

BioBase Terms of Service

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BioBase Terms of Service

Last Modified: 02.24.2023

This BioBase Terms of Service Agreement (this "**Agreement**") is a binding contract between you ("**Customer**," "**you**," or "**your**") and Navico, Inc. ("**Provider**," "**we**," or "**us**"). This Agreement governs your access to and use of the BioBase platform and related services, as further defined below.

THIS AGREEMENT TAKES EFFECT WHEN YOU CLICK THE "I ACCEPT" BUTTON BELOW OR BY ACCESSING OR USING THE SERVICES (the "**Effective Date**"). BY CLICKING "I ACCEPT" OR BY ACCESSING OR USING THE SERVICES YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT AND, IF ENTERING INTO THIS AGREEMENT FOR AN ORGANIZATION, THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT ORGANIZATION; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS.

IF YOU DO NOT AGREE TO THESE TERMS, PLEASE DO NOT ACCESS OR OTHERWISE REGISTER TO USE THE SERVICES. IF YOU DO NOT ACCEPT THESE TERMS, YOU MAY NOT ACCESS OR USE OUR SERVICES.

Definitions

(a) "**Authorized User**" means Customer or Customer's employee or agent (i) who is authorized to use the Services as a data collector; and (ii) for whom access to the Services has been purchased in accordance with Customer's order. Unless expressly agreed to otherwise by Navico, Customer shall only have one (1) Authorized User per subscription.

(b) "**Services**" means the BioBase services provided by Provider under this Agreement that are reflected in the Customer's order and as detailed more generally on Provider's website available at <https://www.biobasemaps.com>. For purposes of this Agreement Services also includes Provider's Documentation.

(c) "**Customer Data**" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or any other Authorized User through the Services.

(d) "**Documentation**" means Provider's user manuals and guides relating to the Services provided to Customer either electronically or in hard copy form.

(e) "**EULA**" means the BioBase End User License Agreement available at <https://s3.amazonaws.com/downloads.digitalmarine.com/BioBaseEULA.pdf>.

(f) "**BioBase IP**" means the Services, the Documentation, and all intellectual property provided to Customer or any other Authorized User in connection with the foregoing. For the avoidance of doubt, BioBase IP includes Aggregated Statistics and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Services, but does not include Customer Data.

(g) **"Third-Party Products"** means any products, content, services, information, websites, or other materials that are owned by third parties and are incorporated into or accessible through the Services.

Access and Use.

(h) Access. Subject to and conditioned on your payment of Fees and compliance with the terms and conditions of this Agreement and our EULA, Provider hereby grants you a revocable, non-exclusive, non-transferable, non-sublicensable, limited right to access and use the Services during the Term solely for your internal operations by your Authorized User in accordance with the terms and conditions herein.

(i) Downloadable Software. Use of some of the Services may require or include use of downloadable software. Provider grants you a non-transferable, non-exclusive, non-assignable, limited right for Authorized Users to use downloadable software we provide as part of the Services. Any Third-Party Products that consist of downloadable software are subject to the terms of Section 1(r).

(j) Use Restrictions. You may not, and may not permit or assist others to: (a) rent, lease, sell, sublicense, loan, time-share, or otherwise transfer or distribute the Service or any derived data product for any commercial purpose, (b) remove, alter or obscure Provider's proprietary notices affixed to or contained in the Service, (c) install or use the Services in a manner inconsistent with its design, including use on computers with which it is not designed to operate and use in circumvention of content protection technologies, or (d) reverse engineer, decompile or otherwise attempt to discover the source code in the Services. Unless you are a subscriber to the service, you shall not, republish, distribute, resell or otherwise use the Service or any data products derived from your use of the Service ("Derived Data Products") for any commercial purpose. A "commercial purpose" is one which is undertaken for a business purpose, rather than hobby, recreational, educational, or other purpose. Such commercial uses are usually attributed to a for-profit entity, rather than an individual, public agency, university or other educational institution, or non-profit organization. You shall disclose these terms to any recipient of shared data or map products derived from the Service.

(k) Aggregated Data. Notwithstanding anything to the contrary in this Agreement, Provider may monitor Customer's use of the Services and collect and compile data and information related to Customer's use of the Services to be used by Provider in an aggregated and anonymized manner, including to compile statistical and performance information related to the operation of the Services ("**Aggregated Statistics**"). As between Provider and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Provider. You acknowledge that Provider may compile Aggregated Statistics based on Customer Data uploaded through the Services. You agree that Provider may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information.

(l) Reservation of Rights. Provider reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the BioBase IP.

(m) Suspension. Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Customer's and any other Authorized User's access to any portion or all of the Services if: (i) Provider reasonably determines that (A) there is a threat or attack on any of

the BioBase IP; (B) Customer's or any other Authorized User's use of the BioBase IP disrupts or poses a security risk to the BioBase IP or to any other customer or vendor of Provider; (C) Customer or any other Authorized User is using the BioBase IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Provider's provision of the Services to Customer or any other Authorized User is prohibited by applicable law; (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or products required to enable Customer to access the Services; or (iii) in accordance with Section 0 (collectively, a "**Service Suspension**"). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to Services following any Service Suspension. Provider shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Services Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of or profits), or any other consequences that Customer or any other Authorized User may incur as a result of a Service Suspension.

Customer Responsibilities.

(n) Acceptable Use. The Services may not be used: (i) for unlawful, fraudulent, offensive, or obscene activity; (ii) in violation of any term or conditions of this agreement, including the restrictions stated in Section 2(c); or (iii) for any restricted purpose as further described and set forth our EULA, as may be amended from time to time.

(o) Account Use and Registration. You are solely responsible and liable for all uses of the Services. Without limiting the generality of the foregoing, you are responsible for all acts and omissions of the Authorized User, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by you will be deemed a breach of this Agreement by you. You further agree that all information provided during the registration process is accurate, current and complete and will be maintained as such during the term of your subscription. Registration data that we view as inaccurate, false, or incomplete may result in your suspension or termination from the Services.

(p) Customer Data. You hereby grant to Provider a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Provider to provide the Services to you. You will ensure that Customer Data and any Authorized User's use of Customer Data will not violate any policy or terms referenced in or incorporated into this Agreement or any applicable law. You are solely responsible for the development, content, operation, maintenance, and use of Customer Data.

(q) Passwords and Access Credentials. When you register for the Services, you will be asked to select a password and access credentials for your Authorized User. You and your Authorized User are responsible for keeping your password and access credentials confidential. You will not sell or transfer them to any other person or entity. You will promptly notify us about any unauthorized access to your passwords or access credentials. If we are promptly notified that someone has accessed your account without your consent, we will attempt to halt any further activity on said account. However, we are not liable for any loss or damage that occurs on your account as a result of any unauthorized use.

(r) Third-Party Products. The Services may permit access to Third-Party Products. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions presented to you for acceptance within the Services by website link or otherwise. If you

do not agree to abide by the applicable terms for any such Third-Party Products, then you should not install, access, or use such Third-Party Products.

Subscription Options.

(s) One Authorized User per Subscription. Unless expressly agreed to otherwise by Provider, all subscriptions are limited to one (1) Authorized User and shall not be shared with other parties. The Authorized User shall be the person responsible for data collection and shall not share their access credentials with any other parties. Authorized Users may request that other parties within their organization receive “read only” access to view Customer Data uploaded through the Service, provided that Customer maintains either an active paid subscription or data Maintenance Plan, as further described below in Section 4(e).

(t) Annual Subscriptions. Unless stated otherwise, each annual subscription shall last for a period of one (1) year from the date of the subscription purchase indicated on the Customer order. Renewals shall last for a period of one year from your anniversary date, but you may have the option to purchase multi-year subscriptions. No sonar files that pre-date or post-date the subscription period can be uploaded to Customer's account without our consent. By subscribing to the Service and registering your payment details, you authorize Provider to charge the fixed upfront payment. Payment for the Services is in advance, billed on an annual cycle starting on the day you subscribe to the Service. Where Provider cancels the Services due to no fault of yours and the Services do not resume, Provider will provide a pro-rated refund of subscription fees which will be your sole and exclusive remedy in such cases.

(u) Single-Use Subscriptions. We may offer single-use subscription plans (“Single-Use Plans”) that allow for single sonar uploads up to a total size of 4GB. Single-Use Plans run for a term of 30 days from the subscription start date indicated on the customer order. Single-Use Plan subscribers must purchase a separate Maintenance Plan (see Section 4(d) below) in line with their storage requirements in order to continue accessing uploads after expiration of the 30 day term. In the event a user is required to log multiple files during a single survey due to good cause (e.g. equipment malfunction), user should contact customer service as soon as reasonably practicable to discuss their options.

(v) Freemium Subscriptions. From time to time, we may offer certain eligible users access to free and/or discounted subscriptions for some of the Services, which may include access to premium features. In addition to the terms of this agreement, Freemium Subscriptions are governed by and subject to the BioBase Freemium Offer Terms and Conditions of Use detailed in Exhibit A.

(w) Maintenance Plans. If Customer wants to continue to access trip analysis and other Customer Data generated through the Services after the expiration or termination of their applicable subscription, Customer must purchase a separate data maintenance plan (“Maintenance Plan”) with enough storage to cover their data requirements. Unless agreed to otherwise, Maintenance Plans will run for a period of 12 months. Pricing for standalone maintenance plans are dictated based on Customer’s storage requirements. For the avoidance of doubt, Maintenance Plans are only required if Customer wants to continue to have access to their trip data after their subscription plan ends. Maintenance Plans solely grant “read-only” access to trip analysis uploaded before Customer’s Service subscription ended. The Maintenance Plan by itself will not allow for new data uploads.

(x) Modifications. We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the subscription Services (or any part thereof) with or without notice.

Fees and Payment.

Unless expressly agreed to otherwise, all subscription fees stated on the Customer order ("**Fees**") are payable upfront at the time of registration or otherwise within thirty (30) days from the invoice date if not charged upfront. If Customer fails to make any payment when due, without limiting Provider's other rights and remedies, Provider may suspend, in accordance with Section 1(m), Customer's and all other Authorized Users' access to any portion or all of the Services until such amounts are paid in full. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.

Confidential Information.

From time to time during the Term, Provider and Customer may disclose or make available to the other party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving party; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving party. The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity, except to the receiving party's employees, agents, or subcontractors who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder and who are required to protect the Confidential Information in a manner no less stringent than required under this Agreement.

Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (i) to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish a party's rights under this Agreement, including to make required court filings. Each party's obligations of non-disclosure with regard to Confidential Information are effective as of the date such Confidential Information is first disclosed to the receiving party and will expire five years thereafter; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

Privacy Policy.

In providing the Service, Provider complies with its privacy policy posted on our Website available here <https://s3.amazonaws.com/downloads.digitalmarine.com/PrivacyPolicyBioBase.pdf> ("**Privacy Policy**"). The Privacy Policy is subject to change as described therein. By accessing, using, and providing information to or through the Services, you acknowledge that you have reviewed and accepted our Privacy Policy, and you consent to all actions taken by us with respect to your information in compliance with the then-current version of our Privacy Policy.

Intellectual Property Ownership; Feedback.

As between you and us, (a) we own all right, title, and interest, including all intellectual property rights, in and to the Services, including Derived Data Products generated through the Services, and (b) you own all right, title, and interest, including all intellectual property rights, in and to Customer Data. If you or any of your employees, contractors, or agents send us suggestions or recommendations for changes to the Services, including without limitation, new features or functional

improvements, or any comments, questions, suggestions (collectively, "**Feedback**"), we are free to use such Feedback at our discretion. All Feedback is and will be treated as non-confidential. You hereby assign to us on your behalf, and shall cause your employees, contractors, and agents to assign, all right, title, and interest in, and we are free to use, without any attribution or compensation to you or any third party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although we are not required to use any Feedback.

Limited Warranty and Warranty Disclaimer.

(y) Provider warrants that it provides the Services using a commercially reasonable level of care and skill. THE FOREGOING WARRANTY DOES NOT APPLY, AND PROVIDER STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.

Customer Warranty.

You warrant that you own all right, title, and interest, including all intellectual property rights, in and to Customer Data and that both the Customer Data and your use of the Services are in compliance with the terms of this Agreement and all applicable laws and regulations.

(z) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 1(y), THE SERVICES ARE PROVIDED "AS IS" AND PROVIDER SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON'S OR ENTITY'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OF YOUR OR ANY THIRD PARTY'S SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

Indemnification.

(aa) Provider Indemnification.

(i) Provider shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, or costs, including reasonable attorneys' fees ("**Losses**"), incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights, provided that Customer promptly notifies Provider in writing of the Third-Party Claim, cooperates with Provider, and gives Provider sole control of the defense or settlement of such Third-Party Claim.

(ii) If such a Third-Party Claim is made or Provider reasonably anticipates such a Third-Party Claim will be made, Customer agrees to permit Provider, at Provider's sole discretion, to (A) modify or replace the Services to make it non-infringing, or (B) obtain the right for Customer to continue use. If Provider determines that neither alternative is reasonably available, Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer. This Section 10(a)(ii) sets forth your sole remedies and our sole liability and obligation for any actual, threatened, or alleged Third-Party Claims that the Services

infringe, misappropriate, or otherwise violate any intellectual property rights of any third party.

(iii) This Section 1(aa) will not apply to the extent that any such Third-Party Claim arises from Customer Data or Third-Party Products or Customer's breach of this agreement.

(bb) Customer Indemnification. Customer shall indemnify, hold harmless, and, at Provider's option, defend Provider and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all Losses arising from or relating to any Third-Party Claim (i) that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights; or (ii) based on Customer's or any Authorized User's negligence or willful misconduct or use of the Services in a manner not authorized by this Agreement; provided that Customer may not settle any Third-Party Claim against Provider unless Provider consents to such settlement, and further provided that Provider will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

Limitations of Liability.

IN NO EVENT WILL PROVIDER BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR \$50,000, WHICHEVER IS GREATER. The exclusions and limitations in this Section 11 do not apply to the parties' obligations under Section 0 (Indemnification).

Term and Termination.

(cc) Term. The term of this Agreement begins on the Effective Date and continues thereafter for the subscription term stated in the Customer order, unless terminated earlier as provided herein.

(dd) Termination. In addition to any other express termination right set forth in this Agreement:

(i) Provider may terminate this Agreement, for any reason upon thirty (30) days' advance notice.

(ii) either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; or

(iii) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party (a) becomes insolvent or is generally unable to pay its debts as they become due; or (b) otherwise becomes subject of a petition in bankruptcy (voluntarily or involuntarily) or other similar proceeding.

(ee) Effect of Termination. Upon termination of this Agreement, Customer shall immediately discontinue use of the BioBase IP. No expiration or termination of this Agreement will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund.

(ff) Survival. This Section 12(d), Sections 0, 0, 0, 0, 0, **Error! Reference source not found.**, 0, and any right, obligation, or required performance of the parties in this Agreement which, by its express terms or nature and context is intended to survive termination of this Agreement, will survive any such termination.

Changes.

You acknowledge and agree that we have the right, in our sole discretion, to modify this Agreement, and that modified terms become effective on posting. You will be notified of modifications through direct email communication from us. You are responsible for reviewing and becoming familiar with any such modifications. Your continued use of the Services after the effective date of the modifications will be deemed acceptance of the modified terms.

Export Regulation.

The Services use software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Services or the software or technology included in the Services to, or make the Services or the software or technology included in the Services accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, regulation, or rule. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Services or the software or technology included in the Services available outside the US.

Governing Law and Jurisdiction.

This agreement is governed by and construed in accordance with the internal laws of the State of Oklahoma without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Oklahoma. Any legal suit, action, or proceeding arising out of or related to this agreement or the rights granted hereunder will be brought in the federal or state courts in Tulsa County, Oklahoma and each party irrevocably submits to the jurisdiction of such courts.

Miscellaneous.

This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. Any notices to us must be sent to our corporate headquarters address at 4500 S. 129th East Ave., Suite 200, Tulsa, OK 74134-5885 USA. Notwithstanding the foregoing, you hereby consent to receiving electronic communications from us. These electronic communications may include notices about applicable fees and charges, transactional information, and other information concerning or related to the Services. You agree

that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing. The invalidity, illegality, or unenforceability of any provision herein does not affect any other provision herein or the validity, legality, or enforceability of such provision in any other jurisdiction. Any failure to act by us with respect to a breach of this Agreement by you or others does not constitute a waiver and will not limit our rights with respect to such breach or any subsequent breaches. This Agreement is personal to you and may not be assigned or transferred for any reason whatsoever without our prior written consent and any action or conduct in violation of the foregoing will be void and without effect. We expressly reserve the right to assign this Agreement and to delegate any of its obligations hereunder.

Additional Terms for Bing Maps.

The End User Minimum Terms for Bing Maps ISV Applications (the “End User Minimum Term”) provided on Exhibit A below shall expressly apply to your purchase and use of any of our products or services which use the Microsoft Bing Maps Services. Please read the End User Minimum Terms carefully. If you do not accept these terms, do not download or otherwise use the services.

Additional Terms for EcoSat.

By ordering, accepting, and viewing EcoSat output in your BioBase account, you hereby agree to be bound by one or more of the following partner provider agreements depending on the product and resolution you select:

(gg) Maxar Internal Use License: <https://www.maxar.com/legal/internal-use-license>
Airbus: <http://www.intelligence-airbusds.com/cgf/>

(hh) Pleiades: http://www.intelligence-airbusds.com/files/pmedia/public/r13117_9_eula-pleiades-vuk- European Space Agency

(ii) Copernicus Sentinel Satellite:
https://sentinel.esa.int/documents/247904/690755/Sentinel_Data_Legal_Notice

EXHIBIT A

BioBase Freemium Offer

Terms and Conditions

1. Introduction.

From time to time, Navico may offer Eligible Users (as defined below) free subscriptions for BioBase software services including access to premium features that would otherwise require a paid subscription ("Freemium Subscription"). These terms and conditions for BioBase Freemium ("Freemium Terms") cover your access to and use of the Freemium Subscription, together with our Privacy Policy and the full BioBase Terms of Service Agreement.

By registering for a Freemium Subscription, you agree to be bound by these Freemium Terms and the BioBase Terms of Service. If you do not agree, please do not register for or otherwise use the Freemium Subscription.

2. Offer and Eligibility.

- a. This offer ("Offer") for a Freemium Subscription is contingent on your eligibility with the criteria below, and is subject to the terms and conditions referenced herein.
- b. Criteria. Freemium Subscriptions are offered solely to users working in one of the following sectors: (i) governmental natural resource and/or public works agencies; (ii) academic or research institutions focused on aquatic resources and/or marine environments; or (iii) non-governmental institutions or non-profit organizations working in the area of aquatic resource conservation (collectively, "Eligible Users").
- c. Additional Subscriptions. Institutions that satisfy the criteria herein may receive additional Freemium Subscriptions up to a maximum of five (5) single-user accounts, provided that each data collector must have their own login credentials and cannot share their credentials with any other person. For the avoidance of doubt, in no event shall any institution have more than five (5) data collectors at any time, unless expressly authorized by Navico.
- d. Eligible Users agree to protect their login credentials as stated in the BioBase Terms of Service.
- e. Determination. Notwithstanding anything to the contrary, Navico shall have the sole and exclusive right to determine your eligibility for any Freemium Subscription, and may ask you to provide supporting documentation evidencing your eligibility for a Freemium Subscription. Navico may, at its discretion, suspend or revoke Freemium Subscriptions if it has reason to believe you are abusing your access credentials or not acting in good faith to comply with these Freemium Terms.

3. User Data Sharing. In exchange for access to the Freemium Subscription, you hereby grant to Navico a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and use your Shared Data in anonymized aggregated format to the extent and in the manner permitted under applicable law. For purposes of these Freemium Terms, "Shared Data" means information, data, and other content that you generate through the Freemium Subscription.

4. Limitations.

- a. Freemium Subscriptions are limited to a maximum of 20GB of storage. Navico will endeavor to provide you with reasonable advance notice in the event your storage capacity is near capacity.
- b. You understand and acknowledge that once your storage capacity is reached you will need to convert to a paid subscription plan or delete content to remain under 20GB, in order to continue using the Services.

5. Term and Cancellation.

- a. Term. Freemium Subscriptions run for a period of 12 months (the “Trial Term”) from the date you register as a subscriber.
- b. Renewal. Unless you elect to upgrade to a paid subscription, your Freemium Subscription will automatically terminate upon the conclusion of your Trial Term. You may be given the option to re-subscribe for an additional Freemium Subscription at Navico’s sole discretion.
- c. Inactive Accounts. Accounts with no activity for 12 consecutive months may be suspend and/or deleted at Navico’s sole discretion.
- d. Subscription Lapse. In the event you choose not to renew your Freemium Subscription, you may purchase a data maintenance plan in order to continue to access your data on the BioBase platform. Please review purchase options on biobasemaps.com through My Account or contact your BioBase representative for more information on available data maintenance plans and current pricing.

6. Freemium Subscription “AS IS.”

Navico strives to provide great services, but there are certain things that we can't guarantee. TO THE FULLEST EXTENT PERMITTED BY LAW, NAVICO AND ITS AFFILIATES MAKE NO WARRANTIES, EITHER EXPRESS OR IMPLIED, ABOUT THE FREEMIUM SUBSCRIPTION OR THE SERVICES INCORPORATED THEREIN. FREEMIUM SUBSCRIPTIONS ARE PROVIDED "AS IS" AND NAVICO DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

7. Other Terms.

- a. You understand that BioBase is a software program used for analyzing aquatic data uploaded via sonar logs. Additional hardware is needed for sonar data collection. For the avoidance of doubt, reference to “free” or “freemium” does not apply to any equipment or hardware needed to enjoy the BioBase services, and additional purchase may be necessary.
- b. You have the option to enter your payment information on biobasemaps.com if you decide to upgrade to a paid subscription plan and/or increase your storage capacity. If you provide your credit card information and elect to auto-renew, you will be charged automatically for a renewal term when your subscription plan lapses. You can opt-in or opt-out of auto-renewal at anytime.
- c. This Offer is non-refundable and cannot be redeemed for cash or credit of any kind.
- d. Freemium Subscriptions are only available while supplies last, and Navico reserves the right to change or cancel this Offer at any time.
- e. Registration for a BioBase account is required. Use of the Services is subject to the above BioBase Terms of Service and the End User License Agreement, available at <https://s3.amazonaws.com/downloads.digitalmarine.com/BioBaseTermsAndConditions.pdf>

EXHIBIT B

to the

BioBase Terms of Service

END USER MINIMUM TERMS FOR BING MAPS ISV APPLICATIONS

These license terms (“End User Minimum Terms”) are an agreement between you (“End User” or “you”) and the independent software vendor that has licensed the application to you (“Bing Maps Licensor”) governing the software application or suite of applications (“Application”) which use the Microsoft Bing Maps Services. Please read them. Microsoft has licensed the Bing Maps Services to Bing Maps Licensor. By using the Application, you accept these terms. If you do not accept them, do not use the Application.

1. Definitions.

For the purposes of these End User Minimum Terms, the following definitions apply:

“Asset” means mobile objects that are managed as part of a fleet, which may include vehicles, devices, or people.

“Billable Transaction” means a call to the Service for which Bing Maps Licensors pay a fee, as further described at this URL: <https://docs.microsoft.com/en-us/bingmaps/getting-started/bing-maps-dev-center-help/understanding-bing-maps-transactions>.

“Bing Maps Distance Matrix API” means the API that enables developers to generate and calculate travel time and distance information between various origin and destination locations, but without the routing details.

“Bing Maps Documentation Website” means the website located at this URL: <https://docs.microsoft.com/en-us/bingmaps/>.

“Bing Maps Isochrone API” means the API that calculates the geographical area that can be reached for a given travel time or distance. The result is a time- or distance-based geographical polygon based on routable networks for driving, walking, and public transit.

“Bing Maps Platform APIs” means the APIs available on the Bing Maps Documentation Website, and any other Bing Maps Platform APIs that Microsoft may offer via the Documentation.

“Bing Maps Snap to Road API” means the API that takes a list of longitudes and latitudes and returns a list of objects containing longitude, latitude, speed limit, and street names that forms a route snapped to the roads on the map. Users can request that the points be interpolated, resulting in a path that smoothly follows the geometry of the road.

“Bing Maps Truck Routing API” means the API that gets a truck driving route by specifying a series of geographical location defined by longitude and latitude that is used for navigational purposes. The route includes information such as route instructions, travel duration, travel distance. The API takes into consideration specific requirements for trucks and larger vehicles, e.g. avoiding low bridges, sharp turns, steep gradients, or following restrictions and permits for hazardous material.

“Bing Maps TOU” means the Bing Maps End User Terms of Use located here: <http://aka.ms/enduserembeddedmapstou> or such other locations as Microsoft may specify from time to time, that apply to End Users.

“Content” means any maps, images, geocodes, data, third party content or other content that Bing Maps Licensors are authorized to access via the Services.

“Drive Analytics” means the output of the analysis about an Asset’s movement resulting from an Application’s use of latitude/longitude coordinates, street names, and posted speed limits (car or truck) and other legal road use restrictions in order to determine if such Asset is following road compliance signage.

“Geofence” means one or more coordinates used to determine whether the location of an Asset has intersected a line or entered or exited a polygon. Examples include a radius of a point, a polyline or a polygon.

“Geofencing Alert” means the notification generated when an Asset enters, intersects or exits a Geofence.

“Ordnance Survey” means a third party maps content provider Ordnance Survey <https://www.ordnancesurvey.co.uk/>.

“Premium Services” means, collectively, the Bing Maps Distance Matrix API, Bing Maps Isochrone API, Bing Maps Snap to Road API, and Bing Maps Truck Routing API.

“Services” means (i) the Application-Specific Services listed in Section 6 below, (ii) the maps platform APIs for the Universal Windows Platform listed on the Bing Maps Documentation Website that provide access to Content, including all elements, components and executables of such APIs, and (iii) documentation that Microsoft makes available to End Users.

“Subscription License” or “SL” means a subscription license for the Services that may be granted pursuant to an agreement between Bing Maps Licensors and an End User.

“Universal Windows Platform” means an API created by Microsoft to enable development of applications that will potentially run on multiple types of devices running the Windows 10 operating system (and subsequent versions).

2. License.

Bing Maps Licensors provide you a license to access the Services from within the Application provided by Bing Maps Licensors only. You have acquired this Subscription License for use solely within the Application supplied by Bing Maps Licensors.

3. Additional Rights and Restrictions for End Users

(a) Bing Maps TOU. In addition to these End User Minimum Terms, you must also comply with the Bing Maps TOU, which is incorporated by reference to these End User Minimum Terms.

(b) Support or Service Level Agreement. Microsoft does not provide any support or service level agreement directly to End Users for Application(s) provided to End User by Bing Maps Licensors.

(c) Termination Rights. Microsoft reserves the right to terminate access to the Application to any End User who is in breach of any restriction included in these End User Terms or Bing Maps Licensors’ terms with End User related to use of the Services, and who fails to cure such breach within thirty (30) days after written notice thereof.

(d) No Warranty by Microsoft to End Users. Microsoft does not make any representation or warranty (express, implied, statutory, or otherwise) with respect to the Services or otherwise.

4. General Restrictions:

Microsoft does have some restrictions on your use of the Application supplied by Bing Maps Licensor. In using the Services provided with the Application, you may not:

- (a) Upload or incorporate any content to the Services via the Application, or use the Application to display or use any content:
 - for which you do not have all necessary permissions from the copyright holder(s);
 - which includes nudity or is obscene, indecent, pornographic or libelous;
 - which is intended to exploit minors in any way;
 - which incites, advocates, or expresses hatred, bigotry, racism, or gratuitous violence; or
 - which is intended to threaten, harass, stalk, defame, defraud, degrade, victimize, or intimidate an individual or group of individuals for any reason, including on the basis of age, gender, disability, ethnicity, sexual orientation, race, or religion, or to incite or encourage anyone else to do so.
- (b) Copy, store, archive, or create a database of the Content.
- (c) Use Content, including geocodes, other than in conjunction with the Application.
- (d) Present or alert a user to individual maneuvers of a route in any way that is synchronized with the user's sensor-based position along the route (e.g. turn by turn navigation that tracks user's position using GPS and communicates a maneuver as the user approaches the location for such maneuver).
- (e) Change, obscure, or minimize any logo, trademark, copyright or other notice of Microsoft or its suppliers, or digital watermarks in the Content; except that we may make alternative logo, trademark and copyright attribution requirements available for use with small maps or on small devices; if available you will find them at this URL: <https://www.microsoft.com/en-us/maps/mobile-brand-guidelines>.
- (f) Use Content other than in combination with the Services and not separately.
- (g) Use Content that consists of points of interest data to generate sales leads information in the form of ASCII or other text-formatted lists of category-specific business listings which (i) include complete mailing address for each business; and (ii) contain a substantial portion of such listings for a particular country, city, state or zip code region.
- (h) Transmit, sell, license or deliver any infringing, defamatory, offensive, or illegal products, services or materials.
- (i) Violate any applicable U.S. Export Administration Regulations or End User, end-use and destination restrictions issued by U.S. and other governments. The Services are subject to U.S. export jurisdiction.
- (j) Use the Services in any way that threatens the integrity, performance or reliability of the Services including performance or stress testing, or in any manner that works around any technical limitations in the Services.
- (k) Syndicate, redistribute, resell or sublicense access to the Services or Content on a standalone basis.
- (l) Falsify or alter any unique referral identifier in, or assigned to, an Application, or otherwise obscure or alter the source of queries coming from an Application.

(m) Reverse engineer, decompile or disassemble the Services, except and only to the extent that applicable law expressly permits, despite this limitation.

(n) Integrate road maps from the Services with road maps supplied by any third party. You may not replace aerial imagery from the Services with imagery supplied by any other mapping platform.

(o) Use the Services or Content with a vehicle's dashboard, or a device connected to a vehicle's dashboard, systems or sensors, except that the device may be connected to the vehicle power source for charging purposes.

(p) Use bird's eye aerial imagery (if it is made available through the Bing Maps Platform APIs) to reveal latitude, longitude, altitude or other metadata.

You may only use Content from Ordnance Survey in Applications that you make available to the general public.

You may combine or overlay Ordnance Survey's United Kingdom mapping data or data derived from Ordnance Survey's United Kingdom mapping data (but not Ordnance Survey's roads data) with the Services, only if you (i) have procured all such rights to Ordnance Survey's United Kingdom mapping data; and (ii) such use is consistent with your Ordnance Survey license.

5. Intellectual Property and Reservation of Rights.

All rights to the Services and the Content, including rights of use, not specifically granted under these End User Minimum Terms or your agreement with Bing Maps Licensor are reserved by Microsoft and its suppliers. Except as set forth in your agreement with your Bing Maps Licensor, these End User Minimum Terms do not grant Microsoft any right or license to any Application or your intellectual property, including intellectual property that you licensed from third parties. Except for material that Microsoft may license to you, Microsoft does not claim ownership of the content you post or otherwise provide to us, which is hosted by Microsoft or a third party hosting provider on

Microsoft's behalf, related to the Services (called a "Submission"). However, by posting or otherwise providing your Submission (and for the avoidance of doubt, where Microsoft hosts content on your behalf including by a third party hosting provider, this constitutes a Submission, but where you host or a third party hosts content on your behalf, other than Microsoft or a third party hosting provider on behalf of Microsoft, this does not constitute a Submission), you are granting to Microsoft free permission to use, copy, distribute, display, publish, transcode and otherwise modify your Submission, each in connection with the Services, and sublicense these rights to others in order to provide the Services. For every Submission you make, you must have all rights necessary for you to grant the permissions in this section.

6. Application-specific terms.

The terms in Sections 1-5 above apply generally to all Bing Maps ISV Applications. This Section 6 includes application-specific terms depending on which SKU the Bing Maps Licensor has included in its Application, and are in addition to the terms above. These application-specific terms govern if there are any conflicts with the terms in Sections 1-5 above.

(a) Light Known User

- "Application-Specific Services" means Bing Maps Platform APIs (except Premium Services)

- Your license does not include the right to use Premium Services.
- You must acquire the appropriate Subscription License for each Known User (or Light Known User) that accesses the Application. Known Users (or Light Known Users, as applicable) are permitted to access the Application for the purpose of displaying maps and related information in an Application.
- Light Known Users may overlay administrative boundaries or other map content provided in the Application, provided that you do not use the Application for:
 - (i) loading additional map content layers of any kind;
 - (ii) editing or creating map content. For avoidance of doubt, simple annotations such as a line, arrow, polygon or circle to highlight an area are allowed and not considered to be map content under this restriction; and
 - (iii) executing any spatial query other than proximity (find the nearest), point-in-polygon, distance between two points or as provided by the find and route services. For avoidance of doubt, the Application may not perform Geofences, buffers or query a spatially enabled database.