

# Hexagon Geosystems Technology Terms of Use

Thank you for your interest. Please carefully read these Hexagon Geosystems Technology Terms of Use (the "**Terms of Use**") before accessing, using or downloading Hexagon Technology.

**By submitting an order, by clicking an accept button or by accessing, downloading and/or using Hexagon Technology, you as a Customer or User (as defined below) agree to be bound by these Terms of Use, which also incorporate the Privacy Policy, Acceptable Use Policy and the Documentation (as defined below). If you accept these Terms of Use on behalf of a company, you represent that you have the authority to bind that company to these Terms of Use. If you do not have such authority, or if you do not agree to these Terms of Use, you must not accept these Terms of Use and may not access, download and/or use Hexagon Technology. All rights and obligations of the Customer under these Terms of Use shall apply *mutatis mutandis* to all Users (as defined below). The Hexagon Technology is intended for use by business customers and educational institutions only.**

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## 1 Introduction

These Terms of Use govern the relationship between Hexagon and the Customer and any of its Users (as defined below). The Hexagon Technology offered under these Terms of Use is intended for use by business customers and educational institutions only. These Terms of Use apply to both paid and free use of the Hexagon Technology.

## 2 Definitions

In these Terms of Use

- a) **Acceptable Use Policy** means Hexagon's Acceptable Use Policy for the Hexagon Technology, as specified in the HOS. The Acceptable Use Policy will be provided to the Customer on demand;
- b) **Account** means the Customer's and/or the Users' Hexagon Technology user account;
- c) **Agreement** means collectively the HOS, the Subscription Plan, these Terms of Use and any other agreements of the Parties in text form regarding Hexagon Technology;
- d) **Authorized User** means any individual natural person or legal entity not belonging to the Customer's organization who is registered or permitted by the Customer to use the Hexagon Technology subject to the Agreement;
- e) **Brand Features** means trade names, trademarks, logos, domain names, and other distinctive brand features, whether registered or not;
- f) **Confidential Information** means all information disclosed by Hexagon to a Customer or its Users, whether orally or in text form, that is designated as confidential or that relates to the Hexagon Technology, including the terms of this Agreement (including pricing). Confidential Information excludes any information, which the Customer proves that: (i) is or becomes generally known to the public without breach of any obligation owed to Hexagon, (ii) was known to the Customer or its Users prior to its disclosure by Hexagon without breach of any obligation owed to Hexagon, (iii) is received from a third party without breach of any obligation owed to Hexagon, or (iv) was independently developed by the Customer or its Users;
- g) **Content** means any type of data, in raw or other form, including but not limited to, electronic data, text, messages, communications, documents, physical world data, including but not limited to, (i) stereo, ortho-rectified, and/or oblique aerial imagery; (ii) point cloud, elevation, and/or digital surface model data; (iii) various derivative natural or human made geographic feature data; and (iv) measurement data, associated metadata or attribute information and other information and data;
- h) **Customer Content** means Content uploaded to and/or stored on the Hexagon Technology by the Customer and/or its Users;
- i) **Customer** means the individual or entity who enters into the Agreement and/or uses the Hexagon Technology and/or is specified as the customer in the HOS;
- j) **Customer User** means any individual natural person belonging to the Customer's organization who is registered or permitted by the Customer to use the Hexagon Technology subject to the Agreement;
- k) **Device** means equipment and related functionalities on which Hexagon Technology is installed;
- l) **Documentation** means the Hexagon Technology technical documentation provided and authorized by Hexagon, e.g. in the form of product manuals, data sheets etc., as may be further specified in the HOS;
- m) **Educational License** means a License granted to an academic, educational and/or research institution free of charge or at reduced prices;
- n) **E-Mail Address** means the Customer's and Hexagon's e-mail address to which any notices and notifications under the Agreement shall be sent according to Section 21.1 (Notices);

- o) **Equipment** means any equipment and ancillary services needed by the Customer and its Users to download, connect to, access or otherwise use the Hexagon Technology, including, without limitation, modems, hardware, servers, software, operating systems, networks, web servers and the like;
- p) **Force Majeure** means any act of God, natural disaster, government order, rule or decision, fire, war or armed conflict or the serious threat of the same, strike or labor dispute, pandemic, attack by viruses, worms or Trojan horses or any other cause beyond the reasonable control of the Parties;
- q) **Hexagon** means Leica Geosystems AG, Heinrich-Wild-Strasse 201, 9435 Heerbrugg, Switzerland or the legal entity defined in the HOS;
- r) **Hexagon Technology Content** means any Content made available or stored on, uploaded to or generated or processed by Hexagon Technology;
- s) **Hexagon Technology** means the technology and/or services to be provided by Hexagon to the Customer and/or which is pre-installed on a Device used by the Customer, as specified in the HOS or the Documentation, including Hexagon Beta Technology;
- t) **Hexagon Beta Technology** means Hexagon Technology provided by Hexagon to the Customer for beta testing, e.g. prior to making the technology available for general use;
- u) **HOS** means:
- the Hexagon Order Specifications, which are any online, written or otherwise in text form registration, subscription or purchase order form or contract for the Hexagon Technology submitted by the Customer and confirmed by Hexagon or an authorized reseller of Hexagon,
  - as well as any other agreement or document regarding the Hexagon Technology incorporating these Terms of Use;
- v) **Parties** means Hexagon and the Customer collectively;
- w) **Perpetual License for Pre-Installed Hexagon Technology** means the rights granted to the Customer according to Section 7.3 (Perpetual License for Pre-Installed Hexagon Technology);
- x) **Perpetual License** means the rights granted to the Customer according to Section 7.2 (Perpetual License);
- y) **Privacy Policy** means the privacy policy available at <https://leica-geosystems.com/en-gb/global/privacy-policy> and/or provided to the Customer on demand;
- z) **Qualified Form** means in writing, with the signature or qualified electronic signature of a person(s) authorized to represent the respective party;
- aa) **Seat** means the country in which the Customer has its company seat, unless otherwise defined in the HOS or agreed in Qualified Form;
- bb) **Subscription License** means the rights granted to the Customer according to Section 7.1 (Subscription License);
- cc) **Subscription Plan** means the terms for a defined subscription level for the use of the Hexagon Technology;
- dd) **Subsidiaries and Affiliates** means Hexagon's subsidiaries and affiliated legal entities around the world, regardless of whether Hexagon owns a controlling interest in such legal entity or not;
- ee) **Terms of Use** means these Hexagon Geosystems Technology Terms of Use;
- ff) **Territory** means the territory as defined in the HOS, if no territory is defined in the HOS, Territory means the Seat;
- gg) **Third Party Content** means Content made available or stored on Hexagon Technology by third parties;

hh) **User** means both Customer Users and Authorized Users;

### **3 Scope and Application of the Terms of Use**

#### **3.1 Scope of the Terms of Use**

These Terms of Use govern the Customer's and its Users' use of Hexagon Technology and the Parties' respective rights and obligations. They do not replace any Hexagon terms and conditions between the Parties for any other Hexagon products or services.

The Privacy Policy, the Acceptable Use Policy and the Documentation form an integral part of these Terms of Use in their current versions.

#### **3.2 Accepting the Terms of Use**

The Customer and its Users agree to be bound by these Terms of Use by submitting a HOS, by clicking an accept button or by accessing, using or downloading Hexagon Technology. Hexagon is in no way bound by any contradictory or additional terms and conditions from the Customer, its Users or any reseller of the Hexagon Technology unless accepted by Hexagon in Qualified Form.

#### **3.3 Order of Precedence**

Any inconsistency between these Terms of Use, the HOS, the Subscription Plan or any other agreement between the Parties regarding Hexagon Technology shall be resolved by giving precedence in the following order:

- a) The HOS and/or any other agreement in text form, or where specifically stated in the Agreement in Qualified Form, regarding Hexagon Technology between the Parties;
- b) The Subscription Plan;
- c) The Terms of Use;
- d) The Privacy Policy;
- e) The Acceptable Use Policy;
- f) The Documentation.

#### **3.4 Changes to the Terms of Use**

Hexagon expressly reserves the right to make changes to the Terms of Use from time to time. Hexagon shall notify the Customer of the changes in appropriate form, e.g. notifications in the Hexagon Technology, and shall make a new copy of the Terms of Use available to the Customer at least 30 days in advance.

Without objection by the Customer, the adapted terms enter into force on the date indicated by Hexagon. If the adapted terms are unacceptable to the Customer, the Customer must inform Hexagon thereof within 30 days of being notified. In case of an objection, the Customer may terminate the Agreement according to Section 20.1 (Term and Ordinary Termination). If the Customer does not terminate the Agreement according to Section 20.1 (Term and Ordinary Termination) at the next opportunity, the adapted terms apply from the automatic renewal of the Agreement after the next opportunity to terminate it in accordance with Section 20.1 (Term and Ordinary Termination).

### **4 Services Rendered by Hexagon's Subsidiaries and Affiliates**

Sometimes, Subsidiaries and Affiliates as well as third parties will be providing the services under the Agreement to the Customer on behalf of Hexagon. The Customer acknowledges and agrees that Hexagon shall be entitled to subcontract the provision of any part of the services provided under the Agreement to its Subsidiaries and Affiliates as well as third parties (which shall be entitled to provide the services under the Agreement on behalf of Hexagon).

## **5 Customer Account**

To access and use Hexagon Technology, the Customer and its Users may need an Account. When opening an Account, the Customer and its Users must provide Hexagon with the information reasonably requested by Hexagon. The provided information must be accurate and correct and must be kept accurate and correct throughout the term of the Agreement.

## **6 Functionality of the Hexagon Technology**

The exact services and/or Content available to the Customer and its Users are specified in the Agreement, in particular the HOS and the Documentation.

Hexagon Technology allows the Customer and its Users to upload/download Customer Content to/from and view, edit, process and store it on Hexagon Technology to the extent and as specified in the Agreement, in particular the HOS and the Documentation.

Any deviations from the functionality, areas of application and/or intended and/or suitable use of Hexagon Technology as specified in the HOS and the Documentation are only binding if agreed between the Parties in Qualified Form.

## **7 Right to Use Hexagon Technology**

### **7.1 Subscription License**

During the term of the Agreement, to the extent reflected in the HOS, Hexagon grants the Customer and its Users a limited, non-exclusive, non-transferable, non-sublicensable and revocable right to access, install, use and operate the Hexagon Technology in the Territory on a subscription basis in the manner and to the extent specified in the Agreement. The right is subject to the Agreement, in particular the limitations set forth in Section 8.9 (Use Restrictions) of these Terms of Use. Unless otherwise specified in the HOS, the Customer shall acquire one Subscription License for each User and/or Device or machine, respectively.

### **7.2 Perpetual License**

During the term of the Agreement, to the extent reflected in the HOS, Hexagon grants the Customer and its Users a limited, perpetual (subject to termination as provided in these Terms of Use), non-exclusive, non-transferable, and non-sublicensable right to access, install, use and operate the Hexagon Technology in the Territory in the manner and to the extent specified in the Agreement. The right is subject to the Agreement, in particular the limitations set forth in Section 8.9 (Use Restrictions) of these Terms of Use. Unless otherwise specified in the HOS, the Customer shall acquire one Perpetual License for each User and/or Device or machine, respectively.

### **7.3 Perpetual License for Pre-Installed Hexagon Technology**

For Hexagon Technology pre-installed on a Device, during the term of the Agreement, Hexagon grants the Customer and its Users a limited, perpetual (subject to termination as provided in these Terms of Use), non-exclusive, non-transferable and non-sublicensable right to use Hexagon Technology in the Territory only on the Device on which the Hexagon Technology is pre-installed in the manner and to the extent specified in the Agreement. The right is subject to the Agreement, in particular the limitations set forth in Section 8.9 (Use Restrictions) of these Terms of Use.

### **7.4 No Transfer of Title**

Any title, ownership and intellectual property rights in the Hexagon Technology and Documentation belonging to Hexagon shall remain with Hexagon.

### **7.5 No Right to Use Brand Features**

Hexagon does not grant the Customer any right in or to any Hexagon Brand Features, including in particular no right to use any Hexagon Brand Features.

## **8 Use of Hexagon Technology by the Customer**

### **8.1 Access to Hexagon Technology**

During the term of the Agreement, Hexagon will make Hexagon Technology available to the Customer and its Users pursuant to the terms of the Agreement.

Hexagon may suspend the Customer's or any of its User's right to access or use any portion or all of Hexagon Technology immediately upon notice if Hexagon determines that (i) the Customer's or any of its User's use of Hexagon Technology (a) poses a security risk to Hexagon Technology or any third party, (b) could adversely impact Hexagon's systems, (c) could subject Hexagon and its Subsidiaries and Affiliates or any third party to liability, or (d) could be fraudulent; (ii) the Customer or any User is in breach of the Agreement or any applicable law; (iii) the Customer is in breach of its obligations under Section 13 (Pricing and Payment).

### **8.2 Use by Business Customers Only**

The Hexagon Technology offered under these Terms of Use are not intended for access or use by consumers. The Customer represents and warrants that it is a business customer or academic institution and uses the Hexagon Technology under these Terms of Use only in the course of running its business or academic institution.

### **8.3 Use of Hexagon Beta Technology**

If Hexagon grants the Customer the right to use Hexagon Beta Technology, the Customer may only use the Hexagon Beta Technology on a temporary basis for the period limited by the license key or specified in the HOS. Hexagon Beta Technology is still being developed, tested and evaluated. It has not been released for sale, distribution or use by the public. Hexagon, in its discretion, may stop enabling the use of Hexagon Beta Technology at any time, at which point the Customer shall no longer access Hexagon Beta Technology and any related data, information, and files and must immediately cease using the Hexagon Beta Technology. Any Content uploaded to Hexagon Beta Technology and any configurations or customizations made by the Customer during the beta test may be permanently lost.

Hexagon Beta Technology may not be a final product and, as such, may contain various errors, defects and bugs and may be unstable, including not being available for extended periods of time. Hexagon is not obliged to fix any errors or defects or provide any updates, technical support, or maintenance for Hexagon Beta Technology.

Hexagon does not recommend installing any software necessary to use Hexagon Beta Technology during full or everyday operation. Hexagon Beta Technology is recommended for use of experienced users only. It is the Customer's responsibility to take adequate precautions against possible damage resulting from the use of Hexagon Beta Technology. In case of doubt, Hexagon Beta Technology should not be installed or used.

As a usual part of the beta test program, the Customer agrees to provide timely feedback to Hexagon of the progress of the beta test. This includes bug reports, conferences with Hexagon, and written evaluations of new features included in the Hexagon Beta Technology. Hexagon is free to use all such feedback for any purpose, including communication to the public.

### **8.4 Use by Educational Institutions**

Hexagon may grant Educational Licenses to academic, educational and/or research institutions.

Educational Licenses may not be used for commercial purposes. They may only be used for not-for-profit academic research that does not benefit a commercial entity and that is not subject to consulting or licensing obligations or other grants of rights to any commercial entity.

Hexagon may terminate Educational Licenses provided free of charge at any time in its sole discretion, at which point the Customer will no longer have access to any related data, information, and files and must immediately cease using the Hexagon Technology. Any Content uploaded to Hexagon Technology and any configurations or customizations made by the Customer may be permanently lost.

No support is provided with an Educational License. Hexagon may in its sole discretion and at its own schedule, but without obligation, review the merit of any reported issues, requests for enhancement or questions about usage and may deliver a response.

## 8.5 Use by Users

All rights and obligations of the Customer under this Agreement shall apply *mutatis mutandis* to all Users.

The Customer assumes full responsibility for any Users' use of Hexagon Technology (see Section 11.1 [Compliance]). Use of Hexagon Technology by a User shall be considered for all intents and purposes as the Customer's use. The Customer undertakes to ensure that only sufficiently qualified Users use Hexagon Technology.

The Customer is fully liable for its Customer Users' use of Hexagon Technology. For Authorized User's use of Hexagon Technology, the Customer is jointly and severally liable with the Authorized Users. The Customer undertakes to make Authorized Users aware of the terms of the Agreement and to oblige them to fully comply with the terms of the Agreement at all times.

If the Customer becomes aware of any violation of its obligations caused by a User, the Customer must immediately suspend access to Hexagon Technology to such User or instruct Hexagon to do so.

## 8.6 Tracking of Use

In order to evaluate and improve the functionality, reliability, performance, maintenance of and support for Hexagon Technology and in order to verify whether Hexagon Technology is used with a valid license and in accordance with the Agreement, Hexagon may track and evaluate the Customer's and its Users' use of Hexagon Technology, including by collecting geospatial information. Hexagon may use such usage data for any purpose it deems fit in anonymized form.

What usage data is collected by Hexagon depends on the functionality of the Hexagon Technology as further specified in the Documentation.

## 8.7 Use only for Specified Areas of Application

Unless otherwise explicitly agreed in Qualified Form, the Customer shall only use the Hexagon Technology in and for the areas of application specified in the HOS and/or the Documentation.

**To the maximum extent permitted by law, Hexagon explicitly excludes any representations and warranties as to the accuracy of results and the suitability of the Hexagon Technology in and for areas of application not specified in the HOS and/or the Documentation or agreed between the Parties in Qualified Form.**

## 8.8 Permitted Use

The Customer shall use Hexagon Technology only for purposes and in a way that

- a) are permitted by and in compliance with the Agreement;
- b) are permitted by all applicable laws and regulations in the relevant jurisdictions.

The Customer's use of Hexagon Technology shall conform with the restrictions set forth in the HOS and/or the Subscription Plan for the level of subscription purchased by the Customer, if any. Hexagon may monitor the Customer's compliance with these limits and, if it detects overuse, require that the Customer upgrade to the appropriate subscription to a higher performance offered for the Hexagon Technology.

The Customer agrees to follow the operation procedures published by Hexagon, including, but not limited to procedures for routine maintenance of the Hexagon Technology.

If the Hexagon Technology is web-based, the Customer's use of Hexagon Technology must comply with any separate terms of use for the point of access as updated by Hexagon from time to time.

## **8.9 Use Restrictions**

### **8.9.1 General Restrictions**

The Customer shall not and shall not permit any User or third party to, or to attempt to:

- a) distribute, sell, or otherwise make any part of Hexagon Technology, including the user interface and any Hexagon Technology Content or the Documentation, available to third parties except as permitted by the Agreement.
- b) perform an action with the intent of introducing to Hexagon Technology any viruses, worms, defects, Trojan horses, malware, or any items which negatively affect Hexagon Technology.
- c) interfere with or disrupt Hexagon Technology or the servers or networks providing Hexagon Technology.
- d) reverse engineer, decompile, disassemble or otherwise reduce the Hexagon Technology to any human perceivable form, except to the extent that this is expressly allowed by applicable law.
- e) extract any source code, algorithms, methods, ideas, techniques, workflows or hierarchies from or embodied in the Hexagon Technology or any portion thereof, except to the extent that this is expressly allowed by applicable law.
- f) modify, adapt, install any other non-authorized software, access the underlying operating systems, translate, or create derivative works based upon the Hexagon Technology, Documentation or any part thereof.
- g) rely solely on Hexagon Technology or Hexagon Technology Content for any plans, technical drawings, models, feasibility studies or other construction or business decisions and activities where the use or failure of Hexagon Technology, including any Hexagon Technology Content, could lead to death, personal injury, or environmental damage.
- h) circumvent any technological measures that protect access to Hexagon Technology and/or Hexagon Technology Content.
- i) remove, obscure, or alter any Hexagon terms of service, or any links to or notices of those terms or any Hexagon Brand Features, product identification, copyright, proprietary, intellectual property notices or other marks.
- j) use or access all or any part of Hexagon Technology in order to build a product or service which competes with Hexagon Technology.
- k) infringe Hexagon or its Subsidiaries and Affiliates' intellectual property rights or those of any third party.
- l) infringe or breach any applicable laws and regulations.

### **8.9.2 Autonomous Use Restrictions**

**Unless otherwise explicitly specified in the HOS, the Documentation, or agreed in Qualified Form, the Customer may not use Hexagon Technology for devices or systems which operate autonomously, without immediate control of human beings.**

### **8.9.3 Export Control Restrictions**

The Customer agrees to comply with all applicable laws with respect to export controls and economic sanctions. The Customer agrees in particular not to export or re-export, directly or indirectly, Hexagon



Technology, Hexagon Technology Content, software or technical data that are intended to be used for any purposes prohibited by the United States Government regulations or the EU dual-use regulations, including but not limited to nuclear and/or missile proliferation or chemical or biological weapons or weapons precursor development, unless the Customer first obtains written permission to do so from Hexagon. The Customer's obligations in this clause shall survive the termination or expiration of the Agreement.

#### **8.10 Services Depending on the Territory and Geo-Fencing**

The Hexagon Technology services and/or Content available to customers may vary depending on the Territory. Hexagon reserves the right to limit the Customer's access to or use of Hexagon Technology and/or Content, including the ability to upload and download Content, to or from certain geographical areas or locations (geo-fencing) in line with Hexagon's general policies and mandatory law.

### **9 Third Party Software and Resources**

The Customer expressly acknowledges that operation of the Hexagon Technology may require that the Customer has or obtains, at the Customer's sole cost and expense, appropriate hardware and third party software and/or application licenses, such as (but not limited to) operating systems. Except as expressly stated in the Agreement, these Terms of Use do not grant any license in or to any other software than the Hexagon Technology, and the Customer is responsible for procuring all such necessary third party software or other hardware or equipment.

Hexagon may have integrated directly in the Hexagon Technology certain software supplied by third parties and/or open source software not owned by Hexagon. Hexagon provides access to such third-party and/or open source software as part of Hexagon Technology. The Customer acknowledges and agrees that such third party and/or open source software is subject to various other terms and conditions imposed by the licensors of such third party software and/or open source software license terms. A list of third party and open source software licenses, and the applicable terms thereof, shall be provided with the Software. Such third party and/or open source software is provided "**as is**", with no warranties of any kind. Any third party and/or software sublicense will terminate when the Agreement terminates or when the Software is no longer being used by the Customer. The Customer's use of such third party and/or open source software is subject to, and governed by, the specified third party and/or open source license terms, except that this Section 9 (Third Party Software) and Section 16 (Limitations of Liability) of these Terms of Use also govern the Customer's use of the third party and/or open source software. The Customer acknowledges that all third party and/or open source software licensors and suppliers in respect of the Software retain all rights, title and interest in their respective software products. The Customer agrees to comply with such third party and/or open source software license terms.

Hexagon Technology may include hyperlinks to other websites, content or resources. Hexagon has no control over any websites or resources that are provided by companies or persons other than Hexagon. Hexagon is not responsible for the availability of any such external sites or resources, and does not endorse any advertising, products, or other materials on, or available from, such websites or resources.

### **10 Support and Maintenance**

#### **10.1 Service Levels**

Unless otherwise specified in the HOS, Hexagon does not guarantee any service availability for Hexagon Technology. However, Hexagon will use commercially reasonable efforts to make Hexagon Technology continuously available, except for: (i) planned downtime, or (ii) any unavailability caused by circumstances beyond Hexagon's reasonable control, including without limitation internet service provider failures or delays, denial of service attacks, or failures in the Customer's or third parties' systems and/or infrastructure.

To the maximum extent permitted by law, Hexagon is not liable for any disruption or loss the Customer may suffer as a result of disruptions or outages of Hexagon Technology. In the event of a disruption or outage, the Customer may not be able to retrieve Customer Content stored on Hexagon Technology.

## **10.2 Support**

Hexagon Technology is designed for qualified and experienced business Customers. The Customer shall identify any need for support and liaise with Hexagon to determine the extent of support available prior to the use of the Hexagon Technology.

Hexagon will provide support for Hexagon Technology only if and as detailed in the Agreement. Any further support will be charged additionally.

## **10.3 Maintenance**

Hexagon may further develop and improve Hexagon Technology and release upgrades and updates as deemed necessary by Hexagon. The contents, timing, availability and pricing of all upgrades and updates of Hexagon Technology will be decided by Hexagon in its sole discretion.

## **10.4 Changes to Hexagon Technology**

Hexagon may enhance and/or change the features of Hexagon Technology at its discretion as long as it does not materially reduce the core functionality of Hexagon Technology. Hexagon will notify the Customer of any material change to or discontinuation of Hexagon Technology.

# **11 Customer Responsibilities and Obligations**

## **11.1 Compliance**

The Customer ensures, undertakes, represents and warrants that:

- a) its and its Users' use of Hexagon Technology complies with the Agreement, all applicable laws and regulations and all regulations policies and procedures of networks connected to Hexagon Technology.
- b) it uses all reasonable endeavours to prevent, and immediately notify Hexagon of, and terminate any unauthorized use of or access to the Customer's and its Users' Accounts or Hexagon Technology.

## **11.2 Customer Equipment, Security and Backup**

The Customer is solely responsible for:

- a) obtaining and maintaining the Equipment;
- b) maintaining the security of the Equipment, its and its Customer Users' Accounts, passwords and other data;
- c) taking the measures necessary to protect, secure and preserve its Customer Content and other data, in particular for the event of errors or malfunctions of Hexagon Technology or hardware on which the Hexagon Technology is used, including by making back-ups.

## **11.3 Transfer of Rights and Obligations to Acquirers**

In case a third party acquires a Perpetual License or a Device from the Customer, the Customer shall inform said third party of the terms of the Agreement and shall ensure that all rights and obligations of the Customer under the Agreement are transferred to said third party.

## 12 Privacy and Personal Information

### 12.1 Privacy Policy

Hexagon's data protection practices are outlined in the Privacy Policy (<https://leica-geosystems.com/en-gb/global/privacy-policy>). The Customer agrees to the use of its data in accordance with the Privacy Policy.

### 12.2 Personally Identifiable Information or Personal Data

After setting up the Account, the Customer in the course of using Hexagon Technology may only provide to Hexagon or upload to Hexagon Technology the following data with the respective person's permission or where this is strictly necessary for using Hexagon Technology and permitted by the applicable data protection legislation:

- a) any personally identifiable information or device identifiers; or
- b) any person's personal data, including in particular personal data as defined in the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 and the California Consumer Privacy Act [CCPA]).

## 13 Pricing and Payment

### 13.1 Subscription License

#### 13.1.1 Subscription Plans and In-App Purchases

The prices, features, and options of Hexagon Technology available to the Customer under a Subscription License depend on the Subscription Plan selected as well as any changes instigated by the Customer. Certain features and options in a Subscription Plan may only be available upon a separate payment (in-app purchases).

Hexagon does not represent or warrant that a particular Subscription Plan will be offered indefinitely and reserves the right to change the prices for or alter the terms of a particular Subscription Plan.

Hexagon will notify the Customer of any intended changes of the Customer's Subscription Plan at least 30 days in advance. Without objection by the Customer, the adapted terms enter into force on the date indicated by Hexagon. If the adapted terms are unacceptable to the Customer, the Customer must inform Hexagon thereof within 30 days of being notified. In case of an objection, the Customer may terminate the Agreement according to Section 20.1 (Term and Ordinary Termination). If the Customer does not terminate the Agreement according to Section 20.1 (Term and Ordinary Termination) at the next opportunity, the adapted terms apply from the automatic renewal of the Agreement after the next opportunity to terminate it in accordance with Section 20.1 (Term and Ordinary Termination).

#### 13.1.2 Payment and No Refunds

The Customer will timely pay Hexagon all fees associated with its Subscription Plan, Account, in-app purchases or use of Hexagon Technology by Users. Except as expressly provided in the Agreement, the Customer's payments are non-refundable.

#### 13.1.3 Recurring Charges

When purchasing a Subscription Plan, the Customer must provide accurate and complete information for a valid payment method, such as a credit card, that the Customer is authorized to use. The Customer must promptly notify Hexagon of any change in its invoicing address and must update its Account with any changes related to its payment method.

By completing registration for a Subscription Plan or by upgrading an existing Subscription Plan, the Customer authorizes Hexagon or its agent to charge its payment method on a recurring (e.g. monthly or yearly) basis for (i) the applicable Subscription Plan charges; (ii) any in-app purchases; (iii) any and all applicable taxes; and/or (iv) any other charges incurred in connection with the Customer's use of

Hexagon Technology. This authorization continues through the applicable term until the Agreement is terminated as set forth in Section 20 (Term and Termination) of these Terms of Use.

### **13.2 Perpetual License**

Unless otherwise stated in the HOS, the one-off fee for a Perpetual License is to be paid by the Customer upfront as described in the HOS and based upon the rates and amounts set forth in the HOS.

### **13.3 Perpetual License for Pre-Installed Software**

The customer will be subject at Hexagon's sole discretion to a fee for the Perpetual License for Pre-Installed Hexagon Technology, unless otherwise specified in the HOS.

### **13.4 Invoices**

Hexagon will provide billing and usage information in a format of its choice, which may change from time to time.

### **13.5 Taxes**

All fees, prices, and other charges mentioned in the Agreement shall be exclusive of all value-added taxes. If Hexagon is obligated to collect or pay value-added taxes, the taxes will be invoiced to the Customer, unless the Customer provides Hexagon with a timely and valid tax exemption certificate authorized by the competent taxing authority.

### **13.6 No Deductions or Set-Off**

The Customer shall make all payments free of deductions of any kind, such as (but not necessarily limited to) expenses, taxes, and dues. A payment shall only be deemed to be made when it has been made in full.

The Customer shall not set off any payment due against any counterclaim and the Customer shall not be entitled to withhold payment on the grounds of any complaint or other claim, unless the Customer's counterclaim is accepted by Hexagon or has been finally decided by a competent court or arbitral tribunal.

### **13.7 Default**

Upon expiry of the agreed date of payment, the Customer shall be deemed in default. All consequential costs due to default shall be at the Customer's charge. Late payments bear interest at the rate of 5% per year. Hexagon reserves the right to suspend the Customer's access to Hexagon Technology or terminate the Agreement for any late payments (see Sections 8.1 [Access to Hexagon Technology] and 20.2 [Extraordinary Termination]).

## **14 Confidentiality**

The Customer will use at least the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind, but in no event less than reasonable care, to (i) not use any Confidential Information of Hexagon for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by Hexagon in writing, limit access to Confidential Information of Hexagon to those of its and its affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who are under confidentiality obligations with the Customer not materially less protective than those herein. The Customer shall destroy Confidential Information in its possession upon termination of this Agreement.

The Customer may disclose Confidential Information of Hexagon to the extent compelled by law to do so, provided the Customer gives Hexagon prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at Hexagon's cost, if Hexagon wishes to contest the disclosure.

## **15 Warranties**

### **15.1 Rights of the Customer in Case of Defects**

The Customer shall inspect the Hexagon Technology and any upgrades thereto immediately after delivery and shall notify any defects to Hexagon with undue delay, at the latest within 10 days of delivery. Absent a timely notice of defects, the Customer shall be deemed to have accepted the Hexagon Technology and/or any upgrades to it and to have waived any and all claims for defects, except for hidden defects. The Customer shall notify Hexagon of any hidden defects within 10 days of discovering them. In any case, Hexagon shall not be liable for any defects which are notified later than 12 months after delivery.

Provided that the Customer timely notified Hexagon of a defect, in case any representations or warranties explicitly specified in the Agreement are not met by Hexagon, the Customer has the right to request Hexagon to cure the defect within a reasonable period of time of at least 14 days. If Hexagon fails to cure the defect on the second independent attempt, as the sole and exclusive remedies, the Customer has the right to (i) terminate the Agreement with immediate effect (see Section 20.2(g) [Extraordinary Termination]), and/or (ii) claim damages for any direct damage caused by the defect limited to the price of (a) the Customer's Subscription Plan for one year in the case of a Subscription License, (b) the one-off fee in the case of a Perpetual License, and (c) the Device in the case of a Perpetual License for Pre-Installed Software.

### **15.2 Exclusion of Warranties**

The Customer's use of Hexagon Technology and any Hexagon Technology Content is entirely at its own risk and Hexagon Technology as well as all Hexagon Technology Content are provided "as is" and "as available". Unless otherwise explicitly specified in the HOS, the Documentation, or agreed in Qualified Form, to the maximum extent permitted by law, Hexagon does not represent or warrant to the Customer that:

- a) Hexagon Technology or any Hexagon Technology Content will meet the Customer's requirements or are fit for a particular purpose;
- b) Hexagon Technology will be uninterrupted (if applicable), timely (if applicable), secure, or error-free;
- c) Hexagon Technology or any Hexagon Technology Content will be correct, accurate or reliable;
- d) defects in the operation or functionality of Hexagon Technology will be corrected;
- e) Hexagon Technology is compatible with any particular third party software; and
- f) Hexagon Technology or any Hexagon Technology Content or other data will be available or be made available to the Customer at any point in time.

To the maximum extent permitted by law, Hexagon explicitly excludes any representations and warranties as to the quality, correctness, accuracy, reliability and fitness for a particular purpose of any Third Party Content.

## **16 Limitations of Liability**

Hexagon's and its Subsidiaries' and Affiliates' and their employees' and other auxiliary persons' liability for any direct damage caused to the Customer and its Users shall be limited to the price of (i) the Customer's Subscription Plan for one year in the case of a Subscription License, (ii) the one-off fee in the case of a Perpetual License, and (iii) the Device in the case of a Perpetual License for Pre-Installed Hexagon Technology.

To the maximum extent permitted by law, Hexagon, its Subsidiaries and Affiliates and their employees and other auxiliary persons exclude any liability towards the Customer and its Users for any indirect, subsidiary and consequential damage or loss, including for loss of profit or

**business of any kind and third-party claims. This shall apply even if Hexagon has been informed of the possibility of the occurrence of said damage.**

**For the use of Hexagon Beta Technology by the Customer (see Section Error! Reference source not found. [Use of Hexagon Beta Technology]), Hexagon, its Subsidiaries and Affiliates and their employees and other auxiliary persons exclude any liability towards the Customer and its Users to the maximum extent permitted by law.**

**To the maximum extent permitted by law, Hexagon and its Subsidiaries and Affiliates and their employees and other auxiliary persons exclude any and all liability for damage caused in connection with any use of the Hexagon Technology not permitted by these Terms of Use.**

## **17 IP Infringements**

In the event of a claim that the Hexagon Technology, any Hexagon Brand Features and/or the Documentation, or the Customer's or its User's permitted use thereof under the Agreement infringes a third party's intellectual property, proprietary or other right, or Hexagon's belief that such claim is likely to arise, Hexagon shall have the right, at its sole option and expense to (i) procure for the Customer the right to continue using the affected Hexagon Technology and/or Documentation, (ii) replace or modify the affected (part of the) Hexagon Technology and/or Documentation so that it does not infringe, or (iii) terminate the Agreement with immediate effect (see Section 20.2(h) [Extraordinary Termination]). If the Customer becomes aware of any such claim raised by a third party, it shall notify Hexagon thereof immediately.

If Hexagon terminates the Agreement, as the Customer's sole remedy and Hexagon's entire liability, Hexagon will refund to the Customer, upon the Customer's certified deletion of the affected Hexagon Technology, a reasonable amount of the fees paid by the Customer under the Agreement.

## **18 Indemnities**

The Customer shall hold harmless, defend and indemnify Hexagon and its Subsidiaries and Affiliates, directors, officers, employees, strategic partners, licensors, and their suppliers against and for all liabilities, damages, losses, costs, fees (including legal fees), and expenses relating to any allegation, claim, complaint, regulatory action or third-party legal proceedings arising from:

- a) the Customer's use of Hexagon Technology or Content in breach of the Agreement or any applicable law;
- b) the Customer's Content and any derivatives generated by Hexagon Technology based thereon, including any claim that the Customer's Content and any models generated based thereon infringe third parties' rights or breach any applicable law.

The Customer shall cooperate as fully as reasonably required in the defence of any allegation, claim, complaint, regulatory action or third-party legal proceedings free of charge. Hexagon reserves the right, at its own expense, to assume the exclusive control and defence of any indemnified matter under this Section 18 (Indemnities).

## **19 Force Majeure**

In the event of Force Majeure preventing a party from discharging its obligations under this Agreement, neither party shall be in default or liable to the other party to the extent that performance is prevented, hindered or delayed by such an event.

The party invoking Force Majeure shall promptly inform the other party and keep the other party reasonably apprised of the development. The party having declared Force Majeure shall be held to cooperate in any reasonable manner in order to mitigate the consequences of such Force Majeure. Should Force Majeure circumstances continue to prevent the servicing of the Agreement for more than three consecutive months, either Party shall have the right to terminate the Agreement with immediate effect.

In the event of such termination, claims for loss and damages under any and all titles between the parties to this Agreement shall be excluded to the maximum extent permitted by law.

Force Majeure includes, without limitation, non-delivery or delays in delivery of goods and services of Hexagon. Force Majeure of suppliers or service providers of Hexagon shall be deemed to be Force Majeure of Hexagon.

## **20 Term and Termination**

### **20.1 Term and Ordinary Termination**

#### **20.1.1 Subscription License**

Unless otherwise specified in the HOS or the Subscription Plan, the initial term of the Agreement will begin upon the earlier of (i) Hexagon's confirmation of the subscription after receipt of the HOS, or (ii) the Customer's use of Hexagon Technology, and shall continue on a subscription term to subscription term basis until the Agreement is terminated. The Customer may only withdraw a Subscription License before the end of the Agreement's term if this is explicitly permitted by the HOS.

Either party may terminate the Agreement by providing a prior notice of termination to the other party at least 60 days prior to the end of the then-current term.

#### **20.1.2 Perpetual License**

Unless otherwise specified in the HOS, the term of the Agreement will begin upon Hexagon's confirmation of the Perpetual License after receipt of the HOS and shall continue for an indefinite term, until terminated in accordance with this Section 20 (Term and Termination).

#### **20.1.3 Perpetual License for Pre-Installed Hexagon Technology**

Unless otherwise specified in the HOS, the term of the Agreement will begin upon the Customer's first use of the Software on the Device and shall continue for an indefinite term, until terminated in accordance with this Section 20 (Term and Termination).

### **20.2 Extraordinary Termination**

The Agreement may be terminated for cause, in particular but not limited to the following circumstances:

- a) immediately by either party if proceedings are initiated for the other party's liquidation or insolvency or a negotiated settlement with the other party's creditors is concluded or an assignment is made on behalf of the other party for the benefit of creditors;
- b) immediately by either party in case of breach of the Agreement by the other party, if the breach has not been stopped or removed during 30 calendar days after receipt of a notice from the aggrieved party asking to do so;
- c) immediately by either party if Force Majeure circumstances continue to prevent the servicing of the Agreement for more than three consecutive months as specified in Section 19 (Force Majeure);
- d) immediately by Hexagon if the Customer is in default with any payment due under the Agreement;
- e) immediately by Hexagon if, in Hexagon's sole discretion, further use of Hexagon Technology by the Customer or its Users may have a detrimental impact on Hexagon's reputation;
- f) immediately by Hexagon if it has the right to suspend the User's use of Hexagon Technology under Section 8.1 (Access to Hexagon Technology);
- g) immediately by the Customer if Hexagon fails to cure a defect as specified in Section 15.1 (Rights of the Customer in Case of Defects);
- h) immediately in the case of claims of IP-infringements as specified in Section 17 (IP-Infringements).

### **20.3 Effects of Termination**

Upon termination of the Agreement:

- a) The Customer immediately loses the rights granted under the Agreement, in particular the right to use the Hexagon Technology;
- b) All payments then due and payable to Hexagon must be paid in full;
- c) The Customer shall be denied access to Hexagon Technology and any Customer Content stored thereon;
- d) Hexagon may delete the Customer Content and the Account from the production environment;
- e) Hexagon may but is not obliged to keep a copy of any Customer Content and Account information or give it to a third party for secure storage in line with the applicable data protection legislation.

In case of an ordinary termination of the Agreement, to the maximum extent permitted by law, Hexagon shall not be liable for any damages in connection with the termination. In case of an extraordinary termination of the Agreement, Hexagon reserves the right to claim damages from the Customer caused by the extraordinary termination.

Upon the extraordinary termination of a Subscription License, the Customer shall pay to Hexagon the remuneration that the Customer would have had to pay in the case of an ordinary termination.

## **21 General Legal Terms**

### **21.1 Notices**

The Parties shall provide each other with an e-mail address to receive any notices and notifications under the Agreement (the "**E-Mail Address**"). The Customer is responsible to ensure that e-mails sent to its E-Mail Address are received and read and shall notify Hexagon of any changes in its E-Mail Address.

Notices under the Agreement shall be deemed to be properly given when given by email with confirmation of receipt by email, except that any notice under the Agreement sent by Hexagon to the Customer's E-Mail Address shall be deemed to be properly given.

### **21.2 Amendments**

Amendments to the Agreement, including amendments to this Section 21.2 (Amendments), shall only be effective if made in the following form:

- a) Qualified Form for any agreements made in Qualified Form;
- b) Qualified Form for any issues and provisions for which the Agreement requires Qualified Form, including this Section 21.2 (Amendments) in its entirety;
- c) text form for any other issues and provisions.

### **21.3 No Waiver**

The Parties shall not be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under the Agreement.

### **21.4 Assignment**

The Customer may not assign, novate or otherwise transfer any or all of its rights, benefits or claims under the Agreement without the prior written consent of Hexagon.

### **21.5 Severability**

If any provision or part of a provision of the Agreement shall be, or be found by any authority or court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of the Agreement, all of which shall remain in full force and effect.



## **22 Applicable Law**

These Terms of Use and the Agreement shall be governed by and construed in accordance with the substantive laws of Switzerland. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

## **23 Dispute Resolution**

### **23.1 Arbitration**

All disputes arising out of or in connection with the Agreement shall be exclusively and finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The seat of the arbitration shall be Zurich, Switzerland. The arbitral proceedings shall be conducted in English. Chapter 12 of the Swiss International Private Law Act shall be the applicable *lex arbitri*.

### **23.2 Hexagon's Additional Right to Sue the Customer in Ordinary Courts**

Hexagon additionally shall have the right to sue the Customer in the ordinary courts at the Customer's seat.

### **23.3 Right to Mutually Agree on Another Forum**

The Parties shall have the right but no obligation to mutually agree on another forum after a dispute arises.

\* \* \*

### **Leica Geosystems AG**

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Switzerland