



THIS DATA PROCESSING ADDENDUM (“DPA”) supplements the Master Terms between Customer and Hexagon, or other agreement between Customer and Hexagon (the “**Agreement**”) governing Customer’s use of Hexagon Software Products, Maintenance Services, and/or the Cloud Program Hexagon’s performance of Services (collectively, “Hexagon Products”) when the GDPR applies to Customer’s use of Hexagon Products to process Customer Data. This DPA is an agreement between Customer and Hexagon. Any and all terms capitalized but not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

1. DEFINITIONS AND CONSTRUCTION

1.1 Definitions

“**EU Model Clause Agreement**” means an agreement made using the relevant EU Model Clauses as adopted by the EU Commission for the transfer of personal data to third countries.

“**EU Personal Data Legislation**” means (a) until 24 May 2018, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and any amendments made thereto, (b) until 24 May 2018, local legislations where the Directive referred to in (a) is implemented and any amendments made thereto, and (c) the GDPR.

“**GDPR**” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing the Directive 95/46/EC (General Data Protection Regulation), and any amendments made thereto.

“**Hexagon Affiliates**” means a legal entity that directly or indirectly through one or more intermediaries is controlled by or under common control with Hexagon’s ultimate parent company. For the purposes of this definition, the term “control” shall be understood as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a legal entity, whether through the ownership of voting stock, by contract, or otherwise.

“**Party**” or “**Parties**” means the Customer and Hexagon separately, or jointly, as the case may be.

“**Regulatory Requirements**” means the privacy and personal data legislation applicable to the processing of personal data, including the EU Personal Data Legislation, and such legislation as may replace the aforementioned legislation from time to time (and in case of discrepancies or contradictions between different rules or regulations, the one which provides the highest degree of privacy and/or information security shall apply).

“**Supervisory Authority**” means any court, regulatory agency or authority which, according to applicable laws and/or regulations (including the Regulatory Requirements), supervises privacy issues and/or the processing of personal data.

1.2 Construction

1.2.1 Non-capitalized terms and expressions used in this Agreement, *e.g.* ‘data subject’, ‘controller’, ‘personal data’, ‘processing’, ‘processor’, ‘third country’, etc., shall have the same meaning as in EU Personal Data Legislation.

1.2.2 Unless it is otherwise stated herein, or clearly follows from the context in which it appears, the term “including” shall mean “including without limitation”.

2. SPECIAL UNDERTAKINGS OF THE PARTIES

2.1 Roles, Ownership of Personal Data, Processing and Purpose

- 2.1.1 The Customer shall be regarded as a controller of all personal data processed on behalf of the Customer and in accordance with its instructions. Hexagon shall be considered a processor of the personal data processed on behalf of the Customer.
- 2.1.2 Hexagon may only process the Customer's personal data for the purpose set forth on Schedule 1 attached hereto and to the extent it is necessary for the fulfilment of Hexagon's obligations under this DPA or the Agreement.
- 2.1.3 Hexagon acknowledges that, between the Parties, all rights, title, and interest in the personal data processed as a result of this Agreement is vested solely in the Customer, irrespective of whether Hexagon is considered to be a controller of personal data.

2.2 Special Undertakings of the Customer

The Customer undertakes to:

- (a) Ensure that there is a legal ground for processing the personal data covered by this DPA;
- (b) Ensure that the data subjects, as required by the EU Personal Data Legislation, have received sufficient information regarding the processing, including information on that Hexagon may process the personal data on behalf of the Customer;
- (c) Immediately after it is brought to the Customer's attention, inform Hexagon of any erroneous, rectified, updated or deleted personal data subject to Hexagon's processing;
- (d) In a timely manner, provide Hexagon with lawful and documented instructions regarding Hexagon's processing of personal data;
- (e) Before this DPA enters into force, provide Hexagon with the Customer's applicable policies and guidelines for processing of personal data; and
- (f) Act as the data subject's point of contact.

2.3 Special Undertakings of Hexagon

Hexagon undertakes to:

- (a) Only process the personal data in accordance with the Customer's documented instructions, including with regard to transfers of personal data to a third country or an international organization, unless required to do so by Regulatory Requirements; in such a case, Hexagon shall inform the Customer of that legal requirement before processing the personal data, unless such information is prohibited by the Regulatory Requirements on important grounds of public interest;
- (b) Ensure that such employees (of Hexagon or its subcontractors) which process personal data on behalf of the Customer have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (c) Take all measures required pursuant to GDPR, Article 32;
- (d) Taking into account the nature of the processing, assist the Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising the data subject's rights set forth in the EU Personal Data Legislation;

- (e) Except in cases of personal data breach, upon a timely request by the Customer, assist the Customer in ensuring compliance with the obligations pursuant to GDPR, Articles 32 to 36 (e.g. assist in data protection impact assessments) taking into account the nature of the processing and the information available to Hexagon; and
 - (f) Make available to the Customer the information necessary to demonstrate compliance with Hexagon's obligations set forth in this DPA and allow for and contribute to audits, including inspections, conducted by the Customer or another authorized third party, in accordance with Section 4.
- 2.3.1 Hexagon shall immediately inform the Customer if, in its opinion, a Customer instruction infringes the EU Personal Data Legislation.
- 2.3.2 The Parties agree that the security measures taken by Hexagon, listed in the Agreement, fulfils Hexagon's undertakings in Sections 2.3(c) and 2.3(e).

3. SUBCONTRACTORS

- 3.1 Hexagon shall be entitled to engage subcontractors acting as sub-processors of the personal data under the condition that such subcontractors are bound by a written contract which states that they must adhere to the same data protection, privacy and audit obligations as Hexagon under this DPA.
- 3.2 Should Hexagon wish to engage a subcontractor different from or additional to those subcontractors set forth in the Agreement or the Quote, it shall notify the Customer in advance. The Customer may, within twenty-four (24) hours from receipt of the notification, object to Hexagon appointing that specific subcontractor. Should the Customer's objection(s) result in any additional costs or expenses for Hexagon, e.g. if the engagement of another subcontractor than the one initially proposed by Hexagon would result in additional or increased costs or expenses by Hexagon, Hexagon shall be compensated for such additional and/or increased costs and expenses.
- 3.3 Hexagon shall remain the Customer's sole point of contact, unless otherwise agreed.
- 3.4 For the avoidance of doubt, the Customer fully and explicitly consents to the use of the subcontractors with whom Hexagon has agreements in place with at the time this DPA enters into force, including all Hexagon Affiliates, regardless if they have been engaged as subcontractors at the time of this DPA.

4. AUDIT RIGHTS AND LOCATIONS

- 4.1 The Customer shall have the right to perform audits of Hexagon's processing of the Customer's personal data (including such processing carried out by Hexagon's subcontractors, if any) in order to verify Hexagon's, and any subcontractor's, compliance with this DPA and the EU Personal Data Legislation.
- 4.2 Hexagon will, during normal business hours and upon reasonable notice (whereby a notice period of twenty (20) Business Days shall always be deemed reasonable), provide an independent auditor, appointed by the Customer and approved by Hexagon, reasonable access to the parts of facilities where Hexagon is carrying out processing activities on behalf of the Customer, to personnel and to all information relating to the processing of the Customer's personal data. The auditor shall comply with Hexagon's work rules, security requirements and standards when conducting site visits.
- 4.3 A Supervisory Authority shall always have direct and unrestricted access to Hexagon's premises, data processing equipment and documentation in order to investigate that Hexagon's processing of the personal data is performed in accordance with the Regulatory Requirements.
- 4.4 The Customer is responsible for all costs associated with the audit mentioned in Section 4.2, save for when the audit concludes a material breach of Hexagon's undertakings in

violation of this DPA. If so, Hexagon shall compensate the Customer for reasonable and verified costs associated with the audit.

- 4.5 The Customer's personal data may not be processed in a manner that entails a transfer to a third country or an international organisation (including inadvertently through the use of cloud-based IT solutions) unless this is in accordance with the Customer's instructions.

5. INTERNATIONAL PERSONAL DATA TRANSFERS

5.1 Hexagon Affiliates and sub-contractors outside the EU/EEA

- 5.1.1 When providing the Hexagon Products, Hexagon may need to process the Customer's personal data outside of the EU/EEA. Therefore, the EU Model Clause Agreement as set out in Schedule 2 shall apply in such instances. The Parties agree that any disputes arising under an EU Model Clause Agreement shall be treated as if they had arisen under the Agreement.
- 5.1.2 If the Customer's personal data is to be transferred to and processed by a sub-contractor located outside the EU/EEA, Hexagon is obliged to ensure that the sub-contractor accedes to the EU Model Clause Agreement as set out in Schedule 2.
- 5.1.3 The above shall not apply if the jurisdiction in which Hexagon or sub-contractor is established has been deemed by the European Union as a jurisdiction with adequate protection for personal data.

6. REMUNERATION

- 6.1 The remuneration for Hexagon's undertakings under this DPA shall, unless otherwise stated in this Section 6.1, be included in the remuneration paid by the Customer under the Agreement. Notwithstanding the aforesaid, Hexagon shall always, in case of the Customer's instructions or other requests under this DPA requires extra measures by Hexagon in addition to what is reasonably required under the Agreement, be entitled to compensation for such surplus work on a time and material basis. This includes, for example, Hexagon's assistance handling data subject requests.
- 6.2 In the event that (a) the Customer amends its written instructions mentioned in Section 2.2(d), or (b) the Customer would require the implementation of technical or organizational measures, in addition to those mentioned herein, and this would cause a cost increase to Hexagon, then Hexagon shall be entitled to request an equitable adjustment in the remuneration.
- 6.3 The payment terms for the adjusted remuneration shall be governed by the provisions regarding payment in the Agreement.

7. TERM AND TERMINATION

- 7.1 This Agreement shall enter into force on the Effective Date. Unless terminated earlier due to a material breach of the terms of this DPA, this Agreement shall remain in force until the termination or expiration of the Agreement, whereupon it shall terminate automatically without further notice.
- 7.2 On termination of this DPA for any reason, Hexagon shall cease to process the personal data processed on behalf of the Customer and shall, at the Customer's expense, provide for the return to the Customer (or its nominated third party) of all such personal data together with all copies in its possession or control unless storage of the personal data is required under the Regulatory Requirements. If the Customer does not respond to an offer from Hexagon to return the personal data processed by it under this DPA, within a period of three (3) months from when the offer was made, Hexagon will be entitled to delete any such personal data, including copies thereof, unless storage of the personal data is required under the Regulatory Requirements.

8. FORCE MAJEURE

Hexagon shall not be liable for any default or delay in the performance of its obligations under this DPA if and to the extent the default or delay is caused by Force Majeure. A failure by a subcontractor will be considered a Force Majeure event provided that the underlying reason for the subcontractor's non-performance is an event which, if it had been related directly to Hexagon, would have qualified as a Force Majeure event under this DPA.

9. MISCELLANEOUS

9.1 Neither Party may assign its rights or obligations under this DPA without the prior written consent of the other Party. Notwithstanding the foregoing, Hexagon may assign its rights and obligations under this DPA, without the approval of Customer to: (a) a Hexagon Affiliate, or (b) another business entity in connection with a merger, consolidation, or reorganization of Hexagon or any of its subsidiaries.

9.2 This DPA and the Agreement sets forth and constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and all prior agreements, understandings or promises with respect thereto are hereby superseded.

9.3 No amendment, modification, release, or discharge of this DPA shall be binding upon the Parties unless in writing and duly executed by authorised representatives of both Parties.

10. GOVERNING LAW AND DISPUTES

10.1 Provisions regarding governing law and disputes are set forth in the Agreement.

[SCHEDULES ATTACHED HERETO]

SCHEDULE 1

DESCRIPTION OF THE PROCESSING OF PERSONAL DATA

1. **Subject matter**. The subject matter of the data processing under this DPA is Customer Data.
2. **Duration**. As between Hexagon and Customer, the duration of the data processing under this DPA is determined by Customer.
3. **Purpose**. The purpose of the data processing under this DPA is the provision of the Hexagon Products initiated or requested by Customer from time to time.
4. **Nature of the Processing**: Compute, storage, and such other services as described in the Agreement and documents referenced therein and initiated by Customer from time to time.
5. **Type of Customer Data**: Customer Data uploaded to or provided by Customer in its use of or receipt of Hexagon Products.
6. **Categories of Data Subjects**: The data subjects may include Customer's end-users and natural persons that are the subject of Customer's business and/or operations.

SCHEDULE 2
EU MODEL CLAUSES

Commission Decision C(2010)593
Standard Contractual Clauses (processors)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

For the purposes of Article 28 of the EU General Data Protection Regulation (the “**GDPR**”), the provisions in Appendix 3 shall form an integrated part of these Clauses.

Name of the data exporting organisation:

The entity identified as “Customer” in the DPA
(the data **exporter**)

And

Name of the data importing organisation:

The entity identified as “Hexagon” in the DPA
(the data **importer**)

each a “party”; together “the parties”,

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1

Definitions

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the Transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-Party Beneficiary Clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by

contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the Data Exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the Data Importer¹

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
 - (ii) any accidental or unauthorised access, and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain

¹ Mandatory requirements of the national legislation applicable to the data importer which do not go beyond what is necessary in a democratic society on the basis of one of the interests listed in Article 13(1) of Directive 95/46/EC, that is, if they constitute a necessary measure to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of breaches of ethics for the regulated professions, an important economic or financial interest of the State or the protection of the data subject or the rights and freedoms of others, are not in contradiction with the standard contractual clauses. Some examples of such mandatory requirements which do not go beyond what is necessary in a democratic society are, *inter alia*, internationally recognised sanctions, tax-reporting requirements or anti-money-laundering reporting requirements.

commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.
3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and Jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
 - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
 - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with Supervisory Authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10

Variation of the Contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or

data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation After the Termination of Personal Data Processing Services

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

Data exporter

The data exporter is the entity identified as “Customer” in the DPA.

Data importer

The data importer is Hexagon.

Data subjects

Data subjects are defined in Schedule 1 of the DPA.

Categories of data

The personal data is defined in Schedule 1 of the DPA.

Processing operations

The processing operations are defined in Schedule 1 of the DPA.

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

The technical and organizational security measures implemented by the data importer are as described in the Agreement.

APPENDIX 3 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and by signing the Clauses, the data importer undertakes to comply with the undertakings listed in this Appendix, in addition to its undertakings following the Clauses.

In the event of inconsistencies between the provisions of this Appendix and any other provisions of the Clauses, the other provisions of the Clauses shall prevail.

Processing in Accordance with Documented Instructions

The Data importer undertakes to only process personal data in accordance with applicable law and on documented instructions from the data exporters, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by applicable law; in such a case, the data importer shall inform the data exporter of that legal requirement before processing the personal data, unless such information is prohibited by the applicable law on important grounds of public interest.

Confidentiality Commitments

The data importer undertakes to ensure that such employees (of the data importer or its subcontractors) who are authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

Technical and Organisational Security Measures

The data importer undertakes to, taking into account the nature of the processing, assist the data exporter by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the data exporter's obligations to respond to requests for exercising the data subject's rights laid down in the GDPR.

Data Breach

In the case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed by the data importer on behalf of the data exporter, the data importer shall immediately inform the data exporter of such security breach and thereafter, within twenty four (24) hours at the latest, provide the data exporter with:

- (a) a description of the nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- (b) a description of the likely consequences of the personal data breach; and
- (c) a description of the measures taken or proposed to be taken by the data importer to address the personal data breach (including measures to prevent similar security breaches in the future), including, where appropriate, measures to mitigate its possible adverse effects.

Data Protection Impact Assessment and Prior Consultation

The data importer undertakes to provide reasonable assistance to the data exporter with any data protection impact assessments, and prior consultations with supervisory authorities or other competent data privacy authorities, which the data exporter reasonably considers to be required of any data exporter by Article 35 or 36 of the GDPR or equivalent provisions of any other applicable data protection law, in each case solely in relation to processing of personal data by, and taking into account the nature of the processing and information available to, the data importer.

Deletion or Return of Personal Data

The data importer undertakes to promptly of the date of cessation of any services involving the processing of personal data, delete and procure the deletion of all companies of such personal data or, if preferred by the data exporter, to return such data to the data exporter.

Audit Rights

The data importer undertakes to make available to the data exporter on request, all information necessary to demonstrate compliance with this Appendix and shall allow for and contribute to audits, including inspections, by the data exporter or an auditor mandated by the data exporter in relation to the processing of personal data by the data importer.

Instructions in infringement of the GDPR or other Applicable Law.

The data importer shall immediately inform the data exporter if, in its opinion, a data exporter's instruction infringes the GDPR or other applicable law.