <https://www.terex.com/en/privacy-policy>. In the event of any conflict between the Terex Privacy Policy and these TOU, these TOU will govern.

6.2 You acknowledge that some Data may be retraceable to individuals ("Personal Data"). Each time an Authorized User logs on to the Service and the Site, certain information, including the username, will be processed in the Service application software. This information is used to manage the Authorized User's account, Service and other personalized features. Terex may match the username to personally identifiable information in order to provide the Authorized User with the Service that

the Authorized User is entitled to use and to provide relevant Data and information. Additionally, the Service may permit collection of location-based Data in connection with your Devices and the services provided (“Location Data”) so that the geographic location and other user-related data may be identifiable.

6.3 The Service may be administered by Terex from its offices or those of its affiliates or service providers at various locations throughout the world. Consequently, Data that is collected may be sent, processed and stored outside the country where it was originally collected. You acknowledge that in the event of a conflict of privacy laws or practices in your jurisdiction and those in the domicile of the entity hosting the Service, the law applicable in the domicile of the entity hosting the Service will have precedence at all times.

6.4 You acknowledge that the Data and the Service may be transmitted through networks and signals that are not specifically protected or encrypted and where third party interception may be possible. You consent to such transmission and waive any claims that you may have against us with respect to such transmission.

## **7. Modification of the Service**

7.1 Terex may, at any time, modify, suspend or permanently discontinue the Service or Site, or any portion of them, with or without advance notice. Subject to section 13.2 below, no Terex Party will be liable to you or to any third party for any such modification, suspension or discontinuance.

7.2 Terex may modify and update the TOU if circumstances warrant. Your continued use of the Service following the effective date of any such changes will constitute confirmation of your acceptance of the updated TOU.

## **8. Network Coverage, GNSS Satellites, Interruption of Service**

8.1 You acknowledge that the Service and network access may be 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. To the extent that Devices or other hardware units receive signals from Global Navigation Satellite System (“GNSS”) you further acknowledge that Terex is not responsible for the operation or failure of operation of any GNSS satellites or the availability of GNSS satellite signals.

8.2 Terex will not be liable to you or any third party for any loss or damage arising from the Service, or its interruption, transmission errors (including location data inaccuracies), downtime of the Service due to maintenance or defects or any other cause, including, but not limited to, interruption caused by the underlying communications system carrier. Terex does not assume and will not have any liability arising from events beyond Terex’s control or the control of Terex’s subcontractors, licensors or business partners, including events such as acts of God, epidemics, acts of any governmental entity, acts of public enemy, strikes or weather conditions.

## **9. No Warranties; Customer Responsibility for Devices, and Risk of Loss**

TEREX, ITS DIRECTORS, OFFICERS, EMPLOYEES, LICENSORS, SUPPLIERS, DEALERS, AFFILIATES, PARTNERS, SERVICE PROVIDERS, AND AGENTS (EACH A “TEREX PARTY” AND COLLECTIVELY THE “TEREX PARTIES”) DISCLAIM ANY RESPONSIBILITY FOR ANY HARM RESULTING FROM YOUR USE OF THE SERVICE, DEVICES, EQUIPMENT AND SITE. YOU EXPRESSLY UNDERSTAND AND AGREE THAT: (a) THE APPLICATION, SITE AND SERVICE 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 TEREX 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, 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 SERVICE, DEVICES, EQUIPMENT, APPLICATION, OR SITE, AND (iv) WARRANTIES THAT ACCESS TO OR USE OF THE SERVICE, APPLICATION OR SITE WILL MEET YOUR REQUIREMENTS, BE UNINTERRUPTED OR ERROR-

FREE. You agree that you will access the Site and use the 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.

NOTWITHSTANDING YOUR USE OF THE SERVICE, AND REGARDLESS OF ANY INFORMATION PROVIDED THROUGH IT (WHETHER ACCURATE OR INACCURATE) REGARDING THE OPERATION, MAINTENANCE OR PERFORMANCE STATUS OF YOUR EQUIPMENT OR DEVICES -- YOU REMAIN SOLELY RESPONSIBLE FOR, AND ASSUME ALL RISK RELATED TO, THE PROPER OPERATION, SUPPORT AND MAINTENANCE OF SAID EQUIPMENT AND DEVICES. YOU AGREE THAT YOU ARE SOLELY LIABLE AND WILL NOT SEEK RESTITUTION FROM ANY TEREX PARTY FOR ANY DAMAGE OR LOSS RELATED TO OR ARISING OUT OF ANY ACTION TAKEN BY YOU, YOUR AUTHORIZED USERS, OR AFFILIATES OF YOU OR YOUR AUTHORIZED USERS BASED ON DATA OBTAINED FROM A DEVICE/EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, UTILIZING OR ACTIVATING ANY FEATURE ON YOUR ASSET, DEVICE OR EQUIPMENT THAT MAY IMPACT THE OPERABILITY, PERFORMANCE, AND FUNCTIONING OF YOUR EQUIPMENT.

YOU ARE RESPONSIBLE FOR ANY RISK OF LOSS FOR ANY ITEMS REQUIRED TO COMMUNICATE WITH OR THROUGH THE SERVICE, INCLUDING, WITHOUT LIMITATION, DUE TO EQUIPMENT FAILURE, THEFT, FIRE, COLLISION, TAMPERING, AND VANDALISM.

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

#### **10. Limitation of Liability**

UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, WILL THE TEREX PARTIES BE LIABLE TO YOU 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, INTERRUPTION OR DISABLING OF DEVICE, EQUIPMENT, AND/OR VEHICLE, LOSS OF DATA, LOSS OF BUSINESS INFORMATION, VIRUS INFECTIONS, SYSTEM OUTAGES AND THE LIKE) ARISING OUT OF, BASED ON OR RESULTING FROM YOUR ACCESS TO, USE OF, MISUSE OF OR INABILITY TO USE THE SERVICE, DEVICES, EQUIPMENT OR THE SITE, EVEN IF TEREX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (INCLUDING DAMAGES INCURRED BY THIRD PARTIES). THE EXCLUSION OF DAMAGES UNDER THIS SECTION 10 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 TEREX'S 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 TEREX WITHIN THE 12 MONTHS PRIOR TO THE MOST RECENTLY ENDED MONTH FOR YOUR ACCESS OR USE OF THE 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 OR IN THE EVENT OF PERSONAL INJURY ARISING SOLELY FROM A TEREX PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

#### **11. Customer Indemnification**

UPON OUR REQUEST, YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS EACH OF THE TEREX 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) VIOLATION OF THE TOU, OR (B) 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 Terex in connection with or arising from any such claim, lawsuit, action, demand or other proceeding. Terex 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 Terex in asserting any available defenses.



## **12. Intellectual Property Rights**

12.1 You hereby agree and acknowledge that Terex and its licensors (and as applicable, Third Party Suppliers of any software you may license in connection with the Service) own all right, title and interest in and to all Intellectual Property Rights (defined below) in connection with or relating to the Service and the Sites. "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. Terex 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 Terex, including without limitation assigning (and you hereby assign) to Terex 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 Service or the Site. Notwithstanding the foregoing, Terex's Intellectual Property Rights as they pertain to the Data, include only the rights granted to Terex under Section 5 above.

12.2 You acknowledge that all trademarks, service marks, and logos (collectively, "Marks") that appear throughout the Service or the Site belong to Terex 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 Terex or the owner of the Mark, as applicable, is strictly prohibited. Terex 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.

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

13.1 Terex may suspend your access to the Sites and terminate your right to use the Service without liability, if (i) you violate the TOU or any other valid agreement with Terex; (ii) fail to pay amounts owed when due, (whether due to Terex directly or to the dealer or distributor); (iii) the communications service through which you are able to access and use the Service terminates your communications service; or (iv) Terex has reason to believe that you, your Authorized Users, any of your agents or any third parties are abusing the Service or using it fraudulently or unlawfully.

13.2 Terex may cancel or terminate your account due to your violation of these TOU or any other valid agreement with Terex, or your insolvency, bankruptcy (or similar action or proceeding), or your ceasing to do business in the ordinary course, or your failure to notify Terex of the transfer, sale or disposition of the Equipment.

## **14. International**

Terex makes no representation that Service is appropriate or available for use in locations outside your subscription area, and accessing the Service from territories where the Service is illegal is prohibited. You may not use or export or re-export the 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.

## **15. Notices and Electronic Communications**

When you visit the Sites 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 Terex with accurate information, Terex cannot be held liable if it fails to notify you. You may have the right to request that Terex provide such notices to you in paper format, and may do so by contacting Terex Corporation, 45 Glover Avenue, Norwalk, CT 06850. Any other communications should also be sent to that address.

## **16. Governing Law**

The TOU are governed by and construed in accordance with the laws of the State of Connecticut and applicable United States federal law, without reference to “conflicts of laws” provisions or principles.

## **17. General Provisions**

These TOU and/or any other valid agreement between you and Terex for use of the Service, constitute the entire agreement between you and Terex and govern your use of the Service and Site, superseding any and all prior agreements, negotiations and communications (whether written, oral or electronic) between you and Terex with respect to the subject matter hereof. No change, modification, or waiver of the TOU, will be binding on Terex unless made in writing, with Terex’s approval. Any rights not otherwise expressly granted under the TOU are reserved by Terex and its licensors. The failure of Terex 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 Terex, and the remaining portions shall remain in full force and effect.

## **18. 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.