

Bill No. 209  
2016

By-law No. A.-\_\_\_\_\_

A By-law to approve the Master Purchase Agreement with Intergraph Canada Ltd. doing business as Hexagon Safety & Infrastructure for the supply and installation of various Software Products and other services to be purchased under a Purchase Order; and to authorize the Mayor and the City Clerk to execute the Agreement.

WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 2(1) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended, provides that every municipality shall provide such other fire protection services as it determines may be necessary in accordance with its needs and circumstances;

AND WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Master Product and Services Agreement attached as Schedule A to this by-law, between The Corporation of the City of London and Intergraph Canada Ltd. doing business as Hexagon Safety & Infrastructure, which sets the terms and conditions for purchases by way of Purchase Orders from Intergraph Canada Ltd., is authorized and approved.
2. The Fire Chief is delegated the authority to appoint in writing a Project Manager for the purposes of the Master Purchase Agreement approved in 1 above.
3. The Mayor and the City Clerk are authorized to execute the agreement approved under section 1 above.
4. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council May 31, 2016.

Matt Brown  
Mayor

Catharine Saunders  
City Clerk

First Reading – May 31, 2016  
Second Reading – May 31, 2016  
Third Reading – May 31, 2016

## Schedule A



### MASTER PRODUCT AND SERVICES AGREEMENT

This Master Product and Services Agreement ("Master Agreement") is entered into by and between:

**Intergraph Canada Ltd.**  
doing business as **Hexagon Safety & Infrastructure ("Hexagon")**  
with its principal office located at  
1120 68 Avenue NE, Calgary, Alberta T2E 8S5

and

**The Corporation of the City of London ("Customer")**  
with its principal office located at  
400 Horton Street, London, Ontario N6B 1L7

### WITNESSETH

**WHEREAS**, Hexagon will make available to Customer certain proprietary software, including related proprietary documentation, software maintenance services, and professional services, all of which will be provided to Customer pursuant to the terms of this Master Agreement and an Order; and

**WHEREAS**, before Hexagon will provide any Software licenses or perform any Services, Customer must execute a corresponding Order; and

**WHEREAS**, Hexagon and Customer (each a "Party" and collectively the "Parties") desire to enter into this Master Agreement to govern each Order.

**NOW THEREFORE**, in consideration of the mutual covenants and promises set forth herein, the Parties agree as follows:

### GENERAL TERMS AND CONDITIONS

**1 Definitions.** In this Agreement, including any attachments made to it, the following terms have the following meanings:

1.1 "Affiliate" means, for business entities, the parent business entity of a Party and any business entities in which a Party or its parent company directly or indirectly holds a controlling ownership interest.

1.2 "Beta Software" means any version of Software prior to a generally available commercial release of such Software.

1.3 "Confidential Information" means any data or information, tangible or intangible, disclosed or made available by either Party ("Disclosing Party") to the other Party ("Receiving Party") in relation to this Master Agreement that is of value to the Disclosing Party and is not generally known in the industry or to competitors of the Disclosing Party and which shall include:

1.3.1 tangible information marked by the Disclosing Party with the word "Confidential" or otherwise identified by an appropriate stamp or legend indicating its confidential nature;

1.3.2 Confidential Information disclosed orally or visually and identified by the Disclosing Party as confidential when disclosed, and confirmed by the Disclosing Party in a written notice

within thirty (30) days following disclosure, which notice shall include markings similar to those outlined above; and

1.3.3 all other information that, notwithstanding the absence of markings or designations, would be understood by the Parties, exercising reasonable business judgment, to be confidential.

1.3.4 technical, financial and business information and models, information relevant to the current or proposed business plans of the Disclosing Party, reports, market projections, analyses, working papers, comparisons, studies, or other documents which contain such information;

1.3.5 information disclosed either directly, in oral or tangible form (including, but not limited to, magnetic or electronic form), or indirectly, by permitting the Receiving Party or its employees to observe various operations or processes conducted by the Disclosing Party;

1.3.6 information of the Disclosing Party's Affiliates, employees or agents; and

1.3.7 any material or documents prepared by the Receiving Party that is based on or contains any information disclosed by the Disclosing Party.

1.3.8 Confidential Information does not include information that:

1.3.8.1 is or becomes available in the public domain through no act of the Receiving Party;

1.3.8.2 has been received on a non-confidential basis from a third party without breach of this Master Agreement, where the Receiving Party has no reason to believe that such third party is bound by any confidentiality obligation to the Disclosing Party;

1.3.8.3 was already known by the Receiving Party without any obligation of confidence prior to receipt;

1.3.8.4 was developed independently by the Receiving Party without reliance on the disclosed Confidential Information, provided that such independent development can be substantiated; or

1.3.8.5 is confirmed by the Disclosing Party as not being confidential in writing.

1.4 “**Customized Software**” means those Services Deliverables that are software or computer code, whether in source code or object code.

1.5 “**Deliverable(s)**” means all Services, Maintenance Services, Software, hardware, and other items delivered or to be delivered by Hexagon to Customer pursuant to an Order under this Master Agreement.

1.6 “**Effective Date**” means the date the last Party executes this Master Agreement.

1.7 “**Fixed Price Project Assignment**” means Hexagon will provide the Services and Software licenses for a fixed price.

1.8 “**Hexagon IP**” means Hexagon or Hexagon Affiliate developed, created, or prepared Intellectual Property.

1.9 “**Installation Guide**” means a computer file in a Microsoft Word or Adobe PDF document or a text file that contains information a User may need to install or operate a Software Product.

1.10 “**Intellectual Property**” means all forms of intellectual property including, but not limited to, patents, trademarks, copyrights, trade secrets, methodologies, logos, techniques, processes, know-how, formulae, algorithms, logic designs, screen displays, schematics, source and object code computer programs or software, documents, mask work rights, design, ideas, product information, inventions and improvements thereto (whether or not patentable), and all works of authorship fixed in any medium of

expression (including any form of online, digital, or electronic medium), whether or not copyrightable and whether registered or not.

1.11 “**Maintenance Services**” means services associated with the maintenance of Software and/or other Deliverables licensed to Customer as particularly identified in a Quote for Maintenance Services.

1.12 “**Order**” means each individual purchase referencing this Master Agreement and executed by both Parties, which shall be comprised of the following, dependent upon the type of engagement:

(1) For a Fixed Price Project Assignment:

- a) a mutually executed SOW including pricing or referencing a Quote, or
- b) a Quote signed by an authorized signatory of the Customer, or
- c) a Quote and Customer PO referencing the Quote.

(2) For Services to be performed in a Time and Materials Project Assignment:

- a) a mutually executed SOW including pricing or referencing a Quote, or
- b) a Quote signed by an authorized signatory of the Customer, or
- c) a Quote and Customer PO referencing the Quote.

(3) For a Software License Sale:

- a) a Quote signed by an authorized signatory of the Customer, or
- b) a Quote and Customer PO referencing the Quote.

(4) For Maintenance Services:

- a) a Quote signed by an authorized signatory of the Customer, or
- b) a Quote and Customer PO referencing the Quote.

(5) For any other type of engagement, in a manner as agreed to by the Parties in writing.

1.13 “**Party**” means Hexagon or Customer, as applicable, and “**Parties**” means Hexagon and Customer collectively.

1.14 “**Purchase Order**” or “**PO**” means a document issued by Customer to Hexagon to authorize the delivery of certain Services or Deliverables contemplated herein.

1.15 “**Quote**” means a document prepared by Hexagon reflecting prices for Software, Services, Maintenance Services, and/or Deliverables.

1.16 “**Services**” means the work, services, projects, assignments, or tasks Hexagon shall perform pursuant to an Order, as specifically set forth in the SOWs. Services do not include Maintenance Services.

1.17 “**Services Deliverable**” means any data, document, information, Customized Software, Third Party Software, or material provided to Customer as a product of Hexagon’s performance of Services pursuant to the Master Agreement.

1.18 “**Software**” means the software owned by Hexagon or an Affiliate and Third Party Software that is licensed to Customer.

1.19 “**Software License Sale**” means an Order that involves only the sale of Software licenses from Hexagon to Customer. This type of Order does not include Services.

1.20 “**Software Product**” means Hexagon IP delivered as proprietary object code or machine readable program identified in and to be provided by Hexagon to Customer pursuant to an Order placed under the terms of this Master Agreement. Software Product includes all of the following: (i) any associated Hexagon or Affiliate files, disk(s), CD-ROM(s), or other media with which the Software is provided, (ii) any associated templates, data, printed materials, and “online” or electronic documentation, and (iii) any

Updates or Upgrades of such Software Products provided pursuant to Maintenance Services. Software Product shall not mean any Third Party Software, if any, that may be licensed to Customer under a separate license agreement.

1.21 “**SOW**” means a statement of work setting forth the scope of Services and Deliverables being provided pursuant to an Order.

1.22 “**Subsystem**” means a Software and hardware solution that is designed to provide a specific capability independent of the procurement of any other Subsystem. Hexagon’s computer aided dispatch system (“CAD”), records management system (“RMS”), field based reporting (“FBR”), and mobile for public safety (“MPS”) are examples of Subsystems.

1.23 “**System**” means a physical or operational location where the Software Product resides and operates on an individual server or where a single operational identification number (“Site ID”) has been assigned by Hexagon.

1.24 “**Term**” means the duration of performance under this Master Agreement.

1.25 “**Time and Materials Project Assignment**” means Hexagon will perform the Services set forth in an Order on an hourly basis until the project is either completed or the authorized hours are exhausted, whichever comes first.

1.26 “**Third Party Software**” means computer software or other technology in which any person or entity, other than Hexagon or Hexagon’s Affiliate, has any right, title, or interest, including any restrictions or obligations (such as obligations to obtain consents or approvals and restrictions that may be eliminated only by obtaining such consents or approvals) applicable to the computer software or technology, but does not include Software embedded in the Software Products by license from third parties. The use of Third Party Software is subject to all of the terms and conditions of the third party’s software license or similar agreement (“SLA”) provided with the Third Party Software.

1.27 “**Update**” means any modified version, fix, or patch of the Software Product provided by Hexagon.

1.28 “**Upgrade**” means each new release of the Software Product that is a result of an architectural, major, or minor change to the Software Product provided by Hexagon.

1.29 “**User**” means Customer or an individual employed by Customer. A User may also include Customer’s contractor who requires temporary use of the Software Product to provide services on Customer’s behalf.

## **2 Elements of an Order.**

2.1 Order Composition. Where referencing this Master Agreement, Orders shall be governed by the terms of this Master Agreement.

2.1.1 Each Order will include a Quote, which shall identify the type of project assignment and the price for the Services, Software licenses, and/or other Deliverables included in the Order. If Fixed Price Project Assignments include professional Services, a mutually-agreed SOW will also be required to have a valid Order.

2.1.2 From time to time, Customer may request from Hexagon or Hexagon may provide Customer a draft Quote and/or SOW for Deliverables. Once the Parties mutually agree upon the contents of the Quote and the SOW, as applicable, the Parties shall execute either the Quote or the SOW, which shall represent agreement for that Order.

2.1.3 Upon mutual execution of the Order, Customer will issue a PO or a notice to commence work, unless otherwise specified in the Quote or SOW. Except as set forth in the mutually

executed Quote or SOW, Hexagon shall not commence work on the Order until it receives from Customer a PO or notice to commence work.

2.1.4 Notwithstanding the foregoing, Orders for Maintenance Services shall commence on the date specified in the Quote or Order regardless of whether Customer has issued a PO or notice to commence work.

2.2 Pricing. The following minimum elements shall be included with each respective Order:

2.2.1 For a Software License Sale, the Quote shall identify the Software licenses being procured and the total price for the Software License Sale.

2.2.2 For Time and Materials Project Assignments, the Quote shall set forth the number of hours allocated for each grade of Hexagon resource to be utilized on the assignment and the hourly rate for each grade of Hexagon.

2.2.3 For Fixed Price Project Assignments, the Quote and SOW shall set forth the price of the work to be performed and the Deliverables provided for that Order.

2.2.4 For Orders for Maintenance Services, the Quote shall identify the Software to be maintained and the total price for the associated Maintenance Services.

2.3 Change Control. During the course of Hexagon's performance under the SOW, either Party may request a change in the scope of the SOW in writing, delivered to the other Party's project manager. Any changes in price, schedule, or other terms must be documented either by an amendment, change order, or a replacement of the SOW in question. No change, as contemplated in this paragraph, shall become effective until agreed to by both Parties in a mutually-executed writing.

2.4 Acceptance. Acceptance will occur based upon the following:

2.4.1 For Fixed Price Project Assignments, when the Deliverables in a SOW meets the acceptance criteria described in the SOW. Once Hexagon believes a corresponding milestone has been successfully completed according to the provisions of the applicable SOW, Hexagon shall submit for execution by Customer's project manager a Project Deliverable Sign-off form in substantial conformity with Exhibit D. Within ten (10) calendar days of receipt of the applicable Project Deliverable Sign-off Form for the completed milestone, Customer's project manager will either: (i) execute the Project Deliverable Sign-off Form provided by Hexagon, or (ii) provide a written description of all deficiencies to Hexagon. If Customer fails to perform either action identified in the preceding sentence within ten (10) calendar days, or if the Deliverable, including the Software contained in the Fixed Price Project Assignment Order, is placed into production or utilized in a live environment, then the Deliverable shall be deemed accepted.

2.4.2 For Time and Materials Project Assignments and Maintenance Services, the Services are accepted as performed.

2.4.3 For a Software License Sale, once the Software has been shipped.

### **3 Composition of the Master Agreement.**

3.1 Components. The agreement between the Parties consists of: (1) the Master Agreement (including the General Terms and Conditions and all Exhibits), (2) any amendments to the Master Agreement, and (3) Orders, together with any change orders, that may be delivered, prepared, or issued after the Effective Date.

3.2 Order of Precedence. In the event of any conflict or inconsistency among documents related to this Master Agreement, the following order of precedence shall be used to determine the resolution of the discrepancy, unless both Parties mutually agree in writing to an alternative decision. The order of precedence for these documents shall be as follows:

- (1) Any amendments to this Master Agreement;
- (2) This Master Agreement, excluding all Exhibits hereto;
- (3) Exhibits to this Master Agreement; and
- (4) Orders, as amended or modified by a change order

#### **4 Invoicing and Payment.**

4.1 Invoices. Invoices shall be issued based upon the following:

4.1.1 For Software License Sales, Hexagon shall invoice Customer for the amount set forth in the Quote upon shipment of the Software identified in the Quote.

4.1.2 Orders for Fixed Price Project Assignments and Time and Materials Project Assignments shall be billed and invoiced in accordance with Exhibit A.

4.1.3 Orders for Maintenance Services shall be billed and invoiced in accordance with Exhibit C.

4.2 Payment. Customer shall make payment for any invoices issued by Hexagon within thirty (30) calendar days of the date the invoice was issued.

4.3 Late Payment. If Customer does not make timely payment, an interest charge of two percent (2%) per month (or the maximum allowed by law, whichever is less), which shall be compounded on a monthly basis, will be due on any unpaid and overdue amounts.

4.4 Taxes. The purchase price is exclusive of all Federal, Provincial, or Local taxes. Any taxes applied to this sale by a Federal, Provincial, or Local taxing authority will be the responsibility of Customer. Such taxes do not include franchise taxes or taxes based on net income. If Customer is claiming a tax-exempt status, it must submit the proper documentation satisfactory to Hexagon evidencing its tax exempt status. Applicable taxes may be invoiced at any time such taxes become fixed and certain.

#### **5 Term and Termination.**

5.1 Term. The Term of this Master Agreement shall begin on the Effective Date and remain in effect until **December 31, 2020**, or until the Master Agreement is earlier terminated pursuant to the terms set forth herein or by mutual agreement of the Parties. An Order that is executed prior to the expiration of the term of this Master Agreement shall be governed by this Master Agreement even if the Master Agreement Term expires during the performance of the Order.

5.2 Termination for Convenience. Except for Orders for Maintenance Services, either Party may terminate this Master Agreement or an Order in its sole discretion at any time upon providing the other Party with ninety (90) days written notice. The coverage period applicable to Orders for Maintenance Services shall be governed by Exhibit C and shall survive termination of this Master Agreement if the Master Agreement is terminated for convenience. In the event of a termination pursuant to this paragraph, Customer agrees to pay Hexagon for the pro rata percentage of work performed based upon the schedule of payments set forth in the SOW, plus the cost of any labor, equipment, or materials ordered in good faith prior to notice of termination that could not be canceled. To the extent a Party exercises its right to terminate a specific Order, that termination shall have no effect upon the remaining Master Agreement, which, along with any other active Orders, shall remain in full force and effect. If a Party desires to terminate the Master Agreement, then the Parties shall proceed to wind down all ongoing work under the respective Orders in effect under this Master Agreement by the termination date. Each Party shall take commercially reasonable steps to bring the work to a close and to reduce its costs and expenditures.

5.3 Termination for Cause. Either Party may terminate this Master Agreement or a specific Order, as the case may be, in the event that the other Party materially breaches a material term of this Master Agreement or any Order.

5.3.1 In the event a Party has materially breached an Order, the non-breaching Party may terminate the Order only after providing a sixty (60) calendar day cure period to cure such breach and the breach has not been cured, except for material breaches arising from non-payment. During the sixty (60) day cure period, the Parties shall try to determine a mutually agreeable plan to cure such breach. If such breach cannot be cured or an acceptable plan is not provided within the sixty (60) day cure period, the non-breaching Party may, but does not have the obligation to, terminate the Order. Notwithstanding the foregoing, Hexagon may terminate an Order for cause if payment is not received within thirty (30) days following the date when payment was due. In the event an Order is terminated for cause, Hexagon shall be entitled to, and Customer agrees to pay Hexagon, payment for Deliverables and Services rendered on said Order up to the termination date, including, but not limited to, a pro rata percentage of work performed based upon the schedule of payments set forth in each SOW.

5.3.2 In the event a Party has materially breached the Master Agreement or multiple Orders, the non-breaching Party may terminate the Master Agreement only after providing a sixty (60) calendar day cure period to cure such breach and the breach has not been cured except for material breaches arising from non-payment. During the sixty (60) day cure period, the Parties shall try to determine a mutually agreeable plan to cure such breach. If such breach cannot be cured or an acceptable plan is not provided within the sixty (60) day cure period, the non-breaching Party may, but does not have the obligation to, terminate the Master Agreement. If the Master Agreement is terminated pursuant to this paragraph, by the termination date, Hexagon will stop all work pursuant to any Orders arising under this Master Agreement. In the event the Master Agreement is terminated for cause, Hexagon shall be entitled to, and Customer agrees to pay Hexagon, payment for Deliverables and Services rendered on all ongoing Orders up to the termination date, including, but not limited to, a pro rata percentage of work performed based upon the schedule of payments set forth in each SOW.

5.3.3 Notwithstanding the foregoing, Hexagon may terminate any Order or the Master Agreement for cause if payment is not received within thirty (30) days following the date when payment was due.

5.3.4 Notwithstanding the foregoing, Customer may not exercise a termination pursuant to the terms of Section 5.3 if Hexagon's material breach of the terms and conditions of the Master Agreement or any Order thereunder is caused or partially caused by Customer's negligence or failure to perform its obligations.

## **6 IP Ownership.**

Customer acknowledges Hexagon will retain ownership and title of Intellectual Property made at any time while performing any Order. All Hexagon Software provided under this Master Agreement is licensed to Customer in accordance with Exhibit B (End-User License Agreement) except as it is inconsistent with the terms set forth herein. Third Party Software is licensed to Customer pursuant to the software license agreement delivered with such Third Party Software product.

## **7 Warranties.**

7.1 Software. For so long as Software provided under the Orders is covered under an active maintenance agreement, the same is warranted to substantially conform to the user documentation, and be free from defects in material and workmanship that prohibit substantially productive use of the Software.



7.2 Subsystem Warranty Coverage. For, and only for, new Subsystems procured/implemented pursuant to an Order under this Master Agreement, the warranty coverage shall be set forth in the applicable SOW, which shall be in addition to the warranty coverage set forth in Section 7.1.

7.3 Third Party Warranty Coverage. To the extent third-party products are supplied by Hexagon, those products are provided with a pass-thru-warranty from the original manufacturer, if any.

7.4 Disclaimer. Any product information Hexagon has shared with Customer during the proposal and/or contract activities to date was to provide an understanding of Hexagon's current expected direction, roadmap, or vision and is subject to change at any time in Hexagon's sole discretion. Hexagon specifically disclaims all representations and warranties regarding future features or functionality to be provided in any Software or Deliverable. Hexagon does not commit to develop the future features, functions, and/or products discussed in this material beyond that which is specifically committed to be provided by Hexagon pursuant to a valid Order. Customer should not factor any future features, functions, or products into its current decisions since there is no assurance that such future features, functions, or products will be developed. When and if future features, functions, or products are developed, they will be made generally available for licensing by Hexagon.

7.5 Warranty Disclaimer. EXCEPT AS SPECIFICALLY SET FORTH IN THIS ARTICLE 7, HEXAGON DISCLAIMS (TO THE FULLEST EXTENT PERMITTED BY LAW) ALL WARRANTIES ON PRODUCTS FURNISHED PURSUANT TO THIS MASTER AGREEMENT, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTIES SET FORTH IN THIS ARTICLE 7 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND, EXCEPT AS SET FORTH IN THE ARTICLE ENTITLED "INDEMNIFICATION PROVISIONS" BELOW, REPRESENTS THE FULL AND TOTAL WARRANTY OBLIGATION AND/OR LIABILITY OF HEXAGON.

## **8 Limitation of Liability.**

IN NO EVENT WILL HEXAGON BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, LOST PROFITS, LOSS OF USE OR PRODUCTION, LOSS OF REVENUE, LOSS OF DATA, OR CLAIMS OF THIRD PARTIES, EVEN IF HEXAGON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCE WILL HEXAGON'S LIABILITY UNDER THIS MASTER AGREEMENT EXCEED THE AMOUNT THAT HEXAGON HAS BEEN PAID BY CUSTOMER UNDER THE INDIVIDUAL ORDER UNDER WHICH THE EVENT GIVING RISE TO THE CAUSE OF ACTION HAS OCCURRED.

## **9 Indemnification Provisions.**

9.1 The limitation of liability in Section 8 shall in no way restrict or limit the indemnities provided by Hexagon in this Master Agreement. Hexagon will defend, at its expense, a third party action, suit, or proceeding against Customer ("Claim"), and indemnify Customer from any judgments, settlements, and reasonable attorney's fees resulting therefrom, to the extent such Claim is (i) attributable to bodily injury, death, or physical damage to tangible property caused by Hexagon's negligent acts or omissions arising under this Master Agreement; or (ii) based upon an allegation that a Software Product, Customized Software, or Services Deliverable as of its delivery date under this Master Agreement, infringes a valid United States or Canadian patent, copyright, or trademark, or misappropriates a third party's trade secret ("Infringement Claim").

9.2 Hexagon's defense and indemnification obligations are conditioned upon:

9.2.1 Customer providing prompt written notice to Hexagon in writing of any Claim;

9.2.2 Hexagon having sole control of the defense of any actions and negotiations related to the defense or settlement of any Claim; and

9.2.3 Customer cooperating fully in the defense or settlement of any Claim.

9.3 Hexagon will have no obligation to defend Customer or to pay any resulting costs, damages, or attorney's fees for any Infringement Claims alleging direct or contributory infringement of the Software Product (i) by the combination of or integration with a product, process, or system not supplied by Hexagon; (ii) by material alteration by anyone other than Hexagon or its subcontractors; (iii) by use after Customer has been notified of possible infringement; (iv) use after modifications are provided to Customer; (v) use after a return for refund as described below is ordered by Hexagon; (vi) the creation of which was pursuant to specifications provided by Customer; or (vii) use other than as specified in the documentation associated with the Software Product.

9.4 In connection with any Infringement Claims, Hexagon, at its own expense and option, may either (i) obtain rights for Customer to continue using the Software Product; (ii) replace the Software Product with a non-infringing alternative, or modify the allegedly infringing elements of Software Product, while maintaining substantially similar software functionality or data/informational content; or (iii) refund to Customer a prorated portion of the license fees paid by Customer for the infringing item(s), based on a five (5)-year, straight-line depreciation basis beginning from the initial date of delivery, in which case Customer will uninstall, cease all use of, and return to Hexagon the infringing item(s).

9.5 In no event will the indemnification for Infringement Claims apply to any Beta Software or sample, hot fix, royalty-free, or evaluation Software delivered pursuant to the Master Agreement.

9.6 Hexagon is not required to indemnify or defend Customer against Claims brought by any Customer affiliate.

9.7 Intentionally deleted.

## **10 Insurance.**

10.1 Policies and Coverage Amounts. Hexagon agrees to procure and maintain in force during the term of this Master Agreement, at its own cost, the following policies and amounts of coverage:

10.1.1 Workers' Compensation Insurance as required by applicable law.

10.1.2 Commercial General Liability Insurance with minimum combined single limits of TWO MILLION DOLLARS (\$2,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, and personal injury.

10.1.3 Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) for any one occurrence, with respect to non-owned vehicles assigned to or used in performance of the Services or work under this Master Agreement.

10.1.4 Umbrella/Excess Coverage with minimum combined single limits of TWO MILLION DOLLARS (\$2,000,000) per occurrence.

10.2 Policy Maintenance. Hexagon shall procure and maintain, and shall cause any subcontractor of Hexagon to procure and maintain, the minimum insurance coverages listed herein. All policies shall be continuously maintained for the term of this Master Agreement.

10.3 Certificate of Insurance. Upon Customer's request, a Certificate of Insurance shall be completed by Hexagon's insurance agent(s) as evidence that policies providing the required coverage amounts, conditions, and minimum limits are in full force. The completed Certificate of Insurance shall be sent to the contact person identified in the notices provision below.

10.4 Insurance Deductible. Hexagon shall be solely responsible for any deductible losses under the policies required above.

## 11 **Dispute Resolution.**

11.1 Resolution Protocol. The Parties shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Master Agreement or Order made pursuant to this Master Agreement (“Dispute”) in accordance with the provisions set forth herein. If either Party disputes any provision of this Master Agreement (the “Disputing Party”), or the interpretation thereof, or any conduct by the other Party under this Master Agreement, that Party shall bring the matter to the attention of the other Party at the earliest possible time in order to resolve the Dispute except for Disputes for non-payment. If such dispute is not resolved by the employees responsible for the subject matter of the dispute within ten (10) business days, the Disputing Party shall be permitted to deliver to the first level of representatives below a written statement (“Dispute Notice”) describing the dispute in detail, including any time commitment and any fees or other costs involved. A copy of the Dispute Notice shall also be directed to the non-Disputing Party contact person identified in the section entitled “Notices” below. Receipt by the first level of representatives of a Dispute Notice shall commence the dispute resolution process and a time period within which the respective representatives must exercise their best effort to resolve the dispute. If the respective representatives do not resolve the dispute within the given time period, the dispute shall be escalated to the next higher level of representatives in the sequence as set forth below

### Escalation Timetable

Calendar Days	<b>Hexagon Representative</b>	<b>Customer Representative</b>
0 to 7th	Project Manager	Project Manager
8th to 14th	National Sales Director	Fire Chief
15th to 21st	Vice-President and General Manager	Managing Director- Neighbourhood Children and Fire Services

11.2 Mediation. To the extent a dispute is not resolved through the process outlined in the previous section and remains unresolved, the Parties agree to enter into non-binding mediation to resolve the dispute. Within sixty (60) calendar days of the issuance of the Dispute Notice, or such longer period that is mutually agreeable to the Parties, the Parties agree to identify a mutually acceptable mediator who shall mediate the dispute. If after making reasonable efforts to identify a mutually acceptable mediator and no later than fifty (50) calendar days after the issuance of the Dispute Notice, the Parties are unable to identify such a mediator, the Disputing Party shall provide the non-disputing Party with a list of five (5) proposed mediators. The non-disputing Party shall have five (5) business days from receipt of such list from the Disputing Party to identify one proposed mediator on the list to use as a mediator. If the non-disputing Party fails to identify and communicate its choice to the Disputing Party in the time allotted, then the Disputing Party shall be permitted to unilaterally identify the mediator from the list of five (5) mediators previously given who shall mediate the Dispute. The mediator shall be an attorney licensed to practice law in the courts of the province identified in the section below entitled “Governing Law”. Subject to the mediator’s availability, the Parties agree to mediate the dispute within thirty (30) days after the Parties have identified a mediator who has agreed to mediate the dispute. To the extent the mutually identified mediator is unavailable, unwilling, or unable to mediate the Dispute, the Parties shall utilize the same steps listed above to identify a new mutually agreeable mediator. To the extent the Disputing Party had to prepare a list of proposed mediators previously, it shall prepare and transmit a revised list within five (5) business days of receiving notice of the proposed mediator’s unavailability. Subject to the mediator’s requirements, the Parties agree they shall be permitted to attend the mediation via telephone or

video conferencing. The Parties agree to pay in equal shares the mediator's fee and expenses unless otherwise agreed to pursuant to a settlement agreement.

11.3 Prerequisites to Litigation. Except for disputes for non-payment, only after the Parties have endeavored to resolve the dispute through the processes outlined in the immediately preceding two sections may a Party commence litigation to resolve the dispute.

11.4 Injunctive Relief. Notwithstanding the foregoing, either Party may, before or during the exercise of the informal dispute resolution procedures set forth above, apply to a court identified in the section entitled "Forum" for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of such informal dispute resolution procedures.

## 12 Notices.

All notices given between the Parties shall be in writing and shall be considered properly sent by postage prepaid to the addresses identified below, or such substitutes as may hereafter be disclosed by proper notification:

Hexagon Safety & Infrastructure  
1120 – 68 Avenue NE  
Calgary, Alberta T2E 8S5  
Attn: Contracts Administrator  
Tel. No. 403-569-5500  
Fax No. 403-569-5801

The Corporation of the City of London  
400 Horton Street  
London, Ontario N6B 1L7  
Attn: Fire Chief  
Tel. No. 519-661-2500 x4750  
Fax No. 519-661-6507

## 13 Force Majeure.

Neither Party shall be deemed to be in default of any provision of this Master Agreement or an Order or be liable for any delay, failure in performance, or interruption of service resulting from acts of war, acts of terrorism, acts of God, acts of civil or military authority, labor disruption, civil disturbance, or any other cause beyond its reasonable control.

## 14 Place of Performance.

To the extent necessary, Customer agrees to provide appropriate work space and work place accommodations; computer equipment; software; access to relevant data, documents, plans, reports, and analyses; and necessary access to Hexagon personnel to perform its obligations under an Order. To the extent work is performed remotely, Customer must provide VPN or secured remote connectivity (including a log-on and password) to all servers and workstations requiring installation/configuration by Hexagon.

## 15 Amendments.

Any and all amendments to this Master Agreement shall specifically reference the fact the amendment is intended to alter the terms and conditions set forth herein. No Order or change order to a SOW shall affect the terms and conditions set forth herein.

## 16 Confidential Information.

The Parties agree not to disclose Confidential Information provided to it by the Disclosing Party to the maximum extent allowable under applicable law unless it first obtains the Disclosing Party's written consent to such disclosure. It is further understood and agreed that money damages may not be a sufficient remedy for any breach of this provision of the Master Agreement by the Receiving Party and the Disclosing Party may be entitled to seek equitable relief, including injunction and specific performance, as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this provision of the Master Agreement, but will be in addition to all other remedies available at law or equity and subject to the Municipal Freedom of Information and Protection

of Privacy Act (Ontario) and the Municipal Act, 2001 (Ontario). The covenants set forth herein and the rights and obligations related thereto shall continue for a period of five (5) years from the date of disclosure.

**17 Assignment.**

Neither Party shall assign, sublet, or transfer all or any portion of the Master Agreement, nor any interest in the Master Agreement, without the express written consent of the non-assigning Party, which consent may be granted or withheld in the sole discretion of the non-assigning Party. Notwithstanding the foregoing, Hexagon may assign its rights and obligations under the Master Agreement, without the approval of Customer to: (1) an Affiliate or (2) another business entity in connection with a merger, consolidation, or reorganization of Hexagon or any of its subsidiaries.

**18 Export.**

Hexagon IP, including any technical data related to Software or Services, is subject to the export control laws and regulations of the United States and other applicable jurisdictions. Diversion contrary to applicable law is prohibited. Hexagon IP, including any technical data related to Software or Services, shall not be exported or re-exported, directly or indirectly (including via remote access), under the following circumstances:

- To Cuba, Iran, North Korea, Sudan, or Syria, or any national of these countries;
- To any person or entity listed on any United States government denial lists or consolidated screening lists, including, but not limited to, the United States Department of Commerce Denied Persons, Entities, and Unverified Lists, the United States Department of Treasury Specially Designated Nationals List, and the United States Department of State Debarred List ([http://export.gov/ecr/eg\\_main\\_023148.asp](http://export.gov/ecr/eg_main_023148.asp));
- To any entity if Customer knows, or has reason to know, the end use is related to the design, development, production, or use of missiles, chemical, biological, or nuclear weapons, or other unsafeguarded or sensitive nuclear uses; and/or
- To any entity if Customer knows, or has reason to know, that a reshipment contrary to United States law or regulation will take place.

Customer agrees to hold harmless and indemnify Hexagon and its Affiliates for any causes of actions, claims, costs, expenses, and/or damages resulting to Hexagon from a breach of the export restrictions set forth in this Master Agreement by Customer or any User. Any questions regarding export or re-export of the Software should be addressed to Hexagon's Export Compliance Department at 305 Intergraph Way, Madison, Alabama, 35758, USA or at [exportcompliance@intergraph.com](mailto:exportcompliance@intergraph.com).

**19 Non-Solicitation of Employees.**

Customer agrees that it will not, without the prior written consent of Hexagon, solicit or hire any Hexagon employee, or induce such employee to leave Hexagon's employment, directly or indirectly, during the term of this Master Agreement and for a period of twelve (12) months after the Master Agreement expires or is terminated. Customer agrees that a breach of this provision would cause actual and substantial damages to Hexagon such that it would be difficult or impossible to calculate actual damages. Accordingly, any such breach will entitle Hexagon to recover liquidated damages from Customer in an amount equal to one (1) year of the affected employee's annual salary plus benefits for each such breach, as well as expenses, costs, and reasonable attorney's fees incurred by Hexagon in seeking enforcement of this provision. Customer agrees that the foregoing amount is intended to be, and in fact is, a reasonable estimate of the actual damages that would be incurred by Hexagon if Customer were to breach this provision, and that this amount is not intended to be, and in fact is not, a penalty. In addition, Hexagon shall be entitled to equitable or injunctive relief to prevent further breaches. For purposes of this section, the term "employee" means employees of Hexagon and/or any Affiliate and/or any of Hexagon's subcontractors who directly support Customer.

## **20 Miscellaneous.**

20.1 Authority. Each Party represents and certifies to the other Party it has the requisite legal authority to enter into and be bound by this Master Agreement and all Orders arising from this Master Agreement.

20.2 Survival. The rights and obligations in sections entitled "IP Ownership", "Limitation of Liability", "Dispute Resolution", "Confidential Information", "Export", and the terms of any license granted pursuant to this Master Agreement (including, but not limited to, Exhibit B), shall survive and continue after expiration or termination of the Master Agreement, shall remain in effect until fulfilled, and shall apply to any permitted successors and assigns. Upon termination of the Master Agreement, the provisions of the Master Agreement, including those in the preceding sentence, which by their express terms survive termination, shall remain in full force and effect.

20.3 Waiver. The waiver by either Party of any of its rights or remedies in enforcing any action or breach under this Master Agreement in a particular instance shall not be considered as a waiver of the same or different rights, remedies, or actions for breach in subsequent instances.

20.4 Severability. If any provision of this Master Agreement or an Order is void, voidable, unenforceable, or illegal in its terms, but would not be so if it were rewritten to eliminate such terms that were found to be voidable, unenforceable, or illegal and such rewrite would not affect the intent of the provision, then the provision must be rewritten to be enforceable and legal.

20.5 Counterparts. This Master Agreement may be executed in multiple counterparts, each of which shall be deemed to be original, and all of which together shall constitute one and the same document. A signature delivered by facsimile or via an email containing a scanned, executed Master Agreement shall be deemed to be an original signature and shall be effective upon receipt thereof by the other Party.

20.6 Headings. Numbered topical headings, articles, paragraphs, subparagraphs or titles in this Master Agreement are inserted for the convenience of organization and reference and are not intended to affect the interpretation or construction of the terms thereof.

20.7 Governing Law. All legal or equitable disputes between the Parties which may arise from this Master Agreement, including all Orders, shall be subject only to the laws and jurisdiction of the Province of Ontario, and the appellate courts to which appeals can be taken from those courts. All Parties consent to the exercise by such courts of personal jurisdiction over them and each Party waives any objection it might otherwise have to venue, personal jurisdiction, inconvenience of forum, and any similar or related doctrine. The United Nations Conventions on Contracts for the International Sale of Goods shall not apply to this Master Agreement, and the Parties expressly agree not to be governed by the Uniform Computer Information Transactions Act or similar laws.

20.8 Independent Contractor. The Parties agree that Hexagon is an independent contractor, that nothing in this Master Agreement shall be construed as establishing or implying a relationship of master and servant between the Parties, or any joint venture or partnership between the Parties, and that nothing in this Master Agreement shall be deemed to constitute either of the Parties as the agent of the other Party or authorize either Party to incur any expenses on behalf of the other Party or to commit the other Party in any way whatsoever. Hexagon and its agents, employees, or subcontractors shall at no time be deemed to be agents, employees, or subcontractors of Customer, or be deemed to be under the control or supervision of Customer when carrying out the performance of its obligations in this Master Agreement. Without the prior written consent of Customer, Hexagon shall not carry on any activity that could be construed as being on behalf of Customer.

20.9 Limitation on Claims. Except as otherwise provided by the Limitations Act, 2002 (Ontario), a proceeding shall not be commenced in respect of any claim arising out of this Agreement after the second anniversary of the day on which the claim was discovered.

**21     Entire Agreement.**

This Master Agreement constitutes the entire agreement between the Parties with regard to the subject matter hereof. This Master Agreement supersedes any and all prior discussions and/or representations, whether written or oral, and no reference to prior dealings may be used to in any way modify the expressed understandings of this Master Agreement. Any future representations, promises and verbal agreements related to the products, product features, future product enhancements, product functionality, or services covered by this Master Agreement will be of no force or effect unless reduced in writing and made a part of this Master Agreement. This Master Agreement may not be amended or modified unless so done in writing signed by authorized representatives of both Parties. The pre-printed terms and conditions of Customer's PO or any other terms and conditions of a Customer PO that may conflict in any way with the terms and conditions of this Master Agreement shall be void, even if issued subsequent to the effective date of this Master Agreement, and shall not be deemed to constitute a change to this Master Agreement.

**SIGNATURE PAGE FOLLOWS**

In consideration of the mutual obligations assumed under this Master Agreement, Customer and Hexagon agree to the terms and conditions set forth herein and attached to this Master Agreement as Exhibits and represent that this Master Agreement has been executed by each Party's duly authorized representative. The signatories represent that they have the authority to bind their respective organizations to this Master Agreement. This Master Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Master Agreement signed by each Party for all purposes.

**AGREED BY:**

**INTERGRAPH CANADA LTD.  
D/B/A HEXAGON SAFETY & INFRASTRUCTURE**

Per: 

Name: Jennifer Williams

Title: Director

Date: 5-6-2016

I have authority to bind the Corporation.

**THE CORPORATION OF THE CITY OF LONDON**

Per: \_\_\_\_\_

Name: Matt Brown

Title: Mayor

Date: \_\_\_\_\_

I have authority to bind the Corporation.

Per: \_\_\_\_\_

Name: Catharine Saunders

Title: City Clerk

Date: \_\_\_\_\_

I have authority to bind the Corporation.

**THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY**





**Exhibit A – Services Terms and Conditions**

The additional terms and conditions set forth in this this Exhibit constitute the terms and conditions governing the delivery of Hexagon Services to Customer as described in individual Quotes, Orders, or SOWs.

**1 Scope of Services.**

1.1 Hexagon will provide Services to Customer as stated on the Quote and/or mutually agreed upon SOW. Services as specified will be performed during a standard workweek, based on an eight (8) hour day.

1.2 For Fixed Price Project Assignments, the Services Deliverables will be stated in the Quote and/or mutually agreed upon SOW.

1.3 For Time and Materials Project Assignments, Services will be provided up to the maximum amount of time as stated in the Quote and/or mutually agreed upon SOW. Hexagon shall have no obligation to work beyond the number of hours authorized by Customer. Hexagon cannot commit to firm Services Deliverables, guaranteed results, or a fixed schedule of performance on a time and material Services engagement. Hexagon will apply diligent effort to the stated purpose of the applicable SOW, however, should the Services require more time than estimated, Hexagon will obtain either a change order or new Order or SOW prior to performing additional Services. Except as otherwise stated in an Order, Time and Materials Project Assignment Orders will expire after a duration of six (6) months.

**2 Invoicing for Services.**

2.1 For time and materials Services, Hexagon will invoice Customer for all hours expended and travel expenses incurred on a monthly basis, or after all purchased hours have been expended, whichever occurs first. Customer agrees to reimburse Hexagon for all travel and travel-related expenses at Hexagon's cost plus a ten percent (10%) administrative fee.

2.2 For firm fixed price Services, Hexagon will invoice Customer upon acceptance of a Deliverable (as set out in Section 2.4 (“Acceptance”) of the General Terms and Conditions) or in accordance with any billing milestones specified in the Order or SOW. Any necessary travel and travel-related expenses will be included in the firm fixed price.

**3 License to Use Services Deliverables.**

Hexagon grants to Customer a personal, nontransferable, nonexclusive license to use for Customer’s internal purposes only those Services Deliverables that are not Software. Customized Software is licensed for use by Customer pursuant to Exhibit B (Hexagon's End-User License Agreement). Customer agrees to execute any applicable third party end-user license agreement for Third Party Software that is delivered to Customer without an included third party end-user license agreement.

**4 Intellectual Property Ownership.**

All Hexagon Services Deliverables and all products of Hexagon Services are Hexagon IP. Any Intellectual Property created by Hexagon during the course of the Services shall be the sole and exclusive property of Hexagon. Customized Software and any Third Party Software furnished to Customer by Hexagon hereunder shall remain the property of Hexagon or the respective third party. All Hexagon IP is Confidential Information and proprietary to Hexagon. Customer shall maintain the confidentiality of all Services Deliverables as it would confidential information/data of its own and subject to the Municipal

Freedom of Information and Protection of Privacy Act (Ontario) and the Municipal Act, 2001 (Ontario), or an order of the court shall not disclose same to any third party without the prior written consent of an authorized Hexagon contracts representative. The Services and Services Deliverables provided to Customer pursuant to the Master Agreement are not “work for hire.” Except as expressly provided elsewhere in this Exhibit, no direct or indirect ownership interest, license right, or usage right in the Services or Services Deliverables are granted or created by implication. Hexagon may perform the same or similar services for other customers.

**5 Maintenance.**

Customer shall be responsible for maintaining any Services Deliverables provided. In the event Customer elects to have Hexagon perform such maintenance, such maintenance may be provided pursuant to an additional Order or SOW.

**6 Customer Obligations.**

If any work needs to be performed at Customer’s location, Customer agrees to provide, at its own expense, building access (including weekend and after-hours access), appropriate work space accommodations (including access to meeting room facilities), and the use of any machines, documentation, or software which Hexagon deems necessary to perform the Services. Additionally, Customer will review and provide timely feedback to Hexagon on all Deliverables and provide qualified technical personnel to support Hexagon as needed during performance of the Services. Customer is solely responsible for ensuring its systems, software, and data are adequately backed up. Hexagon will not be responsible for lost Customer data. Neither Customer nor Hexagon will permit Hexagon to have sole control of Customer data.

**7 Schedule.**

The Schedule for Services provided under the Master Agreement will be stated on the Quote and/or mutually agreed upon SOW.

**8 Acceptance and Disclaimer of Warranties.**

Acceptance for Services Deliverables is set forth in Section 2.4 (“Acceptance”) of the General Terms and Conditions. Otherwise, all Services and Services Deliverables are provided "AS IS" and without warranty of any kind. Hexagon does not warrant the type, quality, or results of any Services or Services Deliverable provided. HEXAGON DISCLAIMS (TO THE EXTENT PERMITTED BY APPLICABLE LAW) ALL WARRANTIES ON SERVICES AND DELIVERABLES FURNISHED HEREUNDER, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTY HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND REPRESENTS THE FULL AND TOTAL OBLIGATION AND/OR LIABILITY OF HEXAGON.

**9 Use of Subcontractors.**

Hexagon may utilize subcontractors to perform the Services set forth in any Order or SOW. Hexagon shall be responsible to Customer for the performance by any such Hexagon subcontractors as if the Services were performed by Hexagon itself.

**END OF EXHIBIT A**



## **Exhibit B - END-USER LICENSE AGREEMENT**

The additional terms and conditions set forth in this End-User License Agreement (“EULA”) and the General Terms and Conditions shall govern the Software Products provided by Hexagon to Customer as described in individual Orders.

If Customer does not agree to the terms of this EULA, Customer is not authorized to, and Customer shall not, download, install, or use a Software Product. Customer agrees to timely pay all charges due and payable for Customer’s use of any Software Product.

### **1 DEFINITIONS.**

1.1 “**Core**” means a physical processor on a computer server that can respond to and execute the basic instructions that drive the computer. A Central Processing Unit (“CPU”) may have one or more Cores, and a given server may have multiple CPU sockets that may each contain multiple Cores.

1.2 “**Desktop-based Software Product**” means a self-contained application that runs from a local drive and does not require network connectivity to operate.

1.3 “**Installation Guide**” means a computer file in Microsoft® Word or Adobe® PDF format or a text file that contains information a User may need to install or operate a Software Product.

1.4 “**Primary License**” means the license(s) of the Software Product provided to Customer for general production use as authorized by this EULA.

1.5 “**Supplementary License**” means a license(s) of the Software Product which is made available by Hexagon for select Software Products to augment Primary Licenses for special purposes. Each Supplementary License requires a Primary License and the term of the Supplementary License shall not exceed the term of the applicable Primary License.

1.6 “**Web-based Software Product**” means a Webservices-based Software Product that is accessed by Users solely over the World Wide Web, Internet, or intranet.

1.7 “**XML Files**” means the XML (Extensible Markup Language) files generated by the Software Product, where applicable.

1.8 “**XSL Stylesheets**” means the XSL (Extensible Stylesheet Language) presentation of a class of XML Files which, when included with the Software Product, describe how an instance of the class is transformed into an XML (Extensible Markup Language) document that uses the formatting vocabulary.

### **2 LICENSE GRANT.**

2.1 Provided Customer is not in breach of any term or condition of this EULA or the applicable Order for a Software Product, Hexagon hereby grants Customer a limited, non-exclusive license to install and use the Software Product, in object code form only, strictly for Customer’s internal use and strictly in accordance with this EULA. The license is non-transferable, except as specifically set forth in this EULA. Customer assumes full responsibility for the selection of the Software Product to achieve Customer’s intended results, and for the installation, use, and results obtained from the Software Product.

2.2 **Minimum Requirements.** The Software Product may require Customer’s System to comply with specific minimum software, hardware, and/or Internet connection requirements. Hexagon will append the applicable minimum requirements to each SOW or Quote for Software License Sale under which a Software Product is purchased.

2.3 License Type and Mode. Software Products are licensed as either Primary Licenses or Supplementary Licenses. There are two (2) types of Primary Licenses and seven (7) types of Supplementary Licenses as described below. Depending on Customer's license, a license may be used in either Concurrent-Use mode or Node-Locked mode. The license type and mode for the Software Product Customer subscribed to or obtained will be designated (per the abbreviations set forth below) in the product description set forth on the proposal, quote, SOW, or packaging provided with the Software Product, and, if an electronic license manager tool is incorporated in the Software Product, verified by the Hexagon license system. If not otherwise indicated, Customer's license type and mode will be a Node-Locked Primary License. Each license of the Software Product is subject to the terms of this EULA.

2.3.1 Primary Licenses are described below:

(a) Concurrent-use mode (CC) allows for the checking in and checking out of the total available licenses of the Software Product for Users. At any point, Customer may run as many copies of the Software Product as Customer have licenses. If the Software Product is enabled to be run in a disconnected mode, as set forth in the Installation Guide, a User may check out a license from the System for mobile or home use, thus reducing the total number of licenses available in the license pool until the license is checked back in to the System. If the Software Product is not enabled to be run in a disconnected mode, the mobile or home computer will require a Node-Locked License. If the anticipated number of Users of the Software Product will exceed the number of applicable licenses, and in the absence of a license manager tool incorporated in the Software Product, Customer must use a reasonable mechanism or process to assure that the number of persons using the Software Product concurrently does not exceed the number of licenses. Customer consents to the use of a license mechanism, license files, hardware keys, and other security devices in connection with the Software Product and agree not to attempt to circumvent, reverse engineer, or duplicate such devices.

(b) Node-Locked mode (NL) allows a single copy of the Software Product to be stored on hard disk and loaded for execution on a single designated workstation, or, for software designed for use on a handheld device, for execution on a single designated handheld device.

2.3.2 Supplementary Licenses are described below:

(a) Backup License (BCK) is licensed solely for "cold standby" when manual switchover of the Software Product to the Supplementary License is required in the event of failure of the Primary License.

(b) Developer's License (DEV) is a license of a Web-based Software Product that is delivered solely in connection with the Primary License of such Software Product for the purposes of developing and testing Customer's website built only with the Software Product. Developer's Licenses shall not be used for production purposes (i.e. a fully deployed website).

(c) Load Balancing License (LOB) is a license of a Web-based Software Product solely for use as a second or successive license on a web cluster to balance the load with the Primary License on multiple servers represented by one (1) IP address.

(d) Redundant License (RDT) is licensed solely for "hot standby" when automatic switchover of the Software Product to the Supplementary License is required in the event of failure of the Primary License.

(e) Test License (TST) is licensed solely for testing purposes. However, Hexagon also allows a Test License to be used to conduct no-cost training on test servers for a maximum of thirty (30) days per year.

(f) Training License (TRN) is licensed solely for training purposes.

(g) Secondary License (SEC or TFB) is licensed for non-productive use for training, development, testing, failover, backup, etc. Number of Secondary Licenses cannot exceed the number of purchased Primary Licenses.

2.4 Updates and Upgrades. If the Software Product is an Update or Upgrade to a previous version of the Software Product, Customer must possess a valid license to such previous version in order to use the Update or Upgrade. The Software Product and any previous version may not be used by or transferred to a third party. All Updates and Upgrades are provided to Customer on a license exchange basis. Updates are subject to all of the terms and conditions of the EULA applicable to the Software Product. By using an Update or Upgrade, Customer (i) agrees to voluntarily terminate Customer's right to use any previous version of the Software Product, except to the extent that the previous version is required to transition to the Update or Upgrade; and (ii) acknowledges and agrees that any obligation that Hexagon may have to support the previous version(s) of the Software Product will end upon availability of the Update. If an Update is provided, Customer will take prompt action to install such Update as directed by Hexagon. If Customer fails to do so, Customer acknowledges the Software Product may not work correctly or Customer will not be able to take advantage of all of the Software Product's available features. In any event, Hexagon will not be liable for additional costs Customer incurs as a result of Customer's installation or failure to install an Update. The EULA delivered with the Upgrade may supersede any EULA or signed license agreement associated with prior releases of the Software Product. Customer and Hexagon acknowledge: that allowing an Upgrade to be licensed on the same terms as a prior release may create unintended consequences, such as, without limitation, a failure to bind a user to terms necessitated by new functions or content of the Upgrade; and, that mandating an Upgrade be licensed on terms delivered with the Upgrade may create unintended consequences, such as, without limitation, a heightened risk that new terms may apply to the user without the user's normal diligent scrutiny thereof. It is the expectation of the Parties to formally and expressly agree upon license terms to be applied to an Upgrade; provided that in the absence of express license terms evidenced in writing, an Upgrade shall be licensed on the same terms of the prior release, but subject to such superseding terms of the EULA delivered with the Upgrade as a commercially reasonable software vendor would require in order to accommodate any attributes of the Upgrade which differentiate it from the prior release.

**3 RIGHTS AND LIMITATIONS.** Please see specific exceptions and additional terms related to GeoMedia Viewer Software, Beta Software, Evaluation Software, and Educational Software set forth at the Addendum to this EULA.

3.1 THE FOLLOWING ARE PERMITTED FOR YOUR LICENSE:

3.1.1 Customer may make one copy of the Software Product media in machine readable or printed form and solely for backup purposes. Hexagon retains ownership of all User created copies. Customer may not transfer the rights to a backup copy unless Customer transfers all rights in the Software Product and license as provided for in Section 3.1.2. Any other copying of the Software Product, any use of copies in excess of the number of copies Customer have been authorized to use and have paid for, and any distribution of the Software Product not expressly permitted by this EULA, is a violation of this EULA and of federal or applicable governing law.

3.1.2 Customer may transfer the Software Product and license within Customer's company (intra-company transfer), subject to the Hexagon Software Transfer Policy ("Software Transfer Policy") and the terms of this EULA. The Software Transfer Policy is available from Hexagon upon request. If Customer transfers the Software Product, Customer must at the same time either transfer all copies, modifications, or merged portions, in whatever form, to the same party, or Customer must destroy those not transferred.

### 3.1.3 For a Web-based Software Product:

- (a) Customer may run multiple Websites and provide multiple Webservices to Customer's client users with a single license.
- (b) Customer may distribute client side web page plug-ins (e.g., ActiveX controls, Java applets and applications, Enhanced Compressed Wavelet (ECW) plug INS) to Users.
- (c) Customer may load this Web-based Software Product on multiple machines within a cluster that is acting as a single web server, provided Customer has obtained the applicable number of Load Balancing Licenses or number of Cores from Hexagon and the total number of map servers or number of Cores deployed do not exceed the quantity licensed.
- (d) Customer may only copy and distribute the Java script source files to support the Web-based Software Product's output vector map type and Customer's associated websites, and Customer may prepare derivative works solely for Customer's internal use.

3.1.4 Unless otherwise stated in the Installation Guide, for Software Products which contain XSL Stylesheets for presenting XML Files, Customer may only use the XSL Stylesheets and derivative works thereof for the purpose of presenting XML Files and derivative works thereof (collectively, "XML Products") for Customer's enterprise. Customer may not distribute the XSL Stylesheets or XML Products on a stand-alone basis. XSL Stylesheets may not be used in the production of libelous, defamatory, fraudulent, lewd, obscene or pornographic material, or any material that infringes upon any third party intellectual property rights, or otherwise in any illegal manner. All XSL Stylesheets supplied with the Software Product are and will remain the property of Hexagon.

3.1.5 Unless otherwise stated in the Installation Guide, for Software Products that are delivered with an Application Programming Interface ("API") and/or configuration set-up, Customer may use the API(s) to write Customer's own extensions to the Software Products, and Customer may use configuration setup to configure the Software Product, but only to the extent permitted by the API(s) and/or configuration setup. Insofar as Hexagon does not transfer to Customer any rights in its Intellectual Property by allowing Customer to write Customer's own extensions using the API(s) or to configure the software via the configuration set-up, Customer hereby agrees and acknowledges that Hexagon retains all rights in its Software Product, API(s), and configurations. Except where otherwise provided for in writing, Hexagon does not make any representations or warranties with respect to such extensions and/or configurations and to the maximum extent permitted by applicable law, Hexagon and its suppliers disclaim all warranties, either express or implied, relating to such extensions and/or configurations, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, high risk use and non-infringement. Subject to the foregoing, Customer's use of such extensions and/or configurations is solely at Customer's own risk.

3.1.6 Customer is responsible, and bears the sole risk, for backing up all systems, software, applications, and data, as well as properly using the Software Product.

3.1.7 At all times, Customer must keep, reproduce and include all copyright, patent, trademark and attribution notices on any copy, modification or portion of the Software Product, including, without limitation, when installed, used, checked out, checked in and/or merged into another program.

## 3.2 THE FOLLOWING ARE PROHIBITED FOR YOUR LICENSE:

3.2.1 Customer may not sell, rent, license, lease, lend, or otherwise transfer the Software Product, or any copy or modification, to another company or entity or person. Any such unauthorized transfer will result in automatic and immediate termination of the license.

3.2.2 Customer may not, and Customer may not authorize anyone else to, decompile, disassemble, or otherwise reverse engineer the Software Product.

3.2.3 Customer may not, and Customer may not authorize anyone else to, work around any technical limitations in the Software Product.

3.2.4 Customer may not, and Customer may not authorize anyone else to, publish the Software Product for others to copy or use.

3.2.5 Customer may not, and Customer may not authorize anyone else to, use, copy, modify, distribute, disclose, license or transfer the Software Product, or any copy, modification, or merged portion, in whole or in part, except as expressly provided for in this EULA.

3.2.6 Customer may not, and Customer may not authorize anyone else to, re-use the component parts of the Software Product with a software product other than the Software Product Customer is licensed to use. Customer may not, and Customer may not authorize anyone else to, re-use the component parts of the Software Product on different computers, servers, or devices. The Software Product is licensed as a single product.

3.2.7 Customer may not, and Customer may not authorize anyone else to, circumvent any license mechanism in the Software Product or the licensing policy.

3.2.8 Customer may not, and Customer may not authorize or allow anyone else to, use or view the Software Product for any purposes competitive with those of Hexagon.

3.2.9 Customer may not, and Customer may not authorize anyone else to, use the Software Product except as expressly set forth in this EULA.

3.2.10 For a Desktop-based Software Product that is Node-Locked:

(a) Customer may not run the Software Product for Web-based applications.

(b) Customer may not allow the Software Product to be used by multiple Users on a single workstation at the same time.

3.2.11 Customer may not, and Customer may not authorize or allow anyone else to, use the Developer's License for production purposes (i.e., a fully-deployed website).

3.2.12 Customer may not, and Customer may not authorize or allow anyone else to, publish to a third party any results of benchmark tests run on the Software Product. The sample and demo data set(s) and related script(s) delivered with some Software Products (the "Sample Data") are provided solely for the purpose of instructing the User on how to use the Software Product with which the Sample Data are delivered. The Sample Data are licensed in conjunction with the Software Product and are not to be redistributed, licensed, sold, transferred, used, or otherwise dealt with in a production solution without Hexagon's prior written consent.

3.2.13 The Software Product is not one hundred percent (100%) fault-tolerant. The Software Product is not designed or intended for use in any situation where failure or fault of any kind of the Software Product could lead to death or serious bodily injury of any person, or to severe physical, property, or environmental damage ("High Risk Use"). Customer is not licensed to use the Software Product in, or in conjunction with, any High Risk Use. High Risk Use of any Software is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: operation of aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices. Customer hereby agrees not to use the Software Product in, or in connection with, any High Risk Use. High Risk Use shall not mean any use of the Software Product for purposes it is regularly marketed and sold (e.g., computer aided dispatch software may be used to dispatch emergency services).



### 3.2.14 For a Web-based Software Product:

- (a) Customer may not use the Web-based Software Product to operate software as a service or hosting without the prior written consent of Hexagon.
- (b) Customer may not use a Load Balancing License (LOB) of the Web-based Software Product detached of its Primary License.
- (c) Customer may not use Primary Licenses (and their allocated Load Balancing Licenses) ordered or delivered under a single part number (e.g. "product name – WORKGROUP") for other entities or organizations or at a different physical geographic address.
- (d) Core Restrictions for Hexagon APOLLO Software Product: License fees and installation restrictions for Hexagon APOLLO Software Products may be based on the number of Cores present in the server on which the Hexagon APOLLO Software Products are installed. The license type for APOLLO will be designated in the product descriptions set forth on the proposal, quote or packaging provided with the Software Product. If Customer's APOLLO Software Products are Core based, this section will apply. Each product can be licensed in multiples of four (4) Cores, up to a maximum thirty-two (32) Cores. Customer are responsible for determining the number of Cores on Customer's host server and ordering the appropriate number of Core licenses. Each license of a Hexagon APOLLO Software Product must be installed only on a single server. For example, an 8-Core license does not permit Customer to install two copies of a component, each on a 4-Core server. In a virtualized data processing environment, where hyper-threading, "virtual machine" technology or other similar techniques create "virtual processors" which do not necessarily correspond to the physical Cores present on the server, Customer's usage rights depend on the relationship between the number of Cores for which Customer is licensed, the number of physical Cores present on the host server, and the number of processors available to the Hexagon APOLLO Software Product in the virtualized environment, as follows: if the number of Cores for which Customer is licensed equals or exceeds the number of physical Cores present on the host server, then additional virtual processors created by hyper-threading or other methods of multi-tasking a physical Core do not violate Customer's licensing restriction. However, if Customer wishes to install the Hexagon APOLLO Software Product on a host server having a greater number of physical Cores present than the number of Cores for which Customer is licensed, Customer must operate the Hexagon APOLLO Software Product only within a "guest" virtual machine that accesses a maximum number of processors (whether virtual, physical or both) that is less than or equal to the number of Cores for which Customer is licensed.

3.3 Indemnification by Customer. Customer agree to hold harmless and indemnify Hexagon for any causes of action, claims, costs, expenses and/or damages resulting to Hexagon from a breach by Customer or any User of any of the limitations or prohibited actions set forth in this EULA.

## 4 **TERM.**

This EULA is effective until terminated or until Customer's software subscription or lease expires without being renewed. This EULA may be terminated (a) by Customer, by returning to Hexagon the original Software Product or by permanently destroying the Software Product, together with all copies, modifications and merged portions in any form; (b) by Hexagon, upon Customer's breach of any of the terms hereof or Customer's failure to pay the appropriate license or subscription fee(s); (c) upon Customer's installation of an Upgrade that is subject to a new applicable license agreement covering the Software Product Upgrade; or (d) by expiration of the applicable license files, if this is a temporary license. Customer agree upon the earlier of the termination of this EULA or expiration of Customer's software subscription to cease using and to permanently destroy the Software Product (and any copies or modifications of the Software Product in any form, and all of the component parts of the Software Product) and certify such destruction in writing to Hexagon.



## **5      AUDIT.**

Hexagon shall have the right, during Customer's normal business hours, to audit Customer's use of the Software Product and Customer's compliance with the provisions of this EULA. Hexagon will provide Customer with thirty (30) days prior written notice of an audit. The right of audit shall be limited to twice per calendar year. Prior to the start of an audit, Hexagon's personnel will sign a reasonable non-disclosure agreement provided by Customer. During the audit, Customer shall allow Hexagon's personnel to be provided reasonable access to both Customer's records and personnel. The cost of the audit shall be paid by Hexagon unless the results of the audit indicate that Customer has underpaid fees to Hexagon, in which case, Customer agrees to promptly pay Hexagon such fees at the price previously agreed to for the Software Product license or software subscription plus interest on such underpayments from the original due date at the lesser of two percent (2%) per month or the highest rate allowed by applicable law, and Customer further agrees to bear all costs associated with the audit.

## **6      INTELLECTUAL PROPERTY.**

6.1      Ownership of Software. ALL SOFTWARE PRODUCTS ARE PROPRIETARY PRODUCTS OF HEXAGON AND THIRD PARTIES WHERE SUCH THIRD PARTIES ARE IDENTIFIED BY HEXAGON, AND ARE PROTECTED BY COPYRIGHT LAWS AND INTERNATIONAL TREATIES. TITLE TO SOFTWARE PRODUCTS AND ALL COPIES, MODIFICATIONS AND MERGED PORTIONS OF A SOFTWARE PRODUCT SHALL AT ALL TIMES REMAIN WITH HEXAGON AND SUCH THIRD PARTIES. Software Products are licensed pursuant to this EULA, not sold. Hexagon and additional third parties retain all right, title and interest in and to all Software Products, including, but not limited to, all Intellectual Property rights in and to each Software Product. All rights not expressly granted to Customer by this EULA or other applicable Third Party Software license agreement or terms and conditions are reserved by Hexagon and such third parties. No source code is deliverable hereunder unless otherwise expressly agreed to in writing by Hexagon. A list of registered patents associated with the Software Products, is available at [www.intergraph.com/patents](http://www.intergraph.com/patents).

6.2      Ownership of Intellectual Property. Customer acknowledges and agrees that Hexagon and third party manufacturers, as applicable, own all rights in and to Hexagon's and the applicable third party manufacturer's trade names, and no right or license is granted to Customer pursuant to this EULA to use such trade names. Customer also acknowledges and agrees that Hexagon and third party manufacturers, as applicable, own all right, title and interest in and to all Intellectual Property relating to and for the Software Product. If Customer brings a patent claim against Hexagon or any third party manufacturer over patents Customer claim are being infringed by the Software Product, Customer's patent license from Hexagon and any applicable third party manufacturer(s) for the Software Product automatically ends.

6.3      Intellectual Property Infringement Indemnification by Customer. In the event any proceeding (suit, claim, or action) is based (in whole or in part) on modifications, enhancements or additions made by Customer or any person or entity on Customer's behalf, or Customer's use of the Software Product in combination with other products not furnished by Hexagon, Customer agrees to hold harmless and defend, at Customer's sole cost and expense, all of Hexagon's right, title and interest in and to the Software Product, as well as Hexagon's goodwill and reputation both in good faith and at a standard as if the claim is made against Customer. Customer shall have sole control of said defense, but Customer shall allow Hexagon to reasonably participate in its own defense and Customer shall reasonably cooperate with Hexagon with respect to the settlement of any claim. Notwithstanding the foregoing, Hexagon may at any time decide to take over any defense of Hexagon at Hexagon's cost and expense and Customer shall render full cooperation and assistance to transfer such defense to Hexagon and with respect to such defense.

## 7 **RESTRICTIONS.**

7.1 United States Government Restricted Rights. If the Software Product (including any Updates, Upgrades, documentation or technical data related to such Software Product) is licensed, purchased, subscribed to or obtained, directly or indirectly, by or on behalf of a unit or agency of the United States Government, then this Article 7 also applies.

7.1.1 For civilian agencies: The Software Product was developed at private expense and is “restricted computer software” submitted with restricted rights in accordance with the Federal Acquisition Regulations (“FAR”) 52.227-19 (a) through (d) (Commercial Computer Software – Restricted Rights).

7.1.2 For units of the Department of Defense: The Software Product was developed at private expense and is “commercial computer software” submitted with restricted rights in accordance with the Defense Federal Acquisition Regulations (“DFARS”) DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation).

7.1.3 Notice: This Software Product is “Commercial Computer Software” as defined in DFARS 252.227-7014 (Rights in Noncommercial Computer Software) and FAR 12.212 (Computer Software), which includes “technical data” as defined in DFARS 252.227-7015 (Technical Data) and FAR 12.211 (Technical Data). All use, modification, reproduction, release, performance, display or disclosure of this “Commercial Computer Software” shall be in strict accordance with the manufacturer’s standard commercial license, which is attached to and incorporated into the governing Government contract. Hexagon and any applicable Third Party Software manufacturer(s) are the manufacturer. This Software Product is unpublished and all rights are reserved under the copyright laws of the United States.

7.1.4 Government Reserved Rights: MrSID technology incorporated in the Software Product was developed in part through a project at the Los Alamos National Laboratory, funded by the U.S. Government, managed under contract by the University of California (the “University”), and is under exclusive commercial license to LizardTech, Inc. It is used under license from LizardTech. MrSID technology is protected by U.S. Patent No. 5,710,835. Foreign patents pending. The U.S. Government and the University have reserved rights in MrSID technology, including without limitation: (a) The U.S. Government has a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced throughout the world, for or on behalf of the United States, inventions covered by U.S. Patent No. 5,710,835 and has other rights under 35 U.S.C. § 200-212 and applicable implementing regulations; (b) If LizardTech’s rights in the MrSID technology terminate during the term of this EULA, Customer may continue to use the Software Product. Any provisions of this license which could reasonably be deemed to do so would then protect the University and/or the U.S. Government; and (c) The University has no obligation to furnish any know-how, technical assistance, or technical data to users of MrSID technology and makes no warranty or representation as to the validity of U.S. Patent 5,710,835 nor that the MrSID technology will not infringe any patent or other proprietary right. For further information about these provisions, contact LizardTech, 1008 Western Ave., Suite 200, Seattle, WA 98104.

7.2 Export Restrictions. Software Products, including any technical data related to Software Products, are subject to the export control laws and regulations of the United States and other applicable jurisdictions, including, but not limited to the U.S. Export Administrations Act. Diversion contrary to United States and other applicable law is prohibited. This Software Product, including any technical data related to this Software Product and any derivatives of this Software Product, shall not be exported or re-exported, directly or indirectly (including via remote access), under the following circumstances:

- To Cuba, Iran, North Korea, Sudan, or Syria, or any national of these countries.

- To any person or entity listed on any United States government denial list, including, but not limited to, the United States Department of Commerce Denied Persons, Entities, and Unverified Lists ([www.bis.doc.gov/complianceand enforcement/liststocheck.htm](http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm)), the United States Department of Treasury Specially Designated Nationals List ([www.treas.gov/offices/enforcement/ofac/](http://www.treas.gov/offices/enforcement/ofac/)), and the United States Department of State Debarred List (<http://www.pmdtc.state.gov/compliance/debar.html>).
- To any entity if Customer knows, or have reason to know, the end use is related to the design, development, production, or use of missiles, chemical, biological, or nuclear weapons, or other unsafeguarded or sensitive nuclear uses.
- To any entity if Customer knows, or have reason to know, that an illegal reshipment will take place.

If the Software Product Customer received is identified on the media as being ITAR-controlled, this Software Product has been determined to be a defense article subject to the U.S. International Traffic in Arms Regulations (“ITAR”). Export of this Software Product from the United States must be covered by a license issued by the Directorate of Defense Trade Controls (“DDTC”) of the U.S. Department of State or by an ITAR license exemption. This Software Product may not be resold, diverted, or transferred to any country or any end user, or used in any country or by any end user other than as authorized by the existing license or ITAR exemption. Subject to the terms of this EULA, this Software Product may be used in other countries or by other end users if prior written approval of DDTC is obtained.

Customer agree to hold harmless, indemnify and defend Hexagon for any causes of actions, claims, costs, expenses and/or damages resulting to Hexagon from a breach by Customer or any User of the export restrictions set forth in this EULA. Any questions regarding export or re-export of the Software Product or concerning ITAR restrictions, if applicable, should be addressed to Hexagon’s Export Compliance Department at 305 Intergraph Way, Madison, Alabama, 35758, USA or at [exportcompliance@intergraph.com](mailto:exportcompliance@intergraph.com).

7.3 Territorial Use Restriction. Unless otherwise specifically permitted in writing by Hexagon, use of the Software Product outside the country in which it is licensed is strictly prohibited.

7.4 Use Outside the United States. If Customer is located outside the United States, then the provisions of this section shall also apply: (i) Les parties en présence confirment leur volonté que cette convention de même que tous les documents y compris tout avis qui s’y rattachent, soient rédigés en langue anglaise (Translation: “The parties confirm that this agreement and all related documentation is and will be in the English language.”); and (ii) Customer is responsible for complying with any local laws in Customer’s jurisdiction which might impact Customer’s right to import, export or use the Software Product, and Customer represents that Customer has complied with any and all regulations or registration procedures required by applicable law to make this EULA fully enforceable.

7.5 Survival. The provisions of this EULA which require or contemplate performance after the expiration or termination of this EULA shall be enforceable notwithstanding said expiration or termination.

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## HEXAGON END-USER LICENSE AGREEMENT ADDENDUM FOR CERTAIN PRODUCTS

This Addendum is applicable to Customer in the event that the Software Product is one that also makes use of the products identified below. If applicable, this Addendum (“Addendum”) sets forth the terms of the Customer’s use of the Software Product in addition to the terms of the END-USER LICENSE AGREEMENT (“EULA”) provided to the Customer at the time of purchase. This Addendum shall only apply to Customer if Customer use any of the products identified below. To the extent not inconsistent with this Addendum, all terms of the EULA shall apply to the use of the Software Product. In the event of a conflict of terms between the EULA and this Addendum, this Addendum shall take precedence over the EULA.

**1 Geospatial Desktop Program.** This Article only applies if the Software Product is that particular bundle of applications known as the “Geospatial Desktop Program.”

### 1.1 Definitions.

1.1.1 “Effective Addendum Date” shall mean the later of (i) the date of delivery of the License Key(s) to Licensee, (ii) the date the Geospatial Desktop Program goes into production, or (iii) such later date as specified in the Quote.

1.1.2 “Existing Products” - any Hexagon software products held by Customer prior to entering into this addendum that are duplicative of one or more components of the Geospatial Desktop made the subject of this Addendum.

1.1.3 “License Key” shall mean the unique key provided to the Licensee by Hexagon for the run-time use of the Software Product

1.1.4 “Licensee” shall mean an individual or single legal entity authorized by Hexagon to utilize the Software Product pursuant to the EULA and this Addendum.

1.2 License Grant. Provided Customer is not in breach of any term or condition of the EULA or this Addendum Hexagon hereby grants Customer a limited, non-exclusive license to install and use the Software Product, in object code form only, strictly for Customer’s internal use and strictly in accordance with the EULA and this Addendum. The license is non-transferable, except as specifically set forth in the EULA. Customer assumes full responsibility for the selection of the Geospatial Desktop Program to achieve Customer’s intended results, and for the installation, use, and results obtained from the Geospatial Desktop Program.

1.2.1 License type and Mode: The Geospatial Desktop Program licensed pursuant to this Addendum shall be concurrent-use mode (CC) as defined in the EULA.

1.3 Term. This Addendum and the rights granted to Licensee pursuant to this Addendum and the EULA shall begin upon the Effective Addendum Date and remain in effect for a period of twelve (12) months. This Addendum may be renewed as set forth herein. New License Keys and/or installation media will be issued annually upon renewal of this Addendum.

Approximately thirty (30) days prior to the end of the license term, Hexagon may submit a renewal Quote to the Licensee to renew the license(s) for the next subscription period at the prices provided in the renewal Quote. If the license(s) are not renewed at the end of the term, Licensee acknowledges that all

rights and license grants provided by this EULA and this Addendum shall terminate upon expiration of the term described in the section immediately above.

1.4 Customer's Existing Products. Any Existing Products held by Customer are not a part of this Addendum.

1.4.1 Any Existing Products must be subject to a separate Hexagon maintenance agreement. Customer may choose to not renew maintenance for Existing Products only at the expiration of the term of any maintenance agreement applicable to Existing Products. Early maintenance termination is not permitted for Existing Products under this Addendum.

**2 Geospatial SDK.** This Article only applies if the Software Product is the Geospatial Portal SDK.

2.1 License Limitations for Sencha Products. Customer shall not distribute the Sencha Products in stand-alone form. Customer shall not provide license rights, consulting, training, or other services with the standalone functionality of the Sencha Products. Customer shall not allow third parties to develop or use the Sencha Products on a standalone basis. Copies of the Sencha Products are licensed and not sold. Customer may not: (a) modify the Sencha Products or permit or permit any third party to do so; (b) rent, lease or sell or otherwise provide temporary access to the Sencha Products to any third party; (c) use the Sencha Products in any manner to assist or take part in the development, marketing, or sale of a product competitive with the Sencha Products; (d) modify, remove or obstruct any copyright or other proprietary rights statements or notices contained within the Sencha Products; (e) distribute the Sencha Products except as provided herein; (f) allow, assist or permit any others to do any of the foregoing. Customer agrees to not reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the Sencha Products. Customer may only make a single copy of the Sencha Products for back-up purposes only.

2.2 Limitations on Use. Customer may only use the Geospatial Portal SDK and Sencha Products in combination with the Geospatial Portal Software Product. For the avoidance of doubt, "Customer" in this Addendum means an individual person. Only one person may use the Geospatial Portal SDK per license. Customer is the only authorized user of this licensed copy of the Geospatial Portal SDK and Customer may not allow anyone other than itself to use the Geospatial Portal SDK.

**3 Remote Content Management.** This Article only applies if the Software Product is Remote Content Management and makes use of DotNetZip Library.

3.1 "Contributor" shall mean any person that distributes its contribution under this license.

3.2 If Customer brings a patent claim against any contributor over patents that Customer claims are infringed by the software, Customer's patent license from such contributor to the software ends automatically.

**4 IMAGINE GeoPDF PUBLISHER.** This Article only applies if the Software Product is the IMAGINE GeoPDF PUBLISHER product.

4.1 Warranty Disclaimer. Notwithstanding anything to the contrary herein, no warranty is provided with respect to the performance of IMAGINE GeoPDF PUBLISHER. For greater clarity IMAGINE GeoPDF PUBLISHER is provided on an "AS IS" basis.

4.2 Limitation of Liability. Hexagon, its licensors or its suppliers shall not be liable for any claims relating to or arising out of IMAGINE GeoPDF PUBLISHER, regardless of form, in connection with Customer's use of IMAGINE GeoPDF PUBLISHER.

4.3 Acceptance. IMAGINE GeoPDF PUBLISHER shall be deemed accepted upon Customer's installation of the same.

4.4 Use Restrictions. Customer may use the GeoPDF PUBLISHER only for Customer's internal business use, and Customer may not use IMAGINE GeoPDF PUBLISHER to render any files other than GeoPDF files.

**5 Euclidean technology.** This Article only applies if the Software Product is APOLLO, ERDAS IMAGINE, Geospatial Portal, or GeoMedia WebMap. These Software Products have Euclidean technology embedded within the final products and the intellectual property rights of such third-party technology remain with Euclidean. By installing and using these Software Products, Customer agrees that Customer will not modify, reverse engineer, disassemble or decompile any Euclidean software, that Customer will not remove, obscure or alter any notice of patent, trademark, copyright or trade name.

**6 mTransformer.** mTransformer by myVR Software AS is delivered with the Hexagon Geospatial Provider Suite and Platform Suite products. mTransformer may be installed on any machine and used within an organization that has a valid license for any product from the Provider Suite or the Platform Suite.

**7 GeoMedia Viewer Software – Additional Terms.** The software license specifically for GeoMedia Viewer permits copies to be stored on hard disk and loaded for execution on one or more workstations. The GeoMedia Viewer software may be freely copied, transferred, and loaned both inside and outside Customer's company.

**8 Beta Software - Additional Terms.** If the Software Product Customer received with this EULA is Beta Software, then the following additional terms apply. To the extent that any provision in this Article is in conflict with any other terms or conditions in this EULA, this Article shall supersede such other terms and conditions with respect to the Beta Software, but only to the extent necessary to resolve the conflict. Customer shall hold all information concerning Beta Software and Customer's use and evaluation of such information and the Beta Software (collectively, "Beta Software Information") in confidence and with the same degree of care Customer uses to keep Customer's own similar information confidential, but in no event shall Customer use less than a reasonable degree of care; and Customer shall not, without the prior written consent of Hexagon, disclose such Beta Software Information to any person or entity for any reason at any time; provided, however, it is understood that Customer may disclose any Beta Software Information to those of Customer's representatives who actually need such information for the purpose of participating in the proposed evaluation and testing ("Beta Testing") of the Beta Software, on the condition that, prior to such disclosure, such representative has been made aware of the terms of this EULA. Customer shall not use any Beta Software Information for any reason or purpose other than as necessary for Beta Testing. Customer agrees to make no other use of the Beta Software Information or to incorporate any Beta Software Information into any work or product. Customer acknowledges that the Beta Software is a pre-release, beta version, does not represent final product from Hexagon, and may contain bugs, errors and other problems that could cause system or other failures and data loss. THE BETA SOFTWARE IS PROVIDED TO YOU "AS-IS", AND HEXAGON DISCLAIMS ALL WARRANTY AND LIABILITY OBLIGATIONS TO YOU OF ANY KIND. Customer may use the Beta Software only for evaluation and testing. Production use of Beta Software is strictly prohibited. Customer acknowledges that Hexagon has not promised or guaranteed to Customer that Beta Software or any portion thereof will be announced or made available to anyone in the future, Hexagon has no express or implied obligation to Customer to announce or introduce the Beta Software and that Hexagon may not introduce a product similar to or compatible with the Beta Software. Accordingly, Customer acknowledges that any research or development that Customer performs regarding the Beta Software or any product associated with the Beta Software is done entirely at Customer's own risk. During the term of this EULA, if requested by Hexagon, Customer will provide feedback to Hexagon regarding Beta Testing, including error or bug reports. Upon receipt of a later unreleased version of Beta Software or release by Hexagon of a publicly released commercial version of the Software Product, Customer agrees to return or permanently destroy all earlier Beta Software received from Hexagon. Customer agrees that Customer will return or destroy all unreleased versions of the Beta Software within thirty (30) days of the

completion of Beta Testing when such date is earlier than the date for Hexagon's first commercial shipment of the publicly released commercial software.

**9 Evaluation Software - Additional Terms.** If the Software Product Customer has received with this EULA is provided specifically for evaluation purposes ("Evaluation Software"), then this Article applies until such time that Customer purchases a license of the full retail version of the Software Product. To the extent that any provision in this Article is in conflict with any other term or condition in this EULA, this Article shall supersede such other terms and conditions with respect to the Evaluation Software, but only to the extent necessary to resolve the conflict. Customer may use the Evaluation Software only for evaluation and testing and not for general production use. Customer acknowledges the Evaluation Software may contain limited functionality and/or may function for a limited period of time. Hexagon is licensing the Evaluation Software on an "AS-IS" basis, solely for Customer's evaluation to assist in Customer's purchase decision. If the Evaluation Software is a timeout version, then the program will terminate operation after a designated period of time following installation (the "Time Out Date"). Upon such Time Out Date, the Evaluation Software license will cease operation and Customer will not be able to use the Software Product, unless Customer purchases a license for a full retail version of the Software Product. Customer acknowledges such Evaluation Software shall cease operation upon the Time Out Date and accordingly, access to any files or output created with such Evaluation Software or any product associated with the Evaluation Software is done entirely at Customer's own risk.

**10 Educational Software Product – Additional Terms.** If the Software Product Customer has received with this EULA is Educational Software Product (where either an education price is paid for the Software Product, or the Software Product is received by virtue of Customer's participation in an Hexagon program designed for educational or research institutions, or is received through an education grant from Hexagon), Customer is not entitled to use the Software Product unless Customer qualifies in Customer's jurisdiction as an Educational End User. Customer may use the Educational Software Product only for educational and research purposes. Commercial and general production use of Educational Software Products is specifically prohibited. Additional terms and conditions, as well as the definition of an Educational End User, are detailed in Hexagon's Education Policy which is available from Hexagon upon request.

**11 ImageStation and Geospatial SDI Software – Additional Terms.** Some Software Products of the ImageStation and Geospatial SDI product families contain one or more dynamic link libraries (DLLs) that were built at least partially from open source code subject to the Code Project Open License (CPOL) 1.02 which may be found at <http://www.codeproject.com/info/cpol10.aspx>. By installing and using these Software Products, Customer agrees the terms of the CPOL license apply to the portions of such DLLs built with CPOL-licensed open source code.

**12 ECW Browser Plug-in – Additional Terms.** The Enhanced Compression Wavelet (ECW) browser plug-in Software Product ("Browser Plug-in") is designed to be used as a browser plug-in to view, within the Microsoft Internet Explorer, Google Chrome and Mozilla Firefox browsers (the "Browsers"), images created using ECW image technology. Browsers are not included with the Browser Plug-in. Customer may make and install as many copies of the Browser Plug-in as Customer needs, as plug-ins to lawfully licensed Browsers on computers that Customer owns or controls. If Customer has a valid license to use Hexagon Enhanced Compression Wavelet (ECWP) server Software Product ("ECWP Server Software"), Customer may also distribute copies of the Browser Plug-in to others whom Customer wish to authorize to access images residing on Customer's ECWP server, provided Customer includes this EULA with the distributed copies. All copies of the Browser Plug-in authorized as described herein are considered to be authorized copies. Customer may install and use the Browser Plug-in only to enable the Browsers to display images that are created with ECW image technology, and that are accessed via Customer's licensed ECWP Server Software. The Browser Plug-in is licensed only for research, commercial, governmental, and educational purposes and is not licensed, and shall not be used, for personal, family, or household purposes.

**13** **AAIC and RINAV - Limits on use.** Customer may not use a single license of AAIC or RINAV for more than four (4) simultaneous jobs. Customers desiring to execute AAIC or RINAV simultaneously on more than four (4) cores may purchase additional licenses.

**END OF EXHIBIT B**





**Exhibit C - Maintenance Terms and Conditions**

The additional terms and conditions set forth in this Exhibit C shall govern the Maintenance Services provided by Hexagon to Customer for the Covered Products identified in individual Orders issued pursuant to the Master Agreement. Terms not defined in this Exhibit C will have the meaning ascribed to them in the General Terms and Conditions or Exhibit B (the End-User License Agreement).

**1 DEFINITIONS.**

1.1 “**Maintenance Agreement**” means the combined terms and conditions applicable to an Order for Maintenance Services, to-wit: the terms set forth in this Exhibit, the General Terms and Conditions of the Master Agreement, and the applicable Quote for Maintenance Services.

1.2 “**Coverage Period**” means the period of performance of Maintenance Services set forth in the applicable Quote.

1.3 “**Covered Products**” means the Software listed on the Quote for which Maintenance Services are to be provided to Customer by Hexagon. Covered Products shall also include additional copies of Software (i) where the Software is already a Covered Product under an existing Maintenance Agreement and (ii) additional licenses are purchased or otherwise obtained by Customer during the Coverage Period. Covered Products may include Software Products and Third Party Software.

**2 AUTHORIZATION OF SERVICES.**

Following execution of the Master Agreement, Customer authorizes Hexagon to provide the Maintenance Services for Covered Products during the Coverage Period in accordance with the Maintenance Agreement by one of the following means:

- a) returning a signed Quote for Maintenance Services;
- b) submitting a signed purchase order referencing a Quote for Maintenance Services;
- c) paying any charges as set forth on a Quote for Maintenance Services; or
- d) accepting delivery of Maintenance Services as set forth on a Quote for Maintenance Services.

The Maintenance Services will be provided by Hexagon in accordance with the Scope of Coverage as set forth elsewhere in this Exhibit.

**3 TERM AND RENEWALS OF A MAINTENANCE AGREEMENT.**

3.1 Maintenance Services shall begin (retroactively, if applicable) on the first calendar day of the first month of the applicable Coverage Period, and shall expire at the end of the Coverage Period unless terminated earlier pursuant to the terms of the Master Agreement, or renewed by mutual agreement of the parties in accordance with the terms of this Exhibit. The Coverage Period shall be for whole months only.

3.2 Approximately ninety (90) days prior to the expiration date of any Coverage Period, Hexagon will submit to Customer a renewal Quote that includes pricing for the upcoming Coverage Period. The immediately preceding Article entitled “AUTHORIZATION OF SERVICES” shall apply mutatis mutandis to the formation of a renewed Maintenance Agreement based on the renewal Quote. If the Maintenance Agreement is not renewed for an additional annual Coverage Period based on the renewal Quote, Hexagon, after the preceding Coverage Period has expired, shall be entitled to discontinue Maintenance Services for the affected Covered Products, including access to system support or knowledge base, and/or end the ability of Customer to log or check support requests.

#### **4 LAPSE AND REINSTATEMENT OF MAINTENANCE SUPPORT COVERAGE.**

4.1 Lapse in Maintenance Coverage. To reinstate Maintenance Services after any termination or suspension thereof, Customer must pay a reinstatement fee. The Coverage Period for any reinstated Maintenance Services (the "Renewal Coverage Period") shall begin on the first day after the expiration or termination of the last paid-in-full Coverage Period and extend until the next purchase anniversary date of the lapsed Covered Products. The reinstatement fee will equal twenty-five percent (25%) of the past due maintenance charges (rounded up to whole months only) for the Renewal Coverage Period, and shall be in addition to the total maintenance charges due for the Renewal Coverage Period, all calculated at the current maintenance list price. Upon request of Customer, Hexagon will provide a Quote for the Renewal Coverage Period, to include the reinstatement fee, which is applicable only for reinstatement made in the then-current month.

4.2 Failure to Obtain Maintenance Coverage. In the event Maintenance Services were not purchased at the time that the Covered Product was originally purchased, in order to obtain Maintenance Services, Customer must pay one hundred twenty-five percent (125%) of all maintenance payments from the date the original Covered Product was purchased up to the date the Maintenance Services are actually purchased, plus one hundred percent (100%) of the remaining Coverage Period that expires upon the anniversary date of the original Covered Product purchase, all calculated at the current maintenance list price. The Coverage Period for such Covered Products will begin on the first day of the month in which the Covered Products were originally purchased.

#### **5 SCOPE OF COVERAGE FOR SOFTWARE PRODUCTS.**

Maintenance Services described in this Article apply to Software Products only.

Hexagon offers two levels of Maintenance Services for Software Products included in the Covered Products: Standard Support and Premium Support. Under both levels of Maintenance Services, Hexagon shall provide reasonable commercial efforts to aid in the diagnosis and correction of defects in and provide general advice as to the use of the Software Products included in the Covered Products. The level of Maintenance Services will be set forth on the Quote and will include the following:

5.1 **Standard Support:** Standard Support will include and be limited to the following:

5.1.1 Help Desk Support. Out-of-the-box functionality support via the Help Desk (telephone or eService via Hexagon's Customer Support Web Site where available at <http://esupport.intergraph.com>). Phone support for all priority levels of software errors is available on Monday through Friday from 8 AM – 5 PM at Customer's local time, excluding Hexagon-observed holidays. Local variances in support hours will be posted on the Customer Support Web Site or applicable local support website, or can be determined by contacting Customer's local Hexagon office.

5.1.2 Updates. Access to all available Updates of Software Products included in the Covered Products. Hexagon will notify Customer when Updates are made available for any Software Products for which Service has been purchased by way of posting notices of such to the "Support Notices and Announcements" section on the Customer Support Web Site or applicable local support website or via direct notification by Hexagon. If applicable, Customer may also register on the Customer Support Web Site or applicable local support website to automatically receive email notifications when a new release of a Software Product is made available by Hexagon. Updates are shipped to Customer upon Customer request. Hexagon is not obligated to produce any Updates.

5.1.3 Knowledge Base. Twenty-four-hour-per-day/seven-day-per-week access to problem Knowledge Base, an on-line self-help tool.

5.2 **Premium Support:** Premium Support will include all of the features available under Standard Support. Additionally, when the software error is considered to be critical (meaning production is down), then phone support is also available after-hours and on Hexagon-observed holidays.

5.3 Hexagon may not provide both levels of support for all Software Products in all countries. Customer may choose any level of Maintenance Services offered, however, all interrelated or identical Software Products included in the Covered Products under the Terms and Conditions must have the same level of Maintenance Services when available.

5.4 Defect correction Maintenance Services are only available for the current version and the one version prior to the current version of a particular Software Product, except in system down cases and in cases wherein Hexagon otherwise elects. Diagnostic Maintenance Services are available regardless of version. Maintenance Services are limited to the specific Software Products listed on the Quote and functioning on the appropriate Hexagon-supported operating system.

## **6 MINIMUM SYSTEM REQUIREMENTS; CUSTOMER'S OBLIGATIONS.**

Performance of Maintenance Services by Hexagon is specifically conditioned upon the following minimum system requirements and fulfillment by Customer of the following obligations (collectively, minimum system requirements and customer obligations hereinafter referred to as "Customer Obligations"):

6.1 Customer's hardware and operating system software must meet the minimum system requirements specified by Hexagon and made available to Customer upon request.

6.2 Customer's system must have input and output devices that enable the use of Hexagon's diagnostic programs and supplemental tests. The specifications of such devices shall be made available to Customer by Hexagon upon request.

6.3 Customer will be responsible for any required adjustments or updates to its hardware and/or operating system software required to accommodate Updates of Covered Products.

6.4 Customer will ensure availability of its own system technical support personnel so that Hexagon can fulfill its Service obligations.

6.5 When reporting problems to Hexagon's Help Desk, Customer will provide a complete problem description, along with all necessary documents and information that is available to Customer and required by Hexagon to diagnose and resolve the problem. Customer will grant all necessary access to all required systems as well as to the Covered Products, and any other reasonable assistance needed.

6.6 Customer will carry out any reasonable instructions on troubleshooting or circumvention of the problem provided by Hexagon through an Authorized Contact (as defined below) immediately and in conformity with these instructions, and will install any necessary patches, defect corrections or new versions from Hexagon.

6.7 Customer is solely responsible for assuring the compatibility of non-Hexagon products with products provided by Hexagon.

6.8 Customer is solely responsible for ensuring its systems, software, and data are adequately backed up. Hexagon will not be liable for lost data.

6.9 In addition, Customer shall provide for any other requirements reasonably specified by Hexagon and related to the rendition of the Maintenance Services to be met.

## **7 EXCLUDED SERVICES.**

7.1 Maintenance Services for the following are outside the scope of the Maintenance Agreement and may be available under separate agreement at an additional charge (collectively "Excluded Maintenance Services"):

- Installation of any Covered Product, Update, Upgrade, or interface software
- Network configuration
- Configuration or customization of Covered Products to Customer requirements.
- System-level tuning and optimization and system administration support
- Programming or software development
- Training
- Maintenance Services required because the Authorized Contact is not available or is not trained in accordance with this Exhibit
- On-site Services of any sort
- Maintenance Services outside of the regular business hours associated with the applicable level of Maintenance Services
- Maintenance Services required due to modifications of Covered Products by Customer except where such modifications are required by Hexagon. In the case of Hexagon software modules which assist in the creation and use of Customer software, the performance of Maintenance Services under the Maintenance Agreement is restricted to unmodified components of these Covered Products.
- Maintenance Services required due to use other than in the ordinary manner intended for the Covered Products, or use in a manner that contravenes terms hereunder, or Customer's disregard of the installation and operating instructions according to the documentation provided with the Covered Products
- Maintenance Services required due to failure of software or hardware not supplied by Hexagon and not covered in the Maintenance Agreement.
- Maintenance Services required due to Customer's use of hardware or software that does not meet Hexagon specifications or failure of Customer to maintain or perform industry standard maintenance on Customer's hardware or software
- Maintenance Services required due to software or portions thereof that were incorrectly installed or configured, or use in an environment inconsistent with the support environment specified by Hexagon, or use with peripherals, operational equipment, or accessories not conforming to Hexagon's specifications
- Maintenance Services required due to cases of force majeure, acts of God, lightning strikes, fire, or flood or other events not caused through Hexagon's fault.
- Customer's failure to materially fulfill the Customer Obligations set forth in this Exhibit
- Maintenance Services required due to faulty or incomplete Customer data.

7.2 When ordered by Customer, Excluded Maintenance Services or other software maintenance support services that are outside the scope of the Maintenance Agreement will be billed by Hexagon at the then-current hourly rates and material prices at the time such service is performed.

## **8 SYSTEM SUPPORT TECHNICIAN.**

8.1 Customer will appoint a minimum of two and a maximum of three contact people who are each authorized to make use of the Maintenance Services ("Authorized Contacts").

8.2 Customer must make sure that the Authorized Contacts have adequate expertise and experience to make possible a targeted and professionally accurate description of malfunctions and make it possible for Hexagon to handle them efficiently. Authorized Contacts must have successfully completed Hexagon product training or complete it at the next available scheduled opportunity, for those products for which formal training is available. Customer will bear the cost of this training. Customer is obligated to select only those personnel for this task who are suitable for it by means of training and function, and who have knowledge of Customer's operating system, network, and hardware and software systems. Customer agrees to promptly notify Hexagon of any replacement of an Authorized Contact.

## **9 REMOTE ACCESS.**

Customer will permit Hexagon to electronically access Customer's system via SecureLink™. SecureLink™ is a tool for providing secure, auditable remote access to Customer's system in order for Hexagon support personnel ("Customer Support") to effectively troubleshoot critical or complex problems and to expedite resolution of such issues. The Authorized Contacts should be available to assist Hexagon Customer Support as needed during this entire process. Customer Support will only access Customer's system with the knowledge and consent of Customer. For local variances specific to the use of remote access tools other than SecureLink™, Customer should contact the local Hexagon support office.

## **10 THIRD PARTY SOFTWARE.**

10.1 Support and Updates of Third Party Software shall be provided in the fashion and to the extent or duration that Hexagon is authorized to provide such by the third party manufacturer of the Third Party Software, and such Third Party Software Maintenance Services may be subject to additional terms and conditions of the third party manufacturer of the Third Party Software.

10.2 Maintenance Services and Updates for any Third Party Software that are not listed on the Quote must be obtained from the third party owner of the products or their designated representative.

## **11 REQUIRED COVERAGE.**

11.1 Multiple or Interdependent Licenses. Customer may not decline Maintenance Services for individual licenses of a Covered Product for which Customer has multiple copies installed at one site or for Covered Products that are being used interdependently regardless of installation locations, except in accordance with the relinquishment process described in Section 12.2, below.

11.2 Prerequisite Licenses. All prerequisite Hexagon software licenses that are necessary to operate the Covered Products for which Customer desires Maintenance Services under the Maintenance Agreement must also be included as Covered Products and Hexagon undertakes to list these on the Quote.

## **12 ADDITIONS AND REMOVALS OF COVERED PRODUCTS.**

12.1 Additions of Covered Products to Maintenance.

12.1.1 Additional Software Products from Hexagon. In the event Customer purchases additional licenses of Software Products from Hexagon during the term of this Maintenance Agreement, Hexagon will provide Customer with a written extension Quote that reflects the additional licenses, the effective date of service, and charges for the additional licenses, pursuant to the Master Agreement.

12.1.2 Additional Software Products from a third party. In the event Customer obtains additional licenses of Software Products from an authorized reseller or by any other means, Customer agrees to promptly notify Hexagon in writing about the newly acquired Software Products, and upon receipt of such notice, Hexagon will provide Customer with a written extension Quote that reflects the additional licenses, the effective date on which Hexagon may commence the Maintenance Services with respect to the copies of the Software Product pertaining to the additional licenses, and the charges that would be due in return for these Maintenance Services pursuant to the Maintenance Agreement.

12.1.3 Section 2 of this Exhibit shall apply mutatis mutandis to the expansion of the Maintenance Agreement based on the extension Quote(s) submitted to Customer pursuant to the terms of this Article. If the Maintenance Agreement is not expanded based on the extension Quote, then the terms and conditions set forth in this Exhibit regarding reinstatement of Maintenance Services will apply to the additional licenses of Software Products. If, however, the additional Software Products are multiple, interdependent, or prerequisite licenses as described in this Exhibit above,

Maintenance Services may not be declined and Maintenance Services and the appropriate monthly charges will begin on the effective date as shown on the extension Quote.

12.1.4 Additional Software Products via Software Transfer Policy. Customer shall purchase Maintenance Services on all additional licenses of Software Products for a site obtained via software license transfer. Any such software license transfers shall be in accordance with the then-current Hexagon Software Transfer Policy and the EULA or other applicable software license agreement delivered with the Software Product.

12.2 Removal of Covered Products from Maintenance. Either party may provide written notice to the other party at least sixty (60) calendar days prior to the end of any Coverage Period of its intent to remove any individual Covered Products from the Maintenance Agreement for the renewal period. Neither party may remove Covered Products except upon Coverage Period renewal. Customer may not remove individual software licenses of a Covered Product for which Customer has multiple copies under Service at one site or for Covered Products that are being used interdependently at a single site unless Customer has first certified to Hexagon on a Software Relinquishment Agreement (to be provided to Customer by Hexagon upon request) that the copies of the Covered Product for which Customer desires to cease Maintenance Services (the "Relinquished Licenses") for the renewal Coverage Period have been uninstalled and removed from its system(s). Should Customer desire to reinstate Maintenance Services for the Relinquished Licenses at a later date, Customer must re-purchase the licenses at the then current list price.

### **13 PAYMENT.**

13.1 Terms of Payment. Charges for the Maintenance Services are due and payable annually and in advance. For Customers desiring to pay quarterly and in advance instead of annually and in advance, Customer must request a revised Quote which shall include a convenience fee increase of fifteen percent (15%) of the total annual charges, which convenience fee Customer agrees to pay. The convenience fee shall be prorated and charged to the four quarterly invoices. All charges for Maintenance Services are due net thirty (30) calendar days from the date of invoice or prior to the beginning of the applicable Coverage Period, whichever is earlier. Charges for Maintenance Services associated with Covered Products added during a Coverage Period shall be prorated to the remaining months of the Coverage Period, in whole month increments only, and such charges shall be due and payable in full upon Customer's receipt of invoice.

13.2 Past Due Accounts. HEXAGON RESERVES THE RIGHT TO REFUSE SERVICE TO ANY CUSTOMER WHOSE ACCOUNT IS PAST DUE. At the discretion of Hexagon, Customers who have not paid any charges when due (i) under this Master Agreement, (ii) under any other agreement between the parties, or (iii) under any agreement between Hexagon and Customer's parent and/or subsidiary at least fifty percent (50%) owned by Customer, may not be rendered Maintenance Services until all past due charges are paid in full. The start of the Coverage Period shall not be postponed due to delayed payment of any charges. If Hexagon is required to use a collection agency or attorney to collect money owed by Customer, Customer agrees to pay the reasonable costs of collection. These collection costs include, but are not limited to, any collection agency's fees, reasonable attorneys' fees, and court costs.

### **14 CUSTOMER WARRANTIES.**

During the Coverage Period, Customer shall commit to the following:

14.1 Subject to Section 12.2 above, Customer warrants that for all Covered Products supported under the Master Agreement, all licenses of a Covered Product for which Customer has multiple copies in its possession and that are located at the site referenced on the Quote, and all prerequisite licenses necessary to operate Covered Products, are listed on the Quote. If all like Covered Products or prerequisite software licenses are not listed on the Quote, Customer agrees to notify Hexagon so that Hexagon may issue a revised Quote to Customer.

14.2 Customer warrants that Maintenance Services provided herein shall be utilized only for the quantity of Covered Products licenses listed on the Quote.

14.3 Customer shall, and Customer shall cause each of Customer's employees and representatives to, comply with each and every term and condition of the EULA and/or SLA applicable to the Covered Products supported under the Maintenance Agreement.

## **15 RESTRICTIONS.**

15.1 United States Government Restricted Rights. If a Covered Product (including any Updates, Upgrades, documentation, or technical data related to such Covered Products) is licensed, purchased, subscribed to, or obtained, directly or indirectly, by or on behalf of a unit or agency of the United States Government, then this Article also applies.

15.1.1. For civilian agencies: The Covered Product was developed at private expense and is "restricted computer software" submitted with restricted rights in accordance with the Federal Acquisition Regulations ("FAR") 52.227-19 (a) through (d) (Commercial Computer Software – Restricted Rights).

15.1.2. For units of the Department of Defense ("DoD"): The Covered Product was developed at private expense and is "commercial computer software" submitted with restricted rights in accordance with the Defense Federal Acquisition Regulations ("DFARS") DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation).

15.1.3 Notice: The Covered Product is "commercial computer software" as defined in DFARS 252.227-7014 (Rights in Noncommercial Computer Software) and FAR 12.212 (Computer Software), which includes "technical data" as defined in DFARS 252.227-7015 (Technical Data) and FAR 12.211 (Technical Data). All use, modification, reproduction, release, performance, display or disclosure of this "commercial computer software" shall be in strict accordance with the manufacturer's standard commercial license, which is attached to and incorporated into the governing Government contract. Hexagon and any applicable Third Party Software manufacturers are the manufacturers. This Covered Product is unpublished and all rights are reserved under the copyright laws of the United States.

## **16 ADDITIONAL TERMS.**

16.1 Third Party Providers. Hexagon reserves the right to provide Maintenance Services through a third party provider, subject to Hexagon's assurance of performance, and the provider meeting Customer requirements, as applicable to Hexagon.

16.2 The use of Updates is subject to all of the terms and conditions of the EULA or SLA provided with Customer's current version of the Covered Products.

16.3 Upgrades require a full installation and may be provided with a separate EULA or SLA. Any EULA or SLA delivered with the Upgrade may supersede any EULA or SLA associated with prior releases of the Covered Products. It is acknowledged and agreed that allowing an Upgrade to be licensed on the same terms as a prior release may create unintended consequences, such as, without limitation, a failure to bind a user to terms necessitated by new functions or content of the Upgrade; and, that mandating an Upgrade be licensed on terms delivered with the Upgrade may create unintended consequences, such as, without limitation, a heightened risk that new terms may apply to the user without the user's normal diligent scrutiny thereof. It is the expectation of the Parties to formally and expressly agree upon license terms to be applied to an Upgrade; provided that in the absence of express license terms evidenced in writing, an Upgrade shall be licensed on the same terms of the prior release, but subject to such superseding terms of the EULA delivered with the Upgrade as a commercially reasonable software vendor would require in order to accommodate any attributes of the Upgrade which differentiate it from the prior release.)

**END OF EXHIBIT C**



**EXHIBIT D**



**HEXAGON**  
SAFETY & INFRASTRUCTURE

**PROJECT DELIVERABLE SIGN-OFF FORM**

The Corporation of the City of London – <Project Name>  
400 Horton Street, London, Ontario N6B 1L7

Submission Date:	<Month/Day/Year>	Sign-Off Target Date:	<Month/Day/Year>
Submitted By:	<Hexagon Contact Name>	Submitted To:	<Customer Contact Name>
Customer Contract #:	<Contract Number>	Customer/Project #:	<Hexagon Project Number>

**TYPE OF DELIVERABLE**

SOW Tasks       Payments       Plans/Designs       Training  
her

**DELIVERABLE INFORMATION**

**DELIVERABLE DESCRIPTION** **\$AMOUNT OF**  
**PYMT** **(If applicable)**  
**THIS SECTION DESCRIBES THE DELIVERABLE**

With the Deliverable described above complete, the Customer shall have ten (10) working days after receipt of a written request from Hexagon, to either sign-off that the Deliverable has been met or state in writing to Hexagon the reason the Deliverable has not been met.

Sign-off of the Deliverable shall be based solely upon the Deliverable meeting the requirements stated in the Agreement between Hexagon and The Corporation of the City of London dated <Month/Day/Year> and shall be indicated by the Customer signing the Project Deliverable Sign-off Form. If the Customer does not provide such sign-off or rejection within the ten (10) day period, then the Deliverable will be deemed to have been signed off.

The signature below acknowledges that the Deliverable described in the Agreement and listed above meets all of the appropriate criteria and supersedes all prior requirements for this item.

Customer acknowledges completion of this payment milestone according to the Contract Payment Milestone Schedule and provides authorization to invoice this milestone.

**Authorized Customer Representative**  
**Customer Contact Name**

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**DATE**