HEXAGON

HEXAGON MINING SPECIAL TERMS AND CONDITIONS

APPENDIX A - SOFTWARE

1. **Introduction**. This **Appendix A** constitutes an integral and inseparable part of the Contract along with the Hexagon Mining General Terms and Conditions and the Hexagon Quote or Order Form generated by Hexagon and executed by Hexagon and Client ("**Order**") for use of Hexagon's Software as agreed upon by the parties in the applicable Order.

2. **Software, License Grant Definitions and Acceptance**. "**Software**" means all Hexagon software and firmware, whether preloaded on Hardware, hosted, or installed on premise, including any media on which Client receives it, if any, and any corresponding software updates, upgrades, patches, source codes, materials and Documentation, each as may be provided by Hexagon in its discretion. "**License**" means the right to use the Software granted by Hexagon to Client pursuant to the terms, conditions and restrictions set forth herein and in the Contract.

   2.1. **License Grant under a Subscription Contract**. Upon payment of applicable fees and subject to the terms of the Contract, Hexagon grants to Client a non-exclusive, non-sublicensable, limited, non-transferable (except as otherwise permitted by this Contract), revocable (if in violation of this Contract) license to use the Software in accordance with the Documentation, commencing on the date of delivery to Client for the term set forth in the Order and subject to any additional restrictions in this Contract. Client understands that this is a license and is not the sale by Hexagon of any other rights or for perpetual access to the Software.

   2.2. **License Grant under a Purchase Contract**. Upon payment of applicable fees and subject to the terms of the Contract, Hexagon grants to Client a non-exclusive, non-sublicensable, perpetual, non-transferable (except as otherwise permitted by this Contract), revocable (if in violation of this Contract) license to use the Software in accordance with the Documentation, commencing on the date of delivery to Client and subject to any additional restrictions in this Contract. Client understands that this is a license and is not the sale by Hexagon or the purchase by Client of any other rights to the Software. All Software ordered on a Purchase basis remains owned by Hexagon.

   2.3. **License Grant (Applicable to both Subscription and Purchase Contracts)**. All rights related to the Software or to its respective License(s) not specifically granted hereunder are reserved by Hexagon.

   2.4. **Acceptance**. By installing and/or using Hexagon's Software, Client is agreeing that it has read and accepts all the terms of the Contract, including this Appendix A, the General Terms and Conditions, and the Order. If Client does not agree to these terms, it may not install or use Hexagon's Software.

3. **License Conditions and Restrictions.**

   (A) Except as expressly permitted by this Contract, Client may not use, misuse, reproduce, distribute, resell, rent, transfer, lease, lend, sublicense or publish the Software or other Hexagon IP, nor provide or otherwise make available the Hexagon System or any part or copies thereof to any third party.

   (B) Regarding the Software, Client will:

      (i) Follow industry standards to protect the Software and related materials from unauthorized use, misuse, reproduction, distribution or publication;

(ii) Not modify, translate, reverse engineer, reverse compile, decompile, reverse assemble, disassemble, make any attempt to discover the source code of the Software or the underlying ideas, algorithms, structure or organization form of the Software, or create derivative works based on the Software or its related materials or Documentation or transform the Software or any portion thereof except as expressly granted herein. To the extent that the Software incorporates its own or third-party developed interfaces or libraries (for example, DLL files), Client is not allowed to invoke such interfaces, or use such interfaces as a development tool;

(iii) Not attempt to defeat, avoid, by-pass, remove, deactivate or otherwise circumvent any Software protection mechanisms for and/or in the Software, including without limitation any such mechanism used to restrict or control the functionality of the Software;

(iv) Not remove, delete, alter, or obscure any Hexagon or third-party trademarks, copyright, proprietary notices, labels, or marks from the Software;

(v) Not use any part of the Software to create any computer software, application or database for resale or external distribution;

(vi) Not permit any third party to do any of the foregoing; and

(vii) Promptly notify Hexagon if Client becomes aware of any infringement of the Software or any breach of security or unauthorized use of the Software;

(C) As the case may be, the Software License may come with a key or "dongle" which enables installation and use of the Software. This key is a valuable asset and must be protected carefully. If a key/dongle is lost or stolen, Client may be responsible for replacement costs, penalties, and other fees solely at the discretion of Hexagon.

(D) Client may not separate Software components and install them on different devices or remove any Software from the Hardware on which it may come preinstalled.

(E) Installation and use of the Software are subject to the license purchase or Subscription limitations set forth in the Order, such as number of authorized users or locations. No other copies, use or installation is permitted without Hexagon's prior written consent.

(F) Unless otherwise set forth in the Order, each license used to operate the Software may not be used concurrently on different computers or by different users. Use of the Software is restricted to a single location or on a single personal computer. Creating simultaneous multiple users by any means is prohibited.

(G) Client may transfer the Software licenses between related Client sites only with prior written consent from Hexagon (not to be unreasonably withheld) and following payment to Hexagon of applicable transfer fees.

(H) Client represents that it has clear policies and procedures designed to prevent software piracy in any form, it does not allow its Client Parties to use pirated software (i.e., software not legally licensed to the user), it is compliant with the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights, that it will notify Client Parties of Client's obligations under this Contract and also of the possibility of civil and criminal consequences of a breach due to unauthorized use or copying of the software);

(I) Client shall not sublicense, assign, resell, share, pledge, rent, gift, or otherwise transfer or grant any rights in the Software or related Documentation or components in any form to any person

not a party to this Contract (excepting permitted assignees), or use the Software on a service bureau or time sharing arrangement without the prior written consent of Hexagon;

(J) The Documentation received from Hexagon is licensed to Client for the duration of the License. Client may copy or reproduce the Documentation to the extent reasonably required for the purpose of using the Licensed Software. All right, title, and interest in and to such copies shall belong to Hexagon. Client must ensure that the copies are clearly marked with a notice stipulating that the Documentation belongs to Hexagon and must not be reproduced.

(K) Client is responsible for following Hexagon's recommendations regarding technical specifications, system requirements, proper installation, proper use, and other user guidelines provided by Hexagon, available upon request.

(L) Some or all of the software may be licensed to Client on a trial basis, which can be used by Client for the sole and exclusive purpose of an evaluation of the system. Client's rights to use trial software are limited to the trial period, and all restrictions and obligations outlined herein apply during and after said trial period. Trial licenses may be used by Client for revenue generating activity, but shall not be extended to personal or commercial purposes of Client's personnel or consultants / contractors.

4. <u>Warranty; Warranty Disclaimers; Remedies</u>

4.1. <u>**Software Warranty**</u>. Hexagon warrants that at the time of initial installation, the Software will substantially conform to published specifications, provided that it is used properly in accordance with the Documentation and is used on the computer hardware and with the operating system for which it was designed.

4.2. <u>**Warranty Disclaimers**</u>.

(A) Except as otherwise expressly set forth in the Order, the Software is provided "AS IS" and "AS AVAILABLE." The warranty set forth in Section 4.1 of this Appendix A is the sole and exclusive warranty given by Hexagon for the Software and are in lieu of and exclude all other warranties, express or implied, arising by operation of law or otherwise, including without limitation warranties of merchantability, title, satisfactory quality, non-infringement, course of dealing or performance, usage in trade, and fitness for a particular purpose or intended use (whether or not such use or purpose has been disclosed to Hexagon).

(B) Hexagon does not warrant that Client's use or receipt of Software will be error free, free from interruption or failure, or will achieve specific or desired results. Client hereby acknowledges that the Software may become unavailable or interrupted due to periodic system maintenance and other factors such as acts of God, technical failure, user error, Software/Hardware failure, telecommunications infrastructure problems, viruses, denial of service attacks, increased or fluctuating demand, actions or omissions by third parties, or other causes.

(C) Client's warranty will be immediately voided as a result of Software defects or malfunctions caused by acts or omissions in violation of this Contract; maintenance, repair, alterations, or modifications made without written authorization of Hexagon; improper storage, installation, handling, or use, including any use of the Software with any software or hardware not provided by Hexagon; or failure to use the Software in accordance with the Documentation or other technical specifications or system requirements.

4.3. **Remedies**

(A) Client must notify Hexagon within thirty (30) days of Client's discovery of any Software warranty defect. Hexagon may inspect the Software to confirm warranty applicability. IF SUCH SOFTWARE ERROR QUALIFIES AS A WARRANTY DEFECT, HEXAGON IN ITS SOLE DISCRETION, AND AS CLIENT'S SOLE AND EXCLUSIVE REMEDY, WILL REPAIR THE SOFTWARE OR REPLACE THE RELEVANT LICENSE OR, IF HEXAGON IS UNABLE OR UNWILLING TO REPAIR THE SOFTWARE OR REPLACE THE LICENSE, HEXAGON WILL ISSUE A REFUND FOR THE PORTION OF THE SOFTWARE FOUND BY HEXAGON TO BE DEFECTIVE.

(B) Failure by Client to give Hexagon notice of the defect within the aforementioned time period will be an unconditional and absolute waiver of Client's claim for such defect. Where the Software is bound to a removable License key or installed in a Hardware, Client agrees to return such Software License(s) key to Hexagon's designated premises at the Client's expense and, at its own expense, arrange for any required dismantling and reassembly of the Hardware and/or of any other equipment to the extent necessary to remedy the defect.

4.4. **Performance Guarantee**. Hexagon does not and will not guarantee any financial results which may be expected by Client in regard to the Software herein licensed. Hexagon's guarantee, subject to the warranty terms stated here in, is solely limited to the adequate functioning of the Software based on its technical specifications and according to the terms and conditions established herein.

5. **Software Maintenance:** (Refer to Appendix D "Special Terms and Conditions – Maintenance / Subscription / Lease" for details)**.**

5.1. **Technical Support**. Unless otherwise stated in the Order, technical support for Software is available through Hexagon regional offices via email, internet, and telephone, according to the Technical Specifications and **provided that Client is current with required payments for Maintenance**. In many countries, toll-free telephone numbers are provided for support. Technical support may provide assistance during normal business hours (unless otherwise agreed by the parties) to download and install enhancements, corrections, upgrades, and updates.

5.2. **Software Updates**. To be eligible for Software **updates**, Client must be current with the Maintenance / Subscription programs.

5.3. **Errors; Enhancements and Fixes**. Hexagon will work to resolve reported repeatable Software problems and find a temporary solution within a reasonable time. Hexagon will provide such corrections, updates and enhancements to Client when available for general release and **pursuant to special terms and conditions set forth by Appendix D**.

6. **Payment; Taxes**.

6.1. **Invoicing; Fees**. The Software License purchase fees will be invoiced as specified in the Order. Unless otherwise stated in the Order, Software License Subscription fees are due and payable annually in advance. (Refer to Appendix D "Special Terms and Conditions – Maintenance / Subscription / Lease" for details.)

6.2. **Payment**. Unless otherwise specified in the Order, all invoices are due within thirty (30) days of the date of the invoice. All fees are non-refundable and due in the currency indicated in the Order.

6.3. **Late Payments**. After thirty (30) days an unpaid invoice is delinquent and may accrue 1.5% interest per month or the highest rate permitted by applicable law, whichever is lower. If payment is delinquent, Hexagon may suspend or cancel the relevant Software License(s) at its sole discretion. If more than one late payment occurs, Hexagon may require full payment prior to the use of the Software by Client.

6.4. **Invoice Disputes**. Client agrees to notify Hexagon within fifteen (15) days of receipt of any invoice if it disputes such invoice or any portion thereof along with reasonable documentation as to the dispute. All undisputed fees are payable as if such invoice was not under dispute. For disputed fees, the parties will discuss and timely resolve in good faith. If, after discussions, it is determined by both parties that any such amount was improperly disputed, Client agrees to pay such disputed amount together with interest accruing as of the date the invoice was originally due in accordance with Section 6.3.

6.5. **Taxes**. Unless otherwise specified in the Order, fees due are exclusive of taxes, duties, and other charges imposed or levied by governmental entities. If applicable, Client is responsible for all costs for customs documentation, duties, taxes (including ISSQN, ICMS, VAT, IVA, IGV, PST and GST), and other charges or fees payable relating to the Software. Should any additional government or regulatory duties or charges become payable directly or indirectly as a result of the performance of this Contract / Order, such amounts shall be payable directly by the Client or as a Reimbursable Expense due to Hexagon.

7. **Title and Risk**.

7.1. **Software License Purchase**. Notwithstanding the provisions set out in Section 2.2 of this Appendix A, the title of a Software License purchased by Client shall pass on to Client upon the payment of the corresponding fees to Hexagon, pursuant to Section 6.2. Title to the Software License shall be voided if Client infringes any of the provisions set out in Section 3 of this Appendix A.

7.2. **Software License Subscription**. Notwithstanding the provisions set out in Section 2.1 of this Appendix A, all Software licenses ordered on a Subscription or lease basis remain owned by Hexagon. However, Client's granted rights to use the subscribed licenses shall be subject to the provisions set out in Section 3 of this Appendix A. All rights not specifically granted hereunder are reserved by Hexagon.

8. **Data Transfers.** As part of Hexagon's continuous and ongoing efforts to enhance the utility and accuracy of its applications, Hexagon collects anonymous usage statistics from all of its customers. By utilizing the Software and consenting to this Contract, Client consents to allow the collection of anonymous usage statistics. If Client does NOT consent to such statistics collection, Client must configure the application accordingly in order to opt out of the collection of statistics.

9. **Third Party Components.** The Software coordinates with and/or contains, with permission, third party components. Client shall be responsible for third party software version updates when specified. This Contract is between Client and Hexagon. Client agrees, however, that the rights, restrictions and protections that apply to the Software also apply to any third-party components embedded within the Software. The owners of third-party components are beneficiaries of this Contract with the right to enforce its restrictions and protections.

10. **Term and Termination**.

10.1. **Term (Purchased License)**. If the Software is licensed by Hexagon to Client under a Purchase Contract, the respective License(s) shall become effective on the date of the signed Order and remain effective indefinitely, except if revoked as per Section 3 of this Appendix A.

10.2. **Term (Subscription)**. If the Software is licensed by Hexagon to Client under a Subscription Contract, the respective License(s) shall become effective on the date of the signed Order and remain effective until the expiration of the Subscription term set out in the Order or unless there's a breach pursuant to Section 3 of this Contract.

10.3. **Termination for Cause**. Hexagon may immediately terminate the Contract if Client breaches any terms contained herein provided the client is afforded a thirty (30) day right to attempt to cure such breach after written notice to Client by Hexagon of such breach. Should termination occur due to breach, the License shall be revoked and the provisions set out in section 14.4 of the Hexagon General Terms and Conditions shall apply.