

**Last Updated: January 1, 2023**

## **TOPCON AGRICULTURE PLATFORM SERVICES AGREEMENT**

This Topcon Agriculture Platform Services Agreement is between Topcon Agriculture S.r.l. ("**Topcon**") and the individual/entity accepting its terms and conditions and/or accessing the Service ("**Customer**").

IF AN INDIVIDUAL IS ACCEPTING THE TERMS OF THIS AGREEMENT ON BEHALF OF AN ENTITY, SAID INDIVIDUAL REPRESENTS THAT HE/SHE HAS THE AUTHORITY TO BIND SUCH ENTITY.

1. Definitions. As used in this Agreement:

1.1. "**Affiliate**" means an entity that controls, is controlled by or is under common control with another entity, where "control" refers to ownership or the right to direct more than 50% of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority of another entity.

1.2. "**Agreement**" means this Topcon Agriculture Platform Services Agreement and the applicable Purchase Certificate(s).

1.3. "**Applicable Privacy Laws**" means, in relation to any Personal Information that is processed in the provision of the Services, the applicable legislation on the protection of identifiable individuals.

1.4. "**Cloud Connectivity Device**" means a Topcon-branded telematic device that provides connectivity with the Service.

1.5. "**Content**" means the information, documents, reports, software, products and services made available to Customer in the course of using the Service.

1.6. "**Customer Data**" means all data submitted, stored, posted, displayed, or otherwise transmitted by or on behalf of Customer, its customers or any User and received and processed by the Service. Customer Data includes Machine Data and may include Personal Information.

1.7. "**Firmware Updates**" means feature enhancements, corrections and bug fixes to the Cloud Connectivity Device firmware.

1.8. "**High Risk Activities**" means activities where the use or failure of the Services could lead to death, personal injury, or environmental damage, including (a) emergency response services; (b) autonomous and semi-autonomous vehicle or drone control; (c) vessel navigation; (d) aviation; (e) air traffic control; (f) nuclear facilities operation.

1.9. "**Intellectual Property Rights**" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

1.10. "**Machine Data**" means data concerning the operation of the machine to which a Cloud Connectivity Device is installed, including location data. Machine Data does not include Personal Information.

1.11. **“Personal Information”** means any information that by itself or in combination does or can identify a specific individual or as defined in the Applicable Privacy Laws.

1.12. **“Privacy Statements”** means the Topcon privacy statements/policies available at <https://www.topconpositioning.com>.

1.13. **“Purchase Certificate”** means each purchase certificate, purchase confirmation or other order document confirming Customer’s purchase of access to the Service.

1.14. **“Processed Data”** means the data created as the result of the processing of Customer Data by the Service, which, in turn, enables the Service to function, including but not limited to the generation and provision of Service features and Content.

1.15. **“Sensitive Information”** means any confidential or personal information classified as “sensitive data” (or similar term) under Applicable Privacy Laws and that requires the highest level of access control and security protection.

1.16. **“Service”** means the Topcon Agriculture Platform Service.

1.17. **“Service Usage Data”** means anonymized data gathered as a result of Topcon monitoring the use of the Service by all Users. Such information includes but is not limited to account type, device type, browser version and duration. These data points and similar data points assist Topcon in monitoring the Service for security and infrastructure stability.

1.18. **“Support Services”** means additional remote support for the Services provided by Topcon from time to time.

1.19. **“Term”** means the initial term or any renewal term for the Service as set forth on the applicable Purchase Certificate or renewal confirmation.

1.20. **“Terms of Use”** means the terms of use governing the use of the website through which Customer accesses the Service.

1.21. **“User(s)”** means Customer’s employees, representatives, contractors or agents who are authorized to use the Service for Customer’s internal business purposes and have been supplied access credentials by Customer.

2. Service Description. Description of the features and details of the Services are available at the Service webpage(s): <https://www.topconpositioning.com/na/agriculture-data-management/data-management-software/topcon-agriculture-platform-tap>. Operation of the Service is dependent on connection with Cloud Connectivity Devices.

3. Service Access License Grant and Restrictions.

3.1. Access License Grant. Topcon hereby grants to Customer a non-exclusive, non-transferable, right to access and use the Service, solely for Customer’s own internal business purposes for the Term. All rights not expressly granted to Customer are reserved by Topcon and its licensors.

3.2. Restrictions. Customer shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party any Content or the Service; (ii) modify or make derivative works of the Service or the Content; (iii) create Internet “links” to the Service or

“frame” or “mirror” any Content on any other server or wireless or Internet-based device; (iv) access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes; (v) access the Service or its underlying code in order to (a) build a competitive product or service, (b) build a product using similar features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service; (vi) loan, or share its passwords, or allow third party access to the Service, other than its Users, or any related materials; or (vii) access or use the Services: (a) for High Risk Activities; (b) in a manner intended to avoid incurring fees; (c) for activities that are subject to the International Traffic in Arms Regulations (ITAR) maintained by the United States Department of State; or (d) on behalf of or for the benefit of any entity or person who is legally prohibited from using the Services.

Customer shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; (v) attempt to gain unauthorized access to the Service or its related systems or networks; or (vi) use the Service in any manner that infringes the intellectual or proprietary rights of, rights of publicity or privacy or other rights of any party

4. Customer Responsibilities. Customer is responsible for all activity in connection with its use of the Service, including but not limited to the use of the Service by its Users, and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with its use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. Customer shall: (i) notify Topcon immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Topcon immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Customer or its Users to be in violation of the restrictions in Section 3.2.

**Customer expressly consents to the provision and collection of location-based information in connection with the use and operation of the Service. Customer hereby represents that any Personal Information uploaded or otherwise made available through the Service has been collected and processed in a lawful and legitimate manner, in accordance with the requirements of Applicable Privacy Laws and the nature of the information being collected. Customer shall clearly and conspicuously, and upon a regular and ongoing basis, notify all customers and Users of the Service that location information is gathered and processed in connection with the operation of the Service and shall obtain the express consents from customers and Users of the Service for the collection and process of location information, as required by Applicable Privacy Laws. Such information is processed and managed as described in Section 21 below.**

Customer understands and accepts that the relationship established in this Agreement is a commercial relationship between independent companies. The relationships between the Customer and its employees and/or subcontractors, are totally unrelated to Topcon or any of Topcon’s Affiliates and are entirely the responsibility of the Customer.

5. Modifications. Topcon reserves the right, in its sole discretion, to make changes to this Agreement, the Terms of Use, Privacy Statements and other published policies, including, without limitation, changes

required to comply with applicable law. It is Customer's responsibility to regularly check the applicable Topcon website for updates. Topcon shall provide prior notice of any such changes in the manner indicated in Section 21 herein. Customer shall have 30 days after notice of a change that materially effects the nature of the Service to reject such change and terminate this Agreement by providing written notice of termination to Topcon. Customer's continued use of the Services after said 30-day period constitutes acceptance of relevant changes. Topcon may make new applications, tools, features or functions available from time to time through the Service, the use of which may be conditioned on Customer's agreement to additional terms.

6. Cloud Connectivity Devices; Updates. Use of the Service is dependent on connection with properly functioning and updated Cloud Connectivity Devices. Topcon may, from time to time make Firmware Updates available for download. The Cloud Connectivity Device may periodically check with Topcon for Firmware Updates. If Topcon makes a Firmware Update available, it may automatically download and install onto the Cloud Connectivity Device. **Customer acknowledges and agrees that: (i) full and complete functionality of the then-current form of the Service will require that Customer ensure that relevant Cloud Connectivity Devices are installed with the most current form of the relevant firmware and Firmware Updates; and (ii) Topcon may download and install automatic Firmware Updates onto its Cloud Connectivity Devices.**

7. Maintenance/Support. Topcon will use commercially reasonable efforts to ensure that the Service is available to Customer at all times (other than during the times which Topcon may conduct scheduled maintenance, Cloud Connectivity Device updates and times of unavailability due to Force Majeure events and/or third-party conduct or services). From time to time Topcon may connect to the Topcon web-based license manager to validate Customer's right to use the Service, Support Services and/or any other related activities. From time to time Topcon may need to impersonate a User in order to support a request for maintenance or support made by Customer and/or User. Topcon warrants that such action will be done in compliance with Sections 16 and 21 and Customer specifically accepts the need of such action.

8. Security. Topcon will use commercially reasonable efforts to prevent unauthorized access to Customer Data by third parties (except where such access is required by applicable law, or an order of a court of competent jurisdiction).

9. Ownership.

9.1. Topcon.

9.1.1. Service. As between Topcon and Customer, all right, title and interest in the Service, and all suggestions, ideas and feedback proposed by Customer regarding the Service, including all Intellectual Property Rights and Confidential Information, belong to and are retained solely by Topcon or its licensors, as applicable. Customer hereby irrevocably assigns to Topcon all evaluations, ideas, feedback and suggestions made by Customer to Topcon regarding the Service (collectively, "**Feedback**") and all Intellectual Property Rights in the Feedback. The assignment set forth herein expressly includes the right to reproduce, use, disclose, exhibit, display, adapt, market, create derivative works and distribute such Feedback to others without limitation. To the extent required by applicable laws, Customer undertakes to execute any assignments, licenses or other instruments reasonably required by Topcon to secure Topcon's rights over the Feedback. The Topcon name and

logo, the Service name and logo, and the product names associated with the Service are trademarks of Topcon and no right or license is granted to use them.

9.1.2. Processed Data and Service Usage Data. As between Topcon and Customer, all right, title and interest in the Processed Data (excluding any Personal Information) and Service Usage Data, including all Intellectual Property Rights therein, belong to and are retained solely by Topcon.

9.1.3. Content. As between Topcon and Customer, all right, title and interest in the Content, including all Intellectual Property Rights therein, belong to and are retained solely by Topcon and its licensors.

9.1.3.1. License to Content. Topcon hereby grants to Customer a limited, non-exclusive, non-transferrable license to use and copy the Content solely for Customer's internal business purposes in connection with the use of the Service.

9.2. Customer Data. As between Topcon and Customer, all right, title and interest in the Customer Data and all Intellectual Property Rights therein, belong to and are retained solely by Customer. Customer, not Topcon, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Topcon shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data.

9.2.1. License to Customer Data. Customer hereby grants to Topcon a limited, non-exclusive, royalty-free, worldwide license to use, copy, modify and create derivatives of the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Topcon to provide the Service and generating Content to Customer, including but not limited to the processing of the Customer Data to create and make use of the Processed Data.

10. Use of Anonymized and/or Aggregated Data. Notwithstanding anything else in this Agreement or otherwise, Topcon may, in accordance with Applicable Privacy Laws, use the Customer Data, in an anonymized form and/or aggregated with other anonymized data, in the pursuit of its legitimate commercial interests, including for industry analysis, benchmarking, analytics, product development, product improvement and marketing. Customer agrees that Topcon may collect, use and disclose such information that does not incorporate Personal Information, or otherwise identify Customer or its Users.

11. Third-Party Features/Services. The Service may include features/services available under license from certain third-parties ("**Third-Party Features**"). Topcon cannot and does not guarantee the ongoing availability of any Third-Party Features, which are subject to immediate discontinuation at the discretion of Topcon. In the event that any Third-Party Feature is discontinued Customer's access to such Third-Party Feature may be permanently disabled. Topcon shall undertake reasonable efforts to provide prior notice of any such discontinuation. Notifications of availability/termination of Third-Party Features may be posted from time to time on the Service website.

11.1. Google Maps. Google Maps is subject to the then-current Google Maps/Google Earth Additional Terms of Service at [https://maps.google.com/help/terms\\_maps.html](https://maps.google.com/help/terms_maps.html) ([https://www.google.com/url?q=https://maps.google.com/help/terms\\_maps.html&sa=D&ust=1524619731781000](https://www.google.com/url?q=https://maps.google.com/help/terms_maps.html&sa=D&ust=1524619731781000)) and Google Privacy Policy at <https://www.google.com/policies/privacy/>

(<https://www.google.com/url?q=https://www.google.com/policies/privacy/&sa=D&ust=1524619731781000>).

## 12. Fees and Payment; Renewal.

12.1. Fees and Payment. If applicable, Customer shall pay all fees or charges to Customer's account as set forth in the applicable Purchase Certificate in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. Fees are exclusive of all taxes, levies, or duties imposed by taxing authorities and will be made without any deduction or withholding for or on account of any tax, levies, or duties and Customer shall be sole responsible for payment of all such taxes, levies, or duties. All payment obligations are non-cancelable, and all amounts paid are nonrefundable. Overdue amounts are subject to interest of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection.

12.2. Excess Data Storage/Transfer/Processing Fees. The Service (including its fee structure) assumes a reasonable amount of data storage space available for the storage of Customer Data, as determined by Topcon in the exercise of its reasonable discretion. If, at any time, Topcon determines, in the exercise of its sole discretion, that Customer's use of the Service requires more than a reasonable amount of data storage space, it may require Customer to limit the Customer Data stored on the Service and/or to purchase additional storage space to continue its use of the Service. Should Customer choose not to limit data and/or purchase additional storage space if so requested under this Section 12.2, Topcon may terminate Customer's use of the Service on 10 days' notice and Section 13.3 shall apply. Topcon reserves the right to establish or modify its general practices and limits relating to storage and processing of Customer Data, modifications which will be disclosed to Customer if they have an impact on the Service.

## 13. Term and Termination.

13.1. Term. This Agreement commences on the earlier of the date of acceptance of this Agreement or initiation of the Service and will remain in effect, as amended from time to time, for the applicable Term.

13.2. Termination for Cause. Either party may terminate this Agreement for cause (i) on 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period or immediately if, in the reasonable opinion of the non-defaulting party it considers that the material breach is not capable of being remedied; or (ii) immediately upon written notice if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or an assignment for the benefit of creditors. In addition, Topcon may terminate this Agreement, on written notice in the event (A) Customer fails to pay any amounts due hereunder, and such failure continues more than 10 days after notice by Topcon; or (B) Customer infringes Topcon's Intellectual Property Rights, including without limitation through use of a Service in excess of the license to use or access granted in this Agreement, including any limitation on scope, nature, type, term, purpose, consumption, or users. Customer is solely responsible for its actions and the actions of its Users.

13.3. Discontinuation of Service/Termination for Convenience. To the extent permitted by applicable law, Topcon may discontinue the Service, in whole or in part, and/or terminate this Agreement for any reason at any time. Topcon shall undertake reasonable efforts to provide prior notice of discontinuation. If the Service is discontinued or this Agreement is terminated by Topcon other than for cause, Customer,

so long as it is not in default under this Agreement, shall be entitled to be reimbursed in an amount equal to the amount of fees paid by Customer for the number of full months remaining in the subject Term. For example, if a Customer purchases and pays in advance for a 1-year Term for the Service and Topcon discontinues the Service in the 7<sup>th</sup> month of the 1-year Term the Customer would be entitled to be reimbursed for the amounts paid for the remaining 5 months of the Term.

13.4. Effect of Termination or Expiration. On termination or expiration of this Agreement Customer's right of access to the Service will terminate and Customer will immediately cease to use the Service. So long as Customer is not in default of any obligation hereunder, Topcon will make any Customer Data stored in the Service available on request by Customer in the format in which it is stored in the Service for 60 days following the effective date of termination and, thereafter, unless legally prohibited, will delete all Customer Data in its systems or otherwise in its possession or under its control.

14. Warranties. Mutual Warranties. Each party represents and warrants that it has the legal power and authority to enter into this Agreement and (ii) its acceptance of and performance under this Agreement will not breach any oral or written agreement with any third party or any obligation owed by it to any third party.

15. Disclaimer of Warranties; Customer Responsibilities.

THE SERVICE AND ALL CONTENT IS PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS" BASIS AND USE OF THE SERVICE IS AT CUSTOMER'S SOLE RISK. TOPCON, ITS LICENSORS AND WIRELESS SERVICE PROVIDERS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. TO THE EXTENT PERMITTED BY THE APPLICABLE LAW, TOPCON AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CUSTOMER THROUGH THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY TOPCON AND ITS LICENSORS.

THE SERVICE(S) MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC/WIRELESS COMMUNICATIONS. TOPCON IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

CUSTOMER IS RESPONSIBLE TO ASSURE THE SUITABILITY OF THE SERVICE FOR ITS OWN SPECIFIC PURPOSES AND TO CREATE THE NECESSARY HARDWARE AND SOFTWARE ENVIRONMENT FOR THE USE OF THE SERVICE. CUSTOMER FURTHER AGREES THAT IT IS SOLELY RESPONSIBLE FOR THE PROPER MAINTENANCE, OPERATION AND SUPPORT OF HARDWARE/EQUIPMENT (e.g., consoles, connectivity hardware, mobile phones, tablets, monitors, etc.) THAT IT MAY USE IN CONNECTION WITH THE SERVICE

AND, NOTWITHSTANDING CUSTOMER'S USE OF THE SERVICE AND REGARDLESS OF ANY INFORMATION PROVIDED THROUGH IT (WHETHER ACCURATE OR INACCURATE) REGARDING THE OPERATION, MAINTENANCE OR PERFORMANCE STATUS OF THE HARDWARE/EQUIPMENT, CUSTOMER ASSUMES ALL RISK RELATED TO THE PROPER OPERATION, SUPPORT AND MAINTENANCE OF THE HARDWARE/EQUIPMENT.

**CUSTOMER IS RESPONSIBLE FOR ANY RISK OF LOSS FOR ANY HARDWARE/EQUIPMENT REQUIRED TO COMMUNICATE WITH OR THROUGH THE SERVICE FROM ANY CAUSE, INCLUDING, WITHOUT LIMITATION, VEHICLE, EQUIPMENT AND DEVICE FAILURE, THEFT, FIRE, COLLISION, TAMPERING, AND VANDALISM.**

16. Indemnification. CUSTOMER SHALL INDEMNIFY AND HOLD TOPCON, ITS LICENSORS AND EACH SUCH PARTY'S PARENT ORGANIZATIONS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS AND AGENTS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, COSTS, DAMAGES, LOSSES, LIABILITIES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS) ARISING OUT OF OR IN CONNECTION WITH: (I) ANY ALLEGATION THAT USE OF THE CUSTOMER DATA INFRINGES, MISAPPROPRIATES OR VIOLATES THE PRIVACY OR INTELLECTUAL PROPERTY RIGHTS OF, OR HAS CAUSED HARM TO, A THIRD PARTY; (II) CUSTOMER'S AND/OR ITS USERS USE OF THE SERVICE; (III) A BREACH BY CUSTOMER OR CUSTOMER'S USERS OF ANY TERM, OBLIGATION AND/OR COVENANT UNDER THIS AGREEMENT; (IV) CUSTOMER AND/OR ITS'S USERS NEGLIGENCE OR MISCONDUCT; (V) ANY USE OR MISUSE OF THE SERVICE.

17. Confidentiality.

17.1. Confidential Information. "**Confidential Information**" means any and all non-public information disclosed by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") in any form or medium, whether oral, written, graphical or electronic, pursuant to this Agreement, that is designated confidential or proprietary, or that a reasonable person should understand is confidential or proprietary. Confidential Information includes but is not limited to: information related to either party's technology, products, know-how, trade secrets, whether or not patentable or copyrightable, specifications, customers, business plans, pricing information, promotional and marketing activities, finances and other business affairs, Topcon products and anything else created or developed by Topcon in connection with this Agreement and the Services. Customer will not remove or destroy any proprietary markings or restrictive legends placed upon or contained in the Service and/or related materials.

17.2. Nondisclosure Obligations. The Receiving Party will not use the Confidential Information of the Disclosing Party for any purpose other than as necessary to fulfill its obligations or to exercise its rights under this Agreement and by Topcon to improve the Service (the "**Purpose**"). The Receiving Party will not disclose Confidential Information of the Disclosing Party to any third party; provided that the Receiving Party may disclose Confidential Information to its partners, officers, directors, employees, contractors, Affiliates, agents, advisors, or representatives who need access to such Confidential Information for the Purpose and who are subject to written confidentiality obligations at least as stringent as the obligations set forth in this Section 16. Each party accepts responsibility for the actions of its partners, officers, directors, employees, contractors, Affiliates, agents, advisors and representatives, and will protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but with no less than reasonable care. The Receiving Party will promptly notify the Disclosing



Party upon becoming aware of a breach or threatened breach hereunder and will cooperate with any reasonable request of the Disclosing Party in enforcing its rights.

17.3. Exceptions to Confidential Information. “Confidential Information” does not include information which: (i) is known by the Receiving Party prior to receipt from the Disclosing Party, without any obligation of confidentiality; (ii) becomes known to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (iii) lawfully becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the Receiving Party without use of or access to the Disclosing Party’s Confidential Information. The Receiving Party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, but only after it notifies the Disclosing party (if legally permissible) to enable the Disclosing party to seek a protective order or otherwise to contest such required disclosure, at Disclosing Party’s expense.

17.4. Injunctive Relief. The Parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Receiving Party will be entitled, in addition to any other available remedies, to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.

#### 18. Limitation of Liability.

TO THE EXTENT PERMITTED BY THE APPLICABLE LAW, IN NO EVENT WILL TOPCON BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY TORT, CONTRACT OR ANY OTHER LIABILITY ARISING IN CONNECTION WITH THE USE OF THE SERVICE, THE WEBSITE, OR ANY TOPCON WEBSITE, OR RELIANCE ON ANY INFORMATION OR SERVICES PROVIDED BY TOPCON, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION (REGARDLESS OF CAUSE) IN THE CONTENT, REGARDLESS OF THE FORM OF ACTION, INCLUDING, WITHOUT LIMITATION, FOR ANY LOSS OF PROFITS, GOODWILL OR OTHER INTANGIBLE LOSSES, OR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES WHATSOEVER, EVEN IF TOPCON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

UNDER NO CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO A NEGLIGENT ACT, WILL TOPCON OR ITS AFFILIATES, AGENTS, EMPLOYEES, OR LICENSORS (INCLUDING THIRD PARTY PROVIDERS) BE LIABLE FOR ANY DAMAGES OF ANY KIND THAT RESULT FROM (i) THE USE, UNAUTHORIZED USE OR THE INABILITY TO USE THE SERVICE; (ii) THE TIMELINESS, DELETION, MIS-DELIVERY, OR FAILURE TO STORE ANY CUSTOMER DATA; OR (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF CUSTOMER DATA.

TO THE GREATEST EXTENT ALLOWED BY APPLICABLE LAWS, IN NO EVENT TOPCON’S TOTAL LIABILITY TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT, THE USE OF THE SERVICE, THE WEBSITE, OR ANY TOPCON WEBSITE, WHETHER BASED ON CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED THE AMOUNT PAID BY CUSTOMER TO TOPCON WITHIN THE TWELVE (12) MONTHS PRIOR TO THE MOST RECENTLY ENDED MONTH FOR CUSTOMER’S ACCESS OR USE OF THE SERVICE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS SET FORTH HEREIN ARE AN ESSENTIAL PART OF THIS AGREEMENT AND REFLECT A FAIR ALLOCATION OF RISK BETWEEN THE PARTIES AND THAT, ABSENT SUCH TERMS, THE PROVISIONS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

IN ADDITION, WITHOUT LIMITING THE FOREGOING, IN ALL EVENTS THE REMEDIES AVAILABLE TO CUSTOMER SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO TOPCON FOR THE RIGHT TO USE THE SERVICE FOR THE THEN CURRENT TERM.

Certain jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to Customer.

19. Force Majeure. Any delay in or failure of performance by Topcon under this Agreement shall not be considered a breach of this Agreement if and to the extent caused by events beyond the reasonable control of Topcon , including, but not limited to, acts of God, embargoes, governmental restrictions, strikes, riots, terrorist attacks, wars, or other military action, civil disorders, rebellion, fires, floods, vandalism, power outages, sabotage, epidemic, or pandemic (specifically including COVID-19).

20. Local Laws and Export Control.

The Service provides services and uses software and technology that may be subject to United States export controls, administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies, as well as to European and/or Australian export controls. Customer agrees that the Service shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States, the E.U. and/or Australia maintains an embargo (collectively, “**Embargoed Countries**”), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, “**Designated Nationals**”). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, Customer represents and warrants that Customer are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. Customer agrees to comply strictly with all applicable export laws and assumes sole responsibility for obtaining licenses to export or re-export as may be required.

Topcon and its licensors make no representation that the Service is appropriate or available for use in other locations. If Customer uses the Service from outside the United States of America or outside of the European Union, Customer is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United States or European laws law is prohibited.

21. Data Protection and Security.

21.1. As between Topcon and Customer, Customer is the data controller of the Personal Information included in the Customer Data and Topcon shall process Personal Information only as a data processor acting on behalf of Customer in supplying the Service and order to perform its obligations under this Agreement. Topcon shall process the data according to the Customer’s instructions, the purposes previously authorized by the data Subjects, and the Applicable privacy Laws (including the principles that protect it).

21.2. Solely in connection with the sale and provision of the Service and or in connection services such as maintenance or support (Section 6) , Topcon may, from time to time, collect, maintain, process and use Personal Information including customers’ names, Users’ names, addresses, email addresses,

credit card information, login credentials (username, password), IP address, diagnostic, technical, location, usage and related information.

21.3. Topcon will process Personal Information in accordance with the terms of this Agreement and its Privacy Statements. The Customer warrants that Topcon's Privacy Statements comply with the obligations and standards required by the applicable law and the Customer's Privacy Policy. The parties agree that the Customer's complete and final instructions are set out in this Agreement. Processing outside the scope of these instructions (if any) will require prior written agreement between Customer and Topcon with additional instructions for processing. In the event of a conflict between the terms of this Agreement and the Privacy Statements, the terms of this Agreement will control with respect to the Service being purchased under this Agreement.

21.4. Topcon has implemented and will maintain and follow appropriate technical and organizational measures intended to protect Personal Information against accidental, unauthorized or unlawful access, disclosure, damage, alteration, loss, or destruction. Notwithstanding the above, Customer is responsible for its secure use of the Service, including securing its account authentication credentials, protecting the security of Personal Information when in transit to and from the Service and taking any appropriate steps to securely encrypt or backup any Personal Information uploaded to the Service.

21.5. If Topcon becomes aware of any unlawful access to any Personal Information stored on Topcon equipment or in a Topcon facility, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Personal Information (each a "**Security Incident**"), Topcon will (1) promptly notify Customer of the Security Incident (provided that such notification may be delayed as required by a law enforcement agency); (2) take reasonable steps to address any Security Incident and prevent any further Security Incident; (3) at Customer's request and cost, take commercially reasonable steps to assist Customer in complying with its obligations under Applicable Privacy Laws pertaining to responding to a Security Incident; and (4) when required under the Applicable Privacy Laws, comply with its obligations pertaining to a Security Incident.

21.6. Notification(s) of Security Incidents will be delivered to one or more of Customer's administrators by any means Topcon selects including via email. It is Customer's sole responsibility to ensure Customer's administrators maintain accurate contact information on the online portal or as otherwise required by Topcon in a written notice to Customer's administrator(s). Topcon's obligation to report or respond to a Security Incident under this Section is not an acknowledgement by Topcon of any fault or liability with respect to the Security Incident. Customer must notify Topcon promptly about any possible misuse of its accounts or authentication credentials or any security incident related to the Service.

21.7. Topcon may transfer Customer Personal Information to its Affiliates entities in connection with the performance of its obligations under this Agreement. For a list of Topcon locations, please see company locations found at <https://www.topconpositioning.com>. Customer expressly acknowledges that Personal Information may be transferred to the United States, and Customer authorizes Topcon (where applicable) to transfer Personal Information to and process it in the United States or any other country as set forth above, which may not have the same level of data protection as the country from which the Personal Information originated and represents and warrants that it has obtained the consent of its Users, where applicable, as required by Applicable Privacy Laws.

21.8. Customer represents and warrants that it has the authority to provide the Personal Information to Topcon for processing as contemplated by this Agreement as required by the Applicable Privacy Laws. If any applicable law requires a data subject to receive notice of or to provide consent to the processing and/or transfer of his/her Personal Information, Customer will provide such notice and obtain such consent from the applicable data subjects.

21.9. Topcon will abide by Applicable Privacy Laws pertaining to any relevant individual's exercise of his or her rights to access, correct, or object to the processing of Personal Information. Notwithstanding the foregoing, unless otherwise required by Applicable Privacy Laws, Topcon will promptly notify Customer if Topcon receives a request from a data subject to have access to Personal Information or any other complaint or request relating to Customer's obligations under Applicable Privacy Laws. Topcon will provide reasonable assistance to Customer to facilitate Customer's ability to respond to such request or complaint (including, without limitation, by allowing data subjects to have access to their Personal Information if such access is required by the applicable data protection laws, and where the Personal Information is not already available to the Customer).

21.10. Customer consents to Topcon engaging third party sub-processors to process the Personal Information for the permitted purpose. Topcon maintains an up-to-date list of its sub-processors which is available upon request to [dpo@topcon.com](mailto:dpo@topcon.com).

21.11. Customer only will provide Topcon with the Personal Information necessary for Topcon to perform its obligations under this Agreement. Customer acknowledges that the Service does not require the need to process Sensitive Information; therefore, under no circumstances will Customer upload or otherwise provide to the Service any Sensitive Information or data related to minors. In the event that Customer uploads Sensitive Information or information related to minors inadvertently, it will be treated in the same manner that Personal Information is treated under this Agreement and Customer will be liable before Topcon for any damages, losses, penalties or other costs associated with the unauthorized processing of Sensitive Information.

21.12. Following termination or expiry of the Service, Topcon will, where required by Applicable Privacy Laws and at the option of the Customer, return to Customer or securely delete all Personal Information processed in connection with the Service. This requirement shall not apply to the extent that Topcon is required by applicable law to retain some or all of the Personal Information, or to Personal Information it has archived on back-up systems, in which event Topcon shall securely isolate and protect from any further processing except to the extent required by such law.

21.13. If there is new guidance or a change in the Applicable Privacy Laws that renders all or part of the Service and/or this Agreement illegal, Topcon may notify Customer of such modifications to this Section 21 as it reasonably deems necessary in light of such new guidance or change in Applicable Privacy Laws. If the Customer does not wish to accept the new terms in this Section 21, the Customer may terminate this Agreement within 15 days of the date such notice is given.

22. Notice. Topcon may give notice by means of a general notice on the Service, electronic mail to Customer's e-mail address on record in the Customer Account, or by written communication sent by first class mail or pre-paid post to Customer's address on record in the Customer Account. Such notice shall be deemed to have been given upon the expiration of forty-eight (48) hours after mailing or posting (if sent by first class mail or pre-paid post) or twelve (12) hours after sending (if sent by email). Customer may

give notice to Topcon (such notice shall be deemed given when received by Topcon) at any time by letter, delivered by internationally recognized overnight delivery service or first-class postage prepaid mail, to Topcon "TAP Notice" at Via Cernaia 2, Turin, 10122, Italy; with a copy to Topcon "General Counsel" at 111 Bauer Drive Oakland, New Jersey 07436.

23. Assignment; Change in Control. This Agreement may not be assigned by Customer without the prior written approval of Topcon. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of Customer that results or would result in a direct competitor of Topcon directly or indirectly owning or controlling 50% or more of Customer shall entitle Topcon to terminate this Agreement for cause immediately upon written notice. Topcon may assign this Agreement at any time.

24. Applicable Law; Venue.

24.1. Customers Located in the Americas. For Customers located in the Americas this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to conflicts of laws provisions. Any action concerning this Agreement shall take place in state or federal courts located in Alameda County, California. For purposes of determining applicable laws, the parties acknowledge that Topcon is the proponent of this Agreement.

24.2. Customers Located in the European Union. For Customers located in the European Union this Agreement is governed by Italian law. Any action concerning this Agreement shall be remitted to the exclusive jurisdiction of the courts of Turin, Italy.

24.3. Customers Located in Australia. For Customers located in Australia the agreement will be governed by and construed in accordance with the laws for the time being in force in South Australia and the parties agree to submit to the jurisdiction of the courts and tribunals of South Australia.

24.4. Arbitration. If the choice of venue in Sections 24.1, 24.2 and/or 24.3 is not recognized by local law or is invalidated for any reason, all disputes shall be submitted to resolution all disputes under this Agreement shall be submitted to final and binding arbitration by three (3) arbitrators to take place at a mutually acceptable location in the capital city of the relevant country of the under the rules International Chamber of Commerce to which jurisdiction the parties exclusively submit. The Parties further agree that the service of any process upon them may be made by certified mail at their respective address stated below.

25. General. If for any reason any provision of this Agreement, or a portion thereof, shall be unenforceable, that provision shall be enforced to the maximum extent permissible so as to affect the intent of this Agreement, and the remainder of this Agreement shall continue in full force and effect. This Agreement constitutes the entire agreement between Topcon and Customer with respect to the Service and it supersedes all prior or contemporaneous communications, agreements and understandings between Topcon and Customer with respect to the subject matter hereof. No joint venture, partnership, employment, or agency relationship exists between Customer and Topcon as a result of this agreement or use of the Service. The failure of Topcon to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Topcon in writing. A printed version of this Agreement shall be admissible in judicial or administrative proceedings.

26. Wireless Data Transmission Services.

26.1. Wireless Data Usage. The Service contemplates that users' data consumption rates will be typical/similar to the data consumption rates experienced by services similar to the Services. In the event that Topcon determines that Customer's data consumption exceeds a reasonable level it shall notify Customer and may, in the exercise of its absolute and sole discretion, suspend Customer's access to the Service for as long as deemed necessary by Topcon. Topcon reserves the right to charge Customer for overage charges it may incur associated with Customer's excessive data consumption. In the event of excessive data consumption Topcon shall provide no less than 30 days' notice to the Customer and thereafter may invoice for such charges. Invoices for overage charges shall be paid within 30 days of the date of the subject invoice. Customer shall not be entitled to suspend any payments or to offset any amounts due.

26.2. Wireless Network Changes; Equipment Upgrades. Customer acknowledges that, over time, wireless service provider requirements may change and, as a result, equipment used in connection with the Service may need to be upgraded to accommodate such changed requirements. Customer may be responsible for all costs related to any such upgrades, and for equipment that is not upgraded, Topcon cannot provide assurance that the Service will continue to be available (without any errors, defects or breakdowns). Topcon will notify Customer in writing as soon as reasonably practical after receiving notice from the wireless service provider that upgrades will be required.

26.3. User/Device Registration. As a condition to use applicable wireless data transmission services, Customer may be required to register with the relevant supplier and accept a password and username ("User ID") for each Cloud Connectivity Device/User. In the event such registration is required Customer shall be responsible to provide accurate, complete and updated registration information in such instances and to update such information when outdated. Customer may not: (i) select or use as a User ID a name of another person with the intent to impersonate that person; or (ii) use as a User ID a name subject to any rights of a person other than such user without appropriate authorization. Where required, a User ID shall be assigned to (and may only be used by) one unique Cloud Connectivity Device /User and Customer shall ensure that each such User ID is not shared with or used by any entity other than the unique Cloud Connectivity Device /User to which it is assigned.

26.4. Wireless Carrier Disclaimer. CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT IT HAS NO CONTRACTUAL RELATIONSHIP WHATSOEVER WITH THE UNDERLYING WIRELESS SERVICE PROVIDER OR ITS AFFILIATES OR CONTRACTORS AND THAT CUSTOMER IS NOT A THIRD-PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN TOPCON (OR ANY OF ITS AFFILIATES) AND THE UNDERLYING CARRIER. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE UNDERLYING CARRIER AND ITS AFFILIATES AND CONTRACTORS SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO CUSTOMER AND CUSTOMER HEREBY WAIVES ANY AND ALL CLAIMS OR DEMANDS THEREFOR, TO THE EXTENT POSSIBLE UNDER APPLICABLE LAW.

**27. For Customers located in Australia the following additional terms apply:**

27.1. Implied terms and consumer guarantees (Laws of Australia).

27.1.1. If the laws of Australia apply to this Agreement then, subject to Section 27.1.2, any condition or warranty which would otherwise be implied in this Agreement is excluded.

27.1.2. Liability of Topcon for breach of a guarantee conferred by the Australian Consumer Law (“ACL”) (other than those conferred by sections 51 to 53 of the ACL) is limited:

27.1.2.1. In the case of services, to any one of the following as determined by Topcon:

27.1.2.1.1. The supplying of the services again; or

27.1.2.1.2. The payment of the cost of having the services supplied again.