Master Services Agreement

Client's full name

Subject (optional) - Additional title line

Client reference

Document Security Classification: **CONFIDENTIAL**
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CONTENTS

EFFECTIVE DATE: [DATE]

This Agreement is made between:

[**CUSTOMER NAME**], with company number [Company Number], with its registered office [Company Registered Address] ("CUSTOMER").

and

NTT DATA BUSINESS SOLUTIONS LIMITED company number 03689001, with its registered office at 12 Gough Square, London EC4A 3DW, United Kingdom ("NDBS").

Each is referred to as a "Party" and collectively as the "Parties".

1. BACKGROUND

1.1 NDBS is in the business of providing consultancy and other services.

1.2 CUSTOMER wishes NDBS to provide it with certain Services (defined below) and has agreed to provide the same in accordance with the terms and conditions set out in this Agreement.

IT IS AGREED AS FOLLOWS:

2. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply to this Agreement:

Affiliate	means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity. For the purposes of this definition, "control" refers to the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management and policies of the company, whether through the ownership of voting securities, by contract or otherwise.
Agreement	means this Master Services Agreement together with its annexes and schedules.
Confidential Information	means information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party.
Deliverables	means any software and non-software deliverables (including any New Software) as set out in the Order

	developed by NDBS for CUSTOMER under this Agreement.
Effective Date	means the date in the head section above. If no date is shown, then it means the date of the last signature to this Agreement.
Fees	means the charges for the Services as set out in the Order.
Force Majeure	means any event outside the reasonable control of either Party preventing it from performing any of its obligations under this Agreement, including, but not limited to, acts of God, fire, flood, lightning, war, revolution, loss of power, pandemic, cyberattack, act of terrorism, riot or civil commotion, but excluding lack of finance, strikes, lock-outs or other industrial action of the affected Party's own employees, or failure or delay by any sub-contractor or NDBS of the affected Party.
Good Industry Practice	means that degree of skill, diligence, and foresight which would reasonably and ordinarily be expected from a skilled operator in the relevant industry.
Intellectual Property Rights	means rights arising by virtue of copyright or in relation to trademarks (registered or unregistered), registered designs or patents and any other similar rights in any country and all rights in any trade secrets applicable thereto and the rights to any knowledge, know how or product (either in physical or electronic form), developed or learnt, as part of the provision of this Agreement.
New Software	means the software developed by NDBS over the course of providing the Services.
Order	means CUSTOMER’s order for Services as may be subsequently agreed in writing between the Parties.
Pre-Contractual Statement	means any undertaking, promise, assurance, statement, representation (other than a fraudulent misrepresentation), warranty or understanding (whether in writing or not) of any person (whether Party to this Agreement or not) relating to this Agreement other than

	as expressly set out in this Agreement or any documents referred to in it.
Services	means such Services to be provided by the NDBS to CUSTOMER as are set out in the Order.
Termination Date	means the date of termination of this Agreement.
Working Day	refers to a period of 7.5 hours, observed during UK business hours of 9:00 AM to 5:00 PM, Monday to Friday, excluding UK bank holidays and travel time.

References to the singular shall include the plural and vice versa.

Use of the words "includes" or "including" means without limitation.

The provisions of this Agreement shall prevail exclusively, superseding any other terms that the Parties may seek to impose or incorporate, whether arising from trade, custom, practice, or prior course of dealing.

3. TERMS OF THIS AGREEMENT

This Agreement shall commence on the Effective Date and remain in effect for an initial term of one year. Thereafter, it shall continue in force until terminated in accordance with Clause 12 or upon either Party providing the other with no less than three (3) months' written notice.

4. NDBS'S OBLIGATIONS

4.1 NDBS shall:

4.1.1 use reasonable endeavours to meet any performance dates agreed between the Parties in respect of the Services, but any such dates shall be estimates only unless expressly agreed otherwise;

4.1.2 provide the Services in accordance with Good Industry Practice;

4.1.3 retain the right to modify the Services as required to comply with applicable laws or safety regulations, or to implement changes that do not significantly impact the nature or quality of the Services. NDBS will notify the CUSTOMER of any such modifications;

4.1.4 work in accordance with all reasonable policies and procedures provided to it by the CUSTOMER from time to time; and

4.1.5 promptly make available to CUSTOMER such information as is reasonably required to demonstrate NDBS's compliance with its respective obligations under this Clause 4 and the Data Protection Laws. NDBS shall allow for, permit, and contribute to audits, including inspections, by the CUSTOMER or another auditor mandated by the CUSTOMER for this purpose, limited to once per year. NDBS shall provide access to all relevant premises, systems, and records during normal business hours for the purposes of each such audit or inspection upon reasonable prior notice and provide and procure all further reasonable cooperation, access, and assistance in relation to any such audit or inspection.

4.2 Where the Services involve the development of New Software by NDBS, this one shall warrant that such New Software will perform substantially in compliance with its specification for a period of three (3) months from the date of delivery.

4.3 NDBS does not warrant that the use of any software (including New Software or third-party software) will be uninterrupted or error-free.

5. CUSTOMER'S OBLIGATIONS

5.1 CUSTOMER shall, at its own cost, on the request of NDBS:

5.1.1 allow NDBS's employees, agents and contractors engaged in the provision of the Services access to its premises and make available reasonable office services and facilities (including computer facilities such as storage, computer consumables and data preparation facilities) necessary for the performance of the Services;

5.1.2 obtain all licences, consents and permissions required for NDBS to perform the Services and ensure that any third-party software necessary for the delivery of the Services operates substantially in accordance with its published specifications;

5.1.3 ensure its employees provide co-operation reasonably required by NDBS; and

5.1.4 promptly supply NDBS with any information and documentation reasonably requested to facilitate the performance of the Services.

6. FEES AND PAYMENT TERMS

6.1 NDBS shall invoice CUSTOMER for the Fees in accordance with the frequency set out in the Order. All undisputed invoices shall be payable within 30 days of date of invoice.

6.2 If CUSTOMER disputes any invoice in good faith, it shall provide NDBS with written notice specifying the disputed amount and the reasons for the dispute within 30 days of the date of the relevant invoice. CUSTOMER shall promptly pay any undisputed portion of the invoice. The Parties shall work together in good faith to resolve the dispute promptly.

6.3 All Fees are exclusive of value-added tax (VAT) and any other applicable sales or withholding taxes, which will be charged to CUSTOMER at the prevailing rate unless otherwise stated in the Order.

6.4 CUSTOMER shall reimburse NDBS for all reasonable and properly incurred expenses related to the provision of the Services, including, but not limited to, travel and accommodation costs, upon receipt of appropriate supporting documentation such as receipts or invoices.

7. INTELLECTUAL PROPERTY

7.1 Unless expressly agreed otherwise in writing, Intellectual Property Rights arising out of or in connection with the Services (including in any Deliverables) shall be owned by NDBS.

7.2 To the extent that NDBS owns the Intellectual Property rights in any Deliverables and use of such Deliverables is necessary to make use of the Services, NDBS grants CUSTOMER a perpetual, non-exclusive licence to use any Deliverables (including, for the avoidance of doubt, any software). Such licence will be subject to such terms as may be set out in the Order.

7.3 To the extent that NDBS requires access to software that CUSTOMER either owns or has a licence to use, CUSTOMER hereby grants NDBS a non-exclusive licence to use the software for the purpose of providing the Services to CUSTOMER.

8. DATA PROTECTION

Each Party shall comply with the provisions of Schedule 1 (Data Protection).

8.1 INCIDENT REPORT

NDBS shall promptly and, in any event within 24 hours:

8.1.1 notify the CUSTOMER if it, or any of its Sub-Processors or NDBS Personnel, suspects or becomes aware of any suspected, actual or threatened occurrence of any Personal Data Breach in respect of any Protected Data; and

8.1.2 provide all information as the CUSTOMER requires to report the circumstances referred to in Clause 8.1.1 to a Data Protection Supervisory Authority and to notify affected Data Subjects under Data Protection Laws.

9. CONFIDENTIALITY

9.1 Each Party (the "Receiving Party") shall maintain the confidentiality of the other Party's (the "Disclosing Party") Confidential Information and shall not, without the prior written consent of the Disclosing Party, disclose, copy, or modify the Confidential Information (or permit others to do so), except as necessary for the exercise of its rights and the performance of its obligations under this Agreement.

9.2 The Receiving Party undertakes to disclose the Disclosing Party's Confidential Information only to those of its officers, employees, agents, and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement.

9.3 The Receiving Party shall notify the Disclosing Party immediately upon becoming aware of any unauthorised misuse, disclosure, theft, or loss of the Disclosing Party's Confidential Information.

9.4 The provisions of this Clause 9 shall not apply to information which:

9.4.1 is or becomes part of the public domain through no fault of the Receiving Party or its officers, employees, agents, or contractors;

9.4.2 is lawfully received by the Receiving Party from a third party free of any obligation of confidence at the time of its disclosure;

9.4.3 is independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information; or

9.4.4 is required to be disclosed by law, court order, or governmental or regulatory authority, provided that the Receiving Party, where possible, notifies the Disclosing Party at the earliest opportunity prior to making any such disclosure.

9.5 The obligations under this Clause 9 shall survive the termination or expiry of this Agreement for a period of six (6) years.

10. LIMITATION OF LIABILITY

10.1 The extent of either Party's liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this Clause 10.

10.2 Subject to Clause 10.6, either Party's total aggregate liability to the other Party (whether arising from negligence, breach of contract, or any other cause whatsoever) shall, in no event, exceed the greater of £250,000 or 140% of the Fees paid or payable in the twelve months immediately preceding the date on which the claim first arose.

10.3 Neither party shall be liable for any indirect, special or consequential loss or damage howsoever caused.

10.4 Neither Party shall be liable to the other for any

10.4.1 loss of revenue; or

10.4.2 loss of profits; or

10.4.3 loss of the use of money; or

10.4.4 loss of anticipated savings; or

10.4.5 loss of business; or

10.4.6 loss of opportunity; or

10.4.7 loss of goodwill; or

10.4.8 loss of or unauthorised access to data; or

10.4.9 loss of reputation.

10.5 Except as expressly stated in this Agreement, and subject to Clause 10.6, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

10.6 Notwithstanding any other provision of this Agreement, neither Party's liability shall be limited in any way in respect of the following:

10.6.1 death or personal injury caused by negligence;

10.6.2 fraud or fraudulent misrepresentation; and/or

10.6.3 any other losses which cannot be excluded or limited by applicable law.

11. INDEMNITY

11.1 NDBS shall indemnify the CUSTOMER for any direct losses, damages, liability, costs and expenses incurred by it as a result of any action, demand or claim that the provision of the Services or the Deliverables infringes the Intellectual Property Rights of any third party (an IPR Claim).

11.2 In the event that CUSTOMER receives notice of any IPR Claim, it shall:

11.2.1 notify the NDBS in writing as soon as reasonably practicable;

11.2.2 not make any admission of liability or agree any settlement or compromise of the IPR Claim without the prior written consent of the NDBS;

11.2.3 let NDBS at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion provided that if NDBS fails to conduct the IPR Claim in a timely or proper manner the CUSTOMER may conduct the IPR Claim at the expense of the NDBS;

11.2.4 take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim; and

11.2.5 provide NDBS with all reasonable assistance in relation to the IPR Claim (at the CUSTOMER's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the CUSTOMER.

11.3 If any IPR Claim is made or is reasonably likely to be made, NDBS may at its option:

11.3.1 procure for the CUSTOMER the right to continue receiving the relevant Services or using and possessing the relevant Deliverables; or

11.3.2 re-perform the infringing part of the Services or modify or replace the infringing part of the Deliverables so as to avoid the infringement or alleged infringement, provided the Services or the Deliverables remain in conformance to the specification.

11.4 NDBS's obligations under Clause 11.1 shall not apply to any Deliverables modified or used by the CUSTOMER other than in accordance with this Agreement or NDBS's reasonable written instructions.

12. TERMINATION AND CONSEQUENCES OF TERMINATION

12.1 This Agreement may be terminated immediately by a Party giving written notice to the other if:

12.1.1 the other Party is in material breach which is either not capable of remedy; or if it is capable of remedy not remedied within 30 days of receipt of notice specifying the nature of the material breach;

12.1.2 the other Party ceases, or threatens to cease, carrying on business; or

12.1.3 the other Party becomes insolvent or, in the other Party's reasonable opinion, is likely to become insolvent.

12.2 Termination of this Agreement shall be without prejudice to the rights of either Party in respect of any prior breach.

12.3 On termination of this Agreement for any reason, the CUSTOMER shall immediately pay all valid outstanding invoices issued by NDBS, and termination of this Agreement shall automatically result in the termination of all associated Orders.

13. FORCE MAJEURE

No Party shall in any circumstances be liable to the other for any loss of any kind whatsoever, including, but not limited to, any damages, whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations under this Agreement which is due to a Force Majeure event. If such event subsists for a period of 30 days or more the other Party may, forthwith by notice to the affected Party, terminate this Agreement with immediate effect without any cost or liability whatsoever.

14. CHANGE CONTROL PROCESS

14.1 Unless otherwise provided herein, all proposed changes, additions or modifications by either Party to the services, including all proposals by service recipient for additional services (such changes, additions, modifications and additional services, collectively, "changes") shall be subject to the formal change control process set forth in this Clause 14~~15~~ (the "Change Control Process"). The Party seeking a change will document the proposed change in writing, deliver such writing to the other Party, and specify a desired implementation date. The receiving Party shall evaluate the proposal.

14.2 No change shall be effective unless and until the Parties in their own discretion, mutually agree on the changes and reflect such agreed upon changes in writing on amended terms or an amended schedule which shall include the following information, as applicable:

14.2.1 the date and term of effectiveness of the changes;

14.2.2 a description of the changes;

14.2.3 the applicable Fees, if any, for such changes; and

14.2.4 any additional provisions applicable to the changes that are not otherwise set forth in this Agreement or that are exceptions to the provisions set forth in this Agreement.

14.3 Amended terms or an amended schedule reflecting changes made pursuant to this Clause 15 shall become effective only when executed in writing by both of the Parties.

15. DISPUTE RESOLUTION

15.1 In the event of any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination (a “Dispute”), either Party may serve written notice of the Dispute on the other Party (a “Dispute Notice”).

15.2 Following service of a Dispute Notice, the Dispute shall be referred in the first instance to the Account Manager for NDBS and the person responsible for acquiring the Services for the CUSTOMER. These representatives shall meet (in person or via teleconference) within five (5) Business Days of service of the Dispute Notice to attempt to resolve the Dispute through good faith negotiations. Consent to such a meeting proposed by one Party shall not be unreasonably withheld by the other. The Account Manager and the person responsible for acquiring the Services for the CUSTOMER shall each have full authority to conduct negotiations and to enter into a settlement agreement on behalf of their respective Party.

15.3 If the Dispute is not resolved within five (5) Business Days of the initial meeting (or such other period as the Parties may agree in writing), the Dispute shall be escalated to the Chief Operating Officer of NDBS and, for the CUSTOMER, a director or other individual of equivalent or higher seniority. These individuals shall meet (in person or via teleconference) within five (5) Business Days following the escalation to attempt to resolve the Dispute through further good faith negotiations.

15.4 If the Dispute remains unresolved following the negotiation escalation process and no resolution is reached within ten (10) Business Days of such escalation (or such other period as may be agreed in writing), either Party may refer the matter to litigation.

16. NOTICES

16.1 Any notice given by a party under this Agreement shall be:

16.1.1 in writing and in English;

16.1.2 signed by, or on behalf of, the party giving it (except for notices sent by email); and,

16.1.3 sent to the relevant party at the address set out in Clause 16.3~~17.3~~.

16.2 Notices may be given, and are deemed received:

16.2.1 by hand: on receipt of a signature at the time of delivery;

16.2.2 by post: on receipt of a signature at the time of delivery; or

16.2.3 by email: provided confirmation is sent by first class post on receipt of a read receipt email from the correct address.

16.3 Notices shall be sent to:

For NDBS:

For the attention of: Commercial Team at 12 Gough Square, London, EC4A 3DW, United Kingdom

Email: commercial-solutions-uk@nttdata.com

For the CUSTOMER:

For the attention of: [insert name], [address], [city], [post code], [country]

Email: [Email]

16.4 Any change to the contact details of a party as set out in Clause 16.3~~17.3~~ shall be notified to the other party in writing.

17. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE")

17.1 Each Party warrants to the other that no persons are intended to transfer to the other Party under the application of TUPE or otherwise as at the Effective Date or at the date of termination of this Agreement, as applicable.

17.2 Each Party shall indemnify and keep indemnified the other Party against any and all employment liabilities, claims, costs, or expenses arising from or connected with:

17.2.1 its breach of the warranties in this Clause 17~~18~~; or

17.2.2 any claim by an employee or third party asserting a transfer of employment to the other Party by virtue of TUPE or otherwise, contrary to the warranties provided in this Clause 18.

18. NO PARTNERSHIP OR AGENCY

The Parties are independent businesses and are not partners, principal and agent or employer and employee and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the Parties shall have, nor shall represent that they have, any authority to make any commitments on the other Party's behalf.

19. CONFLICTS WITHIN AGREEMENT

In the event of any conflict or inconsistency between the provisions of this Agreement and its associated documents, the order of priority shall be as follows (in descending order):

19.1 the Order;

19.2 the Statement of Work (SOW);

19.3 the terms and conditions in the main body of this Agreement; and

19.4 the Schedules and exhibits.

20. GENERAL PROVISIONS

20.1 Neither Party may assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under this Agreement, without the other's prior written consent.

20.2 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement.

20.3 Each Party shall comply with all applicable laws, statutes, and regulations relevant to this Agreement, including, without limitation, the Bribery Act 2010, the Modern Slavery Act 2015, and any other anti-bribery, anti-corruption, anti-slavery, or human trafficking laws, as amended from time to time.

20.4 This Agreement sets out the entire agreement between the Parties relating to its subject matter and overrides any prior correspondence or representations. All warranties and conditions not set out in this Agreement whether implied by statute or otherwise are excluded to the extent permitted by law.

20.5 In entering into this Agreement and any Orders associated with it, neither Party has relied on any Pre-Contractual Statement save to the extent that such statement or representation is included in this Agreement or other documents referred to by it.

20.6 This Agreement shall become effective and enforceable only upon execution by all signatories.

20.7 Any variation to this Agreement must be in writing and signed by the authorised signatories of both Parties.

20.8 No failure or delay by a Party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20.9 The Parties agree that, during the Term of this Agreement and for a period of one (1) year following its termination, neither Party shall, directly or indirectly, employ or engage the services of any employee of the other Party who was involved in the performance of this Agreement, without obtaining the prior written consent of the other Party.

20.10 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

20.11 This Agreement is intended to be legally binding and shall be governed by and construed in accordance with the law of England and Wales. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

21. SIGNATURES

Signed for and on behalf of: **CUSTOMER**	Signed for and on behalf of: **NDBS**
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:
Signed for and on behalf of: **CUSTOMER** (optional)	Signed for and on behalf of: **NDBS**
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

22. SCHEDULES

SCHEDULE 1 – DATA PROTECTION

1. DEFINITIONS

Data Controller	has the meaning given to "Data Controller", or "Controller" as appropriate, in the Data Protection Laws.
Data Breach	means a "personal data breach" as defined in the Data Protection Laws, being a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.
Data Processor	has the meaning given to "Data Processor", or "Processor" as appropriate, in the Data Protection Laws.
Data Protection Laws	means any and all laws, statutes, enactments, orders or regulations or other similar instruments of general application and any other rules, instruments or provisions in force from time to time relating to the processing of personal data and privacy applicable to the performance of this Agreement, including where applicable the Data Protection Act 2018, the Data Protection Bill, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) as amended or superseded and the EU GDPR (Regulation (EU) 2016/679) and the UK GDPR.
EU GDPR	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing directive 95/46/EC as updated, superseded or repealed from the time to time.
GDPR	means either the EU GDPR or UK GDPR, depending on which is applicable to the processing.
Personal Data	has the meaning given in the Data Protection Laws.
UK GDPR	means the EU GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, as modified by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, as updated or amended and including any subordinate or replacement legislation.

2. COMPLIANCE WITH DATA PROTECTION LAWS

The Parties shall each comply with their respective obligations under the applicable Data Protection Laws.

3. PROCESSING OBLIGATIONS

In respect of any Personal Data to be processed by a Party acting as Data Processor pursuant to this Agreement for which the other Party is Data Controller, the Data Processor shall:

3.1 provide appropriate technical and organisational measures in such a manner as is designed to ensure the protection of the rights of the data subject and to ensure a level of security appropriate to the risk;

3.2 not engage any sub-processor without the prior specific or general written authorisation of the Data Controller (and in the case of general written authorisation; the Data Processor shall inform the Data Controller of any intended changes concerning the addition or replacement of other processors, thereby giving the Data Controller the opportunity to object to such changes);

3.3 ensure that any sub-processor that is engaged to process such Personal Data by the Data Processor is subject to data protection obligations that are similar to those applicable to the Data Processor under this Schedule;

3.4 process the Personal Data only to perform its obligations under this Agreement or other documented instructions and for no other purpose save to the limited extent required by law;

3.5 on termination of this Agreement, at the Data Controller's option either return or destroy the personal data (including all copies of it) immediately;

3.6 ensure that all persons authorised to access the personal data are subject to obligations of confidentiality;

3.7 make available to the Data Controller all information necessary to demonstrate compliance with the obligations laid out in Article 28 of GDPR and this Schedule and allow for and contribute to audits, including inspections, conducted by the Data Controller or another auditor mandated by the Data Controller; provided that, in respect of this provision the Data Processor shall immediately inform the Data Controller if, in its opinion, an instruction infringes Data Protection Laws;

3.8 taking into account the nature of the processing, provide assistance to the Data Controller, insofar as possible, in connection with the fulfilment of the Data Controller's obligation to respond to requests for the exercise of data subjects' rights pursuant to Chapter III of the UK GDPR to the extent applicable. Such assistance to be chargeable at Data Processor's standard rates or rates agreed by the Parties from time to time;

3.9 provide the Data Controller with assistance in ensuring compliance with Articles 32 to 36 (inclusive) of the GDPR (concerning security of processing, data breach notification, communication of a personal data breach to the data subject, data protection impact assessments, and prior consultation with supervisory authorities) to the extent applicable to the Data Controller, taking into account the nature of the processing and the information available to the Data Processor. Such assistance to be chargeable at Data Processor's standard rates or rates agreed by the Parties from time to time;

3.10 notify the Data Controller without undue delay (and in any event, within 24 hours of becoming aware of a security breach in respect of Personal Data that it processes on behalf of the Data Controller) in writing if the Data Processor becomes aware of a Data Breach;

3.11 maintain a record of its processing activities in accordance with Article 30(1) of the GDPR; and

3.12 allow the Data Controller (or its appointed third-party auditor) to conduct an audit of compliance with this Schedule by the Data Processor pursuant to this Agreement (including by way of physical inspection) no more frequently than once per year during the term and on at least 10 days' notice to the Data Processor in advance (provided that the Data Processor shall be entitled to require that any third-party auditor appointed to conduct such an audit enters into a confidentiality agreement with the Data Processor prior to such audit being conducted). Support for audits to be chargeable at Data Processor's standard rates or at rates agreed by the Parties from time to time.

4. INTERNATIONAL DATA TRANSFER

In respect of any Personal Data to be processed by a Party acting as Data Processor pursuant to this Agreement for which the other Party is Data Controller, the Data Processor shall not, save as set out below, transfer the Personal Data outside the territory comprising the UK and EEA or to an international organisation without first:

4.1 ensuring appropriate levels of protection, including any appropriate safeguards if required, are in place for the Personal Data in accordance with the Data Protection Laws;

4.2 notifying the Data Controller of the protections and adequate safeguards in Clause 4.1 above; and

4.3 documenting and evidencing the protections and adequate safeguards in Clause 4.1 above and allowing the Data Controller access to any relevant documents and evidence.

5. DETAILS OF PROCESSING ACTIVITIES

The following table sets out the details of processing as required by Article 28 of GDPR:

Purposes for which the Personal Data shall be processed	Solely in connection with providing Services under this Agreement.
Description of the categories of the data subjects	CUSTOMER's employees and subcontractors.
Description of the categories of Personal Data	The minimum required contact data and personal data required to provide the Services: employee name, business address, business phone number, business mobile number, business e-mail address, system login details and such other personal data as it required to provide the Services.
Description of transfers of Personal Data to a country outside of the UK	The following NTT Data organisations may process data as sub-processors. **NTT DATA Business Solutions AG** Königsbreede 1 33605 Bielefeld, Germany **NTT DATA Business Solutions sp. z o.o.** Business Garden Poznań ul. Pastelowa 8 PL-60-198 Poznań, Poland **NTT DATA Business Solutions Holding B.V.** Utopialaan 50 5232 CE 's-Hertogenbosch, Netherlands

	itelligence Outsourcing MSC Sdn Bhd (H.Q) c/o NTT MSC, Momiji (West) Building No. 43000 Persiaran APEC MY-63000 Cyberjaya, Selangor, Malaysia **NTT DATA Business Solutions Pvt. Ltd.** Plot no. 4, Softsol Tower - 2, 3rd floor, Software Units Layout Madhapur, Hi-Tech City Hyderabad - 500081, Telangana, India **FH S.A.** 100 SCN QD 04, Bloco B #1201 Brasilia, Distrito Federal 70714-900, Brazil **NTT DATA Business Solutions Türkiye** Nidakule Ataşehir Kuzey İş Merkezi, Barbaros Mah. Begonya Sok. No:3/A Ataşehir 34746 İstanbul, Turkey **NTT DATA Business Solutions Inc.** 10856 Reed Hartman Highway, Cincinnati, OH 45242, USA
The envisaged time limits for erasure of the different categories of Personal Data Please specify how long you think the Personal Data will be retained for, where possible.	Personal Data will be erased within six months of the completion of the Services, unless otherwise agreed with the CUSTOMER, or if retention is required by law.

General description of technical and organisational security measures Where possible, please describe the measures put in place under Article 32(1) GDPR.	All data held on CUSTOMER laptops is permanently encrypted. Access to data held in CUSTOMER networks is restricted to CUSTOMER employees or subcontractors under the control of CUSTOMER.
Authorised Sub-Processors List the sub-processors who will process Personal Data.	Subcontractors under the control of NDBS.

Software Agreement Hexagon

EFFECTIVE DATE: <DATE>

This Agreement is made between:

[**CUSTOMER NAME**], with company number [Company Number], with its registered office [Company Registered Address] (“CUSTOMER”).

and

NTT DATA BUSINESS SOLUTIONS LIMITED, company number 03689001, with its registered office at 12 Gough Square, London EC4A 3DW, United Kingdom (“NDBS”).

IT IS AGREED

6. This Agreement, together with the licence granted hereunder, shall commence on [Effective Date] (the “Effective Date”) and shall continue for the subscription period specified in Schedule 1 (the “Initial Subscription Term”), unless terminated earlier in accordance with Clause 12. Upon expiry of the Initial Subscription Term, this Agreement shall automatically renew for successive periods of equal duration (each a “Renewal Term”), unless either Party gives the other not less than thirty (30) days’ prior written notice of its intention not to renew before the end of the then-current term.

7. During the term of this Agreement, NDBS shall supply, and the CUSTOMER shall purchase, an end-user licence to use the Software, in accordance with the terms and conditions of this Agreement.

8. The specific details of the Software to be licensed to the CUSTOMER, together with the applicable commercial terms, are set out in Schedule 1.

9. The Software shall be licensed to the CUSTOMER in accordance with the terms set out in Schedule 2 (End-User Licence Agreement). For the purposes of this Agreement, all references to “Customer” within Schedule 2 shall be interpreted as references to the CUSTOMER. In the event of any conflict or inconsistency between the provisions of Schedule 2 and the other provisions of this Agreement, the provisions of Schedule 2 shall prevail.

10. As between the CUSTOMER and NDBS, all rights and obligations attributed to Hexagon under Schedule 2 shall be exercised or performed by NDBS, except for those rights expressly reserved to Hexagon, which shall remain vested in Hexagon unless otherwise agreed in writing between NDBS and Hexagon.

11. NDBS may act as a point of contact between CUSTOMER and Hexagon for the purposes of facilitating communications. Notwithstanding the foregoing, Hexagon shall remain solely responsible for the performance of the services and for meeting the service levels set out in Schedule 2. Any Service Credits due to the CUSTOMER under Schedule 2 shall be issued by Hexagon and applied by NDBS as a credit against subsequent monthly billing periods in respect of the fees, until such Service Credits have been fully applied.

12. The provisions of Schedule 2 may be amended by NDBS, but only to the extent and in the manner expressly permitted within Schedule 2.

13. The fees payable for the licence to use the Software under this Agreement shall be as set out, or determined in accordance with, Schedule 1. All sums payable under this Agreement are exclusive of VAT. The CUSTOMER shall pay all undisputed amounts due to NDBS, in pounds sterling, within thirty (30) days of the date of the relevant invoice.

14. NDBS shall have the right to charge interest on overdue invoices at the rate of 4% per year above the base rate of the Bank of England, calculated from the date when payment of the invoice

becomes due for payment up to and including the date of actual payment.

15. The aggregate liability of NDBS arising out of or in connection with this Agreement, whether in contract, tort (including negligence and breach of statutory duty), or otherwise, shall not exceed the total amount of fees received by NDBS from the CUSTOMER under this Agreement during the twelve (12) month period immediately preceding the date on which the relevant claim arose. Nothing in this Agreement shall exclude or limit either Party's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation, or any other liability which cannot lawfully be excluded or limited.

16. Notwithstanding anything to the contrary in this Agreement, neither Party shall be liable to the other, its Affiliates, or any third party for any indirect, incidental, consequential, special, or punitive loss or damage, including, without limitation, loss of profit, loss of revenue, loss of anticipated savings, loss of business opportunity, loss of use, loss or corruption of data, loss of production, loss of goodwill or reputation, or costs of capital, whether arising in contract, tort (including negligence), breach of statutory duty, or otherwise, and whether or not foreseeable or notified as a possibility, arising out of or in connection with this Agreement or the performance or non-performance of obligations hereunder.

17. Either Party may terminate this Agreement, together with the licence granted hereunder, by written notice with immediate effect if:

   a. the other Party enters into liquidation (whether compulsory or voluntary), administration, becomes insolvent, ceases or threatens to cease carrying on business, or is subject to any arrangement with its creditors or any analogous procedure under any applicable law, in which case termination shall take effect immediately upon written notice; or

   b. the other Party commits a material breach of this Agreement and fails to remedy such breach within thirty (30) days of receiving written notice from the non-breaching Party specifying the breach and requiring its remedy; or

   c. the other Party is unable to resolve a Force Majeure Event within sixty (60) days of receiving written notice that such an event has occurred; or

   d. any sum payable under this Agreement remains unpaid for more than seven (7) days after its due date; or

   e. termination is expressly permitted under any provision of Schedule 2 to this Agreement.

18. Termination of this Agreement shall be without prejudice to any rights, remedies, obligations or liabilities of either Party that have accrued up to the effective date of termination. Upon termination, all sums due and payable under this Agreement shall become immediately due.

19. Termination of this Agreement shall terminate all licences granted hereunder.

20. The CUSTOMER shall not assign, transfer or otherwise deal with any on its rights or obligations under this Agreement without the prior written consent of NDBS.

21. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement, and no person other than the Parties to this Agreement shall have any right to enforce any of its terms.

22. This Agreement (including its Schedules and any referenced documents) constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior discussions, correspondence, negotiations, drafts, or representations, whether written or

oral, relating to such subject matter.

23. If any provision of this Agreement is found to be invalid, that invalidity shall not affect the validity and enforceability of the remaining provisions.

24. No variation of this Agreement shall be effective unless it is in writing and signed by authorised representatives of both Parties.

25. The CUSTOMER shall not be entitled to withhold, set off or deduct any amount from any sum due to NDBS under this Agreement, whether by way of set-off, counterclaim, abatement or otherwise.

26. The terms of this Agreement, including its content and any information exchanged between the Parties in connection with it, shall be treated as confidential and shall not be disclosed to any third party without the prior written consent of the other Party, except as required by law, regulation, or a competent authority, or as otherwise permitted under this Agreement.

27. This Agreement shall become effective and enforceable only upon execution by all signatories.

28. This Agreement is intended to be legally binding and shall be governed by, and construed in accordance with, the laws of England and Wales. The Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

29. Signatures

Signed for and on behalf of: **CUSTOMER**	Signed for and on behalf of: **NDBS**
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:
Signed for and on behalf of: **CUSTOMER** (optional)	Signed for and on behalf of: **NDBS**
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

SCHEDULE 1 – SOFTWARE AND COMMERCIAL TERMS

1. Software Description

Software Name	Description	Quantity	Licence Type
[Insert Name]	[Insert functional description]	[e.g. 50 users]	[e.g. Subscription / Term-based / Named User]

2. Licence Term

- Initial Term: [Insert duration, e.g. "12 months from Effective Date"].
- Renewal: Automatically renews for successive [e.g. 12-month] periods unless terminated in accordance with Clauses 1 and 12.

3. Licence Fees

Fee Type	Amount	Frequency	Payment Terms
Licence Fee	£[amount]	[e.g. Annual / Monthly]	Payable within 30 days of invoice date

- All fees are exclusive of VAT.

SCHEDULE 2 – HxGN SMART® CLOUD SERVICES END USER AGREEMENT

This HxGN Smart® Cloud Services End User Agreement (“Agreement”) is between Intergraph Corporation, Hexagon’s Asset Lifecycle Intelligence division, headquartered at 305 Intergraph Way, Madison, AL 35758, United States of America (hereinafter referred to as “Hexagon”) and the Customer entity purchasing the Cloud Services as identified on the Quote (hereinafter referred to as “Customer”) and entered as of the Effective Date.

1. DEFINITIONS

The following definitions are used throughout this Agreement and, unless otherwise defined therein, including any and all Policy Documentation.

a. “Acceptable Use Policy” and “AUP” means Hexagon’s acceptable use policy for use of Cloud Services. The AUP is a Policy Documentation.

b. “Affiliate” means any entity which is directly controlled by the Customer. Control for the purposes of this definition means that Customer owns in excess of fifty percent (50%) of the ownership interest of the entity or owns a majority of the voting shares of the entity.

c. “Application(means Hexagon mobile applications available for purchase or included with the Cloud Services that enable users to use a Software Product license utilizing a Device. Applications may be included with the Software Products procured hereunder or purchased separately under this Agreement. Unless separately identified, Applications are included in the Software Products definition.

d. “Authorized User” means any individual user authorized by the Customer in accordance with this Agreement to use Cloud Services on behalf of the Customer and in relation to whom an account is or has been set up by or on behalf of Customer to access Cloud Services.

e. “Cloud Environment” means the Hexagon multi-tenant engineering environment delivered via a public cloud platform (as determined by Hexagon) which operates on a 24/7/365 basis and is supported by Hexagon.

f. “Cloud Incident” means any unplanned interruption to Cloud Services which results in the Authorized Users being unable to access the Customer Environment or launch Software Products and the incident is reported to Hexagon through Cloud Services Support.

g. “Cloud Optional Services” means additional services that are available to be purchased separately by Customer to complement the Cloud Services as quoted by Hexagon.

h. “Cloud Services” means the standard market offering of Hexagon cloud based software provided by Hexagon and ordered by the Customer. Unless otherwise explicitly identified, Cloud Services as used herein includes the Cloud Services’ Software Products provided to Customer in return for the payment of the Cloud Services Fees.

i. “Cloud Service Fees” means, collectively, any of the fees as quoted by Partner and payable by Customer to Partner for the Cloud Services (or any part thereof). Cloud Services Fees include:

   i. The Subscription Fees; and

   ii. Non-recurring charges, being either a one-time or one-off expense, charge, or amount payable by Customer to Hexagon in respect of an element of the Cloud Services provided hereunder as agreed with Customer. Such charges may be required to be paid on a repetitive basis in order for the Customer to continue to receive and/or have access to the relevant element of the Cloud

Service.

iii. Fees for Cloud Optional Services may be a Subscription Fee or a non-recurring charge depending on the service.

j. "Cloud Service Start Date" means the earlier date in which (i) Hexagon commences onboarding and configuration of the Customer Environment, or (ii) the first user account and log-in credentials are released by Hexagon to the first Authorized User via email. Should onboarding and configuration of the Customer Environment or access to the Cloud Services commence part-way through a month, the Cloud Service shall be deemed to have commenced at the beginning of that month for the purpose of calculating the Cloud Service Fees. The Cloud Service Start Date for renewal Subscription Terms shall be the calendar day immediately following the prior Order's end date.

k. "Consulting Services" means services not delivered as part of Hexagon's commercial off the shelf ("COTS") core Cloud Services or Software Products and Support, including but not limited to software and system configuration, software and system development (outside of the COTS development), software customization, software and system design (outside of the COTS design), software modifications or software enhancements. Consulting Services are not available through Support.

l. "Contractor(s)" shall mean any contractors, subcontractors, agents, advisors and consultants who are performing services on behalf of Customer or Customer's Affiliates.

m. "Customer Data" means all electronic data or information submitted to, stored in and/or generated in the Customer Environment(s) by Customer.

n. "Customer Environment" means the Customer's segment of the Cloud Environment to which the Customer is provided with access and use of as part of the Cloud Services. For the Cloud Services' Software Products that are multi-tenant, the Customer Environment shall collectively mean the Customers' tenants.

o. "Data Protection Legislation" means the privacy and personal data legislation applicable to the processing of Personal Data in the jurisdiction where this Agreement is made or performed, including but not limited to the General Data Protection Regulation (Regulation (EU) 2016/679) (the "GDPR") as may be amended and/or any corresponding or equivalent national laws or regulations, (and in case of discrepancies or contradictions between different rules or regulations, the one which provides the highest degree of privacy and/or information security shall apply).

p. "Device" means any technical device that can be used for creating, storing, or transmitting information in the form of electronic data including but not limited to a PC, workstation, terminal, personal digital assistant (PDA), tablet, mobile phone, shop floor computer, and handheld scanner.

q. "Documentation" means the then-current documentation made generally available by Hexagon relating to the features, functions, and use of the Software Products. Documentation may include User's Guides, Installation Guides, Reference Guides, Administrator's Guides, Customization Guides, Programmer's Guides, Configuration Guides and Help Guides made available to Customer. Not all of the previous types of Documentation are available for each Software Product supplied by Hexagon. Documentation may be available through Support.

r. "Effective Date" means the date Customer signs below.

s. "Emergency Maintenance" means maintenance performed when either (i) a Cloud Incident or Security Incident demands immediate unplanned attention, or (ii) prompt maintenance is required to be carried out by Hexagon or a Third Party Service Provider, due to an external attack, virus cleansing, and service degradation resolution. Hexagon shall provide as much notice as possible to the Customer in respect to any Emergency Maintenance.

t. “Employees” means an individual employed by the Customer or its Affiliate on a permanent or part time basis performing services for Customer or its Affiliate who has access within the Customer’s and/or its Affiliates’ computer network firewall.

u. “Extensibility Hosting Service” means a Cloud Optional Service available for purchase to host Customer specific product customizations that are developed and maintained by Hexagon for a fee under a Consulting Services statement of work outside of this Agreement. This Cloud Optional Service is not available for all Software Products.

v. “Force Majeure Event” is as defined in Subsection 19.10.

w. “Hexagon Group Company” means a company controlled directly or indirectly by Hexagon AB, a Swedish corporation.

x. “Intellectual Property Rights” means all intellectual property or other proprietary rights, whether registered or unregistered, in any jurisdiction, including all such rights in patents and patent applications, trademarks (including any goodwill therein or relating thereto), service marks, trade names, business names, internet domain names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in trade secrets, and rights in inventions (whether or not patentable).

y. “Material Adverse Effect” means a change that either individually, or collectively with other changes, has the effect of (i) negatively and materially reducing the Customer’s and/or its Affiliates and/or its/their Authorized Users’ access and/or usage rights in respect of the Cloud Services and which render the Cloud Services unusable by a reasonable person (i.e. a natural person with an ordinary degree of reason who would find the Cloud Services offer no value added to their normal course of business), or (ii) applicable to the Security Policy only, materially increases the security risk to the Customer Data.

z. “Month” means a calendar month.

aa. “Non-Production” or “Non-Production Use” means use that is limited to the preparing, evaluating, testing, design, internal training, and/or maintenance of the Cloud Services’ Software Products. Use of a Customer Environment where Customer Data (beyond Personal Data required for login or test data) is input, accessed, or created is not Non-Production use.

bb. “Order” means an order for Cloud Services licensed hereunder.

cc. “Parties” means Hexagon and Customer, and “Party” means either of them individually.

dd. “Partner” means the Hexagon partner that has been authorized by Hexagon to resell the Cloud Services to Customer.

ee. “Personal Data” means data or information that relates to an identified, or identifies a natural person, or is defined to be Personal Data under the Data Protection Legislation.

ff. “Planned Maintenance” means any maintenance required, planned, and communicated in advance by Hexagon for the maintenance of the system and Cloud Services.

gg. “Policy Documentation” means, the HxGN Smart Cloud policies found at https://hexagon.com/company/divisions/asset-lifecycle-intelligence/technology-compliance-standards/smart-cloud-policies.

hh. “Production Use” or “Production” designations means any use that exceeds Non-Production Use. This includes and is not limited to use by a Customer for production/operation (e.g. for the design of new facilities, modification of existing facilities or maintenance or operating facilities; the management of assets; project management).

ii. “Quote” or “Quotation” means a quotation for Cloud Services issued by Partner (at any given time during the term of this Agreement) to Customer which shall incorporate the provisions of this Agreement by reference.

jj. “Result(s)” means any results generated while using or otherwise generated by the Cloud Services, Software Products or functionality therein as output, based on any source content provided to the Cloud Services including without limitation Customer Data. Results includes any results or content generated from any artificial intelligence functionality that may be included in the Cloud Services.

kk. “Security Incident” means an event or set of circumstances resulting in a material compromise to the security, confidentiality, availability, or integrity of the Customer Data under Hexagon’s control. Examples of Security Incidents include security breaches to Hexagon’s network perimeter or to internal applications resulting in compromise of the Customer Data; severe degradation of Hexagon’s security controls, methods, processes, or procedures that result in compromise of the security, availability, confidentiality, or integrity of Customer Data; or the unauthorized disclosure of Customer Data.

ll. “Service Operational Time” means twenty four (24) hours a day, three hundred and sixty five (365) days a year (366 days if a leap year).

mm. “Site” means a distinct instance of the Software Product within the Customer Environment. HxGN SDx (not HxGN SDx2) and Smart Construction utilize Sites.

nn. “Service Request” means a problem or question related to a Software Product in the Customer Environment OR a request from an Authorized User with access to Smart Community, for a service to be performed in the Customer Environment.

oo. “Smart APIs” mean any APIs made available to Customer through or with a Cloud Services subscription. Not all Software Products include Smart APIs. Unless separately identified, Smart APIs are included in the Software Products definition.

pp. “Software Products” means collectively or individually the Hexagon Group Company software applications identified in the applicable Quote for which Hexagon is providing access via the Cloud Services and which have been manufactured and are owned or licensed by Intergraph Corporation or a Hexagon Group Company, but excluding Third Party Software Products. Unless separately identified, Software Products are included in the Cloud Services definition.

qq. “Staff Augmentation” means an extension of the Customer’s Employee base by use of individual persons that are temporarily engaged by Customer or its Affiliate, provided that the access is from within the Customer’s or its Affiliates’ firewall. Staff Augmentation may work onsite or remotely provided they work within Customer’s or Affiliates’ computing infrastructure and access that infrastructure via Customer or Affiliate-provided computing equipment/hardware.

rr. “Subscription Fees” means the annual or monthly subscription fees payable by Customer pursuant to the terms and conditions of this Agreement in order to receive a Cloud Services’ Software Product(s) as stated in the applicable Quote.

ss. “Subscription Term” means the initial or renewal term of the Cloud Services’ Software Product subscription including access to at least one Production Customer Environment. Subscription Terms shall be the number of calendar months or years quoted by Partner. In the event the Quote service start date differs from the Cloud Services Start Date, the Cloud Services Start Date shall govern and the term quoted by Partner shall automatically adjust to reflect the new start date (e.g. if the quote has a 3 year term start date of May 1st but the Cloud Services Start Date is June 1st, the 3 year term shall automatically be deemed adjusted to start June 1st).

tt. “Subcontractor(s)” means parties selected by Hexagon to provide an element of the Cloud Services and includes (where applicable) a Third Party Service Provider.

uu. “Support” means the Hexagon provided technical support and assistance in the use of the Cloud Services including the Authorized Users filing of, and Hexagon’s management and resolution of, Cloud Incidents and/or Service Requests in accordance with the Policy Documentation.

vv. “Third Party Service Provider” means a third party service provider with whom Hexagon enters into a subcontract in respect of the cloud platform and/or related services to provide an element of the Cloud Services to Customer (if applicable) on behalf of Hexagon.

ww. “Third Party Software Products” means, where applicable, pre-requisite third party software products used by Hexagon in order for Customer to receive the Cloud Services or licensed by Hexagon and used by the Customer in Cloud Services in order to deliver a Software Product functionality. Prerequisite Third Party Software Products are listed in the Software Products Policy. If required by the owners of Third Party Software Products, Customer shall in good faith review and sign licenses relating to Third Party Software Products.

2. CLOUD SERVICES

a. Subject to payment of the Cloud Services Fees, from the Cloud Service Start Date through the applicable Subscription Term(s), Hexagon will provide the Cloud Services (including the Software Products, Third Party Software Products, Smart APIs, and Applications) to Customer in accordance with the provisions of the Order(s) and this Agreement including the Policy Documentation.

3. LICENSE GRANT AND CUSTOMER RESPONSIBILITY

a. For the Cloud Services purchased by the Customer, Hexagon hereby grants to Customer, and its Affiliates, a personal, non-exclusive, non-transferable, worldwide (subject to compliance with applicable laws) right to access and use the Cloud Services (including any Software Products, Applications, and Smart APIs contained or delivered therewith) to the Customer solely for Customer’s and its Affiliates’ own internal business purposes.

b. Customer shall ensure that:

i. Except where Contractors are allowed under a specific license type as stated in the Software Product and Licensing Policy, Authorized Users shall be limited to Customer’s and its Affiliates’ Employees and Staff Augmentation; and

ii. Authorized Users’ use of the Cloud Services is limited solely to work for the benefit of Customer and/or Customer’s Affiliates; and

iii. Authorized Users’ access to the Cloud Services shall be promptly terminated upon the cessation of such Authorized Users’ services for the Customer and/or Customer’s Affiliates.

c. Customer, on behalf of itself and its Affiliates and its Authorized Users, shall not:

i. license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make available to any third party the Cloud Services in any way; or

ii. modify or make derivative works or a competitive product or service based on Cloud Services or the Software Product; or

iii. create other Internet “links” to Cloud Services or “frame” or “mirror” any Software Product on any other server or wireless or Internet-based device other than those forming part of Cloud Services; or

iv. run penetration testing or any other testing that could affect the usability (e.g. increase traffic) of the Cloud Services or put at risk any other Cloud Services customers; or

v. reverse engineer the Cloud Service.

d. Notwithstanding the foregoing, to the extent made available to Customer, Customer may use the Smart APIs to develop integrations to the Cloud Services.

e. Customer shall and shall ensure that its Affiliates and its/their Authorized Users shall:

i. have sole responsibility for the accuracy, quality, integrity, reliability, and appropriateness of all Customer Data;

ii. use commercially reasonable efforts to prevent unauthorized access to or use of Cloud Services, the Customer Environment and the Cloud Environment and shall notify Hexagon promptly of any such unauthorized access or use;

iii. implement and maintain appropriate technical and organizational security measures to protect and to preserve the security, integrity and confidentiality of the Cloud Services including the Cloud APIs, Software Product, and the Customer Data. These security measures shall prevent the unauthorized access or disclosure of confidential data. Customer shall promptly report any security deficiencies or security incidents that may impact or compromise our users or Cloud Services in writing to smartcloudandislsupport.ppm@hexagon.com.

iv. provide and maintain their own equipment, software, networks, and communications lines, including any public lines required to properly access Cloud Services, content and/or data; and

v. be aware of and at all times comply with the appropriate provisions of this Agreement (including the Policy Documentation) which includes but is not limited to the provisions regarding ownership; nondisclosure; confidentiality; licensing and limitations of usage of the Cloud Services (including this Section 3); warranty disclaimers; limitation of liability; compliance and export control; governing law; and the Acceptable Use Policy.

f. Customer shall be responsible and liable for all activities that occur in Authorized User accounts in respect of its Affiliates and Authorized Users including any violations of this Agreement.

g. If Cloud Services, the Software Products, or any part thereof is acquired directly or indirectly on behalf of a unit or agency of the United States Government, this provision applies. For civilian agencies: Cloud Services and the associated Software Products were developed at private expense and are “restricted computer software” submitted with restricted rights in accordance with subparagraphs (a) through (d) of the Commercial Computer Software - Restricted Rights clause at 52.227-19 of the Federal Acquisition Regulations (“FAR”) and its successors, and are unpublished and all rights are reserved under the copyright laws of the United States. For units of the Department of Defense (“DoD”): This program is ‘commercial computer software’ as defined in DFAR’s 252.227-7014 and the rights of the government are as specified at DFARs 227.7202-3.

4. CLOUD SERVICE LICENSES

a. The quantity of Software Products licenses procured under an Order may be added but may not be decreased during a Subscription Term. Once increased, the increased quantity shall remain the quantity during the remainder of the Subscription Term. This limitation applies to all license types including those that have an annual true up.

b. Approximately sixty (60) days prior to the last day of the current Order's Subscription Term, Partner will submit to the Customer a renewal Quotation of the pricing for the Order's renewal. Customer must send notice in accordance with Section 9.2 if the Customer chooses not to renew otherwise the Cloud Services will automatically renew for an additional Subscription Term based on the Quotation term and pricing.

5. POLICY DOCUMENTATION

a. Policy Documentation forms part of and is incorporated into this Agreement by reference. Access to and use of the Cloud Services by Customer, its Affiliates and their respective Authorized Users is subject to acceptance and compliance with the Policy Documentation. Hexagon retains the right to update the Policy Documentation from time to time by notification to Customer, and for such purpose, communications via email shall suffice. If a change made to the Policy Documentation has a Material Adverse Effect to Customer and/or its Affiliates, the Customer and/or its Affiliates shall be permitted to terminate the Agreement by written notice to Hexagon within thirty (30) days of such change coming into effect. In the absence of such written notice from the Customer to Hexagon, Customer and/or its Affiliates shall be deemed to have agreed to and accepted such changes to the Policy Documentation.

b. Notwithstanding the foregoing, any change to the Policy Documentation that affects Cloud Services Fees due to Hexagon for a Customer Environment during a current Subscription Term shall not apply until the renewal of the Order.

6. WARRANTIES AND DISCLAIMERS

a. During the Subscription Terms, Hexagon warrants that each Customer Environment used for Production Use in the Cloud Services will meet or exceed a 99.5% Availability Service Level each Month (see Section 7 on how this is calculated). In the event the Availability Service Level for a Customer Environment falls below the 99.5% service level in a Month, Hexagon shall apply the following service credits (hereinafter "Service Credits") for the affected Customer Environment for such Month:

Availability Percentage	Service Credits
99.499% - 99.0%	ten (10%) percent of the monthly Subscription Fees
Less than 99.0%	twenty-five (25%) percent of the monthly Subscription Fees

i. The Service Credits apply:

(a) only to the extent that the affected Customer Environment or portion thereof is used for Production Use;

(b) only for the affected Software Product in that Customer Environment;

(c) only if Customer logged a Cloud Incident to notify Hexagon of the problem;

(d) only if Customer puts in a request with Hexagon for the Service Credit within thirty (30) days of the affected month;

(e) where Cloud Services are delivered via a public cloud platform, only to the extent available to Hexagon from a Third Party Service Provider on a pass through basis subject to such notification procedures which may be required by the Third Party Service Provider.

ii. To the extent applicable and compliant with this Section 6.1., Service Credits shall be credited by Hexagon through Partner against subsequent monthly billing periods in respect of the monthly Subscription Fees until such applicable Service Credits have been fully consumed.

iii. Hexagon's and Partner's entire liability and Customer's and its Affiliates' sole remedy under this warranty shall be the Service Credits.

b. Hexagon warrants that the Software Products accessed via Production Customer Environments will perform substantially in accordance with the applicable Documentation. If such Software Product does not perform substantially in accordance with the applicable Documentation, Hexagon's entire liability and Customer's, and its Affiliates' sole remedies under this warranty shall be to obtain the support described in this Agreement. Notwithstanding the foregoing, Customer acknowledges that the Documentation may not have been drafted with the Cloud Services based Software Product in mind and that some functionality of the on-premise Software Product may not be technically feasible in the Cloud Services (e.g. installation, database access, customization, and configuration availability of the Software Product might be more limited); lack of such functionality shall not be considered a breach of this warranty. Where such Documentation was drafted for the Cloud Services, such Documentation shall supersede any other version of the Documentation.

c. Cloud Services will use industry standard Virus checking software to avoid transmission of any Viruses to Customer's or an Affiliate's IT environment (except for any Viruses contained in Customer Data uploaded by Authorized Users or otherwise originating from Authorized Users). "Virus" in this provision means anything or device (including any software, code, file or program) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by rearranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

d. The Cloud Services, including but not limited to the Software Products available thereon, 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 weapon systems, in which the failure of the Cloud Services (including the Software Products available thereon), 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 Cloud Services to the extent used by Customer in High Risk Activities.

e. The foregoing warranties do not include any engineering reference data, Non-Production Customer Environments, Smart APIs, Applications, Cloud Optional Services, or Results which are provided "AS IS" and without warranty.

f. Hexagon does not warrant that the Cloud Services, Software Products, or pre-requisite Third Party Software Products (to the extent accessed by Customer under this Agreement) will meet the Customer's or its Affiliates' requirements or that they will run uninterrupted or be error free. Customer and its Affiliates are responsible for the results obtained from their use of the Cloud Services, Software Products, and pre-requisite Third Party Software Products (to the extent accessed by Customer under this Agreement). Hexagon has no legal commitment on any future functionality unless explicitly committed to in this Agreement.

g. The foregoing warranties are void if failure of a warranted item results, directly or indirectly, from a Customer, Affiliate or their Authorized Users': (i) unauthorized modification or enhancement to a warranted item; (ii) unauthorized attempt to repair a warranted item; or (iii) misuse of a warranted item, including without limitation use of a warranted item under abnormal operating conditions or without routinely maintaining a warranted item.

h. Except as expressly provided in this Agreement, Hexagon makes no representations or warranties with respect to any products or services provided under this Agreement, express or implied, including the implied warranties of merchantability and fitness for a particular purpose. If under the law ruled applicable to this Agreement any part of the above disclaimer of express or implied warranties is invalid, then Hexagon disclaims express or implied warranties to the maximum extent permitted by said law.

7. AVAILABILITY SERVICE LEVEL

a. The Availability Service Level shall be determined on a per Software Product title per Production Customer Environment per Month basis.

b. The Availability Service Level percentage is calculated as follows: Availability Service Level percentage = Availability divided by Service Operational Time.

   i. "Availability" for the applicable Month shall be calculated as the number of minutes in the Month in which the Customer can connect to the Software Product in the applicable Customer Environment.

   ii. "Service Operational Time" for the applicable Month shall be calculated as (1) the total number of minutes in the Month (i.e., 1,440 minutes per day multiplied by the number of days in a Month), less (2) the total number of minutes of Exceptions experienced by a Customer during the applicable Month for the applicable Software Product title in the applicable Customer Environment.

   iii. By way of example only: during a Month with 30 days, if (a) the Customer experienced downtime attributable to Exceptions of 30 minutes, and (b) Customer experienced downtime not attributable to Exceptions of 30 minutes, then (c) the percentage of Availability would be 99.93%, because (x) the Numerator would be 43,140 (representing the total minutes that the Customer experienced Availability as defined herein), (y) the Denominator would be 43,170 (representing Service Operational Time, which is the total number of minutes in the Month less minutes attributed to Exceptions), and (z) the Numerator divided by the Denominator is .9993, which, if expressed as a percentage, is 99.93%.

   iv. "Exceptions" are:

      (a) time expended for Planned Maintenance;
      (b) time expended for Emergency Maintenance;
      (c) the inability of the Customer or its Authorized Users to connect to Cloud Services due to problems outside of Hexagon's control (e.g. a network or device failure at Customer's site or between Customer and Hexagon's data centers; delays in email or webmail transmission to or from the hosted application; a Force Majeure Event; Outages attributable to the acts or omissions of Customer or Customer's Authorized Users; or outages that result from Customer's equipment, software, or other technology and/or third party equipment, software or other technology (other than those which are under Infor's direct control).
      (d) Periods of down time at Customer's request (e.g. to perform Consulting Services);
      (e) Performance degradation due to Customer's use of the Cloud Services in excess of the scope of Customer's license, usage restrictions, or product limitations outlined in this Agreement or the Documentation.

c. Monthly reports on the Availability Service Levels are available via the Cloud Services portal or upon request.

8. OWNERSHIP AND INTELLECTUAL PROPERTY

a. Customer, for itself, its Affiliates, and its and their Authorized Users acknowledges and agrees that all right, title and interest in and included with the Cloud Services (including but not limited the Smart APIs, the Applications the Cloud Environment, the Software Products, the Third Party Software Products) including Policy Documentation, Documentation, data and information and all copies and derivatives of all or any part thereof (in this Section, hereinafter the foregoing collectively the "Product"), are and shall remain vested in Hexagon or a Hexagon Group Company or relevant third parties. Customer, its Affiliates and its and their Authorized Users do not have, and shall not attempt to obtain, any right, title, or interest in or to the Product, or Hexagon's or a Hexagon Group Company's or such third parties' Intellectual Property Rights, except as expressly provided herein, and shall not decompile, disassemble, or otherwise attempt to gain access to any source code for the Product. Customer, for itself, its Affiliates and Authorized Users, acknowledges and agrees that the Product is comprised of trade secrets, proprietary information, and Confidential Information (as defined in Section 14 herein), and that Customer, and its Affiliates shall not use, distribute, copy, perform, amend, alter, modify, create derivative works, reverse engineer, exploit, sublicense, or assign the Product, or any of Hexagon's or a Hexagon Group Company's or such third parties' Intellectual Property Rights or permit such to occur, except as expressly permitted by this Agreement.

b. During the term of this Agreement, the Customer hereby grants to Hexagon and the Hexagon Group Companies a global, royalty-free, sub-licensable, non-exclusive license to use the Customer Data to the extent required by Hexagon to: (i) provide the Cloud Services to the Customer and fulfil Hexagon's obligations under this Agreement, including making necessary disclosures and obtaining all licenses, permits, approvals, or consents required to provide the Cloud Services and comply with applicable law; and (ii) develop, improve, modify and optimize the Cloud Services and Software Products.

c. Notwithstanding the foregoing, Customer or its Affiliates shall retain their respective full ownership and all rights associated therewith solely to Customer Data and work product input or output generated by the Cloud Services. This ownership shall not extend to any formats or other Intellectual Property Rights provided by Hexagon under this Agreement that makes a particular data file intelligent or that structures output, which shall remain the property of Hexagon or a Hexagon Group Company or the respective third party that owns said format or Intellectual Property Rights.

d. This Section 8 governs the ownership of the Cloud Services. Any other provision that conflicts with this Section, including those between Partner and Customer, is null and void.

9. TERM

a. **Agreement Term.** This Agreement commences on the Effective Date and shall continue until terminated by Party as allowed in Section 10 of this Agreement or until one (1) month after all Orders under this Agreement have expired.

b. **Order Term and Renewal**. Upon receipt of an Order, each Order shall be subject to a Subscription Term. Thereafter, unless not renewed in accordance with Subsection 9.2.1, each Order shall automatically renew for another Subscription Term. Unless terminated per Section 10.1, each Subscription Term (including all renewals) are non-cancellable during the Subscription Term quoted and Customer shall be liable and pay for the full amount for the full Subscription Term as quoted.

   i. An Order shall not automatically renew if:

      (a) Notice of non-renewal of the Order has been sent to either Party at least thirty (30) days' prior to the current Order's end date (e.g. current Subscription Term ends October 31, to avoid auto-renewal, notice must be sent no later than October 1); or

(b) The Agreement has been terminated in accordance with Section 10 below.

10. TERMINATION AND SUSPENSION

a. **Termination for Cause**. If either Customer or Hexagon:

(a) commits a material breach of this Agreement and does not remedy such breach within thirty (30) days or receiving notice of breach from the other Party. Non-payment or late payment of Cloud Services Fees shall constitute a material breach under this Section. Notice of an alleged breach of warranty does not constitute notice of material breach for purposes of this Section; or

(b) enters into liquidation, insolvency or ceases doing business, has a receiver or administrator appointed, makes an assignment for the benefit of its creditors, files a voluntary petition in bankruptcy, is adjudicated a bankrupt or an insolvent, or files a petition seeking reorganization, liquidation, dissolution, or similar arrangement under present or future statute, law, or regulation with immediate effect on the date of notice; or

(c) is unable to resolve a Force Majeure Event within sixty (60) days of written notice that a Force Majeure Event has occurred;

then the non-breaching Party may, by giving written notice to the other Party, terminate this Agreement (including all Orders procured hereunder) or any Order(s) for cause as of a date specified in the notice of termination.

i. If the Agreement is terminated under this section, the Agreement and, unless the Parties agree otherwise, all Orders in effect (including any Orders placed by Affiliates) shall terminate as of the termination date.

ii. If only an Order(s) is terminated, the applicable Order(s) shall terminate as of the termination date. This Agreement and any other Orders shall remain in effect until terminated or non-renewed, as allowed herein.

b. **Termination by Notice.** This Agreement may be terminated by either Party with at least ninety (90) days notice.

i. If the Agreement is terminated by notice, Orders in effect prior to the termination date shall remain in effect through the Order(s)'s Subscription Term.

c. **Suspension.** Without limitation to its other rights and without incurring any liability to Customer or its Affiliates, Hexagon may, in its sole discretion, suspend, disable or limit the Customer's, its Affiliates or an Authorized User's, access (or require the Customer to suspend or limit such access) to the Cloud Services, Software Products, or any portion thereof, if: (i) Hexagon experiences or reasonably believes it will experience a security threat or system failure that jeopardizes the Cloud Environment, the Cloud Services, or Hexagon's customers or employees; (ii) Hexagon is directed to do so by any law enforcement or regulatory agency; (iii) the continued performance of its obligations under this Agreement could result in Hexagon being in breach of applicable laws (e.g. U.S., EU custom and trade regulations or Data Protection Legislation); (iv) Hexagon reasonably believes the Customer's use of the Cloud Services amounts to excess usage; or (v) the Customer fails to pay the Cloud Services Fees hereunder by the due date. Hexagon shall, to the extent legally able, use commercially reasonable efforts to provide at least twenty-four (24) hours notice prior to such suspension and, if such threat or issue has been resolved, promptly restore such access.

d. **Termination Effects.**

i. Upon the termination of this Agreement for any cause, such termination shall not release either Party from its obligation to pay amounts due under this Agreement which accrued prior to such termination.

(a) In the event of termination by Customer under Subsection 10.1, all fees due up to the date of offboarding, shall continue to be due. Hexagon through Partner shall refund any other prepaid fees.

(b) In the event of termination by Customer under Subsection 10.1, all fees due up to the date of offboarding, shall continue to be due. Hexagon through Partner shall refund any other prepaid fees.

ii. No new Orders including any renewals of Orders may be processed under this Agreement after the Agreement has been terminated.

11. OFFBOARDING

a. In the event of notice to terminate this Agreement or not renew a Customer Environment as allowed in this Agreement, Hexagon and Partner shall coordinate with Customer in accordance with the Offboarding Policy.

b. Customer acknowledges and accepts that lack of response or Customer's failure to follow the Offboarding Policy will not affect Hexagon's following of the Offboarding Policy including the deletion of the Customer Data after the thirty (30) day download period. Hexagon shall not be liable for any damages due to Customer's failure to respond to Hexagon or follow the Offboarding Policy.

12. NON-PRODUCTION CUSTOMER ENVIRONMENTS

a. Non-Production Customer Environments may be provided under this Agreement. Non-Production Customer Environments may include environments provided as an evaluation prior to a Cloud Services Production purchase or may be included with an existing Production Use Customer Environment subscription. If included with a Production Customer Environment, such term of the Non-Production Customer Environment shall not exceed the Production Use Customer Environment term. If made available as a pre-purchase evaluation or beta evaluation, unless otherwise specified in a Quote or statement of work or other writing, the term available to Customer is at Hexagon's discretion.

b. Customer acknowledges and agrees that Non-Production Customer Environments shall be used solely by Customer and its Authorized Users for Non-Production Use only. If further limited in use (e.g. identified as "testing" or "academic"), Customer agrees that such use by Customer and its Authorized Users shall be further limited to that specific purpose. Under no circumstance shall a Non-Production Customer Environment be used for Production Use.

c. Notwithstanding any other provision herein, all Non-Production Customer Environments provided at no cost are provided "AS IS" and Hexagon hereby disclaims any and all liability, damages, or obligation relating to such Non-Production Customer Environments. Support for Non-Production Customer Environments are provided at Hexagon's sole discretion.

13. SECURITY AND BREACH NOTIFICATION

a. During the term of this Agreement, Hexagon shall implement and maintain a written plan and process, in accordance with industry standard processes, for preventing, detecting, identifying, reporting, tracking, and responding to Security Incidents. Hexagon's plan shall include response and notification procedures, specific contacts in an event of a Security Incident, and each contact's roles and responsibilities.

b. In the event of a Security Incident, Hexagon will submit a Security Incident report to the Customer. The report will be provided as soon as practicable following discovery of a Security Incident as required by applicable laws. Thereafter, at Customer's reasonable request, Hexagon will meet with Customer to discuss the cause of the Security Incident and Hexagon's response.

c. Personal Data.

i. In addition to the other requirements of this Section 13, with respect to any Personal Data in the possession or under the control of Hexagon and in order to protect such Personal Data from unauthorized access, destruction, use, modification or disclosure, Hexagon shall:

(a) develop, implement, and maintain reasonable security procedures and practices appropriate to the nature of the information to protect Personal Data from unauthorized access, destruction, use, modification, or disclosure; and

(b) develop, implement, and maintain data privacy and security programs with administrative, technical, and physical safeguards appropriate to the size and complexity of the Hexagon's business and the nature and scope of Hexagon's activities to protect Personal Data from unauthorized access, destruction, use, modification, or disclosure.

ii. Any processing of Personal Data within the meaning of the Data Protection Legislation will be carried out by Hexagon, Hexagon Group Companies and their employees, and subcontractors in accordance with Customer's instructions and to enable Hexagon to deliver the services contemplated by this Agreement. Customer shall only transmit to Hexagon the minimum amount of Personal Data as strictly necessary for Hexagon to perform the Cloud Services procured under this Agreement.

iii. In the event of a Security Incident where Personal Data is, or is reasonably believed to have been, acquired by an unauthorized person, Hexagon shall notify the applicable data protection authority in accordance with the timescales and in the manner mandated pursuant to the Data Protection Legislation.

d. Hexagon shall maintain all documentation relating to Security Incidents, whether in written or electronic form, including their identification, processing, and resolution, for two (2) years (unless a shorter period is mandated by law) after final resolution, including the final resolution of any claims arising out of a Security Incident.

14. CONFIDENTIALITY

a. Hexagon and Customer, for themselves and on behalf of their Affiliates or a Hexagon Group Companies (as the case may be) each acknowledge that they may be furnished with, receive, or otherwise have access to information of or concerning the other Party or relevant third parties which such Party or relevant third party considers to be confidential, proprietary, a trade secret or otherwise restricted. As used in this Agreement, "Confidential Information" shall mean all information, in any form, furnished or made available directly or indirectly by one Party to the other, which may include third party information, that is marked confidential, restricted, proprietary, or with a similar designation. The terms of this Agreement shall also be deemed Confidential Information. This however shall not prevent Hexagon from disclosing that Customer or its Affiliate is a customer of Cloud Services. Cloud Services, including but not limited to the Smart APIs, Software Products and Third Party Software Products (to the extent accessed by Customer under this Agreement) and Documentation shall be deemed Confidential Information of Hexagon. Confidential Information, when properly identified as such pursuant to this Section, also shall include (i) specifications, designs, documents, correspondence, software, documentation, data and other materials and work products produced by either Party or relevant third parties; (ii) with respect to either Party or relevant third parties, all information concerning the operations, financial affairs and businesses, and relations with its employees and service providers; and (iii) for Customer, for itself and its Affiliates, information related to the design, construction and operation of facilities, structures and equipment and the procurement of equipment and materials.

b. If Confidential Information is disclosed orally by one Party to the other, the disclosing Party may state at the time of disclosure that the information is Confidential but unless and until such confidentiality is confirmed in writing by the disclosing Party to the receiving Party there shall be no obligation of confidentiality on the receiving Party. If Confidential Information is disclosed orally by one Party to the other, but the disclosing Party at the time of disclosure fails to identify the oral disclosure as confidential, then there shall be no liability of the receiving Party if such information is disclosed during the thirty (30) day period between the disclosure and receipt of a written notification that the information is confidential; provided, however, that upon receipt of the written notification, if such notification is received no more than thirty (30) days following the oral disclosure, the receiving Party shall then treat the information as Confidential.

c. Each Party's Confidential Information shall remain the property of that Party or the relevant third party. Hexagon and Customer, for themselves and on behalf of their Affiliates, or Hexagon Group Companies (as the case may be), shall not use the Confidential Information of the other Party for any purpose, except as permitted under this Agreement. Customer and Hexagon shall each use at least the same degree of care, but in any event no less than a reasonable degree of care, to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own information of a similar nature. The obligation of confidentiality shall exist during the term of this Agreement and for a period of five (5) years after the termination of this Agreement.

d. On expiration or termination of this Agreement, each Party and its Affiliates, shall return, delete, or destroy, as the other Party may reasonably direct, all material in any medium that contains, refers to, or relates to the other Party’s Confidential Information, and retain no copies unless otherwise permitted in accordance with applicable law or as may reasonably be required for archival or record keeping purposes. Hexagon and Customer and its Affiliates shall take reasonable steps to ensure that their Affiliates and employees comply with these confidentiality provisions.

e. This Section shall not apply to any particular information which Hexagon or Customer, can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving Party; (iii) was in the possession of the receiving Party and not subject to confidentiality obligations or use restrictions at the time of disclosure to it; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further use or disclosure; or (v) was independently developed by the receiving Party without use of or reference to Confidential Information of the disclosing Party. In addition, a Party shall not be considered to have breached its obligations by disclosing Confidential Information of the other Party as required to satisfy any legal requirement of a competent government body provided that, immediately upon receiving any such request and to the extent that it may legally do so, such Party advises the other Party promptly and prior to making such disclosure in order that the other Party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.

f. Should Hexagon receive a request from a competent government body to disclose Customer Data, promptly upon receiving any such request and to the extent that it may legally do so, Hexagon shall advise Customer prior to making such disclosure in order that Customer may interpose a legal objection to such disclosure, take action to assure confidential handling of the Customer Data, or take such other action as it deems appropriate to protect the Customer Data.

g. In the event of any disclosure or loss of, or inability to account for, any Confidential Information of the disclosing Party, the receiving Party shall promptly, at its own expense (i) notify the disclosing Party in writing; (ii) take such actions as may be necessary or reasonably requested by the disclosing Party to minimize the violation; and (iii) cooperate in all reasonable respects with the disclosing Party to minimize the violation and any damage resulting therefrom.

15. OPEN SOURCE SOFTWARE

a. To the extent Cloud Services contains open source software, it is licensed pursuant to the terms of the applicable open source license agreement. Nothing contained in this Agreement shall restrict any rights provided specifically for any open source software by the open source licensor; however, any rights that are broader than those granted in this Agreement shall be applicable solely to the open source software component. Additional open source license information may be found in the About Box or Readme Files of the applicable software product.

b. Any open source software is provided “AS IS”, without warranty or liability of any kind, express or implied, including but not limited to the warranties of merchantability, fitness for a particular purpose and noninfringement. In no event shall the authors or copyright holders of the open source software be liable for any claim, damages, or other liability, whether in an action of contract, tort or otherwise, arising from, out of or in connection with the open source software or the use or other dealings in the open source software.

c. Notwithstanding the limitation of damages stated in Section 17, in no event will any copyright holder or any other party who modifies and/or conveys the open source software as permitted under its license, be liable to Customer or its Affiliates for damages, including any general, special, incidental or consequential damages arising out of the use or inability to use the open source software (including but not limited to loss of data, data being rendered inaccurate, losses sustained by Customer, its Affiliates or third parties, or a failure of the open source software to operate with any other programs), even if such holder or other party has been advised of the possibility of such damages.

d. If the above disclaimer of warranty and limitation of liability provided above for the open source software cannot be given local legal effect according to its terms, reviewing courts shall apply local law that most closely approximates an absolute waiver of all civil liability in connection with the open source software, unless a warranty or assumption of liability accompanies a copy of the open source software in return for a fee.

16. PATENT, TRADEMARK, COPYRIGHT INFRINGEMENT

a. “Cloud Services” in this Section is limited to only the components of Cloud Services manufactured and owned by Intergraph Corporation or a Hexagon Group Company and which are used as part of Cloud Services under the Agreement. Hexagon’s non-infringement assurances hereunder do not include where the claim for infringement is due solely to a Third Party Software Product.

b. In the event of any proceeding (suit, claim, or action) against Customer or its Affiliate, (in this Section “Authorized Person”) arising from allegations that the Cloud Services or Software Products subscribed to under this Agreement, furnished by Hexagon (in this Section hereinafter “Product”) infringes a U.S. or an EU patent, copyright, or trademark of any third party, Hexagon will, if such infringement does not result solely from modifications, enhancements or additions to the Product made by an Authorized Person or any person or entity acting under the direction or control of an Authorized Person, or an Authorized Person’s use of any Product in combination with other products not furnished by Hexagon, and provided the Authorized Person promptly notifies Hexagon in writing of said proceeding, Hexagon shall defend the Authorized Person’s right, or interest in the Product, and said infringement claim at Hexagon’s expense, and Hexagon shall pay any judgment or settlement against the Authorized Person resulting from said proceeding. Hexagon shall make such defense by counsel of its own choosing and the Authorized Person shall reasonably cooperate with said counsel. Hexagon, in such circumstances, shall have sole control of the defense and settlement of any such claim, but shall consult with the Authorized Person on the status of and strategy for the defense.

c. If any such infringement is found by a court of competent jurisdiction to be caused by modifications, enhancements or additions to the Product made by an Authorized Person or any person or entity authorized to use the Product, acting under the direction or control of an Authorized Person or an Authorized Person’s use of the Product in combination with other products not furnished by Hexagon, Customer shall reimburse Hexagon any reasonable defense expenses inclusive of reasonable legal fees which may have been expended by Hexagon in defense of said claim, as well as to pay any final judgment rendered against Hexagon as a result of said proceedings.

d. In the event any Product furnished hereunder is, in Hexagon’s opinion, likely to or does become the subject of a claim of infringement of any duly issued U.S. or EU patent, copyright or trademark of a third party, and if Authorized Person’s use of any Product is enjoined, Hexagon may at its option and expense, either procure for the Authorized Person the right to continue using the Product, or modify the Product to make it non-infringing but functionally the same, or replace the Product with a non-infringing equivalent.

e. The above provisions are in lieu of all other provisions related to patent, trademark, and copyright infringement, express or implied. They, along with the remedies stated above and which are subject to the limitations set forth in Section 17 below, represent the full and total obligation and/or liability of Hexagon and Customer, and its Affiliates, in relation to the infringement of Intellectual Property Rights.

17. LIMITATION OF LIABILITY

a. Notwithstanding anything to the contrary, neither Party shall have any liability to the other or its Affiliates, or a Hexagon Group Company for any indirect, incidental, consequential, punitive or special damages, including, but not limited to, loss of profit, loss of use or production, loss of data or cost of capital, loss of good will or reputation, losses resulting from missing, contaminated or misdirected emails or corruption of data arising out of or in connection with either Parties’ performance or non-performance hereunder, or the use or inability to use Cloud Services or anything provided under this Agreement, even if the Parties have knowledge of the possibility of such losses.

b. Subject to and without limiting to Section 17.1, except for an unauthorized disclosure of Confidential Information, Hexagon’s and any Hexagon Group Company’s total liability under this Agreement in the aggregate to Customer shall not exceed the amount of payment that Hexagon has been paid under this Agreement from the Customer in respect of Cloud Services Fees in the twelve (12) Months prior to the time the claim is made.

c. Subject to and without limiting to Section 17.1, with respect to an unauthorized disclosure of Confidential Information by Hexagon (which liability is subject to Section 17.3), Hexagon’s and any Hexagon Group Company’s total liability shall not exceed two (2) times amount of payment that Hexagon has been paid under this Agreement from the Customer in respect of Cloud Service Fees for the twelve (12) Months prior to the time the claim is made.

d. Notwithstanding anything to the contrary in this Agreement, in no event shall Hexagon or a Hexagon Group Company be liable for any damages, including any direct damages from the use of Non-Production Customer Environment.

e. Hexagon or a Hexagon Group Company shall not be liable for any failure or delay to fulfil its obligations under this Agreement to the extent that such failure or delay is attributable to the Customer’s failure or delay to comply with its obligations under this Agreement.

f. Nothing in this Agreement shall limit or exclude a Party's liability for death or personal injury caused by negligence or for fraud or deceit or any other liability that cannot be excluded or limited by the applicable law.

g. Except where prohibited by applicable law, no claim regardless of form, arising out of or in connection with this Agreement may be brought by Customer more than one (1) year after the event giving rise to the cause of action has occurred. If under the law ruled applicable to this Agreement any part of this Section 17 is invalid, then Hexagon and the Hexagon Group Companies limit their liability to the maximum extent allowed by said law.

18. EXPORT CONTROL

a. Customer represents that it is not a sanctioned party due to Customer's or Customer direct and indirect owners' listing on any applicable country's Denied/Restricted Parties List, e.g., SDN, Entity List, EU Designated Persons List.

b. Some Software Products delivered hereunder, including any technology related to the Cloud Services (hereinafter collectively "Technology"), might be subject to the export control laws and regulations of the United States. Upon request, Hexagon will confirm which Technology is subject to the export control laws and regulations of the United States. Customer acknowledges and confirms that the Technology, any items produced using such Technology and derivatives of either (collectively "Subject Items") shall not be exported, reexported or transferred (in-country), directly or indirectly (including via remote access) to the extent prohibited by applicable export control laws.

c. Hexagon will not knowingly support and is not obligated to support any exports, reexports or transfers (in-country) of Subject Items:

   a. in connection with any corrupt business activities, including bribery or extortion;

   b. in support, directly or indirectly, of terrorist activities, financing terrorist activities or money laundering;

   c. for end-use in territories where there is a high risk of the activities described in points (i) and (ii), i.e., Cuba, Iran, North Korea, Syria, or Russian controlled parts of Ukraine including Donetsk People's Republic, Luhansk People's Republic, or Crimea or Sevastopol regions;

   d. for end use related to the design, development, production, or use of missiles, chemical, biological, or nuclear weapons, or other un-safeguarded or sensitive nuclear uses;

   e. for any end-user targeted individually by sanctions of the United Nations Security Council, United States or European Union to the extent such sanctions are applicable to Hexagon or any of the Hexagon Group Companies; or

   f. in any manner that would expose Hexagon or any of its affiliated entities in the Hexagon Group Companies to possible violations of applicable law, including US laws.

d. Customer is responsible for all Authorized Users access of the Cloud Services and for all technology created in and/or stored by Hexagon as part of the Cloud Services for Customer, including compliance with applicable US and other countries' export controls and sanctions.

e. Customer shall hold harmless and indemnify Hexagon and each Hexagon Group Company against any causes of actions, claims, costs, expenses and/or damages suffered or incurred by Hexagon or a Hexagon Group Company, which arise from a breach by Customer, an Affiliate or an Authorized User of the export restrictions set forth in this Section 18.

f. Hexagon is excused from performance and may suspend or terminate any applicable contract or agreement with the immediate effect if Hexagon determines that an export, reexport or transfer (in-country) of Subject Items would involve Hexagon supporting any of the above-described activities or determines that it has inadvertently supported such activities without being informed that the export, reexport or transfer (in-country) of Subject Items was in support of such activities.

g. Any questions regarding export or re-export of the Subject Items should be addressed to Hexagon's Asset Lifecycle Intelligence Division, Export Compliance Department, 305 Intergraph Way, Madison, Alabama 35758, USA.

19. MISCELLANEOUS

a. **APPLICATIONS.** In the event a Software Product provided hereunder includes an Application or a license to an Application is purchased hereunder, in addition to the terms of this Agreement, the terms stated in the Mobile Applications Terms of Use Policy (available and considered a Policy Documentation) shall apply to such Application.

b. AFFILIATES.

i. Only Customer may place Orders for Cloud Services licensed under this Agreement.

ii. Customer shall have the sole right to bring any claims that it and/or any Affiliate(s) and Authorized User(s) may have against Hexagon or a Hexagon Group Company under or in connection with this Agreement. If Customer brings any such claim, action or proceeding, Customer may recover from Hexagon (in accordance with the limitations in Section 17) any such costs, damages, or losses which an Affiliate and/or Authorized User would have been entitled to recover had that Affiliate or Authorized User brought such claim.

iii. Customer indemnifies Hexagon against all liabilities, losses, damages, costs, and expenses (including legal fees) payable or incurred by Hexagon as a result of any claim, action or proceeding under this Agreement which an Affiliate or Authorized User brings in breach of this Section 19.2.

c. **Legal Notices.** Any legal notice or communication given pursuant to this Agreement shall be in writing, as a document or in electronic form, and deemed received when delivered in person, electronic mail, facsimile, or sent postage prepaid via Express Mail, Federal Express or other private courier, or United States certified mail, return receipt requested. Legal notices to Customer shall be sent to the contact as stated on the Quote. Legal notices to Customer shall be sent to the notice indicated on the signature page of this Agreement. Legal notices to Hexagon shall be sent to the below. Any and all notices (including notices of termination) must include Partner as a recipient.

Attn: Hexagon Asset Lifecycle Intelligence Division Counsel
Address: 305 Intergraph Way
Madison, AL 35758
Email: ppmlegal@ingrnet.com

d. **SUBCONTRACTORS.** Customer understands that Hexagon will subcontract certain elements of the Cloud Services including but not limited to Third Party Service Providers and other Hexagon Group Companies. During the term of this Agreement, Hexagon may, at its sole discretion provided it is in compliance with applicable laws and personal data provisions in this Agreement, decide to change Subcontractors or Third Party Service Providers.

e. CONSULTING SERVICES.

i. Provision of Consulting Services is outside of this Agreement and any procured Consulting Services shall be subject to the terms in the applicable Hexagon statement of work or quotation for such Consulting Services unless a separately negotiated Consulting Services agreement has been executed by the Parties.

ii. Maintenance and support of any customized software and/or custom-configured software and/or its source code, which may be delivered by Hexagon under a Consulting Services scope of work or quote are a responsibility of the Customer and not included in the Cloud Services procured under this Agreement. If Customer requests Hexagon perform such support, the Parties may enter into a separate support agreement for the maintenance of the customized software and/or custom-configured software and/or source code.

f. **RELATIONSHIP OF THE PARTIES.** Hexagon is an independent contractor. This Agreement shall not create any relationship between Customer and its Affiliates and Hexagon as joint ventures, partners, associates, or principal and agent. Neither Party is granted any right of authority and shall not create any obligation or responsibility for or on behalf of the other Party. Neither Party shall have the authority to bind the other Party.

g. **WAIVER.** No failure on the part of either Party to exercise any right, power, or privilege under this Agreement, or under any instrument executed pursuant hereto, shall operate as a waiver.

h. **SEVERABILITY.** If any part of this Agreement is held unenforceable, the rest remains in full force and effect.

i. **ASSIGNMENT.** This Agreement shall be binding on the Parties hereto and their respective successors and assigns. Neither Party may, or shall have the power to, assign this Agreement without the prior written consent of the other, except that Hexagon may assign its rights and obligations under this Agreement without the approval of Customer to an entity which acquires all or substantially all of the assets of the Intergraph Corporation, its Asset Lifecycle Intelligence division, Hexagon, or Hexagon AB, or to any subsidiary, affiliate or successor in a merger or acquisition of Intergraph Corporation, its Asset Lifecycle Intelligence division, Hexagon or Hexagon AB.

j. **FORCE MAJEURE.** Neither Party will be liable for any failure in performance due to causes beyond that Party's reasonable control which is considered a "Force Majeure Event" in this Agreement (including, but not limited to, national or local emergencies, fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts, omissions, or outages or actions of cloud service providers, Third Party Service Providers, and Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulation or other acts of government that impact the delivery of Cloud Services), utility providers, Viruses, technical impossibility, infectious diseases, epidemics or pandemics (including the impacts of an infectious disease, epidemic or pandemic).)\ This Section will not, however, apply to Customer's payment obligations under this Agreement. The Party whose performance is prevented or delayed by a Force Majeure Event, shall within fourteen (14) days after the occurrence or detection of such event, give notice to the other Party setting forth in reasonable detail the nature of the Force Majeure Event and the anticipated duration of the delay.

k. GOVERNING LAW.

i. If Customer's address in the signature page is located in the United States of America, this Agreement shall for all purposes be construed and enforced under and in accordance with the Laws of the State of Delaware, United States of America. The Parties agree that any legal action or proceeding relating to this Agreement shall be instituted in the appropriate federal or state court in Dover, Delaware.

ii. If Customer's address in the signature page is located outside of the United States of America, this Agreement shall for all purposes be construed and enforced under and in accordance with the Laws of England. The Parties agree that any legal action or proceeding relating to this Agreement shall be instituted in the appropriate court in London, England.

iii. The Parties agree to submit to the jurisdiction of and agree that venue is proper in these courts in any such legal action or proceeding. The Parties waive the application of the United Nations

Commission on International Trade Law and United Nations Convention on Contracts for the International Sale of Goods as to the interpretation or enforcement of this Agreement.

l. **DISPUTE RESOLUTION.** For any controversy or claim that may arise out of or in relation to this Agreement or with respect to breach thereof, the Parties agree to initially seek to solve the matter amicably through discussions between the Parties' points of contact as listed herein. If the Parties fail to resolve such controversy or breach by amicable arrangement and/or compromise within thirty (30) days of the notice of dispute, such dispute should be escalated to Parties' upper management. If the Parties fail to resolve such controversy, claim, or breach by amicable arrangement and/or compromise within thirty (30) days of the dispute being brought to the attention of Parties' upper management, then the Parties may, at their sole discretion, seek resolution through non-binding mediation. If either Party is not satisfied with the result of the non-binding mediation, such Party may seek legal recourse through the courts in the jurisdiction chosen herein. No Party may commence litigation in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by negotiation and mediation, and the mediation has terminated, or the other Party refused to participate in the mediation. Any time period stated in this Section may be reduced for the sole purpose of avoiding the expiration of the Statute of Limitations for the event made the basis of the controversy.

m. **COMPLIANCE WITH LAWS.** Customer and Hexagon hereby certify that they shall comply with all applicable laws in carrying out its duties under this Agreement, including but not limited to the General Data Protection Regulation, the United States Foreign Corrupt Practices Act, ("FCPA"), the Bribery Act 2010 (pursuant to the laws of England and Wales) and any analogous legislation of other jurisdictions that are applicable or relevant in the country where this Agreement is entered into or to be performed.

n. AUDIT.

i. Hexagon may audit Customer's compliance with the terms of this Agreement and applicable Quotes. If an audit reveals that Customer has exceeded the permitted scope of use including but not limited to the license quantity procured, 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.

ii. Some Software Products may require an audit or production of a usage report for Hexagon to invoice or "true up" for such Software Products usage. Information on Software Products subject to such true up is available in the Policy Documentation.

o. **MARKETING.** 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.

p. **SURVIVAL.** All provisions survive termination of this Agreement except those requiring performance only during the term of the Agreement.

q. ENTIRE AGREEMENT.

i. Any contract between Partner and Customer that relates to the Cloud Services is between Partner and Customer and any obligations that exceed those stated herein as to the Cloud Services functionality or service offerings are an obligation of Partner alone. Hexagon's obligations to Customer is limited to those in this Agreement. If this Agreement is included as an appendix/exhibit to the Partner's agreement with Customer, this appendix/exhibit is the sole obligations and liability of Hexagon to Partner or Customer.

ii. This Agreement and the Policy Documentation, constitute the entire Agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements, whether written or oral, with respect to the subject matter contained in this Agreement. In the event of conflict between the text of the Agreement and the Policy Documentation, the text of the Agreement shall take precedence over the text of the Policy Documentation.