

# Hexagon Multivista Documentation Software

## Terms and Conditions

This agreement (the "Agreement") between you and Multivista Systems LLC ("Multivista", "we", "us" and "our") governs your use of the Hexagon Multivista Documentation Software ("Hexagon MDS"), as more fully defined below, our Website, and the services available through either (collectively the "Software Services"). It is important that you read and understand the following Agreement. By clicking "Agree," you are agreeing on behalf of yourself and the Client or other entity that you represent that the terms and conditions contained in this Agreement will apply if you access or use the Software Services.

### 1. Definitions

**"Client"** means the person or entity that entered into an agreement with us, one of our independent licensees, third-party suppliers, or licensed affiliates to purchase construction documentation services, existing facilities documentation services and other services and, through such agreement and subject to this Agreement, has the right to access, either directly or through an authorized user, the Client portion of our Website, utilize our Multivista mobile app (**"Multivista App"**), or utilize our Hexagon Capture mobile app (**"Capture App"**) to view the Client Content and use the Hexagon MDS and related Software Services.

**"Client Content"** means information, data and other content that is submitted, posted or otherwise transmitted by or on behalf of Client or through Client's account to the Software Services, including the construction and existing facilities documentation generated, created, or aggregated for Client by us or on our behalf by our affiliates, third-party suppliers, or licensees under a Project Agreement.

**"Hexagon Multivista Documentation Software"** or **"Hexagon MDS"** means the web based proprietary software or web application platform which hosts certain of the Client Content, and provides features and functionality including, but not limited to, permitting the uploading, viewing, organizing, indexing, annotating, analysis, sharing and otherwise enabling the use of certain of the hosted Client Content. The definition of the Hexagon MDS also includes improvements and upgrades thereto along with any documentation, training materials, help files, and user manuals related to the Hexagon MDS.

**"You"** and **"your"** refers to each person or entity that uses the Software Services through Client's account, with or without Client's consent, expressly including the Client personnel and other users authorized by the Client through the Client Software Services account.

**"Third-Party Services"** means materials or services that are owned or controlled by third-parties, and not by us, and are governed by the respective agreements and policies of the applicable third party.

### 2. Introduction

Client has purchased access to certain construction and existing facilities documentation services and related services from us or an independently-owned licensee of Multivista ("Project") pursuant to an agreement outlining the Project services ("Project Agreement"). The Project Agreement includes access to the Hexagon MDS made available by us to Client under this Agreement. Client's use of the Hexagon MDS and related Software Services is solely subject to and dependent upon Client's compliance with this Agreement and the Project Agreement.

This Agreement governs your access to and use of the Software Services, including access to and use of the Hexagon MDS and the hosted Client Content. In the case of Client, if this Agreement conflicts in whole or in part with a Project Agreement, Client acknowledges and agrees that this Agreement shall govern and control with respect to the provision of the Software Services and the use and access to Client Content.

If you access the Hexagon MDS via the Website, your access is further subject to the Website Terms and Conditions of Use ("Website Terms and Conditions of Use"). The Website Terms and Conditions of use are located at

<https://www.multivista.com/terms-and-conditions-of-use/>, and are incorporated into this Agreement by this reference. If there is any conflict between the Website Terms and Conditions of Use and this Agreement, this Agreement will govern.

This Agreement reflects the current terms and conditions relating to the Software Services and may be amended by Multivista upon posting the changes to your Software Services account accessible through the Multivista Website. By again clicking "Agree" you accept and agree to the changes.

You are responsible for ensuring that you have Client's authorization and permission to access the Software Services and any Client Content. You may access Client Content via the Software Services solely with Client's authorization and approval.

### **3. Access and Use**

Provided Client has purchased and paid for Project services pursuant to a Project Agreement and subject to the terms and conditions of this Agreement, Multivista hereby grants Client a non-exclusive, non-transferable access to and use of the Software Services, including the Hexagon MDS, in accordance with this Agreement, solely for Client's internal business purposes. If Client has not entered into a Project Agreement and paid for Project services or agreed to the terms of this Agreement, then Client is not granted the right to either access or use the Software Services under this Agreement. The use of the Hexagon MDS or any part of the Software Services in any manner or for any purpose other than as permitted in this Agreement is strictly prohibited and infringes on the Multivista Intellectual Property Rights, as defined below.

### **4. Limitations on Use**

You agree to use the Software Services only for the purposes of this Agreement and in compliance with applicable laws and regulations for the benefit of the Client. You may not use the Software Services for any purpose that is unlawful or prohibited by this Agreement. You may not make the Hexagon MDS or Software Services available to any third party through any website or link. You may only access the Hexagon MDS and its Software Services through our Hexagon MDS portal, whether accessed through the Website or otherwise. Except as expressly permitted in this Agreement, you agree that you will not and that you will not permit any third party, to (a) make, have made, copy, reproduce, modify, adapt, alter, translate, or create derivative works from the Hexagon MDS, Website, or any Multivista Intellectual Property Rights, (b) sublicense, distribute, sell, lease, rent, loan, or otherwise transfer the Hexagon MDS, Software Services, or any part thereof, including the Multivista Intellectual Property Rights, to any third party, (c) reverse engineer, decompile, disassemble, modify, or attempt to reconstruct, identify, or discover all or any portion or feature of the Hexagon MDS, Software Services, including the Multivista Intellectual Property Rights, (d) remove, alter or cover any copyright notices, trademarks, or other proprietary rights notices relating to the Hexagon MDS, Software Services and the Multivista Intellectual Property Rights, or (e) otherwise use the Hexagon MDS, Software Services, including the Multivista Intellectual Property Rights, except as expressly permitted hereunder.

You agree that you will not use the Software Services to: (i) upload, download, post, email, transmit, store or otherwise make available any Client Content that is unlawful, harassing, threatening, harmful, tortious, defamatory, libelous, abusive, violent, obscene, vulgar, invasive of another's privacy or publicity rights, hateful, racially or ethnically offensive or otherwise objectionable or (ii) engage in any copyright infringement or other intellectual property infringement or disclose any trade secret or confidential information in violation of any agreement.

Client Content generated, created, or aggregated by us (or on our behalf by our affiliates, third-party suppliers, or licensees under a Project Agreement) are generated and delivered solely using ordinary skill, care, and judgement related to electronic data manipulation and transcription. Neither Multivista nor any of our affiliates, third-party suppliers, or licensees is acting as a design, architecture, or contractor professional of record and do not assume any of the responsibilities of the professional of record. As a result, you must ensure that any Client Content, whether generated, created, or aggregated by or on behalf of either you or Multivista is subject to review and approval by the appropriate professional of record. You are responsible for ensuring that any such Client Content is stamped and signed by the appropriate professional of record prior to any use of the same.

All Client Content and any plans, details, drawings, models, sketches, specifications, or other similar materials provided by the same are for the sole internal use and benefit of the Client.

You may not use the Software Services in any manner that could damage, disable, overburden, or impair any of Multivista or its vendor's servers or the network(s) connected to any of Multivista or its vendor's servers, or interfere with any other party's use and enjoyment of the Hexagon MDS, Software Services or other products and services

offered through the Website. You may not attempt to gain unauthorized access to any portion or feature of the Software Services through hacking, password mining or any other means. You may not obtain or attempt to obtain through any means any materials or information not intentionally made available to you through the Software Services or any portion or feature of the Software Services

If your use of the Software Services or other actions intentionally or unintentionally threatens our ability (or that of our vendor's) to provide the Software Services or other systems, or if you otherwise violate the above use restrictions, Multivista shall be entitled to take all reasonable steps to protect the Software Services and our systems, which may include suspension of your access to the Software Services or termination of your right to access the Software Services.

## **5. Proprietary Rights and Trade Secrets; Feedback**

You acknowledge and agree that Multivista and/or its licensors own all legal right, title and interest in and to all: (i) registered and unregistered trademarks, business names, logos, trading styles and trade dress, including without limitation those appearing in the Hexagon MDS, the Website, or Software Services, (ii) patents, patent applications, and patentable ideas, inventions and improvements, (iii) registered and unregistered copyrights including, without limitation, the Hexagon MDS, Hexagon MDS documentation, Multivista App, Capture App user interface, scripts, indexing systems, viewing systems, navigation systems, forms, images, graphics, audiovisual displays, text and data; (iv) trade secrets, proprietary information and know-how, and (v) all other intellectual property, proprietary rights, confidential information or other rights which are used, developed, comprising, embodied in, or practiced in connection with any of the Software Services, including the Hexagon MDS, Multivista App and Capture App, ("Multivista Intellectual Property Rights") and you agree to make no claim of interest in or ownership of any such Multivista Intellectual Property Rights.

In addition, we will own any and all right, title, and interest in, and to any feedback, suggestions, ideas, information, or materials you convey to us related to the Software Services in connection with your use of the Software Services ("Feedback"). You hereby assign to Multivista all right, title, and interest in such Feedback without compensation such that we may use such Feedback in our discretion without attribution.

## **6. Technical Requirements For Use of the Software Services**

Use of the Software Services requires compatible devices, third-party software and Internet access and the Software Services may be affected by the performance of these devices, software and type of Internet access. We may change the requirements for access to and use of the Software Services from time to time upon advance notice to you. You agree that meeting these requirements, and implementing any changes to the same, is your responsibility.

## **7. Changing the Software Services**

We reserve the right, in our sole discretion, to modify the Hexagon MDS and any other component of the Software Services, or any part thereof, either temporarily or permanently. We will post on the Hexagon MDS, send an email, or otherwise notify you of any material changes to the Software Services. You agree that Multivista and its affiliates and licensees shall not be liable to you or any third-party for any modification of the Software Services, whether or not Client receives notice of the same. Changes to the Software Services may result in new features or functions that are only available via additional fees upon advance written notice to you. If you or Client do not pay such fees, you will not be entitled to receive the enhancements, additions and changes.

## **8. Fees; Project Agreement**

Client's payment for the Software Services is addressed in the Client Project Agreement. Except as provided in this Agreement, fees paid for the Software Services are nonrefundable.

## **9. Third-Party Services; Contracted Features**

The Software Services may contain links to, integrate with, or provide the ability for you to access and export Client Content to Third-Party Services that you separately license from such third parties. You are solely responsible for ensuring you have the permission from the Client to access and export any Client Content. Third-Party Services are not under our control. Your use of or reliance on any Third-Party Services are at your own risk. We, our affiliates and licensees are not responsible for and do not make any warranties regarding such Third-Party Services. We may cease

making any links to or integrations with Third-Party Services available at any time with or without advance notice to you.

In addition, certain features and functions of the Hexagon MDS and the Software Services may rely on features and tools that we license from third parties, the functionality of which is dependent on such third party ("Contracted Features"). The use of Contracted Features may require us to share certain Client Content, specifications, drawings, and related data and content with such third parties in order to provide you your selected features. Multivista, our affiliates and licensees are not responsible for the acts or omissions of such third parties and do not make any warranties regarding such Contracted Features. You agree in advance to any such delegation by Multivista of any portion or all of its obligations and duties hereunder. We may cease making any Contracted Features available at any time with or without advance notice to you.

#### **10. Use and Protection of the Username and Password; No Public Access to the Software Services and the Hexagon Multivista Documentation Software**

You must limit all access to and use of the Hexagon MDS and Software Services to those persons that you authorize through your account. Each of your users must have a unique username and password, which username must be tied to the Client corporate email account or other authorized user email. No username may consist of a public or shared email domain (i.e., an email domain that is generally available for any member of the public to join or access) as this may create security issues for the Hexagon MDS. The unique username and password may not be shared with other persons or entities, whether or not such other person or entity has been authorized by Client or its designees to access and use the Software Services. You must provide us with accurate and complete information for each user and this information must be timely updated if a change occurs. You are responsible for maintaining the confidentiality of your account username and password. The Client is responsible for all project access, level of permissions granted, and all use of the Hexagon MDS or Software Services through the Client's account, whether or not actually or expressly authorized by the Client.

If there is a breach or threatened breach of the confidentiality of a username or password or any other breach or threatened breach of security or confidentiality relating to the Hexagon MDS or Software Services, then you must notify Multivista immediately at the notice address referenced below. Upon such breach or threatened breach of the confidentiality of a username or password or other breach or threatened breach of security or confidentiality, we shall be entitled to take all reasonable steps to protect the Software Services, which may include suspension of your access (or that of any user) to the Hexagon MDS or Software Services or termination of your right to access the Hexagon MDS and Software Services. You must comply with the access and other security requirements designated by us from time to time.

MAKING ACCESS CREDENTIALS PUBLICLY AVAILABLE IS EXPRESSLY PROHIBITED. CLIENT MUST MAKE EACH USER AWARE OF CLIENT'S AND EACH USER'S CONFIDENTIALITY AND RESTRICTED ACCESS OBLIGATIONS AND POTENTIAL LIABILITY FOR THE SAME. WE, OUR AFFILIATES AND LICENSEES CANNOT AND WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE ARISING FROM THE FAILURE TO COMPLY WITH THESE USERNAME, PASSWORD, ACCESS AND OTHER SECURITY AND CONFIDENTIALITY OBLIGATIONS OR OTHERWISE ARISING FROM OUR SUSPENSION OR TERMINATION OF THE HEXAGON MDS OR SOFTWARE SERVICES AS A RESULT OF ANY VIOLATION OF THIS AGREEMENT.

#### **11. Confidentiality**

"Confidential Information" means all non-public information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party") that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Client includes the Client Content. Confidential Information of Multivista includes proprietary information of and relating to the Hexagon MDS or Software Services. Confidential Information does not include information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third-party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without use of or reference to any Confidential Information provided by the Disclosing Party. The Receiving Party will use the same degree of care it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (a) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (b) except as otherwise authorized by the Disclosing Party in writing or pursuant to this Agreement, limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees, contractors, licensees or agents who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not

materially less protective of the Confidential Information than those herein. The restrictions on disclosure imposed by this section do not apply to information that is required by law or order of a court, administrative agency or other governmental body to be disclosed by the Receiving Party, provided that in each such case the Receiving Party provides the Disclosing Party with prompt written notice of such order or requirement and reasonably assists the Disclosing Party at the Disclosing Party's request and expense, in seeking a protective order or other appropriate relief.

## **12. Use of Client Content**

Ownership. Ownership of any Client Content created pursuant to a Project Agreement is as set forth in the Project Agreement. Notwithstanding the foregoing, the Software Services (expressly including the Hexagon MDS) and related know-how used to create any Client Content, including all Multivista Intellectual Property Rights associated therewith, at all times remain the sole property of Multivista.

Liability. You acknowledge and agree that you, not us, our affiliates or licensees, are responsible for any Client Content you upload, download, post, email, transmit, store or otherwise make available directly or indirectly through your use of the Software Services. We, our affiliates and licensees do not control the Client Content posted by you and other third parties via the Software Services. We do not guarantee the accuracy, integrity or quality of any Client Content, including any Client Content generated, created, or aggregated by us or on our behalf. In the event you provide any third-party files or models for use to generate, create, or aggregate Client Content, Multivista is not responsible for any errors or omissions included in the same or for any errors in Client Content resulting from the same. Multivista shall not be required to execute any document that would result in certifying, guaranteeing, or warranting the existence of any conditions for any Project or Client Content. You agree that any Client Content that you submit or post, directly or indirectly, shall be your sole responsibility, shall not infringe or violate the rights of any third party or violate any laws, or otherwise be obscene or objectionable and must otherwise comply with the use restrictions set forth in this Agreement. We, our affiliates and licensees have no duty to pre-screen or otherwise review any Client Content (unless such review services are expressly included within the services purchased by Client under the Project Agreement). However, we reserve the right to determine whether Client Content is appropriate and in compliance with this Agreement, and may remove Client Content at any time, in our sole discretion, if any Client Content is found in violation of this Agreement or is otherwise objectionable. Client is solely responsible for all Client Content submitted or posted by or on behalf of Client.

Personnel Consents. In addition, you are solely responsible for obtaining any and all consents from any personnel or individuals present at any site during the creation of Client Content. We, our affiliates and licensees disclaim any responsibility or liability for conditions, persons or events captured incidentally, inadvertently or in the periphery of the subject or events that any webcam, video camera, UAV, laser scan or other data capture method or technology provided under a Project Agreement is intended to capture. Client is solely responsible for any claims that arise out of such incidental, inadvertent or peripheral footage captured.

Our Content Use. You grant us and our vendor's on our behalf a world-wide, royalty free, non-exclusive license to use, distribute, reproduce, modify, adapt, publish, translate, perform and display Client Content that you own or provide in connection with performance of the Software Services and the related services under the Project Agreement, as permitted under this Agreement and the Project Agreement, and for such other purposes for which the Client Content was provided. We reserve the right to use limited samples of the Client Content, media and system service prepared for Client (not to exceed 1% of total media and Client Content unless otherwise agreed by Client) for our marketing and promotional purposes. We may also utilize Client statements, cost savings and ROI examples derived from Client's use of the construction and existing facilities documentation services and the Software Services. We may, without Client's consent, include Client's name and other indicia in our list of current or former clients in promotional and marketing materials.

Aggregate Content. You also grant us and our vendor's on our behalf a world-wide, royalty free, non-exclusive license to manually review, process and use your Client Content to facilitate machine learning and development of related features within the Software Services and (1) to create aggregated Client-identifiable data files for Client's use, which may be made available via the Software Services to Client and which Client-identifiable data remains Client Content and (2) to create aggregated and anonymized data files ("MDS Aggregate Content"). All MDS Aggregate Content may be used and disclosed in our discretion, including without limitation (a) to analyze, improve, support, and operate the Software Services, during and after the term of this Agreement, (b) for the marketing of our services and (c) the creation of existing or new products and services that may be made available to third parties. As between us and you, all right, title, and interest in MDS Aggregate Content, and all intellectual property rights therein, belong to and are retained solely by us and are expressly part of the Multivista Intellectual Property Rights.

### **13. Personal Information; Privacy and Cookie Policy; Usage Statistics and Aggregated Statistics**

We may collect and use certain personal information and technical data collected through your use of the Software Services and the Website as set forth in our [Privacy Policy](#) and [Cookie Policy](#) which are incorporated by reference into this Agreement. You hereby acknowledge the collection, use and disclosure as set forth herein and in the Privacy and Cookie Policies of information we and our service providers collect from you, including the transfer of this information within and between the United States, Canada and other countries for storage, processing, and use by Multivista, its affiliates, licensees, service providers and third-parties.

Notwithstanding anything to the contrary in this Agreement, Multivista may also monitor use of the Software Services and collect and compile data and information related to Client's use of the Software Services ("Usage Statistics"). Usage Statistics are not Client Content. To the extent such Usage Statistics are identifiable to you, such Usage Statistics are your Confidential Information. However, we may use and process such Usage Statistics in an aggregated manner to compile statistical and performance information related to the provision and operation of the Software Services ("Aggregated Statistics"). As between Multivista and Client, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Multivista as part of the Multivista Intellectual Property Rights and may be used and disclosed by us in our discretion provided you are not identified.

### **14. Access and Delays in Software Services**

You acknowledge that we have made reasonable efforts to provide you with access to the Software Services. Further, we, our affiliates and licensees shall not be liable to you for any loss or liability resulting, directly or indirectly, from delays, inaccuracies, errors, omissions or interruptions of the Hexagon MDS or Software Services for any reason, including, without limitation, electronic or mechanical equipment failures, connection problems, defects, failure of the World Wide Web, weather, strikes, walkouts, fire, acts of God, acts of war, pandemics or to other like causes. We reserve the right to interrupt the Hexagon MDS or Software Services, or any portion thereof, as necessary to perform routine or non-routine maintenance, error correction, modifications or other changes to the Software Services, or any portion thereof.

### **15. Disclaimer of Warranties**

WE AND OUR AFFILIATES AND LICENSEES DO NOT GUARANTEE, REPRESENT OR WARRANT THAT THE Hexagon MDS, THE SOFTWARE SERVICES, ANY FEATURE OF THE SOFTWARE SERVICES, CLIENT CONTENT MADE AVAILABLE VIA THE SOFTWARE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE OF THE SOFTWARE SERVICES WILL MEET CLIENT'S, YOUR, OR ANY OTHER PERSON'S REQUIREMENTS OR EXPECTATIONS, OR YIELD ANY PARTICULAR RESULTS. WE AND OUR AFFILIATES AND LICENSEES DO NOT GUARANTEE, REPRESENT OR WARRANT THAT THE HEXAGON MDS OR THE SOFTWARE SERVICES OR ANY CLIENT CONTENT, ANALYSIS (I.E. INSIGHTS™ ARTIFICIAL INTELLIGENCE) OR CALCULATIONS FROM THE SAME WILL BE AVAILABLE, ACCURATE, ERROR FREE OR UNINTERRUPTED. WE, OUR AFFILIATES AND LICENSEES HAVE NO RESPONSIBILITY OR LIABILITY FOR ANY BUSINESS DECISIONS YOU MAKE BASED ON THE SOFTWARE SERVICES OR CLIENT CONTENT AVAILABLE THROUGH THE SOFTWARE SERVICES OR ANY ANALYSIS OR CALCULATIONS FROM THE SAME. YOU ACKNOWLEDGE AND AGREE THAT THE SOFTWARE SERVICES AND EACH FEATURE AND COMPONENT OF THE SAME ARE PROVIDED ON AN "AS IS" AND "WHEN AVAILABLE" BASIS. EXCEPT WHERE PROHIBITED BY APPLICABLE LAW, WE AND OUR AFFILIATES AND LICENSEES EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, ORAL, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING BY VIRTUE OF CUSTOM OF TRADE, USAGE, OR COURSE OF DEALING. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CLIENT'S USE OF THE HEXAGON MDS AND ANY OTHER SOFTWARE SERVICES COMPONENT IS IN CLIENT'S DISCRETION AND AT ITS SOLE RISK.

### **16. Limitation of Liability**

EXCEPT WHERE PROHIBITED BY LAW, IN NO EVENT WILL MULTIVISTA, ITS AFFILIATES, EMPLOYEES OR ANY OTHER THIRD PARTY INVOLVED IN CREATING, PRODUCING OR DELIVERING THE SOFTWARE SERVICES OR CLIENT CONTENT BE LIABLE FOR ANY (1) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR (2) LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, OR COSTS OF LOST OR DAMAGED DATA OR CLIENT CONTENT, INCLUDING ATTORNEYS' FEES, FROM ANY CAUSES OF ACTION WHATSOEVER, INCLUDING TORT (INCLUDING NEGLIGENCE), CONTRACT, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE

THEORY, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SOFTWARE SERVICES, OR THE CLIENT CONTENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR COSTS. YOU FURTHER AGREE THE AGGREGATE LIABILITY OF MULTIVISTA, ITS AFFILIATES AND EMPLOYEES AND ANY OTHER THIRD PARTY INVOLVED IN CREATING, PRODUCING OR DELIVERING THE SOFTWARE SERVICES AND ANY CLIENT CONTENT FOR ANY CLAIMS, LOSSES, COSTS, DAMAGES AND CLAIMS EXPENSES (INCLUDING ATTORNEYS' FEES) OF ANY NATURE WHATSOEVER ARISING FROM OR RELATING TO THIS AGREEMENT, THE SOFTWARE SERVICES AND CLIENT CONTENT MAY NOT EXCEED \$2,000. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## **17. Indemnification**

Indemnification By Multivista. Multivista agrees to defend, indemnify, and hold harmless Client, and its members, managers, shareholders, directors, employees agents representatives, predecessors, successors, in interest and affiliates from and against all loss, claims, demands and causes of action of whatever kind or character, including without limitation costs and attorneys' fees, made by a third party arising from, in connection with, or relating to any claim that the Software Services, but excepting the Client Content, infringe or misappropriate such third parties' intellectual property rights in the United States or Canada. If any claim for which indemnity is or may be sought hereunder is made or appears reasonably possible for intellectual property infringement, Client agrees to permit Multivista, at Multivista's sole discretion, to enable Client to continue to use the Hexagon MDS and the Software Services, or to modify or replace any such infringing material to make it non-infringing, provided that if Multivista determines that none of the foregoing alternatives is reasonably available, Client shall cease use of that portion of the Hexagon MDS and the Software Services which is alleged to be or is infringing.

Indemnification by You. You agree to defend, indemnify, and hold harmless Multivista, and its members, managers, shareholders, directors, employees, agents, representatives, predecessors, successors in interest, affiliates, subsidiaries, licensees and licensors from and against all loss, claims, demands and causes of action of whatever kind or character, including without limitation costs and attorneys' fees, made by a third party arising from, in connection with, or relating to: (i) any Client Content or use of the same, excluding claims from the gross negligence or willful misconduct of Multivista with respect to Client Content generated, created, or aggregated by or on behalf of Multivista, (ii) any violation or breach by you of this Agreement, (iii) any conditions, persons or events captured incidentally, inadvertently or in the periphery of the subject or events any webcam, video camera, laser scan or other data capture method or technology is intended to capture, (iv) your access to and use of the Software Services otherwise than as permitted hereunder, and (v) any business decision, action or failure to act on your part based on the use or results of any Software Services or Client Content.

Procedures. In the event of an indemnified claim under this Section 17, the parties shall comply with the following: (i) the indemnified party shall provide to the indemnifying party written notice of any such claim within ten days after the indemnified party's receipt of notice of such claim, (ii) the indemnified party shall grant to the indemnifying party, and the indemnifying party will have, the exclusive right to defend any such claim and make settlements thereof at the indemnifying party's own discretion, (iii) the indemnified party shall not settle or compromise such claim, except with prior written consent of the indemnifying party, and (iv) the indemnified party shall give, at the indemnifying party's expense such assistance and information as the indemnifying party may reasonably require to settle or oppose the claim. The indemnified party may, however, participate in the defense of such claim at its own expense and with its own choice of counsel.

## **18. Governing Law and Forum**

The laws of the State of Texas and of the United States, excluding any rule or principle that would refer to and apply the substantive law of another jurisdiction, shall govern this Agreement. Except as otherwise required by applicable law, you agree that any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the state or federal courts of the United States located in Dallas, Texas, and you waive any objection to such jurisdiction or venue in such courts.

## **19. Miscellaneous**

### **Waiver**

Our failure to exercise any right provided for herein shall not be deemed to be a waiver of such right. In addition, to the maximum extent permitted by applicable law, you waive any claims against Multivista arising out of the Software Services and any Client Content, except for those resulting from the sole negligence or willful misconduct of Multivista.

### **No Third-Party Beneficiaries**

Nothing in this Agreement creates any contractual relationship with any third party and Multivista or creates any cause of action in favor of any third party against Multivista. The Software Services and Client Content made available herein are solely for use by or benefit of Client, subject to any stated limitations in this Agreement or the Project Agreement.

### **Assignments**

You may not assign any of your rights, obligations, privileges or performance hereunder without the prior written consent of Multivista. Any assignment other than as provided for in this Section shall be null and void.

### **Attorneys' Fees**

Should there be any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements and reasonable attorneys' fees from the other party. The substantially prevailing party shall include, but not be limited to, the party who is awarded a net recovery against the other, unless such other party has previously made a bona fide offer of payment in settlement and the amount of recovery is the same or less than the amount offered in settlement.

### **Severability**

If any provision of this Agreement is found to be unlawful or unenforceable in any respect, the court shall reform such provision to allow it to become enforceable. If the provision cannot be reformed so as to become enforceable, such a provision should be deleted from the Agreement. After such changes are made, the court shall fully enforce this Agreement.

### **Relationship of the Parties**

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

### **U.S. Government Restricted Rights**

The Software Services are commercial in nature. Any use, duplication or disclosure by the U.S. Government is subject to restrictions as stated in applicable laws and regulations. As consistent with applicable laws and regulations, the commercial software is licensed to the U.S. government end users only as commercial items and with only those rights as are granted to all end users pursuant to the terms and conditions of this Agreement.

### **Export Compliance**

The Software Services and other technology we make available and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. You represent that you are not named on any U.S. government denied-party list. You shall not permit users to access or use any Software Services in a U.S. embargoed country including, without limitation, Cuba, Iran, North Korea, Sudan or Syria, or in violation of any U.S. or other jurisdictions export law or regulation.

### **Anti-Corruption**

You agree that you have not received or been offered any illegal or improper bribe, kickback, payment, gift or thing of value from us or our affiliates or licensees in connection with this Agreement. If you learn of any violation of the above restriction, you will use reasonable efforts to promptly notify us at the notice address referenced below.

### **Termination**

This Agreement may be terminated by either party upon fourteen (14) days written notice. Upon termination of this Agreement by or with respect to Client, the Client will pay the portion of the compensation (and fixed fee if applicable) earned by us, our affiliates or licensees under the Project Agreement(s) through the effective date of termination. If full payment is made under the Project Agreement(s) and the Client is not in default under the material terms and conditions of this Agreement, archive copies of the construction and existing facilities documentation services will be provided to the Client in accordance with the terms of the applicable Project Agreement(s). If any Project Agreement is terminated, we may immediately terminate the Software Services relating to such Project Agreement. Termination or cancellation of your access to or use of the Software Services shall not affect any right or relief to which we may be entitled, at law or in equity. Upon termination of this Agreement, all rights granted to you will terminate and revert to us.

### **Survival**

Provisions of this Agreement which by their nature are intended to survive termination of this Agreement will survive any termination of this Agreement including, but not limited to, Sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19.

### **Entire Agreement**

This Agreement is complete and effective at the time you begin use of the Software Services. REGARDING USE OF THE SOFTWARE SERVICES, THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. In the event that any inconsistencies exist between this Agreement and any future published terms or understanding, the last published Agreement or terms and conditions of use shall control. ANY RIGHTS NOT EXPRESSLY GRANTED HEREIN ARE RESERVED BY US.

### **Notice**

Official correspondence must be sent via an internationally recognized overnight courier, signature required, to: Multivista Systems LLC, 4299 Canada Way, Suite 101, Burnaby, British Columbia, Canada V5G 1H3 or 129 S. Main Street, Suite 200, Grapevine, TX 76051. The notice will be effective upon our receipt.

*Last updated: March 14, 2024*