SOFTWARE END USER LICENSE AGREEMENT
FOR HEXCAL AND SERVICE UTILITIES

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"**Confidential Information**" has the meaning ascribed to it in **Section 8**.

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"**Order Form**" means a purchase order or other order form filled out and submitted by or on behalf of Licensee, and accepted by Licensor, for Licensee's purchase or receipt of the license for the Software granted under this Agreement.

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"**Term**" has the meaning set forth in **Section 9**.

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(a) On Licensor's written request, Licensee shall conduct a review of its use the Software and certify to Licensor in a written instrument signed by an officer of Licensee that it is in full compliance with this Agreement or, if Licensee discovers any noncompliance, Licensee shall immediately remedy such noncompliance and provide Licensor with written notice thereof. Licensee shall provide Licensor with all access and assistance as Licensor requests to further evaluate and remedy such noncompliance. If the Licensee's use of the Software exceeds the

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(c) If the audit or any of the measures taken or implemented under this **Section 5** determines that the Licensee's use of the Software exceeds or exceeded the use permitted by this Agreement then Licensor shall also have the right to terminate this Agreement and the license granted hereunder, effective immediately upon written notice to Licensee.

Licensor's remedies set forth in this **Section 5(c)** are cumulative and are in addition to, and not in lieu of, all other remedies the Licensor may have at law or in equity, whether under this Agreement or otherwise.

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8. Confidentiality. The Software, Documentation, access codes and processes and procedures for using the Software are the confidential intellectual property and/or trade secrets of Licensor, whether or not disclosed prior to entry of this Agreement (collectively, **"Confidential Information"**). However, in no event shall Confidential Information include information that, at the time of disclosure: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of a confidentiality undertaking owed to Licensor; (ii) is or becomes available to the Licensee on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such information; (iii) was known by or in the possession of the Licensee prior to being disclosed by or on behalf of the Licensor; (iv) was or is independently developed by the Licensee without reference to or use of, in whole or in part, any information from Licensor that would otherwise qualify as Confidential Information; or (v) is required to be disclosed publicly pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction. The Licensee shall: (A) protect and safeguard the confidentiality of the Confidential Information with at least the same degree of care as the Licensee would protect its own confidential information, but in no event with less than a commercially reasonable degree of care; (B) not use the Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (C) not disclose any such Confidential Information to any person or entity, except to the Licensee's representatives who need to know the Confidential Information to assist the Licensee, or act on its behalf, to exercise its rights or perform its obligations under the Agreement. The Licensee shall be responsible for any breach of this **Section 8** caused by any of its representatives. On the expiration or termination of this Agreement, the Licensee shall promptly return to the Licensor all copies, whether in written, electronic or other form or media, of the Confidential Information, or destroy all such copies and certify in writing to the Licensor that such Confidential Information has been destroyed.

9. Term and Termination.

(a) This Agreement and the license granted hereunder shall remain in effect for the term set forth on the Order Form or until earlier/until terminated as set forth herein (the "**Term**").

(b) Licensee may terminate this Agreement by ceasing to use and destroying all copies of the Software and Documentation.

(c) Licensor may terminate this Agreement, effective upon written notice to Licensee, if Licensee materially breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after Licensor provides written notice thereof.

(d) Licensor may terminate this Agreement, effective immediately, if Licensee files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or

applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

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(b) IN NO EVENT WILL LICENSOR'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO THE LICENSOR PURSUANT TO THIS AGREEMENT.

(c) THE LIMITATIONS SET FORTH IN **SECTION 11(a)** AND **SECTION 11(b)** SHALL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

12. Export Regulation. The Software and Documentation may be subject to US export control laws, including the US Export Administration Act and its associated regulations. The Licensee shall not, directly or indirectly, export, re-export or release the Software or Documentation to, or make the Software or Documentation accessible from, any jurisdiction or country to which export, re-export or release is prohibited by law, rule or regulation. The Licensee shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing or otherwise making the Software or Documentation available outside the US.

13. US Government Rights. The Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if the Licensee is the US Government or any contractor therefor, Licensee shall receive only those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

14. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Rhode Island without giving effect to any choice or conflict of law provision or rule (whether of the State of Rhode Island or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Rhode Island. Any legal suit, action or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted in the federal courts of the United States or the courts

of the State of Rhode Island in each case located in the city of Providence and County of Providence, and each party irrevocably submits to the jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or forum non conveniens. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

(b) Licensor shall not be in default hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning or Licensee equipment, loss and destruction of property or any other circumstances or causes beyond Licensor's reasonable control.

(c) All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Order Form (or to such other address as may be designated by a party from time to time in accordance with this **Section 14(c)**).

(d) This Agreement, together with the Order Form, constitutes the sole and entire agreement between Licensee and Licensor with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

(e) Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Licensor's prior written consent, which consent Licensor may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Licensee (regardless of whether Licensee is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this Agreement for which Licensor's prior written consent is required. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this **Section 14(e)** is void. Licensor may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Licensee's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(f) This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(g) This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(h) If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(i) This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Order Form referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

(j) The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.