

**XtremeGeo, LLC**  
**End-User License Agreement for Software**

**XtremeGeo, LLC (“Licensor”)**, a limited liability company having its principal place of business at 777 29<sup>th</sup> Street, Suite 400, Boulder CO 80303, is a developer, owner, and licensor of seismic processing software and desires to license its products to customers. In consideration of the covenants and conditions contained herein, Licensor agrees to furnish to Customer and Customer agrees to accept the use of the Product(s) (as defined below), pursuant to the terms of this Agreement and the product schedule attached hereto as Exhibit 1 along with any supplemental product schedules that may be executed during the term of this Agreement (collectively “**Product Schedule**”).

**BY INSTALLING OR BY GIVING ACCESS FOR LICENSOR TO INSTALL THE LICENSE CERTIFICATE(S) ENABLING YOUR USE OF THE PRODUCT (DEFINED BELOW), CUSTOMER AGREES TO THE END-USER LICENSE TERMS SET FORTH IN THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE TO THESE TERMS, DO NOT INSTALL OR ALLOW TO BE INSTALLED THE LICENSE CERTIFICATE(S).**

**1. Definitions**

**1.1. “Affiliate”** of a Party means any entity directly or indirectly controlling, controlled by, or under common control with that Party as of the date of this Agreement. Control means: (i) the legal, beneficial or equitable ownership, directly or indirectly, of at least a majority of the equity concerns of an entity; or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity or the election of a majority of the board of directors or comparable governing body of an entity, whether through the ownership of voting securities, by contract, or otherwise. An entity shall no longer be an Affiliate when the requisite control no longer exists.

**1.2. “Confidential Information”** shall mean all information of or regarding the disclosing Party or its affiliates including, but not limited to: all financial, technical, commercial, operational, staff, management and other information, data, know-how, trade secrets, products, services, designs, formulations, product development plans, testing protocols, data, drawings, tools, techniques, software and computer programs, inventions (whether or not patentable) assets, markets, costs, prices, customers, suppliers, legal affairs, business plans, forecasts, budgets, systems and processes, furnished irrespective of the forms of communications to receiving Party or its affiliates (including any officer, director or employee thereof), agents or representatives (including attorneys, accountants, consultants and financial advisors) (collectively “Representatives”) by the disclosing Party or any of its Representatives, and all analyses, compilations, data, studies or other documents prepared by Receiving Party or its Representatives containing, or based in whole, or in part on any such furnished information. “Confidential information” does not include: (i) any information in the public domain at the time of its communication thereof to either Party by the other Party; (ii) any information which enters the public domain, through no fault of the receiving Party, subsequent to the time of its communication to the receiving Party; (iii) any information which is obtained in good faith by either Party from a third party, provided such third party is not bound by a confidentiality agreement with Licensor or Customer, as applicable.

**1.3. “Date Of Delivery”** means the date each User License certificate is issued by Licensor. The date(s) for each User License will be specified in the Product Schedule.

**1.4. “Hotfix”** means a subsequent release of an existing Product that is generally deemed to be a bug-fix release and will generally not contain major, new functionality.

**1.5. “License Fee”** is defined as the fee stated on the Product Schedule in exchange for the User Licenses granted herein.

**1.6. “Maintenance”** means Product maintenance, Upgrade and Hotfix services provided pursuant to the terms set forth in this Agreement and in the attached Product Schedule.

**1.7. “Maintenance Start Date”** is the Date of Delivery. This date will be specified in the Product Schedule.

**1.8. “Product”** means the Software provided pursuant to this agreement. Products include, but are not limited to:

**1.8.a.** Flatirons™ Refraction Statics

**1.8.b.** Pecos™ Residual Statics

**1.9. “Software”** means any of the computer software programs that Customer has acquired the right to use under this Agreement along with associated documentation, Upgrades, Hotfixes or other modifications supplied to Customer by Licensor.

**1.10. “Upgrade”** means a subsequent release of an existing Product containing new functionality and enhancements in addition to bug fixes.

**1.11. "User"** is defined as a specific individual (e.g. identified by an individual login ID, access point or user name) who may access and use the licensed Products at any time.

**1.12. "User License"** means a right to create and/or use an electronic identity, representing an individual User, within a licensed Product.

## **2. Software License**

**2.1. Evaluation License.** Subject to the terms of this Agreement, Licensor grants Customer a limited, non-exclusive, non-assignable, non-transferable, personal, object code User License to evaluate the Product for a limited period of time at no charge. The time frame for the evaluation will be established by Licensor in its sole discretion. As set forth in Section below, the Products, including any related copyright, trademark, patent rights and derivative works are owned by Licensor and will remain the sole and exclusive property of Licensor.

**2.2. Full License.** Subject to the terms of this Agreement and accompanying Product Schedule and upon payment of the applicable license fee(s) specified in the Product Schedule, Licensor grants to Customer and Customer accepts a non-exclusive, non-transferable, non-refundable, perpetual object code End User License to Licensor's Product in order to: (1) make copies of Licensor's Product to the extent licensed hereunder; and (2) use each copy of Licensor's Product solely for Customer's internal business purposes. As set forth in Section below, the Products, including any related copyright, trademark, patent rights and derivative works are owned by Licensor and will remain the sole and exclusive property of Licensor.

**2.3. Users.** The maximum number of concurrent users permitted under this Agreement is one User per User License. The total number of User Licenses purchased by Customer will be specified in the Product Schedule.

**2.4. Restrictions.** Except as otherwise permitted under this Agreement or applicable law, Customer will not: (i) use, reproduce, modify, merge, translate, enhance, decompile, disassemble, reverse engineer, or create derivative works of the licensed Software; (ii) rent, lease, sell, sublicense, assign, distribute or otherwise transfer a Product; (iii) provide, divulge, disclose, make available to or permit the use of the Product by any third party; (iv) make or publish any representations, warranties, or covenants on behalf of Licensor concerning the Product; (v) remove or destroy any proprietary markings or proprietary legends placed upon or contained with any Product or any related materials or documentation by Licensor; (vi) export or import the Product without first obtaining any licenses that may be required under any applicable export or import laws; or (vii) circumvent or disable and technological features or measures in the Product.

**2.5. Permitted Copies.** Customer may make an additional copy of each Product, but only for back-up or archival reasons. Each permitted copy of all or part of a Product must include all copyright notices, restricted rights legends, proprietary markings and the like exactly as they appear on the copy delivered by Licensor to Customer.

## **3. Maintenance**

**3.1. Maintenance Service.** Pursuant to this Agreement, Customer may purchase Maintenance services and Licensor will provide Upgrades and Hotfixes to Customer, along with relevant documentation and training, subject to the terms set forth below and the attached Product Schedule.

**3.2. Term.** The term for Maintenance begins on the Maintenance Start Date and shall continue for a period of one year (the "Term"). Thereafter, Product Maintenance shall automatically renew for successive terms of one year ("Renewal Term"), provided Customer pays to Licensor the applicable annual Maintenance Fees.

**3.3. Fees.** Customer shall pay to Licensor an initial annual Maintenance Fee as listed on the attached Product Schedule and an annual fee, paid in advance, will be due for each subsequent Renewal Term. Maintenance fees for the initial annual term are calculated based on a percentage of the total License Fees due for Product(s) licensed under the Agreement. Maintenance fees for subsequent annual Renewal Terms are subject to change by Licensor. There will be a pro-rata increase in the Maintenance fees due if additional Products or Licenses are purchased during the Maintenance term. Maintenance Fees are non-refundable.

**3.4. Lapse and Reinstatement.** Maintenance Service will lapse if payment is not received on or before the annual due date. To reinstate Maintenance, Customer must remit in advance all payments that would have been due if its subscription to Maintenance Service had not lapsed. If Customer chooses to purchase Maintenance services after the Maintenance Start Date has passed, Customer must remit all payments that would have been due had Maintenance Service been selected as of the Effective Date of this Agreement.

**3.5. Excluded Services.** Licensor shall have no obligation to provide support services under this Agreement where a problem is caused by: (i) relocation, movement, improper installation, operation, neglect or misuse of the Product;

(ii) Customer's failure to incorporate any Upgrades or Hotfixes previously released by Licensor; (ii) Customer's failure to maintain proper site or environmental conditions; (iv) any fault of Customer's agents or employees; (v) any attempts at repairs, maintenance, or modifications to the Product performed by persons other than authorized service personnel of Licensor; (vi) casualty, act of God, strikes, riot, war, the unauthorized acts of third parties; (vii) failure or interruption of any electrical power, telephone or communication line or like cause; or (viii) any other cause external to the Product except ordinary use.

**3.6. Discontinued Products.** Nothing in this Agreement shall prevent Licensor from choosing to cease development, support, hotfixes, or upgrades of the Product. Licensor will provide support for superseded or discontinued Products through the end of the then-current Maintenance Term.

**3.7. Termination of Maintenance Service.** Either Party may terminate Product Maintenance by written notice to the other at least thirty (30) days before expiration of the initial or renewal term. Customer's lapse or termination of Maintenance Service will not affect the license of the Product.

#### **4. Additional Services**

**4.1. Training.** Licensor will provide initial training concerning the Products at Licensor's current rates. The date, location, rates and duration for such training will either be specified in the Product Schedule or determined later by mutual agreement of the parties.

**4.2. Product Orders.** Customer may order additional Products under this Agreement at the then current market rate or as negotiated for the Product(s) being ordered. Any order for Products delivered by Customer to Licensor during the term of this Agreement shall be deemed to be delivered pursuant to terms of this Agreement unless the Parties agree otherwise. An order shall be in writing and identify the Product(s) being ordered, the quantity of User Licenses required (where applicable), the delivery method and invoicing locations. All other terms and conditions on such order shall be of no contractual effect between the Parties unless Licensor otherwise agrees in writing.

**4.3. Public License Server.** Licensor may provide a public license server for distributed software for promotional or testing purposes. Access to this license server is free, and usage information will be given out as necessary either publicly or as requested. XtremeGeo, LLC reserves the right to remove this license server or revoke access to any customer at any time. XtremeGeo, LLC is not responsible for lost production time or errors resulting from downtime or removal of said public license server.

**4.4. Other Services.** Licensor may make other services available to Customer, such as on-site installation assistance, advanced training, or problem diagnosis and resolution. These services are not included in Maintenance and will be charged at the rates specified in the Product Schedule, if applicable, or Licensor's then current market rate plus travel expenses, as set forth below.

#### **5. Price and Payment**

**5.1. Prices.** Prices and fees are set forth in the Product Schedule and incorporated herein. In addition, Customer shall pay all taxes, levies or similar governmental charges assessed or levied by any governmental entity that are now or may become applicable to this Agreement. This includes but is not limited to sales, use, excise, stamp, and value added taxes, custom/excise duties, and any interest and penalties thereon (hereinafter "Applicable Taxes"). If Applicable Taxes are assessed on Licensor under any laws or regulations governing this Agreement, then Licensor's invoices to Customer will be automatically increased so that the amount actually remitted to Licensor, net of all Applicable Taxes, equals the amounts set forth in the Product Schedule.

**5.2. Travel Expenses.** Licensor's expenses for travel necessary to perform training, maintenance, and other services provided under this Agreement, including transportation, lodging, a per diem amount for food, plus applicable taxes, fees, and surcharges, shall be reimbursed by Customer. These charges will be specified on the invoice. Receipts or other reasonable documentation for travel expenses will be provided upon request by Customer.

**5.3. Invoices.** Invoices will be submitted by email to the designated contact specified on the Product Schedule.

**5.4. Payment.** All amounts payable under this Agreement shall be paid to Licensor within thirty (30) days of the date an invoice is sent by Licensor to Customer. Late payments are subject to a 1.5% monthly finance charge.

#### **6. Marketing, Branding and Reference**

**6.1. Marketing.** Customer agrees Licensor may use Customer's brand logo and corporate name to identify Customer as a customer of Licensor. Licensor's use of Customer's brand logo or corporate name will be subject to Customer's

reasonable review and approval of the materials prior to publication, which approval will not be unreasonably withheld or delayed.

**6.2. Branding.** Customer agrees to prominently place Licensor's brand logo or equivalent material on Customer's website and on any presentation materials, reports or studies related to Customer's use of functionalities provided by Licensor's Product(s) that are disseminated at industry conferences or other professional gatherings.

**6.3. Reference.** During the Term of this Agreement, Customer agrees to serve as a reference for prospective customers of Licensor.

## **7. Intellectual Property**

**7.1. Licensor Property.** Customer acknowledges that title to each Product shall at all times remain with Licensor and that Customer has no rights in the Product or Software except those expressly granted by this Agreement. The Product(s), whether existing, in development or developed in the future, including any related copyright, trademark, and patent rights are owned by Licensor and will remain the sole and exclusive property of Licensor.

**7.2. Enforcement.** Licensor shall maintain sole control and discretion over the prosecution and maintenance with respect to all rights, including all intellectual property rights, in and to the Software. Licensor shall have the primary right, but not the obligation, to bring and control any suits against any unauthorized use, infringement, misappropriation, dilution or other violation of the Licensed intellectual property. Licensor shall be entitled to retain the entirety of any award arising from such suit.

**7.3. Customer Data.** All data created and / or processed by the Product shall in no way become attached to the Product nor shall Licensor have any rights in or to the data of Customer.

**7.4. Export Law Assurances.** Customer may not use or otherwise export Licensor Intellectual Property except as authorized by United States law. By using the Licensor Intellectual Property, Customer represents and warrants that it is not located in, under control of, or a national or resident of any U.S. embargoed country and that you are not on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders.

## **8. Confidentiality**

**8.1. Ownership.** All Confidential Information shall remain the property of the disclosing Party and shall be returned to such Party upon termination of this Agreement or immediately upon request by such disclosing Party.

**8.2. Obligation of Nondisclosure.** Each Party agrees and acknowledges that it shall have no proprietary interest in the Confidential Information of the other Party and will not disclose, communicate nor publish the nature or content of such information to any person or entity (except to those employees or representatives as necessary to carry out such Party's obligations under this Agreement), nor use, except as authorized in writing by the communicating Party, any of the Confidential Information they receive, acquire or obtain from such Party. Each Party shall immediately advise its employees and others to whom the Confidential Information is disclosed of their strict obligations under this Agreement and shall take all necessary steps to insure that the Confidential Information is securely maintained. In the event either Party becomes legally compelled to disclose any of the Confidential Information, such Party shall provide the other with prompt notice thereof and shall not divulge any information until the non-disclosing Party has had the opportunity to seek a protective order or other appropriate remedy to curtail such disclosure. If such actions by such Party are unsuccessful, or the non-disclosing Party otherwise waives its right to seek such remedies, the disclosing Party shall disclose only that portion of the Confidential Information which it is legally required to disclose.

**8.3. Prior Agreement(s).** These confidentiality provisions apply in conjunction with any previous confidentiality or non-disclosure agreements signed by the parties and all other confidentiality or non-disclosure agreements and terms are incorporated into this Agreement by reference.

## **9. Indemnification**

**9.1. Mitigation.** Customer agrees to safeguard the licensed Product(s) and Licensor's Confidential Information from any unauthorized use, infringement, misappropriation, dilution or other violation of this Agreement and Customer shall promptly notify Licensor in writing of any possible violation of which it becomes aware.

**9.2. Audit.** Customer shall keep records of the number of copies of Products made or in use and applicable confidentiality and non-disclosure agreements and procedures. A chartered or certified public accountant retained by Licensor may, upon reasonable notice during normal business hours and no more often than once a year, inspect the records of Customer as is necessary to audit Customer's compliance with its obligations under this provision.

**9.3. Indemnity.** Customer shall indemnify, defend, and hold harmless Licensor from any and all claims, losses, costs (including attorney's fees), expenses, damages, settlements, or liabilities arising out of or related to actions, proceedings, or lawsuits necessary to protect against or seek recovery for any unauthorized use, infringement, misappropriation, or distribution of the licensed Product, Licensor's intellectual property or Licensor's Confidential Information attributable to the willful or negligent actions of Customer, including its Affiliates, representatives, contractors, or consultants.

## **10. Product Warranty and Limitations of Liability**

**10.1. Product Warranty.** Licensor warrants that, at the time of delivery: (i) the Product will be free of any viruses that are detectable by industry-standard virus detection methods; (ii) to the best of its knowledge, Licensor possesses all necessary rights and authority to license the Product to Customer; and (iii) to the best of its knowledge, the Licensed Product does not infringe upon any third party's rights, including intellectual property rights, patent(s), copyrights(s) or trade secrets.

**10.2. Exclusive Remedy.** If the software does not meet the foregoing warranties during the applicable warranty period, as Customer's sole and exclusive remedy, Licensor shall, at Licensor's option: (i) correct or modify the Product; (ii) obtain a license necessary so Customer may continue use of the Product; (iii) replace the Product with a compatible, functionally-equivalent Product; or (iv) refund to Customer the amount paid for the License(s) as depreciated on a straight-line sixty (60) month basis. This provision states the entire liability and obligations of Licensor and the exclusive remedy of Customer with respect to any actual or alleged breach of any warranty under this Agreement.

**10.3. NO OTHER WARRANTIES OR REMEDIES.** EXCEPT AS SPECIFICALLY STATED HEREIN, LICENSOR MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING OR RELATING TO THE PRODUCT, MATERIALS OR SERVICES FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SOFTWARE, DOCUMENTATION AND SUCH OTHER MATERIALS AND SERVICES AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING.

**10.4. LIMITATION OF LIABILITY.** THE PARTIES AGREE THAT, EXCEPT FOR THE OBLIGATIONS IMPOSED IN SECTIONS above and 10.2, above, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY GENERAL, SPECIAL, DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR CUSTOMER'S USE OF LICENSOR'S PRODUCT.

## **11. Termination**

**11.1. Termination by Licensor.** Licensor may terminate this Agreement without notice if Customer: (i) assigns or attempts to assign this Agreement or any of Customer's rights hereunder to a third party, except as provided for in Section 12.3; (ii) neglects or fails to perform or observe, or correct a breach of, its obligations to Licensor as described in this Agreement within thirty (30) days after notification from Licensor of such neglect, failure to perform or observe, or breach; or (iii) files a bankruptcy petition or has such a petition filed involuntarily against it, becomes insolvent, makes an assignment for the benefit of creditors, consents to the appointment of a trustee, or if bankruptcy, reorganization or insolvency proceedings are instituted by or against Customer.

**11.2. Termination by Customer.** Customer may terminate this Agreement without notice if Licensor: (i) assigns or attempts to assign this Agreement or any of Licensor rights hereunder to a third party, except as provided for in Section below ; (ii) neglects or fails to perform or observe, or correct a breach of, its obligations to Customer within thirty (30) days after notification from Customer of such neglect, failure to perform or observe, or breach; or (iii) files a bankruptcy petition or has such a petition filed involuntarily against it, becomes insolvent, makes an assignment for the benefit of creditors, consents to the appointment of a trustee, or if bankruptcy, reorganization or insolvency proceedings are instituted by or against Licensor.

**11.3. Effects of Termination.** In the event of Termination by either Party for any reason: (i) any amounts owed to Licensor under this Agreement before such termination will be immediately due and payable; (ii) all licensed rights granted in this Agreement will immediately cease to exist; and (iii) Customer must promptly discontinue all use of the Product, erase all copies of the Product from their computers, and destroy or return immediately all Products and all copies thereof to Licensor.

**11.4. Survival.** The terms which, by their nature, should survive termination of this Agreement, including Sections 1 and 7-12, shall remain in force upon termination for any reason.

## **12. Additional Provisions**

**12.1. Effective Date.** This Agreement is effective as of the date of installation of the license certificate enabling use of the Product on either an evaluation or full basis.

**12.2. Amendments.** Licensor may amend this Agreement from time to time by emailing an amended version to Customer at the email address provided on the Product Schedule. Such amendment will be deemed accepted and become effective 30 days after such notice is provided unless Customer first gives Licensor written notice of rejection of the amendment. In the event of such rejection, this Agreement will continue under its original provisions and unless and until Customer chooses to purchase any additional end-user license(s). If Customer purchases an additional license or licenses, the amended Agreement will become effective for all of Customer's licenses upon installation of the additional license certificate(s). Customer's continued use of the Product following the effective date of an amendment will confirm Customer's consent to the amended Agreement.

**12.3. Assignment - Consent Required.** Neither Customer nor Licensor shall assign this Agreement, any interest herein or any rights hereunder without the prior written consent of the other Party, except that: (i) Customer may assign this Agreement to any Party which acquires all or substantially all of its related business by merger, sale of assets, or otherwise; and (ii) Licensor may assign this Agreement to any Party which acquires all or substantially all of its related business by merger, sale of assets, or otherwise.

**12.4. Governing Law.** This Agreement is made under and must be interpreted and enforced in accordance with the laws of the State of Colorado without giving effect to those principles of conflict of laws that might otherwise require the application of the laws of another jurisdiction. The parties agree that this contract is not a contract for the sale of goods and therefore this Agreement shall not be governed by any codification of Article 2 or 2A of the Uniform Commercial Code (UCC) or any codification of the Uniform Computer Information Technology Act (UCITA) or any references to the United Nations Convention on Contracts for the International Sale of Goods.

**12.5. Venue.** Any litigation or enforcement of this Agreement must be brought in District Court, Boulder County, State of Colorado or the U.S. District Court for the District of Colorado, if appropriate. Each party submits to the exclusive jurisdiction of those courts and waives the right to change venue. Each party further consents to the exercise of personal jurisdiction by either such court with respect to any proceeding arising from this Agreement.

**12.6. Notice.** All notices required or permitted under this Agreement must be in writing and will be deemed effective when actually received. Notice may be delivered by first-class mail to the principal address of the other party or by email to the addresses specified on the Product Schedule, as may be updated by either party from time to time. For notice via email, the subject line of the email must start with the word "NOTICE" in all capital letters. To establish when notice has been received, either the recipient must acknowledge receipt in a reply email or delivery can be established using a certified mail or email service that provides delivery confirmation.

**12.7. Waiver.** The failure of a Party to claim a breach of any term of this Agreement shall not constitute a waiver of such breach or the right of such Party to enforce any subsequent breach of such term.

**12.8. Force Majeure.** Neither Party shall be deemed in default hereunder or liable for any loss or damage resulting from delays in performance or from failure to perform or comply with the terms of this Agreement due to any causes beyond its reasonable control, which causes include but are not limited to acts of God, civil or military authority, riots and insurrections, accidents, fire, labor disputes, embargoes, judicial action, shortages of labor, materials, energy, or transportation, or any similar cause beyond the Party's reasonable control.

**12.9. Severability.** If any part of this Agreement shall be held invalid and/or unenforceable, the remainder of the Agreement shall nevertheless remain in full force and effect.

**12.10. Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties on the subject matter hereof and supersedes any prior agreements communications, terms, conditions, and/or understandings of any nature whatsoever, oral or written.