



## Product Terms

**Version 1; Last Updated 1 December 2020**

### **INTRODUCTION**

1. These Product Terms are comprised of:
  - The provisions set out in this **Introduction**;
  - **Section A: General Terms** which applies to all Contracts;
  - **Section B: Desktop Products** which applies to the licensing and use of all software products which, in order to be used, must be downloaded or installed on a user's computer or the Customer's local server or a cloud environment provided by the Customer (**Desktop Products**);
  - **Section C: Hosted Products** which applies to Seequent's proprietary product branded as Central (**Hosted Products**);
  - **Section D: Daily licensing and consumption-based licensing** which applies to any licensing and use of certain software products where the Customer pays for usage in arrears;
  - **Section E: VOXI** which applies to the licensing and use of the Seequent's proprietary product branded as VOXI and any related data computation services (**VOXI**);
  - **Section F: Academic Licensing** which applies to the licensing and use of any software product by an academic institute for teaching or research purposes;
  - **Section G: Consultant On Demand Licensing**: which applies to the licensing and use of certain software products on a 'Consultant on Demand Licence' model; and
  - **Section H: Region specific terms** which applies to the licensing and use of any Product by customers based in a specified country or region.
2. For the purposes of these Product Terms, unless otherwise specified, Product includes (and therefore these Product Terms apply to):
  - a. all Desktop Products;
  - b. all Hosted Products;
  - c. VOXI;
  - d. all Support and Maintenance;
  - e. Hosting Services; and
  - f. except as described below in clause 3, all other software products and related services developed or distributed by Seequent from time to time and irrespective of the licence term or licence type that may apply with respect to the same and, where applicable, irrespective of whether those Products are made available as prototypes or as beta, early access or commercial release versions.
3. These Product Terms do not apply to:
  - a. standalone services such as training, consultancy or project assistance, implementation services or data consolidation, cleansing and cataloguing services all of which are dealt with under the Service Terms.
  - b. licences for the use of MX Deposit, developed and distributed by Minalytix Inc. Use of a MX Deposit Product will be subject to the Minalytix Terms of Service and User Agreement; and any references to "MX Deposit" in such terms will be read as references to "Seequent".
4. These Product Terms must be read in conjunction with any applicable MSA, Quote or Confirmation, and any policies provided by Seequent to the Customer. These Product Terms, together with any MSA, Quote or Confirmation accepted by the Customer in accordance with their terms, form a binding contract between Seequent and the Customer (**the Contract**). If there is any conflict between these Product Terms and the terms of any MSA or Quote, the terms of the MSA or Quote will take precedence.
5. Seequent may update these Product Terms at any time by publishing a new version on its Website, which new versions will become effective from the date of publication.

## SECTION A: GENERAL TERMS

### 1. Definitions:

**Administration Portal:** any portal or functionality made available to the Customer by Seequent from time to time through which an authorised representative of the Customer can manage the Customer's and Authorised Users' access to Products, Usage Limits and other licence parameters related to the rights granted to the Customer under a Contract.

**Authorised User:** any individual granted access to a Product by or on behalf of the Customer.

**Authorised Reseller:** any third party authorised by Seequent to distribute and sub-licence Products to Customers.

**Confirmation:** any confirmation presented or emailed to a Customer or a Customer's representative as a result of the use of an e-commerce platform or other online process to purchase Products which sets out the Products to be purchased, the applicable Fees and any other relevant terms.

**Customer:** the entity contracting with Seequent for the purchase of the Products as identified in a Quote or MSA, entered into any e-commerce portal.

**Customer Data:** the data inputted into Products by the Customer, by Authorised Users, or by Seequent on the Customer's behalf.

**Documents; Documentation:** release notes made available at the time of download or release of the relevant Product together with any updates available via our Websites or as otherwise notified to the Customer.

**Dongle:** any device issued to the Customer by Seequent for enabling access to licenced Products by Authorised Users.

**Fees:** the charges payable by the Customer with respect to the Products, as specified in a Quote or MSA or at checkout in any e-commerce portal.

**Hosting Services:** any cloud hosting services provided or procured by Seequent with respect to any Hosted Product.

**Intellectual Property:** includes patents, utility models, inventions, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and the right to have information kept confidential, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**MSA:** any negotiated agreement in writing entered into by the Customer and Seequent (such as a master supply agreement or an enterprise agreement) which applies to the provision of Products by Seequent to the Customer.

**Quote:** a quote, letter, proposal or other document created by Seequent setting out the Products to be purchased by the Customer, the applicable Fees and any other relevant terms.

**Seequent:** the Seequent Group Entity set out in the Quote, MSA or Confirmation, or where the Customer has purchased a licence to use a Product from an Authorised Reseller, the Seequent Group Entity that has appointed the Authorised Reseller.

**Seequent Group:** Seequent, any parent company or companies of Seequent, any subsidiaries of Seequent and any subsidiaries of any parent company of Seequent.

**Seequent Group Entity:** an entity that is part of the Seequent Group.

**Seequent ID:** the individual account created by users which enables them to access Products, comprising an email address and password.

**Support and Maintenance:** any support and maintenance services provided from time to time by Seequent, including access to helpdesks and support material, bug fixing and the release of updates and upgrades to software.

**Third Party Products:** applications and/or software products identified in which proprietary rights are held by or licenced by a third party entity other than a Seequent Group Entity, including but not limited

to 'Mx Deposit' and 'Maptex Link'.

**Usage Limits:** any limit on the usage of any Product specified in a Quote, MSA or Confirmation (including, without limitation, the number of Authorised Users who may access or use the Product at any one time or over a period of time, the number of days that a Product is available for use by Authorised Users during a period of time, or the amount of data that can be stored with respect to any Hosted Product).

**User Terms:** any terms and conditions required to be accepted or agreed to by users of a Product upon download or installation of a software Product or upon the creation of a user identity in order to access or use any Product.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Website:** any website owned and operated by the Seequent Group, including seequent.com and my.seequent.com.

## 2. General Licence

- 2.1. Subject to the payment of all applicable Fees and compliance with the Contract, and where applicable depending on the type of Product purchased, Seequent grants the Customer a non-exclusive, non-sublicensable and non-transferable licence (**Licence**) to use any Product in accordance with and for the term specified in the Contract.
- 2.2. Where the use of a Product is subject to Usage Limits and the Customer exceeds a Usage Limit, Seequent will work with the Customer to reduce or change the Customer's usage so that it conforms to the relevant Usage Limit. If the Customer is unable or unwilling to abide by Usage Limits, Seequent will be entitled to invoice for and the Customer will be liable to pay any additional charges related to the excess usage or necessary to increase the relevant Usage Limits which are sufficient for the Customer's usage.
- 2.3. The Customer must not:
  - a. translate, adapt or modify any Product or, if applicable, any Dongle or do anything to circumvent the operation of any Product or Dongle;
  - b. provide access to any Product to any unauthorised third party by any means including sharing log-in or identity information or sharing a Dongle, or lend, rent, lease, transfer, assign or deal in any Product, Documents or Dongles or in any other way deal with the Customer's rights under a Contract without the prior written consent of Seequent;
  - c. alter or modify the whole or any part of any Product, or permit or enable any Product or any part of it to be combined with or incorporated into any other programs, products, software or systems; or
  - d. disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of any Product or attempt to do any such thing except to the extent expressly permitted by law.

## 3. Customer Obligations

- 3.1. The Customer is responsible for:
  - a. ensuring that its Authorised Users comply with the User Terms and the Contract;
  - b. ensuring that its Authorised Users keep confidential their Seequent IDs and any Dongles, and do not share the same with any other employee, contractor or representative of the Customer or any third party;
  - c. paying all Fees and charges due under the Contract, including any charges payable as a result of exceeding Usage Limits and any additional charges payable for use of the Products by unauthorised users;
  - d. ensuring that the Administration Portal is used in a responsible manner in accordance with the Contract and any applicable Usage Limits;

- e. ensuring that individuals who are not employed by or contracted to the Customer or are otherwise not authorised to use the Products are not granted access to the Products; and
  - f. suspending or removing access to a Product for any individual that ceases to be an Authorised User of that Product. If no Administration Portal is available to the Customer, it may request Seequent via email to suspend or remove access for such an individual.
- 3.2. All Authorised Users must have a Seequent ID or access to a Dongle to access or use any Product. The Customer is liable for the actions and Product use of any individual who gains access to the Products licenced to the Customer or through the use of any Seequent ID or a Dongle, irrespective of whether that access was authorised by the Customer.
- 3.3. By entering into the Contract or installing and using a Product, the Customer represents and warrants that the individual representing the Customer has the legal capacity and authority to enter into a binding agreement with Seequent.
- 3.4. The Customer represents and warrants that the Products will be used only in accordance with the Contract and in accordance with all applicable laws and regulations, including all applicable technology controls or export laws and regulations.
- 3.5. Where available, Seequent may offer the ability for the Customer to designate an Authorised User as an administrator with control over the Customer's use of the Products (**Administrator**), including management of Authorised Users and Customer Data, as described in the Documentation. The Customer is fully responsible for its choice of Administrator and any actions the Administrator takes. The Customer agrees that Seequent's responsibilities do not extend to the internal management or administration of the Products by the Customer.

#### **4. Beta Products**

- 4.1. Beta releases of a Product (**Beta Products**) allow Authorised Users to use and evaluate pre-release Products before that Product is commercially available. Beta Products may contain errors or inaccuracies and may not function in the same manner as commercially available Products. With respect to Beta Products, the Customer acknowledges and agrees that the Beta Product is provided on an "as is" basis without any warranty of any kind. Seequent is under no obligation to provide support for the use of a Beta Product.

#### **5. Support and Maintenance**

- 5.1. Except where the Customer has entered into a Contract for the purchase of a Product on a perpetual licence or for a Beta Product and subject to any supplementary terms that apply to any Third Party Product distributed by Seequent, software Products include the right to receive Support and Maintenance for the term specified in the Contract.
- 5.2. Where the Customer has entered into a Contract for the purchase of a perpetual licence to use a Product, the provision of Support and Maintenance by Seequent is subject to the payment in advance of the necessary Fees for the same and the Customer's right to access and use such Support and Maintenance will commence on the date and be provided for the term specified in the Contract.
- 5.3. Seequent has no obligation to permit a Customer to purchase Support and Maintenance with respect to any Product licenced on a perpetual basis and where the Customer has allowed their Support and Maintenance to lapse for any period such that they have not paid for Support and Maintenance on a continual basis since the commencement of the relevant licence. In such circumstances, the Customer may be required to make payment for the lapsed periods or purchase a new licence. Without limitation to the foregoing, where a Customer has entered into a Contract for the purchase of a GeoStudio Product on a perpetual licence, the Geoslope Annual Maintenance Policy applies.

#### **6. Systems Requirements**

- 6.1. Seequent will publish or otherwise provide a statement of its system requirements which describe the minimum hardware and software requirements the Customer's systems must meet to access and use Products. The Customer is responsible for ensuring that its hardware and software meet at least the minimum standards of Seequent's system requirements and will be responsible for any costs associated with meeting these requirements.
- 6.2. Seequent expressly reserves the right to update or change the system requirements as it maintains and develops Products. Seequent will provide the Customer with the appropriate notification of important changes to the system requirements during development, such as when a new Product version is released.

## 7. Confidentiality

- 7.1. From time to time, either party (**Disclosing Party**) may disclose Confidential Information to the other party (**Receiving Party**). The Receiving Party must at all times ensure the confidentiality of the Confidential Information and ensure that its officers, employees and agents do not disclose, communicate, copy or reveal for any purpose whatsoever the Confidential Information except as permitted under these Product Terms. If the Customer has entered into a Contract to purchase a Third Party Product, the Customer expressly permits Seequent to disclose certain information (including the identity of any users (to the extent known) and the date on which the licence was issued) to that third party for the purpose of fulfilling the Contract. For the purposes of this clause, Confidential Information includes the Products, Documents, any Dongle(s), information relating to the customer account and any other information provided by Disclosing Party to Receiving Party as confidential, or which from its nature and content is, or would reasonably be expected to be, confidential. The obligations under this clause will survive termination of any Contract.

## 8. Intellectual Property

- 8.1. The Customer acknowledges that the Intellectual Property rights in the Products and the Documents are vested in one or more members of the Seequent Group and that the Customer has no rights in or to the Products or Documents other than the right to use them in accordance with the Contract. The Customer must maintain all intellectual property notices appearing on the Products, Documents or a Dongle. The Customer must notify Seequent immediately in writing if the Customer knows of any circumstances that suggest that any person may have unauthorised knowledge, possession or use of any Product, the Documents or a Dongle. The Customer acknowledges that it has no right to access the Products in source code form.
- 8.2. The Customer must promptly provide Seequent with written notice if the Customer has knowledge of a claim or the likelihood of a claim by a third party against the Customer that the Customer's use of the Products infringes that third party's intellectual property rights. If any Product becomes or, in Seequent's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, Seequent may in relation to commercial release versions of any Product, at its option:
- a. obtain the right for the Customer to continue using the affected Products; or
  - b. replace or modify any such Product so that it becomes non-infringing without substantially compromising its principal functions.
- 8.3. Seequent shall defend the Customer against any claim made by a third party against the Customer that a Product, specifically excluding Beta Products and Third Party Products, infringes any patent effective at the date of commencement of a Contract, copyright, database right or right of confidentiality owned by or proprietary to the third party, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of any such claim, provided that:
- a. Seequent is given prompt notice of any such claim;
  - b. the Customer provides reasonable co-operation to Seequent in the defence and settlement of such claim, at Seequent's expense;
  - c. the Customer takes all reasonable steps to mitigate its losses or damage; and
  - d. Seequent is given sole authority to defend or settle the claim.
- 8.4. In the defence or settlement of any claim under clause 9.3, Seequent may obtain for the Customer the right to continue using a Product, replace or modify a Product so that it becomes non-infringing or, if such remedies are not reasonably available, terminate the Contract without liability to the Customer. Seequent shall have no liability if the alleged infringement is based on:
- a. a modification of a Product by anyone other than Seequent;
  - b. the Customer's use of a Product in a manner contrary to the instructions given to the Customer by Seequent and set out in the Contract; or
  - c. the Customer's use of a Product after notice of the alleged or actual infringement from Seequent or any appropriate authority.
- 8.5. The foregoing states the Customer's sole and exclusive rights and remedies, and Seequent's entire obligations and liability with respect to third party claims for patent, copyright, database or right of confidentiality infringement.

## 9. Charges and Payment

- 9.1. Customer shall pay all invoices when due, in full without deduction or setoff of any kind, and in the specified currency. Unless otherwise specified on an invoice or otherwise agreed in writing, all invoices are immediately due and payable on their date of issue. Fees are non-refundable.
- 9.2. The Customer is solely responsible for all taxes, fees, duties and governmental assessments (except for taxes based on Seequent's net income) that are imposed or become due in connection with a Contract. In the event that the Customer becomes liable to deduct or withhold an amount by way of tax or otherwise from payment of the Fees due, or if Seequent is required to collect any sales, use or other taxes from the Customer, the Customer will pay such additional amount as will be necessary to ensure that the amount of the Fees received by Seequent equals the amount that would otherwise have been received in the absence of such deduction, withholding tax or duty.
- 9.3. Seequent may charge interest on overdue amounts. If Customer fails to pay any Fees on time, Seequent reserves the right, in addition to taking any other action at law or equity, to charge interest on past due amounts at 1.0% per month or the highest interest rate allowed by law, whichever is less, and to charge all expenses of recovery. Interest will be calculated from the due date to the date of payment (both inclusive).
- 9.4. Upon reasonable advance written notice, Seequent shall have the right to have an independent auditor (reasonably acceptable to the Customer) verify the Customer's compliance with the relevant Contract, in particular, any Usage Limits specified in a Contract. The Customer shall make its systems and all applicable records available for such inspection during normal business hours at the Customer's principal place of business. Any such audit shall be at Seequent's expense, unless it discloses a failure by the Customer to comply with the terms of the relevant Contract, in which case the Customer will reimburse Seequent for such expenses.

## 10. Term and Termination

- 10.1. The term of any licences granted under a Contract will be specified in the Contract. Except as otherwise agreed in writing by Seequent in a Quote or MSA, any licence for a Product will automatically renew upon each anniversary of the date it was issued by Seequent through its licensing system (the **Renewal Date**) for additional periods equal to the expiring term or one year (whichever is shorter). Unless otherwise agreed in writing, the Fees for any renewal of a licence will be the then current list price for the Product as notified to the Customer by Seequent.
- 10.2. Seequent will provide notice of the renewal of the term of any licenced Product at least 60 days prior to its expiry by issuing a Quote to the Customer or otherwise following an agreed process in any MSA. The Customer may accept the Quote or other applicable notification but in any case the Quote or other notification of renewal will automatically be deemed accepted and a Contract formed unless the Customer provides 30 days' written notice of non-renewal prior to the expiry of the term of the then current licence. Upon acceptance or deemed acceptance, Seequent will issue an invoice for the applicable Fees which will be payable upon its terms and/or the terms of the Contract.
- 10.3. Either party may terminate the Contract immediately by notice in writing to the other party if the other party:
  - a. is in irremediable breach of its material obligations or, in the case of a remediable breach, such breach has not been remedied within 14 days of receipt by the breaching party of a notice from the other party specifying the breach and requiring its remedy; or
  - b. enters into voluntary or compulsory liquidation, or compounds with or convenes a meeting of its creditors, or has a receiver or manager or an administrator appointed over any part of its assets, or ceases for any reason to carry on business, or takes or suffers any analogous action which is likely to result in an inability to pay its debts.
- 10.4. For the avoidance of doubt, material provisions of this Licence include any which relate to what the Customer or any Authorised Users may or may not do with respect to the Products and any provisions related to intellectual property rights or confidentiality.
- 10.5. Immediately upon termination of a Contract or any licence of a Product:
  - a. all rights granted to the Customer under the Contract will cease in whole or with respect to the relevant Product as applicable;
  - b. the Customer must pay any sums due to Seequent under the Contract in whole or with respect to the relevant Product as applicable; and
  - c. the Customer must immediately delete or remove the Product from all computer equipment in its

possession and immediately destroy or return to Seequent all copies of the Product, Documents and any Dongles that the Customer has in its possession, custody or control and, in the case of destruction, certify to Seequent that the Customer has done it.

## **11. Right to Suspend Licence**

11.1. In the event that the Customer or any Authorised User breaches any material term of the Contract (including, without limitation, the obligation to pay Fees) Seequent may block any or all Authorised Users' access to the Products or otherwise suspend the Customer's access to the Products or any Administration Portal or other service made available by Seequent until such time as the breach is remedied.

## **12. Data and Security**

12.1. Ownership of the Customer Data shall remain with the Customer and Seequent will have no rights to use the Customer Data except a limited right to use the same strictly as necessary for the fulfilment of its obligations under the Contract (including the right to provide support services requested by the Customer).

12.2. Any personal data collected by Seequent as a result of its performance of its obligations under the Contract will be collected and used in accordance with the Seequent Privacy Policy as published on the Website.

12.3. From time to time, Seequent may collect anonymous usage data generated as a result of the Customer's or any user's use of the Products (for example, technical information about the operating environment and sessions, systems architecture, page loads and views, product versions, number and type of searches, number of users, source type and format) (**Usage Data**). Usage Data does not include Customer Data. Seequent may collect Usage Data for a variety of reasons, such as to identify, understand, and anticipate performance issues and the factors that affect customers, to provide updates and personalized experiences to users, and to improve the Products. The Customer consents to Seequent collecting Usage Data solely for its internal business purposes, provided that such information does not identify the Customer, a specific individual or contain any personally identifiable information.

12.4. Seequent will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorised access to or disclosure of Customer Data (other than by Customer or Authorised Users).

## **13. Liability**

13.1. The Customer acknowledges that the Products operate in a predictive manner relative to input, and that Seequent has no control over the collection, use or interpretation of input. The Customer assumes sole responsibility with respect to the use and the results of the use of the Products and Documents in terms of correctness, accuracy, reliability and performance, and the conclusions drawn from such use. Furthermore, the Customer acknowledges that the Products have not been developed to meet any individual requirements, and that it is the Customer's responsibility to ensure that the facilities and functions of the Product as described in the Documents meet the Customer's requirements.

13.2. Seequent shall have no liability for any damage caused by error or omissions in any information, instructions or scripts provided to Seequent by the Customer in connection with a Product or any actions taken by Seequent at the Customer's direction.

13.3. Except as expressly and specifically provided in these Product Terms all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Product Terms.

13.4. To the fullest extent permissible at law:

- a. Seequent shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising under the Contract.
- b. Seequent's maximum aggregate liability in contract (including in respect of the indemnity at clause 8.3), tort (including negligence) or otherwise shall be limited to the lesser of either (a) the total amount paid or payable by the Customer for the Product in the 12 months prior to the event giving rise to the liability or (b) USD\$100,000.

#### **14. Third party libraries**

- 14.1. GeoStudio Products incorporate third party manufacturer reinforcement libraries (including without limitation Tensar, Maccaferri S.p.A, Huesker and TenCate). Seequent take no responsibility for the accuracy or reliability of the underlying data provided by these third parties. Seequent shall have no liability for any damage caused by error or omissions in any information, instructions or scripts as a result of use of a third-party reinforcement library.

#### **15. Application to contracts with Authorised Resellers**

- 15.1. Where a party purchases a Product from an Authorised Reseller, their contract is with the Authorised Reseller and Seequent will not be bound by any terms and conditions agreed by that party and the Authorised Reseller that apply to the use or provision of the Product in addition to these Product Terms.
- 15.2. Notwithstanding the provisions of clause 15.1 above, these Product Terms and the User Terms will govern all use of the Products and Seequent reserves the right to suspend or terminate any party or user's access to and use of any Product if they breach these Product Terms or any Users Terms, irrespective of whether they purchased the Products directly from a Seequent Group Entity or from an Authorised Reseller.
- 15.3. Seequent accepts no liability for any Authorised Reseller's failure to comply with the terms of any contract between it and a third party relating to the supply and use of any Product.

#### **16. Force Majeure**

- 16.1. Seequent shall not be responsible or liable for, nor considered to be in breach of its obligations under a Contract, for any failure or delay in performance of its obligations under a Contract arising from or attributable to any force majeure, which shall include (but not be limited to) events that are unpredictable, unforeseeable, or irresistible, such as any severe weather, earthquake, fire, epidemic, pandemic, acts of terrorism, biological warfare, outbreak of military or civil hostilities, explosions, strikes, sabotage, governmental interference or decree, interruption of service due to telecom carriers, internet service provider issues, power supply issues, or other technology issues.

#### **17. Survival**

- 17.1. All provisions of these Product Terms which, by their nature, should survive termination will survive termination, including, without limitation intellectual property, indemnity, and limitations of liability.

#### **18. Dispute Resolution**

- 18.1. Before taking any court action, a party must use their best efforts to resolve any dispute under, or in connection with, the Contract through good faith negotiations.
- 18.2. If the parties are unable to resolve a dispute through good faith negotiations, either party may refer the dispute to mediation. Unless otherwise agreed between the parties, the mediator shall be nominated by the President (or equivalent) of the law society (or equivalent) in the jurisdiction or state (as appropriate) where Seequent is domiciled (or their nominee). To initiate mediation, a party must serve notice in writing to the other party requesting a mediation (mediation notice). The mediation will start not later than 10 days after the date of the mediation notice. Unless otherwise agreed in writing, the mediation shall take place in the city or town of Seequent's registered address.
- 18.3. Where these Product Terms are governed by the law of Colorado, if the parties are unable to resolve the dispute through mediation, the dispute shall then be resolved through arbitration. Arbitration shall be held in Denver, Colorado (the **Arbitration Location**). Each party submits and irrevocably waives any objection to in personam jurisdiction in the Arbitration Location and the forum and convenience of the state and federal courts thereof. Except in cases in which Seequent has the right, but not the obligation, to seek injunctive relief, any controversy, claim, or dispute arising under or related to the Contract shall be finally resolved by arbitration in accordance with the then-effective rules of the American Arbitration Association (**AAA**); provided, however, that there is no requirement that the arbitration proceed through or under the auspices of the AAA. Such arbitration shall take place in the Arbitration Location. Judgment upon the award rendered by the arbitrators may be entered in any court having appropriate jurisdiction. The foregoing shall not restrict nor prevent Seequent from seeking injunctive relief in any court of competent jurisdiction.

#### **19. Governing Law**

- 19.1. These Product Terms, and any disputes arising out of in connection with the use and access of any Products under this Product Terms, will be governed exclusively by the laws of the country or state (as appropriate) where Seequent is domiciled without regard to conflicts of laws rules or the United



Nations Convention on the International Sale of Goods.

- 19.2. Subject to clause 18.3, the courts located in the applicable venue will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to the Contract or its formation, interpretation or enforcement. Each party hereby consents and submits to the exclusive jurisdiction of such courts.

## **20. Notices**

- 20.1. Any notice required to be given under a Contract shall be in writing and shall be delivered by hand or sent by post to the other party at its address set out in the Quote, Confirmation or MSA, or such other address as may have been notified by that party for such purposes, or sent by email to the CEO or COO of the other party. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received when transmitted provided that no automatic notification of failed delivery is received.

## **21. Assignment and sub-contracting**

- 21.1. The Customer may not assign, subcontract or transfer any right or obligation under the Contract without the prior written approval of Seequent.

## **22. Independent Contractors**

- 22.1. The parties shall be independent contractors in their performance under the Contract, and nothing contained herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

## **23. Entire Agreement**

- 23.1. The Contract constitutes the entire agreement between the Customer and Seequent with respect to the subject matter hereof and supersedes any and all negotiations and communications between the parties. These Product Terms and/or any applicable policies may be revised by the Seequent Group from time to time. By downloading or using any new version of a Product, paying Support and Maintenance Fees or accepting any update or new module offered by the Seequent Group, you will be deemed to have agreed to, and will be bound by, all the terms and conditions of these Product Terms in the then most current form. Each party acknowledges that it has not relied on any commitment, representation or warranty in entering into the Contract, other than those expressly set out in the Contract.

## **24. Variation**

- 24.1. No variation of these Product Terms shall be effective unless it is in writing and signed by the parties.

## **25. Language**

- 25.1. Copies of these Product Terms or the Contract may be provided in languages other than English for information purposes only. In the event of any conflict between the terms of these Product Terms or the Contract in English and any translation, the English version will take precedence.

## **SECTION B: DESKTOP PRODUCTS**

This Section B applies where the Customer has entered into a Contract for access to and use of a Desktop Product.

### **1. Scope of Licence**

- 1.1. The Customer and the Authorised Users may:
- a. download, install or use a Desktop Product on a device provided by the Customer for its internal business purposes in accordance with the licensing permissions and Usage Limits applicable to the Customer; and
  - b. use any Documents in support of the use permitted under the Contract and make one copy of such Documents as reasonably necessary for its lawful use.

### **2. Warranty**

- 2.1. With respect to all Desktop Product, except Beta Products and Third Party Products, Seequent warrants that:
- a. Desktop Products will, when properly used on an operating system for which they are designed,

- perform substantially in accordance with the functions described in the Documents; and
- b. the Documents correctly describe the operation of the Desktop Products in all material respects for a period of 90 days from the date of installation of the Desktop Products (**Warranty Period**).
- 2.2. If, within the Warranty Period, the Customer notifies Seequent in writing of any defect or fault in a Desktop Product as a result of which it fails to perform substantially in accordance with the Documents, Seequent shall, at its sole discretion, either repair or replace the Desktop Product provided the Customer makes available to Seequent all the information that may be necessary to help Seequent remedy the defect or fault, including sufficient information to enable Seequent to recreate the defect or fault.
  - 2.3. The warranty described in clause 2.1 of this Section B and the remedies described in clause 2.2 of this Section B does not apply if the defect or fault in the Desktop Product results from the Customer having:
    - a. altered or modified the Desktop Product; or
    - b. used the Desktop Product in breach of the terms of the Contract.
  - 2.4. Other than the warranty granted 2.1 of this Section B, all Desktop Products and Documents are licenced and any Dongle is provided to the Customer “as is” and all representations or warranties are expressly excluded, including any implied warranties of merchantability and fitness for a particular purpose, except any which may not lawfully be excluded.

## SECTION C: HOSTED PRODUCTS

This Section C applies where the Customer has entered into a Contract for access to and use of a Hosted Product.

### 1. Definitions:

**Maintenance:** release management and change control services to ensure that versions of servers, network devices, storage, operating system software and utility and application software are audited and logged, and that new releases, patch releases and other new versions are implemented as necessary to maintain the Hosted Product, including all regularly scheduled error corrections, software updates and those upgrades limited to improvements to features.

**Material:** any messages, files, data, images, photographs, code and other materials uploaded to a Hosted Product by an Authorised User, including Customer Data.

**Service Levels:** the service levels for Hosted Products as set out at Service Levels for Central.

### 2. Authorised Users

- 2.1 The Customer may add Authorised Users, increase data storage limits, or otherwise increase the Customer’s use of Hosted Products by submitting a request to Seequent or via any applicable Administration Portal. Unless otherwise agreed in writing, Seequent will charge the Customer for any increased use at its then-current rates, prorated for the remainder of the then-current term of any applicable licence to use a Hosted Product, as specified in the Contract.

### 3. Customer obligations

- 3.1. The Customer:
  - a. will provide Seequent with all necessary co-operation required under a Contract and all necessary access to such information as may be required by Seequent in order to provide a Hosted Product and associated services, including but not limited to Material, security access information and software interfaces to the Customer’s other business applications;
  - b. will not, and will ensure that its Authorised Users do not, store, distribute or transmit through a Hosted Product any Virus, or any Material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities; or any thing that violates any applicable laws; and
  - c. is responsible for obtaining and maintaining all telecommunications, broadband and computer equipment and services needed to access and use the Hosted Products, and for paying all associated charges.

#### **4. Seequent support and maintenance obligations**

- 4.1. Seequent will contract with a third party of its choosing to host the Hosted Product in the cloud and will be responsible for managing that cloud environment. Seequent will ensure that the cloud environment is sufficient to provide the Hosted Product and associated services in accordance with the Contract.
- 4.2. Seequent will use commercially reasonable endeavours to provide the support and maintenance services for the Hosted Product as described in the Service Levels, and if applicable the Quote or Confirmation.
- 4.3. Seequent will provide reasonable monitoring, back-up, and administration services in relation to the Hosted Product and will implement reasonable and appropriate measures to help secure the hosted environment against unlawful access.
- 4.4. Seequent will develop a back-up schedule, perform scheduled back-ups, provide routine and emergency data recovery, and manage the archiving process with respect to the Hosted Products.
- 4.5. Seequent may interrupt the availability of a Hosted Product to perform emergency Maintenance at any time and without notice to the Customer.
- 4.6. Seequent may interrupt the availability of a Hosted Product for scheduled Maintenance. Seequent shall use reasonable efforts to provide the Customer with prior notice of any scheduled Maintenance, and the Customer shall use reasonable efforts to comply with any Maintenance requirements notified by Seequent. Seequent will always endeavour to keep any service interruptions to a minimum.

#### **5. Data Storage Capacity**

- 5.1. Where a Customer has entered into a Contract for access to and use of Central, irrespective of the number of Authorised Users, the Customer's use of Central is limited to the amount of data storage detailed on the Quote, Confirmation or MSA. In the event that the Customer exceeds the purchased capacity of data storage, Central may not process additional data beyond the maximum capacity until additional capacity is purchased. Such additional data storage may be increased in increments and at Seequent's then current prices.

#### **6. Customer Data, archiving and backup**

- 6.1. The Customer represents and warrants that:
  - a. the Customer has obtained all necessary rights, releases and permissions to submit all Material to the Hosted Products;
  - b. submission and use of the Material in the Hosted Product will not violate any applicable laws, or any third-party intellectual property, privacy, publicity or other rights; and
  - c. Seequent assumes no responsibility or liability for the Material, and the Customer is solely responsible for the Material and the consequences of submitting and using it with the Hosted Products.
- 6.2. The Customer and its Authorised Users must not submit to the Hosted Products any sensitive personal information. Notwithstanding any other provision to the contrary, Seequent has no liability under the Contract for personal information submitted in violation of the Contract.
- 6.3. The Customer will indemnify Seequent (including its officers, directors, agents and employees) from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) resulting from any claim arising from or related to Material submitted or used with the Hosted Products.
- 6.4. Seequent has no obligation to monitor any Material uploaded to the Hosted Products. However, if any Material breaches these Product Terms, Seequent may remove the Material from the Hosted Product or suspend the Customer's or an Authorised User's access to the Hosted Product. Seequent will use reasonable efforts to provide the Customer with advance notice of removals and suspensions when practicable, but if Seequent determines that the Customer's actions may compromise the operation of the Hosted Product or other users, Seequent may suspend the Customer's access or remove the Material immediately without notice. Seequent has no liability to the Customer for removing or deleting the Material from or suspending the Customer's access to any Hosted Products as described in this clause 8.1 of this Section C.
- 6.5. In the event of any loss or damage to Material, the Customer's sole and exclusive remedy shall be for Seequent to use reasonable commercial endeavours to restore the lost or damaged Material from the latest back-up of such Material maintained by Seequent in accordance with these Product Terms.

6.6. Seequent will not be responsible for any loss, destruction, alteration or disclosure of Material caused by any third party (except those third parties sub-contracted by Seequent to perform services related to Material to undertake maintenance and back-up).

## 7. Return of Customer Data.

7.1. Seequent shall use reasonable commercial endeavours to deliver any back-up of the Customer Data to the Customer within 90 days of the termination or expiry of the Contract, provided that the Customer has, at that time, paid all Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Seequent in returning or disposing of Customer Data. After the 90 day period, Seequent will have no obligation to maintain or store the Customer Data, and may delete all remaining Customer Data.

## 8. Suspension

8.1. Without affecting any other right or remedy available to it, Seequent may suspend the Customer's (and its Authorised Users') access to a Hosted Product immediately upon written notice in the event that:

- a. the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment; or
- b. Seequent becomes aware of any unauthorised use of Central obtained through the use of any of the Customer's Authorised User's account details.

## SECTION D: DAILY LICENSING AND CONSUMPTION BASED LICENSING TERMS

This Section D applies where the Customer has entered into a Contract for access to and use access of:

- a. Works on a Daily Licence Model; or
- b. any other Product on a Consumption Based Licence.

### 1. Definitions:

**Consumption Based Licence:** a licence model where the Customer pays for only those days (or other period as selected by the Customer) on which the Product is used.

**Daily Licence:** a licence to use Works for a User Day. Daily Licence Model will have a corresponding meaning.

**Usage:** the number of User Days used by an Authorised User or the period for the licence purchased by the Customer.

**User Day:** a continuous 24-hour period commencing at the time an Authorised User signs in to the relevant Product, provided that the Authorised User continues to use the Product for more than ten minutes during that period (less than ten minutes' use will not constitute a User Day).

**Works:** means the proprietary product, developed by the Seequent Group and marketed as Leapfrog Works.

### 2. Usage – Daily Licensing

2.1. With respect to a Daily Licence for Works, there is no cap on the number of Authorised Users who may access the Product, provided that each Authorised User must have a Seequent ID which is linked to the Customer's Daily Licence account for the relevant Product.

### 3. Customer Obligations

3.1. The Customer is responsible for the activity of Authorised Users with respect to the Product licenced under the Consumption Based Licence or Daily Licence, including ensuring that Users comply with these Product Terms and the User Terms, and paying all Fees associated with Usage.

3.2. The Customer must provide Seequent with such information as is necessary to set up the Seequent IDs and link them to the relevant Consumption Based Licence or Daily Licence.

4. Seequent may increase prices for a Consumption Based Licence at any time. Price changes will take effect 30 days from notification by Seequent. There are no ongoing obligations with respect to a Consumption Based Licence or Daily Licence; the Customer is entitled to cease use at any time.

5. Account set up Fees for new Consumption Based Licences or Daily Licences will be invoiced immediately upon signature of the Contract.

6. Fees will be calculated monthly based on Usage in the previous calendar month. Fees for Usage will

be invoiced monthly in arrears. Invoices must be paid electronically and in cleared funds in accordance with their terms.

## **SECTION E: VOXI PRODUCTS**

This Section E applies where the Customer has entered into a Contract for the use of VOXI.

### **1. Definitions:**

**Material:** any messages, files, data, images, photographs, code and other materials uploaded to a Hosted Product by an Authorised User, including Customer Data.

**Oasis montaj:** Seequent's proprietary software branded as Oasis montaj.

**Pay-As-You-Go Access:** access to VOXI on a 'pay per model basis'.

**VOXI Subscription:** access to VOXI on a continuous basis for a fixed period and fixed service level for a single named Authorised User.

### **2. Access**

2.1. The Customer must have both a current licence for Oasis montaj and a current licence for VOXI to access and use VOXI.

### **3. Use of VOXI**

3.1. In relation to the use of VOXI:

- a. the Customer shall not store, distribute or transmit through VOXI any Virus, or any Material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities.
- b. where the Customer has purchased a VOXI Subscription, the Customer will use VOXI subject to the Fair Use Policy set out in clause 4 of this Section E.
- c. where the Customer has purchased Pay-As-You-Go Access, use of VOXI is subject to the VOXI Refund Policy clause of this Section E.

### **4. Fair Use Policy – VOXI Subscriptions**

- 4.1. It is Seequent's policy that all use of VOXI should be reasonable and not excessive so that all users are able to access and use VOXI in accordance with their licences. Seequent may apply this Fair Use Policy where in its reasonable opinion the Customer's usage, or an Authorised User's usage, of VOXI is excessive or unreasonable as detailed in this clause 4.
- 4.2. The Fair Use Policy has been developed with reference to average customer profiles and estimated usage of VOXI. If the Customer's usage of VOXI materially exceeds estimated use patterns or is inconsistent with normal usage patterns, then its usage will be considered to excessive or unreasonable.
- 4.3. If the Customer's usage is excessive or unreasonable, Seequent may request that the Customer stops or alters its usage to come within the Fair Use Policy.
- 4.4. If the Customer's excessive or unreasonable usage continues after it is requested to stop or alter the nature of such usage, Seequent may without further notice, suspend, modify, or restrict the Customer's use of VOXI.

### **5. No Refund Policy – Pay-As-You-Go Access**

5.1. This Refund Policy applies to use of VOXI via Pay-As-You-Go Access. Fees for Pay-As-You-Go Access are incurred by the Customer immediately upon submission of Customer Data to VOXI irrespective of the period it takes for the data to be processed by VOXI. The Customer will not be entitled to a refund on any Fees where it purports to cancel any service following submission of the Customer Data to VOXI.

### **6. Customer Data**

- 6.1. The Customer shall own all rights, title, and interest in and to all of the Customer Data and Material and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data and Material.
- 6.2. In the event of any loss or damage to Customer Data or Material, the Customer's sole and exclusive

remedy shall be for Seequent to use reasonable commercial endeavours to resupply the VOXI services. Seequent shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data or Material caused by any third party (except those third parties sub-contracted by Seequent to perform services related to Customer Data or Material or to undertake maintenance and back-up).

## 7. Modifications and Service Interruptions

- 7.1. Seequent does not warrant that the Customer's use of VOXI will be uninterrupted or error-free or that any defects will be corrected. Seequent will not be liable for service interruptions or any other service failures.
- 7.2. Seequent may interrupt services to perform maintenance to VOXI or to address or mitigate the effects of security breaches, virus attacks, denial of service attacks, or other intentional interferences by third parties. Seequent will exercise reasonable efforts to inform the Customer (via its Authorised User) before interrupting use of VOXI and to repair or reinstate VOXI services promptly.
- 7.3. Seequent reserves the right to do any of the following, at any time, without notice: (1) to modify, suspend or terminate operation of or access to VOXI, for any reason; (2) to modify or change VOXI, and any applicable policies or terms; and (3) to interrupt the operation of VOXI, as necessary to perform routine or non-routine maintenance, error correction, or other changes.
- 7.4. If use of VOXI is interrupted by Seequent, the Customer's sole remedy is for Seequent to re-perform the services.

## SECTION F: ACADEMIC LICENCES

This Section F applies where the Customer has entered into a Contract for the use of a Product, and:

- a. the Customer is an academic institution; and
- b. has been provided with free or discounted Products for academic, research or education purposes, (**Academic Licence**).

### 1. Definitions:

Where any terms in this Section F are capitalised but not defined in this clause 1 of Section F or the definitions set out in clause 1 (Definitions) of these Product Terms, they shall be given the meaning set out in the Academic Licence Key Terms.

**Academic Customer:** a Customer who receives any Academic Licence.

**Academic Deliverables:** the products and materials developed by the Academic Customer as further described in the Academic Licence Key Terms.

**Academic Licence Key Terms:** a letter, proposal, or other document provided to the Customer by Seequent in conjunction with or as a supplement to a Quote or Confirmation which provides more specific detail regarding the terms of the Academic Licence, together with any other terms specific to the engagement with the Customer.

**Commercial Purposes:** a purpose intended for or directed toward commercial advantage or monetary compensation.

### 2. Restrictions

- 2.1. For the purpose of an Academic Licence:
  - a. the Products, the Academic Deliverables, and any materials or products resulting from or developed by the Academic Customer (including any faculty member or student of the Academic Customer) directly or indirectly using the Products, must not be used for Commercial Purposes;
  - b. the Products must be used strictly for the purpose set out in the Academic Licence Key Terms or where no purpose is stated for research and teaching purposes for the internal business purposes at the Academic Customer; and
  - c. the Products must only be used by the Authorised User as set out in the Academic Licence Key Terms.

### 3. Customer Obligations

In consideration of the rights granted under an Academic Licence, the Institution:

- 3.1. grants Seequent the Publication Rights set out in the Academic Licence Key Terms;

- 3.2. agrees to (and will procure all Authorised Users to) comply with the Attribution Rights and Reporting Obligations set out in the Academic Licence Key Terms; and
- 3.3. agrees to comply with any other obligations of the Institution as set out in the Academic Licence Key Terms.

#### **4. Intellectual Property**

Unless specifically agreed otherwise, Intellectual Property (including any modification, enhancement or derivative work of such Intellectual Property) remains the property of the current owner, including:

- 4.1. Intellectual Property that existed prior to the date of the Contract; and
- 4.2. Intellectual Property that was developed independently of the Contract.

### **SECTION G: CONSULTANT ON DEMAND LICENSING TERMS**

This Section G applies where the Customer has entered into a Contract for access to, and use access of, Products on a Consultant on Demand Licence.

#### **1. Definitions:**

**Consultant on Demand Licence:** licensing of a software product by Seequent on a licence described as "Consultant on Demand", and which is specified in further detail on the Quote or Confirmation.

#### **2. Customer Obligations**

- 2.1. The Customer is responsible for the activity of Authorised Users with respect to the Products licenced under the Consultant on Demand Licence, including ensuring that Users comply with these Product Terms and the User Terms.
- 2.2. The Customer must provide Seequent with such information as is necessary to set up the Seequent IDs and link them to the relevant Consultant on Demand Licence.
- 2.3. Fees for Consultant on Demand Licences will be charged based on the number of days selected by the Authorised User during the checkout process (regardless of how often the Product is used during the period selected). Fees will be calculated on either a daily rate for licences checked out for between 1 and 29 days or, where the Product is checked out for 30 days, on the 30 day rate. The Customer is responsible for paying all Fees associated with the checkout of the Product by its Authorised Users.
- 2.4. Seequent may increase prices for a Consultant on Demand Licences at any time. Price changes will take effect 30 days from notification by Seequent.
- 2.5. Fees will be calculated monthly based on the number of days the Authorised User has selected to check out the Product during the preceding month. Where the checkout occurs prior to the end of the month, but the period proceeds month end, Seequent will invoice for days committed to but not consumed.

### **SECTION H: REGION SPECIFIC TERMS**

#### **Brazil:**

1. Where the Customer is located in Brazil, the following terms of this clause 1 will apply and prevail over the remainder of the Product Terms.
  - 1.1. All references to "Products" in these Product Terms and User Terms (as updated from time to time) will be replaced by and deemed to refer to "Software".
  - 1.2. The final sentence of clause 7 (Confidentiality) of these Product Terms and any analogous terms in the User Terms (as updated from time to time in the Software), is deleted and replaced with "The obligations under this clause will survive termination of this Licence for a period of ten (10) years."
  - 1.3. Seequent may charge fine and interest on overdue amounts. If Customer fails to pay any Fees on time, Seequent reserves the right, in addition to taking any other action at law or equity, to charge a fine of 2% plus interest on past due amounts at 1.0% per month or the highest interest rate allowed by law, whichever is highest, and to charge all expenses of recovery. **Interest will be calculated from the due date to the date of payment (both inclusive).**
  - 1.4. In the event of breach of any of the Customer's obligations to Seequent, the Customer must pay to Seequent a fine equivalent to 10% (ten percent) of the total amount of the Contract or of the amount equivalent to 12 months of the relevant Product's licensing, whichever is highest, duly adjusted by the variation of the IGPM on date of actual payment, without prejudice to Seequent's rights of recovery for

any losses and damages suffered by Seequent.

- 1.5. Any dispute arising out of or in connection with the Contract as to the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach, continuance, or termination of the Contract will be governed by Brazilian law, submitted to the jurisdiction of Belo Horizonte, Minas Gerais, and will be conducted in Portuguese.