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# End User Access Agreement

14 December 2021

**IMPORTANT - READ CAREFULLY BEFORE ACCESSING INFORMATION FROM THIS HEXAGON-ENABLED WEBSITE, DOWNLOADING INFORMATION OR USING SERVICES FROM HEXAGON.**

By accessing this Hexagon-enabled website or other means of accessing or downloading information, you accept this agreement. If you do not agree with the terms of this agreement, do not access this information from any Hexagon-enabled website, or other means of accessing or downloading information. Access to the geospatial data is granted by Hexagon exclusively on these terms or other terms expressly agreed in writing and signed by an authorized officer of Hexagon.

This End User Access Agreement (“Agreement”) is between you and Leica Geosystems Inc. (“Hexagon”), a Delaware corporation with a place of business at 5051 Peachtree Corners Cir., Suite 250, Norcross, GA 30092, USA.

**1. Purchase Type.** You may purchase a Pixel Download or a Streaming Subscription on the data store, which is available at <https://hxgncontent.com/data-store>. A Pixel Download allows you to download georeferenced, physical world imagery data (“Geospatial Data”) by selecting in the data store an area of interest, resolution, and file format. A streaming subscription allows you to access Geospatial Data for a period of time (“Subscription Period”) you select from the data store. You must specify the geographic scope of the data you wish to stream (e.g., country, state, metro or county). The streaming service supports access through ArcGIS and OGC WMS/WMTS protocols directly into your application of choice. By making a purchase on the data store, you agree to the terms of this Agreement.

**2. Rights to Geospatial Data.** Your rights to use Geospatial Data depend on whether you have purchased a Streaming Subscription or a Pixel Download from the data store. In this Agreement, “you”, and “your” means the legal entity, or natural person in the event of personal use, who has created an account on the data store for purchasing access to the Geospatial Data.

#### A. Streaming Subscription

If you purchase a Streaming Subscription, Hexagon grants you access to the Geospatial Data through the online services provided by Hexagon (the “Services”) for which you have paid the required fees. You may grant access to one person within the corporation, governmental body, or other legal entity that directly employs you, or of which you are the principal or officer, to use the Services. If Hexagon consents in writing (which consent may require a fee), you may permit access by additional users in your organization (the “Authorized End Users”).

You must use the Services in accordance with the Acceptable Use Policy. You are responsible for use or misuse of the Geospatial Data or Services, and for compliance with and breach of this Agreement by the Authorized End Users.

During the subscription period set forth in the data store, and subject to payment of fees when due and compliance with this Agreement, Authorized End Users may use the Geospatial Data for internal purposes to (i) consume Geospatial Data through a desktop and/or web-based GIS application (to the extent compatible with the Geospatial Data), and (ii) combine vector layers and other data sets with the Geospatial Data, and (iii) otherwise use the Geospatial Data and the Services for internal purposes within your organization.

You may not grant any person the right to access the Geospatial Data, including your affiliates or contractors.

#### B. Pixel Download

If you purchase a Pixel Download, subject to the payment of all required fees when due and compliance with this agreement, Hexagon grants Authorized End Users (i.e., you and your authorized users within your organization, as defined in paragraph A., above) the right to download and use internally the Geospatial Data

for which you have paid the required fees. You may copy and distribute the Geospatial Data to other employees in your organization, but you may not copy or distribute the Geospatial Data outside of your organization, including to affiliates or contractors.

**3. Attribution.** You may not alter or remove any copyright notices.

**4. Ownership.** Geospatial Data is not sold to the Authorized End User and no ownership rights are transferred to the Authorized End User. The Geospatial Data is owned by Hexagon or its licensors.

**5. Confidentiality.** “Confidential Information” means all information disclosed by Hexagon (“Disclosing Party”) to an Authorized End User (“Receiving Party”), whether orally or in writing, that is designated as confidential or that relates to the Services, including the terms of this Agreement (including pricing). Confidential Information excludes any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind, but in no event less than reasonable care, to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who are under confidentiality obligations with the Receiving Party not materially less protective than those herein. The Receiving Party shall destroy Confidential Information in its possession upon termination of this agreement. Nothing in this section grants rights to Geospatial Data greater than those set forth in section 1 of this Agreement.

The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**6. Fees and Taxes.** The data store sets forth the fees, subscription term and other terms related to access and use of the Geospatial Data, and is hereby incorporated into, and forms a part of, this Agreement. Fees are exclusive of all applicable sales, use, value added, GST, and other taxes (and all applicable tariffs, customs duties and similar charges), and you will be responsible for payment of all such taxes (other than taxes based on the net income of Hexagon), tariffs, duties and charges (and any related penalties and interest), payable in connection with this Agreement or the provision of Services hereunder. The total invoice amount for fees is subject to increase by the amount of any taxes which Hexagon is required to pay and/or which you are required to withhold, collect or pay upon the fees so that Hexagon receives the full amount of the fees invoiced. If you are claiming tax exemption status, you must provide a copy of a valid tax exemption certificate.

**7. Restrictions.** The Geospatial Data and Services may only be used by the Authorized End User or by individual users authorized in writing by Hexagon, and not by any other party. No part of the Geospatial Data, the Services or products derived therefrom, or any right granted under this Agreement may be copied (except internally in the case of pixel downloads as described above), sold, rented, leased, lent, sub-licensed, disclosed, or transferred to any other person or entity. The Authorized End User shall not use any part of the Geospatial Data or the Services to develop or derive any other product or service for distribution, disclosure, or commercial sale, whether by hardcopy, digital medium or web service, without a license specifically authorizing it to do so, with the understanding that no such right is granted under this Agreement. You have no other rights to the Geospatial Data except as expressly set forth in this Agreement. Without limiting the foregoing, you may not re-sell or re-distribute or give access to the Geospatial Data as a web service. You may not use the

Geospatial Data in connection with a service bureau or for time-sharing purposes or in any other way allow third parties to exploit the Geospatial Data, except Authorized End Users as specifically authorized by this Agreement. You shall not provide passwords or other log-in information to any third party, except Authorized End Users. You and any Authorized End User acknowledge that the Geospatial Data and Services contain and embody proprietary materials, valuable data, trade secrets, and copyrights of Hexagon and its licensors and suppliers. Unauthorized reproduction, modification, distribution, or display of the Geospatial Data or the Services in whole or in part, and in any manner not expressly authorized in this Agreement, are prohibited. You shall, and you shall cause the Authorized End Users to, keep confidential and use your best efforts to protect the Geospatial Data and the Services and prevent their unauthorized disclosure or use. The Authorized End User shall immediately notify Hexagon upon discovering evidence of a current or threatened misuse or unauthorized use or disclosure of the Geospatial Data or Services by any party. You shall not, and you shall cause your Authorized End User not to, modify, distort, disassemble, decompile or in any way attempt to reverse engineer the Services or any software provided as part of the Geospatial Data or the Geospatial Data itself. Each Authorized End User shall comply with the Acceptable Use Policy.

The Authorized End User may not transfer the Geospatial Data to or store the Geospatial Data or grant access to the Services in any electronic network for use by any person other than Authorized End Users, unless it obtains prior written permission from Hexagon and pays associated additional fees. Without limiting the foregoing, Geospatial Data may not be transferred to any person other than an Authorized End User.

If the Authorized End User is a federal, provincial, state or local government agency, the Geospatial Data is licensed solely to the particular agency and not to any other government agency unless explicit authorization has been received from Hexagon.

**8. Evaluation Access.** Hexagon may grant a right to access the Services during an evaluation period. In addition to the restrictions set forth above, Authorized End Users, during an evaluation period, shall use the Services for evaluation only, and shall not use the Services for any commercial or profit-making activity, including, but not limited to, non-revenue commercial activities such as marketing, bid submission, and promotion. Upon termination of the evaluation period, the Authorized End Users shall return or destroy all Geospatial Data and any reports, documents or files incorporating the Geospatial Data.

**9. Non-Hexagon Services.** Hexagon may offer certain Services, or features or functions within Services, made available by unaffiliated third parties (“Non-Hexagon Services”). Accessing such Non-Hexagon Services may cause your computer to communicate with a third-party website. Such connectivity or access to third party websites or third-party materials is governed by the terms found on such sites, and access to and use of Non-Hexagon Services may require your agreement to separate terms. Linking to or use of Non-Hexagon Services constitutes your agreement with such terms. Hexagon Group Companies are not a party to such third-party agreements and are not responsible for such Non-Hexagon Services. Hexagon may at any time, for any reason, modify or discontinue the availability of any Non-Hexagon Services.

**10. Hexagon Affiliates.** You acknowledge that Hexagon has affiliates and subcontractors worldwide. You acknowledge and agree that Hexagon affiliates and subcontractors are entitled to provide the Services to you.

**11. Warranty Disclaimer and Limit of Liability.** THE GEOSPATIAL DATA AND THE SERVICES ARE PROVIDED “AS IS,” AND HEXAGON MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, UPTIME, ACCURACY, OR NON-INFRINGEMENT. IN NO EVENT WILL HEXAGON AND ITS AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES, HOWEVER CAUSED, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS AND LOST DATA. THE AUTHORIZED END USER ACKNOWLEDGES THAT ITS SOLE REMEDY UNDER THIS AGREEMENT IS TO REQUIRE HEXAGON TO REDELIVER THE GEOSPATIAL DATA GIVING RISE TO ANY BREACH OF THIS AGREEMENT OR BREACH OF DUTY. THE AGGREGATE LIABILITY OF HEXAGON FOR ALL OTHER LOSSES, LIABILITIES,

CLAIMS, DAMAGES OR ASSESSMENTS, OF ANY KIND OR NATURE, SHALL NOT EXCEED THE FEES PAID BY THE AUTHORIZED END USER TO HEXAGON WITH RESPECT TO THE GEOSPATIAL DATA OR THE SERVICES AT ISSUE IN ANY DISPUTE OR CLAIM.

The Authorized End User agrees that the limitations of liability and disclaimers set forth herein will apply regardless of whether the Authorized End User has accepted the Geospatial Data or any other product or service delivered by Hexagon. The Authorized End User acknowledges and agrees that Hexagon has set its prices and entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

In addition, in no event shall Hexagon be liable for any third-party websites that appear in or are referenced by the Hexagon data store.

**12. Acceptable Use.** You shall ensure all your Authorized End Users comply with the Acceptable Use Policy (“AUP”). The latest version of AUP posted <https://hxgncontent.com/global/acceptable-use-policy>, is incorporated herein by reference. An Authorized End User may be prompted with review and acceptance of the AUP to gain access to the Services. Hexagon reserves the right to change the AUP at any time. Any update to the AUP may require each Authorized End User to re-accept the modified AUP. Failure to comply with the AUP may result in suspension of the Services or termination of this Agreement for material breach. During any period of suspension, you will still be liable for payment of the applicable fees.

**13. Term.** Hexagon may terminate this End User Access Agreement, which will terminate all access to the Services and the Geospatial Data, if the Authorized End User fails to comply with any term of this Agreement. In the event of termination, the Authorized End User must immediately return the Geospatial Data to Hexagon or destroy it and certify this destruction in writing to Hexagon.

**14. Complete Agreement.** This Agreement and data store terms at the point of sale set forth the complete and exclusive statement of the understanding between the you and Hexagon with respect to the Geospatial Data and the Services and may be amended or modified only in a written instrument signed by a duly authorized representative of both parties. If any provision is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be valid and enforceable.

**15. Indemnity.** The Authorized End User agrees to defend, indemnify, and hold Hexagon, its affiliates, directors, employees, and agents harmless from and against any claim, action, proceeding, loss, cost, expense, damages, and liability, including reasonable legal fees, arising from or related to any breach of this Agreement by you and any Authorized End User.

**16. Export.** You acknowledge that this Agreement and the performance thereof is subject to compliance with any and all applicable Swiss, Canadian, EU and United States laws, regulations, or orders relating to export. You expressly acknowledge and agree that you will not export, re-export, transfer or release the Geospatial Data in whole or in part to (a) any EU, Swiss, Canadian and/ or U.S. embargoed country (or to a national or resident of any EU, Swiss, Canadian and/ or U.S. embargoed country); (b) any person on the U.S. Treasury Department’s list of Specially Designated Nationals; (c) any person or entity on the U.S. Commerce Department’s Table of Denial Orders; or (d) any person or entity on any EU or Swiss or US Denied Parties Lists; or (e) any person or entity where such export, re-export or provision violates any EU or Swiss or Canadian or U.S. export control laws or regulations including, but not limited to, the terms of any export license or licensing provision and any amendments and supplemental additions to EU or Swiss or Canadian or U.S. export laws as they may occur from time to time.

**17. Force Majeure.** Hexagon will not be held liable or responsible for delay or failure to perform any of such its obligations under this Agreement occasioned by any cause beyond its reasonable control, including but not

limited to war; terrorist acts; civil disturbance; fire; flood; earthquake; pandemic, acts or defaults of common carriers; governmental laws, acts, regulations, embargoes or orders; or any other cause, contingency or circumstance not subject to such party's reasonable control. The affected party will resume full performance of interrupted obligations as soon as practicable upon cessation of intervening causes.

**18. Notices.** Notices permitted or required under this Agreement shall be in writing and delivered personally (including courier service), by certified or registered mail, return receipt requested, or by confirmed facsimile transmission. Notices shall be effective upon receipt. If notice is sent to Hexagon, it shall be directed to Hexagon, 5051 Peachtree Corners Cir., Suite 250, Norcross, GA 30092 U.S.A. Attn: Legal Department.

**19. Precedence.** In the event of a conflict or inconsistency in the Agreement documents, the following order of precedence shall apply: (i) the specific terms on the data store relating to the Geospatial Data, (ii) the Acceptable Use Policy, and (iii) this End User Access Agreement. The English language version of this Agreement is legally binding in case of any inconsistencies between the English version and any translations.

**20. Governing Law.** The interpretation, Agreement shall be governed by the following law: (a) if the Authorized End User is a government entity, the applicable laws of the Authorized End User, (b) in all other cases, the law of the state of Georgia, U.S.A., excluding its choice of law principles.

**21. Restricted Rights to U.S. Federal Agencies.** As prescribed in FAR 27.409(f), the Geospatial Data is existing data, and is licensed to the U.S. government under clause: 52.227-18 Rights in Data-Existing Works.

**22. No Joint Venture.** This Agreement shall not create any relationship between you and Hexagon as joint ventures, partners, associates, or principal and agent. Neither party is granted any right of authority and shall not create any obligation or responsibility for or on behalf of the other party. Neither party shall have the authority to bind the other party.

**23. Electronic Agreement.** You expressly consent and agree that the data store and related Hexagon forms may be electronically signed or acknowledged and agreed, and that such electronic signatures shall be treated, for purposes of validity, enforceability as well as admissibility, the same as written signatures.

**24. Assignment.** Without the prior written consent of Hexagon, neither this Agreement nor any of the rights granted by it may be assigned or transferred by the Authorized End User. This restriction on assignments or transfers shall apply to assignments or transfers by operation of law, as well as by contract, merger or consolidation. Subject to the preceding sentence, this Agreement will be binding upon you and your successors and assigns.