

# TERMS OF USE



IMPORTANT: READ THESE TERMS AND CONDITIONS OF USE ("**TERMS OF USE**") CAREFULLY BEFORE USING THE SERVICE (DEFINED BELOW). WETCOLLECT, LLC (THE "**COMPANY**") IS WILLING TO PROVIDE YOU, AS THE USER OF THE SERVICE (REFERENCED BELOW AS "**YOU**" OR "**YOUR**"), ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS AND CONDITIONS OF THESE TERMS OF USE. THIS IS A LEGAL AND ENFORCEABLE CONTRACT BETWEEN YOU AND THE COMPANY. BY CLICKING THE "I ACCEPT" BUTTON OR OTHERWISE INDICATING ASSENT ELECTRONICALLY, OR ACCESSING OR USING THE SERVICE, YOU AFFIRM THAT THESE TERMS OF USE CONSTITUTE A WRITING, YOU HAVE READ THESE TERMS OF USE, YOU UNDERSTAND THESE TERMS OF USE, AND YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THESE TERMS OF USE. IF YOU ARE ACCESSING AND/OR USING THIS SERVICE ON BEHALF OF AN END USER WHICH IS A CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, OR ASSOCIATION SUCH AS YOUR EMPLOYER, YOU REPRESENT AND WARRANT TO THE COMPANY THAT YOU ARE AUTHORIZED TO ENTER INTO THIS CONTRACT AND ACCEPT THESE TERMS OF USE ON BEHALF OF THE END USER. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THESE TERMS OF USE, CLICK THE "I DO NOT ACCEPT" OR "NO" BUTTON OR OTHERWISE INDICATE REFUSAL, AND DO NOT ACCESS OR USE THE SERVICE.

## 1. Definitions

"**Confidential Information**" means all confidential information of a party ("**Disclosing Party**") disclosed 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 the circumstances of disclosure, including the Customer Data, the Service, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information (except for Customer Data) will not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

"**Customer Data**" means all electronic data, records or information submitted by You to the Service.

"**Excused Downtime**" means any period of unavailability or inoperability caused by a Force Majeure Event.

**“Force Majeure Event”** means any circumstance or occurrence beyond the reasonable control of the Company, including, without limitation, acts or omissions by a public authority, acts of God, strikes, blockades, acts of terrorism, riots, storms, earthquakes, explosions, fires, floods, Internet or telecommunications failures/outages/delays, third-party hosting facility failures, denial of service attacks, or other similar occurrences.

**“Intellectual Property Rights”** means any and all forms of intellectual property rights and protections, throughout the world, including, without limitation, patent rights, copyright rights, mask work rights, trade secret rights, *sui generis* database rights and all other intellectual property or proprietary rights recognized under any laws or international conventions and in each case including the right to apply for registrations, certificates, or renewals with respect to those intellectual property or proprietary rights and the right to prosecute, enforce, obtain damages relating to, settle or release any past, present, or future infringement or misappropriation of those intellectual property or proprietary rights.

**“Malicious Code”** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

**“Planned Downtime”** means any period during which the Service is unavailable for maintenance, including the implementation of any updates, enhancements, patches, fixes, or error corrections.

**“Service”** means the online, Web-based hosted wetland delineation field data collection and processing software service made available by the Company via <http://www.wetcollect.com> and/or other designated websites as further described by the User Guide, including, without limitation, the Timmons Technology.

**“Subscription Term”** means Your initial subscription term for the Service and any renewals or extensions thereof agreed to by the Company or an authorized Company dealer or reseller, as set forth in a written agreement between You and the Company or the applicable agreement between You and an authorized Company dealer or reseller.

**“Timmons”** means Timmons Group, Inc., and its wholly-owned direct and indirect subsidiaries including the Company.

**“Timmons Technology”** means, collectively and individually, Timmons’ proprietary software programs, web sites, graphical user interfaces, data centers, computer servers, and telecommunications networks used by Timmons or the Company to provide or operate the Service.

**“User Guide”** means any written online user guide for the Service published by the Company and supplied to You by the Company or an authorized Company dealer or reseller, as updated from time to time in the Company’s sole discretion.

## **2. Service**

The Company will make the Service available to You pursuant to these Terms of Use during the applicable Subscription Term. You agree that Your purchase of the subscription to the Service is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by the Company with respect to future functionality or

features. You acknowledge that: (i) payment terms for the Service must be established separately and independently between You and the Company or the applicable authorized Company dealer or reseller; (ii) these Terms of Use and the User Guide constitute the entire agreement between You and the Company regarding the provision by the Company, and the access and use by You, of the Service and controls as to any other terms; (iii) if You purchase this subscription through an authorized Company dealer or reseller, the terms and conditions of any purchase order or other agreement between You and any applicable authorized Company dealer or reseller are not binding on the Company; (iv) if You purchase this subscription through an authorized Company dealer or reseller, such dealer or reseller is the Company's agent only with respect to the collection of fees due and payable in connection with the Service and is not authorized to alter, amend or modify these Terms of Use, or otherwise grant any rights relating in any way to the Service; and (v) Your non-payment of any amount owed to the Company or an authorized Company dealer or reseller relating to the Service will constitute a basis for the Company's termination of this contract and Your right to access and use the Service. You further acknowledge that the Company makes no representation or warranty with regard to any services provided by any dealer or reseller, or any actions of failures to act by any dealer or reseller.

### **3. Use of the Service**

The Company will use commercially reasonable efforts to: (i) maintain the security and integrity of the Service and the Customer Data; and (ii) make the Service available 24 hours a day, 7 days a week, except for: (a) Planned Downtime and (b) Excused Downtime. The Company will use commercially reasonable efforts to provide You reasonable advance notice of Planned Downtime.

You will: (i) comply with the requirements of the User Guide; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify the Company promptly following Your discovery of any such unauthorized access or use; and (iii) comply with all applicable local, state, federal and foreign laws in using the Service, including without limitation all applicable data protection laws and regulations.

You may use the Service solely for Your internal business purposes as contemplated by these Terms of Use and may not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service or any part thereof available to any third party; provided, however, that you may use the results of the Service in the course of rendering environmental engineering and related professional services to Your clients; (ii) record, transmit or store infringing or otherwise unlawful or tortious material, including material that violates third-party privacy rights; (iii) send or store Malicious Code; (iv) intentionally interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

### **4. Proprietary Rights**

Subject to the limited rights expressly granted hereunder, the Company reserves all rights, title and interest in and to the Service, including all related Intellectual Property Rights. No rights are granted to You hereunder other than as expressly set forth herein. Save to the extent expressly permitted by applicable law notwithstanding this limitation, You will not: (i) modify, copy or create derivative works based on the Service or any part thereof; (ii) frame or mirror any content

forming part of the Service; (iii) reverse engineer the Service or any part thereof; or (iv) access the Service in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics contained in the Service.

As between the Company and You, the Company acknowledges and agrees that You exclusively own all rights, title and interest in and to all Customer Data. Customer Data is deemed Confidential Information under these Terms of Use. You acknowledge and agree that the Company may access and use Customer Data to the extent necessary to provide the Service.

## 5. Confidentiality

The Receiving Party will not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms of Use, except with the Disclosing Party's prior written permission. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care). If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it will provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party will have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

## 6. Limited Warranties & Disclaimers

The Company warrants that: (i) the Service will perform substantially in accordance with the User Guide; (ii) the functionality of the Service will not be materially decreased during a Subscription Term; and (iii) the Company will use commercially reasonable efforts to prevent the introduction or transmission to of Malicious Code through the Service.

**THE ABOVE LIMITED WARRANTIES ARE THE ONLY WARRANTIES PROVIDED BY THE COMPANY REGARDING THE SERVICE. EXCEPT FOR THE LIMITED WARRANTIES ABOVE, THE SERVICE IS PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ABOVE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. THE COMPANY DOES NOT WARRANT THAT THE SERVICE WILL MEET YOUR REQUIREMENTS OR NEEDS, OR THAT OPERATION OF THE SERVICE WILL BE UNINTERRUPTED, OR THAT THE SERVICE WILL BE ERROR-FREE, OR THAT ANY DEFECTS OR ERRORS IN THE SERVICE WILL BE CORRECTED.**

## 7. Disclaimer of Damages

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL THE COMPANY OR ITS MEMBER, DIRECTORS, MANAGER, OFFICERS, EMPLOYEES, LICENSORS OR AGENTS BE LIABLE TO YOU FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR EXEMPLARY OR SIMILAR DAMAGES, ARISING OUT OF OR IN ANY WAY RELATING TO THESE TERMS OF USE OR THE USE OF OR INABILITY TO USE THE SERVICE, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, LOST DATA, PERSONAL INJURY AND COMPUTER FAILURE OR MALFUNCTION, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH SUCH CLAIM IS BASED. IN NO CASE WILL THE COMPANY'S OR ITS LICENSORS' AGGREGATE LIABILITY UNDER THESE TERMS OF USE EXCEED THE FEES THAT YOU PAID FOR THE SERVICE.

## 8. Indemnification

You will defend, indemnify and hold the Company and its owners, directors, managers, officers, employees and agents (each a “**Company Indemnified Party**”) harmless against any loss, liability, damage, cost or expense (including reasonable attorneys' fees) suffered or incurred by any Company Indemnified Party in connection with claims, demands, suits, or proceedings made or brought against any Company Indemnified Party by a third party alleging (i) a breach by You or Your Users of Your obligations under applicable local, state, federal and foreign laws; or (ii) that the Customer Data, or Your use of the Service in breach of these Terms of Use infringes or breaches the Intellectual Property Rights, of, or has otherwise harmed, a third party; or (iii) a breach by You of Section 5 (Confidentiality).

## 9. Term & Termination

Subject to the terms and conditions of these Terms of Use, the Subscription Term will begin on the date of Your acceptance of these Terms of Use, and will continue until the Subscription Term expiration date as set forth in a written agreement between You and the Company or the applicable agreement between You and the authorized Company dealer or reseller from whom You acquired the subscription. Your access to and use of the Service will automatically terminate at the end of the applicable Subscription Term.

Your right to access and use the Service will terminate automatically without notice from the Company upon Your breach of any term or condition contained in these Terms of Use, whereupon You will immediately cease use of the Service.

Upon request by You made within 30 days after the effective date of termination, the Company will promptly make available to You for download a file of Customer Data in Microsoft Access or CSV format, at the Company's then-current standard charges therefor. After such 30-day period, provided that the Company has complied with its obligations to make available to You the aforementioned Customer Data file promptly upon a request by You made within 30 days after the effective date of termination, the Company will have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.

The provisions of Sections 4 through 10 of these Terms of Use will survive any termination or expiration of Your Subscription Term.

## **10. Miscellaneous**

These Terms of Use will be governed by and construed in accordance with the laws of the Commonwealth of Virginia, United States of America. Any suit, action or proceeding arising in connection with these Terms of Use of Your access to or use of the Service will be brought in the state or federal courts sitting in the Commonwealth of Virginia and You hereby expressly submit to the jurisdiction of such courts for the purpose of any such suit, action, or proceeding. These Terms of Use and the User Guide constitute the entire agreement between You and the Company relating to the Service and: (i) supersedes all prior or contemporaneous oral or written communications, proposals, and representations with respect to its subject matter; and (ii) prevails over any conflicting or additional terms of any quote, order, acknowledgment, or similar communications between the parties. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of these Terms of Use will continue in full force and effect. These Terms of Use may only be modified by a written document that has been signed by both You and the Company. The Company will have no liability under these Terms of Use or otherwise to the extent that it is delayed, prevented or hindered in performing any of its obligations hereunder as a result of a Force Majeure Event. Should You have any questions concerning these Terms of Use or the Service, or if You desire to contact the Company for any reason, please write to [WetCollect Customer Service], [1001 Boulders Parkway, Suite 300, Richmond, VA 23225], U.S.A. or visit the Company's web site at <http://www.wetcollect.com>.