

Sandvik Digital Terms**1. Applicability and scope**

- 1.1. These Digital Terms: (a) apply to the use of all Digital Services provided or made available by Sandvik; (b) form part of the Contract; and (c) where presented to the Purchaser digitally before first accessing the Digital Service (e.g., as a click-through or scroll-through document), have been designed for electronic execution by the Purchaser acting through its representative.
- 1.2. By accepting these Digital Terms (as described in clause 2 (*Quotes, Orders, Order Acceptance, and the Contract*) or by clicking "accept" or similar), the Purchaser unconditionally confirms to Sandvik that its representative has all necessary authority to accept the terms of the Contract (including these Digital Terms) for and on behalf of the Purchaser.
- 1.3. The Parties agree that: (a) an electronic signature shall have equivalent standing in applicable Law to a physical signature; (b) words or phrases beginning with a capital letter shall have their respective meanings given in clause 26 (*Definitions*); and (c) these Digital Terms shall be construed in accordance with clause 2 (*Quotes, Orders, Order Acceptance, and the Contract*) and clause 27 (*Interpretation*).

2. Quotes, Orders, Order Acceptance, and the Contract

- 2.1. The grant of the Licence (as described in clause 4 (*Licence*)) and the Purchaser's receipt and use of the Digital Service is subject to the Contract which specifies (typically in the Quote and Order Acceptance): (a) the Fees (which, unless specified otherwise in the Contract, shall be in addition to the purchase price for Connected Equipment) payable as consideration for: (i) the Licence; and (ii) where applicable, Support; and (b) subject to clause 3 (*Subscription Period*), the Subscription Period.

Quotes, Orders, and Order Acceptance

- 2.2. Except where these Digital Terms have been incorporated into (and form part of) a Separate Contract: (a) the Purchaser may submit an Order to Sandvik (which Order may follow a Quote); and (b) Sandvik may, at its sole discretion, either: (i) accept the Order by way of issuing an Order Acceptance or commencing performing the Digital Service (at which time the Parties shall be immediately bound by the Contract); or (ii) reject the Order.
- 2.3. Subject to clause 2.2 and clauses 2.4 to 2.9 inclusive, the Order constitutes an offer (by the Purchaser) to procure (from Sandvik) a Licence subject to clause 2.4(a).

The Contract

- 2.4. In all cases, the Parties agree that: (a) the provision or supply of the Digital Services is subject to these Digital Terms and the other provisions of the Contract; (b) the Contract contains the entire agreement between the Parties with respect to its subject matter and supersedes all prior communication and agreements between the Parties; (c) in entering into the Contract, the Purchaser has not, and does not, rely on any communication or representation (other than fraudulent misrepresentation) that has not been expressly set out in the Contract; (d) the Contract applies to the exclusion of any other terms or conditions including those: (i) issued, or referred to, by the Purchaser (including in an Order); or (ii) which may be implied by statute, trade, custom, practice, or course of dealing.
- 2.5. Sandvik will not supply on, and expressly rejects: (a) the Purchaser's standard terms and conditions of purchase (or similar); and (b) to the fullest extent permissible under applicable Law, any terms and conditions other than those contained in the Contract.
- 2.6. The Parties agree that the Contract is formed as described in clause 2.2.
- 2.7. By accessing, using or otherwise accepting the benefit of any Digital Services, the Purchaser acknowledges that the Digital Services are supplied in accordance with the terms and conditions of the Contract.

- 2.8. Subject to clause 2.9, if, and to the extent, there is any conflict, inconsistency, or ambiguity between the constituent parts of the Contract then: (a) where the Digital Services have been provided or made available under a Separate Contract, such conflict shall be resolved in accordance with the order of precedence described in that Separate Contract provided always that clause 17 (*Limitation of Liability*) of these Digital Terms shall apply and/or prevail with respect to the Digital Service; and (b) in all other cases, such conflict shall be resolved in accordance with the following order of precedence (with the document earlier in the list prevailing over a document later in the list): (i) the Order Acceptance (if documented); (ii) any other document attached or referred to in the Order Acceptance (if documented); (iii) these Digital Terms; (iv) any other document attached or referred to in these Digital Terms; (v) the Quote; (vi) any other document attached or referred to in the Quote; and (vii) subject to clause 2.5, the Order.

- 2.9. Where the supply of Digital Services is made in conjunction with the supply of other Connected Equipment, Goods and/or Services then: (a) to the extent there is, or arises, any inconsistency between: (i) these Digital Terms; and (ii) the Terms and Conditions of Supply or Separate Contract (as applicable), regarding the provision of Digital Services (or Equipment Monitoring Service); and (b) except as expressly stated otherwise in the Contract (by express reference to the provision in these Digital Terms being modified), these Digital Terms shall prevail.

3. Subscription Period

- 3.1. The Contract (including the Licence) shall have effect on the Effective Date and continue, except where provided otherwise in a Special Condition, for the Subscription Period.

4. Licence

- 4.1. Subject at all times to the Purchaser's payment of the Fees and performance of its obligations contained in the Contract (including the Special Conditions), Sandvik grants the Purchaser a non-exclusive, non-transferable (except as expressly permitted in these Digital Terms), non-sublicensable, and revocable right and licence, during the Subscription Period, to use the Digital Services: (a) in connection with the Connected Equipment (where applicable to the Digital Service); (b) as described in the Documentation; (c) at the Site(s) (if specified in the Contract); (d) solely for the purposes of, and subject to the restrictions contained in clause 4.3 (*Acceptable Use*), (the **Licence**).
- 4.2. The Purchaser accepts that the Digital Service (and any and all Software and other materials made available by Sandvik in connection with the Digital Service) has been licensed for use **and not sold** to the Purchaser.
- 4.3. The Purchaser shall not:
- 4.3.1. where applicable, use the Digital Service in a live or production environment unless and until: (a) the completion of any required Commissioning Project; and (b) it has received written confirmation from Sandvik that the Commissioning Project has, without prejudice or limitation to clause 22 (*Health and Safety Requirements*), been completed to Sandvik's reasonable satisfaction;
- 4.3.2. where applicable to the Digital Service, permit more End Users to access the Digital Service than the number of End User Licences purchased in the Contract;
- 4.3.3. where applicable to the Digital Service, permit anyone to access or use the Digital Service who is not an End User with an assigned End User Licence (and, in particular, not to any direct competitor of Sandvik) or permit any End User Licence to be used by more than one individual End User except where: (a) such End User Licence has been reassigned to another individual End User; and (b) the Purchaser has procured that the previous End User stops using the Digital Service immediately following the re-assignment;

- 4.3.4. access, store, distribute, or transmit any software, code, file, or programme which may prevent, impair, or otherwise adversely affect the operation of the Digital Service (including any worms, Trojan horses, viruses, or other similar things or devices);
 - 4.3.5. submit any data or material to the Digital Service that: (a) is harmful, discriminatory, threatening, defamatory, obscene, infringing, harassing, or offensive; (b) is unlawful (including in breach of the Data Protection Legislation or Export Laws) or facilitates illegal activity; (c) is incomplete, inaccurate, or intended to deceive; or (d) could cause damage or injury to any person or property;
 - 4.3.6. access or use the Digital Service from any location prohibited by Export Laws;
 - 4.3.7. use the Digital Service in breach of any specific restrictions described in the Special Conditions;
 - 4.3.8. except to the extent expressly permitted by mandatory applicable Laws: (a) modify, convert, format, or create copies of any part of the Digital Services; or (b) adapt, reverse engineer, decompile, disassemble, circumvent or otherwise create or attempt to create or permit, allow, or assist others to create the source code of any part of the Digital Services or its structural framework;
 - 4.3.9. sell, transfer, license, offer as a service, or otherwise dispose of or distribute any part of the Digital Services without Sandvik's prior and express written consent;
 - 4.3.10. use any part of the Digital Services for any other purpose or in any other manner than that defined in the Contract;
 - 4.3.11. attempt to circumvent, disable, or otherwise interfere with any security related features of the Digital Service (including features that enforce limitations of use or prevent copying) or the infrastructure supporting the Digital Service;
 - 4.3.12. with the exception of clause 12.4, attempt to, or otherwise permit, the Digital Service to access, provide, or receive (directly or indirectly) data to, any third-party database except either: (a) with Sandvik's prior written consent; or (b) as expressly permitted as a Special Condition;
 - 4.3.13. access or use the Digital Service for any purpose other than its internal business purposes including to: (a) commercialise the Digital Service without Sandvik's express written permission; (b) create derivative works of, or based on, the Digital Service; (c) build a product or service which competes with: (i) the Digital Service; or (ii) Sandvik's (or its Affiliates') business;
 - 4.3.14. use, or communicate with, the Digital Service in a manner that could damage, disable, overburden, impair, or compromise the Digital Service or Sandvik's computing environment and systems used in connection with the Digital Service;
 - 4.3.15. except to the extent expressly permitted in the Special Conditions, collect or harvest any information or data from the Digital Service or attempt to: (a) decipher any transmissions to, or from, the servers running the Digital Service; (b) perform side channel attacks; or (c) carry out indirect information farming, otherwise than as permitted by the Contract;
 - 4.3.16. connect any systems or hardware to the Digital Service that are not approved in writing by Sandvik or in the relevant Documentation;
 - 4.3.17. use the Digital Service in a manner that infringes the Intellectual Property Rights of any person; or
 - 4.3.18. change or remove any copyright and/or other proprietary notice in the Digital Services or Documentation.
- 4.4. The Digital Services may contain Third-Party Software which: (a) Sandvik will identify on the Purchaser's reasonable request; and (b) is provided solely subject to terms and conditions published by the respective Third Party licensor(s) from time to time.
 - 4.5. Where Third Party Software is supplied or installed as part of the Digital Services, the relevant Third Party's terms and conditions shall apply in lieu of the Digital Terms in relation to all aspects of such Third Party Software.
 - 4.6. Sandvik assumes no liability whatsoever for any error, defect, infringement, or unavailability in or to the Digital Services caused by Third Party Software.
- 5. Purchaser's general obligations**
- 5.1. In addition to the Purchaser's obligations under clause 4 (*Licence*), the Purchaser:
 - 5.1.1. without prejudice to clauses 14.3 to 14.8 inclusive (*Disclaimers*), is responsible for carrying out appropriate due diligence in relation to its procurement of the Licence including by: (a) carefully reviewing the Documentation; and (b) making appropriate enquiries to satisfy itself that the Digital Services are capable of meeting its requirements;
 - 5.1.2. shall comply with all applicable Laws with respect to its use of the Digital Services and its activities under and in connection with the Contract;
 - 5.1.3. shall ensure that all End Users are appropriately skilled, experienced, and trained Purchaser personnel;
 - 5.1.4. shall prepare and maintain a list of End Users and, promptly following Sandvik's request, make that list available for inspection by Sandvik;
 - 5.1.5. shall ensure that, to the extent it shares or makes available any Purchaser Materials to Sandvik (including through the Digital Services), it is lawfully entitled to do so and does so in accordance with applicable Laws (including, with respect to Personal Data, the Data Protection Legislation);
 - 5.1.6. shall obtain and maintain all licences, consents, and permissions necessary for it to: (a) provide or otherwise make available the Purchaser Materials; and (b) connect the Purchaser System to the Digital Service;
 - 5.1.7. shall comply with Sandvik's reasonable requests made in connection with the operation of the Digital Services and/or the Equipment Monitoring Service (including by using the Digital Services and Connected Equipment in accordance with any operating instructions described in the relevant Documentation and carrying out all necessary maintenance);
 - 5.1.8. shall: (a) ensure that the Purchaser System (and where relevant the Purchaser Materials) complies with the Technical Requirements; (b) be solely responsible for all problems, incidents, conditions, delays, delivery failures, and all other loss or damage arising from use of, or relating to, the Purchaser System or Purchaser Materials; and (c) give Sandvik remote access to the Purchaser System if, and to the extent, necessary for Sandvik to provide the Digital Service (including for the purposes of installation and the provision of Support);
 - 5.1.9. shall ensure that all data stored or hosted in the Purchaser System (e.g., where the Digital Service is hosted on-premise or using third party infrastructure under the control of the Purchaser) is independently backed-up at least once in every successive period of twenty-four (24) hours; and
 - 5.1.10. shall be solely responsible for procuring and maintaining its network connections and telecommunications links from the Purchaser System to the Digital Services (including all necessary data connections, networks, and other

infrastructure, as specified in the Technical Requirements and/or as instructed by Sandvik from time to time).

5.2. The Purchaser acknowledges and agrees that the Digital Service is a standard service offering and Sandvik will not, except as expressly agreed in the Contract, be responsible for ensuring that the Digital Service complies with any customer-specific, country-specific, or industry-specific security concepts or standards.

5.3. Where the Digital Services are provided for, or in connection with, Connected Equipment, the Purchaser shall: (a) use and access the Digital Services only from Connected Equipment or via the provided web interface (or similar) unless otherwise approved in writing by Sandvik in advance; and (b) maintain independent backup copies of all Purchaser Materials, Input Data, or other data provided by the Purchaser to Sandvik.

5.4. The Purchaser shall: (a) be responsible for the acts and omissions of all End Users as if such acts or omissions were its own and an obligation of the Purchaser contained in the Contract (unless the context reasonably requires otherwise) includes an obligation on the Purchaser to ensure that an End User does not act, or omit to act, in breach of that obligation; and (b) notify Sandvik promptly about any: (i) misuse, possible misuse, or any security risk (e.g., vulnerability) related to the Digital Services (including any breach or non-compliance with clause 4 (*Licence*) of which it becomes aware; (ii) possible unauthorised use of an End User's access credentials (or misuse, loss, or theft of the same); or (iii) unintended data access received through the Digital Services (e.g., data that is evidently not intended to be viewed by the Purchaser or an End User).

6. Purchaser's indemnity

6.1. The Purchaser shall indemnify, hold harmless, and defend Sandvik and its Affiliates, officers, agents, employees, Distributors, sub-contractors, or other representatives (in this clause referred to as "**those indemnified**") from and against all liabilities, costs, and expenses (including, without limitation, all reasonable legal fees) suffered or incurred by any of those indemnified or a third party arising out of or in connection with: (a) the use or receipt of Purchaser Materials by those indemnified including: (i) risk assessments carried out by the Purchaser in connection with a Commissioning Project; (ii) use of the Purchaser System (including in combination with the Digital Service); and (iii) compliance with technical specifications provided by or on behalf of the Purchaser; (b) loss or damage caused, or contributed to by, a Third Party OEM; or (c) the Purchaser's, the Purchaser's Affiliates', or any End User's use of the Digital Services: (i) in breach of the Contract; (ii) for any other purpose(s) than those anticipated by Sandvik for the relevant Digital Service; or (iii) in violation of Export Laws, employment laws, Data Protection Laws, or other applicable Laws in the Purchaser's jurisdiction or the jurisdiction in which the Digital Services are used.

7. Access and End User Accounts

7.1. For the management, administration, and use of the Digital Services, Sandvik may make available user account(s) required by End Users to access the Digital Services in accordance with the Contract.

7.2. The Purchaser may manage, access, and use the Digital Services as described in the Documentation (e.g., via the Connected Equipment, a web interface and/or dashboard(s)) by using log-in access credentials provided by Sandvik to the Purchaser.

8. Sandvik's obligations (availability and technical Support)

8.1. Subject to clauses 14.3 to 14.8 inclusive (*Disclaimers*) and clause 17 (*Limitation of Liability*), Sandvik shall: (a) procure that the Digital Services are, in all material functional and technical respects (excluding, for the avoidance of doubt, trivial and/or immaterial non-conformities not affecting functionality or use of the Digital Services), as described in the Documentation; (b) supply the Digital Services in accordance with the security standards attached to the Contract (typically in the Quote or Order Acceptance) (if any), provided that the

Purchaser acknowledges and agrees that the Purchaser is responsible for implementing and maintaining appropriate security measures to its use of the Digital Service (including in connection with the Purchaser System); (c) where applicable to the Digital Services and specified in the Contract, provide Support in accordance with the Contract and Documentation; and (d) except where the Digital Services are hosted as an on-premise solution on the Purchaser System, use reasonable efforts to ensure that the Digital Services are available to a level that meets or exceeds the availability target(s) specified in the Documentation (if any).

8.2. The Digital Services may be unavailable from time to time due to necessary updates or maintenance. If reasonably possible, scheduled maintenance will be posted on the Digital Services' interface or otherwise communicated to the Purchaser (e.g., via email).

8.3. Sandvik may upon request (e.g., where outside the scope of Support (if any)) offer technical support services, training, and other professional Services to the Purchaser in relation to Digital Services subject to: (a) the Terms and Conditions of Supply; (b) the Separate Contract; or (c) a separate support agreement (as applicable) and additional fees.

9. Updates to the Digital Service

9.1. Sandvik: (a) except as expressly agreed otherwise in the Contract as comprising Support, is not obliged to provide the Purchaser with Updates; and (b) may, acting reasonably, require the Purchaser to promptly apply an Update (e.g., as necessary to patch or remove a vulnerability).

9.2. The Purchaser agrees that: (a) Updates may be subject to an additional or changed Fee and are provided subject to the terms of the Contract; (b) Sandvik is not obliged to maintain prior versions of the Digital Services; (c) Sandvik shall not be responsible for obsolescence of the Digital Service that may result from changes to the Purchaser's requirements or the Purchaser System; and (d) Sandvik has sole discretion and control over the Digital Service and, subject to clause 9.4, has reserved the right to change, update, and further develop the technology, features, performance, configuration, appearance, content, and functionality of Digital Services and, as relevant to the foregoing, the contents of the Digital Terms (including the Documentation) from time to time.

9.3. Sandvik will use reasonable efforts to notify the Purchaser in advance of a material modification to the Digital Service (e.g., through the Digital Services and/or by written notice to the Purchaser (including email)).

9.4. If a modification made by Sandvik under clause 9.2(d) causes the Purchaser to experience a material and demonstrable reduction to the essential functionality of the Digital Service or the performance of the Digital Service then, unless Sandvik agrees to roll-back the modification or make a further modification, in each case, to remove the reduction in functionality or performance then the Purchaser: (a) may terminate the Licence by written notice to Sandvik; and (b) as its sole and exclusive remedy, be entitled to receive a pro-rated refund of the Fees paid in advance for the remainder of the then current Subscription Period, provided that Sandvik receives such notice to terminate within thirty (30) days from the implementation of the original modification.

9.5. Sandvik may terminate the Licence for convenience on written notice to the Purchaser if the Digital Service is: (a) to be discontinued; or (b) Sandvik is prevented from providing the Digital Services due to substantially changed circumstances outside of its reasonable control (e.g., in case continued provision is prohibited due to applicable Law, court decision or governmental order or if Sandvik's agreement with its cloud hosting provider is terminated), provided that Sandvik shall give the Purchaser as much advance notice of the termination as is reasonably practicable in the circumstances and, to the extent that any Fees have been paid in advance for access to the Digital Service that will not be supplied as a result of the termination, provide the

Purchaser with a pro-rated refund of the Fees for the remainder of the then current Subscription Period.

10. Fees, Taxation, and payment terms

10.1. **Variations to an Order prior to supply of the Digital Service:** The Purchaser acknowledges and agrees that: (a) if variations should occur prior to supply, the Fee may be amended by Sandvik; (b) if the Purchaser requests a variation to the Order before the provision of the Digital Services or commencement of the Subscription Period, Sandvik may, at its discretion accept or reject such request; (c) where an Order is varied, the Fees in the Order will increase or decrease (as the case requires) by an amount agreed between the Parties or, failing such agreement, by an amount determined by Sandvik acting reasonably; and (d) where the amount is to be determined by Sandvik, Sandvik will calculate the amount by reference to Sandvik's then current price list, costs, expenses, losses, and damages suffered, off-site overheads, profit and such other reasonable rates and charges in connection with the variation.

10.2. **Taxation:** The Parties agree that, with respect to VAT or other applicable taxation: (a) the Fees are quoted on a VAT-exclusive basis; (b) if in any jurisdiction VAT is payable by Sandvik to a tax authority in relation to the supply of the Digital Services, an amount equal to such VAT will be calculated and charged to the Purchaser as an additional amount; (c) to the extent that a payment to a Party under or in connection with the Contract is calculated by reference to, or as a specified percentage of, another amount or revenue stream, that payment shall be calculated by reference to, or as a specified percentage of, the amount or revenue stream exclusive of VAT; (d) if the Purchaser is required by law to withhold any taxes from payment to Sandvik (including an amount on account of VAT withholding) then the Purchaser shall, unless the Parties agree otherwise, pay an additional amount to Sandvik to ensure Sandvik receives and retains the same amount that it would have received had no tax been withheld from, or otherwise due as a result of, the payment; and (e) this clause 10.2 will continue to apply after expiry or termination of the Contract.

10.3. **Invoicing and payment:** The Purchaser agrees: (a) that the applicable Fees for the Digital Services shall be as specified in the Order Acceptance (or otherwise in the Contract); (b) to be bound by such Fees by installing, copying, downloading, or otherwise using the Digital Service; (c) that unless expressly provided otherwise in the Order Acceptance or Separate Contract, the Purchaser shall pay all invoices within thirty (30) days from the date of the invoice (the "**Due Date**"); (d) that if any part of the Fee is not paid by the Due Date, Sandvik shall be entitled to charge and recover interest at the rate of 1.5% per month or part thereof on the Fee overdue for the period between the Due Date until payment is made in full; (e) that payment received from the Purchaser is valid once honoured or funds are cleared; and (f) that it shall indemnify (and keep indemnified) Sandvik against any costs incurred by Sandvik in connection with the Purchaser's failure to pay the Fee before the expiry of the Due Date (including legal fees on an attorney and own client scale, collection charges, and debt collection agency fees) on a full indemnity basis, provided that the Purchaser is at fault.

10.4. **Failure to pay the Fee:** Without prejudice to Sandvik's other rights or remedies available under the Contract (including under clause 10.3), Sandvik: (a) may without prior notice to the Purchaser suspend or terminate: (i) the supply of Digital Services; and (ii) the grant of the Licence, where any part of the Fee is or remain(s) unpaid after the Due Date; and (b) shall be entitled to recover from the Purchaser all reasonably incurred costs and losses arising from suspension or termination.

11. Intellectual Property Rights

11.1. Sandvik (or its licensors) is and will remain the owner of the Sandvik IPR.

11.2. Except as expressly stated in the Contract, the Purchaser shall have no right or interest in the Sandvik IPR and, for the avoidance of doubt, shall not be entitled to receive or use Sandvik Data.

11.3. Notwithstanding anything else stated to the contrary anywhere in the Contract, the Contract will not, and is not intended to, transfer, assign, or grant implied rights to any part of the Sandvik IPR to the Purchaser.

11.4. The Purchaser shall be permitted to use the Digital Service as described in clause 4 (*Licence*) or otherwise as described in the Special Conditions.

11.5. Project IPR that is created in connection with the provision of Services is licensed for use under the Terms and Conditions of Supply or Separate Contract (as applicable).

11.6. The Purchaser acknowledges and agrees that the Digital Services and Sandvik IPR comprise commercially valuable, proprietary assets and trade secrets of Sandvik or its licensors, the design and development of which reflect the effort of skilled developers and the investment of considerable time and money by or on behalf of Sandvik.

11.7. The Purchaser hereby grants Sandvik a worldwide, perpetual, irrevocable, transferable, sub-licensable, royalty-free license to use any suggestion, recommendation, feature request, or other feedback related to the Digital Services provided by or on behalf of the Purchaser and End Users, and to incorporate any of the above into the Digital Services and related Documentation.

11.8. If (at any time): (a) through use of the Digital Services; (b) by operation of applicable Law; or (c) otherwise, the Purchaser comes to own Intellectual Property Rights in the Sandvik IPR then the Purchaser shall (promptly on Sandvik's request and without delay) assign (or procure the assignment of) such Intellectual Property Rights to Sandvik and, to the extent permitted by applicable Law, waive (or procure the waiver of) all moral rights (and analogous rights) worldwide in connection with such Intellectual Property Rights.

11.9. Subject to clauses 11.10, 11.11, 11.12, 11.13, and 17 (*Limitation of Liability*), Sandvik shall indemnify the Purchaser against any claim made against the Purchaser by a third party to the extent that such claim alleges that the Purchaser's use of the Digital Services (excluding any Third Party Software) in accordance with the Contract infringes any Intellectual Property Rights belonging to that third party (the "**Sandvik Indemnity**").

11.10. The Sandvik Indemnity: (a) applies only to loss or damage that is: (i) awarded to the third party and against the Purchaser by a court or other body having competent jurisdiction over the indemnified claim and to the extent such loss or damage relates strictly to the use of the Digital Service (rather than on an account of the Purchaser's profits); or (ii) agreed by Sandvik to be paid to the third party in settlement of the indemnified claim; and (b) is subject to: (i) the Purchaser giving Sandvik prompt notice of the indemnified claim (and in any event ensuring that notice is given within five (5) Business Days of the Purchaser becoming aware of, or being notified of, the indemnified claim); (ii) the Purchaser providing reasonable co-operation to Sandvik in the defence and settlement of the indemnified claim; (iii) the Purchaser taking all reasonable and timely action necessary to mitigate all loss, damage, costs, and expenses incurred by the Purchaser as a result of the indemnified claim (including taking such reasonable actions as Sandvik may request to avoid, dispute, resist, appeal, compromise, or defend any such indemnified claim); and (iv) Sandvik being given sole authority to defend and settle the indemnified claim.

11.11. In the defence or settlement of any claim to which the Sandvik Indemnity applies, Sandvik may: (a) procure a right for the Purchaser to continue using the infringing material or service; (b) replace or modify the infringing materials or service so that it becomes non-infringing; or (c) if such remedies are not reasonably available, terminate or suspend the Contract on notice to the Purchaser without, subject to clause 11.12, any additional liability to the Purchaser.

11.12. Where clause 11.11(c) applies, Sandvik shall provide the Purchaser with a refund of the Fees paid and pro-rated for the remainder of the current Subscription Period.

- 11.13. In no event shall Sandvik, its Affiliates, or their employees, agents, or subcontractors be liable to the Purchaser to the extent that the indemnified claim is based on any one (or more) of the following: (a) a modification of the Digital Service (or their outputs) by anyone other than Sandvik or its representatives; (b) infringing Third Party Software; (c) use of Purchaser Materials; (d) compliance with the Purchaser's instructions, specifications, or other requirements; (e) the Purchaser's breach of the Contract or use of the Digital Service in breach of the Contract; or (f) a Third Party OEM.
- 11.14. The Purchaser shall have no rights or remedies in respect of infringement of any third party Intellectual Property Rights except as expressly set out in this clause 11.
- 11.15. The Parties agree that the Purchaser shall have sole responsibility for, and warrants, the legality, non-infringement, reliability, integrity, accuracy and quality of the Purchaser Materials.
- 11.16. The Purchaser hereby grants to Sandvik (and its Representatives) a non-exclusive right to use the Purchaser Materials to the extent necessary for Sandvik (or its Representatives) to: (a) provide and make available the Services and/or Digital Service; (b) provide Support and/or complete the Commissioning Project; and (c) as otherwise permitted in the Contract.
- 12. Data**
- 12.1. The Purchaser acknowledges and agrees that Sandvik may: (a) collect, store, analyse, and process any Input Data, Output Data, and other metrics and logs (i.e., use data) collected by Connected Equipment or through the Digital Services in order for Sandvik to: (i) provide the Purchaser with the Digital Services (including the Equipment Monitoring Service, Support, and any services in relation or in connection thereto provided by Sandvik or its Representatives); (ii) develop, plan, and implement improvements to the Digital Service or Connected Equipment, such improvements may be recommended to the Purchaser; (iii) ensure the smooth operation (including the security) of the Digital Service or Connected Equipment; (iv) enable scalability planning and performance monitoring activities to be carried out with respect to the Digital Service; (v) prepare accurate invoices; (vi) evaluate adoption rates and the success of new features and releases of the Digital Service; (vii) create training data; (viii) evaluate current and future performance of the Digital Service or Connected Equipment; and (ix) create, develop, and collect Sandvik Data to use for the Purpose; and (b) permit its Distributors, Affiliates, and third party suppliers permission to access and process Output Data solely in connection with the Contract and for the purpose of enabling such Sandvik Distributors, Affiliates, and third party suppliers to perform services in connection with the Contract.
- 12.2. If and to the extent Sandvik does not have direct access to the Input Data and/or Output Data, the Purchaser shall, on request, provide such Input Data and/or Output Data (in a format reasonably acceptable to Sandvik) promptly and without undue delay.
- 12.3. The Digital Services (including the Equipment Monitoring Service) may include: (a) monitoring equipment hours and/or equipment productivity; and/or (b) assisting or conducting aftermarket services or similar.
- 12.4. The Purchaser may use Input Data and Output Data for its own internal business purposes provided that the Purchaser shall not, without obtaining Sandvik's prior written consent, disclose or otherwise make available any Input Data or Output Data (in whole or in part and regardless of format) to any third party (excluding its Affiliates); provided, however, that the Purchaser may disclose Input Data or Output Data to its third party service providers who: (a) have a need to know the Input Data or Output Data in order to service the Connected Equipment (or other relevant Goods sold to the Purchaser by Sandvik or a Distributor) for and on behalf of the Purchaser; and (b) have entered into written confidentiality undertakings with the Purchaser that are no less protective of the Input Data and Output

Data as those contained in the Contract and prevent further onward disclosure.

- 12.5. For the avoidance of doubt the Purchaser: (a) is not entitled to receive, use, or share RM Data unless expressly agreed otherwise in writing; and (b) acknowledges and agrees that: (i) the RM Data is commercially sensitive Confidential Information belonging to Sandvik; and (ii) where Sandvik agrees to provide the RM Data, an additional fee may apply.
- 12.6. The Purchaser acknowledges and agrees that the Digital Services are based on Input Data sent to Sandvik and that the Purchaser shall be solely responsible and liable for the availability, quality, accuracy, reliability, completeness, and integrity of Input Data.
- 12.7. The Purchaser acknowledges and agrees that: (a) Input Data and Output Data (e.g., machine logs and production data) is made available to the Purchaser through a pre-defined interface; (b) the Purchaser is responsible for pulling, configuring, and the storage of Input Data and Output Data (e.g., machine logs) (including the duration of such storage); and (c) subject to clause 12.7(b), in normal operational circumstances and given the volume of data collected, machine logs are regularly overwritten.
- 12.8. The Purchaser acknowledges and agrees that: (a) the Equipment Monitoring Service is a Digital Service provided by Sandvik based on Input Data received by Sandvik; (b) Sandvik does not warrant (and cannot guarantee) that the Equipment Monitoring Service completely and accurately reflects the factual condition of the Connected Equipment; and (c) it is the Purchaser's sole responsibility to: (i) review the information in relation to the Equipment Monitoring Service; and (ii) confirm the actual condition of the Connected Equipment.

13. Personal Data

- 13.1. For the purposes of this clause 13, "**controller**" "**data subject**", "**Personal Data**", "**personal data breach**", "**processor**", "**processing**" and "**third country**" each have their respective meanings given in the Data Protection Legislation.

- 13.2. If, and to the extent, Input Data and/or Output Data contains any Personal Data, both Parties agree to comply with their respective obligations under the Data Protection Legislation.

For the purposes of the Data Protection Legislation, the Purchaser is the data controller and Sandvik is the data processor for such Personal Data.

- 13.3. For the avoidance of doubt, the Purchaser is solely responsible for ensuring that: (a) it has provided all necessary notices required under the Data Protection Legislation to all relevant data subjects; (b) all appropriate consents have been obtained to enable the lawful transfer to, and processing of, Input Data and Output Data by Sandvik and its Representatives (including Distributors and third party suppliers) as described in the Contract; and (c) all instructions it gives to Sandvik in respect of the Personal Data are and shall be lawful and in compliance with the Data Protection Legislation.

- 13.4. In respect of any Personal Data processed by Sandvik in connection with the Contract and in respect of which the Purchaser is the data controller, Sandvik will:

- 13.4.1. process the Personal Data: (a) as permitted in the Contract (including 13.9) and otherwise to the extent and in such manner as is reasonably necessary for the performance of Sandvik's obligations or exercise of its rights under the Contract; or (b) as required by its obligations under Data Protection Legislation. The Purchaser may provide additional, documented instructions to Sandvik to process Personal Data, provided that Sandvik shall be obligated to perform such additional instructions only if: (a) they are consistent with the terms and scope of the Contract and Data Protection Legislation; and (b) the Purchaser agrees to remunerate Sandvik for any reasonably incurred additional costs resulting from such additional instructions. Sandvik may process Personal Data for other purposes if required to

do so by applicable laws to which Sandvik is subject; in such a case, Sandvik will inform the Purchaser of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;

- 13.4.2. comply with the confidentiality provisions set out in clause 15 and ensure persons authorised by Sandvik to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- 13.4.3. implement appropriate technical and organisational measures within its control in accordance with Article 32 GDPR, to ensure a level of security appropriate to the risk for Sandvik's scope of responsibility within the Contract to guard against unauthorised and unlawful processing and against accidental loss, destruction, disclosure, damage or alteration. The Special Conditions include a description of such technical and organisational security measures (which may be updated from time to time provided that the functionality and security of the Digital Services are not materially degraded);
- 13.4.4. in the event Sandvik becomes aware of a personal data breach involving Personal Data processed by Sandvik pursuant to the Contract, Sandvik shall notify the Purchaser without undue delay;
- 13.4.5. refer requests from data subjects to exercise its rights under Data Protection Legislation to the Purchaser (where Sandvik is acting as data processor). To the extent a data subject's Personal Data is not accessible to the Purchaser through the Digital Services, Sandvik will, as necessary to enable Purchaser to meet its obligations under Data Protection Legislation, provide reasonable assistance to make such Personal Data available to Purchaser. Sandvik is entitled to compensation from the Purchaser for any costs and expenses relating to Sandvik's assistance in accordance with the Purchaser's request pursuant to this clause 13.4.5;
- 13.4.6. assist the Purchaser in ensuring compliance with its obligations pursuant to Articles 32 - 36 GDPR, taking into account the nature of processing and the information available to Sandvik, provided that Sandvik will be entitled to compensation from the Purchaser for any costs and expenses relating to Sandvik's assistance in accordance with this clause 13.4.6;
- 13.4.7. upon termination of the Contract, during a reasonable data retention period determined by Sandvik, provide the Purchaser with the option to download and retrieve any Personal Data in Sandvik's or its subcontractors' possession in accordance with Sandvik's standard procedures for the Digital Services. Upon expiry of the data retention period, Sandvik shall delete or anonymise any Personal Data, unless Sandvik is obligated under applicable law to continue to store the Personal Data;
- 13.4.8. in relation to audits:
 - 13.4.8.1. Sandvik and/or its subcontractor(s) may maintain certifications or audit reports capturing the Digital Services and upon request, Sandvik shall provide relevant extracts and/or information and documentation regarding the applicable reports/certifications (which shall constitute Confidential Information of Sandvik); and
 - 13.4.8.2. only where such certifications and audit reports do not suffice for Purchaser to comply with applicable audit requirements and Data Protection Legislation, the Purchaser may, at its sole cost (and provided that all reasonable costs and expenses incurred by

Sandvik will be reimbursed): (a) request additional information and documentation and (b) subject to at least sixty (60) days' prior written notice and not more than once in each successive period of 12 calendar months from the effective date of the Contract, further audit Sandvik's control environment and security practices relevant to Personal Data processed hereunder during Sandvik's normal business hours, for the sole purpose of verifying compliance with this clause 13 (subject to reasonable confidentiality undertakings being provided and the audit being conducted in a manner that minimises any risk of disruption to Sandvik's or its subcontractors' business and clients, in accordance with Sandvik's applicable practices and policies); and

- 13.4.9. promptly inform the Purchaser if, in its opinion, an instruction provided by the Purchaser infringes the GDPR or other applicable laws to which Sandvik is subject.
- 13.5. The Purchaser hereby provides a general authorisation for Sandvik to, at its discretion and subject to clause 13.6, engage any subcontractor (inside or outside the UK/EU/EEA) as a sub-processor for the processing of Personal Data by Sandvik as a data processor hereunder, provided that:
 - 13.5.1. Sandvik shall remain responsible for the acts and omissions of such sub-processor and Sandvik or the relevant Sandvik Affiliate, as applicable, shall ensure the a sub-processor has entered into a written agreement with obligations, wherever possible, substantially equivalent to those set out in this clause 13. It is acknowledged that sub-processors that are Sandvik Affiliates have entered into an Intra Group Data Transfer Agreement whereby Sandvik and Sandvik Affiliates have signed the standard data protection clauses adopted by the EU Commission under Data Protection Legislation ("SCCs"), ensuring the legal transfer of Personal Data within the Sandvik Group;
 - 13.5.2. Sandvik may replace or appoint new sub-processors at any time, provided that the Purchaser is notified without undue delay. A list of a sub-processors including their geographical location can be provided by Sandvik upon the Purchaser's written request; and
 - 13.5.3. the Purchaser may object to a sub-processor processing Purchaser's Personal Data, provided that such objection is delivered promptly and without delay, reasonable, and based on data protection grounds. If Sandvik is unable to accommodate the Purchaser's objection, the Purchaser may terminate, wholly or partly (if possible), the affected Digital Service by providing Sandvik with written notice within one (1) month of Sandvik's notice. Sandvik will refund a pro-rated portion of any pre-paid charges for the period after such termination date.
- 13.6. Sandvik is entitled to transfer Personal Data it processes as a data processor under this Contract to a third country, provided that a) the third country, according to a decision issued by the EU Commission, provides an adequate level of protection for Personal Data ("**Adequacy Decision**"), b) Sandvik ensures that there are appropriate safeguards in place for the transfer in accordance with Data Protection Legislation (such as the SCCs); or Sandvik is able to apply other legal mechanisms under Data Protection Legislation for the transfer of the Personal Data.
- 13.7. If, in the course of performing its obligations pursuant to the Contract, Sandvik within the EU/EEA transfers Personal Data to the Purchaser and the Purchaser is based in a third country (that is not subject to an Adequacy Decision) or constitutes an international organisation for

GDPR purposes, the Parties agree to adhere to the SCCs relating to the transfer of Personal Data from a processor within the EU/EEA to a controller established in a third country (Module 4), as may be amended from time to time, which will be deemed incorporated into the Contract by reference, with the following modifications:

- 13.7.1. In Clause 1/Annex I.A, the "Data Exporter" shall be Sandvik, and the "Data Importer" shall be the Purchaser.
 - 13.7.2. Clause 7 will be omitted and in Clause 11, the optional redress mechanism will be omitted.
 - 13.7.3. In Clauses 17 and 18, the applicable law and jurisdiction governing the Standard Contractual Clauses shall be the law of the country specified in the Contract.
 - 13.7.4. Annex I shall be deemed completed with the relevant information provided in the Contract (including this clause 13).
 - 13.7.5. All provisions applicable to Modules One, Two and Three will not apply.
- 13.8. The parties agree that in relation to all processing of Personal Data by Sandvik as data processor pursuant to this Contract, the following describes the subject matter and duration, nature and purpose, type of personal data and categories of data subjects:
- 13.8.1. **Subject matter:**
 - 13.8.1.1. The main purpose of the Digital Services is for Purchaser to carry out efficient, productive and safe operation of mining and construction equipment and to manage its human resources. Personal Data is processed by Sandvik in order for Sandvik to be able to provide the relevant Digital Service to the Purchaser.
 - 13.8.2. **Duration and retention:**
 - 13.8.2.1. Personal Data will be stored for as long as necessary to meet the purposes described in the Contract. This means that Personal Data is generally stored for the duration of a data subject's employment or contract with the Purchaser.
 - 13.8.2.2. When a data subject's employment or contract expires, for any reason, the Personal Data will be deleted or rendered anonymous, unless otherwise required or permissible under Data Protection Legislation or local laws. In addition, all Personal Data shall be deleted by Sandvik when Purchaser's right to use the Digital Services terminates or expires (regardless of reason) in accordance with clause 13.4.7, unless otherwise agreed.
 - 13.8.3. **Type of Personal Data:**
 - 13.8.3.1. Personal Data collected in connection with creation of a user account and/or log-in to the Digital Services, including name, employment number, user ID and/or other identifier, email address, shift roster and shift information; and
 - 13.8.3.2. Personal Data that arises when using the Digital Services, such as login information, location data (GPS), time/date, operational data and performance data.
 - 13.8.4. **Processing operations:**
 - 13.8.4.1. Storage, retrieval, analysis, organization, use, combination or alteration of Input Data;
 - 13.8.4.2. Creation, transmission and/or making available of Output Data through the Digital Services; and
 - 13.8.4.3. Anonymization and aggregation of Input and Output Data, to create Sandvik Data.
 - 13.8.5. **Categories of data subjects:**

- 13.8.5.1. Machine operators (Purchaser employees or contractors); and
- 13.8.5.2. Purchaser's system administrators.

- 13.8.6. **Locations:** Personal Data is processed by Sandvik and Sandvik Affiliates in several locations globally, including the country of the relevant Site. Personal Data is primarily stored in IBM data centres in Amsterdam or other IBM data centres in the EU.

- 13.9. The Purchaser permits Sandvik to aggregate and anonymize Personal Data (thereby creating Sandvik Data) which may subsequently be used by Sandvik for Sandvik's business purposes.

14. Digital Services Warranties and Disclaimers

- 14.1. Sandvik warrants that, during the Subscription Period and subject to clause 14.3 and the disclaimers contained in clauses 8.2 and 14.4 to 14.8 inclusive, the Digital Services will be provided in accordance with clause 8.1 (*Sandvik's obligations*) (the "**Digital Services Warranties**").
- 14.2. The Purchaser shall notify Sandvik of any suspected or actual breach of the Digital Services Warranties promptly and without undue delay and Sandvik shall, at its option and on confirming the breach and as the Purchaser's sole and exclusive remedy, either: (a) rectify, repair, or replace any errors or faults in the Digital Services so as to remove the breach within a reasonable period of receiving the Purchaser's notification; (b) credit paid or payable Fees during the period of an error or fault to the Purchaser; or (c) allow the Purchaser to immediately terminate the Licence for the affected Digital Service and provide a pro-rated refund for paid Fees for the remainder of the Subscription Period.
- 14.3. Unless and until the Commissioning Project has been completed (if applicable), Sandvik gives no representation, warranty, or undertaking whatsoever with respect to the Digital Services (including under the Digital Services Warranties).
- 14.4. Except to the extent expressly specified in the Digital Services Warranties: (a) Sandvik does not warrant, represent, or undertake to the Purchaser that: (i) use of the Digital Services will be error-free, without bugs, or otherwise uninterrupted; (ii) the Digital Services will not affect or disrupt any information technology systems; or (iii) that information obtained by the Purchaser through the Digital Service will meet the Purchaser's (or its End Users') specific requirements; It is the sole responsibility of Purchaser to determine and ensure that the Digital Services are relevant for Purchaser's business purpose and needs; (b) Sandvik gives no warranties, representations, or other commitments to the Purchaser (or its End Users) as to the functionality, performance, availability, transmission speeds, content, latency, or accuracy of the Digital Service; and (c) all warranties, conditions, representations, and terms (whether written or oral, express or implied by statute, common law, custom, trade usage, course of dealing or otherwise, including as to satisfactory quality, fitness for a particular purpose or use, accuracy, adequacy, completeness or timeliness) are hereby excluded to the fullest extent permitted by applicable Laws.
- 14.5. Sandvik shall have no liability under or in connection with the Contract if and to the extent any such liability is caused by any one (or more) of the following: (a) use of the Digital Services contrary to Sandvik's documented instructions or the Documentation (including being combined or used with hardware or software not approved in writing by Sandvik); (b) modification or alteration of the Digital Services by any party other than Sandvik or Sandvik's duly authorised contractors or agents; (c) use or interoperation of the Purchaser System or any Third Party OEM with the Digital Service or compliance with the Purchaser's instructions, specifications, or other requirements; (d) the Purchaser System, Purchaser Materials, or Third Party OEM failing to meet the relevant Technical Requirements; (e) any alteration to the configuration of the Digital Services which has not been approved in writing by Sandvik; (f) use of Digital Service otherwise than in

- accordance with the terms of the Contract; or (g) any delays, delivery failures, or any other loss or damage resulting from the transfer of data over third-party communications networks and facilities, including the internet.
- 14.6. For the avoidance of doubt, warranties for any Goods are provided in accordance with the Sandvik Warranty applicable at the date of the Order Acceptance referred to in the Contract.
- 14.7. This clause 14 shall survive the termination of the Contract and any warranty claim must be notified in writing by the Purchaser to Sandvik within reasonable time from the relevant circumstances are discovered or should have been discovered.
- 14.8. The Purchaser acknowledges and agrees that: (a) the Digital Service may contain: (i) Third Party Software; and (ii) Software that is subject to open-source licences; and (b) except as is expressly provided otherwise in this EULA and to the extent permitted by applicable Law, such Third Party Software and open-source licences are made available "as-is" and "as available".
- 15. Confidentiality**
- 15.1. Each Party undertakes to the other that it shall (in respect of the Confidential Information of the other Party): (a) keep all Confidential Information secret; (b) except as expressly permitted by the Contract or otherwise with the other Party's prior and express written consent, not disclose the Confidential Information (in whole or in part) to any third party at any time; and (c) use Confidential Information furnished by the other Party only for the purposes of the Contract
- 15.2. Notwithstanding the foregoing, Sandvik may disclose the Purchaser's Confidential Information: (a) to Sandvik Affiliates, its and their subcontractors, advisors, third party suppliers, and Distributors under conditions of confidentiality to the extent necessary to enable Sandvik to fulfil its obligations and/or exercise its rights under the Contract; and (b) otherwise in compliance with the requirements of a competent legal or other regulatory authority (or as otherwise required by applicable Laws).
- 15.3. The obligations of confidentiality under this clause shall not apply (or shall cease to apply, as the case may be) to any Confidential Information that was: (a) public knowledge at the time of disclosure or thereafter becomes generally known other than through breach of the Contract or an act of negligence by the receiving party; (b) in the receiving Party's lawful possession prior to its receipt from the disclosing Party; (c) demonstrably developed at any time by the receiving Party without any connection to the information received hereunder; (d) rightfully obtained by a Party from other unrestricted sources; or (e) disclosed with the prior written permission of the disclosing Party.
- 16. Audit**
- 16.1. The Purchaser irrevocably agrees that, subject to clause 16.2, Sandvik (or a Third Party appointed by Sandvik) may conduct a physical and/or remote audit for the purpose of verifying the Purchaser's compliance with the Contract (an "Audit").
- 16.2. In connection with Sandvik's conduct of an Audit, the Parties agree as follows: (a) Sandvik shall: (i) give the Purchaser not less than ten (10) Business Days advance written notice of the audit; (ii) conduct the Audit during the Purchaser's normal business hours; and (iii) use reasonable efforts to ensure that the Audit is carried out without unnecessary interruption to the Purchaser's business, except, in each case, where the provision of advance notice may, in Sandvik's reasonably held belief, render the Audit ineffective (e.g., to investigate a suspected breach of Export Laws, Sanctions, or the existence of Unsafe conditions); and (b) the Purchaser shall give Sandvik all reasonably requested information and assistance in connection with the Audit including by giving reasonable access to: (i) the End Users; (ii) the Purchaser's records and logs kept in connection with the Digital Service; (iii) the Purchaser System; (iv) the Connected Equipment; and (v) the Site and the Purchaser's other relevant business premises.
- 16.3. If any Audit reveals that the Purchaser's practices are not in compliance with the Contract, then the Purchaser shall, at its own expense and within a period of time specified by Sandvik, bring its practices into compliance.
- 16.4. Notwithstanding the above, Sandvik reserves the right to assess through its own systems and monitoring processes whether the Purchaser is using the Digital Services unreasonably and undertaking activities that breach the Contract.
- 17. Limitation of Liability**
- 17.1. Nothing in the Contract shall limit or exclude (or seeks to limit or exclude) either Party's liability to the other (to a greater extent than is permitted by applicable Laws) under the Product Liability Act ("Produkthaftungsgesetz") and for any loss or damage resulting from: (a) death or personal injury; (b) fraud or fraudulent misrepresentation, (c) the breach of a material contractual obligation, i.e. an obligation the fulfilment of which is essential for the proper performance of the contract and on the fulfilment of which the customer may therefore regularly rely ("Kardinalpflicht"); (d) intent and/or gross negligence or (e) any other matter in respect of which loss or damage may not be limited or excluded under applicable Laws. This also applies to the liability of any legal representative or vicarious agent ("Erfüllungsgehilfe") of Sandvik.
- 17.2. Subject to clause 17.1, Sandvik shall not be liable to the Purchaser (or to any third party claiming under or through the Purchaser) under any cause of action (whether such cause of action arises in contract (including under an indemnity or warranty), in tort or delict (including negligence or under statutory duty), for breach of statutory duty, or otherwise) for any loss or damage resulting from simple negligence by Sandvik, its legal representatives, or its agents.
- 17.3. Subject to clauses 17.1 and 17.2, the disclaimers contained in clause 14, and the sole and exclusive remedies described in clauses 11.14 and 14.2, Sandvik's total aggregate liability to the Purchaser (and to any Third Party claiming under or through the Purchaser) arising under and in connection with the Contract and the provision of the Digital Services and related services (including Support) shall be limited to the foreseeable and typical damages that may arise under such circumstances.
- 17.4. The Purchaser shall maintain adequate product, business, and professional liability insurance. In case any damages caused to Sandvik are covered by the Purchaser's insurance policies, the Purchaser shall be obligated to forward any such paid-out amounts to Sandvik. For the avoidance of doubt, this obligation shall be valid regardless of whether the damage is indirect or direct or any other limitations.
- 18. Suspension**
- 18.1. Without limitation to clause 19 (Termination), Sandvik may suspend access to, or use of, the Digital Services (in whole or in part) immediately without notice or on notice having immediate effect and for such period as Sandvik reasonably deems to be necessary in order to investigate and, if reasonably practicable, abate such matter if (in Sandvik's reasonable opinion): (a) the Purchaser or an End User is in breach the Contract; (b) the suspension is necessary to prevent or stop an imminent or ongoing attack or to prevent unauthorised access to the Digital Services; (c) the Purchaser's or an End Users' use of the Digital Services poses a security risk to the Digital Services (or adversely impact the Digital Services) or any third party; (d) the Purchaser's or End Users' use of the Digital Services may subject Sandvik or any third party to liability; (e) continued access or use by the Purchaser or an End User may be prohibited pursuant to applicable Laws or in Sandvik's opinion, may place Sandvik in breach of an applicable Law or make Sandvik the subject of investigation or enforcement action by a relevant authority; (f) Sandvik reasonably suspects abuse or fraudulent use of the Digital Services; (g) the Purchaser or an End User becomes or, in Sandvik's reasonably held opinion is likely to become, subject to, or in breach of, a Sanction; or (h) Sandvik has determined (acting reasonably) that the Purchaser's

- continuing use of the Digital Service would, or could reasonably be expected to: (i) have a detrimental effect on the integrity or operation of the Digital Service; or (ii) result in Unsafe conditions or activities.
- 18.2. For the duration of suspension pursuant to clause 18, the Purchaser will continue to be responsible for payment of Fees and for the use of any Digital Services not suspended.
- 19. Termination**
- 19.1. Either Party may terminate the Contract by written notice having immediate effect, if the other Party commits a material breach of any of the terms of the Contract (or a series of breaches which, taken together, amount to a material breach) that: (a) is irremediable; or (b) if such material breach is remediable, is not so remedied within ten (10) Business Days from written notice requiring remedy of the breach.
- 19.2. The Purchaser acknowledges and agrees that its breach of one, or more, of the following clauses shall be construed as an irremediable material breach for the purposes of clause 19.1: clauses 4.3.1, 4.3.4, 4.3.6, 4.3.8, 4.3.9, 4.3.13, 4.3.15, 4.3.17, 4.3.18, 12.4, 15 (*Confidentiality*), 22 (*Health and Safety Requirements*); and 24 (*Sanctions, Export Laws, and End User Assurance etc*).
- 19.3. In addition to its rights elsewhere in the Contract (including under clauses 11.11 (*IPR Indemnity*) and 19.1), Sandvik: (a) has the discontinuance rights described in clause 9.5 (*Updates to the Digital Service*); and (b) has the suspension rights described in clause 18 (*Suspension*).
- 19.4. Where Sandvik has a right to terminate the Contract it may, instead, elect to suspend the Purchaser's access to the Digital Service until the event giving rise to Sandvik's termination right is remedied.
- 19.5. If Sandvik has suspended the Purchaser's access to the Digital Service in accordance with clause 19.4, then Sandvik shall resume the Purchaser's access to the Digital Service if, and when, the Purchaser remedies the cause of the suspension to Sandvik's reasonable satisfaction.
- 19.6. Upon expiry or termination of the Contract (regardless of cause): (a) the Licence shall be automatically and immediately revoked and Purchaser must immediately cease all use of (and, where applicable, uninstall) the Digital Services; (b) the Purchaser will not be entitled to any refund of any Fees paid, except as explicitly stated in these Digital Terms; (c) the Purchaser shall, at its own expense, deliver or destroy (and at Sandvik's option) all copies of the Software, any Sandvik IPR, Sandvik Data, Confidential Information of Sandvik and/or other technical information which relates to the Digital Services and which is in Purchaser's possession, custody or control at the time of termination; and (d) if applicable, the Purchaser must give Sandvik access to the Site and/or Connected Equipment in order to perform any de-installation of the Digital Services.
- 19.7. Provisions that by their nature, sense and context are intended to survive the termination of the Contract (including clause 11 (*Intellectual Property Rights*), clause 12 (*Data*), clause 15 (*Confidentiality*), clause 17 (*Limitation of Liability*) and clause 25 (*Governing Law and Disputes*)) shall however survive the termination or expiration thereof.
- 19.8. The Purchaser agrees that: (a) Sandvik may require an executive of the Purchaser to certify in writing that the Purchaser has fully complied with its obligations under the Contract; and (b) where clause the foregoing applies, the Purchaser shall deliver the certification to Sandvik promptly, without delay, and in any event within five (5) Business Days' of Sandvik's request.
- 20. Assignment**
- 20.1. Except in respect of invoice financing or the recovery of a debt owed, neither Party may assign its rights under the Contract without the prior written approval of the other Party provided that Sandvik may assign or novate the Contract to another member of the Sandvik Group and the Purchaser hereby gives its irrevocable consent to the same.
- 20.2. The Purchaser acknowledges and agrees that: (a) the Digital Services and License granted hereunder are personal to the Purchaser and cannot be assigned or sub-licensed by it without Sandvik's prior written consent; and (b) it shall notify Sandvik if the Purchaser sells, leases, rents, or otherwise assigns or transfers Connected Equipment in respect of which the Digital Services are provided and notify any subsequent end user of the Connected Equipment that continued use of Digital Services requires a separate license and contract between Sandvik and such subsequent end user.
- 20.3. For the avoidance of doubt, the Contract and/or the License granted hereunder does not follow or transfer with the sale or assignment of Connected Equipment.
- 21. Subcontractors**
- 21.1. The Purchaser agrees that Sandvik may engage one or more subcontractors to perform any and all of its obligations under the Contract provided that: (a) Sandvik shall remain responsible for all activities of subcontractors to the same extent as if such activities had been undertaken by Sandvik itself; (b) the Purchaser's relationship remains at all times with Sandvik; and (c) the Purchaser may consequently not direct any claims towards Sandvik's subcontractors.
- 22. Health and Safety Requirements**
- 22.1. The Purchaser acknowledges and agrees that, where applicable, the Commissioning Project may require (as a Purchaser responsibility): (a) the completion of health and safety related training; (b) the appointment of an integrator (who may be a Third Party) to ensure that, amongst other matters, the Digital Service has been integrated correctly such that, for example, Connected Equipment is safe to use at the Site and in connection with the Purchaser Systems; and (c) pre-production testing.
- 22.2. Notwithstanding the Commissioning Project, the Purchaser: (a) is responsible for: (i) appointing a suitable integrator; (ii) completing its own risk assessments; and (iii) ensuring that it complies with all applicable Laws relating to or concerning: (A) the environment and emissions; (B) occupational health and safety; (C) sustainability; (D) the operation of plant and machinery; and (E) hazards and hazardous substances, and shall have and maintain all appropriate procedures and policies required by applicable Law; and (b) shall: (i) take all steps necessary to prevent the occurrence of Unsafe conditions or activities; and (ii) notify Sandvik if it observes, reasonably suspects, or becomes aware of an Unsafe condition or activity.
- 22.3. The Purchaser acknowledges and agrees that Sandvik is not, and will not assume the role of, an integrator.
- 22.4. The Purchaser warrants, represents, and undertakes to Sandvik on a continuing basis that: (a) it has appropriate health, safety and environment policies and procedures in place; (b) access to the Site and its other relevant premises will not be Unsafe; and (c) it will ensure that, before allowing entry at the Site or other premises, Sandvik's personnel are given thorough and appropriate site and safety introductions.
- 22.5. Sandvik will provide reasonable notice to the Purchaser of intended visits to the Site or other relevant premises in order to enable inductions and escorts to be provided.
- 23. Miscellaneous**
- 23.1. **Severability:** If any provision of the Contract is found by a court or administrative body having competent jurisdiction over the Contract to be wholly or partly illegal, invalid, or unenforceable then that provision (or the part that is illegal, invalid, or unenforceable) shall be: (a) modified to the extent necessary to give effect to the commercial intention of the Parties; or (b) where the above is not possible, treated as deleted from the Contract, provided that a deletion made under this clause shall not affect the validity or enforceability of the remaining provisions (or part provisions) of the Contract.
- 23.2. **Exclusive and cumulative remedies:** Except as otherwise expressly provided in the Contract (including as a sole or exclusive remedy): (a)

no right, power, privilege, or remedy conferred is intended to be exclusive of any other right, power, privilege, or remedy; and (b) remedies provided under the Contract shall be cumulative and in addition to, and not in lieu of, any other remedies available to either party at Law, in equity, or otherwise.

- 23.3. **Code of conduct and compliance with anti-bribery and competition/anti-trust Laws:** The Purchaser shall at all times comply with: (a) the "Sandvik Code of Conduct" (a copy of which is available on request); and (b) all applicable Laws relating to anti-bribery and anti-corruption (including anti-money laundering) including the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act as amended from time to time) and competition/anti-trust matters.
- 23.4. **No waiver:** No delay, neglect, or forbearance on the part of either Party in enforcing against the other Party any term or condition of the Contract shall be, or shall be deemed to be, a waiver or in any way prejudice any right under the contract.
- 23.5. **Notices:** Any notice or demand under the Contract shall be: (a) given in writing; and (b) delivered by registered mail, courier, or by hand to the address set out in the Order (or Separate Contract) or, with the exception of the service of legal proceedings, sent by email to the address specified in the Order (or Separate Contract). A notice given in accordance with this clause 23.5 shall be deemed to have been received: (a) if delivered by hand or courier on a Business Day (for the recipient) before 17:00 p.m. recipient's time, on the date of delivery; (b) if delivered by hand or courier on a Business Day (for the recipient) on or after 17:00 p.m. recipient's time, the Business Day (for the recipient) following the date of delivery; (c) if delivered by registered mail, seven (7) Business Days after the date of posting; or (d) email, at 9.00 a.m. (recipient's time) on the Business Day (for the recipient) immediately following transmission.
- 23.6. **Third party rights:** A person who is not a party to the Contract may not enforce any of its terms.
- 23.7. **No partnership or agency:** The Parties agree that nothing in the Contract is intended to create: (a) a partnership; (b) the relationship of principal and agent; or (c) the relationship of employer and employee, between the Parties.
- 23.8. **Notification of Claims:** The Purchaser shall always notify Sandvik of any claim under the Contract as soon as reasonably possible and may under no circumstance, except as for provided for in mandatory legislation, bring a legal action arising out of or related to the Contract more than two (2) years after the cause of action arose.
- 23.9. **Force Majeure:** Neither party is responsible for failure to fulfil its non-monetary obligations due to a Force Majeure Event. If a Force Majeure Event however persists for more than two (2) months, each party shall be entitled to terminate the Contract with immediate effect. Each Party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations.
- 23.10. **Translations:** Where the Purchaser has been provided a translated copy of these Digital Terms in a language other than English, in the event of any conflict arising between the English language version and the translated language version, the relevant translated version shall be deemed to be amended to conform with and be consistent with the relevant English version of the Contract.
24. **Sanctions, Export Laws, and End-User Assurance etc.**
- 24.1. The Purchaser represents and warrants that neither it nor any Related Entity or Representative (including its Related Entities) is currently (or is otherwise controlled by) a Sanctioned Person or otherwise the subject or the target of any Sanctions.
- 24.2. The Purchaser represents and warrants, from the Effective Date and on an ongoing basis, that it shall: (a) strictly comply with, and adhere to, all Sanctions; (b) not engage in any activity, practice or conduct involving a Sanctioned Person or a Prohibited Country; (c) not engage in activity, practice, or conduct in any manner that would breach Sanctions, cause

Sandvik or its Related Entities to breach Sanctions, or that could expose it, Sandvik or their Related Entities to the risk of adverse measures pursuant to any Sanctions (including being designated as a Sanctioned Person); (d) not directly or indirectly (even when under threat of deterring financial liability) sell, re-sell, circumvent, transfer, retransfer, provide, export, re-export, divert, loan, lease, consign, or otherwise release or dispose of any of the Digital Services or Confidential Information to military (or military intelligence) end-users or for military (or military intelligence) end use; to, via or for the benefit of a Sanctioned Person; or to a Prohibited Country; (e) ensure that the Digital Service and Confidential Information will not be used, re-exported, transferred, or retransferred for any purpose connected with chemical, biological, or nuclear weapons, or missiles capable of delivering such weapons; and the Goods, or any replica of them, will not be used in any nuclear explosive activity or unsafeguarded nuclear fuel cycle. The Purchaser understands and acknowledges that Sandvik is not responsible for any Confidential Information that are subsequently exported or re-exported by the Purchaser or sold to another person and/or representative, domestic, or foreign. In the event of such a post-sale re-export, transfer or re-transfer of the Confidential Information, the Purchaser is responsible for complying with (and warrants and represents that it shall comply with) all Sanctions and Export Laws, including by obtaining all export licenses or authorisations where required under law (including the Sanctions) and imposing obligations equivalent to those contained in this clause 24 on its customers with respect to all subsequent transactions involving the Digital Services); and (f) maintain its own policies and procedures to ensure compliance with Sanctions and Export Laws (and the Sanctions-related / Export Laws- related provisions in the Contract).

- 24.3. The Purchaser: (a) represents and warrants that it will take all reasonable measures to ensure that its employees, subcontractors, agents, intermediaries, and Representatives will comply with the terms of the Contract; (b) shall cause all subcontractors to give and enter into representations, warranties, and undertakings substantially equivalent to those set out in clause 24.2. For the purposes of this clause 24.3, reasonable measures includes (but is not limited to) policies, procedures, and training relating to compliance with Sanctions, Export Laws, and the Sanctions-related provisions of these Digital Terms; and (c) shall establish and maintain adequate internal controls and mechanisms to: (i) detect conduct by third parties in its downstream commercial chain, including possible resellers, that violates, or frustrates the purpose of, Sanctions; and (ii) ensure it obtains sufficient knowledge about the end-user to determine whether, for each contract, the Digital Services could be destined for an end-use which is not permitted under the Contract.
- 24.4. Nothing in the Contract requires either Party to take any action, or refrain from taking any action, where doing so would be prohibited by, or subject to penalty under any Sanctions, or where doing so would expose the party or its Related Entities to the risk of adverse measures pursuant to any Sanctions.
- 24.5. Each Party agrees to take advantage of any general licence to lawfully allow for the performance of the terms of the Contract if such performance is affected by Sanctions. For the avoidance of doubt, nothing in the Contract, or otherwise, requires Sandvik to apply for any specific licence or authorisation in the event that performance of the terms of the Contract becomes unlawful pursuant to Sanctions.
- 24.6. If the Purchaser breaches any representation or warranty set out in this clause 24 or, in Sandvik's reasonable opinion, any such breach is likely to occur, the parties agree that Sandvik may terminate or suspend (at its own discretion) its relationship with the Purchaser immediately, and that Sandvik shall not be liable toward the Purchaser or any third party for any subsequent non-performance by Sandvik under the Contract, and that the Purchaser shall indemnify and hold Sandvik harmless from any claims, losses, damages, fines, or penalties relating to such non-performance or otherwise arising from a breach of representation or warranty.
- 24.7. The Purchaser shall notify Sandvik immediately (and no later than within seventy two (72) hours of knowing or suspecting the breach) of any

known or suspected breach (whether by the Purchaser or any other entity or person) of any representation or warranty set out in the clauses above or it becomes aware that performance of the Contract, or any actions taken in relation to or pursuant to the Contract have, or may lead to, a breach of this clause 24. Further, the Purchaser shall provide all information relating to requests for any Digital Services, that the Purchaser suspects could violate or circumvent Sanctions, or where the provision of Digital Services would breach the Purchaser's commitments under the obligations above in these clauses, including requests from or on behalf of a Sanctioned Persons or attempts to acquire any Digital Services in violation of Sanctions.

- 24.8. If Sandvik elects to suspend the Contract pursuant to clause 24.6: (a) Sandvik shall cease performance under the Contract with immediate effect upon serving written notice to the Purchaser; (b) any suspension will last for a period of up to one hundred and twenty (120) days. If, after this period, Sandvik is unable to confirm that the Purchaser is in compliance with this clause 24, Sandvik may elect to terminate the Contract with immediate effect; and (c) for the suspension to cease having effect, Sandvik must serve the Purchaser with a written notice confirming that the suspension period has come to an end.

25. Governing Law and Disputes

- 25.1. The contract and any claims arising out of or in connection with its subject matter or formation shall be governed by and construed in accordance with the laws of the Federal Republic of Germany, excluding its conflict of law rules. The application of the UN sales law (CISG - United Nations Convention on Contracts for the International Sale of Goods) is excluded.
- 25.2. Any disputes arising out of or in connection with the contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law. The arbitral tribunal shall be comprised of three members. The seat of the arbitration shall be Essen and its language shall be English. However, Sandvik as plaintiff reserves the right to resort to the ordinary German courts of law instead and to commence legal action in the courts of Essen or any other court which may have jurisdiction over the Customer or any of its assets.

26. Definitions

- 26.1. In addition to terms explicitly defined throughout the Contract, the following terms shall have the meaning set out below when used in the Contract with an initial capital letter:

"Affiliate(s)" means any entity which: (a) is controlled by a Party; (b) controls a Party; or (c) is under common control with a Party, where control means the direct or indirect ownership of more than fifty percent (50%) of the shares or interests entitled to vote for the directors of such entity or the equivalent power over the management of such entity, for so long as such entitlement or power exists;

"Audit" has the meaning given in clause 16.1;

"Business Day" means Monday through Friday 08:00 - 17:00, excluding public holidays in the location where the Digital Services are provided;

"Commissioning Project" means any integration, migration, or similar implementation project related to the Digital Service described in the Quote, Order Acceptance, or elsewhere in the Contract;

"Confidential Information" means any information or data, in respect of a Party or its Affiliates or Representatives or their respective operations, including but not limited to reports, brochures, technical documents, specifications, part-numbers, service manuals, drawings, information, interpretations, production methods, records, operations, processes, plans, product information, price lists, market opportunities and customers containing or otherwise reflecting any information that is or may be proprietary and includes, but is not limited to, trade secrets, concepts, know-how, designs, patent applications, inventions, Software, (cross) references, processes, business plans, and financial

information, that a party discloses to the other party or its Affiliates or Representatives in writing, orally or otherwise;

"Contract" means either: (a) where Sandvik's standard ordering process is followed: (i) the Order Acceptance (including any Special Conditions contained therein); (ii) these Digital Terms; (iii) the Quote (including the any Special Conditions contained therein); (iii) the Order (subject to clause 2.5) to which these Digital Terms have been attached or incorporated by reference; and (iv) any other document which is attached to or incorporated by reference in the Order Acceptance, the Terms and Conditions of Supply (to the extent referenced in, or incorporated into, these Digital Terms), these Digital Terms, or the Quote; or (b) in all other cases: (i) the written supply agreement to which these Digital Terms have been attached or incorporated by reference (a **"Separate Contract"**); (ii) these Digital Terms; and (iii) any other document which is attached to or incorporated by reference in the Separate Contract, the Terms and Conditions of Supply (to the extent referenced in, or incorporated into, these Digital Terms), these Digital Terms, or the Quote.

"Connected Equipment" means equipment (including Goods sold under the Terms and Conditions of Supply or a Separate Contract), which have remote monitoring hardware or software installed, connected, and activated by Sandvik;

"Contract Year" has the meaning given in clause 17.3;

"Data Protection Legislation" means: (a) if directly applicable, the UK GDPR: as defined in s.2 of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations SI 2019/419 and/or General Data Protection Regulation ((EU) 2016/679) (GDPR); and (b) any national laws, regulations, and legislation in relation to data privacy and which are applicable to the Purchaser's use of the Digital Services (as amended or updated from time to time);

"Digital Services" means: (a) the digital services provided by Sandvik, as: (i) described in the Documentation; and (ii) otherwise provided in connection with the Connected Equipment; and (b) where use of the Digital Services requires the installation of related Software, the provision of such Software;

"Digital Services Warranties" has the meaning given in clause 14.1;

"Digital Terms" these Terms and Conditions for Digital Services;

"Distributor(s)" means Sandvik Representatives (including agents, distributors, dealers, or other intermediaries) who: (a) sell or resell Goods (including Connected Equipment), Services, or Digital Services; or (b) provide Sandvik with equipment or services;

"Documentation" means Sandvik's documentation containing technical and functional specifications concerning the Digital Services (as updated from time to time in accordance with the Contract) and made available by Sandvik in connection with the Contract (including in the Quote and/or Order Acceptance);

"Effective Date" means the date on which Order Acceptance occurs;

"End User(s)" means the Purchaser's (and its Affiliates') employees, end customers (and their personnel), or other individuals accessing or using Digital Services on the Purchaser's behalf;

"End User Licence" means an individual user subscription purchased by the Purchaser from time to time for use by an End User;

"Equipment Monitoring Service" means the services provided by Sandvik in connection with receiving Input Data as may be further detailed in the Contract and Documentation which may include, but is not limited to, availability to Connected Equipment data via a web managed (or similar) subscription service received following online acceptance of any relevant web portal terms and conditions;

"Export Laws" means: (a) the Dual-Use Regulation (428/2009/EC); (c) the Anti-Torture Regulation ((EU) 2019/125); (d) the Firearms

Regulation (258/2012/EU); and (e) all other applicable import and export control Laws applied by a Sanctions Authority;

"Fees" means the licence fees payable as consideration for the Purchaser's receipt and the End User's use of the Digital Services, as specified in the Quote and/or Order Acceptance;

"Force Majeure Event" means a circumstance which impedes performance and is beyond the control of the Party, the consequence of which could not reasonably have been overcome by the suffering Party. Force Majeure Events shall be deemed to include acts of war, acts of terrorism, acts or omissions by a public authority, and similar circumstances. The parties agree that a breach of the Sanctions and Export Laws does not fall within the definition of "Force Majeure" except, with respect to Sandvik, for Sanctions and/or embargoes that relate directly or indirectly to Sandvik's supply chain;

"Goods" means the Sandvik equipment and/or other components supplied to the Purchaser under, and in accordance with, the Terms and Conditions of Supply or Separate Contract (as applicable);

"Input Data" means data that is generated, collected, recorded, or uploaded either by, from or in connection with, the Connected Equipment, including utilisation information regarding the Connected Equipment and the standard industry data SAE J1939 but excluding any data or information regarding Sandvik's equipment control systems including how to achieve functional performance;

"Intellectual Property Rights" or **"IPR"** means: (a) patents, any extensions of the exclusivity granted in connection with patents, petty patents, utility models, registered designs, plant variety rights, applications for any of the foregoing (including, but not limited to, continuations, continuations-in-part and divisional applications), the right to apply for and be granted any of the foregoing, rights in inventions; (b) copyrights, design rights, semiconductor topography rights, moral rights, publication rights, database rights; (c) trade marks and service marks, applications for any of the foregoing, the right to apply for any of the foregoing, rights in trade names, business names, brand names, get-up, logos, domain names and URLs; (d) rights in know-how, trade secrets and Confidential Information, data exclusivity rights; and (e) all other forms of intellectual property right having equivalent or similar effect to any of the foregoing which may exist anywhere in the world;

"Law(s)" means: (a) statutes, statutory instruments, regulations, by-laws, rules, ordinances, guidance, or subordinate legislation; (b) the common law and the law of equity; (c) a binding court order, judgment, or decree; (d) any industry code, guidance, policy or standard which, in each case, is enforceable by law or a regulator; and (e) any direction, policy, rule or order that is legally binding and that is made or given by a regulator and/or Sanctions Authority;

"Licence" has the meaning given in clause 4.1 (*Licence*) and **"Licensed"** shall be construed accordingly;

"Order" means the purchase order or request issued by the Purchaser to Sandvik for the Digital Services;

"Order Acceptance" means Sandvik's acceptance of the Order and consequent agreement to the Contract by either: (a) delivering or making available the Digital Services; or (b) issuing the Purchaser with a document named 'Order Acceptance' (or similar);

"Output Data" means: (a) Input Data that has been processed by Sandvik in order to provide deliverables to the Purchaser as part of the Equipment Monitoring Service; and (b) any other data agreed in the Contract to be provided to the Purchaser through Sandvik's connectivity solutions, which (in each case) always excludes Sandvik Data and any data or information regarding Sandvik's equipment control systems including how to achieve functional performance;

"Party" means Sandvik or the Purchaser (as the case may be);

"Parties" means Sandvik and the Purchaser (taken together);

"Project IPR" means the Intellectual Property Rights in any and all outputs, work products, or deliverables arising from, under, or in connection with the provision or receipt of the Services or Digital Services (including in connection with the Commissioning Project);

"Prohibited Country" means Afghanistan, Belarus, Iran, North Korea, Syria, Russia, Crimea and non-government-controlled areas of the Donetsk, Kherson, Luhansk and Zaporizhzhia oblasts of Ukraine or other Ukrainian territories claimed to be Annexed by Russia or any country or region which: (a) is, or whose government is, or becomes, a target of comprehensive, country-wide or territory-wide Sanctions. Sandvik reserves the right to amend the list of Prohibited Countries by written notice to the Purchaser;

"Purchaser" means the person or entity who Orders the Digital Services from Sandvik;

"Purchaser Materials" means content, materials, assets, data, and Confidential Information provided or made available to Sandvik by the Purchaser (including: (a) by interoperation with the Purchaser System; and (b) Input Data concerning or relating to a Third Party OEM) under and in connection with the Contract) and expressly excludes all Sandvik IPR;

"Purchaser System" means the hardware, software, devices, equipment, tools, infrastructure, and other systems and technologies made available by or on behalf of the Purchaser in connection with the Contract (including all computer environments that interoperate with the Digital Services);

"Purpose" means Sandvik's business purposes including: development, optimisation, improvement, marketing, analysing market trends, evaluation of adoption rates, scheduling, and support of Sandvik's other current and future goods and services offerings, parts deliveries, software and hardware, product support, product development and other business improvements or offerings, including aggregating Sandvik Data with other data for the purpose of providing performance comparisons or benchmarking to Sandvik's other customers;

"Quote" means Sandvik's quote or proposal document describing: (a) the Digital Services; (b) the Fees; and (c) the Special Conditions (if any);

"Related Entity" means in respect of any entity, any of its representatives, contractors, subcontractors, intermediaries, joint venture and consortium partners, officers and directors and that entity's subsidiaries, parent companies (whether direct or indirect) and subsidiaries of a parent company, provided that such entity/person: (a) is receiving or performing services hereunder, or (b) is in any other way (directly or indirectly) associated with the Contract or linked to the Purchaser;

"Representative(s)" any director, employee, officer, adviser, auditor, agent, consultant, distributor, or subcontractor of a Party or its Affiliate;

"RM Data" means remote monitoring data (including data structures and interfaces) derived from Sandvik Data (limb (a)) that relates to and/or concerns: (a) specific equipment within the fleet; (b) how that specific equipment is being used, maintained, and/or operated; and/or (c) the conditions, routes, and/or environment within which the specific equipment operates;

"Sanction(s)" means any laws, regulations, and orders enacted, administered, implemented, imposed, or enforced from time to time by any Sanctions Authority in relation to economic, financial, customs or trade sanctions or export controls, or similar restrictive measures;

"Sanctions Authority" means: (a) the United Nations Security Council; (b) the United States of America; (c) the United Kingdom; (d) Canada; (e) Australia; (f) the European Union (and/or its individual member states); and (g) the respective governmental institutions and agencies of any of the foregoing, or any other jurisdiction that may be relevant to the performance of the Contract, or rights and obligations

pursuant to the Contract (including jurisdictions relevant to any Related Entities or Affiliates, and/or to the end use of the Goods), including the Office of Foreign Assets Control of the US Department of Treasury (OFAC), the US Department of State, the Bureau of Industry and Security of the US Department of Commerce, the Office of Financial Sanctions Implementation, part of His Majesty's Treasury (OFSI), the European Commission and the relevant national competent authorities (NCAs) within an EU member state;

"Sanctions List" means any list of Sanctions targets maintained by a Sanctions Authority, including without limitation: (a) the Consolidated United Nations Security Council Sanctions List; (b) any list maintained by the OFAC or included in the International Trade Administration's "Consolidated Screening List", including the Specially Designated Nationals (SDN) and Blocked Persons List; (c) the Consolidated List of Financial Sanctions Targets or List of persons subject to restrictive measures in view of Russia's actions destabilising the situation in Ukraine, maintained by the UK Treasury; (d) the Consolidated List of Persons, Groups and Entities subject to EU Financial Sanctions; or (e) any similar list maintained by, or public announcement of sanctions made by, any other Sanctions Authority;

"Sanctioned Person" means any person, individual, entity, vessel, or aircraft: (a) specially designated, blocked, or otherwise individually listed or targeted by a Sanction or a Sanctions List; (b) that is resident or located in, operating from, or incorporated under the laws of a Prohibited Country; (c) that is, or is part of, the government of a Prohibited Country or any political subdivision, body, agency or instrumentality thereof, or fully or partially owned (directly or indirectly); or (d) fully or partially controlled by, or acting on behalf or at the direction of, or for the benefit of, any individual or entity on a Sanctions List (including but not limited to where the level of direct or indirect ownership amounts to 45% or more on aggregate);

"Sandvik" means the Sandvik Group entity specified in, or relevant to, the Order Acceptance;

"Sandvik Data" means: (a) any aggregated and/or anonymised) data (including data structures and interfaces) which is created, generated, derived, or otherwise produced by Sandvik based on: (i) Input Data and/or Output Data, or (ii) otherwise created through the use of the Digital Service (including the Equipment Monitoring Service), such data never to contain any Personal Data; (b) all equipment navigation data (including data structures and interfaces and data concerning the movement and operation of equipment) which is created, generated, derived, or produced by Connected Equipment and collected by Sandvik (including through the Digital Service); and (c) any other data comprising Sandvik's Confidential Information (including trade secrets) or which could be used to derive Sandvik's Confidential Information (including trade secrets);

"Sandvik Group" means Sandvik and the Affiliates of Sandvik AB (publ.);

"Sandvik Indemnity" has the meaning given in clause 11.9;

"Sandvik IPR" means: (a) all Intellectual Property Rights comprised in, relating to, or created as a result of, the provision of the Services or Digital Services (including in the Sandvik Data, RM Data, and any data structures and models relating to automation and machine learning, interfaces, interface definitions, open source software, databases, and datasets); (b) all IPR in adaptations, add-ons, modifications, updates, and enhancements (including those made following a request or suggestion made by or on behalf of the Purchaser) made to the Intellectual Property Rights described in limb (a); and (c) any Intellectual Property Rights created in connection with the performance of the Contract (including all materials provided or made available by Sandvik in connection with the Contract and all Project IPR);

"Sandvik Warranty" means the "Sandvik Standard Warranty" or "Sandvik Extended Warranty" (as applicable to equipment) as specified in the Quote or Separate Contract;

"Separate Contract" has the meaning given in the definition **"Contract"**;

"Services" means professional technical engineering or consultancy services delivered in connection with the implementation of, or the Purchaser's on-boarding to, the Digital Service (e.g., services delivered through the Sandvik Knowledge Box or any agreed Service agreement as applicable);

"Site" means the mining sites and other approved sites for use of Digital Services, as specified in the Contract;

"Software" means a computer program in executable object code format, made available or provided by Sandvik in connection with Digital Services;

"Special Condition(s)" means the supplemental or additional terms and conditions applicable to a specific Digital Service (e.g., concerning interoperability) and as may be documented in the Quote, Order Acceptance, and/or Separate Contract (as the case may be);

"Subscription Period" means, unless specified otherwise as a Special Condition, the period commencing on the Effective Date and, subject to early termination or expiry of the Contract in accordance with its terms, continuing until the expiry of twelve (12) months commencing from (and including) the Effective Date;

"Support" means support as described in the Documentation (or elsewhere in the Contract);

"Technical Requirements" means Sandvik's minimum requirements for use of the Digital Services generally and/or at the Site (e.g., infrastructure, data quality, IT, communications/networks and equipment minimum specifications), as specified in the Contract and/or as notified by Sandvik to Purchaser in writing from time to time;

"Terms and Conditions of Supply" means Sandvik's "Terms and Conditions of Supply (for Goods, Services, and Digital Services)" incorporated into the Quote and/or Order Acceptance or provided by Sandvik on request;

"Third Party" means any person or legal entity other than Sandvik, Sandvik's Affiliates, Purchaser, Purchaser's Affiliates and End Users;

"Third Party OEM" means a Third Party manufacturer of equipment, components, products, or digital services which are compatible with, or may be integrated for use with, the Digital Service;

"Third Party Software" means Software licensed by Third Parties;

"Updates" means any updates, new versions, modifications, enhancements, add-ons, upgrades, releases, or other developments to the Digital Service (including the Software) that Sandvik may develop from time to time;

"Unsafe" means unacceptable actual or potential hazards and incidents relating to safety, health, or the environment (including in breach of applicable Laws); and

"VAT" means any value-added tax, goods and services tax, consumption tax, or similar tax imposed by Law.

27. 27.1.

Interpretation

The Contract (and the documents comprising the Contract) shall be construed and interpreted in accordance with the following rules: (a) headings are for ease of reference only and do not affect interpretation; (b) the singular includes the plural and vice versa; (c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time; (d) a reference to a **"person"** includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity; (e) a reference to a legislative requirement or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; (f) the meaning of general words is not

limited by specific examples introduced by the words “**including**”, “**for example**” or similar expressions; (g) the rule known as ejusdem generis shall not apply and, accordingly, words introduced by the word “other” shall not be given a restrictive meaning by reason of the fact that such words are preceded by words indicating a particular class of acts, matters, or things; (h) references to “material breach” mean that such breach (which includes anticipatory breach, as that term is defined at common law): (i) is more than trivial, but need not be repudiatory; and (ii) if not remedied may, or is likely to have, a serious impact on the benefit that the innocent Party would otherwise derive from the performance of the Contract in accordance with its terms; and (i) any obligation in the Contract on a Party not to do something includes an obligation on that Party not to agree, allow, permit or acquiesce to that thing being done.

- 27.2. The rule of interpretation that a written agreement shall be interpreted against the Party responsible for the drafting or preparation of that agreement shall not apply.