

## Topnet Live GNSS Network Service Terms of Service

The following agreements apply to the access and use of the Topnet Live Services for which you have acquired a Subscription.

### I. General Terms of Service - Subscription

#### 1. Acceptance and Order

This **Topnet Live Service Terms** (the “**Terms**” or the “**Agreement**”) is between Topcon Positioning Systems Inc. or the Topcon’s subsidiaries incorporated in the territory where you are active (“**Topcon**”) providing the access to its Reference Station Network (the “**Topcon Network**”) and the individual or entity accepting its terms and conditions (“**Customer**” or the “**Subscriber**”) by clicking the “I Accept” or “Register” button, by creating an account, or by logging in. You may print this agreement which will be stored by us in electronic form and sent to you at your request.

If an individual is accepting the terms on behalf of a company or other entity, said individual represents that he/she has the authority and legal age to bind such entity to the terms. Topcon reserves the right to immediately terminate or suspend the service for failure to comply with the terms.

TOPCON’S STANDARD TERMS AND CONDITIONS ARE APPLICABLE TO THIS TERM [they can be found on [www.topconpositioning.com](http://www.topconpositioning.com)] In the event of any conflict between the terms and conditions of this agreement and the terms and conditions of any other agreement between the parties relating to the acquisition of a subscription to the service or support thereof, including Topcon’s standard terms and conditions, the terms and conditions of this agreement shall control.

#### 2. Topnet Live Services.

Subject to your compliance with these Terms of Service, Topcon grants you a non-exclusive right and license to access and use the Topnet Live GNSS Network Correction Services (“**Topnet Live Service**”) for the duration of the subscription for the purpose of carrying out Surveying Services in the normal course of your business. Such

Topnet Live Service shall include correction data services for GNSS satellite data for GPS and GLONASS as well as optional for Galileo and BeiDou which shall remain available on request. In such clause, “**Surveying Services**” means services carried out to provide physical measurements of earth and/or sea surfaces, natural features, and/or non-static man-made objects for the sole purpose of determining absolute and relative positions of those surfaces, features and objects in either geodetic, topographical, cadastral, hydrographic or construction and engineering surveying. For the avoidance of all doubt, Surveying Services shall include automated GNSS control of construction and construction engineering machinery but shall exclude all other machine automation uses and shall exclude aerial surveying services.

#### 3. Subscription to Topnet Live Services

##### 3.1. Subscription.

###### 3.1.1. Topnet Live Subscription Plans.

Topnet Live Services are subscription based services that provide the subscriber with access via the Internet to real time GNSS position observations correction data (“**Real Time Data Readings**”), through packed switched and, in some areas, circuit switched wireless data transmission such as GSM,GPRS, 3G/4G/5G. The Topnet Live Services are offered under the following “**Topnet Live Subscription Plans**” which provide subscribers with either limited or unlimited access to the Topnet Live Services depending on which plan you subscribe to. The Topnet Live Subscription Plans applicable to You is confirmed in the email you received with the information regarding the account activation.

##### 3.2. Access rights.

3.2.1. You may authorize personnel associated with your business to access and use the Topnet Live Services under this Subscription (“**Authorized account users**”). Use of the Topnet Live Services under this Subscription is not restricted to an individual device it can be used on multiple devices but not at the same time. At any one time only one Device per Topnet Live Subscription Plan may access the Topnet Live Services under this license. You undertake to inform all personnel whom you authorize to use the Topnet Live Services of the terms, conditions and restrictions of the Terms of Service, and you

remain responsible under law for their compliance with the Terms of Service.

3.2.2. **Restriction.** Under this Subscription, you are permitted to access the Topnet Live Services Real Time Data Readings provided that you do not: (1) access or use the Topnet Live Services other than by or with a device owned and used by you; (2) transfer, sublicense or resell the Topnet Live Services or content (to another individual or entity); (3) use the Topnet Live Services or content to create another product or service other than Surveying Services; or (4) broadcast or otherwise disseminate the Topnet Live Services for concurrent use from more than one device. You acknowledge that the Topnet Live Services are only capable of providing positional information relating to real world objects. Authorized account users shall access Topnet Live Services only via authenticated login ID and passwords. Authentication will be achieved by using the NTRIP protocol, or by using caller ID if only circuit switched connections are available through your Device and/or in your geographic area

**3.3. Subscription requirements.**

3.3.1. In order to use and communicate with Topnet Live Services, you must purchase one or more Topnet Live Service Subscription Plan(s) and separately purchase (or have already) one or more applicable Global Navigation Satellite System (“GNSS”) receiver hardware device(s) (such as the Topcon Hiper-VR or Hiper-HR receiver) and one or more wireless communication device(s) that support(s) GSM or GPRS 3G/4G/5G wireless services, (collectively “Devices”). Additionally, to receive data transmission via GPRS, your Devices must support the public domain NTRIP protocol (Networked Transport of RTCM via Internet Protocol).

3.3.2. To enable use of the Topnet Live Services with your GSM, GPRS, 3G/4G/5G communication Devices, you may also need to purchase a separate wireless data plan from your wireless communications carrier. All such wireless communications services and equipment obtained by you are subject to the terms and conditions of the applicable agreement(s)

between you and your wireless carrier, and Topcon shall have no responsibility for the availability, quality or performance of wireless communications services and telephone equipment which are the sole responsibility of your wireless carrier.

**3.4. Subscriber account.**

3.4.1. To access and use the Topnet Live Services you are required to open an account and to provide us with current, complete and accurate information. Topcon reserves the right to refuse its Topnet Live Services to anyone at anytime at its sole discretion. Your submitted *Topnet Live Account Application form and Topnet Live Registration form*, when accepted by Topcon (as acknowledged by Topcon in writing via email or otherwise) is hereafter referred to as the “**Topnet Live Service Plan Agreement**”.

3.4.2. Once you have completed the *Topnet Live Registration Form* we (Topcon) will choose a password and user name for each Topnet Live Service Plan subscription.

3.4.3. You are entirely responsible for maintaining the confidentiality of your passwords and accounts, and you agree that Topcon may terminate your subscription and access to the Topnet Live Services if you fail to do so. Additionally, you are fully responsible for any and all activities that occur under your account. You agree to notify Topcon immediately of any unauthorized use of your account or any other breach of security. Topcon will not be liable for any loss that you may incur as a result of someone else using your password or account, either with or without your knowledge.

**4. Customer’s responsibilities**

4.1. Customer is responsible for all activity occurring under its Subscriptions 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. Topcon may restrict or cancel the Topnet Live Service to you if there is a reasonable suspicion of, or any actual misuse or

fraudulent use by you. You will be responsible for any costs incurred by Topcon or any other party (including attorneys' fees) as a result of your misuse or fraudulent use of the Topnet Live Service. Misuse or fraudulent use includes, but is not limited to:

- Using the Topnet Live Services in such a manner so as to interfere unreasonably with the use of Topnet Live Services by one or more other users or wireless customers or to interfere unreasonably with the underlying carrier's ability to provide Topnet Live Services;
- Subscription fraud or unauthorized access; or using the Topnet Live Services without permission or on a stolen or lost device;
- Taking any action that imposes an unreasonable or disproportionately large load on the Topnet Live Services infrastructure
- Tampering with or making an unauthorized connection to the network;
- Reselling or re-billing the Topnet Live Services to any other individual or entity.
- Re-broadcasting the Topnet Live Services without the express written permission of Topcon; or
- Use of the Topnet Live Services in any other unauthorized or illegal manner

**4.2.** You understand and acknowledge that the Topnet Live Services are not, nor are they intended, to be used for any safety critical or safety related use or application and you shall not use them in that manner.

**4.3.** You are responsible for any risk of loss for the hardware equipment required to communicate with the Topnet Live Service, from any cause, including vehicle failure, theft, fire, collision, tampering, and vandalism

## **5. Ownership.**

As between Topcon and Customer, all right, title and interest in the Service (and Software), and all suggestions, ideas and feedback proposed by Customer regarding the Service (and Software), including all Intellectual Property Rights in each of the foregoing, belong to and are retained solely by Topcon or its licensors, as applicable. Customer hereby does and will irrevocably assign to Topcon all evaluations, ideas, feedback and suggestions made by Customer to Topcon regarding the Service and Software (collectively, "**Feedback**") and all Intellectual Property Rights in 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. Unless otherwise specified in the Term or expressly agreed to in writing by Topcon on a specific case by case basis, you may not modify, copy, distribute, transmit, display, reproduce, publish, license, create derivative works from, transfer, lease or sell any data obtained from the Topnet Live Service.

## **6. Fees and Payment; Renewal**

**6.1. Fees.** In order to access and use the Topnet Live Services, you must pay the subscription fee charges and applicable taxes that apply to each Topnet Live Service Plan subscription purchased by you at the rates prevailing at the time payment is due (the "Fees"). The foregoing shall be deemed to exclude VAT and any and all other charges taxes, levies and duties (howsoever designated) that result directly or indirectly from government regulations or mandates (For the avoidance of doubt this includes, without limitation, those of government recognized organizations levying fees on intellectual property rights.) Topcon may at any time, but no more than once during a twelve month period, increase its subscription fee charges as a result of increased prices or charges imposed on Topcon by third party providers of the Topnet Live Services and you agree to pay such increase in fees.

**6.2. Payments.** All payment obligations are non-cancelable, and all amounts paid are nonrefundable. Topcon reserves the right to modify its fees and charges and to introduce new charges at its discretion. Unless Topcon in its discretion determines otherwise, entities will be billed in USD, Euros or GBP. 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.

**6.3.** If Topnet Live Services are suspended due to non-payment or late payment and then reinstated, (suspension and reinstatement is granted, or denied in Topcon's sole discretion), you will be charged for, and you agree to pay upon the restoration of Topnet Live Services, an administrative reinstatement fee of fifty euros (EUR 50) for Europe excluding UK, GBP 50 for UK and USD50 for the rest of the world per Topnet Live Service Plan, to defray Topcon's costs incurred in connection with the suspension and

restoration of Topnet Live Services. A suspension of Topnet Live Services will not extend any Topnet Live Service Plan subscription term. In the event of early termination of a Topnet Live Service Plan for any reason, the outstanding balance of all subscription of fees payable through the remainder of the subscription term will become immediately due and payable. Topcon shall have the continuing right to approve your credit and change your credit terms. Topcon reserves the right to require a security deposit from you in its sole discretion

## 7. Modifications, Availability

**7.1. Modifications.** Topcon reserves the right, in its sole discretion, to make changes (modify, enhance or make additions) to this agreement and to the Topnet Live Services including, without limitation, changes required to comply with applicable law. Topcon will use commercially reasonable efforts to give Customer not less than two (2) months' notice of any change in the format of the Topnet Live Services that Topcon deems will result in Customer being unable to access the Topnet Live Services under your Topnet Live Service Plan subscription and Topcon will reimburse any subscription fees paid in respect of the un-elapsed subscription period if you are unable to continue to access the Topnet Live Services. 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.

**7.2. Availability.** During the Term Topcon will use commercially reasonable efforts to maintain the Topcon Network in working condition at all times (other than during the times which Topcon may conduct scheduled maintenance and times of unavailability due to Force Majeure events and/or third-party conduct or services). Subscriber is further aware that service from the Topcon Network may be interrupted, or the validity of the data changed, due to local conditions such as blockage by trees or buildings or radio interference. However, Subscriber is aware that interruptions in service may occur from time to time and therefore the availability of the data service is not guaranteed.

Topcon accepts no liability for the unavailability or inaccuracy of the data for any reason whatsoever. 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). Topcon does not assume and shall not have any liability for events beyond Topcon's control or the control of Topcon's subcontractors, licensors or business partners, including, but not limited to, acts of God, acts of any governmental entity, acts of public enemy, strikes or weather conditions.

## 8. Confidentiality

**8.1. 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: the terms of this Agreement, 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.

**8.2. 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 6](#). 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.

**8.3. 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.

**8.4. 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, if it is possible under the Applicable Local Laws, 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.

**9. Term and Termination.**

**9.1. Term.** Topnet Live Service Plan subscriptions are contracted on an annual basis for a fixed term as indicated in your Purchase Order, Invoice or E-mail activation (a "**Plan Year**"). Your initial Topnet Live Service Plan Year will commence on the earlier of the date of your Topnet Live Service Plan Agreement or the date on which the Topnet Live Services are made available to or accessible by you ("**Activation**"). Before the end of the Plan Year, Topcon will offer to renew the Topnet Live service for the same duration.

**9.2. 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 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 written 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.

**9.3. Discontinuation of Service/Termination for Convenience.** Topcon may discontinue the Service in whole or in part, and/or terminate this Agreement with or without notice for any reason at any time. In the event the Service is discontinued, or this Agreement is terminated by Topcon other than for cause under Section 8.2 above, Customer shall be entitled to be reimbursed in an amount equal to the purchase price paid for the unconsumed Service in its account. Such reimbursement shall not be available for instances where Customer is in default under this Agreement.

**9.4. 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. After such 60-day period, Topcon will have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control. Topcon accepts no responsibility for such deleted information, data or content.

**10. Entire Agreement; Assignment; Change in Control**

**10.1.** 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.

**10.2.** 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.

**11. Local Laws and Export Control.**

**11.1.** The Service provides services and uses software and technology that may be subject to US, European Union, UK and/or local 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 European Union or the United States maintains an embargo (collectively, "**Embargoed Countries**"), or to or by a national or resident thereof, or any person or entity on the applicable List of Specially Designated Nationals (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 agree to comply strictly with all EU and U.S. export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

**11.2.** 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 European Union or the United States of America, 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 European law and United States law is prohibited.

**12. Disclaimer of Warranties.**

**12.1.** USE OF THE SERVICE IS AT CUSTOMER'S SOLE RISK. CUSTOMER ACCEPTS THE SERVICE ON AN "AS-IS" AND "AS-AVAILABLE BASIS". 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. 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. THE SERVICE AND ALL CONTENT IS PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS" BASIS. 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.

**12.2.** 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.

**12.3.** YOU FURTHER AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR THE PROPER MAINTENANCE, OPERATION AND SUPPORT OF THE HARDWARE/EQUIPMENT (e.g., mobile phones, tablets, monitors, etc.) THAT YOU MAY USE IN CONNECTION WITH THE SERVICE. YOU UNDERTAKE TO ASSURE THE SUITABILITY OF THE SOFTWARE FOR HIS OWN SPECIFIC PURPOSES AND TO CREATE THE NECESSARY HARDWARE AND SOFTWARE ENVIRONMENT FOR THE USE OF THE SOFTWARE. NOTWITHSTANDING YOUR USE OF THE SERVICE AND REGARDLESS OF ANY INFORMATION PROVIDED THROUGH IT (WHETHER ACCURATE OR INACCURATE) REGARDING THE OPERATION, MAINTENANCE OR PERFORMANCE STATUS OF THE HARDWARE/EQUIPMENT, YOU ASSUME ALL RISK

RELATED TO THE PROPER OPERATION, SUPPORT AND MAINTENANCE OF THE HARDWARE/EQUIPMENT.

**12.4. ACCORDINGLY, YOU ARE 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.**

**13. 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 OR CUSTOMER'S USERS NEGLIGENCE OR MISCONDUCT; (V) ANY USE OR MISUSE OF THE SERVICE.

**14. Limitation of Liability.**

**14.1.** 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, USE OR OTHER INTANGIBLE LOSSES, OR ANY DIRECT, INDIRECT, SPECIAL,

CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES WHATSOEVER, EVEN IF TOPCON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**14.2.** 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.

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

**14.4.** Certain states and/or 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.

**15. Data Protection and Security.**

**15.1.** As between Topcon and Customer, Customer is the data controller of the Personal Information and Topcon shall process Personal Information only as a data processor acting on behalf of Customer in order to perform its obligations under this Agreement.

**15.2.** In connection with the sale and provision of the Service, Topcon may, from time to time, collect, maintain, process and use Personal information including customers' names, Users' names, addresses, email addresses, phone numbers, login credentials (user name, password), IP address, location coordinates and GNSS positions are then determined and processed. With continued use, further data, such as location of the machine control can be derived, which can allow conclusions to be drawn about individual, natural persons. The

processing takes place for the provision of data for the user-side measurement of areas and objects. This can be done in different areas and for different purposes, e.g. in the case of construction and agricultural machinery positioning and its control, as well as for measurement and data acquisition in forestry and agriculture. Furthermore, infrastructure projects can also be prepared and carried out with the system.

**15.3.** Topcon will process Personal Information in accordance with the terms of this Agreement and its Privacy Policies available on request or as published in our website. 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.

**15.4.** 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.

**15.5.** 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; and (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.

**15.6.** 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.

**15.7.** 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.

**15.8.** Customer represents and warrants that it has the authority to provide the Personal Information to Topcon for processing as contemplated by this Agreement. 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.

**15.9.** 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).

**15.10.** Customer consents to Topcon engaging third party sub-processors to process the Personal Information for the permitted purpose provided that: (i) Topcon maintains an up-to-date list of its sub-processors which is available upon request; (ii) Topcon imposes data protection terms on any sub-processor it appoints that require it to protect the Data to the standard required by Applicable Privacy Laws; and (iii) Topcon remains liable for any breach of this Section that is caused by an act, error or omission of its sub-processor. Customer may object to Topcon's appointment or replacement of a sub-processor prior to its appointment or replacement, provided such objection is based on reasonable grounds relating to data protection. In such event, Topcon will either not appoint or replace the sub-processor or, if this is not possible, Customer may suspend or terminate this Agreement (without prejudice to any fees incurred by Customer prior to suspension or termination).

**15.11.** If Topcon believes or becomes aware that its processing of Personal Information is likely to result in a high risk to the data protection rights and freedoms of data subjects, it shall inform Customer and provide reasonable cooperation to Customer (at Customer's expense) in connection with any data protection impact assessment that may be required under Applicable Privacy Laws.

**15.12.** 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 Restricted Information. In the event that Customer uploads Sensitive Information inadvertently, it will be treated in the same manner that Personal Information is treated under this Agreement.

**15.13.** 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.

**15.14.** 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 2](#) 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 2](#), the Customer may terminate this Agreement within 15 days of the date such notice is given.

**16. 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, or sabotage.

**17. 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.

**18. Applicable Law and Competent jurisdiction.**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the where the Topcon entity entering this contract has been incorporated, without regard to conflicts of laws provisions. 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. Any action concerning this Agreement shall take place in competent courts located where the Topcon entity entering this Agreement has been incorporated.