

Software and Services Subscription Agreement

Preamble

This Subscription Agreement ("**Agreement**") for Software and Services by and between Hilti, Inc, 7250 Dallas Parkway, Suite 1000, Plano, TX 75024 ("**Service Provider**") and you ("**Customer**") is either effective (i) upon Customer's electronic acceptance of the Order Form, or (ii) upon the Order Form being signed in writing by both Parties or electronically executed by the Parties via DocuSign (each a "**Effective Date**"), where in each case the Order Form incorporates the terms and conditions of this Agreement, including its Exhibit 1 (Service Level Agreement) and Exhibit 2 (Data Processing Agreement) by reference. Service Provider and Customer may together be also referred to as the "**Parties**" or individually as the "**Party**". Service Provider intends to grant Customer the right to use the Software through a subscription service and Customer intends to subscribe to such Software. In addition to the Software and the related services required for the provisioning of the Software, the Parties may agree upon specific "**Professional Services**" to be rendered by Service Provider according to the terms and conditions of this Agreement.

Now, therefore, the Parties agree by considering the stipulations set forth in the Preamble as follows:

1. Customer's Use of the Service.

1.1 Service Provider Obligations. Service Provider shall make the Software and the Services required for provisioning the Software (Software and Services hereinafter together and individually may also be referred to as "**Service**" or "**Services**") available to Customer as described in the Services Description and in the Services Specific Terms (together hereinafter referred to as "**Services Description**") referenced in the Order Forms and according to the terms and conditions of this Agreement. Service Provider may amend the Services from time to time, provided that such amendments shall not materially diminish the overall Service. Service Provider aims to provide the Software access to Customer within two (2) working days upon the Effective Date, unless otherwise set forth in the Services Description. The Software may consist of a web application provided to Customer in form of a software as a service solution and a mobile application to be installed by Customer on its mobile device. The agreed scope and quality of the Services is exclusively set forth in the Services Description. Public statements concerning the Service made by Service Provider or its agents will only take form when expressly confirmed by Service Provider in writing. Information and specifications contained within the Services Description shall not qualify as warranty or guarantee with regards to the Service's quality or as any other kind of guarantee, unless they have been confirmed as such by Service Provider in writing. Service Provider may update and improve the Services from time to time; any such Updates, meaning software that remedies "**Defects**" (as defined in section 7.4) in the Services and/or may include minor improvements of the Services, are included in the Agreement. In addition to Updates, Service Provider may offer Upgrades and/or Add-On Services to the Services, where "**Upgrades**" mean new capabilities or functionalities of the Services and "**Add-On Services**" either mean (i) new and/or additional functionality packages in form of separate modules to the Services, or (ii) integrations or connection applications with other Hilti or third party software applications. Upgrades and Add-On Services are only subject to the Agreement, if ordered separately and paid for by Customer, where additional terms and conditions may apply.

1.2 System Requirements. The operation or use of the Services by Customer requires certain system requirements as described in the Services Description which are subject to change at the discretion of Service Provider. The specification of system requirements does not form part of Service Provider's obligations under this Agreement. Customer shall be solely responsible for obtaining any and all system requirements required to operate or use the Services. Service Provider is not responsible for problems, conditions, delays, failures and other loss or damages arising from Customer not complying with the system requirements and/or related to Customer's network connections, telecommunication links or caused by the Internet.

1.3 Authorized Users. Unless otherwise defined in the Services Description, Authorized Users means Customer's employees authorized by Customer to use the Services according to the terms of the Agreement ("**Authorized Users**"). Customer shall assign the software access to its Authorized Users to enable registration, access and use of the Services according to the terms and conditions of this Agreement, according to section 3.3.

1.4 Customer Obligations. Customer must ensure that (i) its Authorized Users have entered complete and accurate information about its company and person within the registration process and, but not limited to, have not used any pseudonyms, (ii) its Authorized Users use the Service in compliance with the terms of this Agreement and (iii) that its Authorized Users use reasonable efforts to prevent unauthorized access or use of the Service by employees not considered as Authorized Users or third parties, and to notify Service Provider promptly of any such unauthorized access or use.

2. Subscription Fee, Payment & Taxes.

2.1 Subscription Fee. Customer shall pay to Service Provider in consideration for Service Provider providing the Services, the subscription fee as agreed upon in the Order Form.

2.2 Payment Terms. The payment terms are set forth in the Order Form.

2.3 Taxes. Service Provider's Subscription Fee generally do not include taxes. Customer is responsible for paying all sales, use, and value-added taxes associated with its receipt of Services hereunder, but excluding taxes based on Service Provider's gross receipts, net income or property. If Service Provider has an obligation to pay or collect taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Service Provider with a valid tax exemption certificate authorized by the appropriate taxing authority.

3. Proprietary Rights.

3.1 Hilti Corporation. Hilti Corporation, Feldkircherstrasse 100, FL-9494 Liechtenstein ("**Hilti Corporation**") exclusively and unrestrictedly retains ownership, reserves all Intellectual Property Rights in the Services, where Intellectual Property Rights means any common law, statutory and other industrial property rights and intellectual property rights, including copyrights, trademarks, trade secrets, patents and other proprietary rights issued, honored or enforceable under any applicable laws anywhere in the world, and all moral rights related thereto ("**Intellectual Property Rights**"). Service Provider is entitled by Hilti Corporation to grant to Customer rights to use the Services according to the terms and conditions of this Agreement.

3.2 Reservation of Rights. Subject to the limited rights expressly granted hereunder, no rights are granted to Customer hereunder other than as expressly set forth herein. Customer reserves all rights, title and interest in and to its data, other non-Service Provider software and other intellectual property to which Service Provider may from time to time have access while performing the Services.

3.3 Grant of Rights. Customer is for the Term of the Agreement granted the rights to access and use the Services as agreed upon in the Order Form, where the following options are available:

- a) Named User.** A non-exclusive, non-transferable right to authorize named Authorized Users for remotely accessing the Services and using the Services' functionalities up to the quantity of the Named Users defined in the Order Form. Upon notification to Service Provider, Customer shall be allowed to replace a named Authorized User by another named Authorized User.
- b) Concurrent User.** A non-exclusive, non-transferable right to authorize the remote access of the Services and the usage of the Services' functionalities by the maximum amount of concurrent active user sessions as defined in the Order Form. Concurrent active user sessions mean accessing and/or using the Services by (i) a radio frequency device, (ii) personal computer, (iii) CRT and (iv) a VDT that is logged on and connected to the Services.
- c) Enterprise Usage.** A non-exclusive, non-transferable right to authorize all of Customer's Authorized Users to remotely access the Services and use the Services' functionalities up to the maximum quantity as defined in the Order Form (if any).

3.4 Documentation. Service Provider will provide adequate user guides for the Service upon Customer's request.

3.5 Restrictions. Customer shall not (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, offer in a service bureau, or otherwise make the Service available to any third party, other than to the Authorized Users; (ii) modify, copy or create any derivative works based on the Service; (iii) frame or mirror any content forming part of the Service, other than on Customer's own intranets for its own internal business purposes; (iv) reverse engineer or decompile the Service or any part thereof unless permitted by applicable law; (v) access the Service in order to build any commercially available product or service; (vi) copy any features, functions, interfaces or graphics of the Service or any part thereof; or (vii) use the Service in any manner that exceeds the scope of use permitted herein.

3.6 Customer Data. Customer Data means the data or information provided to or uploaded by Customer or its Authorized Users in connection with the Services, where Customer Data shall not contain infringing, obscene, threatening, or otherwise unlawful or tortious material, including material that violates privacy rights or which disrupt the performance of the Service or the data contained therein. As between Service Provider and Customer, Customer owns its Customer Data and (to the extent Customer Data contains personal data) is the responsible data controller (within the meaning of applicable data protection law) for such Customer Data. Service Provider shall not access Customer Data except to the extent: (i) necessary to respond to Service-related issues or other technical problems, (ii) necessary to provide such Customer Data to Authorized Users, (iii) as required to perform its obligations, (iv) necessary to perform the Services, (v) requested by the Customer in written form, (vi) as otherwise explicitly permitted by the terms of this Agreement (including its Exhibits) or (vii) by the Customer's explicit consent. The Parties agree that Service Provider and/or Service Provider's affiliates may use Customer Data in anonymized form (i.e., in a form that cannot be linked to an individual Employee) in order to develop, maintain and improve the services and products of Service Provider's group of companies, to tailor products and services to Customer's needs and for market research purposes during the term of this Agreement and thereafter. Service Provider may access Customer Data, its related systems or networks and devices to the extent necessary to perform the Services and/or to provide maintenance and/or support remotely as further described in Exhibit 1.

3.7 Customer Input. To the extent legally permitted, Customer herewith grants to Hilti Corporation a royalty-free, transferable, sub-licensable, irrevocable, perpetual, worldwide license to use or incorporate into the Services any of Customer's input, suggestions, enhancement requests, recommendations or other feedback relating to the Services ("**Customer Input**"). Hilti Corporation and/or Service Provider shall have no obligation to implement Customer Input into the Services.

4. Confidentiality.

4.1 Confidentiality. Confidential Information means (a) the Software's source code; (b) Customer Data; and (c) each Party's business or technical information, including but not limited to any information relating to software plans, designs, costs, prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how. A Party shall not disclose or use any Confidential Information of the other Party for any purpose outside the scope of this Agreement, except with the other Party's prior written permission or as required by Law and permitted by section 4.2, below. Each Party agrees to protect the Confidential Information of the other Party in the same manner that it protects its own Confidential Information of like kind (but in no event using less than a reasonable degree of care and reasonable technology industry standards).

4.2 Compelled Disclosure. If a Party is compelled by Law to disclose Confidential Information of the other Party, it shall promptly provide the other Party with prior notice of such compelled disclosure (to the extent legally permitted) and provide reasonable assistance, at the other Party's cost, if the other Party wishes to obtain a protective order or prevent or contest the disclosure.

4.3 Remedies. If a Party discloses or uses (or threatens to disclose or use) any Confidential Information of the other Party in breach of confidentiality protections hereunder, the other Party shall have the right, in addition to any other remedies available, to injunctive relief to stop such acts, it being acknowledged by the Parties that any other available remedies are inadequate.

4.4 Exclusions. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the other Party; (ii) was known to a party prior to its disclosure by the other Party without breach of any obligation owed to the other Party; (iii) was independently developed by a Party without breach of any obligation owed to the other Party; or (iv) is received from a third party without breach of any obligation owed to the other Party, (provided, that Customer Data containing personal data shall be handled in accordance with the standards required by this Agreement (including its Exhibits), even if the same information may be generally known, publicly available or otherwise accessible to Service Provider from other sources).

5. Usage Restrictions.

5.1 The Services usage and functional limitations ("**Usage Restrictions**") are determined in the Services Description and must be complied with to the fullest by Customer and considered when using the Services. Notwithstanding section 8.3, Customer waives any and all warranty and liability claims and remedies resulting due to Customer's usage of the Services not being in compliance with the Usage Restrictions.

5.2 Business Customers. The Services are solely intended and designed to be used by professional business customers in the construction and sub-construction industries, energy system contraction and in building maintenance, and not intended to be used by any other fields of business or private end consumers ("**Field of Use**"). Notwithstanding section 8.3, Customer waives any and all warranty and liability claims and remedies resulting due to Customer's usage of the Services outside the Field of Use.

6. Indemnification by Customer.

6.1 Customer Indemnity. Customer shall indemnify, defend and hold harmless Service Provider against any third party claims and/or fines that are based on: (i) Customer's use of the Services to the extent in violation of the Usage Restrictions as stated in section 5.1 above; (ii) Customer's breach of an applicable data protection law; or (iii) Customer's Data and any other information or material uploaded or used together with the Services. Service Provider shall reasonably cooperate in the defense of such claim, if requested by Customer, where Customer will reimburse Service Provider's reasonable out-of-pocket costs incurred in connection with such cooperation. Customer shall – if decided by Service Provider - have the sole authority to defend or settle the claim, provided such settlement does not involve any payment by Service Provider or admission of wrongdoing by Service Provider.

7. Limited Warranty and remedies in case of Defects.

7.1 Service Provider Warranties. Service Provider warrants that the Services are materially provided according to the Services Description.

7.2 Customer Warranties. Customer covenants to use the Services in accordance with the terms and conditions of this Agreement and that its use of the Service does not and shall not constitute non-compliance with any law or regulation.

7.3 Limitation of Warranties. EXCEPT AS EXPLICITLY SET FORTH IN SECTION 7.1 ABOVE, SERVICE PROVIDER DOES NOT MAKE ANY WARRANTIES, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, GUARANTIES, CONDITIONS, AND REPRESENTATIONS, WHETHER ORAL OR WRITTEN, EXPRESSED OR IMPLIED, OR ARISING BY USAGE OF THE SERVICES, INCLUDING, BUT NOT LIMITED TO, NON-INFRINGEMENTS, THE MERCHANTABILITY OF THE SERVICES, ITS FITNESS FOR A PARTICULAR PURPOSE, MEETING CUSTOMER'S REQUIREMENTS, OR SATISFACTORY QUALITY. SERVICE PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL BE PROVIDED UNINTERRUPTED OR FREE OF DEFECTS IN MATERIAL OR TITLE. SERVICE PROVIDER DOES NOT WARRANT THAT THE SERVICES DO NOT CAUSE ANY LOSS OR DAMAGES RESULTING FROM THE TRANSFER OF DATA OVER COMMUNICATION NETWORKS OR FACILITIES.

7.4 Warranty Remedies. Customer shall promptly notify Service Provider of any alleged Defects of the Service in writing, including a description of the alleged Defect, where the term Defect shall mean a material deviation of the warranty pursuant to section 7.1 above. All Defects will be cured by the Service Provider within a reasonable time as set forth by Service Provider; Service Provider may decide at its sole discretion whether to cure a given Defect by means of repair (e.g. workaround) or replacement delivery. Service Provider may also cure a Defect by using remote means and for this purpose may remotely access Customer Data, systems and/or devices. If Service Provider is unable to cure the Defect within the reasonable time, the Customer may (i) request a reasonable reduction of the Subscription Fee for the Services or (ii), if Service Provider has failed to cure the same Defect for two consecutive times within the reasonable time, either Party may terminate the Agreement with immediate effect. In such case, Customer may also claim damages subject to section 8.

8. Limitation of Liability.

8.1 Limitation of Liability. IN NO EVENT WILL SOFTWARE PROVIDER OR ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY CAUSE RELATED TO OR ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, NEGLIGENCE OR TORT, IN EXCESS OF THE TOTAL FEES AND CHARGES PAID OR PAYABLE BY THE CUSTOMER FOR THE SOFTWARE DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION AROSE. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT SOFTWARE PROVIDE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, LOST PROFITS OR REVENUE.

8.2 Customer's Obligation to Mitigate Damages. Service Provider will create daily backup copies of the whole system on which Customer Data is stored to enable restoration of these system data in case of data loss. However, Service Provider does not restore Customer Data of individual Customers e.g. in case of accidental data loss caused by Customer. Customer shall take adequate measures to avert and reduce damages due to data loss.

9. Term & Termination.

9.1 Term. Unless terminated earlier pursuant to this Agreement's express provisions, this Agreement enters into effect upon the Effective Date and shall be concluded for an indefinite term ("**Term**"), unless otherwise set forth in the Order Form.

9.2 Termination for Convenience. Each Party may terminate this entire Agreement for convenience on not less than sixty (60) days' prior written notice to the end of a calendar month, unless otherwise set forth in the Order Form.

9.3 Termination for Cause. In addition, each Party may terminate this Agreement for good cause if the other party materially breaches and the Agreement does not remedy such a material breach within thirty (30) days of the notification of such a breach.

9.4 Consequences of Termination of the Agreement. Upon any termination by Service Provider, Customer shall immediately cease accessing and otherwise utilizing the Service (except as otherwise provided below). Termination shall not relieve Customer of the obligation to pay any Subscription Fee accrued or due and payable to Service Provider prior to the effective date of termination.

9.5 Return of Customer Data. During the Term of the Agreement, Customer may extract Customer Data and for sixty (60) days thereafter ("**Extraction Period**"), unless otherwise set forth in the Services Description. Service Provider will - subject to Service Provider's right to use Customer Data in anonymized form as provided for in section 3.6, at its discretion delete Customer Data or block such data upon the expiration of the Extraction Period.

9.6 Surviving Provisions. All provisions of this Agreement intended by their terms to survive shall survive any termination or expiration of this Agreement.

10. Changes to the Agreement and/or Subscription Fee.

10.1 Changes to the Agreement. Service Provider reserves the right to change the Agreement and/or the Subscription Fee ("**Change**"). Unless otherwise set forth in the Services Description, Service Provider will notify Customer about the Change with at least four (4) weeks prior notice ("**Change Notification**"). Customer has the right to object to the change with two (2) weeks prior notice before the change is intended to become effective ("**Change Effective Date**"). If the Customer does not object in due time, this shall be deemed as Customer's acceptance of the Change and the Change shall become effective at the Change Effective Date. If Customer objects in due time, Service Provider may choose to either continue the Agreement with Customer under the terms of this Agreement without the Change, or to terminate the Agreement with effect at the Change Effective Date. Service Provider will specifically inform Customer about Service Provider's termination right, the notice period for Customer's objection, the Change Effective Date and the consequences of not objecting to the Change Notification.

10.2 Changes to Subscription Fee. The Subscription Fee agreed upon in the Services Description are fixed for a period of twelve (12) months following the Effective Date of this Agreement and Service Provider may not increase the Subscription Fee within this twelve (12) months period. After the lapse of the initial twelve (12) months period, Service Provider may increase the Subscription Fee unilaterally by no more than three percent (3 %) annually without having to abide by the procedure for a Change as set forth in section 10.1 above and without Customer having an objection right.

11. Terms for Free of Charge Services.

11.1 Free of Charge Services. The Service Provider may provide certain Services free of charge as set forth in the Services Description (“Free of Charge Services”).

11.2 Specific Terms. For the Free of Charge Services, the following specific terms shall apply in addition and shall take precedence in case of any contradictions with the other provisions of this Agreement:

a) **Exclusion of Warranty.** NOTWITHSTANDING SECTION 7.1 ABOVE, SERVICE PROVIDER HEREWITH, EXCEPT FOR FRAUDULENTLY CONCEALED DEFECTS, EXCLUDES ANY AND ALL REPRESENTATIONS, WARRANTIES, AND, GUARANTEES, CONDITIONS, AND REPRESENTATIONS, WHETHER ORAL OR WRITTEN, EXPRESSED OR IMPLIED, OR ARISING BY USAGE OF THE SERVICES, INCLUDING, BUT NOT LIMITED TO, NON-INFRINGEMENT, THE MERCHANTABILITY OF THE SERVICES, ITS FITNESS FOR A PARTICULAR PURPOSE, MEETING CUSTOMER’S REQUIREMENTS, OR SATISFACTORY QUALITY. SERVICE PROVIDER DOES NOT WARRANT ANY AVAILABILITY OF THE SERVICES OR THAT THE SERVICES WILL BE PROVIDED UNINTERRUPTED OR FREE OF DEFECTS IN MATERIAL OR TITLE. SERVICE PROVIDER DOES NOT WARRANT THAT THE SERVICES DO NOT CAUSE ANY LOSS OR DAMAGES RESULTING FROM THE TRANSFER OF DATA OVER COMMUNICATION NETWORKS OR FACILITIES.

b) **Limitation of Liability.** Subject to the foregoing, Service Provider’s liability for damages relating to the Free of Charge Services shall be limited to fifty dollars (USD \$50).

c) **Service Level Agreement.** The Service Level Agreement as set forth in Exhibit 1 shall not be applicable to the Free of Charge Services.

12. Data Protection.

12.1 Data Protection. As regards the processing of Customer Data for the purpose of this Agreement, the Service Provider and Customer herewith agree to enter into the data processing agreement as set forth in Exhibit 2 (Data Processing Agreement).

13. Non-Hilti Services

13.1 Acquisition of Non-Hilti Products and Services. Service Provider or third parties may make available third-party products or services, including, for example, connectors, add-ons, implementation and other consulting services (“Non-Hilti-Services”). Any acquisition by Customer of such products or services, and any exchange of data between Customer and any provider of such Non-Hilti-Services (“Non-Hilti-Provider”) is solely between Customer and the applicable Non-Hilti-Provider. Service Provider does not warrant or support Non-Hilti-Services, whether or not they are designated by Service Provider as “certified” or otherwise, unless expressly provided otherwise in an Order Form.

13.2 Non-Hilti-Services and Customer Data. If Customer chooses to use Non-Hilti-Services with the Services, Customer grants Service Provider permission to allow the Non-Hilti-Services and its provider to access Customer Data as required for the interoperation of that Non-Hilti-Services with the Services. Separate terms shall apply between Customer and the Non-Hilti-Provider regarding the use of such Non-Hilti-Services, and Customer shall be responsible for evaluating whether such terms with the Non-Hilti-Provider ensure appropriate protection of and access to Customer Data, and address responsibility for any disclosure, modification or deletion of Customer Data by the Non-Hilti-Provider, or any breach of data protection laws and regulations resulting from Non-Hilti-Provider’s access to Customer Data. Non-Hilti-Providers shall not be considered subcontractors or Subprocessors (as defined in the DPA) of Service Provider nor any of its affiliates. Neither Service Provider nor its affiliates shall be responsible for any disclosure, modification, corruption, loss or deletion of Customer Data, or any breach of applicable data protection laws and regulations, resulting from access by such Non-Hilti-Services or its provider.

13.3 Integration with Non-Hilti-Services. The Services may contain features designed to interoperate with Non-Hilti-Services. To use such features, Customer may be required to obtain access to such Non-Hilti-Services from their providers and may be required to grant Service Provider access to Customer’s account(s) on such Non-Hilti-Services. Service Provider cannot guarantee the continued availability of such Service features and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of Non-Hilti-Services ceases to make the Non-Hilti-Services available for interoperation with the corresponding Service features in a manner acceptable to Service Provider.

14. Professional Services.

14.1 Professional Services. Customer may order the Professional Services as offered by Service Provider. The full scope of the Professional Services, including the Professional Services Fee will be agreed between Service Provider and Customer in the Order Form or via a separate work order (“Work Order”), where the timings and Professional Services Fees stated therein shall only serve as estimates.

14.2 Specific Terms. For the Professional Services the following specific terms shall apply in addition and shall take precedence in case of any contradictions with the other provisions of this Agreement:

a) **Work Order.** A Work Order can be agreed between Service Provider and Customer in writing or by Service Provider sending Customer a Work Order proposal by e-mail and Customer accepting this proposal. Service Provider will provide the Professional Services either by itself or by its subcontractors. Each Work Order hereto will form an agreement separate from all the other Work Orders and each Work Order shall be subject to the terms of Agreement.

b) **Qualification of Professional Services.** Unless otherwise agreed between the Parties in writing, Professional Services shall qualify as services and not contracts for work and labor. If certain Professional Services are agreed or being qualified as contracts for work and labor, a warranty period of ninety (90) days shall apply. Within such warranty period, Service Provider will either re-perform the non-conforming portions of the Professional Services at no cost to Customer or waive or return, as applicable, any Professional Services Fees owed or paid for the non-conforming portions of the Professional Services as Customer’s sole remedy for breach of this Professional Services warranty.

c) **Customer Obligations.** Customer shall provide reasonable co-operation related to the provision of the Professional Services. Such co-operation and support by Customer shall include, but not be limited to: (i) reasonable level of responsiveness to Service Provider’s requirements and communications; (ii) transmittal and release to Service Provider of appropriate and accurate documentation and information within reasonable timeframe; (iii) prompt review of the Professional Services performed by Service Provider; (iv) subject to Service Provider’s specification of the required hardware and software environment, the making available of all permissions and licenses of the relevant parties (such as required third party software licenses) that are required for enabling Service Provider to provide the Professional Services. If and to the extent the Service Provider requires technical infrastructure or access to Customers systems to perform the contractual services, Service Provider and Customer will agree on the specifics in the relevant Work Order. Customer will grant the Service Provider’s personnel access to Customer’s premises and technical infrastructure and will make available free of charge additional office space and equipment to the extent required for the performance of the contractual services. If Customer fails to provide the co-operation duties in this section, Service Provider shall not be responsible for any consequences resulting therefrom, including but not limited to any delays.

d) **Term & Termination.** Any orders for Professional Services will remain in effect for the term which is specified in the Order Form or in the relevant Work Order or – if no such time is specified – until completion of the relevant Professional Services.

15. General Provisions.

15.1 Relationship of the Parties. The Parties are independent contractors. This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.

15.2 Definitions. Capitalized terms shall have the meaning as defined in parentheses (“...”).

15.3 Notices. Unless otherwise set forth in this Agreement, all notices under this Agreement must be given at least in textual form (e.g. e-mail). Service Provider will deliver such notices by email to the address(es) and contact person(s) indicated by Customer upon registration of Customer’s account for the Service with Service Provider. Additionally, Service Provider may notify Customer directly within Services or by making available information at Service Provider’s webpage. The Parties shall immediately notify each other about any changes of the contact data they have provided each other with. If Customer is not updating its contact details on a regular basis, Customer may not receive Updates, Upgrades or important information about the Services.

15.4 Severability. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to affect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby may be consummated as originally contemplated to the greatest extent possible.

15.5 Waiver and Cumulative Remedies. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party.

15.6 Subcontractors. Service Provider may commission subcontractors with the performance of the Services. If the provision of the subcontracted Services requires the processing of personal data, the requirements and obligations set forth in the Data Processing Agreement shall apply.

15.7 Assignment. Customer may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the Service Provider (which consent shall not be unreasonably withheld).

15.8 Governing Law and Place of Jurisdiction. This Agreement shall be governed exclusively by the Laws of [the State of Texas], without regard to conflicts of laws principles, and excluding the Convention on the International Sale of Goods. The parties irrevocably and unconditionally submit to the exclusive jurisdiction of the state or federal courts of the State of Texas, and all courts competent to hear appeals therefrom.

15.9 Further Provisions. The respective Order Form, including the Services Description it references to, this Agreement and its Exhibits, constitute the entire agreement between the Parties with respect to the subject matter hereof. There are no agreements, representations, warranties, promises, covenants, commitments, or undertakings other than those expressly set forth herein. This Agreement supersedes all prior agreements, proposals or representations, written or oral, concerning its subject matter. In the event of a conflict between this Agreement and one or more of the documents attached hereto or referenced herein, the documents shall be construed consistently, insofar as reasonably practicable, but to the extent of any inconsistency, they shall be controlling in the following order: (1) the Order Form, (2) Services Description, (3) this Agreement, and (4) its Exhibits. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

15.10 Form Requirement. No modification, amendment, or waiver of any provision of this Agreement shall be effective, unless being agreed upon in text form (e.g. email, notifications, etc.) or in writing by the Party against whom the modification, amendment or waiver is to be asserted. Transmission by fax, e-mail or any other equivalent form of electronic exchange or execution shall be deemed to comply with such form requirement. The Parties furthermore acknowledge and agree that this Agreement may be executed, exchanged, stored and processed by applying any form simple- or advanced eSignatures (e.g. DocuSign, etc.) and that such eSignatures shall comply with the written form requirement. The Parties agree that they will not challenge the authenticity or correctness for the sole reason of the Order Form and/or the Agreement being executed in electronic form only. **Force Majeure.** Neither Party shall be liable for delay or failure in the performance of any of its obligations under this Agreement (other than the payment of money) to the extent such delay or failure is due to causes beyond its reasonable control, including acts of God, fires, floods, pandemics, earthquakes, labor strikes, acts of war, terrorism or civil unrest "**Force Majeure**". Each Party shall, if possible, promptly notify the other in writing if it is or will be affected by a Force Majeure event. If a Force Majeure event persists for an uninterrupted period of sixty (60) days, either party shall be entitled to terminate this Agreement.

Exhibit 1 (Service Level Agreement) to the Software and Services Subscription Agreement

1. Service Availability

1.1. Target Monthly Availability SLAs

Service Provider will use commercially reasonable efforts to make the Service available twenty-four (24) hours a day, seven (7) days a week (24/7), with the targeted monthly end to end uptime of ninety-five percent (95%), meaning that access to the Service (Web-application or a smartphone application) is targeted to be available 95% of the time over a whole calendar month ("Target Monthly Availability SLAs"). Customer acknowledges that the Target Monthly Availability SLAs are only targets and cannot be guaranteed.

The stated Target Monthly Availability SLAs exclude: (i) Planned Service Downtime (as set forth in Section 1.2 below) and (ii) any unavailability caused by circumstances beyond Service Provider's reasonable control, including without limitation, force majeure acts of God, acts of government, flood, fire, earthquake, civil unrest, acts of terror, strikes or other labor problems (other than one involving employees of Service Provider), denial of service attacks as well as failures or delays in connection with computers, telecommunications, internet service providers or hosting facilities involving hardware, software or power systems not within Service Provider's possession or reasonable control.

1.2. Planned Service Downtime.

For the purpose of supporting or maintaining the Service (including, but not limited to the roll-out of Updates), the Service might experience a Planned Service Downtime. Service Provider shall, to the extent reasonably practicable, schedule Planned Service Downtime outside of general business hours. The Service Provider shall make good faith efforts to give notice to Customer of such Planned Service Downtime as soon as possible, but at least twenty-four (24) hours via appropriate means (e.g. email or telephone).

1.3. Unplanned Service Downtime.

In case of Unplanned Service Downtime with or without control of Service Provider, Service Provider shall make good faith efforts to send a notification to Customer informing Customer thereof. Service Provider shall further make good faith efforts to provide reasonable updates on the progress for restoring the Service and to inform Customer as soon as the Service is available again.

2. Support

2.1. Severity Levels of Support Requests

Support requests can be raised for Defects of the Service (Severity Level 1-4, as described below) and for general questions regarding the Service (Severity Level 4, as described below). In case of a support request the severity is determined in accordance with the following definitions below ("Severity Levels"):

Severity 1. Customer production use of the Service is stopped or so severely impacted that the Customer cannot reasonably continue work. Customer experiences a complete loss of Service. The operation is mission critical to the business and the situation is an emergency. A Severity 1 service request has one or more of the following characteristics:

- All or the majority of data is corrupted which makes it impossible for the Customer to work with the Software (Web-application and smartphone application).
- All functions or most functions not available; no backup system in place
- Software (web-application and smartphone application) hangs indefinitely, causing unacceptable or indefinite delays for resources or response
- Software (web-application and smartphone application) is not available, aside of announced Planned and/or communicated Unplanned Service Downtime

Severity 2. Customer experiences a severe loss of Service. Important features of the Service are unavailable with no acceptable workaround; however, operations can continue in a restricted fashion. A Severity 2 service request has one or more of the following characteristics:

- Important functions not available; backup system in place
- Software (web-application and smartphone application) experiences major performance delays, timeouts

Severity 3. Customer experiences a minor loss of Service. The impact is an inconvenience, which may require a workaround to restore functionality.

Severity 4. Requests that do not address a Defect of the Services but are related to general information about the Service.

2.2. Service Levels for Support Request.

Service Provider will respond to the support request as described in Section 2.4 and will use commercially reasonable efforts to provide a response within the time frame described in the table set forth below. The response time indicates the time from a support request being received by Service Provider via one of the Support Channels defined in Section 2.3 to the receipt of a response by Service Provider that addresses the issue, by either requesting additional information or providing information on the course of action to resolve the support request. Response times are only applicable during Service Hours, excluding public holidays in the country of residence of Service Provider

Severity Level	Target Response Time
Severity 1	Four (4) hours
Severity 2	One (1) day
Severity 3	Two (2) days
Severity 4	Four (4) days

2.3. Support Channels.

Service Provider will provide telephone and email support via Service Provider Customer Service ("Support Channels") during the defined Service Hours. To make sure that severity 1-3 requests get respective attention by Service Provider, such support requests have to be raised by phone via the customer support number. Severity 4 support requests can be also raised via email. Contact details and Service Hours are published online under the following [link](#).

2.4. Support Process Description.

The Service Provider logs the support request with the appropriate initial Severity Level and informs Customer that the support request has been logged via appropriate means. If further information needs to be provided by Customer, Service Provider will contact Customer to request the missing information. For Customer specific support requests or critical issues Service Provider will use best efforts to directly inform Customer as soon as a workaround solution, another temporary fix or a resolution has been found. For general application Defects and improvements, Customer can find relevant information in the general release documentation and will not be informed proactively. The Severity Level of a support request may be adjusted during the support process.

2.5. Accessing Customer Data and Using Remote Assistance Tools.

In order to be able to provide the support services, Service Provider may need to use Remote Assistance Tools or access Customer Data in accordance with the Agreement as well as applicable data protection laws and legislation. By allowing the Service Provider the use of Remote Assistance Tools, Customer consents to granting Service Provider remote access to Customer Data and temporary access to and control over the relevant computer and/or device. Before granting remote access to Service Provider Customer should take adequate measures such as backing up its data that resides on the relevant device and make sure that any Customer confidential information not relevant for the support request is not available or exchanged via the remote session. Without Customer's consent data not related to the provided Service is not stored or processed in any form by Service Provider.

2.6. Escalation Process.

If Customer believes in good faith that Customer has not received quality or timely assistance in response to a support request or that Customer urgently need to communicate important support related business issues to Service Provider's management, Customer may escalate the support request by contacting Service Provider and requesting that the support request be escalated to work with Customer to develop an action plan.

3. Customer Obligations

3.1. Availability of Contact Person.

Customer must ensure to provide reasonable availability of a contact person when resolving a support request.

3.2. Process Updates.

Customer needs to make sure to communicate to Service Provider the following changes/updates:

- any changes/additional information that occurred/got available since the support request was raised and that influence the support request.
- any changes in the system environment at Customer's site that might influence the resolution of the support request.

- in case the support request is not valid any more (e.g. resolved).

3.3. System Requirements and latest Versions.

To be eligible for support of the Service Customer is obliged to ensure compliance with the minimum System Requirements as set forth in the Services Description.

3.4. Communication to User Community.

Service Provider will inform Customer about any system relevant events (e.g. communication of Planned Service Downtimes etc.) via the announcements in the Services or via the Services dedicated information webpage. It is the obligation of Customer to inform the relevant Customer's end users about this event.

3.5. Failure to co-operate.

If Customer fails to meet the obligations described above, Service Provider shall not be responsible for any consequences resulting therefrom, including but not limited to any delays in resolving a support request and/or any failure in meeting any Service Levels as set forth in this Agreement.

3.6. Non-Applicability of the Service Level Agreement.

Unless otherwise set forth in the Services Description, the Service Level Agreement does not apply to (i) Services being provided Free of Charge, (ii) Services being provided for mobile applications, (ii) Add-On Services and (iii) Non-Hilti-Services ("Excluded Services"). Service Provider does not warrant for the Excluded Services any availability and does not provide any Support or rectification services for the Excluded Services.

Exhibit 2 (Data Processing Agreement)
to the Software and Services Subscription Agreement

- (i) This Data Processing Agreement (“**DPA**”) is entered into by and between:
- (ii) the Customer, acting as controller (“**Controller**”); and
- (iii) Service Provider, acting as processor (“**Processor**”),
- (iv) each a “**Party**”, together the “**Parties**”.

The terms being used in this DPA shall have the same meaning as under the Agreement and as further specified herein.

PREAMBLE

WHEREAS, under the Software and Services Subscription Agreement (“**Agreement**”) concluded between Processor and Controller, Processor agreed to provide the services as set forth in the Agreement and as further specified in the Services Description to this DPA (the “**Services**”);

WHEREAS, in rendering the Services, Processor may from time to time be provided with, or have access to information which may qualify as personal data within the meaning of the applicable data protection laws and provisions;

WHEREAS, Controller engages Processor as a commissioned Processor acting on behalf of Controller as stipulated in Art. 28 GDPR;

NOW, THEREFORE, and in order to enable the Parties to carry out their relationship in a manner that is compliant with law, the Parties have entered into this DPA as follows:

1. Terminology

For the purposes of this DPA, the terminology and definitions as used by the GDPR shall apply. In addition to that,

- “**Member State**” shall mean a country belonging to the European Union or to the European Economic Area;
- “**Subprocessor**” shall mean any further processor, located within or outside of the EU/EEA, that is engaged by Processor as a sub-contractor for the performance of the Services or parts of the Services on behalf of Controller provided that such Subprocessor has access to the personal data of Controller exclusively for purposes of carrying out the subcontracted Services on behalf of Controller.
- “**Security Breach**” shall mean a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed which affects the personal data of the Controller covered by this DPA.

Further definitions are provided throughout this DPA.

2. Details of the processing

(a) The details of the processing operations provided by Processor to Controller as a commissioned data processor (e.g., the subject-matter of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects) are specified in the Services Description.

3. Obligations and responsibilities of Controller

- (a) The Controller is responsible that the processing activities relating to the personal data, as specified in the Agreement and this DPA, are lawful, fair and transparent in relation to the data subjects, as set out in the Services Description. The actual personal data being uploaded and/or being made available to Processor are solely steered and monitored by Customer and Customer is solely responsible to have obtained all necessary consents and permissions to conduct such processing in accordance with the applicable data protection laws. In case of any violations hereof, Customer shall indemnify and hold harmless Processor for any and all claims raised against the Processor.
- (b) Notwithstanding anything contrary in this Agreement, the Controller shall serve as a single contact for the Processor and is solely responsible for the internal coordination, review and submission of instructions or request of other controllers to the Processor. The Processor shall be discharged of its obligation to inform or notify a controller when it has provided such information or notice to the Controller. The Processor is entitled to refuse any instructions provided directly by a controller that is not the Controller similarly. The Processor will serve as a single point of contact for the Controller and is solely responsible for the internal coordination, review and submission of instructions or requests from the Controller to the Processor's Subprocessor(s).

4. Instructions

- (a) The Processor is obliged to process the personal data only on behalf of the Controller and in accordance with this DPA and the Agreement.
- (b) The Controller's instructions are exhaustively set forth in this DPA and the Agreement.

5. Obligations of Processor

- (a) The Processor shall use commercially reasonable efforts that persons authorized by the Processor to process the personal data on behalf of the Controller, in particular the Processor's employees as well as employees of any Subprocessors, have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality and that such persons who have access to the personal data, process such personal data in compliance with this DPA.
- (b) The Processor shall use commercially reasonable efforts to implement and maintain the technical and organizational measures as specified in Annex 1 to this DPA. The Processor may amend the technical and organizational measures from time to time, provided that the amended technical and organizational measures are in overall not less protective as those set out in Exhibit 2. Substantial amendments to the technical and organizational measures shall be notified to the Controller.
- (c) The Processor shall use commercially reasonable efforts to make available to the Controller any information necessary to demonstrate compliance with the obligations of Processor laid down in Art. 28 GDPR and in this DPA.
- (d) The Processor shall use commercially reasonable efforts to provide an independent third-party audit report upon Controller's request, where such audit report shall only be requested once per calendar year and at Controller's costs.
- (e) The Processor is obliged to notify the Controller within forty-eight (48) hours:
 - about any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as by a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation; and
 - about any complaints and requests received directly from a data subject (e.g., regarding access, rectification, erasure, restriction of processing, data portability, objection to processing of data, automated decision-making) without responding to that request, unless the Processor has been otherwise authorized by the Controller to do so, or (ii) in case of a Security breach the Processor is becoming aware of.
- (f) The Processor shall use commercially reasonable efforts to assist the Controller with its obligation to carry out a data protection impact assessment as may be required by Art. 35 GDPR and prior consultation as may be required by Art. 36 GDPR that relates to the Services provided by the Processor to the Controller under this DPA by means of providing the necessary and available information to the Controller, where any extraordinary costs hereto shall be beard by Customer.
- (g) The Processor shall use commercially reasonable efforts to not further process the personal data, after the end of the provision of Services, and delete any existing copies unless European Union or Member State law requires the Processor to retain such personal data.

6. Data subject rights

- (a) The Controller is primarily responsible for handling and responding to requests made by data subjects.
- (b) The Processor shall use commercially reasonable efforts to assist the Controller with any appropriate and possible technical and organizational measures to respond to requests for exercising the data subjects' rights which are laid down in Chapter III of the GDPR, where Controller herewith confirms to consider the technical and organizational measures being set forth in Exhibit 2 to be sufficient.
- (c) The Controller is obliged to determine whether or not a data subject has a right to exercise any such data subject rights as set out in this Section 6 and to give specifications to the Processor to what extent the assistance specified in Section 6 (b) is required.

7. Subprocessing

(a) Processors may subcontract its obligations under this DPA in compliance with the requirements as set forth herein to Processors' affiliated companies and/or third parties ("Subprocessors"). A list of the Subprocessors engaged with Processors as of the Effective Date of the Agreement is set forth in the respective Services Description and Customer herewith agrees to the engagement of such Subprocessors.

(b) During the Term, Processors will provide at least four (4) weeks prior notice ("**Subprocessor Change Notification**") to the Customer before authorizing any new Subprocessor ("Subprocessor Change Effective Date"). If Customer disapproves of the engagement of such new Subprocessor, Customer may terminate the Agreement with two (2) weeks written notice, including an explanation of the reasonable grounds for disapproval of the Subprocessor, to the Subprocessor Change Effective Date. If the Customer does not object to the Subprocessor Change Notification in accordance with the foregoing, this shall be deemed as the Customer's acceptance of the new Subprocessor. Processors remain responsible for any Subprocessors' compliance with the obligations of this DPA.

(c) In case a Subprocessor is located outside the EU/EEA in a country that is not recognized as providing an adequate level of data protection, the Processor will (i) enter into a data processing agreement based on EU Model Clauses (Processor to Processor), or (ii) provide the Controller with information on the Subprocessor's certification under the Privacy Shield program and re-confirms that the Subprocessor's certification under the Privacy Shield Program is still valid upon Controller's request, or (iii) provide the Controller, upon Controller's request, with other information and relevant documentation on the mechanism for international data transfer pursuant to Art. 46 GDPR that is used to lawfully disclose the Controller's personal data to the Subprocessor.

10. Term and termination

The term of this DPA is identical with the term of the Agreement. Save as otherwise agreed herein, termination rights and requirements shall be the same as set forth in the Agreement.

11. Miscellaneous

(a) The Parties are required to comply with those obligations under the GDPR and under any other applicable data protection laws that apply, as applicable, to the Controller in its role as data controller or to the Processor in its role as data processor.

(b) If and to the extent necessary to comply with mandatory provisions regarding the commissioning and performance of the Processor under the laws applicable to the Controller, the Controller may require any necessary changes (including amendments) to the provisions of this DPA and its annexes. If the Controller and the Processor are not able to agree upon changes required to meet mandatory legal requirements within thirty (30) days of the Processor's receiving written notice of the mandatory changes, either Party shall have the right to terminate this DPA with thirty (30) days' notice in writing.

In the event of inconsistencies between the provisions of this DPA and any other agreements between the Parties, the provisions of this DPA shall prevail with regard to the Parties' data protection obligations.

**Annex 1 to the DPA
(technical and organizational measures)**

Description of the technical and organizational measures implemented by Processor as verified and confirmed by Controller:

Access Control to Processing Areas

- Data Importer implements suitable measures in order to prevent unauthorized persons from gaining physical access to the data processing equipment where Personal Data is processed or used, in particular:
 - Site access is tracked and documented.
 - Site access is supervised and secured by an appropriate security system and/or security organization.
 - Visitors will be continuously escorted.

Access Control to Data Processing Systems

- Data Importer implements suitable measures to prevent the data processing systems used for the processing of Personal Data from being used or logically accessed by unauthorized persons, in particular:
 - User identification and user authentication methods are in place to grant controlled access to the processing system.
 - Access control and authorizations are defined according to a 'need to have' principle.
 - Data Importer's internal endpoints used to support the software service are protected to prevent unwanted access to the systems and to avoid infiltration of malicious software. This covers technologies as firewalls, antivirus detection, malware detection, intrusion detection and prevention and others. These technologies will be adjusted to new levels based on the overall development in these areas.

Access Control to Use Specific Areas of Data Processing Systems

- Data Importer implements suitable measures within the applications so that the persons entitled to use the data processing system are only able to access the data within the scope and to the extent covered by its access permission (authorization) and that personal data cannot be read, copied or modified or removed without proper authorization, in particular:
 - For Data Importer personnel policies are in place and trained related to the access to personal data.
 - Data Importer informs its personnel about relevant security procedures including possible consequences of breaching the security rules and procedures.
 - For training purposes Data Importer will only use anonymous data.
 - Access to the data is either done from a controlled location or via a controlled network access.
 - End devices used to access the data are protected by up to date client protection mechanisms.

Transmission Control

- Data Importer implements suitable measures to ensure that Personal Data cannot be read, copied, modified or deleted without authorization during electronic transmission, transport or storage on storage media, and that the target entities for any transfer of Personal Data by means of data transmission can be established and verified (data transfer control), in particular:
 - Control of data transfer between Data Exporter and the Data Importer supplied software service:
 - Data Importer's software services use encryption to ensure confidentiality and integrity/authenticity when transferring data from the Data Exporter to the software service.
 - Control of data transfers between Data Importer and Sub Processors:
 - In addition to the contractual agreed areas, data retrieval is only allowed for dedicated support activities and only for authorized support staff.
 - The authorization process for Data Importer support staff performing data transfers is regulated through a defined process.
 - If data has to be copied to specific media for transport to a 3rd party, these media will be treated with discernment in accordance with the sensitivity of the data.
 - Documented procedures for the secure transfer of Personal Data are established.

Input Control, Processing Control and Separation for different purposes

- Data Importer implements suitable measures to ensure that Personal Data is processed safe and solely in accordance with the Data Exporter's instructions, in particular:
 - Access to data is separated through application security for the appropriate users.
 - The application supports the identification and authentication of users.
 - Application roles and resulting access is based on roles based on the function to be executed within the application.

When reasonable and feasible, Data Importer may implement in their software controls to validate data input and/or to track usage or modification of data.