

# Website Terms and Conditions of Use

Effective Date: 4 July 2018

## 1. About the Website

- 1.1. Welcome to [crosscountryapp.com](http://crosscountryapp.com) (the '**Website**'). The Website provides software and tools to enable subscribers to the Website ('**Subscribers**') to design, manage and publish equestrian cross country courses ('the **Toolkit Services**'). It also enables other users of the Website who have not subscribed to the Website ('**General Users**') to view and interact with those courses ('the **Viewing Services**').
- 1.2. The equestrian cross country courses comprising images, videos, audio or other media, geospatial data and metadata, which are created, managed and published on the Website or through the Toolkit Services are referred to in this document as 'the **Courses**'.
- 1.3. The Toolkit Services and the Viewing Services are together referred to in this document as 'the **Services**'.
- 1.4. Subscribers and General Users are together referred to in this document as '**Users**'.

The Website is operated by Equimaps Pty Ltd (ACN 620 219 847). Access to and use of the Website, or any of its associated Products or Services, is provided by Equimaps. Please read these terms and conditions (the '**Terms**') carefully. By using, browsing and/or reading the Website, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of the Website, or any of the Services immediately.

## 2. Acceptance of the Terms

You accept the Terms by remaining on the Website. You may also accept the Terms by clicking to accept or agree to the Terms where this option is made available to you by Equimaps in the user interface.

## 3. Variation of Terms

- 3.1. Equimaps reserves the right to review and change any of the Terms by updating this page at its sole discretion. When Equimaps updates the Terms, it will use reasonable endeavours to provide you with notice of updates to the Terms. However, it is your responsibility to routinely monitor these Terms and to refer to the Effective Date posted at the top of these Terms in order to monitor any modifications or variations. You further agree to clear your cache when doing so in order to avoid accessing a prior version of these Terms.
- 3.2. Any changes to the Terms take immediate effect from the date of their publication. By continuing to use the Website and/or the Services after such an update to the Terms, you accept all of those updated Terms and are bound by the updated Terms.

- 3.3. In the event that You fail to monitor any modifications to or variations of these Terms, you agree that such failure shall be considered an affirmative waiver of your right to review the modified or varied Terms.
- 3.4. Before you continue, we recommend you keep a copy of the Terms for your records.

#### 4. **Bing Maps**

- 4.1. You hereby acknowledge and agree that the Website and the Services uses systems and technology provided by Bingmaps, which is owned and operated by Microsoft Corporation.
- 4.2. By using the Website and/or the Services you acknowledge and agree that you have had the opportunity to review the *Microsoft® Bing™ Maps Platform APIs' Terms Of Use* ("**Bing Maps Terms**") which (as at the date of these Terms) are available here: <http://www.microsoft.com/maps/product/terms.html>
- 4.3. By using the Website and/or the Services you agree to be bound by the Bing Maps Terms. If you do not agree to the Bing Maps Terms, you must cease usage of the Website, or any of the Services immediately.

#### 5. **Account and Subscription to use the Services**

- 5.1. In order to access the Toolkit Services, you will be required to register for an account through the Website (the '**Account**').
- 5.2. As part of the registration process, or as part of your continued use of the Services, you may be required to provide personal information about yourself (such as identification or contact details), including:
  - (a) an email address
  - (b) preferred username
  - (c) a password
  - (d) primary role
  - (e) country of residence
- 5.3. You warrant that any information you give to Equimaps in the course of completing the registration process will always be accurate, correct and up to date.
- 5.4. You may be required to purchase a subscription through the Website (the '**Subscription**') and pay the applicable fee for the selected Subscription (the '**Subscription Fee**').
- 5.5. In purchasing the Subscription, you acknowledge and agree that it is your responsibility to ensure that the Subscription you elect to purchase is suitable for your use.
- 5.6. Equimaps has the right to make public your username on the website in relation to Courses you make public.

- 5.7. Once you have completed the registration process and paid any required Subscription Fee, you will be a registered Subscriber and agree to be bound by the Terms. As a Subscriber you will be granted immediate access to the appropriate Toolkit Services from the time you have completed the registration process until the subscription period expires (the '**Subscription Period**').
- 5.8. You may not use the Toolkit Services and may not accept the Terms if:
- (a) you are not of legal age to form a binding contract with Equipmaps; or
  - (b) you are a person barred from receiving the Services under the laws of Australia or other countries including the country in which you are resident or from which you use the Services.
- 5.9. Your Subscription is for your sole use. You must not transfer your Subscription to any other person or organisation and must not share your Account details with any other person or organisation.

## **6. Using the Viewing Services**

- 6.1. If you use the Website in any way, but do not create an Account under the preceding clause hereof, then you are a General User.
- 6.2. As a General User, you may use the Viewing Services, subject to these Terms.
- 6.3. In order to use the Viewing Services, you do not need to purchase a subscription to the Website.
- 6.4. By using the Website as a General User, you agree to be bound by these Terms.
- 6.5. In the event that you provide any information to Equipmaps in the course of your use of the Website, you warrant that such information will always be accurate, correct and up to date.
- 6.6. You may not use the Website or the Viewing Services and may not accept the Terms if:
- (a) you are not of legal age to form a binding contract with Equipmaps; or
  - (b) you are a person barred from receiving the Services under the laws of Australia or other countries including the country in which you are resident or from which you use the Services.

## **7. Your obligations as a User**

- 7.1. As a User, you agree to comply with the following:
- (a) you will use the Services only for purposes that are permitted by:
    - (i) the Terms; and
    - (ii) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions;
  - (b) you have the sole responsibility for protecting the confidentiality of your password and/or email address. Use of your password by any other person may result in the immediate cancellation of the Services;

- (c) any use of your registration information by any other person, or third parties, is strictly prohibited. You agree to immediately notify Equimaps of any unauthorised use of your password or email address or any breach of security of which you have become aware;
- (d) access and use of the Website is limited, non-transferable and allows for the sole use of the Website by you for the purposes of Equimaps providing the Services;
- (e) you will not use the Services or the Website in connection with any commercial endeavours except those that are specifically endorsed or approved by the management of Equimaps;
- (f) you will not use the Services or Website for any illegal and/or unauthorised use which includes collecting email addresses of Users by electronic or other means for the purpose of sending unsolicited email or unauthorised framing of or linking to the Website;
- (g) you will not use the Services or the Website in a way that might cause us to breach any laws, regulations or other legal obligations whatsoever;
- (h) you will not use the Services or the Website in a way that might reasonably be considered to be offensive, defamatory, discriminatory, inappropriate, obscene, abusive, racist, sexist, blasphemous, seditious, threatening, pornographic, a breach of privacy or of confidentiality, or likely to incite hatred, violence or aggression;
- (i) you will not use the Services or the Website in a way that might bring the Website or us into disrepute in any way whatsoever;
- (j) you will not use the Services or the Website in a way that might infringe on the intellectual property rights of any person, company or other organisation;
- (k) you agree that commercial advertisements, affiliate links, and other forms of solicitation may be removed from the Website without notice and may result in termination of the Services. Appropriate legal action will be taken by Equimaps for any illegal or unauthorised use of the Website;

you acknowledge and agree that any automated use of the Website or its Services is prohibited.

## 8. Payment

8.1. Where the option is given to you, you may make payment of the Subscription Fee by way of any of the following methods (**'Payment Method'**):

- (a) Credit Card Payment (**'Credit Card'**)
- (b) Direct bank transfer as agreed with Equimaps
- (c) Paypal
- (d) Stripe

- 8.2. In using the Website or the Services or when making any payment in relation to your use of the Services, you warrant that you have read, understood and agree to be bound by any terms and conditions which apply to your Payment Method .
- 8.3. You acknowledge and agree that where a request for the payment of the Subscription Fee is returned or denied, for whatever reason, by your financial institution or is unpaid by you for any other reason, then you are liable for any costs, including banking fees and charges, associated with the Subscription Fee.
- 8.4. You agree and acknowledge that Equipmaps can vary the Subscription Fee at any time and that the varied Subscription Fee will come into effect following the conclusion of the existing Subscription Period.

## **9. Reverse Engineering and Security**

- 9.1. You agree not to:
  - (a) reverse engineer, or attempt to reverse engineer or disassemble any code or software from the Website or in connection with any of the Services; and
  - (b) violate the security of the Website through any unauthorised access, circumvention of encryption or other security tools, data mining or interference with any host, user or network.

## **10. Refund Policy**

Equipmaps will only provide you with a refund of the Subscription Fee in the event Equipmaps is unable to continue to provide the Services or if the manager of Equipmaps makes a decision, at its absolute discretion, that it is reasonable to do so under the circumstances. Where this occurs, the refund will be in the proportional amount of the Subscription Fee that remains unused by the you (the '**Refund**').

## **11. Copyright and Intellectual Property**

- 11.1. The Website, the Services and all of the related products of Equipmaps are subject to copyright. The material on the Website is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the Services and compilation of the Website (including but not limited to text, graphics, logos, button icons, video images, audio clips, website code, scripts, design elements and interactive features) or the Services are owned or controlled for these purposes, and are reserved by Equipmaps or its contributors.
- 11.2. All trademarks, service marks and trade names are owned, registered and/or licensed by Equipmaps,
- 11.3. If you are a General User, Equipmaps grants to you a worldwide, non-exclusive, royalty-free, non-transferable, revocable license whilst you are a User to:
  - (a) use the Website pursuant to the Terms;
  - (b) copy and store the Website and the material contained in the Website in your device's cache memory; and

- (c) print pages from the Website for your own personal and non-commercial use.

Equipmaps does not grant you any other rights whatsoever in relation to the Website or the Services. All other rights are expressly reserved by Equipmaps.

11.4. If you are a Subscriber, Equipmaps grants to you a worldwide, non-exclusive, royalty-free, non-transferable, revocable license whilst you are a Subscriber to:

- (a) use the Website pursuant to the Terms;
- (b) copy and store the Website and the material contained in the Website in your device's cache memory;
- (c) use any Courses which you have created or uploaded through the Toolkit Services (**'Your Courses'**) in accordance with these Terms, and subject to Equipmaps approval:
  - (i) distribute copies of Your Courses to other Users or to members of the public;
  - (ii) place advertisements on your copies of Your Courses; and
  - (iii) sell copies of Your Courses.

Equipmaps does not grant you any other rights whatsoever in relation to the Website or the Services. All other rights are expressly reserved by Equipmaps.

11.5. Equipmaps retains all rights, title and interest in and to the Website and all related Services and intellectual property, including your Courses. Nothing you do on or in relation to the Website will transfer any:

- (a) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright;
- (b) right to use or exploit a business name, trading name, domain name, trade mark or industrial design;
- (c) thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process); or
- (d) intellectual property rights in Your Courses or any other Courses;

to you.

11.6. You may not, without the prior written permission of Equipmaps and the permission of any other relevant rights owners: broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Services or third party Services for any purpose, unless otherwise provided by these Terms. This prohibition does not extend to materials on the Website which are freely available for re-use or are in the public domain.

11.7. Notwithstanding the preceding sub-clauses hereof, nothing in these Terms permits any User (whether a General User or a Subscriber) to print more than five thousand (5,000) copies of a map with satellite imagery background.

11.8. Notwithstanding the preceding sub-clauses hereof, any map or other content that you produce or obtain through the Website or through the Services must contain

the appropriate attribution (“the Attribution”): e.g. *“Made with CrossCountry App ©Microsoft Bingmaps ©Openstreetmap”*

11.9. Notwithstanding the preceding sub-clauses hereof, you must not print screen shots of any map or other content that you produce or obtain through the Website unless such screen shots also contain the Attribution.

11.10. This clause will survive termination or expiration of these Terms.

## **12. Content Provided By You**

12.1. In the event that you broadcast, publish, upload, transmit, post, distribute or otherwise provide content to us or to the Website, for example, by creating a Course, or by uploading photographs, audio, or other information to the Website (“Content”):

- (a) you must not do so in a way that might infringe on the intellectual property rights of any person, company or other organisation;
- (b) you warrant that you hold all necessary licences, permits, consents and rights authorising you to do so;
- (c) you warrant that any information provided by you is true, complete and accurate to the best of your abilities; and
- (d) you acknowledge and agree that Equipmaps holds all rights title and interest in and to the Content.

12.2. This clause will survive termination or expiration of these Terms.

## **13. Privacy**

Equipmaps takes your privacy seriously and any information provided through your use of the Website and/or Services is subject to Equipmaps 's Privacy Policy, which is available on the Website.

## **14. Third Party Links**

14.1. You hereby acknowledge that we may from time to time include links or references to other websites, other content or other materials (hereinafter "Third Party Links"), none of which are controlled by us.

14.2. You hereby acknowledge that these Third Party Links are provided for your information only and that we do not make any representations, warranties or guarantees as to the accuracy, completeness, performance, reliability, timeliness, quality or suitability for a particular purpose of these Third Party Links. We do not endorse, approve or support these Third Party Links. You use the Third Party Links at your own risk.

## **15. General Disclaimer**

- 15.1. Nothing in the Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- 15.2. Subject to this clause, and to the extent permitted by law:
- (a) all terms, guarantees, warranties, representations or conditions which are not expressly stated in the Terms are excluded; and
  - (b) Equipaps will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services or these Terms (including as a result of not being able to use the Services or the late supply of the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.
- 15.3. Use of the Website and the Services is at your own risk. Everything on the Website and the Services is provided to you "as is" and "as available" without warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors and licensors of Equipaps make any express or implied representation or warranty about the Services or any products or Services (including the products or Services of Equipaps) referred to on the Website. This includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:
- (a) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
  - (b) the accuracy, suitability or currency of any information on the Website, the Services, or any of its Services related products (including third party material and advertisements on the Website);
  - (c) costs incurred as a result of you using the Website, the Services or any of the products of Equipaps;
  - (d) the Services or operation in respect to links which are provided for your convenience; and
  - (e) any inadvertent or accidental release of information (such as the publication of a Course before you are ready for it to be published).
- 15.4. In particular, you specifically acknowledge and agree that:
- (a) from time to time the Website and/or the Services will be inaccessible, whether due to a technology failure, scheduled maintenance or otherwise;
  - (b) such unavailability of the Website and/or the Services may coincide with an event or competition and may affect the operation of the event or competition or may reduce the effectiveness of advertisements for sponsors of the event;

- (c) from time to time the Website and/or the Services may encounter technical issues which cause information that has been entered into the Website (such as Your Courses) to be lost;
- (d) Equipmaps cannot recover individual Courses which have been lost, deleted or corrupted;
- (e) you must take full responsibility for backing up any of your information such as Your Courses and for preparing contingency plans so that any events, competitions or advertising campaigns are not affected by unavailability of or technical issues with the Website and/or the Services;
- (f) Equipmaps has no control over the accuracy or completeness of any information that is made available through the Website or the Services by other Subscribers;
- (g) as a Subscriber, you take full responsibility for the accuracy or completeness of any information that is entered into Your Courses or otherwise into the Website;
- (h) as a User, you use the Website, the Services and the Courses at your own risk and accept that information that you receive through the Courses, the Website or the Services may contain inaccuracies or may be incomplete;
- (i) as a Subscriber, in the event that you require a Course to be kept secret for a period (for example, prior to the announcement of a particular event), you must take full responsibility for maintaining the secrecy of that Course. For example, you should refrain from promoting the Course or publishing any links to the Website or to the Course until you are ready for the Course to be released to the public. You can not rely on Equipmaps to maintain the secrecy of a Course.

15.5. This clause will survive termination or expiration of these Terms.

## **16. Limitation of liability**

16.1. Equipmaps's total liability arising out of or in connection with the Services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the resupply of the Services to you.

16.2. You expressly understand and agree that Equipmaps, its affiliates, employees, agents, contributors and licensors shall not be liable to you for any direct, indirect, incidental, special, consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.

16.3. This clause will survive termination or expiration of these Terms.

## **17. Termination of Contract**

17.1. The Terms will continue to apply until terminated by either you or by Equipmaps as set out below.

17.2. If you want to terminate the Terms, you may do so by:

- (a) not renewing the Subscription prior to the end of the Subscription Period;
- (b) providing Equipmaps with 15 days' notice of your intention to terminate; and
- (c) closing your accounts for all of the services which you use, where Equipmaps has made this option available to you.

Your notice should be sent, in writing, to Equipmaps via the 'Contact Us' link on our homepage.

17.3. Equipmaps may at any time, terminate the Terms with you if:

- (a) you do not renew the Subscription at the end of the Subscription Period;
- (b) you have breached any provision of the Terms or intend to breach any provision;
- (c) Equipmaps is required to do so by law;
- (d) the provision of the Services to you by Equipmaps is, in the opinion of Equipmaps, no longer commercially viable.

17.4. Subject to local applicable laws, Equipmaps reserves the right to discontinue or cancel your Subscription at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Website or the Services without notice if you breach any provision of the Terms or any applicable law or if your conduct impacts Equipmaps's name or reputation or violates the rights of those of another party.

## **18. Indemnity**

18.1. You agree to indemnify Equipmaps, its affiliates, employees, agents, contributors, third party content providers and licensors from and against:

- (a) all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with the Content or any of your actions in connection with the Website or the Services;
- (b) any direct or indirect consequences of you accessing, using or transacting on the Website or using the Services or attempting to do so; and/or
- (c) any breach of the Terms.

## **19. Dispute Resolution**

### **19.1. Compulsory:**

If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

### 19.2. **Notice:**

A party to the Terms claiming a dispute ('**Dispute**') has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

### 19.3. **Resolution:**

On receipt of that notice ('**Notice**') by that other party, the parties to the Terms ('**Parties**') must:

- (a) Within 30 days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
- (b) If for any reason whatsoever, 30 days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Australian Mediation Association or his or her nominee;
- (c) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;
- (d) The mediation will be held in New South Wales, Australia.

### 19.4. **Confidential**

All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

### 19.5. **Termination of Mediation:**

If 30 days have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

## 20. **Venue and Jurisdiction**

The Services offered by Equimaps are intended to be viewed and used by residents of Australia. In the event of any dispute arising out of or in relation to the Website, you agree that the exclusive venue for resolving any dispute shall be in the courts of New South Wales, Australia.

## 21. **Governing Law**

The Terms are governed by the laws of New South Wales, Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of New South Wales, Australia, without

reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.

**22. Independent Legal Advice**

Both parties confirm and declare that the provisions of the Terms are fair and reasonable and both parties having taken the opportunity to obtain independent legal advice and declare the Terms are not against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

**23. Surviving Terms**

At the termination or expiration of these Terms, any provisions which would by their nature be expected to survive termination or expiration shall remain in full force and effect. This includes but is not limited to any provisions which explicitly state that they are to survive termination or expiration.

**24. Severance**

If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.