Hilti Software Purchase and Subscription Agreement

Applicable for **Hilti Construction Layout**, **PROFIS Detection**, **PSA 200**, **PROFIS Layout Office**, **PROFIS AutoCAD Field Point** and **PROFIS Revit Field Point** ("**Software**"), where **Section B** shall apply.

Applicable for **PROFIS Detection**, **PROFIS Layout Office**, **PROFIS Field Points for AutoCAD** and **PROFIS Field Points for Revit** ("**Software**"), where **Section C** shall apply.

For the purchase of Software in the form of a purchase, the provisions of **Section A (General Terms of the Agreement)** together with the provisions of **Section B (Purchase Agreement Terms)** form the 'Purchase Agreement' on which the Order is based, and, to the extent that Software is purchased in the form of a subscription, the provisions of **Section A (General Terms of the Agreement)** and the provisions of **Section C (Subscription Agreement Terms)** form the "Subscription Agreement" on which the Order is based, whereby a distinction is made between paid and unpaid subscription contracts. The Purchase Agreement and Subscription Agreement are hereinafter also referred to as "**Agreement**".

Section A: General Terms of the Agreement

1. Conclusion of the Agreement.

The respective Agreement for the Software will be concluded **Hilti (Hong Kong) Ltd**., Room 701-704A & 708B, 7/F, Tower A, Manulife Financial Centre, 223 Wai Yip Street, Kwun Tong, Kowloon, Hong Kong, as the Software provider ("**Software Provider**" or "**Hilti**") and you as the Software user ("**Customer**") (i) by electronic acceptance by Customer, or (ii) by written or electronic (e.g. DocuSign) signature. To the extent that no ordering process has been carried out beforehand, it is deemed concluded with knowledge of the Agreement terms in the course of the Software installation (each referred to as an "**Order"**) and comes into force at this time (each referred to as "**Effective Date**").

2. Use of the Software by Customer.

2.1. Software Description. The Software description and the Software properties are available to Customer on Software Provider's website. Software Provider reserves the right to change the Software and its functionalities from time to time. If this is the case, the Software description will also be promptly adapted to account for the changes.

2.2. System Requirements. The operation or use of the Software by Customer may require certain system requirements to be met. These are stated on Software Provider's website and are updated from time to time. Customer alone is responsible for ensuring that these system requirements are met. According to this Agreement, the provision of the system requirements is not one of Software Provider's obligations.

2.3. Customer Obligations. Customer is responsible for the use of the Software by itself and the users authorised by them pursuant to the provisions of this Agreement, as well as for compliance with the Agreement. Customer must make reasonable efforts to prevent unauthorised access to or use of the Software by third parties. They must also inform Software Provider promptly of any such unauthorised access or use. Customer declares that its use of the Software does not conflict with the laws and regulations it has to observe. Customer acknowledges that it has an independent obligation to comply with all applicable laws.

2.4. Indemnification. Customer is obligated to indemnify Software Provider when first asked to do so against any claim by third parties and/or fines and the costs of the legal defence required for such, which are based on the following: (i) the non-contractual use of the Software by Customer; (ii) a breach of applicable data protection regulations by Customer; (iii) the (alleged) breach of third party intellectual property rights by content uploaded by Customer into the Software or used in connection with it. Software Provider is to cooperate appropriately in the defence against such a claim if Customer asks for this. Customer is obliged to compensate Software Provider for any expenses it incurs in this regard. If Software Provider requests, Customer has sole authority to defend itself against or settle the claim or the fine, provided that such a settlement does not include any payment by Software Provider or admission of misconduct on Software Provider's part.

3. Terms of Payment and Taxes.

3.1. Invoices. Unless otherwise agreed, invoices are due for payment fourteen (14) days after issuance of the invoice.

3.2. Default of Payment. If Customer defaults on its payment, it shall pay default interest in the amount of the lower of the following amounts in addition to the outstanding amount: one (1) percentage point per month of the outstanding amount; or the highest amount permitted by law. Software Provider is entitled to make other claims without prejudice to this.

3.3. Taxes. Customer is responsible for paying all sales, use and value added taxes in connection with its use of the Software under this Agreement, but not for paying taxes in connection with Software Provider's gross income, net income and property. If Software Provider is obliged to pay or collect taxes for which Customer is responsible within the meaning of this clause, Software Provider shall invoice Customer for the corresponding amount, unless Customer provides Software Provider with a valid tax exemption certificate from the responsible tax authority.

4. Proprietary Rights.

4.1. © Hilti Aktiengesellschaft. Hilti Aktiengesellschaft, Feldkircherstrasse 100, 9494 Schaan, Liechtenstein ("**Hilti Aktiengesellschaft**"), exclusively and unrestrictedly owns the Software, and reserves all rights, legal claims and entitlements as well as all rights to the Intellectual Property of the Software (including Updates and Upgrades), unless expressly determined otherwise in this Agreement. Hilti Aktiengesellschaft has authorised Software Provider to grant Customer rights to the Software (including Updates and Upgrades) pursuant to the terms of this Agreement.

4.2. Intellectual Property. "**Intellectual Property**" refers to all commercial property rights as well as intellectual property rights in relation to the Software, including copyrights, trademark rights, trade secrets, patents, know-how and other property rights, which must be observed or enforced within the scope of applicable laws in any jurisdiction worldwide and all moral rights.

4.3. Scope and Rights of Use. The type and scope of the rights of use of the Software granted for Customer is regulated, depending on the type of Software acquisition, in Section B (clause 2) or in Section C (clause 2.1).

4.4. Reservation of Rights. Subject to the limited rights expressly granted in this Agreement, no rights are granted to Customer other than as expressly set out herein. Customer retains all rights to its data.

4.5. Prohibited Activities. Customer is only entitled to use the Software for its own internal business purposes. Unless expressly permitted by law, Customer is not entitled in particular to (i) change or copy the Software, or create derivative works based thereon; (ii) reverse engineer or decompile the Software or parts thereof; (iii) access the Software with the intention of using it to develop a commercial product or corresponding Software of any kind; (iv) copy properties, functions, interfaces or graphics of the Software or parts thereof; or (v) use the Software in a manner that exceeds the scope of use permitted under this Agreement.

4.6. Input from Customer. Without prejudice to that stipulated in clause 4.4 Section A, Customer grants Hilti Aktiengesellschaft a free, worldwide, exclusive, transferable, sub-licensable, irrevocable and perpetually unlimited license for use of data recorded or derived in connection with the use of the Software in whatever form as well as any Customer input, in order to improve the Software. Hilti Aktiengesellschaft and/or Software Provider are under no obligation to implement Customer input in the Software in the form of Updates, Upgrades or in any other form.

5. Documentation.

5.1. Documentation. Software Provider may make user manuals and/or the Software description available to Customer within the Software, but is not obliged to do so. Software Provider shall endeavour to update these documents within a reasonable period of time if a change to the Software requires this.

6. Confidentiality.

6.1. Confidentiality. Neither of the contracting parties is entitled to pass on or use the other party's Confidential Information for purposes that are not the subject of this Agreement, unless the other party has previously agreed to do so in writing or such an action is required by law or permitted within the framework of this Agreement.

6.2. Confidential Information. This refers to (a) the Software in any form; (b) the contracting parties' business or technical information, including, but not limited to, any and all information relating to Software plans, designs, costs, prices and names as well as finance, marketing plans, business opportunities, personnel, research, development and know-how as well as personal data ("**Confidential Information**"). The term Confidential Information does not include information that: (i) is or becomes generally known without a breach of Agreement by either party; (ii) was known to a party prior to disclosure by the other party without a breach of Agreement by either party; (iii) was independently developed by either party without a breach of Agreement by either party; or (iv) a party receives from third parties without a breach of Agreement by either party. Each of the contracting parties undertakes to protect the other party's Confidential Information to the same extent as it protects its own Confidential Information of a comparable nature (but in no event using less than a reasonable degree of care and reasonable technology industry standards).

6.3. Compelled Disclosure. If a contracting party is legally compelled to disclose the other party's Confidential Information, it shall promptly inform the other party of this fact beforehand, 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.

6.4. Remedies. If one of the contracting parties, in breach of confidentiality provisions within the meaning of this Agreement, discloses or uses the other party's Confidential Information (or threatens to disclose or use it), the other party shall have the right to injunctive relief to stop such acts, without prejudice to any other available legal remedies, whereby the parties hereby acknowledge that any other available remedies are inadequate.

7. Provision of the Software.

7.1. Provision. In addition to Software that is supplied to Customer as part of the Hilti device ordered by Customer, Software Provider makes the Software available to Customer for download via its website and/or AppStore. In addition, Software Provider has no obligation to deliver, and in particular Software Provider does not install the Software at Customer's premises and does not provide Customer with the Software's source code. In any case, all implementation tasks for technically preparing the Software for operational use (i.e. setting up the Software to meet technical system requirements and technical parameterisation of the Software) are carried out exclusively by Customer.

8. Business customers.

8.1. B2B use. The Software is only intended for internal use by business customers. Use by private end users is not permitted.

9. Application Notes and usage restrictions.

9.1. Application Notes. Customer is obliged to comply with the restrictions relating to use and function as well as all underlying rules, standards, specifications, guidelines, legal and industry codes that are brought to its attention when using the Software, as well as the assumptions specified or carried out therein (hereinafter individually and collectively referred to as "**Application Notes**") to the greatest possible extent and to take these into account when using the Software. Software Provider is not liable for damage resulting from Customer's use of the Software which does not comply with the Application Notes.

9.2. IMPORTANT NOTE. Any and all information and data contained in the Software exclusively relates to the use of Hilti products and are based on the principles, formulae and safety regulations pursuant to Hilti's technical guidelines, the instructions for operation and assembly as well as the assembly instructions etc., which shall be strictly observed. Hilti's product portfolio, which is to be used in conjunction with the Software,

varies from country to country. All numbers contained in the Software are average values. Therefore, application-specific tests must be carried out before using the corresponding Hilti product. The results of the calculations made using the Software are essentially based on the data recorded by Customer. Therefore, Customer is solely responsible for the accuracy, completeness and relevance of the data it enters. Furthermore, Customer bears sole responsibility for the results being checked and approved by a specialist, in particular with regard to compliance with the applicable standards and approvals, before it uses them for its specific system/facility. The Software only serves as an aid to interpreting standards and approvals, without any warranty or guarantee as to the absence of Defects, accuracy and relevance of the results or suitability for a specific application. Customer must take all necessary and reasonable measures to prevent or limit damage caused by the Software. All results of calculations and design drafts are recommendations and must be confirmed by a professional designer and/or structural engineer to ensure that the results of calculations and drafts are appropriate and reasonable for Customer's specific legal and project requirements.

10. Data protection.

10.1. **Data Protection.** Software Provider and Customer hereby undertake strictly to comply with the applicable data protection and privacy laws. Customer undertakes to notify Software Provider promptly in writing of any data protection violations.

11. Audits

11.1. **Right to conduct Audits.** In order to check whether Customer complies with the provisions of this Agreement, Software Provider or a third party appointed by Software Provider is entitled to check the use of the Software by Customer by remote access or on site within Customer's business hours and without observing a period of notice. Any remote access shall be performed in accordance with the Agreement as well as applicable data protection laws and legislation. By allowing the Service Provider to use remote assistance tools, Customer consents to granting Service Provider remote access to Customer's data and temporary access to and control over the relevant computer and/or device. Before granting remote access to Service Provider, Customer shall take adequate measures to make sure that any confidential information of Customer not relevant for the support request is not exchanged via the remote session. Without Customer's consent data not related to the audit is not stored or processed in any form by Service Provider.

11.2. **Audit Costs.** Customer shall reimburse Software Provider for its reasonable costs for carrying out the audit if a violation of this Agreement is found in the course of an audit.

12. Further provisions.

12.1. **Relationship between the Contracting Parties.** The contracting parties are independent of each other. This Agreement does not establish any partnership, franchise relationship, joint venture, agency or trust relationship, or any employment relationship between the contracting parties, nor is it concluded with the corresponding intention.

12.2. **Notices.** All notices within the framework of this Agreement must be sent at least in textual form (in writing, by fax or e-mail), unless provisions of this Agreement expressly stipulate a different form. Software Provider and Customers are to send such notices by e-mail to the address(es) and contact person(s) specified by both sides when registering Customer account with Software Provider or, if applicable, to other address(es) exchanged among the parties for this purpose. The preceding sentence applies accordingly in the event that the notices are given in writing. Furthermore, Software Provider is entitled to send notices to Customer directly via the Software.

12.3. **Waiver and Cumulative Remedies.** No failure or delay by either of the contracting parties in exercising any right under this Agreement shall constitute a waiver of that right. Other than expressly stipulated in this Agreement, the legal remedies contained in this Agreement are in addition to, and not exclusive of, any other remedies of a Party.

12.4. **Subcontractors.** Software Provider may commission subcontractors to provide the Software.

12.5. **Assignment of Rights or Obligations.** Neither of the contracting parties is entitled to assign any rights or obligations arising from this Agreement, whether in application of legal provisions or in any other way, to third parties without the prior written consent of the other party (which consent shall not be reasonably withheld).

12.6. **Subject Matter of the Agreement.** This Agreement, together with the respective Order, is the only agreement between the parties in relation to the subject matter of the Agreement. With the exception of the provisions set out in this Agreement, there are no other contractual agreements, arrangements, warranties, commitments, assurances, obligations or projects. This Agreement replaces all previous contractual agreements, offers or declarations, whether made in writing or orally. Irrespective of any wording to the contrary in an Order, in the event of contradictions between the provisions of an Order and the provisions of this Agreement, the latter shall take precedence.

12.7. **Severability Clause.** If any provision of this Agreement is held to be invalid, illegal or unenforceable, this shall not affect any other term of this Agreement. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this agreement to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby may be consummated as originally contemplated to the greatest extent possible. As far as this agreement contains gaps, the applicable legal provisions shall be deemed agreed to fill these gaps which the contracting parties would have agreed to in accordance with the economic objectives of the Agreement and its purpose if they had been aware of the gap.

12.8. **Applicable Law.** This Agreement shall be governed exclusively by the laws of Hong Kong.

12.9. Place of Jurisdiction. The exclusive place of jurisdiction for disputes in connection with this Agreement is the competent court for Software Provider's registered office. However, Software Provider has the right to take action in a court that has jurisdiction over Customer's place of business. All parties hereby recognise the jurisdiction of these courts and waive any objections to the place of jurisdiction.

12.10. Force Majeure. Neither party shall be liable for delay or failure in the performance of any of its obligations under this Agreement (other than the payment of money) to the extent such delay or failure is due to causes beyond its reasonable control, including acts of God, fires, floods, pandemics, earthquakes, labor strikes, acts of war, terrorism or civil unrest "**Force Majeure**". Each contracting party shall, if possible, promptly notify the other in writing if it is or will be affected by a Force Majeure event. If a Force Majeure event persists for an uninterrupted period of 60 days, either party shall be entitled to terminate this Agreement.

Section B: Hilti Software Purchase Agreement Terms

1. Purchase Agreement

In addition to the provisions set out in Section A, the provisions of this Section B apply to the purchase of a perpetual license to use the Software and together form the Purchase Agreement on which the Order is based. In the event of any contradictions, the provisions of Section B take precedence.

2. Scope of Use, Granting of Rights

2.1. Scope of use. Software Provider permanently provides Customer with the Software in the version available at the time it entered into force pursuant to the present Purchase Agreement.

2.2. Granting the Right of Use. Unless otherwise stipulated in the Order, Software Provider grants Customer a perpetual, worldwide, irrevocable, non-exclusive, non-sublicensable right to use the Software pursuant to this Purchase Agreement, for a user to be selected by Customer or for a device to be specified (PC, tablet, smartphone, etc.), on payment of the fee owed. This right of use includes the right to install and use the Software. Unless otherwise stipulated in the Order, additional users or other devices are not covered by this Purchase Agreement, but each require separate agreements to be concluded.

3. Fees. Retention of Title

3.1. Fees. Customer shall pay Software Provider the purchase price specified in the Order for Software Provider to provide the Software in accordance with this Agreement.

3.2. Retention of Title. The Software will be made available to Customer before the purchase price has been paid in full, under the retention of title by Software Provider.

4. Warranty, Remedies in the Event of Defects, Exclusion of Warranty and Guarantee

4.1. Warranty. Software Provider hereby warrants that the Software provided essentially corresponds to the Software description as specified in section A under clause 2.1. The warranty period is six (6) months from the time the Software is made available for download or, if the Software is preinstalled in the Hilti device, from the time the Hilti device is handed over.

4.2. Remedies in the Event of Defects. Customer shall report any Defects in writing promptly after downloading the Software or after the corresponding Hilti device containing the Software has been handed over, describing the alleged Defects in detail. Software Provider shall remedy Defects that have been properly reported within a reasonable period of time pursuant to this Purchase Agreement. Software Provider may decide at its own discretion whether to remedy a particular Defect through workaround, repair or exchange. If Software Provider is unable to remedy the Defect after two attempts to improve it, (i) Customer may demand from Hilti to reduce the purchase price of the Software or (ii) each contracting party may withdraw from this Purchase Agreement and Hilti shall reimburse the fees actually paid for the faulty Software. There is no right of withdrawal for insignificant defects.

4.3. Defects. Denotes a severity of defect that prevents the Software from functioning as described in Section A under clause 2.1 ("**Defect**"). In any case, a Defect is not present if (i) Customer can circumvent the Defect with reasonable effort or (ii) the Defect does not lead to downtime or a serious disturbance of Customer's data integrity.

4.4. Exclusion of Warranty and Guarantee. With the exception of the warranty provided under Section B clause 4.1, Software Provider hereby excludes all express or implied warranties, guarantees and conditions relating to the Software, in particular with regard to suitability for use for a specific purpose. Software Provider does not warrant that the Software will work without error or without interruption or that it is free of third party rights. Customer alone is responsible for the selection and use of the Software.

5. Limitation of Liability, Reduction Obligations.

5.1. Limitation of Liability. In no event shall Software Provider's liability to Customer under or in connection with this Agreement whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise exceed the total purchase price paid by Customer under this Agreement. Software Provider shall not be liable to Customer under or in connection with this Agreement, whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, for: (i) loss or damage incurred by the Customer as a result of third party claims; (ii) loss of profit, goodwill, business opportunity, revenue, use, loss or corruption of data, or anticipated saving suffered by the Customer; or (iii) any indirect or consequential loss or damage suffered by the Customer. Nothing in this Agreement will operate to exclude or restrict Software Provider's liability for death or personal injury resulting from negligence, or Software Provider's fraud.

5.2. Customer's Obligation to avert and reduce Damages. Customer is obliged to take appropriate measures to prevent and reduce damages. Customer is in particular obliged to back up the data that it uses in connection with the use of the Software. This is the sole responsibility of Customer.

Section C: Hilti Software Subscription Agreement

1. Subscription Agreement

In addition to the provisions set out in Section A, the provisions of this Section C shall apply to the acquisition of the Software as a subscription, whereby the provisions of Section 2 of Section C shall apply for paid subscription contracts and the provisions of Section 3 of Section C shall apply for free subscription agreements. Together with the provisions of Section A, these respectively form the fee-based or free Subscription Agreement underlying the Order. In the event of any contradiction between the provisions of Section A and Section C, the latter shall take precedence.

2. Fee-based Subscription Agreement

2.1. Scope of Use, Granting of Rights

2.1.1. Scope of Use. Software Provider shall provide Customer with the Software for the duration of the Subscription Agreement and pursuant to the provisions of this Subscription Agreement. Software Provider may update and improve from time to time the Software with updates and upgrades that are included in this Subscription Agreement. "**Updates**" include the correction of Software errors as well as small improvements and/or extensions to the Software. "**Upgrades**" include new options and properties of the Software as well as an expanded range of performance and functions. Whether and at what intervals updates and/or upgrades take place and whether a change is classified as an update or an upgrade, is at the sole discretion of Software Provider.

2.1.2. Granting of Rights. Unless otherwise stipulated in the Order, Software Provider grants Customer for the duration of the Subscription Agreement, the revocable, non-exclusive, non-sublicensable right to use the Software in the country in which both the Software Provider and the Customer have their respective registered offices based, subject to such country being the same and to the extent legally permitted, pursuant to this Subscription Agreement, for a user to be selected by Customer or for a device to be specified (PC, tablet, smartphone, etc.), on payment of the fee owed. This right of use includes the right to install and use the Software, Updates and Upgrades for the duration of the Subscription Agreement. Unless otherwise stipulated in the Order, additional users or other devices are not covered by this Subscription Agreement, but each require separate contracts to be concluded.

2.2. Fees, payments.

2.2.1. Fees. For Software Provider to provide the Software for the duration of the Subscription Agreement, Customer must pay Software Provider the recurring subscription fee specified in the Order.

2.2.2. Payments. Customer will be billed monthly in advance, unless otherwise agreed in the Order.

2.3. Warranty, remedies in the event of Defects, exclusion of warranty and guarantee.

2.3.1. Warranty. Software Provider hereby warrants for the duration of the Subscription Agreement that the Software provided essentially corresponds to the Software description as specified in section A under clause 2.1.

2.3.2. Remedies in the Event of Defects. During the duration of the Subscription Agreement, Customer shall notify Software Provider in writing without undue delay of any Defects as soon as they become known and shall describe the alleged Defects in detail. Software Provider shall remedy Defects that have been properly reported within a reasonable period of time pursuant to the present Subscription Agreement. Software Provider may decide at its own discretion whether to remedy a particular Defect through workaround, repair or exchange. If Software Provider is unable to remedy the Defect after two attempts to improve it, (i) Customer may request Software Provider to reduce the fees for the Software or (ii) each contracting party may terminate this Subscription Agreement ex nunc and Hilti shall reimburse the fees actually paid for the faulty Software. There is no right of withdrawal for insignificant Defects.

2.3.3. Defects. Denotes a severity of defect that prevents the Software from functioning as described in Section A under clause 2.1. In any case, a Defect is not present if (i) Customer can circumvent the Defect with reasonable effort or (ii) the Defect does not lead to downtime or a serious disturbance of Customer's data integrity.

2.3.4. Exclusion of Warranty and Guarantee. With the exception of the warranty provided under Section C clause 2.3.1, Software Provider hereby excludes all express or implied warranties, guarantees and conditions relating to the Software, in particular with regard to suitability for use for a specific purpose. Software Provider does not warrant that the Software will work without error or without interruption or that it is free of third party rights. Customer alone is responsible for the selection and use of the Software.

2.4. Limitation of liability.

2.4.1. Limitation of Liability. In no event shall Software Provider's liability to Customer under or in connection with this Agreement whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise exceed the total subscription fees paid by Customer under this Agreement during the six months prior to the damage event occurred. Software Provider shall not be liable to Customer under or in connection with this Agreement, whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, for: (i) loss or damage incurred by the Customer as a result of third party claims; (ii) loss of profit, goodwill, business opportunity, revenue, use, loss or corruption of data, or anticipated saving suffered by the Customer; or (iii) any indirect or consequential loss or damage suffered by the Customer. Nothing in this Agreement will operate to exclude or restrict Software Provider's liability for death or personal injury resulting from negligence, or Software Provider's fraud.

2.4.2. Customer's Obligation to avert and reduce Damages. Customer is obliged to take appropriate measures to prevent and reduce damages. Customer is in particular obliged to back up the data that it uses in connection with the use of the Software. This is the sole responsibility of Customer.

2.5. Term & Termination

2.5.1. **Term.** This Subscription Agreement has a defined term of one (1) year ("**Term**") and shall each time be renewed for additional one (1) year periods ("**Renewal Term**"), unless duly terminated in accordance with section 2.5.2 below.

2.5.2. **Termination.** Each contracting party may terminate the Subscription Agreement in writing with a notice period of not less than fourteen (14) calendar days prior to the end of the Term or a Renewal Term.

2.5.3. **Immediate Termination for Good Cause.** In addition, each contracting party can terminate this Subscription Agreement with immediate effect for good cause if the other party breaches an essential contractual provision and does not remedy such a breach within thirty (30) days of the notification of such a breach.

2.5.4. **Consequences of Termination of the Agreement.** In the event of a termination, with the exception of a termination on the part of Software Provider pursuant to clause 2.5.3 of Section C, Software Provider shall reimburse Customer for all fees it has paid in advance for the period in which the Software should have been available after the termination came into force. Customer shall immediately cease accessing and otherwise utilizing the Software on the effective date of the termination. Termination shall not relieve Customer of any obligation to pay any fees accrued by the date the termination comes into effect or due and payable prior to the effective date of termination (subject to Customer's statutory rights to withhold payments disputed in good faith). After this Subscription Agreement has expired, Customer is no longer entitled to continue using the Software and shall uninstall it immediately.

2.5.5. **Surviving Provisions.** Termination of the Subscription Agreement shall not affect the parties' rights, legal claims, obligations or liabilities arising from the Subscription Agreement or any rights or legal claims arising from or in connection with such a termination, as set out in this Subscription Agreement, nor does a termination affect the effectiveness of the provisions of this Subscription Agreement that remain in effect after the termination of the Subscription Agreement expressly or due to the nature of the business.

2.6. Changes to the Subscription Agreement and/or Fees.

2.6.1. **Changes to the Subscription Agreement.** Software Provider reserves the right to change the Subscription Agreement and/or the fees ("**Change**"). Software Provider shall inform Customer of an upcoming Change at least six (6) weeks in advance ("**Change Notification**"). Customer may object to such a Change up to two (2) weeks before it is intended to become effective ("**Change Effective Date**"). If Customer does not object in good time, this shall be deemed to be acceptance of the Change, and the Change shall become effective at the Change Effective Date. If Customer objects in good time, Software Provider may choose either to continue the Subscription Agreement with Customer under the existing terms of this Subscription Agreement without the Change, or to terminate the Subscription Agreement with effect at the Change Effective Date, irrespective of clause 2.5.2 of Section C. Software Provider will explicitly inform Customer about Software Provider's right of termination, the notice period for Customer's objection, the Change Effective Date and the consequences of not objecting to the Change Notification.

2.6.2. **Changes to Fees.** The fees agreed in the relevant Order remain unchanged for a period of twelve (12) months after the Change Effective Date of this Subscription Agreement, and Software Provider shall not increase the fees within these twelve (12) months. After the lapse of the initial twelve (12) month period of the Agreement, Software Provider may unilaterally raise the fees by no more than five percent (5%) annually, without having to abide by the procedure for a Change as set forth in clause 2.6.1 Section C and without Customer having a right to object.

3. Free of charge Subscription Agreement.

3.1. Scope of use, Granting of Rights

3.1.1. **Scope of use.** Software Provider shall provide Customer with the Software for the duration of the free of charge Subscription Agreement and pursuant to the provisions of this free of charge Subscription Agreement. Updates and Upgrades are not included in this Free of Charge Subscription Agreement.

3.1.2. **Granting of Rights.** Unless otherwise stipulated in the Order, Software Provider grants Customer the temporally limited, revocable, non-exclusive, non-sublicensable right to use the Software in the country in which both the Software Provider and the Customer have their respective registered offices based, subject to such country being the same and to the extent legally permitted, pursuant to this free of Charge Subscription Agreement, for a user to be selected by Customer or for a device to be specified (PC, tablet, smartphone, etc.). This right of use includes the right to install and use the Software for the duration of the free of charge Subscription Agreement. Unless otherwise stipulated in the Order, additional users or other devices are not covered by this Subscription Agreement, but each require separate contracts to be concluded.

3.2. Exclusion of Warranty and Guarantee.

3.2.1. Software Provider hereby excludes all express or implied warranties, guarantees and conditions relating to the Software, in particular with regard to usability for a specific purpose. Software Provider does not warrant that the Software will work without error or without interruption or that it is free of third party rights. Customer alone is responsible for the selection and use of the Software.

3.3. Limitation of Liability.

3.3.1. **Limitation of Liability.** In no event shall Software Provider's liability to Customer under or in connection with this Agreement whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise exceed the USD 10.-. Software Provider shall not be liable to Customer under or in connection with this Agreement, whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, for: (i) loss or damage incurred by the Customer as a result of third party claims; (ii) loss of profit, goodwill, business opportunity, revenue, use, loss or corruption of data, or anticipated saving suffered by the Customer; or (iii) any indirect or consequential loss or damage suffered by the Customer. Nothing in this Agreement will operate to exclude or restrict Software Provider's liability for death or personal injury resulting from negligence, or Software Provider's fraud.

3.3.2. Customer's Obligation to avert and reduce Damages. Customer is obliged to take appropriate measures to prevent and reduce damages. Customer is in particular obliged to back up the data that it uses in connection with the use of the Software. This is the sole responsibility of Customer.

3.4. Term & Termination.

3.4.1. Term. This free of charge Subscription Contract has an indefinite term, whereby "**Term"** refers to the period from the Effective Date until cancellation by Software Provider.

3.4.2. Cancellation. The free of charge Subscription Agreement automatically ends with the 'cancellation' of the right to download and use the Software by Software Provider, as agreed in clause 3.1.2 of Section C of this free of charge Subscription Agreement.

3.4.3. Immediate Termination for Good Cause. In addition, each contracting party may terminate this free of charge Subscription Agreement for good cause with immediate effect if the other party breaches an essential contractual provision and does not remedy such a breach within thirty (30) days of the notification thereof.

3.4.4. Consequences of Termination of this Free of Charge Subscription Agreement. Customer shall immediately cease accessing and otherwise utilizing the Software on the effective date of the termination. After this free of charge Subscription Agreement has expired, Customer is no longer entitled to continue using the Software and shall uninstall it immediately.

3.4.5. Surviving Provisions. Termination of the free of charge Subscription Agreement shall not affect the parties' rights, legal claims, obligations or liabilities arising from the free of charge Subscription Agreement or any rights or legal claims arising from or in connection with such a termination, as set out in this free of charge Subscription Agreement, nor does a termination affect the effectiveness of the provisions of this free of charge Subscription Agreement that remain in effect after the termination of the free of charge Subscription Agreement expressly or due to the nature of the business.

3.5. Changes to the Free of Charge Subscription Agreement.

3.5.1. Changes to the Free of Charge Subscription Agreement. Software Provider reserves the right to change the free of charge Subscription Agreement at any time ("**Change**"). Software Provider shall inform Customer of an upcoming Change at least six (6) weeks in advance ("**Change Notification**"). Customer may object to such a Change up to two (2) weeks before it is intended to become effective ("**Change Effective Date**"). If Customer does not object in good time, this shall be deemed to be acceptance of the Change, and the Change shall become effective at the Change Effective Date. If Customer objects in good time, Software Provider may choose either to continue the free of charge Subscription Agreement with Customer under the existing terms of this free of charge Subscription Agreement without the Change, or to terminate the free of charge Subscription Agreement with effect at the Change Effective Date, irrespective of clause 2.5.2 of Section C. Software Provider will explicitly inform Customer about Software Provider's right of termination, the notice period for Customer's objection, the Change Effective Date and the consequences of not objecting to the Change Notification.