

# Professional Services Agreement No. \_\_\_\_\_

This Professional Service Agreement (the “Agreement”) is made by and between **Hexagon Geospatial**, a division of Intergraph Corporation (“Hexagon”),

and

\_\_\_\_\_ (“Customer”)

as of the last signature date below (the “Contract Date”). For purposes of this Agreement, Hexagon will provide professional services to Customer subject to the terms and conditions set forth herein.

For good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound, Hexagon and Customer (**each a “Party” and together, the “Parties”**) agree as follows:

## 1.0 Definitions

### 1.1 Services Schedule

The rates, discounts and certain other provisions applicable to the Hexagon services are set forth in Proposal/Quote No.

\_\_\_\_\_ and mutually agreed upon between the parties and shall be effective on the Contract Date.

“Customized Software” shall mean those deliverables developed solely for Customer under this Agreement as well as any Hexagon proprietary information that may be developed or that may be embodied in any deliverable under this Agreement.

“Software License Agreement” means the license agreement attached hereto, provided online or provided as a click-through license for the Customers use of the software, if any.

### 1.2 Term

The “Term” of this Agreement will begin on the date this Agreement is executed by both parties and shall end upon completion of the services described in the Proposal/Quote unless extended in writing by both parties.

## 2.0 Termination and Termination Liability

### 2.1 Discontinuation of Business

Either Party may terminate this Agreement immediately upon written notice to the other Party if such other Party

dissolves, discontinues or terminates its business operations to which this Agreement pertains or such other Party makes any assignment for the benefit of creditors. Notwithstanding the foregoing, where Hexagon dissolves, discontinues or terminates its business operations or makes any assignment for the benefit of creditors, Hexagon will use commercially reasonable efforts to continue providing comparable, alternative services to Customer on comparable terms and conditions for a period of up to one hundred twenty (120) days in order to assist Customer in transitioning said services to a new service provider.

### 2.2 Termination for Cause

Either Party may terminate this Agreement for Cause. “Cause” shall mean a failure of either Party to perform a material obligation under this Agreement which failure is not remedied by such Party within thirty (30) days after receipt of written notice. “Cause” shall also mean Customer’s failure to pay amounts past due.

### 2.3 Suspension/Termination for Regulatory Reasons

Hexagon may suspend (or in the case of any of the circumstances set forth below, which Hexagon believes may continue for the foreseeable future, terminate) this Agreement (or the applicable portion thereof) immediately upon notice to Customer if:

- a) Hexagon is unable to obtain or maintain any U.S. or foreign governmental license, waiver, consent, registration or approval needed to provide any service hereunder;
- b) The continued provision of a service would contravene any local, state, national or international regulation or law.

Prior to suspension or termination hereunder, Hexagon will provide Customer with advance written notice where possible (in Hexagon’s reasonable discretion), of Hexagon’s inability to continue providing Service(s) hereunder.

Hexagon may suspend or terminate any service if said suspension or termination is necessary to prevent or protect against fraud or otherwise protect Hexagon’s personnel, agents, facilities, or services. In the event Hexagon is unable to continue to provide a third-party subcontractor’s, vendor’s or component of equipment, or service for any reason, Hexagon will use commercially reasonable efforts to provide to Customer alternative comparable equipment or service by or through another vendor (or through itself where Hexagon is capable of providing those discontinued services) under comparable terms and conditions.

### 2.4 Mutual Consent

This Agreement may also be terminated at any time by

mutual written agreement of the Parties.

## 2.5 Termination Liability

If: (1) Customer terminates this Agreement, or the services being provided under it, in whole or in part, during the Services Term, for reasons other than: for Cause; or (2) Hexagon terminates this Agreement for Cause, then Customer agrees to pay:

- (a) All accrued but unpaid charges incurred through the date of such termination;
- (b) An amount (which Customer hereby agrees is reasonable) equal to the charges that would otherwise have been due Hexagon during the remaining portion of the Term as of the date of such termination, not to exceed three (3) months of minimum charges based on the notification date.
- (c) Payment in full for any product ordered on Customer's behalf.

## 3.0 Services Provisioning

### 3.1 Statement of Work

Hexagon shall provide to Customer, under the terms set forth in this Agreement, those firm fixed price or time and materials services outlined and set forth in accordance with a mutually agreeable Statement of Work. It is hereby understood and agreed that any additional terms and conditions contained within the Statement of Work shall apply with the same force and effect as if originally written herein.

### 3.2 Schedule of Performance

Hexagon shall use reasonable commercial efforts to perform the Services in accordance with this Agreement.

### 3.3 Changes

In the event Customer elects to make changes to the scope of services contained in a mutually agreeable Statement of Work, and such change(s) results in an increase in the total price, Hexagon will provide a price impact proposal to Customer for the additional work. Hexagon shall have the right to suspend work under this Agreement until Customer and Hexagon have agreed on the change in the price. All changes, regardless of the initiating party must be in writing and signed by both Parties.

### 3.4 Maintenance of Customer Premises Equipment (CPE)

Maintenance obligations associated with any warranty rights accompanying purchased/leased CPE are the responsibility of the applicable supplier of said CPE. If maintenance of CPE is desired beyond that provided by the applicable warranty, such maintenance service and pricing shall be reflected in a mutually agreeable Statement of Work.

## 4.0 Software and Documentation

Software and related documentation (collectively the "Software") provided by Hexagon to Customer in connection with the services being provided under this Agreement will be subject to (i) the shrink wrap license agreement, or (ii) the on-line license agreement that accompanies the product.

### 4.1 Software Rights

All rights in the Software, including without limitation any patents, copyrights and any other intellectual property rights therein, shall remain the exclusive property of Hexagon and/or its licensors. Customer agrees that the Software is the proprietary and confidential information of Hexagon and/or its licensors subject to the provisions of Section 10 of this Agreement ("Confidential Information").

## 5.0 Disclaimer of Certain Damages and Limitation of Hexagon's Liability

### 5.1 Disclaimer of Certain Damages

**NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL, ARISING IN CONNECTION WITH THIS AGREEMENT, THE SERVICES, RELATED PRODUCTS, DOCUMENTATION AND/OR THE INTENDED USE THEREOF, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.**

### 5.2 Limitation of Hexagon's Liability

**WITHOUT LIMITATION OF THE PROVISIONS OF SECTION 5.1 ABOVE, THE TOTAL LIABILITY OF HEXAGON TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE LESSER OF (A) DIRECT DAMAGES PROVEN BY CUSTOMER OR (B) THE AGGREGATE AMOUNTS PAID BY CUSTOMER TO HEXAGON UNDER THIS AGREEMENT FOR THE ONE (1) MONTH PERIOD PRIOR TO ACCRUAL OF SUCH CAUSE OF ACTION FOR THE SPECIFIC PRODUCT OR SERVICE WHICH FORMS THE BASIS FOR SUCH CAUSE OF ACTION. THE FOREGOING LIMITATION APPLIES TO ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT**

**LIABILITY, MISREPRESENTATION, AND OTHER TORTS. FURTHER, HEXAGON'S LIABILITY WITH RESPECT TO SERVICES MAY ALSO BE LIMITED PURSUANT TO THE TERMS AND CONDITIONS OF THE APPLICABLE EXHIBITS. NO CAUSE OF ACTION UNDER ANY THEORY WHICH ACCRUED MORE THAN ONE (1) YEAR PRIOR TO THE INSTITUTION OF A LEGAL PROCEEDING ALLEGING SUCH CAUSE OF ACTION MAY BE ASSERTED BY EITHER PARTY AGAINST THE OTHER.**

### **5.3 Disclaimer of Warranties**

**EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT HEXAGON MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICES, RELATED PRODUCT OR DOCUMENTATION. HEXAGON SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NONINFRINGEMENT OF THIRD PARTY RIGHTS.**

## **6.0 Indemnification**

### **6.1 Customer Indemnification**

Customer agrees to defend at its own expense, and indemnify and hold harmless Hexagon and its subcontractors, if any, (collectively the "Hexagon Indemnitees"), from and against any claims, suits, damages and expenses asserted against or incurred by any of the Hexagon Indemnitees arising out of or relating to:

- (a) Customer's acts, omissions and/or breach of its obligations hereunder;
- (b) And use of any services or related products and documentation provided to Customer hereunder. Notwithstanding any other provision of this Agreement, Customer shall pay all damages, settlements, expenses and costs, including costs of investigation, court costs and reasonable attorneys' fees and costs (including allocable costs of in-house counsel) incurred by Hexagon Indemnitees as set forth in this Section, including, without limitation, reasonable attorneys' fees and costs (including allocable costs of in-house counsel) incurred in enforcing this Agreement.

### **6.2 Intellectual Property Indemnification**

Subject to the provisions of Section 5, Hexagon, at its expense, will defend Customer from and against any third party claim, action, suit, or proceeding ("Claim") alleging that Hexagon used any technology developed and provided by Hexagon to Customer hereunder when used in conformity with all applicable written instructions and documentation, infringes any U.S. patent, trademark, or copyright or constitutes misappropriation of a trade secret

under U.S. law. Hexagon will indemnify Customer for damages finally awarded against Customer or agreed to by Hexagon in settlement of such Claim, and for Customer's reasonable costs incurred as a result of such Claim. Hexagon shall have the exclusive right to defend, counter sue, or settle any such Claim and to collect all damages, costs, fees, and other charges awarded from any such Claim. Hexagon's obligation to defend and indemnify Customer is contingent upon:

- (a) Customer providing Hexagon prompt written notice of any Claim; and
- (b) Customer providing Hexagon, at Hexagon's expense, all information and assistance requested by Hexagon to settle, defend, or bring a counter suit in conjunction with any Claim.

## **7.0 Taxes**

Prices quoted are exclusive of all federal, state, municipal, or other governmental, withholding, excise, sales, use, or like taxes, tariffs, custom duties and importing fees ("Taxes").

Taxes do not include income or franchise taxes based upon the income of Hexagon. Total invoice amounts are subject to increase by the amount of any tax, duty or fee which Hexagon is required to pay and/or which Customer is required to withhold, collect or pay upon sales or delivery of the Products or Services. Any certificate to exempt this Schedule from sales or use tax liability shall be obtained by Customer at its expense.

## **8.0 Ownership of Work Product**

Customer understands that Hexagon possesses information and data that was developed, created or discovered by Hexagon or its subcontractors, or which has become known to, or has been conveyed to Hexagon which has commercial value in Hexagon's day-to-day business. Hexagon considers such information and/or data to be proprietary and confidential. Such information and/or data includes, but is not limited to, trade secrets, copyrights, inventions (whether patentable or not), concepts, ideas, methods, techniques, formulae, algorithms, logic designs, screen displays, schematics, source and object code computer programs all of which shall hereinafter be singularly or collectively referred to as "Hexagon Intellectual Property."

Customer further understands that, if this Agreement requires the development of any customized software as a deliverable, Customer shall maintain the confidentiality of the deliverable, including any documentation applicable thereto, as it would confidential information/data of its own and shall not disclose same to any third- Party without the prior written consent of an authorized Hexagon contracts representative.

The Customized Software shall remain the property of Hexagon and be subject to Hexagon's standard Software License Agreement.

All commercial, off-the-shelf software and third-party

developed software furnished by Hexagon hereunder shall remain the property of Hexagon, or the respective third party, and is subject to the applicable software license agreement.

## 9.0 Reproduction of Materials

Customer agrees that it shall not reproduce any copyrighted materials furnished by Hexagon or its subcontractors, nor video or audio record any training class, without the prior written approval of an authorized Hexagon contracts representative.

## 10.0 Confidential Information

During the performance of work under this Agreement, it may be necessary to share and/or exchange information and data which may be considered confidential, proprietary and/or competition sensitive. Therefore, the Parties agree to the following:

- a) Any confidential, proprietary and/or competition sensitive information exchanged by the parties and entitled to protection hereunder shall be identified by the furnishing party as confidential, proprietary and/or competition sensitive by (i) appropriate stamp or marking on the documents exchanged, or (ii) written notice of any disclosures made under assertion of confidentiality, sent to the receiving party no later than two (2) weeks after disclosure, with listings of all proprietary material and appropriately stamped or marked summaries of such other disclosures.
- b) Verbal communications that are considered confidential, proprietary and/or competition sensitive may also be conducted as part of the normal discussion activities. Prior to these verbal communications, an announcement will be made that the conversation to follow is to be considered confidential, proprietary and/or competition sensitive, and at the conclusion of that part of the conversation that is considered confidential, proprietary and/or competition sensitive, an ending comment will be made so as to bracket the information which is considered to be confidential. Both parties agree to hold such verbal information in confidence in accordance with this Agreement.
- c) The receiving party will hold such confidential, proprietary and/or competition sensitive information in confidence for a period of three (3) years from the date of receipt under this Agreement, and during such period will use such information only for evaluation purposes and will make such information available only to its employees having a "need to know" in order to carry out their functions in connection with the purpose of this Agreement. Unless authorized in writing by the party originally transmitting such confidential, proprietary and/or competition sensitive information hereunder, the receiving party will not otherwise use or disclose such confidential, proprietary and/or competition

sensitive information during the above-mentioned three (3) year period. Information shall not be afforded the protection of this Agreement if, on the effective date hereof, such information has been or from the time thereafter such information is:

- 1) Lawfully developed by the receiving party independently of the information received from furnishing party;
  - 2) Rightfully obtained without restriction by the receiving party from a third party;
  - 3) Publicly available other than through the fault or negligence of the receiving party;
  - 4) Released without restriction by the furnishing party to any third party.
- d) Should the receiving party be faced with legal action regarding disclosure of information under this Agreement, the receiving party shall forthwith notify the furnishing party, and, upon the request and at the expense of the latter, shall cooperate with the furnishing party in contesting such a disclosure. Except in connection with failure to discharge responsibilities set forth in the preceding sentence, neither party shall be liable in damages for any disclosures pursuant to judicial actions or for inadvertent disclosure where the proper degree of care has been exercised; provided, that upon discovery of such inadvertent disclosure, it shall have endeavored to prevent any further inadvertent disclosure and to correct the effects of any such inadvertent disclosure.
  - e) All proprietary information furnished hereunder shall remain the property of the furnishing party and shall be returned to it or destroyed promptly at its request together with all copies made thereof by the receiving party hereunder. The parties shall employ the same standard of care it uses to protect its own proprietary information, but in any event, no less than reasonable care.
  - f) No license under any patents or any other proprietary right is granted or conveyed by one party's transmitting proprietary information or other information to the other party hereunder, nor shall such a transmission constitute any representation, warranty, assurance, guaranty of inducement by the transmitting party to the other party with respect to infringement of patent or any other proprietary right of others.
  - g) The receiving party shall not disclose or deliver, directly or indirectly, any technical data or any product utilizing any such data to any person to whom such disclosure or delivery is prohibited by the U.S. Government, nor export, directly or indirectly, any technical data acquired pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other Government approval without first obtaining such license or approval.

## **11.0 Invoices/Payment Terms**

### **11.1 Currency**

Unless otherwise specified, all amounts due for Hexagon services will be billed in U.S. Dollars.

### **11.2 Payment Terms**

Customer shall pay Hexagon for services within thirty (30) calendar days after the date of Hexagon's invoice. An interest charge of one and one-half percent (1.5%) per month or the maximum amount allowed by law, whichever is less, may be assessed on delinquent payments.

### **11.3 Customer Responsibility**

Customer agrees to be financially responsible for all Customer's authorized subsidiary and Distributor usage of services provided under this Agreement.

### **11.4 Past Due Amounts**

Amounts not paid within thirty (30) days after the date of the invoice will be considered past due, provided, however, that Customer shall be authorized to withhold from its payment those amounts which it believes, in good faith, have been erroneously charged to its account. In order to exercise this provision, Customer must provide Hexagon with immediate written notice of the reasons (and documentation) supporting its withholding of any such sums, and further, it must pay all undisputed amounts billed to its account. After receiving written notice from Customer of the alleged billing discrepancy, Hexagon shall be given thirty (30) days to investigate and engage in informal dispute resolution procedures aimed at resolving the alleged billing dispute.

If, after this time period, Hexagon and Customer continue to dispute the existence and/or amount of Customer's billing claims, then Hexagon or Customer may seek to arbitrate the dispute pursuant to this Agreement. Notwithstanding the foregoing, this provision is not intended to limit Hexagon's interim right to seek any other relief authorized by this Agreement, including but not limited to discontinuation of the Hexagon services and/or termination of the Agreement for non-payment in the event Hexagon determines that such billing claims are not bona fide.

Hexagon may terminate the affected services and/or this Agreement for Cause, as defined in section 2.2 of this Agreement in the event Customer fails to comply with its payment obligations hereunder. Independent of such payment obligations, Customer will make a separate claim in writing, with adequate support, for any credit to which Customer believes itself entitled hereunder, and Hexagon and Customer will promptly address such claim.

If Customer does not give Hexagon written notice of a dispute with respect to any charges within six (6) months of the date an invoice was rendered, such invoice shall be deemed to be correct and binding. Failure of Hexagon to

invoice Customer in a timely manner for any amounts due hereunder shall not be deemed a waiver by Hexagon of its rights to payment.

## **12.0 Client Obligations**

Unless otherwise specified, Customer shall be under the following obligations:

### **12.1 Security**

Customer shall, at its own expense, take all reasonable physical and information systems security measures necessary to protect all equipment, software, data and systems located on Customer's premises or otherwise in Customer's control and used in connection with the Hexagon services, whether owned by Customer, Hexagon, or Hexagon's subcontractors. Customer acknowledges and agrees that Hexagon is not liable, either in contract or in tort, for any loss resulting from any unauthorized access to, or alteration, theft, destruction, corruption, or use of, facilities used in connection with the Hexagon services.

### **12.2 Customer Sites**

Customer agrees to provide Hexagon and its subcontractors and their respective employees and agents access to Customer's sites where any Hexagon services are provided (including access to associated equipment) as necessary for Hexagon and its subcontractors to perform the Hexagon services.

## **13.0 Compliance with Laws**

All Hexagon services are provided subject to applicable local laws and regulations in the countries in which service is provided. Customer is responsible for complying with all laws and regulations including, without limitation,

- (a) Local license or permit requirements;
  - (b) Export, import and customs laws and regulations (such as the export and re-export controls under the U.S. Export Administration Regulations and/or similar regulations of the U.S. or any other country) which may apply to certain equipment, software and technical data provided hereunder; and
  - (c) Foreign corrupt practices acts.
- Notwithstanding the foregoing, Hexagon does not represent that any necessary import, export or customs licenses or approvals will be granted with respect to services provided hereunder.

## **14.0 Insurance**

Hexagon agrees to maintain in full force and effect during the term of this Agreement its standard insurance coverage. Upon request, Hexagon will provide Customer with a Certificate of Insurance on a

standard industry accepted form.

## **15.0 Miscellaneous**

### **15.1 Assignment**

Customer may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Hexagon, which consent shall not be unreasonably withheld. Any attempted assignment without such prior written consent shall be void.

### **15.2 Governing Law**

If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through friendly negotiation, this Agreement, and all causes of action arising out of this Agreement, will be subject to the laws of the State of Alabama, without regard to its choice of law principles.

### **15.3 Enforceability**

If any paragraph or clause of this Agreement shall be held to be invalid or unenforceable by any body or entity of competent jurisdiction, then the remainder of the Agreement shall remain in full force and effect and the Parties shall promptly negotiate a replacement provision or agree that no replacement is necessary.

### **15.4 No Waiver**

Neither Party's failure, at any time, to enforce any right or remedy available to it under this Agreement shall be construed to be a waiver of such Party's right to enforce each and every provision of this Agreement in the future.

### **15.5 Notice**

Any notice required to be given under this Agreement shall be in writing, in English, and transmitted via facsimile, overnight courier, hand delivery or certified or registered mail, postage prepaid and return receipt requested, to the Parties at the addresses below or such other addresses as may be specified by written notice. Notice sent in accordance with this Section shall be deemed effective when received.

**If to Hexagon:**

Hexagon Geospatial

Attention: Legal

Department

305 Intergraph Way

Madison, Alabama 35758

Phone: 256-730-2000

Email: [michael.patton@hexagongeospatial.com](mailto:michael.patton@hexagongeospatial.com)

### **15.6 Independent Contractor**

Hexagon shall perform the services under this Agreement as an independent contractor and neither Hexagon nor its employees shall be deemed to be employees of Customer. Hexagon shall determine in its sole discretion which of

its employees or subcontractors shall be assigned to perform any consulting services for Customer and may reassign any employee or subcontractor at any time. Nothing in this Agreement is intended to establish a partnership, joint venture or agency relationship between the parties.

### **15.7 Non-Solicitation of Hexagon Employees**

Customer agrees that it will not, without the prior written consent of Hexagon, solicit or hire any Hexagon employee, or induce such employee to leave Hexagon's employment, directly or indirectly, for a period of twelve (12) months after the most recent time such employee has performed any services for Customer.

### **15.8 Force Majeure**

Any delay in or failure of performance by either Party under this Agreement (other than a failure to comply with payment obligations) shall not be considered a breach of this Agreement if and to the extent caused by events beyond the reasonable control of the Party affected, including but not limited to acts of God, embargoes, governmental restrictions, strikes, riots, wars or other military action, civil disorders, rebellion, fires, floods, vandalism, or sabotage. Market conditions and/or fluctuations (including a downturn of Customer's business) shall not be deemed force majeure events. The Party whose performance is affected by such events shall promptly notify the other Party, giving details of the force majeure circumstances, and the obligations of the Party giving such notice shall be suspended to the extent caused by the force majeure and so long as the force majeure continues, and the time for performance of the affected obligation hereunder shall be extended by the time of the delay caused by the force majeure event.

### **15.9 Use of Subcontractors and Vendors**

Hexagon reserves the right to obtain facilities, components of equipment, or service used to support Customer from any subcontractor, vendor or other source of Hexagon's choice, including without limitation the right to change such subcontractors, vendors or sources at any time for any reason; provided, however, that where such issue arises, Hexagon continues to provide to Customer comparable equipment or service under comparable terms and conditions.

### **15.10 Entire Agreement**

This Agreement, together with all of its Attachments, constitute the entire agreement between the Parties with respect to its subject matter, and as to all other representations, understandings or agreements which are not fully expressed herein. No amendment to this Agreement shall be valid unless in writing and signed by both Parties.

**15.11 Signature Authorization**

The Parties have duly executed and agreed to be bound by this Agreement as evidenced by the signatures of their authorized representatives below. Each Party represents and warrants to the other that the signatory identified beneath its name below has full authority to execute this Agreement on its behalf.

**Intergraph Corporation, d/b/a Hexagon Geospatial**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Customer:** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_