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9.4 Exclusive Remedy. Licensee's exclusive remedy, and Licensor's sole liability, for Software that does not meet the warranty set forth in Section 9.1 will be, at Licensor's option: (i) to correct the non-conforming Software within a reasonable time so that it conforms to the warranty (or correct the Documentation within a reasonable time if, in Licensor's judgment, the non-conformity results from error in the Documentation); (ii) to replace the non-conforming Software with another Licensor or Licensor Affiliate software offering of substantially similar functionality; or (iii) if neither (i) nor (ii) is commercially feasible, permit Licensee to terminate the license as to the non-conforming Software and refund of the unused license fees actually paid by Licensee for the non-conforming Software, provided that Licensee makes available all the information that may be necessary to help Licensor to remedy the non-conformance, including sufficient information to enable Licensor to recreate the non-conformance.

10. LIMITATION OF LIABILITY.

10.1 Neither Licensor nor its Affiliates or Suppliers will be liable (directly or indirectly) for any indirect, consequential, incidental, exemplary, punitive or special damages; for loss of use, profits, revenue, savings; for loss or corruption of data; for costs of product recall, injury to reputation, or loss of customers; for loss of, loss of use of, or damage to other equipment or property; or for downtime or business interruption; arising out of, relating to, or in connection with the Licensed Materials, Maintenance, Subscription, Services, Hosted Features, other Materials or this Agreement, even if advised of the possibility of such loss or claim.

10.2 The liability of Licensor and its Affiliates, in the aggregate, whether in contract, tort (including negligence), or otherwise, arising out of or in connection with any license, maintenance, subscription, services, or other offering offered or furnished under or in connection with this Agreement shall not exceed the fee that Licensee actually paid for such license, maintenance, subscription, services, or other offering in the twelve-month period immediately preceding the cause of action that gave rise to such liability. No claim, regardless of form, arising out of or in connection with any offering or this Agreement may be brought by Licensee more than one year after the event giving rise to the cause of action has occurred.
10.3 THE EXCLUSIONS AND LIMITATION IN SECTION 10 SHALL NOT APPLY IN CASES OF: (I) FRAUD OR FRAUDULENT MISREPRESENTATION; (II) BODILY INJURY OR DEATH CAUSED BY LICENSOR’S NEGLIGENCE; OR (III) TO THE EXTENT THAT LIABILITY CANNOT BE EXCLUDED OR LIMITED ACCORDING TO APPLICABLE LAW.

10.4 TO THE EXTENT ANY APPLICABLE LAW LIMITS THE SCOPE OF THIS SECTION 10, THIS AGREEMENT SHALL BE INTERPRETED TO CONFORM TO SUCH LAW IN A MANNER THAT LIMITS LICENSOR’S AND ITS AFFILIATES’ AND SUPPLIERS’ LIABILITY TO THE FULLEST EXTENT ALLOWED BY LAW.

11. TERM, TERMINATION AND SUSPENSION.

11.1 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 Licensor upon fourteen (14) days’ prior notice upon a material breach by Licensee 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 2, 3, 4 and 13 of this Agreement by Licensee, and Licensor may terminate this Agreement effective immediately upon notice; (ii) by Licensor immediately upon notice of material breach for failure or delay in Licensee making any payment when due, or fulfilling any payment conditions, in connection with any Licensed Materials or order relating to this Agreement, whether such payments are owed to Licensor, an Affiliate of Licensor, or a Reseller; (iii) by Licensor if Licensee 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, Licensor may, at any time in its sole discretion, terminate any no-charge license.

11.2 Effect of Termination. Licensee shall have no license, service or usage rights, or other right with respect to the Licensed 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), Licensee shall (i) immediately cease using the Licensed Materials and promptly uninstall and erase the Licensed Materials from Licensee computers, and (ii) destroy the Licensed Materials or, upon request by Licensor, return the same to Licensor, the Licensor 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), Licensor reserves the right to require Licensee to certify and/or show satisfactory proof that all copies of the Licensed Materials have been uninstalled and destroyed (or returned, as applicable). Termination or expiration of any license or this Agreement shall not relieve Licensee from any obligation accrued on or before the date of termination or expiration, including without limitation any payment obligation to Licensor, an Affiliate of Licensor, or a Reseller. Provisions that survive termination of this Agreement include those in Sections 4, 8, 9, 10, 11, 12, 13, and 14 and others which by their nature are intended to survive.

11.3 Right to suspend performance. If Licensee fails to make a payment to Licensor, Licensor Affiliate, or Reseller, or otherwise breaches the terms of this Agreement, Licensor may, without prejudice to any other right or remedy available to Licensor, suspend performance (e.g., delivery of Software, License Files, services), and/or suspend Licensee’s license as to the Licensed Materials. In addition, Licensor may do the same if Licensor has reasonable grounds for insecurity concerning Licensee’s performance under this Agreement.

12. INTELLECTUAL PROPERTY INDEMNITY.

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

12.2 Notwithstanding Section 12.1, Licensor shall have no liability for any infringement arising from: (i) the integration or combination of the Licensed Materials together with other software, materials or products not integrated or combined by Licensor, if the infringement would have been avoided by the use of the then-current unaltered release; (ii) modifications to the Licensed Materials that were not made by Licensor or Licensor Affiliates or were undertaken at the request of or direction of Licensee; (iii) Licensee’s use of the Licensed Materials in a manner that does not comply with this Agreement; (v) Third Party Content; or (vi) APIs.

12.3 If the Licensed Materials become, or in Licensor’s opinion are likely to become, the subject of an infringement claim, Licensor may, at its sole option and expense, either: (i) substitute non-infringing Licensed Materials of substantially similar functionality; (ii) modify the infringing Licensed Materials so that they no longer infringe but remain similar in functionally; (iii) obtain for Licensee, at Licensor's expense, the right to continue use of such Licensed Materials; or (iv) if none of the foregoing is commercially feasible, Licensor will take back the Licensed Materials involved, and grant Licensee a refund or credit for the unused portion of the license fee actually paid to Licensor for the Licensed
Materials involved, using a straight line amortization over thirty-six (36) months from initial delivery for any Paid-up License. THIS SECTION 12 STATES LICensor’s ENTIRE LIABILITY AND LICENSEE’S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

13. EXPORT COMPLIANCE.

13.1 Licensee shall comply with all applicable export control, and sanctions laws and regulations ("Export Laws"), which may include those of the United Kingdom, European Union (or its Member States), the United States, and / or other countries. Licensee represents and warrants that the Licensor 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, Licensee represents and warrants that neither Licensee 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, and the Crimea region); 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 the United Kingdom, the European Union (or any Member States), the United States, or other countries whose regulations laws apply. Upon Licensor’s request, Licensee shall promptly cooperate with Licensor and provide Licensor with any end-user certificates, affidavits, or other documents reasonably requested by Licensor in connection with the exporting or importing of any Licensor Materials under this Agreement. Licensee shall indemnify and hold harmless Licensor and Licensor Affiliates from and against any claim, action, proceeding, fine, loss, liabilities, cost and damages arising out of or relating to Licensee’s violation of Export Laws. Licensor shall have no obligation to perform and no liability to Licensee in the event performance is prevented by any impediments arising out of Export Laws, including any restrictions imposed by Licensor’s compliance policies which limit Licensor’s business with identifiable end users, end uses or countries.

14. MISCELLANEOUS.

14.1 Entire Agreement. This Agreement, together with the Hexagon Group terms referenced herein, constitutes the complete agreement between Licensor and Licensee 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. This Agreement supersedes and prevails over any conflicting terms in any purchase order or other Licensee-issued document. Licensee specifically agrees that any Licensee-generated pre-printed terms or general terms and conditions included or referenced in any purchase order or other Licensee-issued document shall not apply.

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

14.3 Severability. If any term within this Agreement is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

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

14.5 Assignment. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Licensee may not assign or transfer, by operation of law or otherwise, this Agreement (or any licenses, rights or obligations hereunder), without Licensor’s prior written consent. Any attempted assignment or transfer in violation of the foregoing shall be void. Licensor may freely assign this Agreement, or transfer all or any of its rights, or subcontract, delegate or otherwise transfer all or any of its obligations or performance under this Agreement, without Licensee’s consent.

14.6 Notices. Licensor may provide any notice to Licensee under this Agreement by sending an email message to the email address then associated with Licensee’s account. Notices Licensor provides by email will be effective when Licensor sends the email. It is Licensee’s responsibility to keep Licensee’s email address current. If Licensee is not current, Licensor will be deemed to have received any email sent to the email address then associated with Licensee’s account when Licensor sends the email, whether or not Licensee actually receives the email. To give Licensor notice under this Agreement, Licensee must contact Licensor by personal delivery, overnight courier or registered or certified mail to the following mailing address: Hexagon, 1370 Montpellier Court, Gloucester Business Park, Gloucester GL3 4AH, United Kingdom, Attention: Legal Department. Notices provided by personal delivery will be effective immediately. Notices provided by overnight courier will be effective three (3) business day after they are sent. Notices provided by registered or certified mail will be effective five (5) business days after they are sent.

14.7 Governing Language. In the event of translation of this Agreement to a language other than English, the English language version shall govern in the event of a conflict.
14.8 **Governing Law / Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of England, unless Licensee acquired the Licensed Materials in the Americas (including any country in North, Central, or South America, or in the Caribbean) in which case the laws of the State of Delaware, USA 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. Licensor and Licensee agree that any claim, action or proceedings arising out of or relating to this Agreement will be brought exclusively in the courts of England, and Licensor and Licensee will be subject to the exclusive jurisdiction thereof; except that if Licensee acquired the Licensed Materials in the Americas, then any such claim, action or proceedings will be brought exclusively in state or federal courts in the State of Delaware, USA, and Licensor and Licensee will be subject to the exclusive jurisdiction thereof.

Notwithstanding the foregoing or anything to the contrary, nothing shall prevent Licensor 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 Licensee is incorporated, domiciled, conducts business, or holds assets.

14.9 **U.S. Government Use.** For U.S. government procurement, the Licensed Materials are commercial computer software and this Agreement is an addendum to (and forms part of) the contract with the U.S. government entity. This Agreement sets out the U.S. government’s rights to use, disclose, modify, distribute, and reproduce the Licensed Materials.

14.10 **Licensor Affiliates.** Licensee agrees that in addition to Licensor, Licensor's 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. **ADDITIONAL TERMS RE APIs AND ADD-INS.**

15.1 **APIs.** With respect to any published application programming interfaces, scripts, macros, sample code, or other development materials (collectively, “APIs”) made available by Licensor as part of the Licensed Materials, subject to any and all payment obligations and compliance with the terms of this Agreement, Licensor grants to Licensee a non-exclusive, non-sublicensable, non-transferable, limited license to install and use the APIs, during the applicable license term, solely on the same Licensee computer(s) where the associated Software is permitted to be installed, and solely for Licensee’s own internal use in conjunction with the Licensed Materials for which APIs were provided, and only in accordance with the Documentation for the APIs. Licensee acknowledges and agrees that APIs are the confidential and proprietary information of Licensor (or its suppliers, as applicable), and no portion of the APIs may be disclosed or distributed to any third party, nor shall Licensee make the functionality of the APIs available to any third party through any means. To the extent Licensee uses the any portion of the APIs to develop one or more applications, services, modules, components, scripts, post processors, or other custom developments (collectively, “Add-Ins”), such Add-Ins may only be installed on the same Licensee computer(s) where the associated Licensed Materials are permitted to be installed, and used only by Licensee’s Authorized Users, during the license term, in conjunction with the Licensed Materials for which APIs were provided on the same Licensee computer, in accordance with the applicable License Type, for Licensee’s own internal use of the associated Licensed Materials. **Licensee shall have no rights under this Agreement to distribute or disclose Add-Ins to any third party, whether on a commercial or non-commercial basis. Any distribution rights for Add-Ins shall require Licensee entering into a separate agreement with Licensor or Licensor Affiliates, and payment of applicable fees and charges by Licensee.**

15.2 **Additional Requirements and Restrictions RE APIs and Add-Ins.** In addition to any other obligations, restrictions, and limitations in this Agreement, Licensee agrees as follows:

(i) Licensee agrees not to use the APIs to reproduce, or substantially reproduce, features or functionality provided by the Software or any Hexagon Group software;

(ii) Licensee agrees not to use the APIs to, or develop Add-Ins that, disable, modify, circumvent or defeat any license management system, TPM, or other security mechanism that exist or accompany the Licensor Materials;

(iii) Licensee warrants that its use of APIs and development of any Add-Ins will be in accordance with this Agreement and will not infringe or violate the rights of any third party, or violate applicable law;

(iv) Licensee agrees to indemnify and hold harmless Licensor and Licensee Affiliates from and against any and all losses suffered by Licensor and its Affiliates (including legal expenses and attorney’s fees) arising out of or in connection with any claim, action or allegation that Licensee’s development or use of any Add-Ins violates or infringes the rights of any third party, or violates applicable law;

(v) Licensee acknowledges that APIs are subject to change as new versions and updates of the Software are released, and that such changes may require Licensee to alter, modify, update, recompile and / or rewrite any Add-Ins Licensee has developed and may detrimentally affect the functionality of Licensee’s Add-In;

(vi) Future versions of the Software may include functionality provided by an existing Add-In. Licensee agrees to cease further development, except to remove competing functionality or any other development requested by Licensor, of Licensee’s Add-In if this occurs until such competing functionality is removed;
(vii) Licensee shall not access or use any unpublished application programming interfaces of the Software;
(viii) Licensee shall not use the APIs in a way that could limit, impair, harm, or damage the APIs, the Hexagon Group, or any of Hexagon Group’s products or services;
(ix) Licensee shall not use the APIs to migrate users of the Add-in away from any of Hexagon Group’s products or services;
(x) Add-Ins may not remotely access the Licensed Materials over a network; Add-Ins invoking the APIs and / or calling the Software must be installed and running on the same Licensee computing device as the Software; nor may any Add-Ins act as a server or other means of remote access to the Licensed Materials; and
(xi) Upon expiration or termination of Licensee’s license to the APIs or the associated Software, Licensee shall immediately cease using any and all portions or elements of the APIs incorporated or embodied in the Add-ins.

16. ADDITIONAL TERMS RE CLOUD HOSTED FEATURES.
16.1 Certain features, functions, or capabilities associated with Software may require access to and use of cloud-hosted content and / or services hosted on Licensor, Licensor Affiliates, or third-party websites (“Hosted Features”). In such cases, the Software may cause Licensee’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 Licensee and / or its Authorized Users. Some Hosted Features may only be available subject to payment of additional fees and charges.
16.2 Access to or use of Hosted Features may be subject to additional or different terms, as may be presented to Licensee and / or its Authorized Users at the time of registration, sign-in or other use, or as posted on the applicable website. Licensee shall comply with such additional or different terms, and cause its users to comply with such additional or different terms. Licensee 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).
16.3 Specifically, to the extent any Hosted Features are made available on the HxGN SFx cloud services platform, access to or use of such Hosted Features is subject to additional terms set forth in the then-current HxGN SFx cloud services agreement, as supplemented and modified by offering-specific terms for Hosted Features, the HxGN SFx Acceptable Use Policy, and other associated terms and conditions for Hosted Features, all as may be updated from time to time, and made available at https://hexagonmi.com/sfxcloudserviceagreement (or any successor or supplemental web pages of the Hexagon Group).
16.4 Licensee acknowledges and agrees that: (i) Licensor or its Affiliates or third party suppliers may modify, discontinue or replace any or all features, functionality or capabilities of the Hosted Features; (ii) Licensee is solely responsible for ensuring that use of the Hosted Features will not cause any error or interruption in Licensee’s systems or other software; (iii) Licensee is solely responsible for procuring and maintaining network connections and internet connectivity to the data centers where the Hosted Features are hosted and neither Licensor, its Affiliates or suppliers shall have liability for loss or damage arising from or related to such connections and connectivity.
16.5 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, Licensee and its users lose access and usage rights as to the associated Hosted Features. Licensee understands that upon such expiration or termination, Licensee may have no further access to any Licensee data or content it stored on the cloud service relating to the Hosted Features.
16.6 Hosted Features are provided on an “as is” basis, with no warranties of any kind. LICENSOR DOES NOT REPRESENT THAT LICENSEE’S USE OF THE HOSTED FEATURES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE, OR THAT THE HOSTED FEATURES WILL MEET LICENSEE REQUIREMENTS OR THAT ALL ERRORS IN THE HOSTED FEATURES WILL BE CORRECTED. LICENSEE ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE HOSTED FEATURES OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR THE LICENSEE’S PURPOSE.
16.7 Licensor 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 Licensee and any third party in connection with such content or services, including, without limitation, such third party’s privacy policies, are solely between Licensee and such third party. Licensor or its Affiliates may at any time, for any reason, modify or discontinue the availability of any third-party content or services.

17. ADDITIONAL OFFERING-SPECIFIC TERMS.
Certain products, services, or offerings are subject to additional offering-specific terms, as set forth or referenced below, or in the applicable Licensor addendum to this Agreement.
17.1 Cabinet Vision Software. Where the Licensed Materials licensed under this Agreement include any part of the Cabinet Vision software product line, Licensee may use such Software only in connection with Licensee’s own operations and not for estimating or performing the work of third parties.