Hexagon Manufacturing Intelligence Canada Limited
Software License Agreement

1 **IMPORTANT—READ CAREFULLY:** By selecting “I accept” or other button designed to acknowledge this Software License Agreement (“Agreement”), or by installing, accessing, or otherwise copying or using all or any portion of the Software: (i) you are consenting to be bound by all the terms and conditions of this Agreement, and a contract is formed between Hexagon Manufacturing Intelligence Canada Limited, a corporation incorporated under the laws of the Province of Ontario, Canada, having its principal offices at 555 Michigan Drive, Unit 200, Oakville, ON L6L 0G4, Canada (“Hexagon”), and either you personally, if you are acquiring the Software for yourself, or the company or other legal entity for which you are acquiring the Software; and (ii) you represent and warrant that you have the right, power and authority to act on behalf of and bind such legal entity (if any) or yourself.

If you do not agree or do not wish to bind yourself or the entity you represent, do not select the “I accept” button or otherwise click on any button designed to acknowledge this Agreement, and do not install, access, or otherwise copy or use the Software.

2 **DEFINITIONS.**

2.1 “Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control” for purposes of this definition means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

2.2 “Authorized Users” means Customer’s: (i) employees, and (ii) contractors working on Customer’s premises who are not competitors of Hexagon and have agreed in writing to use restrictions and confidentiality obligations no less restrictive than those set forth in this Agreement. Customer shall at all times be responsible for its Authorized Users’ compliance with this Agreement.

2.3 “Customer” means either you personally, if you are acquiring the Software for yourself, or the company or other legal entity for which you are acquiring the Software.

2.4 “Customer Computer” or “Designated Computer” means the Customer computing device for which Hexagon or a Hexagon Affiliate provides License Files to enable access to and use of the Software. The Customer Computer may also be referred to in some cases as a “License Server”.

2.5 “Documentation” means the user manuals and other user documentation, in any form and on any media, provided or otherwise made available together with the Software by Hexagon for use with the Software.

2.6 “Installation Site” or “Designated Site” means the Customer facility where the Customer Computer is to reside.

2.7 “Lease License” or “Subscription” is a short-term, for-fee term-based license (such as a twelve-month term license). Unless otherwise specified by Hexagon, Lease Licenses typically include Maintenance. Evaluation Licenses, Non-Production Licenses, or other no-charge short-term licenses are not Lease Licenses, and do not include Maintenance. Lease Licenses are subject to early termination as set forth in this Agreement.

2.8 “License Files” means license files, license keys, activation or authorization codes, passwords, or the like required to install, access, enable, and/or use the Software, Documentation or related materials.

2.9 “License Types” means the types of licenses or use specified by Hexagon or Hexagon Affiliates, including those set forth in Section 4 to this Agreement.

2.10 “Maintenance” means software maintenance and technical support as described in Section 6.1 and 6.2 of this Agreement.

2.11 “Paid-up License” means a license with a perpetual license term, subject to early termination as set forth in this Agreement.

2.12 “Reseller” means a reseller or distributor authorized by Hexagon to market, distribute and/or support the Software.

2.13 “Software” means the computer programs delivered prepackaged with, or otherwise accompanying, this Agreement. Software shall also include any updates, service packs and new releases to such Software made available by or on behalf of Hexagon to Customer in connection with Maintenance.

2.14 “VPN” means a secure virtual private network connection employing current industry standard protections and encryption.

2.15 Additional terms with specific meanings are defined near where they first appear in this Agreement.

3 **GRANT OF LICENSE.**
3.1 Subject to and conditioned upon Customer’s compliance with the terms and conditions of this Agreement and payment of the applicable fees and charges, Hexagon grants to Customer, and Customer accepts from Hexagon, a non-exclusive, non-sublicensable, non-transferable, limited license to install, access, and use (in executable code version only), during the applicable license term, the portions of the Software (and associated Documentation) for which Customer has acquired a valid license, solely for Customer’s own internal use by its Authorized Users in accordance with the terms and conditions of this Agreement.

3.2 Each license shall be in accordance with the limitations of the applicable License Type and in the quantity Customer has validly acquired from Hexagon or a Hexagon Affiliate, or from a Reseller who has been authorized by Hexagon or a Hexagon Affiliate to supply the Software. In no event may Customer’s installation, access or use exceed the number of licenses validly acquired, nor may Customer access or use the Software (or the related Documentation or materials) following termination or expiration of the applicable license term. The license term for any license granted shall be subject to early termination as set forth in this Agreement. Usage of any portion of the Software outside the scope of the license grant, or otherwise not in accordance with this Agreement constitutes an infringement of Hexagon’s (or its supplier’s, as applicable) intellectual property rights as well as a material breach of this Agreement.

3.3 Customer acknowledges that the Software may consist of multiple separately licensable modules, components or options. In addition to any other limitations or restrictions set forth in this Agreement, any license or other rights granted to Customer under this Agreement does not extend to any Software modules, components or options (or related Documentation or materials) for which (a) Customer has not lawfully acquired a valid license, or (b) Customer has not paid (and continued to pay) the applicable fees and charges. Customer acknowledges that any such Software modules, components or options (and related Documentation and materials) are included on media or via download for convenience of the licensing mechanism used by Hexagon, and inclusion does not in any way authorize, expressly or impliedly, a right to use such modules, components or options (or related Documentation or materials).

4 LICENSE TYPES.

4.1 Nodelock License: If Customer acquires a Nodelock License, installation and use of the Software will be limited to a single Customer Computer. The number of target host-ID’s may not exceed the number of Nodelock License(s) purchased. Software licensed under a Nodelock License may only be accessed or used by Authorized Users who are in the country where the Installation Site is located. Each Nodelock License may only be used by one Authorized User at a time. Authorized Users must be physically present and not accessing or using the Customer Computer or Software from a remote location or another computer.

4.2 Named User License: If Customer acquires a Named User License, access to and use of the Software will be limited to Authorized Users who are designated as named users. The number of named users may not exceed the quantity of Named User Licenses purchased. Each named user designated must be an individual who at all times during the designation meets the definition of an “Authorized User”. Group or shared logins are strictly prohibited. In addition to any other restrictions set forth herein, unless otherwise specified by Hexagon or a Hexagon Affiliate in writing, Software licensed under a Named User License may only be accessed or used in the country where the Installation Site is located.

4.3 Network (Floating) Licenses: If Customer acquires a Local Network License, Country Network License, or Regional Network License, access to and use of the Software will be controlled by a single Customer Computer (“License Server”) and Authorized Users may access and use the Software on Customer machines served by the License Server, provided that access to and use of the Software at any one time does not exceed the number of floating licenses acquired by Customer for the Software. In addition, Customer shall strictly comply with the following terms and restrictions:

-If Customer acquires a Local Network License (also sometimes referred to simply as a Network License), the Software may only be installed, accessed or used by Authorized Users physically located at the Installation Site on Customer machines served by the License Server and physically located at the Installation Site; except that Customer’s employees physically located within a fifty (50) mile radius of the Installation Site may access and use the Software by remote access to Customer’s network and the License Server through VPN (but solely on Customer machines served by the License Server and physically located within a fifty (50) mile radius of the Installation Site).

-If Customer acquires a Country Network License, the Software may only be installed, accessed or used by Authorized Users physically located at Customer facilities within the country where the Installation Site is located; except that Customer employees physically located within such country may access and use the Software by remote access to Customer’s network and the License Server through VPN (but solely on Customer machines served by the License Server and physically located within such country).

-If Customer acquires a Regional Network License, the Software may only be installed, accessed or used by Authorized Users physically located at Customer facilities within the Hexagon-authorized Region where the Installation Site is located;
except that Customer employees physically located within such Region may access and use the Software by remote access to Customer’s network and the License Server through VPN (but solely on Customer machines served by the License Server and physically located within such Region).

- Any Network License acquired by Customer hereunder shall be deemed a Local Network License, unless expressly stated otherwise by Hexagon or a Hexagon Affiliate in writing.

4.4 Evaluation License: If Software is licensed to Customer under an Evaluation License, Customer agrees that, notwithstanding anything to the contrary elsewhere in this Agreement: (i) Customer may use such Software for evaluation, non-production purposes only; (ii) the term (duration) of the evaluation license shall be as authorized by Hexagon or a Hexagon Affiliate in writing, but shall in no event exceed ninety (90) days; (iii) such Software is provided on an "as is" basis, with no warranties or indemnities of any kind; and (iv) Hexagon has no obligation to provide any Maintenance for such Software.

4.5 Product-Specific Terms. Certain Software products and/or licensing systems (e.g., MasterKey Plus, and MSC One) may be subject to additional product-specific terms, as set forth or referenced in the applicable Hexagon or Hexagon Affiliate order schedules, addenda and/or exhibits. Customer agrees to adhere to such additional product-specific terms.

4.6 Non-Production Software / License. If Customer is granted a license to an “alpha”, “beta”, “non-production”, or other pre-commercial version of the Software (each a “Non-Production License”), Customer agrees to the following additional restrictions and terms: (i) Customer may use such Software solely for internal nonproduction testing and evaluation purposes; (ii) notwithstanding anything to the contrary contained in this Agreement or elsewhere, such Software is provided on an “as is” basis, without warranties, commitments, or obligations of any kind on the part of Hexagon or its Affiliates (or their suppliers), and neither Hexagon, its Affiliates, or their suppliers, shall have any liability for claims, damages or indemnities arising out of or related to such Software; and (iii) in addition to any other termination rights, Hexagon may terminate licenses to such Software at any time in its sole discretion. A license to such Software is a short-term license with a duration as determined and specified by Hexagon or its Affiliate. If no such term is specified for a validly granted license, the term is thirty (30) days. Such Software does not represent final product from Hexagon, and may contain bugs, errors and other problems that are unknown to Hexagon at the time of provision of the Software and that could cause operational disruptions, system or other failures and data loss. Hexagon may never commercially release such Software.

4.7 Academic License / Use. If Customer is an educational institution which acquires an “Academic License” (also known as an “Educational License”), Customer agrees to the following additional restrictions and terms with respect to Academic Licenses: (a) Customer may use the Software and Documentation solely for academic use, and not for commercial, professional, or other for-profit purposes; (b) the Software, Documentation, or related materials shall not be installed, accessed, used, or operated at or from facilities or locations that are operated for commercial, professional or for-profit purposes; (c) In deviation to Subsection 2.2 of this Agreement, for the purposes of an Academic License, “Authorized Users” means Customer’s faculty members, staff, and students enrolled in a degree- or certificate-granting program, using the Software on Customer-owned and -controlled computing devices for the following permitted academic use: (i) If the Academic License is acquired for “classroom use” or “teaching use”, using the Software solely for authorized classroom projects; and (ii) If the Academic License is acquired for “academic research”, using the Software solely for Customer’s own non-commercial, academic research, where the results of such research are published or public domain. For avoidance of doubt, private or government restricted research projects require purchase of a commercial license. Any license purchased by an educational institution is deemed an Academic License (and not a commercial license), unless stated or indicated otherwise by Hexagon or a Hexagon Affiliate in writing. Only qualified educational institutions (as determined by Hexagon or a Hexagon Affiliate in its sole discretion), are eligible to acquire Academic License offerings made available to educational institutions. Commercial organizations and other non-qualifying entities or persons are not eligible to acquire Academic Licenses.

If an educational institute Customer acquires Maintenance on an Academic License, the following additional restrictions and terms apply: Customer shall designate in writing a “Designated Contact” (“DC”). The DC shall be a knowledgeable full-time staff representative of Customer and serve as the focal point for administering and resolving all Customer requests for technical support. The DC shall use best efforts to solve customer problems or issues related to the Software prior to contacting Hexagon or its Affiliate (or Reseller, as applicable). Neither Hexagon (nor its Affiliates or Resellers) have any obligation to provide technical support to Authorized Users of the Software; Any technical support to which Customer is entitled during a Maintenance term shall be provided solely to the DC. Customer may replace its DC upon written notice to Hexagon (or its Affiliate or Reseller, as applicable).

4.8 For avoidance of doubt, all licenses and License Types (including geographical scope thereof) are subject to and further limited by Section 14 of this Agreement (“Export Compliance”).
5  RESTRICTIONS AND PROTECTIONS.

5.1 Customer acknowledges that the Software and its structure, organization and source code constitute and contain valuable confidential information and trade secrets of Hexagon (and/or Hexagon Affiliates, and/or its suppliers, as applicable). Customer shall not: (i) reverse-engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software; (ii) modify, adapt, alter, translate or create derivative works from the Software or Documentation; (iii) sublicense, rent, loan, lease, sell, or otherwise transfer all or part of the Software or Documentation to any third party except as expressly permitted under this Agreement; (iv) allow any third party to access or use the Software on a service bureau, application service provider, time-sharing, or similar basis, or allow anyone other than Authorized Users within the scope of the license, directly or indirectly (whether through human, machine, or other intermediaries) to submit jobs to or use the Software; (v) access or use the Software to provide data processing or batch processing services to others; (vi) disable, modify or circumvent the license management system or security mechanism provided with the Software, or take any other steps to avoid or defeat the license management system or security mechanisms provided with the Software; (vii) remove, alter, or obscure any proprietary notices, labels, or marks from the Software or Documentation; (viii) disclose results of any software test or benchmark without Hexagon’s prior written consent; (ix) use the Software to develop software applications for use by or distribution to any third party; (x) use the Software or its output for the purposes of developing a competitive product or service; (xi) disclose, display, or permit access to or use of the Software or Documentation by persons other than Authorized Users using the Software and Documentation within the scope of the license acquired by Customer; (xii) use the Software for operations not initiated by an Authorized User (e.g., high-volume automated server processing of wire feed content); or (xiii) otherwise use or copy the Software or Documentation except as expressly permitted under this Agreement. Customer agrees to notify Hexagon immediately of any unauthorized access to or use of the Software. Customer shall at all times be responsible for its Authorized Users’ compliance with this Agreement.

5.2 Customer may not copy or otherwise reproduce the Software in whole or in part, except: (i) as may be required for installation into the computer memory for the purpose of executing the Software for licensed use; and/or (ii) to make one copy for back-up purposes. Any such copies made by Customer shall be the property of Hexagon, and Customer must reproduce and include, in exact form, all proprietary rights notices. Customer shall maintain records of the location of each copy of the Software, and the location and identity of the computers on which the Software is installed.

5.3 The Software and Documentation, and all worldwide intellectual property rights therein, are and remain the property of Hexagon (and/or its Affiliates, and/or its suppliers, as applicable). Nothing in this Agreement will be deemed to convey to the Software and/or Documentation in excess of Customer’s license rights. Customer agrees not to assert any such rights. All rights in and to the Software and Documentation not expressly granted to Customer in this Agreement are reserved by Hexagon (and/or its Affiliates, and/or its suppliers, as applicable).

5.4 Upon fifteen (15) days written notice, Hexagon or its authorized agent or representative may audit Customer’s installation and use of the Software and Documentation. Customer shall fully cooperate with Hexagon’s audit and provide reasonable assistance and access to information, including without limitation reasonable access to Customer’s facilities and computer systems during normal business hours. In addition to any other remedies available to Hexagon, Customer agrees to pay within thirty (30) days of written notification any fees and charges applicable to Customer’s use of the Software and/or Documentation in excess of Customer’s license rights. Further, in the event that any such audit reveals use of the Software and/or Documentation in excess of Customer’s license rights such that there is an underpayment by Customer of more than ten percent (10%) of the fees due to Hexagon in the period being audited, or that Customer has breached any other term of this Agreement, then, in addition to any other rights and remedies Hexagon may have, Customer will pay to Hexagon within thirty (30) days of written notification the reasonable cost of the audit. Hexagon shall not be responsible for Customer’s costs incurred in cooperating with the audit. Hexagon shall comply with Customer’s reasonable security procedures while on Customer’s facilities.

5.5 Customer may not unbundle or separate the component parts of a single Software product for installation or use on multiple devices.

5.6 Customer acknowledges that the obligations of Customer under this Section 5 are of a special and unique character which gives them peculiar value to Hexagon for which Hexagon cannot be reasonably or adequately compensated in damages in the event Customer breaches such obligations. Customer therefore agrees that injunctive relief is an appropriate remedy for such breach or threatened breach. Such relief shall be in addition to, and not in lieu of, any other rights or remedies in law or equity to which Hexagon may be entitled.

6  MAINTENANCE.
6.1 If Customer acquires Maintenance for Software, then during the applicable Maintenance term and subject to the terms and conditions of this Agreement, Hexagon will (directly or through its Affiliate or Reseller) make available to Customer updates, service packs, and new releases of the Software (and updated Documentation), if any, that Hexagon, in its sole discretion, makes generally available to its other similarly situated end-user customers of the Software who are on Maintenance. Maintenance shall not entitle Customer to any release, option, module, or future product, which Hexagon, in its sole discretion, licenses separately or offers for an additional fee. Hexagon is under no obligation to develop any future programs or functionality. Any updates, service packs, and new releases of the Software (or updated Documentation) provided under this Agreement shall be subject to the terms and conditions of this Agreement, unless accompanied by additional or different terms from Hexagon or a Hexagon Affiliate, in which case Customer agrees to comply with such additional or different terms with respect to the same.

6.2 Additionally, if Customer acquires Maintenance for Software, then during the applicable Maintenance term and subject to the terms and conditions of this Agreement, Customer will be entitled to technical support via email, telephone and/or any other means Hexagon, in its sole discretion, makes generally available to its other similarly situated end user customers of the Software who are on Maintenance. Technical support is limited to reasonable remote assistance in response to Customer’s technical support inquiries regarding: (i) Software installation, (ii) Software errors, and (iii) general questions regarding the usage of Software features. Technical support does not include training, consulting, on-site services, or the provision of engineering judgment for a customer-specific situation. Technical support will be limited to the then-current release of the Software (and any immediately preceding release(s) of the Software supported by Hexagon under its then-current technical support policy for the Software), running unaltered, and on an appropriate hardware and operating system configuration, as specified in the applicable Documentation. Upon Hexagon’s request, Customer shall provide information required by Hexagon to verify that Customer and the specific license are entitled to technical support. To allow Hexagon to properly address technical issues, Hexagon may request that Customer provides files and other materials and information.

6.3 Only those Software licenses for which Customer has acquired Maintenance and has a current right to Maintenance will be entitled to the Maintenance specified under subsections 6.1 or 6.2 of this Agreement. The duration and quantity of any initial or renewal Maintenance acquired by Customer will be as expressly set forth in the applicable order schedule. Unless otherwise agreed to by the parties in writing: (i) annual Maintenance renewal, if any, will be at Hexagon's then-current Maintenance prices, and (ii) to purchase any Maintenance, Customer is required to purchase Maintenance for all Software Customer has licensed from Hexagon. If Maintenance lapses (or was not initially acquired), and Customer wishes to procure Maintenance, the Customer will be assessed additional back maintenance fees for the period the Software was not maintained, as well any applicable reinstatement fees, in accordance with Hexagon's then-current policies. In addition to any other remedies available to Hexagon, Hexagon reserves the right to refuse to provide Maintenance if Customer is overdue on any payment obligation to Hexagon.

6.4 Hexagon’s (or its Affiliate’s, as applicable) sole and exclusive liability, and Customer’s sole and exclusive remedy, for Hexagon’s (or its Affiliate’s, as applicable) material breach of its Maintenance obligation and failure to cure such material breach within thirty (30) days after written notice will be that Customer may terminate Maintenance for the Software involved and receive a pro-rata return of Maintenance fees actually paid to Hexagon (or its Affiliate, as applicable) for the remaining unused Maintenance period of the Software involved.

7 INSTALLATION AND LICENSE FILES.

7.1 Customer may install the Software only on the applicable Customer Computer, provided however that in the case of a Network (Floating) License or a Named User License Customer may install the Software on Customer machines within the scope of the License Type acquired, as long as access to and use of the Software is controlled by the license manager program accompanying the Software. Customer shall be responsible for installation of the Software and all associated costs. Customer may only relocate the License Server with Hexagon’s prior written consent.

7.2 Customer acknowledges that the Software (and associated Documentation and materials) may be disabled and protected by a license manager and require License Files to access and use. Any such required License Files will be issued in accordance with Hexagon’s and its Affiliates’ then-current policies and practices, which may differ depending on the jurisdiction. Without derogation of the foregoing, Hexagon specifically reserves the right to issue only temporary License Files and withhold issuance of further License Files until Customer fulfills its payment obligations. Customer shall provide information required to generate any necessary License Files.

7.3 Any Customer requests for replacement License Files are subject to Hexagon’s and its Affiliates’ then-current policies and practices, and Customer’s payment of applicable fees and charges. Hexagon has no obligation to provide replacement License Files if: (i) the Software is not supported on the proposed substitute computer; (ii) if Customer is in breach of this Agreement (including for failure or delay in Customer making any payment when due, or fulfilling any payment
conditions, in connection with any Software, Maintenance, or order relating to this Agreement, whether such payments are owed to Hexagon, a Hexagon Affiliate, or a Reseller; or (iii) if the applicable Software is not covered by Maintenance.

8 **OTHER.**

8.1 **Use of Information.** Customer shall maintain in confidence any non-public commercial and pricing information disclosed to Customer by or on behalf of Hexagon or its Affiliates, and Customer shall not use any such information for a purpose other than as agreed by the parties in relation to the Agreement. Customer agrees that Hexagon and its Affiliates may disclose Customer’s information, including without limitation, contact information and technical information, to Hexagon Affiliates, Resellers, suppliers, and subcontractors, wherever they do business, in furtherance of the Agreement and Hexagon and its Affiliates’ business relationship with the Customer. If Customer provides Hexagon or Hexagon Affiliates with feedback, recommendations, or suggestions about the Software, Maintenance, Documentation, or other products or services offered or provided by Hexagon or its Affiliates (“Feedback”), then Hexagon and its Affiliates may use such Feedback without obligation to Customer, and Customer hereby irrevocably grants to Hexagon and its Affiliates a perpetual, irrevocable, worldwide, sublicensable, royalty-free right and license to use that Feedback.

8.2 **Data Collection / Data Protection.**

8.2.1 **Usage Analytics and Reports.** Customer acknowledges and agrees that the Software and/or the accompanying license manager or tools may collect usage analytics and reporting for measurement, analysis and reporting for the purposes of understanding, optimizing and improving Hexagon’s products and services, as well as for other lawful purposes. Additional information regarding usage analytics and usage reports may be set forth in the applicable Software, Documentation, the license manager or its user documentation, and/or related Hexagon online resources.

8.2.2 **Anti-Piracy and License Compliance.** In addition to 8.2.1, the Software may contain a security and reporting mechanism (“Security Mechanism”) intended to automatically collect and transmit to Hexagon and its Affiliates (and their contractors, representatives, successors and assigns) data relating to the installation and usage of the Software, for purposes of verifying user compliance with the terms of the applicable license agreement, identifying unauthorized use and users, and otherwise protecting and enforcing intellectual property rights. Data collected and transmitted through the Security Mechanism may include, without limitation, user, device, and network identification information such as, but not limited to, email address, username, hostname, MAC address, IP address, Wi-fi SSID, geolocation and organization domain information, as well as information on Software usage, including product name, version, and time and number of uses.

8.2.3 **Data Protection / Privacy.** Personal data transmitted and collected through the Software and/or the license manager or accompanying Hexagon tools will be processed in accordance with the Hexagon Manufacturing Intelligence online privacy statement (or successor privacy statement or policy), as may be updated or amended from time to time, available at https://www.hexagonmi.com/about-us/privacy-policy (or successor web pages).

8.3 **Third Party Content.** The Software may be accompanied by, contain, or provide access to, certain third party data (e.g., machine data or materials data), models, online services, or other third party content or third party software, including open source software (collectively, “Third Party Content”), for which Hexagon may be required to pass-through to its customers certain additional terms, disclaimers and/or notices. Such additional Third Party Content terms, disclaimers, and/or notices may be found or referenced in the Software Help/About Menu, Documentation, and/or read me files, or otherwise accompany the Third Party Content. Customer shall adhere to any such additional Third Party Content terms. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THIRD PARTY CONTENT IS PROVIDED TO CUSTOMER ON AN "AS-IS" BASIS, WITHOUT WARRANTIES OF ANY KIND ON THE PART OF HEXAGON OR ITS AFFILIATES (OR THEIR SUPPLIERS), AND NEITHER HEXAGON, ITS AFFILIATES, NOR THEIR SUPPLIERS, SHALL HAVE ANY LIABILITY FOR CLAIMS, DAMAGES OR INDEMNITIES ARISING OUT OF OR RELATED TO THIRD PARTY CONTENT.

8.4 **Virtual Machines.** Customer may install on a virtual machine ("VM"), the Software and accompanying license manager software, subject to the following restrictions: (i) the VM shall be implemented on a physical machine located at the Installation Site; (ii) Customer shall not cause or allow the host-ID, host name or MAC address for the VM to be duplicated or used for any other virtual or physical machine inside or outside the network; (iii) Customer shall not use or access the VM in a manner that would exceed the number or scope of license(s) granted; and (iv) upon Hexagon’s request, Customer will promptly provide Hexagon with additional information relating to usage of the Software and the VM. All other restrictions apply, including without limitation, the geographical access and use limitations of the applicable License Type.

8.5 **Cloud Hosted Features.**

8.5.1 Certain features, functions, or capabilities associated with Software may require access to and use of cloud-hosted content and/or services hosted on Hexagon, its Affiliates, or third-party websites (“Hosted Features”). In such cases, the Software
may cause Customer’s computer(s), with or without notice, to connect to the internet and to communicate with the website for such purposes. Access to and use of certain Hosted Features may require additional registration by Customer and/or its Authorized Users. Some Hosted Features may only be available subject to payment of additional fees and charges. Access to or use of Hosted Features may be subject to additional or different terms, as may be presented to Customer and/or its Authorized Users at the time of registration, sign-in or other use, or as posted on the applicable website. Customer shall comply with such additional or different terms and cause its users to comply with such additional or different terms. Customer and/or its Authorized Users may be required to further accept such additional or different terms prior to access or use of Hosted Features (e.g., at the time of registration or sign-in).

8.5.2 Customer acknowledges and agrees that: (i) Hexagon or its Affiliates or third party suppliers may modify, discontinue or replace any or all features, functionality or capabilities of the Hosted Features; (ii) Customer is solely responsible for ensuring that use of the Hosted Features will not cause any error or interruption in Customer’s systems or other software; (iii) Customer is solely responsible for procuring and maintaining network connections and internet connectivity to the data centers where the Hosted Features are hosted and neither Hexagon, its Affiliates or suppliers shall have liability for loss or damage arising from or related to such connections and connectivity.

8.5.3 HOSTED FEATURES ARE NOT MADE AVAILABLE ON A PERPETUAL OR PAID-UP LICENSE BASIS, BUT ARE OFFERED ONLY ON A TERM-LIMITED BASIS, SUCH AS DURING AN ASSOCIATED SUBSCRIPTION TERM OR MAINTENANCE TERM. Upon expiration or termination of the associated Subscription or Maintenance term, Customer and its users lose access and usage rights as to the associated Hosted Features. Customer understands that upon such expiration or termination, Customer may have no further access to any Customer data or content it stored on the cloud service relating to the Hosted Features.

8.5.4 Hosted Features are provided on an “as is” basis, with no warranties of any kind. HEXAGON DOES NOT REPRESENT THAT CUSTOMER’S USE OF THE HOSTED FEATURES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE, OR THAT THE HOSTED FEATURES WILL MEET CUSTOMER’S REQUIREMENTS OR THAT ALL ERRORS IN THE HOSTED FEATURES WILL BE CORRECTED. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE HOSTED FEATURES OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER’S PURPOSE.

8.5.5 Hexagon does not control nor accept any responsibility for any third-party content or services. Third party websites are subject to the terms and conditions found on such third-party sites or otherwise associated with the third-party content or services. Any dealings between Customer and any third party in connection with such content or services, including, without limitation, such third party’s privacy policies, are solely between Customer and such third party. Hexagon or its Affiliates may at any time, for any reason, modify or discontinue the availability of any third-party content or services.

9 CUSTOMER RESPONSIBILITY FOR SELECTION AND USE.

9.1 Customer is solely responsible, and neither Hexagon nor its Affiliates shall have responsibility, for the supervision, management and control of the use of the Software, and output of the Software, including, but not limited to: (i) selection of the Software to achieve Customer’s intended results; (ii) determining the appropriate uses of the Software and the output for Customer’s business; (iii) establishing adequate independent procedures for testing the accuracy of the Software and any output; and (iv) establishing adequate backup to prevent the loss of data.

9.2 The Software is a tool that is intended to be used only by trained professionals. It is not a substitute for professional judgment or independent testing of results or output. Customer is solely responsible for any results obtained from using the Software. Neither Hexagon nor its Affiliates shall have any liability to Customer or any third party in respect to the quality or conformity of any products produced or sold by Customer.

9.3 Customer agrees to comply with all applicable laws and regulations relating to the download, installation and/or use of the Software. Customer shall defend, indemnify and hold harmless Hexagon and Hexagon Affiliates, and their respective directors, officers, employees and agents from and against any and all claims, suits, actions, proceedings, liabilities, judgments, settlements, losses, damages, costs and expenses (including, without limitation, attorneys’ fees and court costs) arising from or in any way related to Customer’s use or misuse of any portion of the Software, Documentation or related materials (save for any third party intellectual property indemnity claims for which Hexagon is responsible under Section 13 (“Intellectual Property Indemnity”)).

Please note: If Customer is acquiring the Software or Maintenance in Germany or Austria, the following Sections 10 and 11 do not apply, instead the deviating versions of such provisions in Section 16 (“Deviations for Germany and Austria”) apply.

10 WARRANTY; DISCLAIMERS.
10.1 Hexagon warrants that the Software when used as permitted under this Agreement and in accordance with the instructions in the Documentation (including use on a computer hardware and operating system platform supported by Hexagon) will conform substantially to its associated Documentation for a period of ninety (90) days from the delivery date. Any claim by Customer of a breach of this warranty must be made in writing and within ninety (90) days of the delivery date.

10.2 EXCEPT AS EXPRESSLY STATED IN SECTION 10.1 OF THIS AGREEMENT AND TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, NEITHER HEXAGON NOR ANY AFFILIATE OR SUPPLIER OF HEXAGON MAKE ANY WARRANTIES OF ANY KIND, WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, MAINTENANCE, OR SERVICES PROVIDED UNDER THIS AGREEMENT. HEXAGON FURTHER EXPRESSLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. HEXAGON MAKES NO WARRANTY THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

10.3 Customer's exclusive remedy, and Hexagon's sole liability, for Software that does not meet the warranty set forth in Section 10.1 will be, at Hexagon's option: (i) to correct the non-conforming Software within a reasonable time so that it conforms to the warranty; (ii) to replace the non-conforming Software with another Hexagon software offering of substantially similar functionality; or (iii) if neither (i) or (ii) is commercially feasible, permit Customer to terminate the license as to the non-conforming Software and refund of the license fees and associated, unused Maintenance fees actually paid to Hexagon for the non-conforming Software. Hexagon will have no responsibility or obligation under the foregoing warranty or otherwise with respect to: (a) any Software that has been modified by anyone other than Hexagon, or (b) failure of the Software caused by Customer or its agents through accident, abuse or misapplication.

11 LIMITATION OF LIABILITY.

11.1 NEITHER HEXAGON NOR ITS AFFILIATES OR SUPPLIERS WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES; FOR LOSS OF USE, PROFITS, REVENUE, SAVINGS, OR DATA; FOR COSTS OF PRODUCT RECALL, INJURY TO REPUTATION, OR LOSS OF CUSTOMERS; FOR LOSS OF USE OF OR DAMAGE TO OTHER EQUIPMENT OR PROPERTY; OR FOR DOWNTIME OR BUSINESS INTERRUPTION; ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH LIABILITY IS BASED UPON CONTRACT (INCLUDING BREACH OF A REPRESENTATION OR WARRANTY), TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHER LEGAL THEORY WHATSOEVER, EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY WARRANTY OR REMEDY IS HELD TO HAVE FAILED IN ITS ESSENTIAL PURPOSE.

11.2 UNDER NO CIRCUMSTANCE WILL HEXAGON’S OR ITS AFFILIATES’ LIABILITY UNDER OR IN CONNECTION WITH THE SOFTWARE, DOCUMENTATION, MAINTENANCE, SERVICES, OTHER MATERIALS AND THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IN THE AGGREGATE, EXCEED THE AMOUNT ACTUALLY RECEIVED IN THE LAST (12) TWELVE MONTHS PRECEDING THE CLAIM FOR THE SOFTWARE OR MAINTENANCE THAT IS THE SUBJECT MATTER OF, OR IS DIRECTLY RELATED TO THE CAUSE OF ACTION. 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. TO THE EXTENT ANY APPLICABLE LAW LIMITS THE SCOPE OF THESE SUBSECTIONS 11.1 OR 11.2, THIS AGREEMENT SHALL BE INTERPRETED TO CONFORM TO SUCH LAW IN A MANNER THAT LIMITS HEXAGON’S AND ITS AFFILIATES’ LIABILITY TO THE FULLEST EXTENT ALLOWED BY LAW.

12 TERM AND TERMINATION; SUSPENSION.

12.1 Term and Termination. This Agreement will remain in full force until terminated in accordance with this Agreement or until all licenses granted under this Agreement expire. Except where otherwise provided in this Agreement, this Agreement may be terminated as follows: (i) by Hexagon upon fifteen (15) days’ prior notice upon a material breach by Customer of its obligations under this Agreement if such breach remains uncured at the end of the notice period; provided however that, no cure period shall apply as to any material breach of Sections 3, 4, 5 and 14 of this Agreement by Customer, and Hexagon may terminate this Agreement effective immediately upon notice; (ii) by Hexagon immediately upon notice of material breach for failure or delay in Customer making any payment when due, or fulfilling any payment conditions, in connection with any Software, Maintenance, or order relating to this Agreement, whether such payments are owed to Hexagon, an Affiliate of Hexagon, or a Reseller; (iii) by Hexagon if Customer makes a general assignment for the benefit of its creditors, is the subject of an involuntary bankruptcy petition, or is otherwise subject to insolvency or dissolution proceedings. In addition, Hexagon may, at any time in its sole discretion, terminate any no-charge license.

12.2 Effect of Termination. Customer shall have no license, Maintenance, service or usage rights, or other right with respect to the Software or Documentation (or related License Files or materials) upon termination of this Agreement. Upon
termination of this Agreement for any reason (or upon termination or expiration of any license, with respect to that license), Customer shall (i) immediately cease using the Software and Documentation (and related License Files and materials), including all copies thereof, and promptly uninstall and erase the Software and Documentation (and related License Files and materials), including all copies thereof, from all Customer computing devices, and (ii) destroy the Software and Documentation (and related License Files and materials), including copies thereof, to Hexagon, the Hexagon Affiliate, or the Reseller from which they were acquired. Upon termination of this Agreement for any reason (or termination or expiration of any license, with respect to that license), Hexagon reserves the right to require Customer to certify and/or show satisfactory proof that all copies of the Software, Documentation (and related License Files and materials) have been uninstalled and destroyed (or returned, as applicable). Termination or expiration of any license or this Agreement shall not relieve Customer from any obligation accrued on or before the date of termination or expiration, including without limitation any payment obligation to Hexagon, an Affiliate of Hexagon, or a Reseller. Provisions that survive termination of this Agreement include those in Sections 5, 11 through 16 and others which by their nature are intended to survive.

12.3 Right to Suspend Performance. If Customer fails to make a payment to Hexagon, the Hexagon Affiliate, or the Reseller, or otherwise breaches the terms of this Agreement, Hexagon may, without prejudice to any other right or remedy available to Hexagon, suspend performance (e.g., delivery of Software, License Files, technical support, access to services), and/or suspend Customer’s license as to the Software (Documentation and related materials). In addition, Hexagon may do the same if Hexagon has reasonable grounds for insecurity concerning Customer’s performance under this Agreement.

13 INTELLECTUAL PROPERTY INDEMNITY.

13.1 Hexagon shall, at its own expense and subject to the terms of this Agreement indemnify, defend and hold Customer harmless from and against any claim(s) brought against Customer by an unaffiliated third party alleging that the Software or any portion thereof as furnished under this Agreement and used within the scope of the licenses granted to Customer infringes a patent of Canada, the United States, or a member state of the European Patent Organization, or a copyright in any country; provided that Customer gives Hexagon: (i) prompt written notice of such claim; (ii) assistance and information reasonably requested by Hexagon; and (iii) the sole authority to defend and settle such claim.

13.2 Notwithstanding the provision of Section 13.1, Hexagon shall have no liability for any infringement arising from: (i) the integration or combination of the Software together with other software, materials or products not integrated or combined by Hexagon, if the infringement would have been avoided in the absence of such integration or combination; (ii) the use of other than a current unaltered release of the Software available from Hexagon, if the infringement would have been avoided by the use of the then-current release; (iii) modifications to the Software that were not authorized by Hexagon or were undertaken at the request of or direction of Customer; or (iv) Customer’s use of the Software in a manner that does not comply with this Agreement.

13.3 If the Software becomes, or in Hexagon’s opinion is likely to become, the subject of an infringement claim, Hexagon may, at its sole option and expense, either: (i) substitute non-infringing software of substantially similar functionality; (ii) modify the infringing Software so that it no longer infringes but remains substantially similar in functionally; (iii) obtain for Customer, at Hexagon's expense, the right to continue use of such Software; or (iv) if none of the foregoing is commercially feasible, Hexagon will take back the Software involved, and grant Customer a refund or credit for the unused portion of the license fee and associated unused Maintenance fees actually paid to Hexagon for the Software involved, using a straight line amortization over sixty (60) months from initial delivery for Paid-up License(s). THIS SECTION 13 STATES HEXAGON'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

14 EXPORT. Customer shall comply with all applicable export control and sanctions laws and regulations (“Export Laws”), including without limitation those of Canada, the United States, and the European Union (and its Member States). Customer represents and warrants that the Software, Documentation and related materials provided hereunder, and any derivatives thereof, will not be: (i) downloaded or accessed in violation of Export Laws; (ii) used for any purposes prohibited by Export Laws; or (iii) exported, re-exported, or otherwise transferred, directly or indirectly, in a manner contrary to the Export Laws. Further, Customer represents and warrants that neither Customer nor any of its users is: (i) operating in, organized in, or resident of a country or territory that is subject to any comprehensive trade or economic sanctions (currently, Cuba, Iran, Syria, North Korea, the Crimean, Donetsk People’s Republic (DNR), Luhansk People’s Republic (LNR) regions of Ukraine, Sevastopol); or (ii) listed (or owned or controlled by a person or entity listed) on any export-control-related or sanctions-related list of designated persons or entities maintained by Canada, the United States, the European Union, or other countries whose regulations or laws apply. Upon Hexagon’s request, Customer shall promptly cooperate with Hexagon and provide Hexagon with any end-user certificates, affidavits, or other documents reasonably requested by Hexagon in connection with the exporting or importing of the Software, Documentation or related
materials under this Agreement. Customer shall indemnify and hold harmless Hexagon and Hexagon Affiliates from and against any claim, action, proceeding, fine, loss, liabilities, cost and damages arising out of or relating to Customer’s violation of Export Laws. Hexagon shall have no obligation to perform and no liability to Customer in the event performance is prevented by any impediments arising out of Export Laws.

15  MISCELLANEOUS.

15.1 Entire Agreement. This Agreement (together with any schedules or addenda specifically made part of this Agreement) constitutes the complete agreement between Hexagon and Customer with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or representations, written or oral, with respect to the subject matter. The Agreement supersedes and prevails over any conflicting terms in any purchase order or other Customer-issued instrument. Customer specifically agrees that any Customer-generated pre-printed terms or general terms and conditions included or referenced in any purchase order or other Customer-issued instrument shall not apply. No Hexagon agent or employee is authorized to make any amendment to this Agreement, unless such amendment is in writing and signed by a duly authorized representative of Hexagon. This Agreement may not be modified except in a writing signed by the authorized representatives of the parties, or as otherwise permitted herein.

15.2 No Waiver. Hexagon shall have the benefit of all rights and remedies provided by law or equity. Failure of Hexagon to exercise or reserve any right or remedy shall not be construed as a waiver thereof or of any other right or remedy.

15.3 Assignment. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. However, Customer may not assign or transfer, by operation of law or otherwise, this Agreement (or any of the licenses or other rights or obligations hereunder), without Hexagon's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be void. Hexagon may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance under the Agreement without Customer’s consent. Hexagon may subcontract a service, or any part of it, to subcontractors selected by Hexagon, provided Hexagon will remain responsible to Customer for such subcontractor’s performance in accordance with this Agreement.

15.4 Severability. If any provision of this Agreement is invalid, the parties agree that such invalidity will not affect the validity of the remaining portions of this Agreement. The parties further agree to substitute a valid provision for the invalid provision which most closely approximates the intent and economic effect of the invalid provision.

15.5 Interpretation. Ambiguities, inconsistencies, or conflicts in this Agreement, will not be strictly construed against the drafter of this Agreement; rather, they will be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of contracting. The section headings in this Agreement are for convenience only and will not be of any effect in constructing the meaning of the Sections.

15.6 Force Majeure. Neither Hexagon nor its Affiliates or suppliers will be liable or responsible for delay or failure to perform any obligations occasioned by any cause beyond their reasonable control, including but not limited to war; terrorist acts; civil disturbance; epidemic or pandemic; labor unrest; shortage of raw materials or supply chain disruptions; fire; flood; earthquake; acts or defaults of common carriers or suppliers; governmental laws, acts, regulations, embargoes, orders or restrictions; or any other cause, contingency or circumstance not subject to their reasonable control.

15.7 Notices. Notices required under the Agreement shall be in writing. Notices shall be effective upon receipt. Hexagon may provide any notice to Customer by sending an email message to the email address then associated with Customer’s account. If notice is sent to Hexagon, it shall be directed to Attn: Legal Department.

15.8 Hexagon Affiliates. Hexagon agrees that in addition to Hexagon, Hexagon Affiliates may enforce this Agreement (including without limitation, terminating this Agreement, suspending performance, or providing notice, in accordance with the terms of this Agreement).

15.9 Customer References. Customer acknowledges and accepts that Hexagon and Hexagon Affiliates have the right to use Customer’s name and logo to identify Customer as a Hexagon group customer in sales and marketing presentations.

15.10 Governing Law / Jurisdiction. The Agreement will be governed by and construed in accordance with the laws of the Province of Ontario, Canada, unless: (i) if Customer acquired the Software or Maintenance in the United States of America, the laws of the State of Rhode Island, United States of America shall apply; (ii) if Customer acquired the Software or Maintenance in Federal Republic of Germany, the laws of Federal Republic of Germany shall apply; or (iii) if Customer acquired the Software or Maintenance in Austria, the laws of Austria shall apply. The laws of such jurisdictions shall govern without reference to the conflicts-of-laws rules thereof. The UN Convention on Contracts for the International Sale of Goods shall not apply. In addition, each party agrees that any claim, action or dispute arising under or relating to this Agreement will be brought exclusively in (and the parties will be subject to the exclusive jurisdiction of the courts of the
province of Ontario, Canada, except that if Customer acquired the Software or Maintenance in (a) the United States of America, any such claim or dispute will be brought exclusively in (and the parties will be subject to the exclusive jurisdiction of) the state and federal courts of the State of Rhode Island, United States of America; (b) the Federal Republic of Germany, any such claim or dispute will be brought exclusively in (and the parties will be subject to the exclusive jurisdiction of) the courts of Munich I, Germany; (c) Austria, any such claim or dispute will be brought exclusively in (and the parties will be subject to the exclusive jurisdiction of) the courts of Vienna, Austria. Notwithstanding the foregoing or anything to the contrary, nothing shall prevent Hexagon from bringing claims or actions for infringement of intellectual property rights (including related causes of action, such as breach of contract) in any and all jurisdictions where such infringement is alleged to occur, or where Customer is incorporated, domiciled, conducts business, or holds assets.

15.11 **U.S. Government Use.** If Customer is a branch or agency of the U.S. Government or is licensing the Software on behalf of the U.S. Government ("Government"), the following provisions apply to this Agreement. If the Software is supplied to the Department of Defense ("DoD"), it is classified as "Commercial Computer Software" under clause 252.227-7014 of the DoD Supplement to the Federal Acquisition Regulations ("DFARS") (or any successor regulations) and the Government is acquiring only the license rights granted herein (the license rights customarily provided to non-Government users). If the Software is supplied to any unit or agency of the U.S. Government other than the DoD, it is classified as "Restricted Computer Software" and the Government's rights in the Software are defined in clause 52.227-19 of the Federal Acquisition Regulations ("FAR") (or any successor regulations) or, in the case of NASA, in clause 18.52.227-86 of the NASA Supplement to the FAR (or any successor regulations).

15.12 **Language.** If Customer is acquiring the Software or Maintenance in Canada, the following shall apply: Les parties confirment que l'accord et tous les documents connexe sont et seront en langue anglais. (Translation: “The parties confirm that the Agreement and all related documentation are and will be in the English language.”)

16 **DEVIATIONS FOR GERMANY AND AUSTRIA.** If Customer is acquiring the Software or Maintenance in Germany or Austria, the following deviations shall apply:

- **Section 5.1(i) shall apply with the following exception:**

  The provisions of §§ 69d Abs. 3, 69e German Copyright Act (Urheberrechtsgesetz—UrhG-GER) and §§ 40d Abs. 3 Nr.2, 40e Austrian Copyright Act (Urheberrechtsgesetz—UrhG-AU) shall remain unaffected by Section 5.1(i).

- **Sections 10 (Warranty; Disclaimers) and 11 (Limitation of Liability) of this Agreement shall not apply. Instead, the following Sections 10 (Warranty—Germany and Austria) and 11 (Liability—Germany and Austria) shall apply:**

10 **Warranty—Germany and Austria**

10.1 **Warranty.** Hexagon warrants that upon the passing of risk the Software, when used in accordance with the Agreement, is free from defects that void or substantially reduce its value or its fitness for use as provided for in the Agreement. This includes in particular that the Software, when used in accordance with the Agreement, does not infringe any rights of third parties.

In case of term-based licenses provided against a fee, whether for a fixed-term or as a subscription, Hexagon further warrants that it will maintain the Software in a condition suitable for contractual use during the term of the license. If Maintenance is included in such term-based license, Hexagon will maintain the Software fit for contractual use by providing maintenance services in accordance with Sections 6.1 and Section 6.2.

There are no further warranties or guarantees. In particular, Hexagon does not promise (i) any possibility of use or application in connection with other products, in particular software and hardware products, or (ii) any adaptation of the Software to changes in the Customer's hardware or software environment, in particular not to changes in the Customer's operating system. Such investments by Customer shall be made solely at Customer's risk.

10.2 **Inspection.** Customer must inspect the Software immediately after delivery, to the extent this is feasible in the proper course of business, and, if a defect becomes apparent, must immediately report the defect in writing, by fax or e-mail, including a brief description of the defect. If Customer fails to report a defect, the Software or respective maintenance service shall be deemed to have been approved, unless the defect was not identifiable during the inspection. If such a defect becomes apparent later on, the defect must be reported immediately after discovery; otherwise, the Software or Maintenance service shall also be deemed approved in view of this defect.

10.3 **Remedy.** Defects shall be remedied by Hexagon within a reasonable period of time after written notification, at Hexagon’s option, either by rectification or subsequent delivery (“subsequent performance”). If Hexagon’s inspection does not reveal any defects that have been reported, or if a reported defect is due to faulty operation or malfunctions for which Hexagon is not responsible, the costs of the inspection or the additional costs thus incurred shall be borne by Customer.
10.4 **Further Warranty Rights of Customer.** Withdrawal, reduction, or the assertion of damages in lieu of performance shall only be possible if Customer has specifically objected to the defect within the scope of its possibilities and Hexagon has either allowed a reasonable period for subsequent performance set for it by Customer to fruitlessly expire or the subsequent performance has failed. Subsequent performance shall only be deemed to have failed after two unsuccessful attempts. The statutory provisions according to which the setting of a reasonable period is dispensable (e.g. in Germany § 323 para. 2 BGB) remain unaffected. The declaration of withdrawal or reduction as well as the assertion of damages in lieu of performance must be made in writing.

10.5 **Exclusion.** If the Software is extended or modified by Customer or by third parties, the warranty shall expire unless Customer can prove that the respective modification or extension is not the cause of the defect. No warranty shall be assumed for errors, malfunctions, or damage resulting from improper operation, use of unsuitable equipment/supplies, or unusual operating conditions. Furthermore, the statutory and judicial rules concerning the exclusion of warranty for defects shall apply.

10.6 **Warranty Period.** The warranty period (liability for defects) shall be one (1) year. This limitation shall not apply in cases of injury to life, body, or health, in case of an intentional or grossly negligent breach of duty by Hexagon or by a legal representative or vicarious agent of Hexagon, and in case of fraudulent concealment of a defect.

10.7 **Warranty of Software provided Free of Charge.** The foregoing warranty provisions do not apply to Software provided free of charge, in particular but not limited to no-charge Evaluation Licenses or Pre-Production Licenses. If Software is provided to Customer free of charge, Customer may claim compensation for damages resulting from a material defect or a defect in title of the Software only, if Hexagon fraudulently concealed this defect at the time of the conclusion of the Agreement. The statutory provisions shall remain unaffected in this respect.

11 **Liability—Germany and Austria**

11.1 Hexagon shall only be liable: (i) Insofar as a specific delivery or performance date was expressly agreed by the parties as binding, for damages caused by delay Hexagon shall be liable in accordance with the statutory provisions; (ii) Insofar as Hexagon has given a contractual warranty (“Garantie”), Hexagon shall be liable to the extent of the conditions stated in the respective warranty declaration; (iii) Insofar as Hexagon has fraudulently concealed a defect, Hexagon shall be liable for the damages caused thereby in accordance with the statutory provisions; (iv) For damages due to intentional or grossly negligent breach of duty, for damages resulting from at least negligent injury to life, body, or health of a person, for claims under the national product liability act (e.g. in Germany under the German Product Liability Act (Produkthaftungsgesetz—ProdHaftG)), and for data protection violations, Hexagon shall be liable in each case in accordance with the relevant statutory provisions; (v) For damages arising from the slightly negligent breach of a material contractual obligation (so-called “Kardinalpflicht”), i.e., an obligation the performance of which is essential for the proper execution of the Agreement and on the performance of which Customer regularly relies and is entitled to rely on, Hexagon shall be liable in accordance with the statutory provisions. Such liability, however, shall be limited in amount to the extent of damages foreseeable at the time of the conclusion of the Agreement and typical for this type of Agreement.

11.2 Apart from that, any liability of Hexagon shall be excluded. This applies in particular to the strict liability (“verschuldsunabhängige Haftung”) for initial defects in case of term-based licenses provided against a fee, whether for a fixed-term or as a subscription (e.g. in Germany pursuant to § 536a paragraph 1 BGB).

11.3 Hexagon shall be entitled to invoke the objection of contributory negligence. In the event of loss of data, Hexagon shall only be liable for the damage that would have occurred if data had been properly backed up.

11.4 To the extent to which Hexagon's liability is excluded or limited in accordance with this Section 11, this shall also apply to the personal liability of Hexagon's employees, representatives, and vicarious agents (“Erfüllungsgehilfen”).

11.5 Liability claims under this Section 11 shall become time-barred in accordance with the statutory provisions.