

Topcon Aptix™ Integration Platform

Services Agreement

This Services Agreement is between Topcon Positioning Systems, Inc. or one of its Affiliates (“Topcon”) and the individual or entity accepting its terms and conditions (“Customer”) by clicking the “I Accept” button, by creating an account, or by logging into the Service.

BY CLICKING THE “I ACCEPT” BUTTON OR INITIATING USE OF THE SERVICE, CUSTOMER AGREES TO THE FOLLOWING TERMS GOVERNING ITS USE, WHICH SHALL BE EFFECTIVE UPON THE EARLIER OF THE ACCEPTANCE OF THIS AGREEMENT OR THE FIRST USE. IF AN INDIVIDUAL IS ACCEPTING THE TERMS OF THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER ENTITY, SAID INDIVIDUAL REPRESENTS THAT HE/SHE HAS THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS. TOPCON RESERVES THE RIGHT TO IMMEDIATELY TERMINATE, SUSPEND, CANCEL OR DELAY THE SERVICE FOR FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT. 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 ACCESS AND USE OF THE SERVICE OR SUPPORT THEREOF, INCLUDING TOPCON’S STANDARD TERMS OF PURCHASE, THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL CONTROL.

1. Definitions.

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 Services Agreement.

1.3. “**Customer Data**” means data collected or stored by Customer using the SaaS Services, including, but not limited to, financial, business and technical information, engineering plans, customer and supplier information, research, designs, plans, and compilations.

1.4. “**Subscription**” means the right to access the SaaS Services purchased by Customer for the applicable Term under the terms of the Agreement.

1.5. “**Term**” means the initial term of a Subscription or any renewal term for the SaaS Services as set forth on an applicable commercial offering document, including but not limited to a Proposal, invoice, or renewal confirmation.

1.6. “**SaaS Services**” means the Topcon Aptix™ Integration Platform, made available to Customer and accessed by individual users via the Internet for use under the terms herein.

1.7. “**Permitted Use**” means internal business operations subject to the terms of this Agreement.

1.8. “**Proposal**” means a written proposal issued by Topcon to the Customer for the SaaS Services.

2. Commercial Offering. The SaaS Services may be purchased by Customer as specified in a Proposal from Topcon to Customer, which includes details such as price, Term including the Subscription start date, initial term and any renewal term, support and maintenance, and a description of implementation services.

3. License Grant.

3.1. Topcon will grant Customer a non-exclusive, non-transferrable, non-assignable, revocable, limited license to use and access purchased the SaaS Services (subject to the terms herein and any terms of use (“Terms of Use”) presented upon access) solely for the Permitted Use. Customer acquires only the right to use the purchased SaaS Services and does not acquire any rights of ownership to the SaaS Services or any part thereof. Topcon and its suppliers retain all rights, title and interest in the SaaS Services, and any use of the SaaS Services beyond the Permitted Use shall constitute a material breach of the Agreement.

3.2. Customer acknowledges that Topcon will not be delivering copies of any software or making any object code available to the Customer as part of the SaaS Services.

3.3. Customer acknowledges and agrees that Topcon may in its sole discretion utilize a third-party service to provision the SaaS Services. To be eligible to participate, Customer must be current on all outstanding invoices for amounts owed to Topcon.

4. Restrictions.

4.1. Customer agrees to ensure that its employees and users of the SaaS Services comply with the terms of this Agreement.

4.2. Customer shall not, directly, indirectly, or with another party, (i) copy, disassemble, reverse engineer, or decompile the SaaS Services, (ii) modify, create derivative works based on, or translate the SaaS Services; (iii) license, sell, rent, lease, transfer, grant any right in or otherwise commercially exploit the SaaS Services in any form to any other party, nor shall Customer attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted pursuant to this Agreement.

4.3. Customer shall not:

- a) exceed any limits set forth in such SaaS Services Proposal. In the event use of the SaaS Services by Customer exceeds that purchased by Customer as specified in the applicable SaaS Services Proposal, Topcon may invoice, and Customer shall pay, additional SaaS Services fees. Topcon shall, in its sole discretion, add such additional fees to subsequent invoices or invoice Customer separately; and
- b) tamper in any way with the software or functionality of SaaS Services or any part thereof. Without limiting the foregoing, Customer agrees not to put any material into the SaaS Services which contains any viruses, time bombs, Trojan horses, worms, cancelbots or other computer programming routines that may damage, interfere with, intercept or expropriate any system or data. Customer shall not utilize bots, agents, auction crawlers or other computer based crawling programs in conjunction with its use of the SaaS Services.

4.4. Customer shall communicate the above listed use restrictions to all Customer employees and contractors accessing or using the SaaS Services. The acts or omissions of any such Customer employees or contractors accessing the SaaS Services shall be deemed to be the acts or omissions of the Customer under the Agreement, such that Customer shall be fully responsible for the performance and fulfillment of

all obligations set forth in the Agreement. Customer shall indemnify and hold Topcon harmless against any and all liability resulting from any non-compliance with the terms herein.

5. Access and Availability. Customer is responsible for providing all equipment and the connectivity necessary to access and use SaaS Services via the Internet. Customer agrees that from time to time the SaaS Services may be inaccessible or inoperable for various reasons, including without limitation (i) system malfunctions; (ii) periodic maintenance procedures or repairs which Topcon or its service Topcon may undertake from time to time; (iii) compatibility issues with Customer's or a third party's hardware or software; or (iv) causes beyond the control of Topcon or which are not reasonably foreseeable by Topcon, including network or device failure, interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion or other failures (collectively "Downtime"). Topcon shall use reasonable efforts to provide advance notice to Customer in the event of any scheduled Downtime, and to minimize any disruption of the SaaS Services in connection with Downtime.

6. Data. Topcon acknowledges, and Customer warrants and represents, that Customer owns all right, title and interest in Customer Data. Customer shall indemnify and hold Topcon harmless against any and all claims against Topcon alleging that the Customer Data collected or stored for use with the SaaS Services infringes any patent, trademark, trade secret, copyright or other proprietary rights of any third party, or in any way violates any privacy or data protection laws. Topcon shall not be responsible for any failure or impairment of the SaaS Services caused by or related to the Customer Data. Topcon shall maintain the confidentiality of all Customer Data and shall not reproduce or copy such data except as required to provide services under this Agreement or as may be expressly authorized by Customer. Customer shall be solely responsible for the Customer Data, including without limitation for uploading such data and/or appropriately formatting and configuring such data for use with the SaaS Services.

7. Usage Data. Topcon may collect anonymized, de-identified and aggregated information relating to use of the Services (including usage data results) in order to improve Topcon's products and services and for other reasonable internal uses, and aggregate such anonymized, de-identified information with anonymized, de-identified information of its other clients for purposes of creating and distributing data insights, case studies and/or industry reports as part of marketing and/or its products and services; provided that, in each case, the information does not, and could not reasonably be used to, relate back to or identify Customer and as such is not classified as Personal Data as defined by the Topcon Data Processing Addendum.

8. Data Protection and Security.

8.1. 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 in 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).

8.2. Solely in connection with the sale and provision of the Service and or in connection to services such as maintenance or support, 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.

8.3. 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.

8.4. 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.

8.5. 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.

8.6. 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.

8.7. 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.

8.8. 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.

8.9. 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).

8.10. 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.

8.11. 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.

8.12. 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.

8.13. 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 8](#) 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 8](#), the Customer may terminate this Agreement within 15 days of the date such notice is given.

9. Suspension of Access.

9.1. Topcon may suspend access to the SaaS Services:

- a) To carry out maintenance services;
- b) To carry out modifications or updates to the SaaS Services, including the uploading of updates;
- c) To preserve data and integrity;
- d) In the event of a security breach; or
- e) If the server malfunctions.

9.2. Topcon reserves the right to modify or suspend use of the SaaS Services, or any part thereof, if (i) Topcon determines in its sole discretion that such suspension is necessary to comply with any applicable law, regulation or order of any governmental authority or with the terms of its agreement(s) with its third

party service provider(s); or (ii) Topcon determines in its sole discretion that the performance, integrity or security of the SaaS Services is being adversely impacted or in danger of being compromised as a result of Customer's access.

10. Data Sources. The SaaS Services is an integration platform that will aggregate data from various third-party sources to provide the Customer with one user interface to analyze their data. Customer shall obtain any and all licenses, access rights, API Keys, or other such permissions, as needed, from such third parties necessary to provide the SaaS Services. Customer acknowledges and agrees that any such third-party data sources and/or services/solutions are being provided to you by third parties and not by Topcon. Customer further acknowledges and agrees that its access or use of any such data sources and/or services/solutions are not governed by this Agreement but instead are governed by such third-party suppliers' terms of use or other like agreement. **TOPCON MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE THIRD-PARTY DATA SOURCE OF ANY SORT. TOPCON CANNOT AND SHALL NOT BE RESPONSIBLE FOR, AND EXPRESSLY DISCLAIMS ANY LIABILITY, OF ANY KIND, IN CONNECTION WITH CUSTOMER'S ACCESS TO ANY THIRD-PARTY DATA SOURCES, OR THEREOF, INCLUDING, BUT NOT LIMITED TO CUSTOMER'S ACCESS AND USE OF ITS SUCH DATA SOURCES IN CONNECTION WITH THE SAAS SERVICES.**

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.

12. Taxes. Customer is responsible for payment of all applicable federal, state, and local taxes resulting from provision of the SaaS Services, including any materials supplied by Topcon, under a relevant Proposal. A Proposal may not reflect the applicable tax or amounts listed may be exclusive of tax.

13. Warranty and Liability.

13.1. For thirty (30) days following acceptance of the SaaS Services, Topcon will at its sole cost design, code, checkout, document and deliver promptly any amendments or alterations to such software that may be required to correct errors present at the time of acceptance and which significantly affect performance in accordance with the Proposal. This warranty is contingent upon Customer advising Topcon in writing of such errors within thirty (30) days from acceptance as defined herein and providing Topcon with enough information to replicate the error and certify the correction thereof or the provision of a suitable work-around.

13.2. THE WARRANTIES STATED HEREIN ARE TOPCON'S SOLE AND EXCLUSIVE WARRANTIES PERTAINING TO THE SAAS SERVICES AND OTHER MATERIALS AND SERVICES LICENSED, DELIVERED OR OTHERWISE FURNISHED BY TOPCON UNDER THIS AGREEMENT. TOPCON DOES NOT WARRANT THAT THE SAAS SERVICES, OR ANY OTHER SERVICE OR MATERIALS WILL MEET SUBSCRIBER'S REQUIREMENTS, BE FREE FROM VIRUSES OR OPERATE UNINTERRUPTED OR ERROR FREE. TOPCON HEREBY DISCLAIMS ALL OTHER WARRANTIES EITHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES AGAINST NON-INFRINGEMENT AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. THESE EXCLUSIONS MAY NOT APPLY TO SUBSCRIBER AS SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES.

14. Limitation of Liability.

14.1. IN NO EVENT SHALL TOPCON BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING WITHOUT LIMITATION LOST PROFITS, COSTS OF DELAY, INTERRUPTION OF BUSINESS, LOSS OF USE, ANY FAILURE OF DELIVERY, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF TOPCON HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIMS.

14.2. IN THE EVENT THAT TOPCON IS FOUND LIABLE FOR DAMAGES BASED ON ANY CLAIM ARISING UNDER THIS AGREEMENT OR THE PERFORMANCE OF SERVICES HEREUNDER, TOPCON'S TOTAL CUMULATIVE LIABILITY SHALL NOT EXCEED THE PRICE PAID BY CUSTOMER FOR ONE YEAR OF THE SAAS SERVICES SUBSCRIPTION. THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN TOPCON AND CUSTOMER.

15. Intellectual Property. Customer acknowledges that Topcon shall own all right, title and interest in and to all intellectual property rights (including all derivative or improvements thereof) in the SaaS Services, and any suggestions, enhancement requests, feedback, recommendations, or other information provided by the Customer or any of the Customer's users relating to the SaaS Services. Customer acquires only the right to use the purchased SaaS Services and does not acquire any rights of ownership to the SaaS Services or any part thereof. Topcon and its suppliers retain all rights, title and interest in the SaaS Services, and any use of the SaaS Services beyond the Permitted Use shall constitute a material breach of the Agreement.

16. Fees and Invoicing. The relevant fees and invoicing details for SaaS Services will be set out in a Proposal. Fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Topcon's income. Topcon charges and collects in advance for use of the SaaS Service. 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 U.S. dollars. 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.

17. Term; Termination.

17.1. This Agreement will be effective as of the Effective Date and will continue for the applicable Subscription Term, unless earlier terminated as provided herein.

17.2. 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 the SaaS Services 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.

17.3. Discontinuation of SaaS Service. In the event the SaaS Services are discontinued, or this Agreement is terminated during the Term by Topcon other than for cause under Section 17.2 above, Customer 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 then current Term. For example, assuming the Customer has paid in advance for a full 1-year Term, if Topcon terminates the SaaS Service in the 7th month of the 1-year term, the Customer would be entitled to a reimbursement for the remaining 5 months of the Term. Such reimbursement shall not be available for instances where a Subscription is not activated within 1 year of the date of purchase.

17.4. Effect of Termination or Expiration. On termination or expiration of a Subscription and/or this Agreement, Customer's rights of access to the subject SaaS Service will terminate and Customer will immediately cease to use the SaaS Service. 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 SaaS 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.

18. Confidentiality.

18.1. "**Confidential Information**" as used herein means: all non-public documents and information gained by virtue of the relationship between the Parties (1) designated by Topcon or Customer in writing as proprietary or confidential, (2) or which the receiver should have reasonably known, based on the subject matter of such information, was of a confidential and/or proprietary nature. Confidential Information will specifically include, but not be limited to, business plans and methods, customer and financial information, engineering, and operating and technical data.

18.2. Confidential Information will not include information: (1) that was in the public domain, except by the wrongful disclosure hereunder by a Party; (2) that was in the receiving Party's possession prior to receipt of the same hereunder and was not acquired from a third party under any obligation of confidentiality with respect to such information; (3) that was received from a third party who had a right to make such disclosure; (4) that can be proven to have been independently developed by the receiving Party; or (5) that either Party has been compelled to produce by subpoena or other legal process, provided that such compelled Party gives the other Party prompt notice of such legal process and cooperates with the other Party in seeking a protective order or other appropriate protection (however, such information will remain Confidential Information to the extent that it is not required to be disclosed).

18.3. Each Party agrees: (1) to keep the Confidential Information of the other Party in strict confidence (in no event exercising less care than the degree of care used to protect its own similar confidential information); (2) not to use (except for the purpose of performance under this Agreement), publish or disclose to third parties such Confidential Information; and (3) upon the request of the other Party, to promptly return to the other Party or destroy, and certify to such destruction, all written copies of its Confidential Information.

19. Miscellaneous.

19.1. Sanctions and Export Controls. Customer acknowledges and agrees that the SaaS Services may be subject to the sanctions and export control laws, rules, regulations, restrictions and national security controls of the United States and other agencies or authorities based outside of the United States (the "Sanctions and Export Controls"). Regardless of any disclosure made by Customer to Topcon of an ultimate destination of the Services, Customer must not export, re-export or transfer, whether directly or indirectly,

SaaS Services, or any portion thereof, or any system containing such Products or portion thereof, without first complying strictly and fully with all Sanctions and Export Controls that may be imposed on the SaaS Services and/or the export, re-export or transfer, direct or indirect, of the SaaS Services, and transactions related thereto. The entities, end uses and countries subject to restriction by action of the United States Government or any other governmental agency or authority based outside of the United States, are subject to change, and it is Customer's responsibility to comply with all applicable United States Government requirements, or those of any other governmental agency or authority based outside of the United States, as they may be amended from time to time. Customer shall indemnify, defend and hold Topcon harmless for any breach of its obligations pursuant to this Section.

19.2. Force Majeure. With the exception of Customer's payment obligations under this Agreement, neither Party will otherwise be in breach of this Agreement to the extent that any delay or default in performance is due to causes beyond the reasonable control of the delayed or defaulting Party, including pandemic; provided, that the delayed or defaulting Party will immediately notify the other Party of the event, an estimate of the duration of the event, and the delaying or defaulting Party's plan to mitigate the effects of the delay or default.

19.3. Governing Law and Dispute Resolution. The laws of California will govern this Agreement, excluding its conflicts of law principles. In the event of any dispute, controversy or claim between the Parties arising under this Agreement, the Parties shall submit to binding arbitration before a single arbitrator in Alameda County, California in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and binding on the Parties, and the judgment upon the award rendered by the arbitrator shall be enforceable in any court of competent jurisdiction. Each Party shall bear its own attorney's fees, costs, and expenses incurred in such arbitration.

19.4. Assignment. Neither Party may assign or otherwise transfer this Agreement or any obligation hereunder without the prior written consent of the other Party, except that Topcon may assign this Agreement to a successor in Topcon's business. Topcon may at any time assign or otherwise transfer this Agreement or any right or obligation, including the appointment of a subcontractor, hereunder to either of its major shareholders by thirty (30) day written notice to Customer.

19.5. 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 "Aptix Notice" at 7400 National Dr., Livermore, CA; with a copy to Topcon "General Counsel" at 111 Bauer Drive Oakland, New Jersey 07436.

19.6. Amendments. Any modification or amendment of any provision of this Agreement must be made in writing and signed by an authorized representative of each Party.

19.6. Severability. Should any provision of this Agreement or part hereof be held under any circumstances in any jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the validity or enforceability of any other provision of this Agreement or other part of such provision.

19.7. Survival. Those provisions that would require survival in order to give them full force and effect, including without limitation Sections 6, 7, 14, 15, 17.4 and 18 will survive the termination or expiration of this Agreement, regardless of the date, cause or manner of such termination, and will remain in full force and effect.

19.8. Entire Agreement. This Agreement incorporates the entire agreement of the Parties and supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof. Any additional or different terms or conditions appearing on a purchase order issued by Customer hereunder, even if Topcon acknowledges such terms and conditions, shall not be binding on the Parties unless both Parties expressly agree in a separate writing.

19.9. Counterparts. This Agreement and any Proposal may be executed in one or more counterparts, each of which will be deemed an original and together which will constitute one and the same instrument. A validly executed counterpart that is delivered by one party to the other via electronic transmission (a "Counterpart Image") will be valid and binding to the same extent as one delivered physically, provided that the valid signature is clearly visible in the Counterpart Image. If a Party delivers a Counterpart Image in place of an originally executed counterpart, such Party will retain the originally executed counterpart in its files for at least the duration of the term of this Agreement.