

**HILTI ON!TRACK SERVICES  
SUBSCRIPTION AGREEMENT****Content:**

- **Subscription agreement**
- **Exhibit 1: Definitions**
- **Exhibit 2: Service Description**
- **Exhibit 3: Service Level Agreement**
- **Exhibit 4: Pricing**
- **Exhibit 5: Data Protection and Privacy**
- **Exhibit 6: Professional Services Agreement**

This Subscription Agreement ("Agreement") for the Hilti ON!Track Software and Services ("**Agreement**") is effective as of the date of acceptance of this Agreement or on use of the software by the Customer, whichever occurs earlier ("**Effective Date**"), by and between **Hilti (South Africa) Proprietary Limited Ltd (registration number: 1990/002547/07)**, a legal entity registered under the South African laws and regulations, and having its business address at Hilti Building, 2 Tugela Lane, Waterfall Logistics Precinct, Corner of Bridal Veil Road and R101 Jukskei View, Johannesburg, 2090, South Africa ("**Service Provider**") and you ("**Customer**") (collectively, the **parties**, and each a **party**).

Whereas, Service Provider grants the right to use the Software (including related Updates and Upgrades) required for the provision of the solution as set forth in Exhibit 2 (Service Description) and provides services to the Customer as described in Exhibit 2 (Service Description) and Exhibit 3 (Service Level Agreement) (collectively the "**Service**" or "**Services**") through a subscription service, Customer desires to subscribe to such Service, and this business relationship and the allocation of responsibilities are set forth in this Agreement, the parties agree as follows:

**1. Customer's Use of the Service.**

**1.1 Service Provider Obligations.** Service Provider shall make the Service available to the Customer pursuant to this Agreement as of the 1<sup>st</sup> day of the month following the Effective Date. The agreed scope and quality of the Services is exclusively set forth in Exhibit 2 (Service Description ) and Exhibit 3 (Service Level Agreement). Public statements concerning the Service made by the Service Provider or its agents will only form part of the Contractually Agreed Quality to the extent confirmed by the Service Provider in writing. Information and specifications contained within Exhibit 2 (Service Description) and Exhibit 3 (Service Level Agreement) shall not qualify as guarantee with regard to the Service's quality or as any other kind of guarantee, unless they have been confirmed as such by the Service Provider in writing. The Service Provider may update and improve the Services from time to time; any such Updates are included in the Agreement. In addition to Updates, the Service Provider may offer Upgrades to the Services which are only subject to the Agreement if separately ordered and paid for by Customer.

**1.2 System Requirements; Hardware.** The operation or use of the Services by the Customer requires certain System Requirements as described in Exhibit 2 (Service Description) which are subject to change at the discretion of Service Provider. The provision of System Requirements does not form part of Service Provider's obligations under this Agreement and the Customer shall be solely responsible for obtaining any and all System Requirements required to operate or use the Services. The operation or use of the Services by the Customer may also require certain Hardware as described in Exhibit 2 (Service Description) which is not subject to this Agreement and must be obtained separately by Customer from the Service Provider. Customer is required to install Updates in order to receive Customer Support as described in Exhibit 2 (Service Description) and Exhibit 3 (Service Level Agreement) and to address Defects.

**1.3 Further Service Recipients.** Service Provider shall make available the Services to Customer. Customer may make the Services available to further Service Recipients. Customer must ensure at all time that the Service Recipients and Customer's and Service Recipients' Employees use the Service in compliance with the terms of this Agreement (including but not limited to Sections 1.4 and 4.4) and shall indemnify the Service Provider in the event of the Service Recipients and Customer's and Service Recipients' Employees failure to comply herewith.

**1.4 Customer Obligations.** Customer is responsible for all Authorized Users' use of the Service and their compliance with this Agreement. Customer shall: (i) have sole responsibility for the accuracy, quality, and legality of all Customer Data as provided initially to Service Provider by Customer or Service Recipients or on Customer's or Service Recipients' behalf (excluding any inaccuracy, deficiency or violations of Law attributable to Service Provider's acts and omissions); and (ii) use reasonable efforts to prevent unauthorized access to, or use of, the Service by Employees and other third parties through its systems, and notify Service Provider promptly of any such unauthorized access or use.

**1.5 Prohibited Activities.** Customer shall use the Service solely for its internal business purposes and shall not: (i) license, subcontract, 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) use the Service in violation of applicable Laws; or (iii) send or store infringing, obscene, threatening, or otherwise unlawful or tortious material, including material that violates privacy rights. Further, Customer shall not: (iv) knowingly send or store Harmful Code; (v) knowingly interfere with or disrupt performance of the Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Service or its related systems or networks. For its part, Service Provider shall not: (i) except as otherwise expressly permitted herein, interfere with or disrupt performance of the Service or the data contained therein; or (ii) attempt to gain unauthorized access to the Customer Data or its related systems or networks other than (a) as authorized by Customer; (b) as permitted under the terms of this Agreement; or (c) as required for the performance of the Services.

**2. Professional Services.**

Service Provider and Customer may agree on the provision of Professional Services by the Service Provider to the Customer, in which case the terms of Exhibit 6 (Professional Services Agreement) apply to such Professional Services. In particular, the operation or use of the Services by the Customer may require certain Implementation Services which must be obtained separately by the Customer subject to the additional terms in Exhibit 6.

**3. Fees, Payment & Taxes.**

**3.1 Fees.** In consideration for Service Provider providing the Services, Customer will pay to Service Provider the Fees applicable to the selected Subscription Plan(s) purchased by the Customer as set forth in the pricing table in Exhibit 4 (Pricing). During the term of the Agreement Service Provider may change Fees only in accordance with section 10 below. Customer shall pay all Fees specified in Exhibit 4 (Pricing) in accordance with this Section 3 and the terms of Exhibit 4 (Pricing) or as will be communicated by the Service Provider from time to time through e mail and letters. Except as otherwise provided herein, all Fees are quoted and payable in South African Rands (ZAR).

**3.2 Monthly Subscription Fee.** Service Provider will invoice the Customer monthly in advance on the first day of each calendar month for the Services to be performed in such full calendar month unless otherwise agreed by the parties.

**3.3 Invoices.** All invoices are payable within fourteen (14) days of receipt of the invoice unless otherwise agreed by Service Provider and Customer. Upon request the Service Provider will provide any reasonably necessary information, documents and records to Customer required for Customer to verify the correctness of any invoices.

**3.4 Default Payments.** Upon the Customer's default of payment of the Fees, the Customer shall pay default interest on the outstanding amount at the maximum rate prescribed by the National Credit Act 34 of 2005. This shall not affect the right of the Service Provider to claim any higher damages under the applicable laws of South Africa. Without prejudice to any other right which it may have in terms of law or this Agreement, in the event that the Customer fails to make payment of the Fees or any other amounts on the due date therefor, the Service Provider may, at its election, suspend (i) the provision of the Services under this Agreement; and/or (ii) any or all of its obligations in terms of this Agreement, until payment has been made in full.

**3.5 Taxes.** Service Provider's fees 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.

#### **4. Proprietary Rights.**

**4.1 © Hilti Aktiengesellschaft 2015.** Hilti Aktiengesellschaft exclusively and unrestrictedly retains ownership, reserves all rights, title and interest and all Intellectual Property Rights in the Software (including related Updates and Upgrades), unless explicitly otherwise stated in this Agreement. Service Provider is entitled by Hilti Aktiengesellschaft to grant to Customer rights to use the Software (including related Updates and Upgrades) according to the terms and conditions of this Agreement.

**4.2 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 in the course of performing the Services.

**4.3 Grant of Rights.** The Service Provider grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable right to remotely access the Service and to use the Service's functionalities in accordance with and during the term of this Agreement. This right of use encompasses the right to make available to and use and have used the Services by all Service Recipients. Particularly, this right of use includes the Customer's and/or its Service Recipient's non-exclusive, non-transferable right to create a copy of the smartphone application software which may be required for the provision of the solution as set forth in Exhibit 2 (Service Description) for the purpose of using or operating the Services pursuant to this Agreement. Customer and/or Service Recipients may use the Services as well as the specified functions according to their description in Exhibit 2 (Service Description).

**4.4 Manuals and Documentation.** The Service Provider will provide user manuals and documentation for the Service that will be made available online and which will describe the Service's functions and allow the Customer to make use of the Service in accordance with this Agreement. The Service Provider will update the manuals and documentation in due course after a change of the Services so requires.

**4.5 Restrictions.** Customer shall not (i) modify, copy or create any derivative works based on the Service; (ii) frame or mirror any content forming part of the Service, other than on Customer's own intranets for its own internal business purposes; (iii) reverse engineer or decompile the Service or any part thereof unless permitted by applicable law; (iv) access the Service in order to build any commercially available product or service; (v) copy any features, functions, interfaces or graphics of the Service or any part thereof; or (vi) use the Service in any manner that exceeds the scope of use permitted herein.

**4.6 Customer Data.** As between Service Provider and Customer, Customer (or the respective Service Recipient) 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 during implementation or Update testing, (iv) necessary to perform the Services, (v) requested by the Customer in written form or (vi) as otherwise explicitly permitted by the terms of this Agreement (including its Exhibits) or 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 Customer or an individual Employee) in order to develop, maintain and improve the services and products of the Hilti 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 Section 2.5. of Exhibit 3 (Service Level Agreement).

**4.7 Customer Input.** Customer grants to Hilti Aktiengesellschaft a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Services any Customer Input. Hilti Aktiengesellschaft and/or Service Provider shall have no obligation to implement Customer Input into the Services in form of an Update, Upgrade or any other way.

#### **5. Confidentiality.**

**5.1 Confidentiality.** 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 5.3, below.

**5.2 Protection.** 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).

**5.3 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 prevent or contest the disclosure.

**5.4 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.

**5.5 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).

## **6. Availability of Service; Planned Service Downtime**

**6.1 Availability of Service.** Service Provider will (i) make the Service available to the Customer as set forth in Exhibit 2 (Service Description) and (ii) use commercially reasonable efforts to make the Services available according to the Target Yearly Availability SLAs as set forth in Exhibit 3 (Service Level Agreement). Service Provider will be supported by Hilti Asia IT Services and Hilti Aktiengesellschaft with respect to the provision of the Services; any fees or other remuneration to be paid by the Customer in connection with this Agreement shall solely be owed to the Service Provider.

**6.2 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 as set forth in Exhibit 3 (Service Level Agreement).

## **7. Remedies in case of Defects.**

Customer shall notify Service Provider without delay of any alleged Defects of the Service in writing, including a description of the alleged Defect. The Service Provider will use its best commercial endeavours to correct any default and in such event within a reasonable period. The Service Provider may decide at its sole discretion whether to cure a given Defect by means of repair or replacement delivery. Service Provider may also cure a Defect by using remote means and for this purpose may remotely access Customer's Customer Data, systems and/or devices.

## **8. Limitation of Liability and Exclusions.**

**8.1 Liability Exclusion.** TO THE EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES WILL SERVICE PROVIDER BE LIABLE FOR ANY (i) CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF CUSTOMER; (ii) CLAIMS FOR CORRUPTION OR LOSS OF DATA; (iii) DEPLETION OF GOODWILL; (iv) PROFITS; (v) USE OF MONEY; (vi) USE OF THE SERVICES; (vii) AVAILABILITY OF CUSTOMER DATA; OR (viii) LOSS OF BUSINESS AND/OR SIMILAR LOSSES OR LOSS, ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, DELICT OR OTHERWISE.

SUBJECT TO APPLICABLE LAWS, SERVICE PROVIDER DOES NOT WARRANT THAT THE CUSTOMER'S USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; OR THAT THE SERVICES, DOCUMENTATION AND/OR THE INFORMATION OBTAINED BY THE CUSTOMER THROUGH THE SERVICES WILL MEET THE CUSTOMER'S REQUIREMENTS; AND THE SERVICE PROVIDER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR ANY OTHER LOSS OR DAMAGE RESULTING FROM THE TRANSFER OF DATA OVER COMMUNICATIONS NETWORKS AND FACILITIES, INCLUDING THE INTERNET, AND THE CUSTOMER ACKNOWLEDGES THAT THE SERVICES AND DOCUMENTATION MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES.

**8.2 Limitation of Liability.** IN NO EVENT WILL THE AGGREGATE LIABILITY THAT SERVICE PROVIDER MAY INCUR TO THE CUSTOMER IN ANY AND ALL ACTIONS OR PROCEEDINGS EXCEED THE TOTAL AMOUNT THAT SERVICE PROVIDER ACTUALLY RECEIVED FROM CUSTOMER FOR THE SPECIFIC SERVICES THAT DIRECTLY CAUSED THE DAMAGE.

**8.3 Exceptions.** THIS SECTION WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW REQUIRES LIABILITY BEYOND AND DESPITE THE FOREGOING DISCLAIMER AND LIMITATION.

IN ADDITION TO THE ABOVE:

1. THE CUSTOMER ASSUMES SOLE RESPONSIBILITY FOR RESULTS OBTAINED FROM THE USE OF THE SERVICES AND THE DOCUMENTATION BY THE CUSTOMER, AND FOR CONCLUSIONS DRAWN FROM SUCH USE. SERVICE PROVIDER SHALL HAVE NO LIABILITY FOR ANY DAMAGE CAUSED BY ERRORS OR OMISSIONS IN ANY INFORMATION, INSTRUCTIONS OR SCRIPTS PROVIDED TO SERVICE PROVIDER BY THE CUSTOMER IN CONNECTION WITH THE SERVICES, OR ANY ACTIONS TAKEN BY SERVICE PROVIDER AT THE CUSTOMER'S DIRECTION.
2. ALL WARRANTIES, REPRESENTATIONS, CONDITIONS AND ALL OTHER TERMS OF ANY KIND WHATSOEVER IMPLIED BY STATUTE OR COMMON LAW ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCLUDED FROM THIS AGREEMENT; AND
3. THE SERVICES AND THE DOCUMENTATION ARE PROVIDED TO THE CUSTOMER ON AN "AS IS" BASIS.

**8.4 Customer's obligation to avert and reduce damages.** Subject to clause 8.1, 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, the Service Provider does not restore Customer Data of individual Customers e.g. in case of accidental data loss caused by Customer. Customer shall therefore be obliged to take such and other adequate measures to avert and reduce damages due to data loss. .

## **9. Term & Termination.**

**9.1 Term.** This Agreement shall have an indefinite term.

**9.2 Termination.** Each party may terminate (i) this entire Agreement or (ii) each Subscription Plan separately with 2 (two) calendar months' notice.

**9.3 Termination for Material Breach.** Subject to the applicable statutory requirements, this Agreement may be terminated by a party if the other party commits any breach of any material term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 7 (seven) days of a written request to remedy the same.

**9.4 Termination for Insolvency and Similar Events.** This Agreement may be terminated by a party, immediately on written notice, if the other party becomes bankrupt or insolvent (commercially or otherwise); an application is made, or a resolution is adopted, for the winding-up of the other party (whether provisional or final); business rescue proceedings have commenced in respect of the other party in accordance with the Companies Act 71 of 2008 (as amended) (the **Companies Act**); the other party proposes or effects an offer of compromise with the other party's creditors in accordance with section 155 of the Companies Act or begins negotiations or takes any other

step with a view to generally deferring, re-scheduling or otherwise re-adjusting all or a material part of the other party's indebtedness or proposes or makes a general scheme, arrangement or composition with or for the benefit of the other party's creditors or a moratorium is proposed or agreed in respect of or affecting all or a material part of the other party's indebtedness; the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 (fourteen) days.

**9.5 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 Fees accrued or due and payable to Service Provider prior to the effective date of termination (subject to Customer's statutory rights, if any, to withhold payments disputed in good-faith).

**9.6 Return of Customer Data.** During the Term of the Agreement, and for sixty (60) days thereafter, Customer can extract Customer Data using Service Provider's standard Services; upon expiry of such sixty (60) days period, Service Provider will delete the Customer Data or at least block such data - subject to Service Provider's right to use Customer Data in anonymized form as provided for in Section 4.5.

**9.7 Surviving Provisions.** All provisions of this Agreement intended by their terms to survive shall survive any termination or expiration of this Agreement, excluding : (i) Section 1 and its subparts titled, "Customer's Use of the Service" and (ii) section 9.1, which shall not survive and shall have no further force or effect.

## **10. Changes to the Agreement and/or Fees**

**10.1 Changes to the Agreement.** The Service Provider reserves the right to change the Agreement and/or the Fees ("**Change**"). Service Provider will notify the Customer about the Change with at least 4 (four) weeks' prior notice ("**Change Notification**"). The 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 the Customer's acceptance of the Change and the Change shall become effective at the Change Effective Date. If the Customer objects in due time, Service Provider may choose to either continue the Agreement with the 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 the Customer about Service Provider's termination right, the notice period for the Customer's objection, the Change Effective Date and the consequences of not objecting to the Change Notification.

## **11. General Provisions.**

**11.1 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.

**Notices.** Unless the terms of this Agreement explicitly require any other form, all notices under this Agreement must be given at least in textual form (written form, fax or e-mail). Service Provider will deliver such notices by email to the address(es) and contact person(s) indicated by the Customer upon registration of Customer's account for the Service with Service Provider. Customer will deliver such notices by email to the address of the Service Provider. Additionally, the parties may notify each other to such other address(es) of which the parties may have provided each other with. The preceding sentence applies accordingly if the notices are given in writing. The parties shall immediately notify each other about any changes of the contact data they have provided each other with.

**11.2 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.

**11.3 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 Section 12.1 and 12.2 shall apply.

**11.4 Assignment.** The 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 other party (which consent shall not be unreasonably withheld).

**11.5 Governing Law.** This Agreement shall be governed exclusively by the Laws of South Africa excluding the Convention on the International Sale of Goods.

**11.6 Further Provisions.** This Agreement, including all 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. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the parties. 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) this Agreement and; (2) 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.

## **12. Data Protection, Subcontractors and Security.**

**12.1 Data Protection.** As regards the processing of Customer Data for the purpose of this Agreement, Customer shall enter into the data processing agreement as set forth in Exhibit 5 (Data Protection and Privacy) ("**Data Processing Agreement**") with Service Provider, Hilti Aktiengesellschaft and Hilti Asia IT Services (Hilti Aktiengesellschaft, Hilti Asia IT Services and Service Provider jointly referred to as "**Data Processors**"). Any fees or other remuneration to be paid by the Customer in connection with this Agreement shall solely be owed to the Service Provider.

**12.2 Subcontractors.** Data Processors may subcontract their obligations under the Data Processing Agreement in compliance with the requirements set forth in such Data Processing Agreement to Data Processors' affiliated companies and/or third parties ("**Subcontractors**"). A list of the Subcontractors engaged with Data Processors as of the Effective Date is available at <https://ontrack.hilti.com/subprocessors> and Customer herewith agrees to the engagement of such Subcontractors. During the Term, Data Processors will provide at least four (4) weeks prior notice ("**Subcontractor Change Notification**") to the Customer before authorizing any new Subcontractor to access Customer Data ("**Subcontractor Change Effective Date**"). If Customer disapproves of the engagement of such new Subcontractor, Customer may terminate the Agreement with two (2) weeks written notice, including an explanation of the reasonable grounds for disapproval of the Subcontractor, to the Subcontractor Change Effective Date. If the Customer does not object to the Subcontractor Change Notification in accordance with the foregoing, this shall be deemed as the Customer's acceptance of the new Subcontractor. Data Processors remain responsible for any Subcontractors' compliance with the obligations of the Data Processing Agreement.



**12.3 Representation.** Customer agrees that its use of the Service does not constitute non-compliance with any Law or regulation. Customer acknowledges that it has an independent duty to comply with any and all Laws applicable to it.

**13. Definitions.** Capitalized terms shall have the meaning as defined in parentheses (“...”) in the Agreement and as defined in Exhibit 1 (Definitions).

**14. E-Contracting.**

The Subscription Agreement for Hilti ON!Track Solution can be digitally signed and accepted by submitting the Online Web Form. The information as found on the Official Hilti Quotation for ON!Track Solution, subsequent to the On-Site Analysis, must be completed and relevant Terms and Conditions accepted.

URL for E-Contract: <https://www.hilti.co.za/ontrack-contract>

\_\_\_\_\_  
Order No.

\_\_\_\_\_  
Customer Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Designation

WHO HEREBY ATTESTS THAT HE/SHE IS AUTHORISED HERETO

\_\_\_\_\_  
ID No.



**EXHIBIT 1****Definitions****Definitions**

"**Agreement**" means this Subscription Agreement and any exhibits or attachments hereto.

"**Assets**" has the meaning defined in Section 1.2. of Exhibit 2 (Service Description).

"**Asset Buckets**" has the meaning defined in Section 1 of Exhibit 4 (Pricing).

"**Asset Count**" has the meaning defined in Section 1 of Exhibit 4 (Pricing).

"**Authorized User**" means Customer's Employees and/or Service Recipient's Employees authorized by Customer to use the Services.

"**Change**", "**Change Effective Date**" and "**Change Notification**" have the meaning as defined in Section 10 of the Agreement.

"**Confidential Information**" means (a) the software, which is part of the Services, and respective 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.

"**Contractually Agreed Quality**" has the meaning defined in Section 1.1. of the Agreement.

"**Customer**" has the meaning defined in the Preamble.

"**Customer Data**" means the data or information provided to Service Provider by Customer or Service Recipients or on Customer's or Service Recipients' behalf in connection with the Services

"**Customer Input**" means suggestions, enhancement requests, recommendations or other feedback provided by Customer or Authorized Users relating to the operation or functionality of the Service.

"**Customer Support**" has the meaning defined in Exhibit 2 (Service Description).

"**Data Integration Service**" has the meaning defined in Section 1.1. of Exhibit 2 (Service Descriptions).

"**Data Processing Agreement**" and "**Data Processors**" have the meaning as defined in Section 12.1 of the Agreement.

"**Documentation**" has the meaning in Section 4.3. of the Agreement.

"**Subcontractors**", "**Subcontractor Change Notification**" and "**Subcontractor Change Effective Date**" have the meaning as defined in Section 12.2 of the Agreement.

"**Defect**" means a deviation of the Service from the Contractually Agreed Quality pursuant to Section 1.1 of the Agreement.

"**Employee**" means the Customer's or Service Recipients employees, consultants, contingent workers, independent contractors, or retirees.

"**Effective Date**" has the meaning defined in the Preamble.

"**Hardware**" means the physical parts or components described in Exhibit 2 (Service Description) which the customer may need to make use of the Services, such as RFID scanners as well as different types of tags.

"**Fees**" mean all charges to be paid by Customer to Service Provider for Services.

"**Harmful Code**" means viruses, worms, time bombs, Trojan horses and other malicious code, files, scripts, agents or programs.

"**Hilti Aktiengesellschaft**" means Hilti Aktiengesellschaft, Feldkircherstrasse 100, 9494 Schaan, Liechtenstein.

"**Hilti Asia IT Services**" means Hilti Asia IT Services Sdn. Bhd, Unit 7-01, Level 7, Symphony House, Pusat Dagangan Dana 1, Jln PJU 1A/46, 47301 Petaling Jaya, Selangor, Malaysia.

"**Implementation Services**" means all services required to technically prepare the Services for operational use; this includes setting up the Services to meet technical system requirements and technical parameterization of the Services.

"**Intellectual Property Rights**" means any and all 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.

"**Law**" means any local, state, national and/or foreign law, treaties, and/or regulations applicable to a respective party.

"**Planned Service Downtime**" has the meaning as set forth in Section 1.2 of Exhibit 3 (Service Level Agreement).

"**Productivity Advice**" has the meaning as set forth in Section 4 of Exhibit 2 (Service Description).

"**Professional Services**" means Implementation Services, consulting, and other Service Provider provided services in connection with the Hilti ON!Track solution as agreed upon between Service Provider and Customer in a Work Order and provided under the additional terms of Exhibit 6 (Professional Services Agreement).

**“Remote Assistance Tool”** means all tools used to support the resolution of a Service Request via remote access to the Customer system.

**“Service”** or **“Services”** has the meaning defined in the Preamble.

**“Severity Level”** has the meaning as defined in Section 2.1 of Exhibit 3 (Service Level Agreement).

**“Service Level Agreement”** means the level of the provided Service, e.g. in terms of Target Yearly Availability, Service Request Response times.

**Service Unavailability** means a Service status where web application and smartphone application, as described in Section 3 of Exhibit 2 (Service Description), cannot be accessed by the Customer.

**“Subscription Plan”** means the subscription plans as set forth in Exhibit 4 (Pricing).

**“Support Request”** is a request by the Customer to the Service Provider to address Defects or general questions about the Service.

**“Service Hours”** has the meaning as defined in Section 2.3 of Exhibit 3 (Service Level Agreement).

**“Service Provider”** has the meaning defined in the Preamble.

**“Service Recipient”** means Customer affiliates, subsidiaries or any other third parties to whom the Customer may make the Services available in accordance with the terms of this Agreement.

**“Software”** has the meaning defined in Section 3 of Exhibit 2 (Service Description).

**“System Requirements”** means the technical requirements as described in Exhibit 2 (Service Description) and as updated by Service Provider from time to time which the Customer’s systems and devices must meet in order for Customer to be able to make use of or operate the Services and which may be updated by Service Provider from time to time.

**“Target Yearly Availability SLAs”** has the meaning defined in Section 1.1. of Exhibit 3 (Service Level Agreement).

**“Term”** means the period starting from the Effective Date until the Agreement will have expired or otherwise been terminated.

**“Unplanned Service Downtime”** means Service Unavailability where Service Unavailability due to Planned Service Downtime is excluded.

**“Updates”** means software that remedies Defects in the Services and/or that may include minor improvements of previous software as defined in Section 5 of Exhibit 2 (Service Description).

**“Upgrades”** means new facilities, capabilities or functionalities of the Services as defined in Exhibit 4 (Pricing).

**“Work Order”** has the meaning specified in section 1.2 of Exhibit 6 (Professional Services Agreement).

**EXHIBIT 2**  
**Service Description**

**1. Description of the Services**

**1.1 The Services**

The Services made available by Service Provider to the Customer pursuant to the Agreement comprise “Hilti ON!Track”, a solution for tracking and managing construction Assets (as defined in Section 1.2 below). The Service consists of (i) the Software, (ii) the Productivity Advice, (iii) the Documentation, (iv) Data Integration Service, which provides an interface to (1) tool, (2) Customer Data and (3) contact information of the customer administrator and (iv) Customer Support as described in Exhibit 3 (Service Level Agreement). For (iv) the data is automatically displayed and eventually updated in the ON!Track solution. If in addition the parties have agreed on the provision of Professional Services in accordance with Exhibit 6 (Professional Services Agreement) of the Agreement, the terms “Service” or “Services” also include any such Professional Services.

**1.2 Assets**

The term “Assets” as used in this Exhibit 2 refers to any tool, equipment and material that the Customer may manage with the Services.

**2. System Requirements**

To be able to implement, use and operate the Services, the Customer must ensure and according Section 1.2 of the Agreement is solely responsible that Customer’s systems, networks and/or devices meet the System Requirements.

All System Requirements are subject to change at the discretion of Service Provider due to changes in system setup, design and functionality. Updated system requirements can also be accessed under the above link.

**3. Software [Base Module]**

The Software that is offered as part of the Services consists of a Web-application, a smartphone application that support Customer and Authorized Users in storing, accessing and managing Customer Data.

**3.1 Web-application**

The web-based application offers the following key features

- **Locations**
  - Add/edit/delete locations
  - Group locations
  - View Assets by location
  - Transfer Assets
- **Assets**
  - Add/edit/delete Assets
  - Group Assets
  - View Assets by group
  - Transfer Assets
- **Employees**
  - Add/edit/delete employees
  - Manage user roles
  - View Assets by employee
- **Templates**
  - Add/edit/delete Asset templates
  - Add/edit/delete certificates
  - Add/edit/delete service tasks such as repair, calibration and maintenance
  - Assign certificates and services tasks to Asset templates
- **Reports**
  - Creation of reports

**3.2 Smartphone application**

The smartphone application offers the following key features

- Add Assets
- Transfer Assets
- Acknowledge/confirm delivery of Assets
- Identify Assets
- View Assets
- Validation of Assets
- Barcode scanning
- Offline mode (available operations are cached until next time online)
- Online mode (automatic synchronization to the ON!Track servers).

The smartphone application can be downloaded via a public mobile app store. A description of how this download works is included in the Service documentation.



**4. Productivity Advice**

The Service Provider will provide Productivity Advice supported by standard reports of the Customer Data stored in the ON!Track solution. The Productivity Advice will be provided in the following areas

- Review of number of Assets and number of different types of Assets to assess possibility to save costs by reducing the number of Assets or types of Assets. This will be provided by a representative of the Service Provider, typically as part of the annual review discussion.
- Review of the age of Assets and assessment of possibilities to improve job site productivity by optimizing the Asset fleet. Review of the repair and maintenance history of Assets and assess possibility to reduce frequency of repairs and/or reduce the costs of repair and maintenance. This will be provided by a representative of the Service Provider, typically as part of the annual review discussion
- Provide targeted information about products and services to improve customer productivity. Such information will be provided via (1) a representative, (2) email, (3) phone or (4) by means of information provided to the Customer directly through the Hilti ON!Track solution.

The quality of the Productivity Advice is dependent upon the quantity and quality of the Customer Data. Therefore, the Service Provider reserves the right not to provide productivity advice during the first 12 months of the Agreement or if Customer Data quality or quantity is insufficient.

**5 Updates**

The Service Provider is entitled but not obliged to improve the Service by providing Updates to the Software in the form of maintenance releases. Updates include (1) changes related to existing functionality and (2) changes of technical components not directly impacting functionality for the user. For (1) the Service Provider shall provide any associated Documentation to Customer if required and in whatever form the Service Provider determines to be appropriate. For (2) no such Documentation will be provided. All Updates are included in the Fee.

The introduction of new functionality is categorized as Upgrades, which are only subject to this Agreement if specifically ordered by the Customer for an additional Fee. Information about Upgrades can be found in Exhibit 4 "Pricing".

**6. Hardware**

In connection with the Service, the Service Provider offers Hardware in terms of (1) smart tags and (2) hard tags. The Hardware is not subject to the terms of this Agreement and may be purchased by the Customer from the Service Provider under a separate agreement.

**EXHIBIT 3**  
**Service Level Agreement**

**1. Service Availability**

**1.1. Target Yearly Availability SLAs**

The Service Provider will use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week (24/7), with the targeted yearly end to end uptime of 99%, meaning that access to the Service (Web-application or a smartphone application) is targeted to be available 99% of the time over a whole calendar year (“Target Yearly Availability SLAs”). Customer acknowledges that the Target Yearly Availability SLAs are only targets and cannot be guaranteed.

The stated Target Yearly Availability SLAs exclude: (i) Planned Service Downtime (as set forth in Section 1.2 below) and (ii) any unavailability caused by circumstances beyond the 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 labour problems, 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). After the service maintenance or support has been performed and the Service is available again, the Service Provider will inform Customer about the completion of the maintenance or support.

**1.3. Unplanned Service Downtime.**

In case of Unplanned Service Downtime with or without control of Service Provider the Service Provider shall make good faith efforts to send a notification to Customer informing Customer thereof. The 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 1-3, 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.** The 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.** The 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.** The 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.**

The 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 the Service Provider via one of the Support Channels defined in section 2.3 to the receipt of a response by the 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	Response Time
Severity 1	Twenty Four (24) hours
Severity 2	Two (2) days
Severity 3	Three (3) days
Severity 4	Four (4) days

**2.3. Support Channels.**

The Service Provider will provide telephone and email support via the Service Provider Customer Service during the defined Service Hours. To make sure that severity 1-3 requests get respective attention by the Service Provider, such Support Requests have to be raised by phone via the Customer Support number 800 44584. Severity 4 Support Requests can be also raised via email.

**2.4. Support Process Description.**

The Service Provider logs the Support Request with the appropriate initial Severity Level and informs the Customer that the Support Request has been logged via appropriate means. If further information needs to be provided by the Customer, the Service Provider will contact the Customer to request the missing information. For Customer specific Support Requests or critical issues Service Provider will use best efforts to directly inform the Customer as soon as a workaround solution, another temporary fix or a resolution has been found. For general application Defects and improvements the 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, the Service Provider may need to use Remote Assistance Tools or access the 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 the Customer Data and temporary access to and control over the relevant computer and/or device. Before granting remote access to the 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 the Service Provider.

**2.6. Escalation Process.**

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

**3. Customer Obligations****3.1. Availability of Contact Person.**

The Customer must ensure to provide reasonable availability of a contact person when resolving a Support Request.

**3.2. Process Updates.**

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

- any changes/additional information that occurred/became available since the Support Request was raised and that influence the Support Request.
- any changes in the system environment at the 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 the Customer's is obliged to ensure compliance with the applicable System Requirements and the Software is updated to the respective latest version.

**3.4. Communication to User Community.**

Service Provider will inform the Customer's contact person about any system relevant events (e.g. communication of Planned Service Downtimes etc.). It is the obligation of the 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.

**EXHIBIT 4**  
**Pricing**

**1. Subscription plans**

**1.1 Different Subscription Plans**

The Services are offered under different Subscription Plans. The Subscription Plans are charged through a recurring Fee as set forth in Section 2 below. Each Subscription Plan includes the features of a specific module (as described in Exhibit 2 “Service Description”) for a defined number of Assets ( “Asset Buckets”).

**1.2 The Service Provider offers six (6) standard Asset Buckets**

- Up to 250 Assets
- Up to 500 Assets
- Up to 1,000 Assets
- Up to 2,500 Assets
- Up to 5,000 Assets
- Up to 10,000 Assets
- Customized Subscription Plans for customers with more than 10,000 Assets

**1.3 Asset Bucket**

With respect to determining the Asset Buckets, the number of Assets managed in the ON!Track solution is referred to as the “Asset Count”. The Asset Count is defined in the following way

- Assets managed as “Unique Asset” are counted individually.
- Assets managed as “Commodity” or “Consumable” are counted by the number of different types, such that if ScanCode OR Alternate Code OR Manufacturer OR Model OR Description is different, then those will be considered different types.
- Assets with status “Retired” are not counted.

Whether Assets are managed as “Unique Asset”, “Commodity” or “Consumable” is determined by the Customer.

See table below for an illustrative example of how the Asset Count is calculated:

Managed as	Group	Details				Qty	Asset Count
		Manufacturer	Description	Model / Item #	S/N		
Unique Asset	Power tool	Hilti	Combiammer	TE 40-AVR	1245387	1	1
Unique Asset	Power tool	Hilti	Combiammer	TE 40-AVR	1435313	1	1
Unique Asset	Power tool	Bosch	Cordless impact driver 18V	IDH182-01L	1243138	1	1
Unique Asset	Stationary	Atlas Copco	Compressor	XAS 750 JD7	432142	1	1
Commodity	Hand tool	Estwing	Hammer 20oz/560g head	E3-20SM		12	1
Commodity	Drill bit	DeWalt	Masonry L=85mm D=5mm	DT6505		171	1
Commodity	Drill bit	DeWalt	Masonry L=75mm D=4mm	DT6504		60	1
Commodity	Digging tool		Big shovel			19	1
Commodity	Digging tool		Small shovel			13	1
Commodity	Scaffolding	PERI	L=1,00m D=48,3mm	026411		16	1
Commodity	Scaffolding	PERI	L=2,00m D=48,3mm	026412		24	1
Commodity	Formwork	DOKA	Xlife KS 3,30m	580346500		27	1
Consumable	Anchor	Hilti	Screw anchor	KWIK HUS-EZ		123	1
Consumable	Anchor	Hilti	Expansion anchor	Kwik Bolt TZ SS 316		88	1
Consumable	Paint	Rust-Oleum	Aluminum primer	8781402		18	1
<b>Total Asset Count</b>							<b>15</b>

The Service Provider will conduct monthly reviews of the Asset Count. Based on the result of such review, the Customer will stay in the same Asset Bucket or move to a lower or higher Asset Bucket. The Service Provider will notify the Customer about any Asset Bucket adjustment. Corresponding adjustments to the Subscription Plan and Fees will not apply with retroactive effect and will become effective with the first invoice sent after a period of 30 days following the Customer notification of an Asset Bucket adjustment.

**1.4 Authorized Users**

The Subscription Plan includes an unlimited number of Authorized Users.

**2 Fees**

The monthly service fees of the Subscription Plans are shown in the table below or as will be communicated to the Customer periodically.

<b>Release</b>	<b>Version 1.0</b>						
<b>Date</b>	<b>2016.10.17</b>						
<b>Modules</b>	<b>Asset Count - Asset Buckets</b>						
	<i>Up to 250</i>	<i>Up to 500</i>	<i>Up to 1,000</i>	<i>Up to 2,500</i>	<i>Up to 5,000</i>	<i>Up to 10,000</i>	<i>&gt;10,000</i>
<i>Base module (incl. VAT)</i>	R1,881/month	R3,306/ month	R5,928/month	R9,804/ month	R17,100/month	R28,500/month	R39,900/month

**3 Upgrades of the Services**

The Service Provider may offer Upgrades to the Software. Such Upgrades include the introduction of new functionality. Upgrades will be offered as a separate service module under a separate Subscription Plan and are subject to this Agreement if separately ordered and paid for by Customer. The Customer is not required to Upgrade the Services.

**EXHIBIT 5****Data Protection and Privacy**

This data processing agreement (“DPA”) is entered into by and between the Customer (“Data Exporter”) and the data importers as specified in Appendix 1 (each a “Data Importer”).

**Clause 1****Definitions**

For the purposes of the Clauses:

- (a) “personal data”, “special categories of data”, “process/processing”, “controller”, “processor”, “data subject” and “supervisory authority” shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) “the data exporter” means the controller who transfers the personal data;
- (c) “the data importer” means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country’s system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) “the sub-processor” means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) “the applicable data protection law” means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) “technical and organisational security measures” means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

**Clause 2****Details of the transfer**

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

**Clause 3****Third-party beneficiary clause**

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

**Clause 4****Obligations of the data exporter**

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter’s behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;



- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

#### **Clause 5**

##### **Obligations of the data importer**

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
  - (ii) any accidental or unauthorised access, and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

#### **Clause 6**

##### **Liability**

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

**Clause 7****Mediation and jurisdiction**

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
  - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
  - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

**Clause 8****Cooperation with supervisory authorities**

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

**Clause 9****Governing Law**

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

**Clause 10****Variation of the contract**

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

**Clause 11****Subprocessing**

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.
2. The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

**Clause 12****Obligation after the termination of personal data processing services**

1. The parties agree that on the termination of the provision of data processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

**APPENDIX 1 of EXHIBIT 5**

Data Exporter: The Data Exporter is the Customer receiving Services under the Agreement.			
<b>1.</b> Data Importer 1 is: <b>Hilti (South Africa) Proprietary Limited</b> , (registration number: <b>1990/002547/07</b> ), a legal entity registered under the South African laws and regulations, and having its business address at Hilti Building, 2 Tugela Lane, Waterfall Logistics Precinct, Corner of Briveil Road and R101 Jukskei View, Johannesburg, 2090, South Africa.			
The personal data transferred			
concern the following categories of data subjects:	concern the following categories of data:	concern the following special categories of data	will be subject to the following basic processing activities
Data Exporter • Data Exporters' employees and former employees Other by the Data Exporters' authorized employees and former employees of third parties	<p>A. General customer information:</p> <ul style="list-style-type: none"> <li>• Customer logo</li> <li>• Customer name</li> <li>• Customer address</li> <li>• Address of warehouses, jobsites and vehicles and associated manager</li> </ul> <p>B. General employee information:</p> <ul style="list-style-type: none"> <li>• Last name, first name</li> <li>• Picture (only if the employee consents to share it with the Data Exporter)</li> </ul> <p>C. Data Exporter's customers internal employee information:</p> <ul style="list-style-type: none"> <li>• Internal username in the application</li> <li>• Email address</li> <li>• Business address / contact information (Street, City, State or Province, Country, Zip code, Phone numbers)</li> <li>• Internal employee ID number</li> <li>• Designation/function</li> <li>• Employee type (permanent, outsources, temporary)</li> <li>• Employee certifications (relating to the right to use different types of assets)</li> <li>• Application access, permissions and user roles to the application</li> </ul> <p>D. Asset transfer history</p> <ul style="list-style-type: none"> <li>• Transfer date</li> <li>• Transfer type</li> <li>• Transfer from employee A to employee B (including GPS information of transfer location)</li> <li>• History of all transfers per employee</li> </ul>	None	Providing support services to the Data Exporter
<b>2.</b> Data Importer 2 is: <b>Hilti Aktiengesellschaft</b> , Feldkircherstrasse 100, 9494 Schaan, Liechtenstein			
The personal data transferred			
concern the following categories of data subjects:	concern the following categories of data:	concern the following special categories of data	will be subject to the following basic processing activities
- Data Exporter • Data Exporters' employees and former employees Other by the Data Exporters'	<p>A. General customer information:</p> <ul style="list-style-type: none"> <li>• Customer logo</li> <li>• Customer name</li> <li>• Customer address</li> <li>• Address of warehouses, jobsites and vehicles and associated manager</li> </ul> <p>B. General employee information:</p> <ul style="list-style-type: none"> <li>- Last name, first name</li> </ul>	None.	<ul style="list-style-type: none"> <li>• Administration and maintenance of server, storage, backup and network components needed for the ON!Track environment</li> <li>• Administration and maintenance of email server</li> <li>• Providing support services to the Data Exporter</li> <li>• Administration and maintenance of ON!Track application</li> <li>• Technical integration of the ON!Track application with Data</li> </ul>

<p>authorized employees and former employees of 3rd parties</p>	<ul style="list-style-type: none"> <li>Picture (only if the employee consents to share it with the Data Exporter)</li> </ul> <p>C. Data Exporter’s customers internal employee information:</p> <ul style="list-style-type: none"> <li>Internal username in the application</li> <li>Email address</li> <li>Business address / contact information (Street, City, State or Province, Country, Zip code, Phone numbers)</li> <li>Internal employee ID number</li> <li>Designation/function</li> <li>Employee type (permanent, outsources, temporary)</li> <li>Employee certifications (relating to the right to use different types of Assets)</li> <li>Application access, permissions and user roles to the application</li> </ul> <p>D. Asset transfer history</p> <ul style="list-style-type: none"> <li>Transfer date</li> <li>Transfer type</li> <li>Transfer from employee A to employee B (including GPS information of transfer location)</li> <li>History of all transfers per employee</li> </ul>		<p>Importers system environment</p> <ul style="list-style-type: none"> <li>Transfer of all Personal Data in the category A from the customer that subscribes to the ON!Track application from the Hilti global SAP system through standard interfaces to the ON!Track application and vice versa</li> <li>Transfer of all Personal Data in the categories B and C of employees that the customer request to be an administrator of the solution from the Hilti global SAP systems through standard interfaces to the ON!Track application and vice versa</li> <li>Transfer of all Personal Data of category A, B, C and D from the ON!Track application through standard interfaces to the Hilti global SAP systems</li> <li>Calculation of transfer history, current Asset location, Asset assignment, and Asset status on request of the Data Exporter’s customer through the means of standard functionality of the ON!Track application</li> <li>Hosting and administration of the ON!Track application</li> </ul>
<p>3. Data Importer 3 is: Hilti Asia IT Services SdnBhd  Level 5, Brunsfield Oasis Tower 3   No.2 JalanPJU 1A/7A   Oasis Square   47301 PetalingJaya   Malaysia</p>			
<p>The personal data transferred</p>			
<p>concern the following categories of data subjects:</p>	<p>concern the following categories of data:</p>	<p>concern the following special categories of data</p>	<p>will be subject to the following basic processing activities</p>
<p>• Data Exporter • Data Exporters’ employees and former employees Other from the Data Exporters’ authorized employees and former employees of 3rd parties</p>	<p>A. General customer information:</p> <ul style="list-style-type: none"> <li>Customer logo</li> <li>Customer name</li> <li>Customer address</li> <li>Address of warehouses, jobsites and vehicles and associated manager</li> </ul> <p>B. General employee information:</p> <ul style="list-style-type: none"> <li>Last name, first name</li> <li>Picture (only if the employee consents to share it with the Data Exporter)</li> </ul> <p>C. Data Exporter’s customers internal employee information:</p> <ul style="list-style-type: none"> <li>Internal username in the application</li> <li>Email address</li> <li>Business address / contact information (Street, City, State or Province, Country, Zip code, Phone numbers)</li> <li>Internal employee ID number</li> <li>Designation/function</li> <li>Employee type (permanent, outsources, temporary)</li> <li>Employee certifications (relating to the right to use different types of assets)</li> <li>Application access, permissions and user roles to the application</li> </ul> <p>D. Asset transfer history</p> <ul style="list-style-type: none"> <li>Transfer date</li> <li>Transfer type</li> </ul>	<p>None</p>	<ul style="list-style-type: none"> <li>Technical integration of the ON!Track application with Data Importers system environment</li> <li>Administration and maintenance of server, storage, backup and network components needed for the ON!Track environment</li> <li>Administration and maintenance of the ON!Track application</li> <li>Providing support services to the Data Exporter</li> <li>Providing support services to Data Importer 2 for the ON!Track application</li> <li>Transfer of all Personal Data in the category A from the customer that subscribes to the ON!Track application from the Hilti global SAP system through standard interfaces to the ON!Track application and vice versa</li> <li>Transfer of all Personal Data in the categories B and C of employees that the customer request to be an administrator of the solution from the Hilti global SAP systems through standard interfaces to the ON!Track application and vice versa</li> <li>Transfer of all Personal Data of category A, B, C and D from the ON!Track application through standard interfaces to the Hilti global SAP systems</li> <li>Calculation of transfer history, current asset location, asset assignment, and asset status on request of the Data Exporter’s customer through the means of standard functionality of the</li> </ul>

		<ul style="list-style-type: none"><li>• Transfer from employee A to employee B (including GPS information of transfer location)</li><li>• History of all transfers per employee</li></ul>		ON!Track application
--	--	---	--	----------------------

**APPENDIX 2 of EXHIBIT 5**  
**TECHNICAL AND ORGANIZATIONAL DATA PROTECTION MEASURES**

Description of the technical and organizational security measures implemented by the Data Importer in accordance with Clauses 4(d) and 5(c):

**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.
  - To detect security or data integrity related threats, to investigate violation of privacy issues or other malicious attacks Data Importer may use enhanced monitoring and surveillance techniques to detect any misuse or threatening behavior without disclosing this beforehand.

**Availability Control**

- Data Importer implements suitable measures taken to ensure that Personal Data are protected against accidental destruction or loss, in particular:
  - General measures
    - Availability is managed and designed in line with the agreed service availability figures.
    - The configuration of internal IT systems is subject to standard change control procedures.
    - Data Importer is using a variety of standard methods to protect against loss of data due to power supply failure or general environmental hazards.
    - To reduce unscheduled downtimes proactive maintenance is done in accordance with the service level agreement.
    - Data Importer's software services include features that facilitate recovery of Personal Data by enhanced fault tolerance.
  - Quality assurance and change control
    - The development of Data Importer's customer Software applications is subject to quality assurance and controlled release management. Acceptance testing is performed prior to any release.
    - All changes to Data Importer's customer Software applications and production systems are subject to rigorous change control.
  - Backup and recovery
    - A formal policy for the data backup and the recovery is in place. Personal Data is regularly backed up.
    - These technical backups are implemented and executed based on a predefined policy to allow recovering data and application in case of a technical failure or human errors of technical staff.
    - These backups are taken based on a defined service definition (backup frequency and retention) and will be used to get the backup restored to the primary location in case of loss of the primary data and without preserving the state of a virtual machine.



**APPENDIX 3 of EXHIBIT 5****Additional Provisions:**

**1. Definitions.** Terms used in this DPA shall have the meaning indicated below (also in the body document of this DPA, where defined terms are not capitalized). Other terms that are capitalized but not defined below, shall have the meaning as defined in Exhibit 1 of the Agreement.

"**Clauses**" shall mean all provisions of this DPA, unless provided otherwise in the relevant context;

"**Data Exporter**" shall mean the Data Exporter regardless of its location, whether within or outside the EU/EEA;

"**Data Importer**" shall mean the Data Importer regardless of its location, whether within or outside the EU/EEA;

"**Member State**" shall mean any country, within or outside the EU/EEA; and

"**Service**" or "**Services**" shall mean the processing services rendered by Data Importer, as described in Appendix 1 (also if used with additions or in variations, for instance "processing services").

**2. General provisions**

**2.1 Order of precedence.** If and to the extent there should be contradictions or inconsistencies between this Appendix 3 and the remainder of the DPA, this Appendix 3 shall prevail, unless the Data Exporter is located in the EU/EEA and the Data Importer is located outside the EU/EEA, in which case the provisions of the remainder of the DPA shall prevail. For the avoidance of doubt, even in this case, provisions of Appendix 3 that merely go beyond the remainder of the DPA without contradicting the DPA's terms shall remain valid.

**2.2 Non-applicability of certain Clauses for EU/EEA Data Importers.** Clauses 3, 4 (i), 5 (i), 6, 7, 11 (2) and (3) of the DPA shall not apply, unless the Data Importer (i) is located outside the EU/EEA or (ii) commissions a subprocessor located outside the EU/EEA.

**2.3 Fulfillment of obligations of Data Importers under Clause 5(j).** Data Exporter herewith instructs Data Importers to send any information in connection with the fulfillment of Data Importers' obligations under Clause 5j) exclusively to Data Importer 1.

**2.4 Bundling of Data Importers for efficiency purposes.** The parties agree that the bundling of the Data Importers as processors within this single DPA is only undertaken for efficiency purposes (i.e., to avoid a multitude of different contract documents) and (i) shall result in legally separate DPAs between the respective Data Exporter and the Data Importer and (ii) shall not create any legal or other relationship whatsoever between the "bundled" Data Exporters.

**2.5 Term.** 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.

**3. Local Law Amendments**

The parties agree to the amendments set out below, which are required for full compliance with mandatory requirements regarding the commissioning of processors under the national laws applicable to the Data Exporter.

**3.1 Technical and Organizational Security Measures.** The Subprocessor shall take adequate Technical and Organizational Security Measures in accordance with this Subprocessing Agreement (see Appendix 2 to the Subprocessing Agreement). If the Subprocessor is located inside the EU/EEA in derogation of Clause 9 of the Subprocessing Agreement, its Technical and Organizational Security Measures shall be governed by the laws of the country in which the Subprocessor has its business seat.

**3.2 Rectification, deletion, access and blocking of data.** The Subprocessor shall rectify, allow access to, delete and/or block Personal Data if and how so instructed by the Data Importer and/or the Data Exporter.

**3.3 Self-monitoring by the Subprocessor.** The Subprocessor shall monitor, by appropriate means, its own compliance with its data protection obligations in connection with the Services and shall provide the Data Importer with periodic (at least annual) and occasion-based reports regarding such controls.

**3.4 Monitoring by the Data Exporter and/or Data Importer.** The Data Exporter and/or Data Importer shall have the right to control, by appropriate means, the Subprocessor's compliance with its data protection obligations (in particular as regards the technical and organizational measures) annually and occasion-based (e.g. by demanding information or audit reports regarding the Subprocessor's data processing systems), such controls being limited to information and data processing systems that are relevant to the Services. For such purposes, the Data Importer and/or Data Exporter shall also have the right to carry out on-site audits during regular business hours, without disrupting the Subprocessor's business operations and in accordance with the Subprocessor's security policies, and after a reasonable prior notice. The Subprocessor shall tolerate such audits and shall render all necessary support. The Subprocessor shall provide the Data Importer and/or the Data Exporter with information necessary for the Data Importer and/or the Data Exporter to comply with applicable data privacy and security requirements (e.g. with mandatory information on the Subprocessor's system administrators).

**3.5 Notification obligation for the Subprocessor.** The Subprocessor will notify the Data Exporter without undue delay of (i) any non-compliance with the provisions dealing with the protection of personal data by the Subprocessor or its employees, and (ii) any non-compliance with the provisions of this Subprocessing Agreement. Furthermore, the Subprocessor shall notify the Data Exporter and/or the Data Importer issuing the respective instructions, without undue delay, if it holds that an instruction of the Data Exporter violates applicable laws. Upon providing such notification, the Subprocessor shall not be obliged to follow the instruction, unless and until the Data Exporter and/or Data Importer (as the case may be) has confirmed or changed it. The Subprocessor shall notify the Data Importer of Data Subjects' complaints and requests (e.g., regarding the enforcement of privacy rights, the rectification, deletion and blocking of data or other requests) and orders by courts and competent regulators and any other exposures or threats in relation to data protection compliance identified by the Subprocessor.

**3.6 Right to instruction.** The Data Exporter and/or Data Importer is entitled and obliged to instruct the Subprocessor in connection with the Services, generally or in the individual case, regarding the collection, processing and use of the data. Instructions may also relate to the correction, deletion or blocking of data. Instructions shall generally be given in writing, unless the urgency or other specific circumstances require another (e.g., oral, electronic) form. Instructions in another form than in writing shall be confirmed by Data Exporter and/or Data Importer (as the case may be) in writing, if Subprocessor so requests.

**3.7 Return and further use of data after end of contract.** Unless otherwise instructed by the Data Importer, the Subprocessor shall return to the Data Exporter, without undue delay, all data carriers received from the Data Exporter and all data obtained or generated in connection with the Services, and shall refrain from any further processing and use of such data, to the extent this is possible without infringing the Subprocessor's own statutory obligations. At the Data Importer's request, the Subprocessor shall provide the Data Importer without undue delay with a written statement confirming it has acted as per the above.

**3.8 Data secrecy.** The Subprocessor shall be obliged to commit staff entrusted with the processing of personal data hereunder in written form to keeping any personal data strictly confidential and not to use such personal data for any other purposes except for the provision of Services to the Data Importer. The Subprocessor will further instruct its staff regarding the applicable statutory provisions on data protection. It is also agreed that after termination of this Subprocessing Agreement, the Subprocessor's duties of confidentiality and the prohibition of communicating or disclosing any data obtained or generated in connection with the Services without written and express authorization of the Data Importer or the Data Exporter shall continue to apply.

**3.9 Collaboration:** The Subprocessor shall do whatever reasonable to allow the Data Importer or the Data Exporter to comply with applicable data privacy and security requirements.

**EXHIBIT 6****Professional Services Agreement**

Capitalised terms not defined in this Professional Services Agreement are defined in the Subscription Agreement.

**1. Subject Matter**

**1.1 Ordering of Professional Services.** The Customer may order the Professional Services described in Appendix 1 to this Professional Services Agreement from the Service Provider.

**1.2 Scope.** The full scope of the Professional Services will be agreed between Service Provider and Customer in a work order (“**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. The 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 this Professional Services Agreement.

**1.3 Qualification of Professional Services.** Unless otherwise agreed between the Parties in writing, Professional Services shall qualify as services and not contracts for work and labour

**2. Customer obligations**

**2.1 Co-operation Duties.** 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’ 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’ 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, the Service Provider and the Customer will agree on the specifics in the relevant Work Order. The 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.

**2.2 Failure to co-operate.** 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.

**3. Personnel**

Customer shall advise of all rules, regulations and practices with which Service Provider’ employees must comply while on Customer’s premises. Service Provider shall comply with such rules and regulations whenever they are on such premises. Customer shall take reasonable precautions or shall procure that reasonable steps are taken to ensure the health and safety of Service Provider’ staff, employees, agents and sub-contractors while they are on such premises.

**4. Term & Termination**

Any orders for Professional Services accepted hereunder will remain in effect for the term which is specified in the relevant Work Order or – if no such time is specified – until completion of the relevant Professional Services.

**5. Remuneration and Terms of Payment**

**5.1 Fees.** The Customer will pay the Service Provider the agreed upon fees stipulated in the relevant Work Order. Except as otherwise provided herein or in an Work Order, all fees are quoted and payable in ZAR.

**5.2 Invoices.** Unless otherwise indicated in the Work Order, all invoices are payable within fourteen (14) days of receipt of the invoice. Upon request the Service Provider will provide any information, documents and records to Customer required for Customer to verify the correctness of any invoices.

**5.3 Default Payments.** Upon the Customer’s default of payment of the Fees, the Customer shall pay default interest on the outstanding amount at the maximum rate prescribed by the National Credit Act 34 of 2005. This shall not affect the right of the Service Provider to claim any higher default damages under applicable law. Without prejudice to any other right which it may have in terms of law or this Agreement, in the event that the Customer fails to make payment of the Fees or any other amounts on the due date therefor, the Service Provider may, at its election, suspend (i) the provision of the Services under this Agreement; and/or (ii) any or all of its obligations in terms of this Agreement, until payment has been made in full.

**5.4 Taxes.** Except as may be provided on a Work Order, Service Provider’s fees 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.

**APPENDIX 1 to EXHIBIT 6 to the Professional Services Agreement  
to the Professional Services Agreement**

**Depending on availability, the Customer may order the following Professional Services from the Service Provider:**

**On-Site Analysis**

The On-Site Analysis Services are conducted by the Service Provider at the Customer premises. They may include the following activities:

- Assessment of Customer status quo with respect to the tracking and management of construction Assets
- Identification of improvement levers with respect to the tracking and management of construction Assets
- Quantification of savings potential by implementing corresponding service module(s) from the Service Provider
- Definition of implementation plan Hilti ON!Track

**On-Site Setup**

The On-Site Setup Services are conducted by the Service Provider at the Customer premises. They may include the following activities

- Definition of data structure, e.g. for Asset categories and locations
- Definition of user roles
- Data export/import/entry support
- Process recommendations
- Recommendation on how to tag different types of Assets

**Off-Site Setup**

The Off-Site Setup Services are conducted by the Service Provider outside the Customer premises. They may include the following activities

- Definition of data structure, e.g. for Asset categories and locations
- Definition of user roles
- Data export/import/entry support

**On-Site Training**

The On-Site Training Services are conducted by the Service Provider at the Customer premises. They may include the following activities

- Introduction to the system and key definitions
- Training on how to set up and use the web-based application
- Training on how to set up and use the smartphone and RFID scanner application
- Training on how to use the Hardware if purchased from Service Provider

**Online Training**

The Online Training Services are conducted by the Service Provider via internet. They may include the following activities

- Introduction to the system and key definitions
- Training on how to set up and use the web-based application
- Training on how to set up and use the smartphone and RFID scanner application

**Asset Tagging**

The Asset Tagging Services are conducted by the Service Provider or a subcontractor of the Service Provider and are conducted at the Customer premises. They may include the following activities

- Attachment of tags to customer Assets

**Asset Registration**

The Asset Registration Services are conducted by the Service Provider or a subcontractor of the Service Provider and are conducted at the Customer premises. They may include the following activities

- Adding of Assets to the ON!Track software