

## TOPCON SITELINK3D API LICENSE AGREEMENT

This Service API License Agreement (the “**Agreement**”) is between **Topcon Positioning Systems, Inc.**, a California corporation, with offices located at 7400 National Dr., Livermore, CA 94550 (“**Topcon**”) and the Company/person registering for use of the APIs covered by this Agreement (“**Licensee**”).

Licensee intends to develop an application(s) for end-users that will include features that allow its users, which are also Topcon Service users, to access their Topcon Service accounts. In order to complete the development it is necessary that Licensee be provided access to the Topcon Service API.

Licensee’s identify, its contact information and description of the Licensed Application(s) (defined below) are included in the Sitelink3D v2 OAuth Client Request Form submitted by Licensee (the “**Request Form**”). By completing and submitting the Request Form. Licensee agrees to the terms and conditions of this Agreement.

### 1. Definitions.

“**API**” means the Topcon Service application programming interface that enables software applications to share data with the Topcon Service.

“**Licensee Application**” means an application or web service (described in the Request Form) and developed by Licensee using the API, which includes a feature or features that allows users, who are also users of the Topcon Service, to access the Topcon Service through use of their Topcon Service Credentials.

“**Documentation**” means any technical or other specifications or documentation that Topcon may make available or provide to Licensee relating to or for use in connection with the API.

“**Topcon Service Credentials**” means a Topcon Service user’s account login identity and/or access keys.

“**Topcon Service**” means the Topcon’s Sitelink3D webservice.

“**Trademarks**” means the Topcon names and logos.

### 2. License Grant/Restrictions.

2.1. License to API. Topcon hereby grants to Licensee a personal, non-exclusive, non-sublicensable, non-transferable, revocable limited license to: (a) use and reproduce the API for the purpose of Licensee’s development of the Licensee Application accordance with the Documentation; (b) distribute, in object code form, the API solely as an embedded or integrated component of the Licensee Application in accordance with the Documentation, through multiple channels, to end users, and (c) use the Trademarks within the Licensee Application and supporting materials such as websites and documentation, conditioned on the prior written approval of Topcon’s marketing department and at all times according to Topcon’s then-current trademark usage guidelines available at: <http://brand.topconpositioning.com/d/8HdwDbKRmzky/topcon-positioning-group-brand-guidelines#/logo/topcon-logo>.

2.2. Restrictions.

2.2.1. General Restrictions. Licensee shall not, and shall not attempt to: (i) change, modify, reverse engineer, decompile, disassemble or otherwise attempt to derive the source code of any object code portions of the API; (ii) sell, rent, lease, loan, time share or assign the API, in whole or in part; (iii) use the API for any purpose not expressly permitted by this Agreement; (v) remove or destroy any copyright, logo, trademark, trade name, proprietary markings, or confidentiality legends placed upon or contained within the API.

Licensee may not, and shall not authorize or otherwise permit any third party to, incorporate, link, distribute or use any third party software or code in conjunction with: (i) the API, (ii) the Licensee Application or other materials developed using the API, or (iii) any derivative works that Licensee makes using the example code, in such a way that (a) creates, or has the potential to create, obligations with respect to the API or other Topcon software, including, without limitation, the distribution or disclosure of any source code or (b) grants, or has the potential to grant, to any third party any rights or immunities under Topcon intellectual property or proprietary rights, including, without limitation, as such rights exist in or relate to the API. Without limiting the generality of the foregoing, Licensee shall not engage in any act or failure to act that enables, causes, or facilitates any use or distribution of the API or any third-party software in a manner that causes any patents, copyrights, or other intellectual property rights owned or controlled by Topcon to become subject to any encumbrance or terms and conditions of any Open Source License. "Open Source License" means any agreement that requires as a condition of use, reproduction and/or distribution of any software to other software incorporated into, derived from, or distributed with such software (each a "work"), and any of the following: (a) the making available of source code, object code, or design information regarding a work; (b) the granting of any permission or other right for creating modifications to or derivative works regarding a work; or (c) the granting of any royalty free license rights to any party under any patents or other intellectual property rights regarding a work. By means of example and without limitation, "Open Source License" includes the following license and/or distribution models: (i) the GNU General Public License; (ii) the GNU Lesser Public License; (iii) the Mozilla Public License; or (iv) any other open source software or community licenses.

2.2.2. Licensee Application Restrictions. Licensee shall not use the API to create or develop any program that will impair the security or integrity of the Topcon Service, violate applicable law and/or regulations, or infringe the rights of others (including but not limited to property and privacy rights). Licensee agrees to display in connection with each copy of the Licensee Application a valid copyright notice that shall be sufficient to protect Topcon's copyright in the Topcon Service. The Licensee Application may not contain malicious or harmful code, program or other internal component (i.e. viruses, Trojan horses, etc.) that could damage, destroy or adversely affect other software, firmware, hardware, systems, services or networks.

2.2.3. Distribution Restriction. Licensee's right to distribute the Licensee Application shall be conditioned upon each end user entering into an enforceable contract containing terms and conditions no less protective of Topcon's and its suppliers' rights than the terms and conditions contained in the following provisions of this Agreement: Sections 2 (Restrictions), 4 (Ownership), 5 (Disclaimer of Warranty), 6 (Exclusion of Damages), 7 (Limitation of Liability and Remedies), 8 (Effects of Termination), and 9 (General Provisions).

2.3. Topcon Service Credentials. License acknowledges and agrees that: (i) the Topcon Service Credentials are issued and made available by Topcon to Topcon Service end-users and are chosen by such end-users for their sole personal/internal use in connection with the use of and access to the Topcon Service; (ii) Topcon will does not intend to disclose any Topcon Service Credentials to Licensee; (iii) Topcon Service Credentials are confidential information and if Topcon inadvertently discloses and/or any end users supplies any Topcon Service Credentials to Licensee, Licensee is responsible to maintain their confidentiality; and (iv) that Licensee may not, under any circumstances, disclose, transfer or assign the Topcon Service Credentials, or any part thereof to any third party, without the prior written consent of Topcon and the subject end user.

2.4. Support; Updates. Topcon shall have no obligation under this Agreement to maintain or support the API. Topcon shall have no obligation whatsoever to maintain or support any Licensee Application. Licensee may contact Topcon to inquire about Topcon's commercially available support and maintenance services provided pursuant to separate agreements. This Agreement shall not obligate either party to enter into any such separate agreement. Topcon shall do its utmost to inform the Licensee not later than 30 days beforehand of any changes to the API, including any changes to the technical or other specifications described in the then current Documentation. Topcon shall update the Documentation to reflect any changes made relating to the API. Any updates or error corrections to the API that may be provided to Licensee from time-to-time, if any, shall be deemed the API and shall be licensed to Licensee under the terms and conditions of this Agreement. If any such updates or error corrections are made available to Licensee, then Licensee shall promptly (a) implement such updates or error corrections, (b) cease using the earlier versions without such updates or error corrections, and (c) make such updates or error corrections available to the users of the earlier versions.

**3. Confidentiality.** The API, Documentation and any information contained within and/or provided therewith, related to or about the API and/or the Topcon Service, including but not limited to Topcon Service Credentials are confidential and proprietary to, and trade secrets of, Topcon (the "**Confidential Information**"). Licensee agrees not to disclose any Confidential Information to any third party without the prior written consent of Topcon. Topcon may at any time request in writing the immediate return of all or part of its Confidential Information disclosed hereunder, and all copies thereof, and Licensee will promptly comply with such request

**4. Ownership.** All rights, title and interest in and to the API and Documentation, including, without limitation, all copyright, patent, trade secret and other intellectual property rights shall at all times remain the property of Topcon, or its suppliers, as applicable. The API is licensed, not sold, and are protected by copyright and other intellectual property laws and treaties. Licensee shall take appropriate steps reasonably calculated to notify others of Topcon's and its suppliers' ownership of the API. Moreover, Topcon reserves all rights not expressly granted in this Agreement. Licensee shall take all reasonable measures to protect Topcon's proprietary rights in the API and shall not copy, use, or distribute the API, or any derivative thereof, in any manner or for any purpose, except as expressly authorized in this Agreement. Licensee shall notify Topcon promptly in writing upon its discovery of any unauthorized use of the API or infringement of Topcon's patent, copyright, trade secret, trademark, or other intellectual property rights. Except as provided in Section 2.1., Licensee shall not distribute the API to any third party without the prior written consent of Topcon. Further, Licensee shall not distribute the API to any person or entity if Licensee is aware that such person or entity may be involved in potential unauthorized use of the API or other infringement of Topcon's proprietary rights.

## **5. Data Protection and Security and Encryption.**

5.1. Compliance with Data Protection Laws and Requirements. The Parties will each comply with applicable data privacy and security Laws and requirements (including with respect to data retention and disposal and cross-border data transfer) as independent and separate controllers in relation to Personal Data processed under this Agreement. Topcon will inform Licensee of all data transfer restrictions imposed on any of the data it transfers to Licensee. Each Party will hold all Personal Data in compliance with the Parties' obligations under this Agreement with respect to Personal Data and Confidential Information. Neither Party will use terms of use or privacy statements that are not consistent with this Agreement. Should the receiving party determine that it is unable to fulfill the obligations and regulator expectations under any new data protection, security or privacy laws or requirements, it will promptly bring that matter to the disclosing party's attention such that the Parties can decide on the best course of action and/or decide to terminate this Agreement, in whole or in part.

5.2. Security for Confidential Information. The Parties hereby agree to implement and maintain appropriate physical, administrative, technical and organizational security measures that are designed to protect the API licensed by Topcon as well as for all customer Information, Personal Data and all surrounding Confidential Information collected, processed, stored by, or accessible to, the Party under this Agreement, from loss, misuse, alteration, destruction or unauthorized access. The Parties confirm that those measures will be aligned with applicable security and cybersecurity laws and requirements and other applicable industry best practice standards for the type of data and information at issue. The Parties also confirm that they will take appropriate steps to update those security measures to address new threats as they become known, in a manner commensurate with the type of data or information at issue. As part of the security measures, the Parties confirm that they will limit access to the data and information to those having a legitimate need to know. Each Party agrees that the security measures will include, where applicable, (1) limits on access to those individuals who have a legitimate need to know in connection with their job responsibilities and (2) encryption and other security for data accessed or transmitted over the Internet. Each such Party confirms that the measures will be modified as warranted to account for new security risks and threats as they become known as well as the evolving legal requirements and regulator expectations for safeguarding the data.

5.3. Reporting of Breaches. A Party shall immediately (an in no case later than forty-eight (48) hours after being notified or becoming aware of a breach) report to the other Party any actual or suspected breaches of security or unauthorized access to the other Party's Confidential Information including, with respect to the licensed APIs, that the Party detects or becomes aware of. Licensee shall report such information to the following email addresses: [dpo@topcon.com](mailto:dpo@topcon.com) , and Topcon shall report such information to the email address supplied by Licensee in the Request Form. In the event of a security breach, Parties will work together to formulate a plan to rectify all security breaches involving a Party's Confidential Information including the API. In the event of an actual or suspected security breach, the Party sustaining the actual or suspected breach shall promptly provide the other Party a written report regarding the Party's internal investigation regarding any security breach, which report shall contain sufficient detail in order to allow the other Party to act in order to prevent continuing or further unauthorized access. Subject to the Party's compliance with applicable law, the Party agrees not to notify any regulatory authority nor any customer on behalf of the other Party unless the other Party specifically requests in writing that the Party do so.

**6. Indemnity.** Licensee shall defend, indemnify, and hold Topcon and its suppliers harmless from and against any claims demands, causes of action, losses, liabilities, damages, costs or expenses (including attorney's fees and investigation expenses) that arise out or relate to: (i) the use, reproduction and/or distribution of any Licensee Application; (ii) any allegation that the use, reproduction or distribution of any Licensee Application or the API (or any portion thereof), as modified or integrated by Licensee, infringes any rights of any third party, except and solely to the extent that such infringement is caused by the unmodified API as supplied by Topcon under this Agreement; (iii) any breach of any laws or regulations by Licensee; (iv) any breach of this Agreement by Licensee.

**7. Disclaimer of Warranty.** TOPCON AND ITS SUPPLIERS PROVIDE THE API, AND ANY (IF ANY) SUPPORT SERVICES RELATING TO THE API, AS-IS AND WITH ALL FAULTS; AND TOPCON AND ITS SUPPLIERS HEREBY DISCLAIM WITH RESPECT TO THE API AND ANY SUPPORT SERVICES ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY (IF ANY) WARRANTIES, DUTIES OR CONDITIONS OF OR RELATED TO: MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES, AND RESULTS. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE API REMAINS WITH LICENSEE.

**8. Exclusion of Damages.** EXCEPT AS SET OUT IN SECTION 6 ABOVE, IN NO EVENT SHALL TOPCON OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE API, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE API OR OTHERWISE ARISING OUT OF THE USE OF THE API, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF TOPCON OR ANY SUPPLIER, AND EVEN IF TOPCON OR ANY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO LICENSEE.

**9. Limitation of Liability and Remedies.** EXCEPT AS SET OUT IN SECTION 6 ABOVE, NOTWITHSTANDING ANY DAMAGES THAT LICENSEE MIGHT INCUR FOR ANY REASON WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ALL DAMAGES REFERENCED ABOVE AND ALL DIRECT OR GENERAL DAMAGES), THE ENTIRE LIABILITY OF TOPCON AND ANY OF ITS SUPPLIERS UNDER ANY PROVISION OF THIS AGREEMENT AND LICENSEE'S EXCLUSIVE REMEDY FOR ALL OF THE FOREGOING SHALL BE LIMITED TO THE AMOUNT LICENSEE PAID FOR THE API. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS (INCLUDING SECTIONS 6 AND 7 ABOVE) SHALL APPLY EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

**10. Termination and Effects.** Either party may terminate this Agreement at any time, with or without cause, upon sixty (60) days' notice to the other. Upon termination of this Agreement, Licensee shall immediately cease all use and distribution of the API and return to Topcon all copies of the API within Licensee's control within five (5) days after such termination or expiration. Upon Topcon's request,

Licensee will certify in writing to Topcon that all copies of the API have been returned to Topcon. The following provisions of this Agreement shall survive termination or expiration of this Agreement: Sections 2.2, 2.3, 3, 4, 5, 6, 7, 8, 9, and 10.

## **11. General Provisions.**

11.1. Nonassignability. Licensee shall not assign this Agreement or transfer any of the rights, duties, or obligations arising under this Agreement without the prior written consent of Topcon. This Agreement shall be binding upon, and inure to the benefit of, the permitted successors and assigns of the parties thereto.

11.2. Governing Law; Forum; Attorney's Fees, Injunctive Relief. This Agreement shall be governed in all respects by the laws of the State of California, without regard to conflicts of law principles. The UN Convention on Contracts for the International Sale of Goods is expressly disclaimed from application to this Agreement in all respects. Any disputes in connection with this Agreement shall be resolved exclusively in the state or federal courts, as applicable, located in the State of California. The prevailing party in any such dispute shall be entitled to collect its reasonable costs and expenses, including attorney's fees and expenses, from the other party. Licensee agrees that a material breach of this Agreement may cause irreparable harm to Topcon and that a remedy at law may be inadequate; therefore, in addition to any and all remedies available at law, Topcon will be entitled to seek injunctive relief or other equitable remedies to enforce Topcon's rights under this Agreement.

11.3. Amendment; Waiver. This Agreement may be amended or supplemented only by a writing that refers explicitly to this Agreement and that is signed by both parties. No waiver will be implied from conduct or failure to enforce rights. No waiver will be effective unless in a writing signed by the party against whom the waiver is asserted. One or more waivers of any right, obligation or default shall not be construed as a waiver of any subsequent right, obligation or default. No delay or failure of a party in exercising any right hereunder and no partial or single exercise thereof shall be deemed of itself to constitute a waiver of such right or any other rights hereunder.

11.4. Severability. The illegality, invalidity or unenforceability of one or more provisions of this Agreement shall not affect the legality, validity or enforceability of any other provision, and this Agreement shall be construed in all respects as if such illegal, invalid or unenforceable provision were deemed amended to achieve as near as possible the same economic effect as the original in a legal, valid and enforceable manner if possible.

11.5. Notices. All notices under this Agreement shall be in writing, and shall be deemed given when personally delivered, when received if by nationally recognized courier, or three days after being sent by postage prepaid, certified or registered U.S. mail, as applicable, to Topcon at Topcon's address as set forth herein or to Licensee at the address that Licensee provided in the Request Form, or such other address as a party last provided to the other by written notice.

11.6. Export Regulations. The API is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Licensee agrees to strictly comply with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import the API (or any related Confidential Information). The API (or any related Confidential Information) may not be downloaded, or

otherwise exported or re-exported (i) into, or to a national or resident of any country/region to which the U.S. has embargoed goods; or (ii) to anyone in the U.S. Treasury Department's list of Specially Designated Nations or the U.S. Commerce Department's Table of Denial Orders.

11.7. High-Risk Uses. The API is not designed or intended to be used for the creation of Licensee Application which are used in connection with on-line control of aircraft, air traffic, aircraft navigation or aircraft communications; or in the design, construction, operation or maintenance of any nuclear facility; or in any life-support equipment (e.g., pacemakers), health measurement equipment (e.g., electrocardiographs) or other extremely hazardous environment; and Licensee shall have no right to use the API to create such applications.

11.8. Independent Contractor. Topcon and Licensee are independent contractors. No partnership, joint venture, or other joint relationship is created by this Agreement.

11.9. Entire Agreement. This Agreement and the Request Form represents the entire agreement between the parties relating to its subject matter and supersedes all prior representations, discussions, negotiations and agreements, whether written or oral. The terms and conditions of a party's purchase orders, or acknowledgements shall have no force or affect whatsoever.