

**1. GENERAL****1.1 Introduction**

These SMART CONSTRUCTION Application Terms and Conditions stipulate the terms and conditions that the Customer must comply with when using SMART CONSTRUCTION and related services provided by Komatsu. In the event that Komatsu provides services related to the Application or SMART CONSTRUCTION and the usage conditions are not stipulated in or contemplated by these Terms and Conditions, any other terms and conditions separately provided by Komatsu will be applied in conjunction with these Terms and Conditions.

The services or applications provided by Komatsu include, but are not limited to, the following solutions:

- A. **Dashboard** (including **Cloud SfM**)– developed with the purpose of introducing an online cloud platform to the Customer’s construction site, connecting the contents of the site in an organic manner to enable visualization of the site in three dimensions and to enhance drone data processing capabilities, thereby enabling users to achieve higher quality data for large sites;
- B. **Remote** – developed to allow the Customer remote access and remote operation of a controlling system which is installed in the Customer’s Construction Equipment;
- C. **Pilot** – developed with the purpose of providing the Customer with 3D machine guidance function to conventional Construction Equipment through displaying on the Terminal the blade edge information, which is acquired from the design drawing of the construction site and SMART CONSTRUCTION 3D Machine Guidance;
- D. **Fleet** – developed with the purpose of allowing visualization of the location information of the Construction Equipment and other transportation vehicles such as a utility vehicles (**Service Vehicle**) at the customer’s construction site, management of carried-in/out volume record of the Service Vehicle, and management of carrying in/out record of the soil and other kinds of freight;
- E. **Field** – developed with the purpose of time tacking (labour and construction equipment), cost tracking (labour, materials, and fuel), task management, and communication at construction sites; and
- F. **Office** – developed as a project scheduling and management solution that serves as a central hub for Customers.
- G. **K-RTK** – A GNSS CORS (Continuous Operating Reference Station) Network capable of providing high precision RTK Correction Data via the Mobile Data Network to Komatsu and other precise GNSS technology products.

**1.2 Definitions**

**Account Service** refers to the web service managed by Komatsu, which creates and manages the account to log into SMART CONSTRUCTION.

**Administrator Account** refers to the account created by the Chief Administrator of the Customer, and the account that manages users, including the ability to change or terminate the SMART CONSTRUCTION Quotation on behalf of the Customer.

**Anonymous Customer Installation Information** refers to the Customer Installation Information of the Customer or individual who is not identified or recognised (including the Customer Installation Information that is processed via statistical processing or analysis) so that the Customer or individual is not identified or recognised.

**Anti-social Forces** means any person who falls under one of the following:

- (a) organised crime groups and its affiliated organisations;
- (b) members of the organized crime group and related organisations described in clause 8.2(1)(1);
- (c) organizations or individuals such as corporate extortionist, violent groups that appear to be social groups, violent groups that appear to be political groups, and violent groups with special intelligence;
- (d) organizations or individuals pursuing economic interests, by making unjustifiable demands using violence, power, threatening language and fraudulent methods; and
- (e) organisations or individuals pursuing economic interests by suggesting having a relationship with one of the organisations, members or individuals set out in this clause 8.2, and making unjustifiable

demands.

**API** refers to Application Program Interface (including any updated version) that provides the functions to access SMART CONSTRUCTION in order to browse the information provided by SMART CONSTRUCTION.

**Application** refers to the respective application provided by Komatsu, which operates on SMART CONSTRUCTION and provides the information or services using the information provided by SMART CONSTRUCTION.

**Application Specific Terms** refers to the specific Application terms as set out in Annexure A which apply to the respective Application, namely Dashboard, Remote, Pilot, Fleet or any other Application provided by Komatsu.

**Chief Administrator** refers to an officer, employee, or personnel of the Customer who is authorized to manage Users and to change or terminate the SMART CONSTRUCTION Quotation on behalf of the Customer.

**Cloud Structure from Motion (“Sfm”)** is an application that utilises a photogrammetric method that reconstructs 3D structures from many 2D images taken from different angles that identifies and matches common points in multiple photos to calculate spatial positions, creating a detailed 3D model of the object or site.

**Consequential Loss** means all loss of actual or anticipated profit, loss of use, loss of productivity, loss of revenue, business interruption of any nature, loss of contracts, loss of opportunity, increased costs and expenses, wasted expenditure, loss or corruption of data, loss arising from delay, loss by reason of shutdown or non-operation or increased cost of borrowing capital or financing, loss of business reputation or goodwill and all special, indirect and consequential losses whether caused by or contributed to by a breach of contract or statute, breach of warranty (express or implied), tort, strict liability or any other cause whatsoever.

**Construction Equipment** refers to any Construction Equipment, such as hydraulic excavators and bulldozers, including the ICT Construction Equipment.

**Customer** or “**You**” refers to the entity that entered into the SMART CONSTRUCTION Quotation for the use of the Application, SMART CONSTRUCTION or Services after having agreed to these Terms and Conditions.

**Customer Information** means any information that is directly or indirectly provided to Komatsu in the course of using this Application by the Customer or the Users authorized by such Customer, including those specified in clause 4.1, which includes, among other things, information that the Customer or such Users enter into this Application, information that Komatsu and/or its Related Bodies Corporate acquires when accessing the controlling system installed in the Registered Construction Equipment (including terrain survey data, photographic data, 3D terrain maps, and location and operation data of the Construction Equipment), as well as any information obtained by processing or analysing each of them.

**Customer Installation Information** refers to the information the Customer or User registers on SMART CONSTRUCTION, information related to construction site and Construction Equipment of the Customer that is collected via the IoT device (including measured topography data, photo data, 3D topographic map, location information of the Construction Equipment, and operation data), as well as all other information the Customer provides to and stores in SMART CONSTRUCTION either directly or indirectly (including the information specifically stipulated in clause 4.1), and any information that was processed or analysed through any other processes.

**Field Service Support** refers to when Komatsu’s personnel attend the Customer’s site to install the local client software or to rectify any defects with the local client software.

**Force Majeure Event** means any event or occurrence or any circumstance beyond the reasonable control of a party including those caused by any of the following:

- (a) war, invasion or other act of foreign enemies or terrorists;
- (b) earthquake, flood, storm, tempest or other natural disaster;
- (c) legislative or executive act of government; and
- (d) industrial disputes other than those caused by the Customer breaching, or failing to observe, any industrial award, certified agreement, Australian or New Zealand (as applicable) workplace agreement, other employment agreement or legislation.

**ICT Construction Equipment** refers to the Construction Equipment that has the functions with which the machinery moves without operator interaction (machine-control functions) or those supporting the operator interaction (machine-guidance functions).

**Information Provided by Customer** refers to the information the Customer or each User to whom the

Customer granted the right of using the Application and all the other information provided directly or indirectly by the Customer or User to Komatsu through the use of the Application, as well as any information that went through processing or analysis.

**Intellectual Property Rights** or **IPR** means all statutory and common law rights in and to intellectual property, including without limitation trademarks, service marks, trade names, logos, designs, patents, copyright (including rights in software and databases), moral rights (being rights of attribution, against false attribution and integrity of authorship, and any equivalent rights worldwide), trade secrets, know-how, confidential information, and all other industrial and intellectual property rights, whether registered or unregistered, together with all applications, renewals, extensions, and equivalent or similar rights subsisting now or in the future in any part of the world.

**IoT Device** refers to any device having any data collecting or data communication function, including, but not limited to, sensors, cameras, computers and telecommunication devices, that are installed in any Construction Equipment, construction machinery or vehicles or that are installed at construction sites, and controlling systems of ICT Construction Equipment.

**Komatsu** or **"Our"** refers to Komatsu Australia Pty Ltd ACN 053 514 739 or Komatsu New Zealand Limited NZBN 9429050679508.

**Komatsu Equipment Rental Agreement** refers to the agreement between Komatsu and the Customer for the rental of the Registered Construction Equipment (if such agreement has been entered into by Komatsu and the Customer).

**Komatsu Quotation** means the agreement between Komatsu and the Customer for the sale and purchase of the Registered Construction Equipment (if such agreement has been entered into by Komatsu and the Customer).

**Login ID** refers to a code that is used to distinguish each user from other users using SMART CONSTRUCTION, and the email address of the User registered at the time the User created the account.

**Machine Activation** refers to activating a machine for remote functionality.

**Password** refers to a code that is, in combination with the Login ID, used to distinguish each User from other users on SMART CONSTRUCTION, and that is registered at the time the user creates the account using the arbitrary combination of English characters and symbols.

**Registered Construction Equipment** or **Machine** means any ICT Construction Equipment that is registered on an Application by the Customer or the Users authorized by such Customer.

**Related Bodies Corporate** has the same meaning as in the *Corporations Act 2001* (Cth) as amended.

**Remote Support Service** refers to Komatsu remotely supporting the Customer using SMART CONSTRUCTION and the remote Application, phone call or email in accordance with the level of support (Gold, Silver or Bronze) purchased by the Customer.

**RTK** refers to "real-time kinematic", a technique used to enhance the precision of geospatial positioning obtained from GNSS satellites.

**RTK Correction Data** refers to the data stream that is sent to RTK-capable ICT Construction Equipment in order to improve the accuracy of the Construction Equipment.

**Services** means the services Komatsu provides to the Customer and Users through SMART CONSTRUCTION.

**SMART CONSTRUCTION** refers to the online platform provided by Komatsu and its Related Bodies Corporate, which has the ability to collect, accumulate, process or analyse the Information Provided by Customer or other information related to the construction process, or the services provided through the online platform.

**SMART CONSTRUCTION Quotation** refers to the Komatsu Equipment Rental Agreement, Komatsu Quotation, or a separate contract for the use of SMART CONSTRUCTION that is entered into between the Customer and Komatsu for the Application and/or Services.

**SMART CONSTRUCTION 3D Machine Guidance** refers to the accessory kit provided by Komatsu or Customer which offers ICT functions to existing conventional Construction Equipment. SMART CONSTRUCTION 3D Machine Guidance is composed of all the devices that have functions such as IMU sensor, GNSS antenna, controller, modem router, UHF radio, terminal, harness wiring, data collecting function and any other function expressly stated by Komatsu.

**Terminal** refers to the terminal to be used that is used by an operator of the Construction Equipment equipped with SMART CONSTRUCTION 3D Machine Guidance.

**Terminal to Be Used** refers to the PC, smartphone, tablet, and other electronic terminals the Customer or User uses to use the Application or browse the information provided by SMART CONSTRUCTION.

**Terms and Conditions** means these SMART CONSTRUCTION Application Terms and Conditions

(including the Application Specific Terms).

**Third Party Device** refers to any hardware or software device supplied by a third party (not Komatsu), used to connect with any Smart Construction application.

**User** refers to the one that created the account on one's own or via Customer to use SMART CONSTRUCTION through registering one's information in the Account Service.

**User Guide** refers to the guide in which Komatsu stipulates the content of SMART CONSTRUCTION and the Application and how to use SMART CONSTRUCTION and the Application. A copy of the User Guide is published on the Application.

**Website** refers to the website for providing SMART CONSTRUCTION.

### 1.3 Application and Revision of the Terms and Conditions

1. Komatsu will grant the Customer and User the right to use the Application under conditions stipulated in these Terms and Conditions including the applicable Application Specific Terms. These Terms and Conditions apply to all Smart Construction products, services and applications provided by Komatsu (collectively, "the Applications")
2. These Terms and Conditions will be applied to the SMART CONSTRUCTION Quotation concluded between the Customer and Komatsu, except where, in the SMART CONSTRUCTION Quotation, the Customer and Komatsu agree upon terms and conditions different from these Terms and Conditions, the conditions stipulated in the SMART CONSTRUCTION Quotation will take priority over these Terms and Conditions (including Annexure A) but only to the extent of any inconsistency.
3. Komatsu may vary these Terms and Conditions from time to time and will provide the Customer with replacement Terms and Conditions.
4. In the case where the Customer continues to use the Application after the effective date of the Terms and Conditions that are revised in accordance with clause 1.3(3), the Customer will be deemed to agree upon the revised Terms and Conditions and the content of the SMART CONSTRUCTION Quotation will be amended based on the revised Terms and Conditions.
5. In addition to these Terms and Conditions together with the specific terms and conditions are set out in Annexure A (as amended from time to time). The terms in Annexure A apply only to the particular Application described and are to be read together with these Terms and Conditions. If there is any inconsistency between these Terms and Conditions and the terms of Annexure A, the terms of Annexure A (relevant to the particular Application) will prevail to the extent of the inconsistency, but only in relation to the terms applicable to that Application.

### 1.4 SMART CONSTRUCTION Quotation

The SMART CONSTRUCTION Quotation will be entered into when the Customer and Komatsu sign the SMART CONSTRUCTION Quotation.

### 1.5 Subcontracting

Komatsu may subcontract all or part of the works required when providing the Customers or Users with SMART CONSTRUCTION or the Application to a third party in Japan or overseas (the **Outsourcing Contractor**) at its discretion.

### 1.6 Preparation and Maintenance of Facilities

1. The Customer will use the IoT Device, SMART CONSTRUCTION 3D Machine Guidance and/or Terminal to Be Used under the conditions specified by Komatsu to maintain the environment to use the Application. This will be the responsibility of the Customer and will be completed at the Customer's expense.
2. The Customer will, when using the Application, connect the IoT Device, SMART CONSTRUCTION 3D Machine Guidance and/or Terminal to Be Used with internet using the telecommunication services provided by the telecommunication carriers. This will be the responsibility of the Customer and will be completed at the Customer's expense.
3. The Customer warrants that, in the case where there is a fault or defect in the IoT Device, SMART CONSTRUCTION 3D Machine Guidance and/or Terminal to Be Used, internet connection or the environment to receive SMART CONSTRUCTION as set out in clause 1.6(2), or a problem occurs in the security of the IoT Device, SMART CONSTRUCTION 3D Machine Guidance and/or Terminal to Be Used, internet connection or the environment to receive SMART CONSTRUCTION, SMART CONSTRUCTION may not be capable of use. The Customer must take sufficient measures (including the security measures) at its expense. Komatsu is not liable if the Customer is unable to use SMART

CONSTRUCTION or the Application due to issues or problems with security.

## 2. REGISTRATION OF ACCOUNT

### 2.1 Registration

1. Prior to commencement of the Services, the Customer must have Komatsu register the account on the Account Services, assign the Chief Administrator and inform Komatsu of the name, email address, Login ID of the Chief Administrator in the format or method prescribed by Komatsu. The account owned by the Chief Administrator will automatically be the Administrator Account of the Customer. The Administrator Account will be created by Komatsu on behalf of the Customer with Customer Information.
2. In accordance with the User Guide, the Chief Administrator may register accounts for other users on the Account Services or invite other users. Users who are authorized by the Chief Administrator may register the account on the Account Service for other users or invite other users. Other users who were invited by the Chief Administrator or the User may register their account on the Account Service in accordance with the User Guide. The account created based on this clause will be owned by each User and referred to as the **General Account**, which is, with the Administrator Account, will collectively be referred to as the **Customer Account**.
3. The Customer must not have those other than the Chief Administrator use the Administrator Account or have those other than the User who owns the General Account use the General Account.
4. The Customer may change the registration of the Administrator Account on the Website (at its discretion).
5. The Customer confirms that the General Account users may include the users who are not officers or employees of the Customer and that such users have been provided with and fully understand the terms of the User Guide.

### 2.2 Management of Login ID and Password by the Customer

1. The Customer must not disclose the Login ID or Password of the Customer Account to a third party. Komatsu is not liable for any loss or damage to the Customer, User, or other persons caused by lack of proper management of Login ID and Password, including any incorrect use or use by a third party.
2. In the case where the Customer knows that the Login ID or Password of the Customer Account has been stolen or disclosed, or that the Login ID or Password of the Customer Account is used by a third party other than the one who has a registered account, the Customer must, via Chief Administrator, immediately inform Komatsu of the fact to discuss the counter measures.
3. All actions made on the Customer Account will be deemed to have been taken by the Customer. In the event that a third party uses SMART CONSTRUCTION using the Customer account, the Customer is fully responsible for such use. The Customer is liable for any damage or loss suffered or incurred by Komatsu arising from the third party use.
4. The Customer represents and warrants that the User of the Customer Account will comply with these Terms and Conditions and the User Guide. In the event that a Customer discovers that there is or is reasonably suspected to be a violation committed by a User, the Customer must immediately inform Komatsu and take full responsibility for the violation.

### 2.3 Usage Fee

1. The Application(s) may be available for a fee. The Customer must pay the usage fee, if any, prescribed by Komatsu (**Usage Fee**) as set out in the SMART CONSTRUCTION Quotation for the use of the Application. In the event that Komatsu increases the Usage Fee throughout the Term, it will provide the Customer with thirty (30) days' prior written notice of the increase.
2. With regard to the payment method and payment schedule of the Usage Fee, the Customer will conform to the conditions in the SMART CONSTRUCTION Quotation.

## 3. TERM

### 3.1 Term

The term of the contract and conditions of contract renewal of the Application will be set out in the SMART CONSTRUCTION Quotation.

## 4. ACQUISITION, STORAGE AND USE OF INFORMATION PROVIDED BY CUSTOMER

### 4.1 Acquisition and Use of Information

1. The Customer agrees that Komatsu and its Related Bodies Corporate acquires the Customer Installation Information including the information stipulated in the following items (a) through (n). The Customer Installation Information may contain personal information as defined in the *Privacy Act 1988* (Cth) or, if applicable the *Privacy Act 1993* (NZ)) including:
  - (a) Information such as the address, name Login ID and email address, provided in the SMART CONSTRUCTION Quotation, by the Customer, Chief Administrator and/or by a User of the Customer.
  - (b) Information about the user of the Construction Equipment and other construction vehicles registered by the Customer or User or about the personnel of the construction site;
  - (c) Information obtained from IoT Device (sensor data, typography data, image data, video data, location data of the Construction Equipment and/or operation data);
  - (d) Information identifying the IoT Device (telephone number, firmware version, IP address, MAC address and/or serial number);
  - (e) Information about the software ID and license key related to SMART CONSTRUCTION installed on the IoT Device;
  - (f) Setting information of IoT Device (setting information of the profile, information about the network such as SSID, information from the installed application);
  - (g) Information registered in or uploaded to the Application or SMART CONSTRUCTION by the Customer or the User to whom the Customer granted the right of using the Application;
  - (h) Download history and usage history of the Application;
  - (i) Device information of the Terminal to Be Used (including the individual identification information and name of the carrier to be connected);
  - (j) location information of the Terminal to Be Used;
  - (k) other information necessary to realize the performance of the Application; and
  - (l) any information regarding any owners or users of Registered Construction Equipment or any other workers at construction sites.
2. The Customer agrees that the Customer Information or User information is browsed, used, and managed by the following people for the following purposes described herein:
  - (a) Komatsu, its Related Bodies Corporate and its Outsourcing Subcontractor, with the purpose of providing the Customer with the Application and the Services;
  - (b) Komatsu, its Related Bodies Corporate and its Outsourcing Subcontractor, with the purpose of taking any form of measures in relation to maintenance or security measures;
  - (c) Komatsu, its Related Bodies Corporate and its Outsourcing Subcontractor, with the purpose of providing the after-sales services and Services to the Customer;
  - (d) Komatsu, its Related Bodies Corporate and its Outsourcing Subcontractor, with the purpose of developing the Application;
  - (e) the User to whom the Customer grants full or partial access to the Application held by the Customer, with the purpose of using the Application (within the scope that the rights of browsing, using, or managing the Information Provided by Customer in accordance with the respective User Guide);
  - (f) Komatsu and its Related Bodies Corporate with the purpose of improving the after-sales service and other supporting systems;
  - (g) Komatsu, its Related Bodies Corporate and its Outsourcing Subcontractor, with the purpose of using the information for development and improvement of its products and services;
  - (h) Komatsu, its Related Bodies Corporate and its Outsourcing Subcontractor, with the purpose of creating and analyzing the statistics and other Anonymous Customer Installation Information;
  - (i) Komatsu, its Chief Administrator, and general account User, with the purpose of being provided with the Services (only to the extent the authority to browse, use, or manage the Customer Installation Information is granted in accordance with the User Guide);
  - (j) communication between Komatsu, its Related Bodies Corporate, Customers and Users (including but not limited to, questionnaires and response to inquiries);
  - (k) prevention of unauthorized use (impersonation, fraud or other unauthorized use) of the Application;
  - (l) response to disputes, litigation or notices related to these Terms and Conditions, SMART

CONSTRUCTION or the Applications;

(m) other business purposes of Komatsu and its Related Bodies Corporate (including, but not limited to, development, design, engineering, production, sales, or provision and improvement of the Application); and

(n) any person who is authorized to access the Customer Installation Information linked to the construction site in which the Customer is involved, with the purpose of being provided with the Services, Application and in accordance with the User Guide (only to the extent the authority to browse, use, or manage the Customer Installation Information is granted in accordance with the User Guide).

3. The Customer consents, acknowledges and agrees that:

(a) Komatsu may provide Anonymous Customer Information to a third party; and

(b) Komatsu may provide Customer Information to one of its Related Bodies Corporate located in Japan that manages a server of this Application or SMART CONSTRUCTION with the purpose of processing or analyzing:

a. Anonymous Customer Installation Information;

b. Customer Installation Information that is collected; and

c. any other relevant information related to a. and b. above.

Such Related Bodies Corporate located in Japan referred in clause 4.1(3) may provide Customer Information to other Related Bodies Corporate located outside Japan to accomplish the purposes stipulated in clause 4.1(2).

4. Except in the cases stipulated in clauses 4.1(2) and 4.1(3), Komatsu may obtain the approval of the Customer when Komatsu is required to provide any Customer Information other than Anonymous Customer Information to any third party, provide that approval is not required in the following circumstances:

(a) Komatsu reasonably deems it necessary to disclose Customer Information based on any laws and regulations;

(b) the disclosure is necessary to protect the life, body or property of any person;

(c) the disclosure is necessary to cooperate with any governmental agency, any local public entity or any others authorized thereby, for their execution of the affairs prescribed by laws and regulations;

(d) any change in ownership of this Application or in the service provider of this Application due to mergers or any other reason, and where Komatsu deems it necessary to transfer the Customer Information for the purpose of continued use of the Application;

(e) in the case of providing the information about the cost of SMART CONSTRUCTION to a payment agency that Komatsu is engaged with to process payments; or

(f) in relation to credit card transactions, if corruption in credit card transactions is suspected, to the extent necessary to confirm the suspension.

5. In the case where the person who uses the Application and/or uses or carries the IoT Device, Terminal or SMART CONSTRUCTION 3D Machine Guidance is not the Customer, the Customer must provide these Terms and Conditions to that person.

6. In the case where the Customer provides the Application with the Customer Installation Information via the data collaboration provider, the Customer will observe the terms and conditions of the data collaboration provider.

7. If the Customer advises Komatsu that the certain information provided falls within the category of personal information, the Customer may delete the information or request that Komatsu to delete the information. In the event that this occurs, the Application may not be capable of use because the required information has not been acquired.

8. Notwithstanding the provisions of this clause 4.1, the personal information and other information that the Customer or User enters on the application stores run by Google LLC when downloading the Application for the Terminal are managed by Google. Any questions, conflicts, litigation or concerns relating to such information must be resolved between the Customer or User and Google. The Customer or User warrants that it will not file any claims or complaints against Komatsu and its Related Bodies Corporate.

#### **4.2 Protection of Personal Information**

1. Komatsu will use the personal information acquired or provided in relation to the Application to the extent necessary for the purpose of use stipulated in clause 4.1 and will only provide the personal information to a third party in accordance with the provisions stipulated in clause 4.1(3).

2. Komatsu warrants that it will properly handle the personal information set out in clause 4.1 in accordance

with the *Privacy Act 1988* (Cth) or, if the Customer is in New Zealand, the *Privacy Act 1993* (NZ) and Komatsu's Privacy Policies posted on the Komatsu and the Komatsu New Zealand websites.

#### **4.3 Consent of Interested Party**

1. If the Customer Installation Information provided by the Customer contains the information of a third party other than the Customer (including subcontractors of the Customer), the Customer warrants that it will acquire the consent of the third party regarding the information captured by clause 4.1 in advance of providing the information to SMART CONSTRUCTION (including when the information is input into the Application).
2. The Customer must also acquire the consent regarding the contents of clause 4.1 from the User of the Construction Equipment that falls into the category of the IoT Device and the owner of the site (including any right holder of the Construction Equipment who is the equivalent to the owner) in which the Construction Equipment operates (**Right Holder**) in advance of use of the Services.
3. The Customer represents and warrants that the Customer has acquired any other consents required from third parties or Users before commencement of the Services and during period of use of SMART CONSTRUCTION. The Customer represents and warrants that the Customer has legitimate rights to use and input the Customer Installation Information, and that the use of Customer Installation Information does not violate the rights of a third party or User. The Customer takes all responsibility and liability in relation to any disputes with a third party or Right Holder caused by violation of this representation and warranty. The Customer indemnifies Komatsu for any loss and damage arising from a dispute regarding information provided under clause 4.1.
4. The Customer must not use or exploit the Intellectual Property Rights (including the moral rights) of the author of the Customer Installation Information.

#### **4.4 Uploading and Maintaining Customer Installation Information**

1. The Customer may upload, store, and browse the Customer Installation Information on SMART CONSTRUCTION.

#### **4.5 Remote Support Services**

1. Under these Terms and Conditions, the Customer may, use the following services (collectively as the "**Remote Support Services**") in the method to be designated by Komatsu, as a part of the services associated with an Application:
  - (a) responding to inquiries on how to use an Application;
  - (b) trouble-shooting when having problems with an Application; and
  - (c) support on the set-up that is necessary to start using an Application.
2. The Customer agrees that officers and employees of Komatsu may carry out any of the following on providing the Remote Support Services:
  - (a) accessing, browsing or operating the controlling system of the Registered Construction Equipment;
  - (b) browsing, deleting or changing all or any part of the data stored in the controlling system of the Registered Construction Equipment (including making any configuration changes to the controlling system of the Registered Construction Equipment);
  - (c) sending any file to the controlling system of the Registered Construction Equipment or installing any file to the controlling system of the Registered Construction Equipment; and
  - (d) disconnecting the Registered Construction Equipment from the server of the remote access system.
3. The Customer must take any necessary measures including making a back-up of the data prior to using the Remote Support Services.

#### **4.6 Field Service Support**

1. Under these Terms and Conditions, the Customer may use Field Service Support as part of the services associated with an Application that includes:
  - (a) support on the set-up that is necessary to start using an Application; or
  - (b) trouble-shooting when having problems with an Application.
2. The Customer must take any necessary measures including making a back-up of the data prior to using the Field Service Support.

### **5. USE OF INFORMATION**

#### **5.1 Usage Conditions**

1. The Customer must only use the information provided by SMART CONSTRUCTION in accordance with these Terms and Conditions, SMART CONSTRUCTION Quotation, and applicable Application Terms and Conditions through using the Application or through browsing and to the extent necessary for the purpose of use set forth in these Terms and Conditions, SMART CONSTRUCTION Quotation, and applicable Application Terms and Conditions.
2. The Customer is only authorised to use the Application, SMART CONSTRUCTION and the information provided by SMART CONSTRUCTION to the extent necessary to comply with these Terms and Conditions, SMART CONSTRUCTION Quotation, and applicable Application Terms and Conditions.
3. Intellectual Property Rights, and rights to grant the execution for SMART CONSTRUCTION and the information provided by SMART CONSTRUCTION will be the property of Komatsu and/or its Related Bodies Corporate.
4. The Customer is prohibited from assigning the right of using any information provided by SMART CONSTRUCTION to a third party.
5. In the event that the Customer sends technical or other related information from other countries to Japan or from Australia or New Zealand to other countries, the Customer warrants that it will comply with the laws and regulations on technology export.

## **5.2 Usage Period**

1. If the Customer violates any of the provisions set forth in these Terms and Conditions, Komatsu may terminate the Customer's use of the information provided by SMART CONSTRUCTION.
2. Regarding the period of use of the information provided by SMART CONSTRUCTION, the period will cease when the period of use of the Application ends or when the usage period specified separately by Komatsu in the SMARTCONSTRUCTION Quotation or in writing ends in a way as specified by Komatsu.
3. In the case where the charge for using the information provided by SMART CONSTRUCTION is charged monthly or yearly, the Customer must notify Komatsu of termination of use.

## **5.3 Intellectual Property**

1. The Customer acknowledges and agrees that all Intellectual Property Rights ("IPR") in or relating to an Application, and any related materials, are and shall remain the sole property of Komatsu and/or its licensors. Any IPR, industrial or other proprietary rights in works created, developed, conceived, or made available in connection with an Application or the performance of these Terms and Conditions by Komatsu, its Related Bodies Corporate, employees, consultants, contractors, or subcontractors including but not limited to software, source code, documentation, training materials, marketing materials, drawings, specifications, designs, technology, methods, processes, skills, know-how, and other information, whether existing prior to or arising during the term of these Terms and Conditions — shall vest exclusively in, or be licensed to, Komatsu and/or its respective licensors, as the case may be. The Customer must do all things necessary, including executing all documents and making all assignments, transfers, or consents, to ensure ownership of all such IPR vests in Komatsu. Komatsu hereby accepts any such assignment.
2. The Customer irrevocably consents (and the Customer must ensure its Personnel, contractors and contributors irrevocably consent in writing) to Komatsu and its licensees and assigns doing any acts or omissions in relation to any information the Customer provides under or in connection with an Application that would, but for this consent, infringe moral rights, to the extent permitted by law. The Customer must provide copies of such consents to Komatsu on request.

## **6. OBSERVATION AND PROHIBITION**

### **6.1 Observation**

1. The Customer will ensure that the User who has been granted use of the Application observes these Terms and Conditions as well as all relevant laws and regulations whilst using the Application.

### **6.2 Prohibited Acts**

1. The Customer must not perform any act falling under any of the following items (a) through (t) when using the Application. Komatsu may arbitrarily delete the information and data related to the act falls under the following items (a) through (t):
  - (a) an act that infringes or has possibility to infringe the Intellectual Property Rights or other rights of Komatsu and its Related Bodies Corporate or a third party;

- (b) an act that tampers or deletes the content of SMART CONSTRUCTION or the information that can be used on SMART CONSTRUCTION;
  - (c) an act of checking the Customer Installation Information or the information provided by SMART CONSTRUCTION (excluding the information that was already the personal information at the time of provision) against other information with the purpose of recognizing the individual or the Customer related to the Customer Installation Information or the information provided by SMART CONSTRUCTION, act of identifying the person, or act of trying to check that information or to identify the person;
  - (d) an act of comparing Anonymous Customer Installation Information with other information with the aim of identifying the User, other individuals, or Customer who are related to the Anonymous Customer Installation Information, including an act of identifying the subject, or act of trying to compare the information or identifying the User, other individuals, or Customer;
  - (e) an act of changing API or Application, changing, reverse engineering, decompiling, and decomposing all or any part of the Application, including producing a derivative of the Application and/or decoding the source code with other methods;
  - (f) an act of using the Application for a purpose not authorised in the Terms and Conditions or using a method that is not stipulated in the Terms and Conditions;
  - (g) an act of using the Application in a method that violates the Terms and Conditions or SMART CONSTRUCTION Quotation, or a mode that is deemed inappropriate at Komatsu's discretion;
  - (h) an act of having a third party use the Application in violation of the Terms and Conditions or the SMART CONSTRUCTION Quotation;
  - (i) an act of using the Application by impersonating a third party;
  - (j) an act of violating laws and regulations;
  - (k) an act of discriminating against or slandering others;
  - (l) an act that leads to or has possibility to lead to crimes such as fraud;
  - (m) an act of registering images or documents that are obscene, child pornography or child abuse;
  - (n) an act of opening or soliciting pyramid scheme;
  - (o) an act of registering computer viruses and other harmful data, computer programs;
  - (p) an act of using the Application for advertisement, publicity or solicitation;
  - (q) an act that interferes or has the possibility to interfere with the provision and operation of the Application;
  - (r) an act of registering information for the purpose of meeting unacquainted persons;
  - (s) an act of affixing a link in a way of and with the purpose of promoting an act despite the fact that the Customer knows that the act falls under one of the preceding items; and
  - (t) other acts that Komatsu deems inappropriate.
2. Komatsu may delete or cause its Related Bodies Corporate to delete, at Komatsu's discretion, any information and data related to any action that falls under any of the foregoing.

## **7. WARRANTY AND LIABILITY**

### **7.1 Limitation of Warranty and Liability**

1. Komatsu provides SMART CONSTRUCTION Applications in an "as is" and "AS IS AND WITH ALL FAULTS" form. If there is a defect, fault or bug in the Application, or where use of SMART CONSTRUCTION or the Services is suspended for any reason, including due to overload, defect, fault or other malfunction of the system, Komatsu is only responsible to the extent stipulated in these Terms and Conditions. Komatsu does not and cannot warrant that any Application is error-free.
2. Komatsu may change the content of the Application and/or Services and suspend or terminate the provision of the Application and/or Services without notification to the Customer. In the case where Komatsu suspends or terminates the provision of the Services and/or Application, Komatsu will not be held liable in any way to the Customer except for refunding any unused charges paid in advance.
3. The Customer uses the Services and Application and takes full responsibility for the use and any expense incurred by the Customer for the use. Komatsu is not liable in any way for the integrity, accuracy or completeness of the Services and Application including any data correction, signals or related outputs.
4. Komatsu does not warrant any of the characteristics, credibility, truth, accuracy, validity, legality, and integrity of the information provided by SMART CONSTRUCTION, or that the information does not violate the right of a third party. The Customers uses the information provided by SMART CONSTRUCTION at its own responsibility and without any reliance on Komatsu.

5. Komatsu does not warrant the integrity, usefulness, credibility, truthfulness, accuracy, validity, operation guarantee, conformance to specific purpose, conformance to the device to be used, legality, and any other matters concerning the functions and performance of the Application. The Customer can only use the Application after agreeing that measurement results, location information, and travel route information of the Application may not be displayed, or there may be an error depending on the conditions of the type of vehicle, installation location of the Terminal to Be Used, road environment, local environmental conditions, radio wave condition of GPS satellite, and condition of radio-wave base station or incomplete data, satellite availability, power outages, telecommunication errors or any other condition not suitable or any other matter outside of Komatsu's control. The Customer will only use the Application after agreeing that the topography data may not be displayed or include a disclaimer that there may be an error depending on the location where the Terminal to Be Used and SMART CONSTRUCTION 3D Machine Guidance are set, radio wave conditions of GPS satellites, conditions of radio wave base stations, weather conditions at the time of measurement, and other measurement conditions.
6. Komatsu is not liable in any way for abnormalities such as the failure, defect, power outage, telecommunication errors, fault in communication line or system fault of the device providing the Application. In such cases, data related to the Customer such as Customer Installation Information provided by the Customer may be lost. In the case where data related to the Customer such as Customer Installation Information is lost, disappears, or is delayed, use of the Terminal to be Used and IoT Device may be limited or revoked.
7. Komatsu is not liable for any loss or change in data that may be accessed by Komatsu and/or its Related Bodies Corporate through the controlling system of Construction Equipment or by deletion or changes made by Komatsu and/or its Related Bodies Corporate to the data stored in the controlling system.
8. Komatsu will take security measures required for protection of the Customer Installation Information according to industry standards. Komatsu is not liable for any loss or damage that is caused by unauthorized access, theft, destruction or tampering committed by a third party or the Customer.
9. Komatsu does not warrant and is not obliged to back-up the Customer Installation Information the Customer provided to Komatsu and SMART CONSTRUCTION. The Customer is fully responsible for the back-up of any Customer Installation Information.
10. In the case where the Customer connects IoT Device or Terminal to Be Used with external storage device such as USB memory to export or import the data, or where the IoT Device or Customer performs data communication, Komatsu does not warrant that the external storage device or the transferred data is not infected by any computer virus and Komatsu is not liable in any way for any loss or damage arising in connection with the computer virus.
11. You understand that as part of SMART CONSTRUCTION Applications, Komatsu may use software, hardware, or other services owned or licensed by third parties. These may be subject to their own terms and conditions. Where required, Komatsu will notify You through the relevant service or application if third-party software is used. As far as the law allows, Komatsu is not responsible or liable for any third-party software, hardware, or services, or for how You use them, including any connection or coordination between those third-party components and the Application.
12. All legal, statutory or equitable liability, conditions or warranties of any type in relation to SMART CONSTRUCTION and the Application are excluded.
  - (a) Australia only:  
Nothing herein will limit those provisions of the *Competition and Consumer Act 2010* (Cth) including the Australian Consumer Law, nor statutes, rules or regulations from time to time in force in Australia which imply or guarantee certain conditions or warranties or impose obligations on Komatsu which conditions, warranties and obligations cannot, or cannot except to a limited extent be excluded, restricted or modified. If any such statutory provisions apply, then to the extent to which Komatsu is entitled to do so, its liability under those statutory provisions will be limited at its option, to the supply of the Application again or the payment of the cost of having the Application supplied again; and
  - (b) New Zealand only:  
Nothing herein will limit those provisions of the *Consumer Guarantees Act 1993* (NZ), nor statutes, rules or regulations from time to time in force in New Zealand which imply or guarantee certain conditions or warranties or impose obligations on Komatsu which conditions, warranties and obligations cannot, or cannot except to a limited extent be excluded, restricted or modified. If any such statutory provisions apply, then to the extent to which Komatsu is entitled to do so, its liability under those statutory provisions will be limited at its option, to the supply of the Application again, the payment of the cost of having the Application supplied again or the refund of any money paid or other

consideration provided.

## **7.2 Measures against Violation**

1. If Komatsu decides that an act of the Customer or User to whom the Customer grants the right to use the Application violates these Terms and Conditions, SMARTCONSTRUCTION Quotation and/or the User Guide, Komatsu may delete all or part of the Information Provided by Customer and take any measures that Komatsu deems appropriate, such as suspension or restriction of the use of the Services or Application without prior notice to the Customer or User.
2. Komatsu is not liable for any loss or damage caused by the exercising of its rights under clause 7.2(1).
3. Provisions of clauses 7.2(1) and (2) will not discharge the Customer from liability in the case where there is loss or damage to Komatsu or the third party caused by the measures taken by Komatsu. If the Customer causes loss or damage to a third party, causes a dispute or conflict with a third party due to violation of these Terms and Conditions, the Customer must, at its expense, assume full and sole responsibility to resolve the matter itself (and without any involvement of Komatsu).

## **7.3 Damage caused by Customer Installation Information**

1. If the Customer Installation Information poses or may pose a detrimental issue to SMART CONSTRUCTION, the Application or Komatsu and its Related Bodies Corporate's servers, Komatsu may take any measures that Komatsu deems appropriate, such as deletion of all or part of the Customer Installation Information without obtaining the prior consent from the Customer.
2. Komatsu is not liable in any way for any loss or damage caused by the exercising of its rights under clause 7.3(1).
3. Clauses 7.3(1) and (2) will not discharge the Customer from any liability in the event there is loss or damage to Komatsu or the third party caused by the measures taken by Komatsu.

## **7.4 Limitation of Liability**

Notwithstanding anything to the contrary in these Terms and Conditions and SMART CONSTRUCTION Quotation or elsewhere, and to the full extent permitted by law, Komatsu, its Related Bodies Corporate and its supplier's total cumulative liability to the Customer for all liabilities, damages, losses, costs and expenses (Claims) suffered or incurred under or in connection with these Terms and Conditions and SMART CONSTRUCTION Quotation by the Customer is capped at the Fees actually paid by the Customer to Komatsu for that Application in the six (6) months immediately before the first event giving rise to the relevant Claim.

## **7.5 Exclusion of Consequential Loss**

Notwithstanding anything to the contrary in these Terms and Conditions and SMART CONSTRUCTION Quotation, Komatsu is not liable to the Customer at law, statute, in equity, in restitution, negligence or any other tort, under any indemnity, or otherwise at all, for any Consequential Loss.

## **8. GENERAL**

### **8.1 Confidentiality**

1. The Customer and Komatsu will use technical, sales, or other business information of the other party, which the Customer and Komatsu obtained in relation to SMART CONSTRUCTION and the Application, (hereinafter referred to as "Confidential Information" excluding the Customer Installation Information) only to the extent necessary for the purpose of the use of the Application and/or SMART CONSTRUCTION, and will not disclose or leak the Confidential Information to the third party without obtaining the prior written consent from the other party, provided, that information that can be proved to fall under any of the following Items (1) through (4) are not included in the Confidential Information:
  - (1) information already held without obligation to keep confidential;
  - (2) information obtained legitimately from a third party without obligation to keep confidential;
  - (3) information developed independently by the Customer without using the information provided by the other party; and
  - (4) information that has become publicly known without violating these Terms and Conditions and SMART CONSTRUCTION Quotation, irrespective of the timing, before or after the receipt of the information.
2. Notwithstanding the provisions of clause 8.1, the Customer and Komatsu may disclose the Confidential

Information to the extent required to do by law. In such a case, the Customer or Komatsu will notify the other party to the effect that they will disclose the information before the disclosure, unless it is contrary to the relevant laws and regulations. If the Customer or Komatsu cannot notify the other party before the disclosure, it will promptly notify the other party immediately after the disclosure.

3. Notwithstanding clause 8.1(1), in the case where Komatsu deems it necessary, Komatsu may disclose the Confidential Information of the Customer without obtaining the prior consent in writing from the Customer to the extent necessary under the conditions of having the Outsourcing Contractor comply with the obligations set out in this clause 8.1.

## **8.2 Exclusion of Anti-social Forces**

1. In these Terms and Conditions, "Anti-social Forces" means any person falling under any of the following items (1) through (5):
  - (1) organised crime groups and its affiliated organisations including but not limited to, hate groups, gangs, terrorists, groups engaged in child labour, slave labour, corruption or money-laundering which pose a threat to the order and safety of civil society;
  - (2) members of the organized crime group and related organisations described in clause 8.2(1)(1);
  - (3) organizations or individuals such as corporate extortionist, violent groups that appear to be social groups, violent groups that appear to be political groups, and violent groups with special intelligence;
  - (4) organizations or individuals pursuing economic interests, by making unjustifiable demands using violence, power, threatening language and fraudulent methods; and
  - (5) organisations or individuals pursuing economic interests by suggesting having a relationship with one of the organisations, members or individuals set out in this clause 8.2, and making unjustifiable demands.
2. Customer represents and warrants that:
  - (1) the Customer or the User to whom the Customer granted the right of using the Application is not an Anti-social Force;
  - (2) the Customer or the User to whom the Customer granted the right of using the Application has not been an Anti-social Force;
  - (3) the Customer does not use an Anti-social Force;
  - (4) directors, officers, executive officers and other persons who are substantially involved in management of the organizations are not Anti-social Forces, and they have no relationship with Anti-social Forces; and
  - (5) major shareholders or investors are not Anti-social Forces and they have no relationship with Anti-social Forces.
3. If the Customer violates clause 8.2(2), or there is a reasonable doubt as to the violation, Komatsu may (at its discretion) immediately cancel the SMART CONSTRUCTION Quotation without a warning or other procedure and file a claim against the Customer for any loss or damage caused by the violation. In the case where the User to whom the Customer granted the right of using the Application violates clause 6.2(2) or there is a reasonable doubt as to the violation, Komatsu may immediately have the Customer withdraw the User's right of using the Application without warning.

## **8.3 Cancellation and Suspension of Use**

1. The Customer may cancel the SMART CONSTRUCTION Quotation through applying for cancellation in a way prescribed by Komatsu. With regard to conditions of such a cancellation, the Customer will conform to the conditions presented separately by Komatsu to the Customer.
2. Where the Customer acts in violation of the Terms and Conditions or SMART CONSTRUCTION Quotation and does not correct the actions despite the fact that Komatsu specified a certain period of time and remedy, Komatsu may cancel all or part of the SMART CONSTRUCTION Quotation by notifying the other party in writing or via email. Komatsu may also alternatively suspend the use of the Application by the Customer until the violation is corrected.
3. Komatsu may temporarily suspend the use of the Application by the Customer or cancel all or part of the SMART CONSTRUCTION Quotation by notifying the Customer in writing or via email without warning, if the Customer suffers one of the following items (a) through (e):
  - (a) an act of insolvency such as going into administration or liquidation;
  - (b) having a cheque or direct debit payment dishonoured;
  - (c) it is subject to penalties for being in arrears in payment of government taxes;
  - (d) its creditworthiness becomes uncertain; or

- (e) where a regulatory authority orders cancellation, suspension or otherwise revokes the Customer's business license.
4. Komatsu is not liable for any loss or damage arising from or in connection with cancellation of the SMARTCONSTRUCTION Quotation or suspension of the use of the Application by the Customer in accordance with clauses 8.3(1)-(3).

#### **8.4 Process after Termination**

1. The Customer may not use the Application after termination of the SMART CONSTRUCTION Quotation.
2. The Customer will agree that Komatsu may arbitrarily delete the Customer Supplied Information and all the other data and information the Customer provided to the Customer after termination of the SMART CONSTRUCTION Quotation. The Customer will save the back-up of all the necessary data and information in a timely manner under the User's responsibility and at its expense. Komatsu is not liable for any loss of data and information of the Customer.
3. Where the Customer is provided with a device or software by Komatsu for use with the Application, the Customer must return the device or software and all the relevant documents (including the copies of the software and documents) to Komatsu immediately after termination of the SMART CONSTRUCTION Quotation, or delete the software and documents in accordance with the directions of Komatsu under its responsibility and at its expense.

#### **8.5 Dispute Resolution**

1. If a dispute arises, either party may notify the other in writing identifying the details of the dispute.
2. Within 14 days of notification of a dispute, an executive officer of each party empowered to resolve the dispute must confer at least once to attempt to resolve the dispute. The parties must act in good faith to resolve the dispute.
3. If the dispute is not resolved within 7 days of the meeting of the executive officers, either party may commence mediation by referring the dispute to the Australian Disputes Centre in Sydney, New South Wales, the New Zealand Dispute Resolution Centre in Takapuna, Auckland, or a dispute resolution centre as agreed by the parties. The rules of commercial mediation of that body will apply and both parties must comply with those rules.

#### **8.6 Assignment**

1. The Customer must not assign, sub-contract or otherwise deal with these Application Terms and Conditions or any right or obligation under it except with the prior written consent of Komatsu (which Komatsu is entitled to withhold in its absolute discretion). Failure to obtain the consent of Komatsu constitutes a fundamental breach of these Terms and Conditions.
2. Komatsu is entitled, without obtaining the consent of the Customer, to assign, transfer or otherwise dispose of any or all of its rights or obligations under this Contract to one of its Related Bodies Corporate or to any other entity which is financially sound and capable of performing all of the obligations of Komatsu under these Terms and Conditions by giving notice of such assignment, transfer or disposal to the Customer.

#### **8.7 Severability**

If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these Terms and Conditions, but the rest of the clauses in these Terms and Conditions is not affected.

#### **8.8 Survival**

Annexure A and clauses 1.3, 4, 6.2, and 7 will remain in effect after the termination of these Terms and Conditions.

#### **8.9 Force Majeure**

If Komatsu's ability to perform its obligations is adversely affected by any cause beyond Komatsu's reasonable control, then Komatsu may, if it chooses, end the SMARTCONSTRUCTION Quotation and the Terms and Conditions suspend it for up to 3 months by giving the Customer written notice. Komatsu is not liable for any loss, damage or liability which the Customer incurs as a result, whether directly or indirectly.

### **8.10 Governing Laws**

1. For Customers in Australia, the Application Terms and Conditions are governed by the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the New South Wales courts in respect of all matters relating to these Terms and Conditions.
2. For Customers in New Zealand, the Application Terms and Conditions are governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to these Terms and Conditions.

# **ANNEXURE A – APPLICATION SPECIFIC TERMS AND CONDITIONS**

## **A. Application Specific Terms for DASHBOARD**

### **1. USE OF APPLICATION**

#### **1.1 Use**

1. Komatsu will grant the Customer a license that is restrictive and non-transferable to use the Application.
2. The Customer will be granted a right to use the Application to the extent that the terms and conditions of the SMART CONSTRUCTION Quotation are observed and within the scope of the purpose of the use stipulated in these Terms and Conditions. All authorities, copy right, and other Intellectual Property Rights will belong to Komatsu or one of the Related Bodies Corporate that grants Komatsu the license.
3. Except strictly in accordance with the Terms and Conditions and the User Guide or otherwise where the right is explicitly granted in writing by Komatsu, the Customer must not transfer the right of using the Application to a third party or sublicense any rights included in the Application to a third party.
4. The Customer will use the Application once the Customer fully understands the terms and precautions stipulated in the User Guide.
5. If the Customer sends technical or other forms of information from other countries to Australia or New Zealand, or from Australia or New Zealand to other countries, the Customer will comply with the laws and regulations on technology export.

#### **1.2 Management of the User**

1. The Customer may grant officers and employees of the Customer and other ones determined by the Customer all or part of the right of using the Application it holds, based on the SMART CONSTRUCTION Quotation in accordance with these Terms and Conditions and User Guide. All acts of the User, to whom the right of using the Application is granted by the Customer, will be deemed as an act of the Customer. Even in the case where a third party uses the Application using the Login ID of the Customer, the Customer will take full responsibility of the use. In the case where Komatsu is damaged by the act of the third party, the Customer will compensate Komatsu for any loss or damage suffered.
2. The Customer will have the User to whom the Customer granted the right of using the Application observe these Terms and Conditions, SMART CONSTRUCTION Quotation and User Guide. In the case where the Customer discovers the violation committed by a User or judges that there is a possibility of the violation, the Customer will immediately inform Komatsu and take full responsibility for the violation. In the case where the User to whom Komatsu granted the right of using the Application commits any violation, the Customer will immediately withdraw the right of using the Application the Customer granted to the User and will inform Komatsu of the fact.

## **B. Application Specific Terms for REMOTE**

### **1. USE OF APPLICATION**

#### **1.1 Use**

1. Komatsu will grant the Customer a license that is restrictive and non-transferable for the purpose of downloading and using the Application.
2. The Customer will be granted a right to use the Application to the extent that the Terms and Conditions and the SMART CONSTRUCTION Quotation are observed and within the scope of the purpose of the use stipulated in these Terms and Conditions and the SMART CONSTRUCTION Quotation. All authorities, copy right, and other Intellectual Property Rights will belong to Komatsu and/or its Related Bodies Corporate.
3. Except strictly in accordance with the Terms and Conditions and the User Guide or otherwise where the right is explicitly granted in writing by Komatsu, the Customer must not transfer the right of using the Application to a third party or sublicense any rights included in the Application to a third party.
4. The Customer must only use the Application after fully understanding the precautions stipulated in the User Guide.
5. In the case where the Customer sends technical or other kind of information from other countries to Australia or New Zealand, or from Australia or New Zealand to other countries, the Customer will comply with the laws and regulations on technology export.
6. No remote storage – data, files, information and/or documents which the Customer transfers to Construction Equipment using the Application are only stored locally on the Application's monitor, with the exception of temporary storage for caching and transferring purposes. Komatsu does not guarantee that such data, files, information and/or documents are stored redundantly or as back-up on its servers.
7. **Local client software** – the use of the Application requires the installation of local client software on the Monitor. The compatibility requirements of the local client software are available upon request. Subject to the license conditions of the local client software, Komatsu will install and use one copy of the local client software per Monitor solely for the purposes of using the Application in accordance with the local client software license conditions and these Terms and Conditions.
8. **Updates and upgrades** – the local client software on the Monitor may require updates or upgrades from time to time. Komatsu cannot guarantee that the Customer's user preferences, configuration settings, locally stored data, files, information and/or documents will be preserved when Komatsu performs, remotely or otherwise, an update or upgrade of the local client software.
9. **Customer managed support** - with the Application the Customer can provide, or have a third-party contractor provide on its behalf, support at a distance (**Operational Support**) to Users of the Machines which have been equipped with compatible hardware, in particular an Application-compatible monitor (**Monitor**) through which the Operational Support can be rendered. The Customer will not, without explicit, written consent of Komatsu, grant access to the Application to a third-party contractor for providing Operational Support on its behalf when such third party contractor offers the same or equivalent services as the Services and thus directly or indirectly competes with Komatsu.
10. **Decision support tool** – the Customer understands that the Application is a decision support tool which assists the Users and that it is not possible to operate or control the Machine itself remotely via the Application, with the exception of the Monitor. The Customer understands and agrees that all Operational Support rendered to a User using the Application is its sole and exclusive responsibility.
11. **Information to Users** – it is the Customer's responsibility to inform its Users that the Application is available on the Machine and may be activated, but that the Machine's location and technical specifications will always be known to Komatsu.

#### **1.2 Management of the User**

1. The Customer may grant officers and employees of the Customer and other ones determined by the Customer all or part of the right of using the Application it holds, based on the SMART CONSTRUCTION Quotation in accordance with these Terms and Conditions and User Guide. All acts of the User, to whom the right of using the Application is granted by the Customer, will be deemed as an act of the Customer. Even in the case where a third party uses the Application using the Login ID of the Customer, the Customer will take full responsibility of the use. In the case where Komatsu is damaged by the act of the third party, the Customer will compensate Komatsu for any loss or damage suffered.  
The Customer will have the User to whom the Customer granted the right of using the Application observe these Terms and Conditions, SMART CONSTRUCTION Quotation and User Guide. In the case where the Customer discovers the violation committed by a User or judges that there is a possibility of the

violation, the Customer will immediately inform Komatsu and take full responsibility for the violation. In the case where the User to whom Komatsu granted the right of using the Application commits a violation, the Customer will immediately withdraw the right of using the Application the Customer granted to the User and will inform Komatsu of the fact.

### **1.3 Usage Fee**

1. The Usage Fee for Machine Activation will be specified in the Quotation and will be composed of a fee fixed for twelve (12) months to be paid monthly in arrears. In addition, Komatsu may also charge the Customer its reasonable costs, in circumstances where Komatsu dispatches its personnel to construction sites in order to provide the Field Service Support (**Field Service Support Fees**). The Field Service Support Fees will be as advised by Komatsu in writing.
2. The fees for the relevant level (i.e. Bronze, Bronze Plus, Silver or Gold) of Remote Support Services (Remote Support Service Fee) will be as set out in the SMART CONSTRUCTION Quotation.
3. The Usage Fee for the Machine Activation license is not transferable to other devices and terminals.

### **1.4 De-registration of Application**

1. Where applicable, the Customer must inform the buyer or renter of its Machine that the Machine has been equipped with the Application and that data concerning the Machine's location, serial number and other technical specifics may be sent and stored on Komatsu's or its Related Bodies Corporate's remote servers unless the Customer and previous user of that Machine, de-register the Machine on the Application. It is the Customer's sole and exclusive responsibility to de-register a Machine from the Application when such Machine has been rented out or sold to someone else. Unless the buyer or renter becomes a customer of Komatsu, any further data collection and storage related to that Machine via the Application after such sale or rental is the Customer's responsibility and it is up to the Customer to obtain the necessary consents and authorisations for such collection and storage.

## **C. Application Specific Terms for FLEET**

The Fleet Terminal to Be Used Application can be downloaded for free from the Google Play Store for Android devices and from the Apple App Store for iOS devices. The compatibility requirements for the Application are displayed in each respective store. Terms and conditions of third parties may apply to your use of the Play Store or App Store. You are solely responsible for complying with such terms and conditions of third parties when You use the Play Store or App Store to download the Application.

By first scanning a QR code, entering a ticket number or otherwise installing Our Application on your Terminal to Be Used, You acknowledge that You have read the SMART CONSTRUCTION Quotation and Terms and Conditions and that You accept them without reservation.

### **1. USE OF APPLICATION**

#### **1.1 Internet Connection**

The Customer acknowledges, understands and agrees that the Customer and its Users are required to have an adequate and working internet connection for downloading and using the Application. The Customer's internet service provider may charge the Customer for such internet connection, but that is solely between the Customer and its chosen internet service provider. Komatsu is not liable for any loss or damage arising from any interruption or breakdown of the Customer's internet connection.

### **2. USE OF APPLICATION**

#### **2.1 Intended Use**

The Customer acknowledges and agrees that the Application is only to be used for the purposes and in the manner described in Our corresponding documentation, made available through Our website, these Terms and Conditions, any manuals, policies and/or guidelines which we may publish and in accordance with applicable law. The Customer is responsible for ensuring that its use of the Application and any User's use of the Application complies with all laws and regulations which apply to its activities and/or in its local jurisdiction.

#### **2.2 Your Information**

The Customer's use of the Application requires the Customer to make certain information available through the Application. The Customer agrees that any information it makes available is accurate, correct and up to date.

#### **2.3 Intended Access**

The Customer will only scan QR codes with the Application or enter ticket numbers for which the Customer who issued the QR codes or ticket numbers has explicitly authorized to do so. Attempting to scan a QR code or enter a ticket number to which the Customer is not authorized, is strictly forbidden. Any access credentials the Customer is issued for using the Application are personal and the Customer is required to keep them confidential at all times.

### **3. INTELLECTUAL PROPERTY**

#### **3.1 Licence**

Komatsu grants the Customer a limited, non-exclusive, non-transferable, non-sub-licensable and revocable right to access and use the Application for the intended professional purposes. This license will remain in effect until, and unless, terminated by the Customer or us. Such license will not include a right to copy, analyze, decompile, make public, re-engineer, distribute, transfer to third parties, translate, reproduce, modify, change or create derivative works of the works encumbered with IPR of Komatsu or its licensors unless necessary to make use of the Application for its intended purposes in accordance with these Terms and Conditions, nor the right to sell, lease, rent or loan the Services to a third-party. The Customer can install one copy of the Application on a device which the Customer is authorized to use.

#### **3.2 Ownership of User content, data and communications**

All IPR and ownership rights related to the content, data and communications which the Customer uploads in, or generates with, the Application will vest, and remain vested, in the Customer whose QR codes the Customer scanned or ticket numbers the Customer entered. Our affiliates, contractors, and subcontractors are granted a license to use such content, data and communications for the purposes of making the Application available to the Customer in accordance with these Terms and Conditions and Our Privacy Policy.

### **3.3 Use of Logos and Trade Names**

The Customer's use of the Application does not grant the Customer any rights to use Our trademarks, trade names logos or brands for any purpose.

## **4. FEE**

### **4.1 Fee for the Application**

The Application can be accessed on the Website by the Customer who has purchased a subscription and has accepted the SMART CONSTRUCTION Quotation Terms and Conditions, and the Fee will be as set out in the SMART CONSTRUCTION Quotation Terms and Conditions.

## **5. TERMINATION**

### **5.1 Termination for Convenience**

Komatsu may terminate its agreement with the Customer at any time without notice, compensation, or prior recourse to a judge, by providing the Customer with thirty days' written notice of its intention to terminate.

### **5.2 User content, communications and data**

The Customer must ensure that it has copies of all data which it uploads in the Application. We are not obliged to offer any functionality in the Application that would allow the Customer to export or retrieve any content, communications or data which the Customer has generated with, or have uploaded in, the Application. We reserve the right to permanently delete all content, communications, and data which the Customer has generated with, or uploaded in, Our Application once the Customer has deleted the Terminal to Be Used Application from its device.

## **D. Application Specific Terms for FIELD**

The Field Application can be downloaded from the Google Play Store for Android devices and from the Apple App Store for iOS devices. The compatibility requirements for the App are displayed in each respective Store. Terms and conditions of third parties may apply to your use of the Play Store or App Store. You are solely responsible for complying with such terms and conditions of third parties when You use the Play Store or App Store to download our App.

### **1. USE OF APPLICATION**

#### **1.1 Internet Connection**

You understand and agree that You are required to have an adequate and working internet connection for downloading and using the App. Your internet service provider may charge You for such internet connection, but that is solely between You and your internet service provider. We accept no responsibility or liability for any claims or damages arising out of any interruption or breakdown of your internet connection.

#### **1.2 Intended Use**

You acknowledge and agree that the App is only to be used for the purposes and in the manner described in our corresponding documentation, these Terms, any manuals, policies and/or guidelines which we may publish and in accordance with applicable law. You are responsible to ensure that your use of the App complies with all laws and regulations which apply to your activities in your local jurisdiction.

#### **1.3 Information You provide**

Your use of the App requires You to make certain information available through the App. You agree that any information You make available is accurate, correct and up to date.

#### **1.4 Intended access**

Any access credentials You issued for using the App are personal and You are to always keep them confidential.

#### **1.5 Indemnification for unacceptable use**

You will indemnify, defend and hold Komatsu and its affiliates harmless against any claims, actions or damages which are caused by any use You make of our App which violates these Terms or any applicable laws or regulations. You shall pay all costs and expenses, including reasonable expenses related to legal representation, which we incur in relation to such damages, actions or claims. We have the right, at our own expense, to exclusively defend ourselves for any such claim or action in which case You will provide all assistance and information we require to build up such defence.

#### **1.6 License to use the App**

Komatsu grants You a limited, non-exclusive, non-transferable, non-sub-licensable and revocable right to access and use the App for the intended professional purposes. This license shall remain in effect until, and unless, terminated by You or us. Such license shall not include a right to copy, analyse, decompile, make public, re-engineer, distribute, transfer to third parties, translate, reproduce, modify, change or create derivative works of the works encumbered with IPR of Komatsu or its licensors unless necessary to make use of the App for its intended purposes in accordance with these Terms, nor the right to sell, lease, rent or loan the Services to a third party. You can install one copy of the App on a device which You are authorized to use.

#### **1.7 Ownership of User content, data and communications**

All IPR and ownership rights related to the content, data and communications which You upload in, or generate with, the App shall vest, and remain vested, in the customer who invited You to register and create login credentials for SC Field. We and our affiliates, contractors, and subcontractors and our partners are granted a license to use such content, data and communications for the purposes of making the App available to You in accordance with these terms and our Privacy Policy.

## **1.8 Use of logos and trade names**

Your use of the App does not grant You any rights to use our trademarks, trade names logos or brands for any purpose.

## **2. FEE**

### **2.1 Fee for the Application**

The Application can be accessed on the Website by a Customer who has purchased a subscription and has accepted the SMART CONSTRUCTION Quotation Terms and Conditions, and the Fee will be as set out in the SMART CONSTRUCTION Quotation Terms and Conditions.

## **3. TERMINATION**

### **3.1 Duration**

Our agreement with You commences upon your acceptance of these Terms as set forth herein and shall be of indefinite duration.

### **3.2 Termination for convenience**

Komatsu may terminate Our agreement with You at any time without notice, compensation, or prior recourse to a judge, by providing You with thirty days' written notice of its intention to terminate.

### **3.3 User content, communications and data**

You must ensure that You have copies of all data which You upload in the App. We are not obliged to offer any functionality in the App that would allow You to export or retrieve any content, communications or data which You have generated with, or have uploaded in, the App. We reserve the right to permanently delete all content, communications and data which You have generated with, or uploaded in, our App once You have deleted the App from your device.

## **E. Application Specific Terms for OFFICE**

### **1. USE OF APPLICATION**

#### **1.1 Use**

1. Komatsu will grant the Customer a license that is restrictive and non-transferable to use the Application.
2. The Customer will be granted a right to use the Application to the extent that the terms and conditions of the SMART CONSTRUCTION Quotation are observed and within the scope of the purpose of the use stipulated in these Terms and Conditions. All authorities, copy right, and other Intellectual Property Rights will belong to Komatsu or one of the Related Bodies Corporate that grants Komatsu the license.
3. Except strictly in accordance with the Terms and Conditions and the User Guide or otherwise where the right is explicitly granted in writing by Komatsu, the Customer must not transfer the right of using the Application to a third party or sublicense any rights included in the Application to a third party.
4. The Customer will use the Application once the Customer fully understands the terms and precautions stipulated in the User Guide.
5. If the Customer sends technical or other forms of information from other countries to Australia or New Zealand, or from Australia or New Zealand to other countries, the Customer will comply with the laws and regulations on technology export.

#### **1.2 Management of the User**

1. The Customer may grant officers and employees of the Customer and other ones determined by the Customer all or part of the right of using the Application it holds, based on the SMART CONSTRUCTION Quotation in accordance with these Terms and Conditions and User Guide. All acts of the User, to whom the right of using the Application is granted by the Customer, will be deemed as an act of the Customer. Even in the case where a third party uses the Application using the Login ID of the Customer, the Customer will take full responsibility of the use. In the case where Komatsu is damaged by the act of the third party, the Customer will compensate Komatsu for any loss or damage suffered.
2. The Customer will have the User to whom the Customer granted the right of using the Application observe these Terms and Conditions, SMART CONSTRUCTION Quotation and User Guide. In the case where the Customer discovers the violation committed by a User or judges that there is a possibility of the violation, the Customer will immediately inform Komatsu and take full responsibility for the violation. In the case where the User to whom Komatsu granted the right of using the Application commits any violation, the Customer will immediately withdraw the right of using the Application the Customer granted to the User and will inform Komatsu of the fact.

## **F. Application Specific Terms for K-RTK**

### **1. Terms of License Agreement**

- 1.1 Upon acceptance of a SMART CONSTRUCTION Quotation for the K-RTK Correction Data service. You hereby agree to the Terms and Conditions when accessing the RTK Correction Data provided in these Services.
- 1.2 These terms apply to the use of the RTK Correction Data service on any Komatsu ICT Construction Equipment or GNSS survey equipment, including third party devices, used for the purposes of carrying out GNSS surveying related tasks in the Construction, Mining, and Agricultural sectors.
- 1.3 If you do not agree to the Terms and Conditions, You are not entitled to use the RTK Correction Data service.
- 1.4 Komatsu grants You a license (License) that permits You to use the RTK Data Correction service and the RTK Correction Data. This License is non-exclusive and non-transferable. If upgrades updates or supplements of the data formats are obtained, the use of such upgrades or updates is government by these Terms and Conditions and any amendments unless other terms accompany the upgrades, updates or supplements in which case those terms apply.
- 1.5 As between the parties, all right, title and interest in any data, content or materials supplied through the Application by Komatsu's licensors or their suppliers (excluding User content) are owned by Komatsu or those licensors or suppliers. You receive only the limited rights expressly granted in these Terms and Conditions. All other rights are reserved.

### **2. Confidentiality**

- 2.1 The RTK Correction Data service is subject to confidentiality obligations whereby You acknowledge that any data, content or materials supplied through the Application by Komatsu's licensors or their suppliers (including RTK Correction Data) are proprietary and confidential to those licensors/suppliers and may contain trade secrets, you must keep such data confidential and use it only as permitted under these Terms and Conditions and not disclose or provide access to third parties except to your Personnel who need to know for that permitted use and who are bound by confidentiality obligations no less protective than those set out herein. This clause survives termination. This clause does not apply to information that (a) becomes public through no breach of these Terms and Conditions, (b) was already known to you on a non-confidential basis, (c) is independently developed by you without reference to the confidential information, or (d) is lawfully received from a third party without restriction. You may make a disclosure required by law, regulation or court order, provided you give Komatsu reasonable prior notice (to the extent legally permitted) and limit the disclosure to what is legally required.

### **3. Requirements and Limitations**

#### **3.1 Internet Access**

You understand and agree that You are required to have an adequate and working internet connection for accessing the RTK Correction Data service. Your internet service provider may charge You for such internet connection, but that is solely between You and your internet service provider. We accept no responsibility or liability for any claims or damages arising from any interruption or breakdown of your internet connection.

### **4. Service Coverage Area and Data Accuracy**

- 4.1 You understand and accept that the accuracy of the RTK Correction Data will, in general, degrade the further You are away from the RTK Correction Data service infrastructure, and You are aware of this technical limitation.
- 4.2 Komatsu will provide a coverage map of the locations of RTK Correction Data infrastructure.
- 4.3 Komatsu accepts no responsibility for Users utilising the RTK Data Correction service outside of its recommended coverage area.
- 4.4 Komatsu reserves the right to modify, suspend or discontinue the RTK Correction Data service or parts thereof at any time for maintenance (routine and unplanned), upgrades, or other operational reasons.

**4.5** It is the User's responsibility to validate the accuracy of the RTK Correction Data both prior and during use of the RTK Correction Data service.

## **5. Third Party Device Compatibility**

**5.1** The RTK Correction Data service is designed to work with common Third Party Devices, however Komatsu cannot guarantee compatibility with all third party devices, and You understand that you are solely responsible for the configuration and compatibility of such third-party devices, and to ensure competent operation of such devices.

## **6. Permitted Use and Misuse**

**6.1** The RTK Correction Data is not permitted for use in any application where the accuracy of the data may result in personal injury or death. You are responsible for assessing and managing the risk and implementing appropriate controls.

**6.2** Re-broadcasting of any associated data is strictly prohibited and may result in suspension, termination, and You may be liable for damages.

**6.3** The Terms and Conditions are between Komatsu and You, any unauthorised access, such as re-broadcasting or password sharing may result in service suspension or termination.

## **7. Fee**

**7.1** The RTK Correction Data can be accessed on the device by a Customer who has purchased a subscription and has accepted the SMART CONSTRUCTION Quotation Terms and Conditions, and the Fee will be as set out in the SMART CONSTRUCTION Quotation.

**7.2** Komatsu may immediately revoke access to the RTK Correction Data service if there are any outstanding or overdue Fees relating to a particular subscription.

**7.3** The RTK Correction Data subscription is non-transferable.

## **8. Termination**

**8.1** Komatsu may immediately terminate your access to the RTK Correction Data service if You fail to comply with any of the Terms and Conditions.

**8.2** In the event of termination due to non-compliance with the Terms and Conditions; You may not be entitled to any compensation or refund and You must cease using the RTK Correction Data service immediately.