

## Software as a Service Agreement

This Software as a Service Agreement (the “Agreement”) is between **Hexagon Hexagon EAM Holdings, LLC** (“Hexagon”) and \_\_\_\_\_ (“Customer”) and entered as of the Effective Date. The parties agree as follows:

### 1. **Definitions.**

“**Affiliate**” means (i) in the case of HHexagon, any entity controlled by Hexagon AB and (ii) in the case of Customer, any entity controlled by Customer. For purposes of the preceding sentence, “control” means the direct or indirect ownership of more than 50% of the voting interests of an entity.

“**Annual Period**” means each successive 12-month period following the Effective Date.

“**Authorized Users**” means employees and individual contractors of Customer or its Affiliates authorized by Customer or its Affiliates to access the Subscription Software.

“**Confidential Information**” means non-public information that is identified as or would be reasonably understood to be confidential and/or proprietary. Confidential Information of Hexagon includes, without limitation, the Documentation and the Subscription Software, including any software code and all algorithms, methods, techniques, and processes revealed or utilized therein. Confidential Information of Customer includes Customer Data. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Recipient; (ii) the Discloser regularly discloses to third parties without restriction on disclosure; (iii) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation known to Recipient; or (iv) is independently developed by the Recipient without use of Confidential Information.

“**Customer Data**” means information provided, entered or uploaded for use by or with the Subscription Software by the Customer or its Authorized Users. Customer owns all proprietary rights in Customer Data.

“**Discloser**” means the party providing Confidential Information to the Recipient.

“**Documentation**” means the then-current documentation made generally available by Hexagon relating to the features, functions, and use of the Subscription Software.

“**Documented Defect**” means a material deviation between the then-current, general release version of the Subscription Software and its Documentation.

“**Effective Date**” means the last signature date below unless a different date is specified in the Effective Date field on the signature page.

“**Initial Subscription Term**” means the initial subscription period set forth on the applicable Order Form.

“**Intellectual Property Rights**” means any and all rights in patents, copyrights, trademarks and service marks.

“**Order Form**” means each order form between the parties incorporating the terms of this Agreement which shall contain, without limitation, a list of the Subscription Software and associated quantities and Use Restrictions, a description of the Subscription Services, Subscription Fees, and payment terms.

“**Personal Information**” means Customer Data that (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers). Personal Information shall include any non-public personal information regarding any individual that is subject to applicable national, state, regional, and/or local laws and regulations governing the privacy, security, confidentiality and protection of non-public personal information.

“**Professional Services**” is defined in Exhibit A (Professional Services) to this Agreement. If Hexagon provides professional services under a different agreement than this Agreement (as specified in the work order for such professional services), then this Agreement shall not apply to such professional services and all references herein to Professional Services are inapplicable.

**“Professional Services Fees”** means, if applicable, the fees for Professional Services performed under the Agreement.

**“Recipient”** means the party receiving Confidential Information of the Discloser.

**“Renewal Term”** means any renewal or extension of Customer’s right to access and use the Subscription Software and Subscription Services following the expiration of the Initial Subscription Term.

**“Residual Knowledge”** shall mean ideas, concepts, know-how or techniques related to the Discloser's technology and Confidential Information that are retained in the unaided memories of the Recipient who had rightful access to Confidential Information.

**“Service Level Description”** means the Service Level Description document applicable to the Subscription Services and attached as an exhibit to an Order Form.

**“Subscription Fees”** means the fees for the Subscription Services set forth on the applicable Order Form.

**“Subscription Services”** means the Subscription Software-related application hosting services and Support (as defined in Section 3(b)) that Hexagon provides Customer under this Agreement.

**“Subscription Software”** means collectively or individually the computer software programs identified in the applicable Order Form for which Hexagon is providing access via the Subscription Services.

**“Subscription Term”** means the Initial Subscription Term or any Renewal Term, as applicable.

**“Third Party Licensor”** means a third party whose software products or services have been made available to Hexagon for distribution under the terms of its agreement with Hexagon.

**“Updates”** means generally available updates, enhancements or modifications to the then-current, general release version of the Subscription Software that are not separately priced as new products.

**“Use Restriction”** means any limitation on the use of the Subscription Software identified in an Order Form (e.g., number of Authorized Users, locations, connections).

**“UserID”** means a unique user identification credential used in combination with a unique password to access the Subscription Software and Subscription Services.

## **2. Use Rights and Restrictions.**

a. **Access Rights.** Subject to the terms and conditions of this Agreement and the applicable Order Form, Customer is permitted to allow its Authorized Users to access and use the Subscription Software and the Subscription Services, during the Subscription Term, in an operating environment hosted by Hexagon, solely for the internal use of Customer and its Affiliates (for so long as they remain Affiliates). Any rights not expressly granted in this Agreement are expressly reserved. Customer shall ensure that its Affiliates and Authorized Users comply with the terms of this Agreement and shall be liable for any noncompliance by its Affiliates and Authorized Users.

b. **Documentation.** Customer may make a reasonable number of copies of the Documentation for the Subscription Software for its internal use in accordance with the terms of this Agreement. Customer must reproduce the unaltered Intellectual Property Rights notice(s) in any full or partial copies that Customer makes of the Documentation.

c. **Additional Restrictions on Use of the Subscription Software and Subscription Services.** Use of the Subscription Software and Subscription Services is subject to any Use Restriction specified in the applicable Order Form. Customer is prohibited from causing or permitting the reverse engineering, disassembly or de-compilation of the Subscription Software. Customer is prohibited from using the Subscription Software and Subscription Services to provide service bureau services to third parties. Customer will not allow the Subscription Software to be used by, or disclose all or any part of the Subscription Software to, any person except Authorized Users. Customer acknowledges and agrees that U.S. export control laws and other applicable export and import laws govern its use of the Subscription Software and Customer will neither export or re-export, directly or indirectly, the Subscription Software, nor any direct product thereof in violation of such laws, or use the Subscription Software for any purpose prohibited by applicable laws.

## **3. Subscription Services.**

a. Hosted Environment. Hexagon will provide the application hosting environment, including the hardware, equipment, and systems software configuration on which Hexagon supports use of the Subscription Software and Subscription Services, on servers located at facilities selected by Hexagon. Customer is not permitted to access the Subscription Software on any environment outside the hosted environments selected by Hexagon as part of the Subscription Services.

b. Support. Hexagon shall (a) provide Customer with access (via the internet, telephone or other means established by Hexagon) to Hexagon's support helpline, (b) install, when and if generally available, Updates; and (c) use reasonable efforts to correct or circumvent any material deviation between the then-current, general release version of the Subscription Software and its Documentation (the foregoing referred to collectively as "Support"). Support is included in the Subscription Fee.

c. User Accounts. Customer shall ensure that a unique UserID and password is assigned to each Authorized User accessing the Subscription Software and Customer shall be responsible for managing such UserIDs and passwords through the Subscription Software interface. Customer shall maintain the confidentiality of Customer's UserIDs and passwords and shall cause its Authorized Users to maintain the confidentiality of their UserIDs and passwords. Customer is responsible for all uses of and activities undertaken with UserIDs registered on Customer's account. Customer agrees to immediately notify Hexagon of any unauthorized use of Customer's UserIDs of which Customer becomes aware.

d. Connectivity. Hexagon will be responsible for maintaining connectivity from its network to the Internet which is capable of servicing the relevant Internet traffic to and from the hosted environment. Customer is responsible for providing connectivity to the Internet for itself and its Authorized Users. Customer shall also be responsible for ensuring that latency and available bandwidth from the device of the Authorized User to Hexagon's hosted routers are adequate to meet Customer's desired level of performance. Customer is responsible for all costs associated with any specialized network connectivity required by Customer. If Customer purchases Subscription Services in a single tenant environment, Customer will be responsible for securing VPN connectivity to such environment.

e. Customizations. Customizations (as defined below) are not permitted in a multi-tenant hosted environment. Customizations may only be permitted in a single-tenant hosted environment if authorized in writing by Hexagon and documented in a separate written agreement between the parties. Support or other services for Customizations are not included as part of the Subscription Services and may only be purchased pursuant to a separate written agreement between the parties. As used herein, "Customizations" means any components deployed in the hosted environment other than the generally available Subscription Software or components that Customer may deploy via the standard user interface or tools included in the generally available Subscription Software.

#### **4. Payment and Taxes.**

a. Payment of Subscription Fees. Customer shall pay Hexagon the Subscription Fees set forth on the Order Form. Subscription Fees are payable in advance and Hexagon will invoice Customer for Subscription Fees prior to the commencement of the portion of the Subscription Term to which such fees apply. Unless otherwise specified in the Order Form, invoices are due within 30 days of invoice date. After the Initial Subscription Term, the Subscription Fees shall be subject to annual adjustment. Except as otherwise set forth in this Agreement, Subscription Fees are non-refundable. Late payments are subject to a late charge equal to the lesser of: (i) one percent (1%) per month; and (ii) the highest rate permitted by applicable law. Notwithstanding anything to the contrary in this Agreement, following 10 business days' prior written notice, Hexagon reserves the right to suspend access to the Subscription Services in the event of any past due Subscription Fees.

b. Taxes. Customer is responsible for paying all taxes relating to this Agreement (except for taxes based on Hexagon's net income or capital stock). Applicable tax amounts (if any) are not included in the Subscription Fees set forth on any Order Form or the Professional Services Fees set forth on any Work Order. Hexagon will invoice Customer for applicable tax amounts and such invoices are payable in accordance with Section 4.a. and the Order Form as related to Subscription Fees and, if applicable, Exhibit A and the Work Order as related to Professional Services Fees.

#### **5. Limited Warranties, Disclaimer of Warranties, and Remedies.**

a. Limited Subscription Software Warranty by Hexagon and Remedy For Breach. Hexagon warrants that the Subscription Software will operate without a Documented Defect during the Initial Subscription Term. Hexagon's sole obligation with respect to a breach of the foregoing warranty shall be to repair or replace the Subscription Software giving rise to the breach of warranty. If Hexagon is unable to repair or replace such Subscription Software within a reasonable period of time then, subject to the limitations set forth in Section 9 of this Agreement, Customer may pursue its remedies at law to recover damages resulting from the breach of this warranty. The remedies in this Section 5(a) are exclusive and in lieu of all other remedies, and represent Hexagon's sole obligations, for a breach of the foregoing warranty. Customer must provide notice to Hexagon of any warranty claim within the warranty period. For clarity, Customer's entitlement to Support (as defined in Section 3(b)) in connection with any Documented Defect shall continue throughout the Subscription Term.

b. Malicious Code. Hexagon warrants that it will use generally accepted industry tools and practices, to provide Subscription Software and Subscription Services that do not contain any “time bombs,” “worms,” “viruses,” “Trojan horses,” “protect codes,” “data destruct keys,” or other programming devices that are intended to access, modify, delete, damage, deactivate or disable Customer Data (“Malicious Code”). Upon discovery, Hexagon shall investigate, identify and remove such Malicious Code from the Subscription Software and Subscription Services.

c. Limited Subscription Services Warranty and Remedy For Breach. Hexagon warrants to Customer that, Hexagon will render the Subscription Services with commercially reasonable care and skill. Hexagon further warrants that the hosted production environment will be available at all times throughout the Subscription Term, subject to the exceptions and allowances described in the Availability section of the applicable Service Level Description. The level of unavailability shall not exceed one half of one percent (0.5%) per month, excluding Scheduled Maintenance as described in the applicable Service Level Description (the “Down Time Warranty”). In the event of a breach of the Down Time Warranty Hexagon shall apply service level credits based on the actual availability measure for the applicable period as follows:

<u>Availability</u>	<u>Service Level Credit</u>
99.500% or greater	No Service Level Credit
99.499% - 99.000%	5% of the monthly prorated subscription fee
98.999% - 98.500%	15% of the monthly prorated subscription fee
98.499% - 95.000%	25% of the monthly prorated subscription fee
Below 95.000%	35% of the monthly prorated subscription fee

Service level credits for Subscription Fees paid on an annual basis shall be based on a monthly equivalent fee. For example, a 5% service level credit on an annual subscription fee shall be 5% of 1/12 of the annual subscription fee. Service level credits shall be applied to Customer’s next Subscription Fees invoice or, if Customer has paid the final invoice under this Agreement, service level credits shall be paid to Customer within thirty (30) calendar days following the determination that the credit is due. In the event availability for the production environment falls below 95% for any three (3) consecutive months or any four (4) months in a rolling twelve (12) month period (a “Triggering Event”), Customer may, within sixty (60) days of such Triggering Event, terminate the affected Order Form, in which case, in lieu of service level credits, Customer shall receive a refund, on a pro rata basis, of any prepaid Subscription Fees applicable to the unused portion of the then-current Subscription Term following the effective date of termination of the Order Form. The foregoing remedies are the exclusive remedies and are in lieu of all other remedies for breach of the Down Time Warranty.

d. DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5 OR EXHIBIT A (IF APPLICABLE), HEXAGON MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE SUBSCRIPTION SOFTWARE, SUBSCRIPTION SERVICES OR PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT AND/OR ANY ORDER FORM OR WORK ORDER. HEXAGON EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. HEXAGON EXPRESSLY DOES NOT WARRANT THAT THE SUBSCRIPTION SOFTWARE OR SUBSCRIPTION SERVICES, IN WHOLE OR IN PART, WILL BE ERROR FREE, OPERATE WITHOUT INTERRUPTION OR MEET CUSTOMER’S REQUIREMENTS.

e. FAILURE OF ESSENTIAL PURPOSE. THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN SECTIONS 5 AND 9 WILL SURVIVE AND APPLY EVEN IF ANY REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

f. HIGH RISK ACTIVITIES. THE SUBSCRIPTION SOFTWARE IS NOT FAULT-TOLERANT AND IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE AS ON-LINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR AIRCRAFT COMMUNICATION SYSTEMS, MASS TRANSIT, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE SUBSCRIPTION SOFTWARE COULD LEAD DIRECTLY TO DEATH,

**PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). ACCORDINGLY, HEXAGON DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. CUSTOMER AGREES THAT HEXAGON SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM OR RELATED TO THE USE OF THE SUBSCRIPTION SOFTWARE IN SUCH APPLICATIONS.**

**6. Confidential Information.**

a. Confidentiality. Recipient will take reasonable measures designed to prevent the unauthorized use or disclosure of Discloser's Confidential Information, including, at a minimum, those measures Recipient takes to protect its own Confidential Information of a similar nature. Recipient will use and disclose the Confidential Information disclosed to it under this Agreement only to the extent necessary to further and fulfill the purposes of this Agreement. The non-disclosure and non-use obligations of this Agreement will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after termination of this Agreement. Recipient shall be responsible for any breach of the confidentiality terms contained in this Section 6 by any of its directors, officers, employees, Authorized Users (in the case of Customer), Affiliates, contractors and agents. Nothing herein shall limit Recipient's use of Residual Knowledge, subject to any Intellectual Property Rights of the Discloser, or Hexagon's use of aggregated anonymous data related to Customer's use of the Subscription Software and Subscription Services. If the Recipient should receive any legal request or process in any form seeking disclosure of Discloser's Confidential Information, or if the Recipient should be advised by counsel of any obligation to disclose such Confidential Information, the Recipient shall (if allowed by law) provide the Discloser with prompt notice of such request or advice so that the Discloser may seek a protective order or pursue other appropriate assurance of the confidential treatment of the Confidential Information. Regardless of whether or not a protective order or other assurance is obtained, the Recipient shall provide only that portion of the Discloser's Confidential Information which is legally required to be provided and to use reasonable efforts to assure that the information is maintained in confidence by the party to whom it is furnished. Customer shall ensure that Authorized Users are bound by confidentiality obligations consistent with those above.

b. Security Policies and Safeguards for Subscription Services. Hexagon shall establish and maintain administrative, technical, and physical safeguards designed to protect against the destruction, loss, unauthorized access or alteration of Customer Data in the possession or under the control of Hexagon or to which Hexagon has access, which are: (i) no less rigorous than those maintained by Hexagon for its own information of a similar nature; (ii) no less rigorous than generally accepted industry standards; and (iii) required by applicable laws. The security procedures and safeguards implemented and maintained by Hexagon pursuant to this Section 6(b) shall include, without limitation:

- i. User identification and access controls designed to limit access to Customer's Data to authorized users;
- ii. the use of appropriate procedures and technical controls regulating data entering Hexagon's network from any external source;
- iii. the use of encryption techniques when Customer Data is transmitted or transferred into or out of the hosted environment;
- iv. physical security measures, including without limitation securing Customer Data within a secure facility where only authorized personnel and agents will have physical access to Customer Data;
- v. operational measures, including without limitation IT Service Management (ITSM) processes designed to ensure the correct and secure operations of information processing activities;
- vi. periodic employee training regarding the security programs referenced in this Section; and
- vii. periodic testing of the systems and procedures outlined in this Section.

c. Review of Controls. Once in each 12 month period during the Subscription Term, Hexagon shall, at its cost and expense, engage a duly qualified independent auditor to conduct a review of the design and operating effectiveness of Hexagon's defined control objectives and control activities in connection with the Subscription Services. Hexagon shall cause such auditor to prepare a report in accordance with the American Institute of Certified Public Accountants Statement on Standards for Attestation Engagements No. 18 (SSAE 18) or an equivalent standard, which may include ISAE 3402 (the "Audit Report"). Customer shall have the right to request and receive a copy of the Audit Report and Customer may share a copy of such Audit Report with its auditors and regulators, provided that, such Audit Report shall be Hexagon's Confidential Information.

d. Security Incident Response. In the event that Hexagon becomes aware that Customer Data has been or is reasonably expected to be subject to a use or disclosure not authorized by this Agreement (an "Information Security Incident"), Hexagon shall: (i) promptly (and in any event within 48 hours of becoming aware of such Information Security Incident), notify Customer,

in writing, of the occurrence of such Information Security Incident; (ii) investigate and conduct a reasonable analysis of the cause(s) of such Information Security Incident; (iii) provide periodic updates of any ongoing investigation to Customer; (iv) develop and implement an appropriate plan to remediate the cause of such Information Security Incident to the extent such cause is within Hexagon's control; and (v) cooperate with Customer's reasonable investigation or Customer's efforts to comply with any notification or other regulatory requirements applicable to such Information Security Incident. To the extent that an Information Security Incident is attributable to the acts or omissions of Customer, Customer shall reimburse Hexagon for its out-of-pocket costs to investigate and remediate such Information Security Incident.

**7. Indemnity by Hexagon.** Hexagon will defend, indemnify and hold Customer harmless from and against any loss, cost and expense to the extent arising from a third party claim against Customer that the Subscription Software infringes any Intellectual Property Rights of others. Hexagon's obligations under this indemnification are expressly conditioned on the following: (i) Customer must promptly notify Hexagon of any such claim; (ii) Customer must, in writing, grant Hexagon sole control of the defense of any such claim and of all negotiations for its settlement or compromise so long as such settlement or compromise does not result in payment of money by Customer or an admission of guilt by Customer (if Customer chooses to represent its own interests in any such action, Customer may do so at its own expense, but such representation must not prejudice Hexagon's right to control the defense of the claim and negotiate its settlement or compromise); (iii) Customer must reasonably cooperate with Hexagon to facilitate the settlement or defense of the claim. Hexagon will not have any liability hereunder to the extent the claim arises from (a) any modification of the Subscription Software by, on behalf of, or at the request of Customer; or (b) the use or combination of the Subscription Software with any computer, computer platform, operating system and/or data base management system other than as specified in the Documentation or otherwise authorized by Hexagon in writing. If any Subscription Software is, or in Hexagon's opinion is likely to become, the subject of an Intellectual Property Rights infringement claim, then Hexagon, at its sole option and expense, will either: (A) obtain for Customer the right to continue using the Subscription Software under the terms of this Agreement; (B) replace the Subscription Software with products that are substantially equivalent in function, or modify the Subscription Software so that it becomes non-infringing and substantially equivalent in function; or (C) refund to Customer the un-used portion of the Subscription Fee, if any, paid to Hexagon for the Subscription Software giving rise to the infringement claim, and discontinue Customer's use of such Subscription Software. **THE FOREGOING SETS FORTH HEXAGON'S EXCLUSIVE OBLIGATION AND LIABILITY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.**

**8. Term and Termination.**

a. Term. The Initial Subscription Term will be specified in the applicable Order Form. After the Initial Subscription Term, the Subscription Term shall renew for successive one-year Renewal Terms, unless either party provides written notice of non-renewal to the other party at least ninety (90) days prior to expiration of the Initial Subscription Term or then current Renewal Term, as the case may be. Except as set forth in Section 5(c) or Section 8(b), the Subscription Term cannot be terminated prior to its expiration date.

b. Right of Termination. If either party breaches any material obligation in an Order Form and fails to remedy such breach within thirty (30) days of receipt of written notice of such breach, the other party may terminate the Order Form. Notice of an alleged breach of warranty does not constitute notice of material breach for purposes of this Section.

c. Effect of Termination. Upon termination of an Order Form by either party, Customer's access and use of the Subscription Software and Subscription Services under such Order Form shall immediately terminate as of the effective date of such termination. Termination of an Order Form will not release either party from making payments which may be owing to the other party through the effective date of such termination. Termination of an Order Form will be without prejudice to the terminating party's other rights and remedies pursuant to this Agreement, unless otherwise expressly stated herein. In the event of Customer's termination of an Order Form under Section 8(b), Customer shall be entitled to a refund, on a pro rata basis, of any prepaid Subscription Fees under such Order Form applicable to the unused portion of the then-current Subscription Term following the effective date of termination.

d. Return of Customer Data. Upon termination or expiration of an Order Form, Hexagon shall promptly make all Customer Data available to Customer as a native database export provided through Hexagon's FTP server. In the event that Customer requires the return of Customer Data in an alternate format or requires any other termination assistance services, Hexagon and Customer shall mutually agree upon the scope of such termination assistance services and the fees and expenses payable for such termination assistance services.

e. Survival of Obligations. All obligations relating to non-use and non-disclosure of Confidential Information, limitation of liability, and such other terms which by their nature survive termination, will survive termination or expiration of this Agreement.

**9. LIMITATIONS OF LIABILITY.**

a. **LIMITED LIABILITY.** EXCEPT WITH RESPECT TO (I) HEXAGON'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS UNDER SECTION 7; (II) UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION RESULTING FROM A PARTY'S BREACH OF THE AGREEMENT, WHICH LIABILITY SHALL BE SUBJECT TO SECTION 9(c) BELOW; (III) CUSTOMER'S INFRINGEMENT OR MISAPPROPRIATION OF HEXAGON'S INTELLECTUAL PROPERTY RIGHTS; OR (IV) CUSTOMER'S OBLIGATION TO PAY FEES, THE TOTAL LIABILITY OF EITHER PARTY, ITS AFFILIATES AND THIRD PARTY LICENSORS (IN THE CASE OF HEXAGON), WHATEVER THE BASIS OF LIABILITY, (i) IN CONNECTION WITH OR RELATED TO THE SUBSCRIPTION SOFTWARE, THE SUBSCRIPTION SERVICES OR ANY OTHER MATTER RELATING TO THIS AGREEMENT (OTHER THAN PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT, WHICH IS ADDRESSED IN (ii) BELOW) WILL NOT EXCEED THE SUBSCRIPTION FEES PAID OR PAYABLE TO HEXAGON HEREUNDER FOR THE ANNUAL PERIOD IN WHICH SUCH LIABILITY FIRST AROSE, OR (ii) IN CONNECTION WITH OR RELATED TO PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT, THE PROFESSIONAL SERVICES FEES PAID OR PAYABLE TO HEXAGON FOR THE PROFESSIONAL SERVICES GIVING RISE TO LIABILITY UNDER THE APPLICABLE WORK ORDER.

b. **EXCLUSION OF DAMAGES.** EXCEPT WITH RESPECT TO (I) HEXAGON'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS UNDER SECTION 7; OR (II) CUSTOMER'S INFRINGEMENT OR MISAPPROPRIATION OF HEXAGON'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES OR THIRD PARTY LICENSORS (IN THE CASE OF HEXAGON) BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY SEEK OR BE LIABLE FOR PUNITIVE DAMAGES.

c. **UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION.** WITH RESPECT TO UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION RESULTING FROM A PARTY'S BREACH OF THE AGREEMENT, THE TOTAL LIABILITY OF THE BREACHING PARTY, ITS AFFILIATES AND THIRD PARTY LICENSORS (IN THE CASE OF HEXAGON), SHALL NOT EXCEED THREE (3) TIMES THE SUBSCRIPTION FEES PAID OR PAYABLE TO HEXAGON HEREUNDER FOR THE ANNUAL PERIOD IN WHICH SUCH LIABILITY FIRST AROSE. TO THE EXTENT SUCH BREACH RESULTS IN THE UNAUTHORIZED DISCLOSURE OF PERSONAL INFORMATION, DIRECT DAMAGES SHALL INCLUDE (1) THE COSTS OF PROVIDING NOTICE TO AFFECTED PERSONS, (2) THE COST OF ESTABLISHING AND OPERATING A CALL CENTER TO FIELD INQUIRIES RELATED TO SUCH UNAUTHORIZED DISCLOSURE FOR UP TO 12 MONTHS; AND (3) THE COST OF PROVIDING CREDIT MONITORING SERVICES TO AFFECTED PERSONS, IN EACH CASE TO THE EXTENT REQUIRED BY APPLICABLE LAW AND ACTUALLY INCURRED.

10. **Notices.** All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when: delivered personally; sent by overnight courier; or transmitted by facsimile and confirmed by first class mail. Notices must be sent to a party at its address shown on the signature page of this Agreement, or to such other place as the party may subsequently designate for its receipt of notices in accordance with this Section. Customer must promptly send copies of any notice of material breach and/or termination of the Agreement to Hexagon, Attention: Senior Division Counsel, 305 Intergraph Way, Madison, AL, USA, FAX number 256-730-1928, or to such other place as Hexagon may subsequently designate for its receipt of notices.

11. **Force Majeure.** Except with respect to the payment of fees hereunder, neither party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including, without limitation, Acts of God, war, terrorist acts, accident, labor disruption, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance, or the threat of any of the foregoing (a "Force Majeure Event"). A party seeking to excuse its non-performance as a result of a Force Majeure Event shall have the burden of proof to demonstrate that the Force Majeure Event prevents its performance and must, upon becoming aware of a Force Majeure Event that prevents its performance, provide written notice to the other party specifying the details in such regard (a "Force Majeure Notice"). If, within thirty (30) days following a party's provision of a Force Majeure Notice, such party is unable to provide written assurances of its ability to perform in accordance with the Agreement, the other party shall be entitled to terminate the Agreement or suspend its performance thereunder upon providing written notice.

12. **Assignment.** Customer may not assign or transfer any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of Hexagon. Notwithstanding the foregoing, the named Customer

specified above may, upon written notice to Hexagon, but without requirement of Hexagon's consent, assign or transfer this Agreement in its entirety (including all Order Forms) to a successor of Customer in connection with a merger, acquisition, or sale of all or substantially all of its assets, provided Customer is not in breach of this Agreement and such successor has agreed, in writing, to assume all of the obligations of Customer hereunder. Any attempted assignment or transfer in violation of the foregoing will be void.

**13. No Waiver.** A party's failure to enforce its rights with respect to any single or continuing breach of this Agreement will not act as a waiver of the right of that party to later enforce any such rights or to enforce any other or any subsequent breach.

**14. Choice of Law; Severability.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, without application of any conflict of laws provisions thereof, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of Delaware, without application of any conflict of laws provisions thereof. This Agreement is originally written in the English language and the English language version shall control over any translations. If any provision of this Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the remaining provisions of the Agreement will remain in full force and effect. The United Nations Convention on the International Sale of Goods (CISG) shall not apply to the interpretation or enforcement of this Agreement.

**15. Audit.** Hexagon may audit Customer's compliance with the terms of this Agreement and applicable Order Forms. If an audit reveals that Customer has exceeded the permitted scope of use, then, in addition to any other remedies available to Hexagon, Customer will promptly pay Hexagon any underpaid Subscription Fees associated with such overuse based on Hexagon's then-current list rates.

**16. Miscellaneous.** Customer grants Hexagon permission to use its name and logo in marketing materials referencing Customer as a customer. Hexagon and Customer are independent contractors under this Agreement, and nothing herein will be construed to create a partnership, joint venture or agency relationship between them. This Agreement shall be construed as if drafted by both parties and shall not be strictly construed against either party.

**17. Entire Agreement.** This Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications, representations and understandings between the parties about its subject matter. Each party acknowledges that, in entering into this Agreement, it does not rely upon, and shall have no remedy in respect of, any statement or representation of any person other than as expressly set out in this Agreement. Any purchase order or similar document that may be issued by Customer in connection with this Agreement does not modify, supplement or add terms to this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends this Agreement. This Agreement and any signed agreement entered into in connection herewith or contemplated hereby may be executed in counterparts. An executed document that has been delivered via fax, electronic or digital means shall be treated as an original.

[Signature Page Follows]



THE PARTIES have executed this Agreement through the signatures of their respective authorized representatives.

**Hexagon EAM Holdings, LLC**

**Customer:** \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

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

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

Effective Date: \_\_\_\_\_ (only complete if different than the last signature date above)

**Exhibit A**  
**(Professional Services)**

Hexagon's provision of Professional Services shall be subject to the terms of the Agreement, including the additional terms below.

1. **Definitions.**

**"Professional Services"** means the professional services that Hexagon may provide Customer under the Agreement, including any Work Order. Professional Services expressly excludes Subscription Services.

**"Professional Services Fees"** means the fees for the Professional Services as set forth in the applicable Work Order.

**"Work Order"** means each signed work order between the parties referencing the terms of the Agreement, which shall contain without limitation, a description of the Professional Services, and the rate(s) on which the Professional Services Fees are based.

2. **Work Orders.** Hexagon may provide Customer with Professional Services as set forth in a Work Order. Hexagon is under no obligation to perform any Professional Services other than pursuant to a Work Order. However, if Hexagon performs Professional Services at the direction of Customer and the parties have not signed a Work Order for such Professional Services, then such Professional Services shall be subject to all terms and conditions herein and Hexagon's then-current rates for such Professional Services shall apply.

3. **Scheduling and Cancellation of Scheduled Professional Services.** While Hexagon will try to schedule Professional Services on the date(s) requested by Customer, Customer should make staffing requests at least four (4) weeks in advance to increase the likelihood the requested date(s) can be reserved. Once Professional Services have been scheduled, Customer will be obligated to pay for such Professional Services as if Hexagon had performed such Professional Services on the scheduled date(s) and any related travel and living expenses to the extent such travel and living expenses are non-refundable, unless Customer has notified Hexagon at least fourteen (14) days prior to the scheduled date(s) that it wishes to reschedule or cancel such Professional Services.

4. **Conditions on Providing Professional Services.** Customer must assign a project manager who will assume responsibility for the management of the project for which the Professional Services are provided. Customer will establish the overall project direction, including assigning and managing the Customer's project personnel team. Customer must provide Hexagon with such cooperation, information, facilities, equipment and support as are reasonably necessary for Hexagon to provide the Professional Services. Unless otherwise stated in a Work Order, Hexagon shall own all proprietary rights to any work product generated from the Professional Services (the "Work Product"); provided that to the extent such Work product contains Customer Data or Customer Confidential Information, Customer shall continue to own all proprietary rights in such Customer Data or Customer Confidential Information. Hexagon grants Customer a non-exclusive, non-transferable right to use the Work Product for the internal operations of Customer and its Affiliates.

5. **Payment of Professional Services Fees.** Unless otherwise stated in the applicable Work Order, Hexagon will invoice Customer for all Professional Services Fees and applicable taxes and charges on a monthly basis, as Hexagon renders the Professional Services or Customer incurs the charges, as applicable. Customer will reimburse Hexagon for actual travel and living expenses that Hexagon incurs in providing Professional Services. Unless otherwise stated in the applicable Work Order, invoices are payable within 30 days of invoice date.

6. **Long-term Assignments.** The parties acknowledge that reimbursement of travel and living expenses to an Hexagon consultant who is assigned to a particular location for more than one year may be treated as taxable personal income under applicable tax laws. Where reasonably possible, the parties will limit the duration of a consultant's assignment to a particular location to less than one year. If a consultant is assigned to a particular location for more than one year and becomes subject to additional taxes as a result thereof, then Hexagon will increase consultant's compensation to cover such additional taxes, and Customer shall reimburse Hexagon for the amount of such increase.

7. **Limited Professional Services Warranty and Remedy for Breach.** Hexagon warrants to Customer that Hexagon will render all Professional Services with reasonable care and skill. If Customer notifies Hexagon of a breach of the foregoing warranty, Hexagon will re-perform such Professional Services in compliance with the foregoing warranty. If despite its reasonable efforts, Hexagon is unable to provide Customer with Professional Services in compliance with the foregoing warranty, then, subject to the limitations set forth in Section 9 of the Agreement, Customer may pursue its remedies at law to recover damages resulting from the breach of this warranty. The remedies in this Section 7 are exclusive and in lieu of all other remedies, and represent Hexagon's sole obligations, for a breach of the foregoing warranty. Customer must provide notice to Hexagon of

any warranty claim within twelve months of Hexagon's provision of the Professional Services that are subject to the warranty claim.

8. **Right of Termination.** If either party breaches any material obligation in the Agreement or Work Order related to Professional Services performed under such Work Order, and fails to remedy such breach within thirty (30) days of receipt of written notice of such breach, the other party may terminate such Work Order, but may not otherwise terminate the Agreement or the Subscription Term on the basis of such breach. Termination of a Work Order will not release either party from making payments which may be owing to the other party under the terms of the Work Order through the effective date of such termination. Termination of a Work Order will be without prejudice to the terminating party's other rights and remedies pursuant to the Agreement, unless otherwise expressly stated herein.

9. **Non-Solicitation of Employees.** During the period that Hexagon is providing Professional Services and for a period of one (1) year following the completion of such Professional Services, neither Hexagon nor Customer will offer to hire, hire, Solicit for employment or retention as an independent contractor, or in any way employ any Resource of the other party without the prior written consent of the other party. "Solicit" as used in this Section does not include general solicitations, such as advertisements in newspapers, trade publications or on the internet. "Resource" for purposes of this Section means: (a) employees or independent contractors of the non-hiring party who directly worked on the Professional Services project (the "Project"), and (b) former employees of the non-hiring party who directly worked on the Project and whose employment with that party ended less than six (6) months prior to the date of such offer to hire, hire, Solicitation, or employment.