

Fugro USA Land, Inc.

STATE OF MICHIGAN **CENTRAL PROCUREMENT SERVICES**

Department of Technology, Management, and Budget 320 S. WALNUT ST., LANSING, MICHIGAN 48933

Ulrika Zay

517-242-2027

DTMB

P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number 2

to

Contract Number <u>21000001076</u>

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301	-948-8550 119			Contract Administrator	(517) 284-6993	1		
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INITIAL	EFFECTIVE DATE	INITIAL EXPIRAT	TION DATE	INITIAL	AVAILABLE OPTIONS	8	EXPIRATION BEFORE	
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Effective 2/15/2024 this Contract is exercising two option years. The revised contract expiration date is 5/31/2026.								
Please note that DTMB Program Manager has been changed to Ulrika Zay.								
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Fugro USA Land, Inc.

STATE OF MICHIGAN **CENTRAL PROCUREMENT SERVICES**

Department of Technology, Management, and Budget 320 S. WALNUT ST., LANSING, MICHIGAN 48933

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DTMB

P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number 1

to

Contract Number <u>21000001076</u>

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7320 Executive Way	<i>I</i>	_	517-335-7180				
Frederick MD 2170	Frederick, MD 21704				OV		
Frederick, MD 21704 Dave White 301-948-8550 119			STATE	Sean Regan		DTMB	
301-948-8550 119		(517) 243-8459		<u>l</u>			
dave.white@fugro.c	om			regans@michigan	.gov		
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THIRD PARTY SERVIO	CES	CONTRAC	T SUMMAI	RY			
INITIAL EFFECTIVE DATI		TION DATE	INITI	AL AVAILABLE OPTIOI	NS		TION DATE
March 1, 2021	February 28	3, 2024		5 - 1 Year			31, 2024
PA	MENT TERMS		DELIVERY TIMEFRAME				
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Effective March 1, 2023, t of work.	his Contract is increas			ar processing services	, outline	d in the bel	ow statement
All other terms, conditions Services.	s, specifications, and p	ricing remain tl	he same. F	Per contractor, agency	, DTMB	Central Pro	ocurement



Statement of Work for Sense.Lidar Pilot Project

Statement of Work | Gladwin County & Midland County, MI

222383 | 31 January 2023

State of Michigan, Dept. of Technology, Management & Budget, Center for Shared Solutions



Document Control

Document Information

Project Title	Pilot Project Gladwin County and Midland County, Michigan	
Document Title	Statement of Work for Sense.Lidar Pilot Project	
Fugro Project No.	222383	
MiSAIL Contract No.	210000001076	
Fugro Legal Entity	Fugro USA Land, Inc	
Issuing Office Address	7320 Executive Way, Frederick, MD 217011	

Client Information

Client State of Michigan, Dept. of Technology, Management & Budget, Center for Shared Solutions		
Client Address 111 S. Capitol Avenue, Romney Building, 10th Floor Lansing, MI 48933		
Client Contact	Everett Root and Mark Holmes	
Client Document No.	21000001076: Third-Party Services and Products	

Revision History

Issue	Date	Status	Comments on Content	Prepared By	Approved By
01	25 Oct 2022	Final	Pilot Project	AS	КО
02	24 Jan 2023	Final	Statement of Work	AS	КО

Project Team

Initials	Name	Role
КО	Keith Owens	Commercial Director
AS	Arjun Sheoran	Technical and Business Development Manager
BD	Ben Downey	Project Staging and Controls
DW	Dave White	Regional Manager Remote Sensing and Mapping, Americas
TW	Tian Wang	Lidar Production Manager



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1. Statement of Work

As part of the existing Third-Party Services and Products contract (# 210000001076) between the State of Michigan and Fugro USA Land Inc. the following additional services are being proposed to MiSAIL

- 1. Process USGS QL2 lidar data for Gladwin and Midland Counties using Sense.Lidar
- 2. Optionally delivery 2D building footprints, 3D building models and Culverts shapefiles

Fugro will use the existing USGS QL2 lidar data for Gladwin and Midland Counties to provide the following additional classifications:

- Buildings
- Low, medium, and high vegetation
- Culverts (medium to large)

2. Project Area

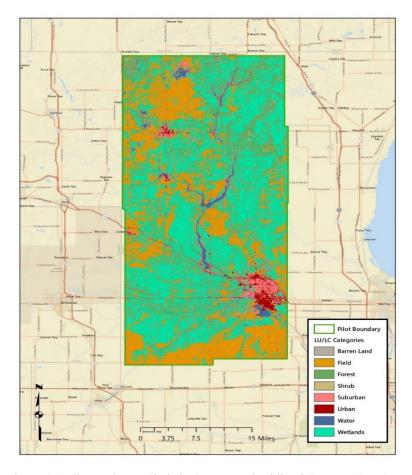


Figure 2.1: Pilot Project – Gladwin County and Midland County, 1044 Sq. Mi.



3. Processing Workflow and Methodology



Figure 3.1: Gladwin County sample results (left is default USGS and right is Sense.Lidar)

3.1 Overview

The creation and distribution of digital data is accelerating at a staggering rate, driving a technical revolution to better store, manage, and most importantly make sense of this abundant 21st century resource. We used to reference data 'sets'; now we have data 'lakes'.

Remote sensing scientists, map mavens, and other purveyors of all things spatial have long required creative solutions to manage their enormous geodata stockpiles and faced challenges interpreting and sharing useful information without access to scalable solutions. Because of this, the extracted value of remote sensing data may have justified the initial cost of collection - but the majority of that data's value will be latent until it is fully mined for insights and/or utilized within the context of other data. If maintained properly, remote sensing data value will even grow over time as a singular definitive reference point in history, impossible to recreate.

Fortunately, we've turned a corner over the past decade with the rise of cloud computing, once a niche domain that is now ubiquitous. The cloud has ushered in the age of 'big data', providing seemingly unlimited access to storage space and compute nodes, evaporating previous constraints.

As the world's leading geodata specialist Fugro has long developed and adapted new technology to drive value for our clients. Most recently this includes migrating our geodata production pipeline, previously run entirely on desktop and local servers, into the cloud.

Other companies might simply move legacy software onto a cloud node and call the result 'cloud production', but Fugro is using the latest in cloud solutions to build an end-to-end cloud-



native geodata processing pipeline from the ground up. This means we are able to fully leverage the scalability of cloud computing without license or engineering restrictions. It also means we can automate many functions that previously took many hours of manual oversight and manipulation – human effort that can now be elevated to higher order tasks that still require human cognition. Automation allows us to offer a 'very suitable' result for an incredibly low price and rapid delivery (typically around 90-95% accuracy) or one combined with additional human support (as proposed) for specific use cases or higher quality requirements (95-99% accuracy).

3.2 Best in Cloud

Fugro is a proud member of the AWS Partner Network (APN) with the majority of our cloud infrastructure built in the AWS environment, including the pipeline that would be used for processing the Pilot project data. We also build on Microsoft Azure and use Azure AD for authentication and authorization of most custom applications, even those running in AWS.

Fugro's large-scale geodata processing pipeline is secure, flexible, and dynamic, constructed to deliver both geodata and analytics for a variety of use cases and applications. It is running in an AWS Virtual Private Cloud with raw data collected with Fugro sensors transmitted instantly over the AWS Direct Connect link or via S3 if provided by client or partner. Our proprietary processes, workflows, and APIs run on a variety of AWS managed products and services including: S3, Glacier, and Deep Archive for storage; EC2 and Lambda for compute; API Gateway to manage APIs; DynamoDB, Amazon RDS for PostgreSQL, and Aurora for database management; Redshift and Athena for analytics; SageMaker, Rekognition, and Deep Learning AMIs for machine learning, and others for governance, security and compliance.

Provisioning cloud services using infrastructure as code not only offers the scale required for a geodata pipeline but allows us to focus more attention on delivering value to clients.

3.3 Approach

To meet the specifications of this Pilot project and deliver a compelling combination of schedule and price, we offer Michigan a hybrid approach whereby we will utilize the Fugro proprietary cloud pipeline for data access/delivery, data management, and automated point classification in combination with minimal human point classification and human oversight for quality control.

The following processing workflow was designed specifically for the Pilot project to utilize Fugro's innovative lidar processing techniques for classifying the USGS lidar data to Michigan's specifications:

- Data access through AWS
- Data Management
- Cloud-based, Machine Learning Techniques for Processing at Scale
- Automated Point Classification



- Manual Point Classification
- Classification QC and Finalization
- Final Formatting and QC for Delivery
- Pilot Delivery, and
- Final Data Delivery through AWS or <u>Michigan.mediashuttle.com</u>

3.4 Data Access

While the geodata pipeline is built in AWS, it is cloud and format agnostic – inputs to our system may be successfully sourced from other cloud or hosted environments in any format, or even shipped via disk.

3.5 Data Management

Fugro's production manager Tian Wang will organize the source data and layout by production blocks. The source data will first go through an initial check before any data processing. The Lidar production manager will review the data so ensure there are no inconsistencies and that in case there are any discrepancies they will be documented and communicated to the production team. Once the data is considered ready for production, the following information will be documented and handed to the production team:

- Lidar data format (including source data classifications)
- Point density
- Metadata
- Hydro Flattened DEM
- Tile layout
- Projection information
- Terrain types
- Any special situations to be noted

Fugro will perform a quality and coverage check on the source data:

- Format: identify the source data format so the data is handled properly in the classification process
- Projection / Datum: Document the data projection to make sure the data remains in the original projection throughout data processing and remains properly defined for the final deliverable
- Completeness: Inventory the received lidar data to verify all data is complete and uncorrupted
- Coverage: Verify the data coverage matches the project layout for each area of interest
- Terrain Type: Perform land cover type analysis for each project area of interest for cloudbased classification routine training data.

Any issues that need Michigan's attention will be communicated immediately.



3.6 Point Classification

For this project Fugro is taking a hybrid automated and manual approach to point classification. The point classification process will be iterative and includes an automated pass performed by a model trained using machine learning, followed by human QC using Terrascan/Terramodel. Fugro's BatchPack will efficiently manage the Terrascan QC workflow and automatically validate formatting and tiling protocols.



Figure 3.2: USGS lidar

Figure 3.3: Sense.Lidar classification





Figure 3.4: USGS lidar

Figure 3.5: Sense.Lidar classification

3.7 Automation

Fugro's automated point classification process includes machine learning and other techniques iteratively to improve results. To start, a smart 'scatter-gather' pattern is used to process point cloud data at scale. The entire dataset is divided into smaller overlapping tiles which act as reference points indicating which subset of data to download for each tile.

The tiles are placed in a queue for processing, potentially multiple times as some steps need to be completed for all tiles before the next steps can proceed (e.g. such as processing terrain, described below). A required number of processors (i.e. EC2 instances) can then be launched (or are already standing by) to start processing tiles from the queue. This way we can easily scale up and down our compute power even while a dataset is in progress.

Points are classified individually based on many geospatial properties of their neighborhood and local consensus amongst points in small clusters.

Before classification begins, ground is extracted by finding the lowest points in large blocks and growing those seed points into a DTM. Only below-ground-noise should be the remaining



points underneath this DTM. The DTM is used compute "height above ground" for all points – one of the so-called features that will be used to classify each single point.

More features are computed, based on local geometry (local planarity, linearity, etc.) and lidar features (return number, intensity, etc.). Neighbors up to 10 meters away can still influence the information with respect to a single point.

The points and their features are now considered as regular tabular data and the proven, robust machine learning algorithm is used first to learn to associate those features with the class of the point and then apply those learnings – the model – to a new dataset.

Fugro's proprietary cloud-based/scalable deep learning classification workflow is often described as a 'forest' of decision trees. A single decision/threshold can often already classify most of the points. For example: "height above ground < 5cm" will get most of the ground points correct. By growing the decision tree and producing more decision trees (a forest) that corrects mistakes – 'boosting' – the process can robustly and quickly sort the points by their class.

3.8 Comparing USGS and Sense.Lidar Classification Schema

Traditionally USGS lidar classifications cater to federal programs and are fit for purposes however they leave out vegetation and building classes which are needed by city planners at the County or State level. The table below compares the default USGS and Sense.Lidar classification schema:

Table 3.1: USGS Lidar Classes Vs Sense.Lidar Classes

USGS (default classes)		Sense.Lidar (add	itional classes)
Code	Description	Code	Description
1	Unclassified	3	Low Vegetation
2	Base earth	4	Medium Vegetation
7	Low noise	5	High Vegetation
9	Water	6	Buildings
17	Bridge deck	14	Culverts
18	High noise		
21	Snow (if present)		

All unchanged values will remain and be included in the LAS file.

3.9 Classification QC and Finalization

Fugro's Senior Production Analyst will QC the manually classified tiles to ensure quality while the team is working on manual classification. Classification consistency will also be checked to make sure that there are no noticeable variations in the character, texture, or quality of the classification between tiles, swaths, lifts, or other non-natural divisions. Feedback will be



provided to the team as soon as any issue is identified during QC and corrective actions will be applied. Once all tiles pass QC, the classifications will be finalized by running automated routines in TerraScan and using Fugro's in-house developed tool packages:

- Classify the vegetation points into the Low, Medium and High Vegetation classes based on their height from ground surface
- Classify the vegetation points that fall inside the waterbodies into the Low, Medium and High vegetation classes based on their height from the water surface
- Classify the points that are tagged with Overlap Flag based on the final non-overlap point classifications in the close neighborhood

3.10 Project Schedule

Table 3.2: Tentative Project Schedule for Pilot Project (Midland Co. and Gladwin Co.)

Item	Process Description	Estimated Duration
1	Notice of Award (Anticipated)	February 1 st , 2023 *
2	Kick-Off Meeting	Within 7 days of contract award
3	Receive and confirm existing USGS data from MiSAIL	Within 10 days of contract award
4	Training of Sense.Lidar models for Michigan	Within 14 days of contract award
5	Auto-classification through Sense.Lidar	Within 18 days of contract award
6	Human assisted QC and classification	Within 60 days of contract Award
7	Final Processing and Delivery	Within 70 days of contract award

4. Product Deliverables

Product samples created for this proposal utilized the same process techniques that will be applied to the Lidar Classification Processing of USGS QL2 Pilot Project in Michigan. The table below highlights the key product deliverables and includes optional products:

Table 4.1: Project Deliverables

Item	Description	Format
1	Sense.Lidar Advanced Classification - Building - Vegetation (Low, Medium, High) - Culverts	LAS File naming will follow the original format.
2	2D building footprints and 3D building models	Shapefile
3	Culvert polygons extracted from classified point cloud (Optional)	Shapefile



5. Pricing

Table 5.1: Sense.Lidar Pilot Project Pricing

Item	Description	Unit Price	Area Price
1	Gladwin County: 516 Sq. Mi.	\$15.00 Sq. Mi.	\$7,740.00
2	Midland County: 528 Sq. Mi.	\$15.00 Sq. Mi.	\$7,920.00
3	Semi-Automated 2D Building Footprints		\$3,121.00
4	Fully Automated 3D Building Models		\$2,516.00
Total P	Pilot Project Cost	\$21,297.00	

Buildings larger than 50 Square meters will be captured in their entirety. Sense.Lidar will be able to capture smaller buildings including garages but there may be some instances where smaller buildings are not classified.

Table 5.2: Optional Culvert Polygons for Pilot Project

Item	Description	Area Price
1	2D Automated Culvert Polygon shapefile (medium to large)	\$1,500.00

Authorized Signatory

Contract # 210000001076

Dave White, Regional Manager Remote Sensing and Mapping, Americas

<u>Dave.white@fugro.com</u>

31st January 2023





STATE OF MICHIGAN PROCUREMENT

Department of Technology, Management, and Budget 525 W. Allegan, Lansing, MI 48933

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. 210000001076 between THE STATE OF MICHIGAN and

CONTRACTOR	Fugro USA Land, Inc.
	7320 Executive Way
	Frederick, MD 21704
	Dave White
ONT	301-948-8550, ext. 119
Ö	dave.white@fugro.com
	V Cust#

Program Manager	Everett Root	DTMB
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	roote@michigan.gov	
Contract Administrator	Sean Regan	DTMB
	517-243-8459	
	regans@michigan.gov	
		517-335-7180 roote@michigan.gov Sean Regan 517-243-8459

CONTRACT SUMMARY				
DESCRIPTION: Third Party S	ervices			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFO CHANGE(S) NOTED BELO	
3/1/2021	2/28/2024	5, 1 Year		
PAYMENT TERMS		D	DELIVERY TIMEFRAME	
Net 45				
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASIN	G
□ P-card □ F	Payment Request (PRC)	□ Other	⊠ Yes □ N	0
MINIMUM DELIVERY REQUIREMENTS				
MISCELLANEOUS INFORMATION				
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION \$0.00			\$0.00	

FOR THE CONTRACTOR:
Company Name
Authorized Agent Signature
Authorized Agent (Print or Type)
Date
FOR THE STATE:
Signature
Name & Title
Agency
Date

STATE OF MICHIGAN

CONTRACT TERMS

This STANDARD CONTRACT ("Contract") is agreed to between the State of Michigan (the "State") and [Insert Company Name] ("Contractor"), a [Insert State & Entity Status, e.g., a Michigan corporation or a Texas limited liability company]. This Contract is effective on [Month, Day, Year] ("Effective Date"), and unless terminated, expires on [Month, Day, Year].

This Contract may be renewed for up to [Insert # of Renewal Options] additional [Insert # of Years Per Renewal Option] year period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.]

- 1. **Definitions.** For the purposes of this Contract, the following terms have the following meanings:
 - "Accept" has the meaning set forth in Section 20.
 - "Acceptance" has the meaning set forth in Section 20.
 - "Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect ownership of more than fifty percent (50%) of the voting securities of a Person.
 - "Allegedly Infringing Materials" has the meaning set forth in Section 33.
 - "Business Day" means a day other than a Saturday, Sunday or other day on which the State is authorized or required by Law to be closed for business.
 - "Business Owner" is the individual appointed by the agency buyer to (a) act as the agency's representative in all matters relating to the Contract, and (b) co-sign off on notice of Acceptance. The Business Owner will be identified in the Statement of Work.
 - "Change" has the meaning set forth in Section 5.
 - "Change Notice" has the meaning set forth in Section 5.
 - "Change Proposal" has the meaning set forth in Section 5.
 - "Change Request" has the meaning set forth in Section 5.
 - "Confidential Information" has the meaning set forth in Section 37.a.
 - "Configuration" means State-specific changes made to the Software without Source Code or structural data model changes occurring.

"Contract" has the meaning set forth in the preamble.

"Contract Activities" refers to the includes the Services, Deliverables, delivery of commodities, or other contractual requirements set forth in **Schedule A – Statement of Work**, including any subsequent Statement(s) of Work, that the Contractor agrees to provide and the State agrees to purchase pursuant to the terms of this Contract.

"Contract Administrator" is the individual appointed by each party to (a) administer the terms of this Contract, and (b) approve any Change Notices under this Contract. Each party's Contract Administrator will be identified in the Statement of Work.

"Contractor" has the meaning set forth in the preamble.

"Contractor's Bid Response" means the Contractor's proposal submitted in response to the State's requests to obtain Contract Activities.

"Contractor Personnel" means all employees of Contractor or any Permitted Subcontractors involved in the performance of Services hereunder.

"Deliverables" means all materials, including, but not limited to Software, Documentation, written materials and commodities including without limitation images or image files of any kind or type, that Contractor is required to or otherwise does provide to the State under this Contract and otherwise in connection with any Services, including all items specifically identified as Deliverables in Schedule A - Statement of Work.

"Dispute Resolution Procedure" has the meaning set forth in Section 50.

"Documentation" means all generally available documentation relating to the Software, including all user manuals, operating manuals and other instructions, specifications, documents and materials, in any form or media, that describe any component, feature, requirement or other aspect of the Software or Hosted Services (as defined in **Schedule D**), including any functionality, testing, operation or use thereof.

"DTMB" means the Michigan Department of Technology, Management and Budget.

"Effective Date" has the meaning set forth in the preamble.

"Fees" means collectively all fees collected by the Contractor pursuant to the terms of this Contract.

"Financial Audit Period" has the meaning set forth in Section 39.

"Force Majeure" has the meaning set forth in Section 49.

"HIPAA" has the meaning set forth in Section 44.

"Intellectual Property Rights" means all or any of the following: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the associated goodwill; (c) copyrights and copyrightable works (including

computer programs), mask works and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable Law in any jurisdiction throughout the world.

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

"Loss or Losses" means all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"Maintenance Release" means any update, upgrade, release or other adaptation or modification of the Software, including any updated Documentation, that Contractor may generally provide to its licensees from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Software.

"New Version" means any new version of the Software that the Contractor may from time to time introduce and market generally as a distinct licensed product, as may be indicated by Contractor's designation of a new version number.

"PAT" means a document or product accessibility template, including any Information Technology Industry Council Voluntary Product Accessibility Template or VPAT®, that specifies how information and software products, such as websites, applications, software and associated content, conform to WCAG 2.0 Level AA.

"Permitted Subcontractor" has the meaning set forth in Section 13.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

"**Pricing**" means any and all fees, rates and prices payable under this Contract, including pursuant to any Schedule or Exhibit hereto.

"**Pricing Schedule**" means the schedule attached as **Schedule B**, setting forth the Fees, rates and Pricing payable under this Contract.

"**Project Manager**" is the individual appointed by each party to (a) monitor and coordinate the day-to-day activities of this Contract, and (b) for the State, to co-sign off on its notice of Acceptance of the Deliverables. Each party's Project Manager will be identified in the Statement of Work.

"Representatives" means a party's employees, officers, directors, partners, shareholders, agents, attorneys, successors and permitted assigns.

"RFP" means the State's request designed to solicit responses for Contract Activities under this Contract.

"Software" means Contractor's software set forth in the Statement of Work, and any Maintenance Releases or New Versions provided to the State and any Configurations made by or for the State pursuant to this Contract, and all copies of the foregoing permitted under this Contract and the License Agreement.

"Services" means any of the services Contractor is required to or otherwise does provide under this Contract, Schedule A - Statement of Work, Schedule C- Contractor Hosted Software and Services (if applicable).

"Source Code" means the human readable source code of the Software to which it relates, in the programming language in which the Software was written, together with all related flow charts and technical documentation, including a description of the procedure for generating object code, all of a level sufficient to enable a programmer reasonably fluent in such programming language to understand, build, operate, support, maintain and develop modifications, upgrades, updates, adaptations, enhancements, new versions and other derivative works and improvements of, and to develop computer programs compatible with, the Software.

"Site" means the physical location designated by the State in, or in accordance with, this Contract or the Statement of Work for delivery or installation of the Contract Activities.

"State" means the State of Michigan.

"State Data" has the meaning set forth in Section 36.a.

"State Materials" means all materials and information, including equipment, documents, data, know-how, ideas, methodologies, specifications, software, content and technology, in any form or media, directly or indirectly provided or made available to Contractor by or on behalf of the State in connection with this Contract.

"Statement of Work" means any statement of work entered into by the parties and attached as a schedule to this Contract. The initial Statement of Work is attached as **Schedule A**, and subsequent Statements of Work shall be sequentially identified and attached as Schedules A-1, A-2, A-3, etc.

"Stop Work Order" has the meaning set forth in Section 27.

"Term" has the meaning set forth in the preamble.

"Third-Party" means any Person other than the State or Contractor.

"Transition Period" has the meaning set forth in Section 31.

"Transition Responsibilities" has the meaning set forth in Section 31.

"Unauthorized Removal" has the meaning set forth in Section 15.

"Unauthorized Removal Credit" has the meaning set forth in Section 15.

"User Data" means any and all information reflecting the access or use of the Hosted Services by or on behalf of the State or any Authorized User, including any end user profile, visit, session, impression, metadata, click-through or click-stream data and any statistical or other analysis, information or data based on or derived from any of the foregoing.

"Warranty Period" means the period set forth in Schedule A, the Statement of Work, commencing on the date of acceptance of all Deliverables purchased pursuant to the terms of this Contract.

"WCAG 2.0 Level AA" means level AA of the World Wide Web Consortium Web Content Accessibility Guidelines version 2.0.

"Work Product" means all State-specific deliverables that Contractor is required to, or otherwise does, provide to the State under this Contract including but not limited to any images or image files of any kind or nature, application programming interfaces, written materials, computer scripts, software configuration, software customization, APIs, macros, user interfaces, reports, project management documents, forms, templates, and other State-specific documents and related materials together with all ideas, concepts, processes, and methodologies developed in connection with this Contract whether or not embodied in this Contract. Work Product does not include software or licensed imagery products or services.

Duties of Contractor. Contractor must perform the Services and provide the Deliverables described in Schedule
 A – Statement of Work. An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in **Schedule A**.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

- 3. Statement(s) of Work. Contractor shall provide the Contract Activities pursuant to Statements of Work entered into under this Contract. No Statement of Work shall be effective unless signed by each party's Contract Administrator. The term of each Statement of Work shall commence on the parties' full execution of the Statement of Work and terminate when the parties have fully performed their obligations. The terms and conditions of this Contract will apply at all times to any Statements of Work entered into by the parties and attached as a schedule to this Contract. The State shall have the right to terminate such Statement of Work as set forth in Sections 28 and 29. Contractor acknowledges that time is of the essence with respect to Contractor's obligations under each Statement of Work and agrees that prompt and timely performance of all such obligations in accordance with this Contract and the Statements of Work is strictly required.
- 4. Statement of Work Requirements. Each Statement of Work may include the following: (a) names and contact information for Contractor's Contract Administrator, Project Manager and other personnel; (b) names and contact information for the State's Contract Administrator, Project Manager and Business Owner; (c) a detailed description of the Services to be provided under this Contract, including any training obligations of Contractor; (d) a detailed description of the Deliverables to be provided under this Contract; (e) a description of all liquidated damages associated with this Contract, if any; and (f) a detailed description of all State Resources, if any, required to complete the Implementation Plan, if such a Plan is necessary.
- 5. Change Control Process. The State may at any time request in writing (each, a "Change Request") changes to the Statement of Work, including changes to the Contract Activities (each, a "Change"). Upon the State's submission of a Change Request, the parties will evaluate and implement all Changes in accordance with this Section 5. No Change will be effective until the parties have executed a Change Notice. Except as the State may request in its Change Request or otherwise in writing, Contractor must continue to perform its obligations in accordance with the Statement of Work pending negotiation and execution of a Change Notice. Contractor will use its best efforts to limit any delays or Fee increases from any Change to those necessary to perform the Change in accordance with the applicable Change Notice. Contractor may, on its own initiative and at its own expense,

prepare and submit its own Change Request to the State. However, the State will be under no obligation to approve or otherwise respond to a Change Request initiated by Contractor.

This Contract may not be amended except by signed agreement between the parties (a "Contract Change Notice"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended

6. Notices. All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
[Name]	[Name]
[Street Address]	[Street Address]
[City, State, Zip]	[City, State, Zip]
[Email]	[Email]
[Phone]	[Phone]

- 7. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Schedule A) if, in the opinion of the State, it will ensure performance of a project under this Contract.
- 8. Insurance Requirements. Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (i) protect the State from claims that arise out of, are alleged to arise out of, or otherwise result from Contractor's or subcontractor's performance; (ii) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (iii) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

Required Limits	Additional Requirements	
Commercial General Liability Insurance		
Minimum Limits:	Contractor must have their policy endorsed to add "the State of Michigan, its departments,	
\$1,000,000 Each Occurrence	divisions, agencies, offices, commissions, officers, employees, and agents" as	
\$1,000,000 Personal & Advertising Injury	additional insureds using endorsement CG	
\$2,000,000 General Aggregate	2010 11 85, or both CG 2010 07 04 and CG 2037 07 04.	
\$2,000,000 Products/Completed Operations		
Automobile Liability Insurance		
Minimum Limits:	Contractor must have their policy: (1)	
\$1,000,000 Per Accident	endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and	

	agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.	
Aviation	Insurance	
Aircraft Liability Minimum Limits: \$1,000,000 Each Occurrence \$2,000,000 General Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.	
Workers' Compensation Insurance		
Minimum Limits: Coverage according to applicable laws governing work activities	Waiver of subrogation, except where waiver is prohibited by law.	
Employers Liability Insurance		
Minimum Limits:		
\$500,000 Each Accident		
\$500,000 Each Employee by Disease		
\$500,000 Aggregate Disease		

If any required policies provide claims-made coverage, the Contractor must: (i) provide coverage with a retroactive date before the Effective Date of the Contract or the beginning of Contract Activities; (ii) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (iii) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Contract, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (i) provide insurance certificates to the Contract Administrator, containing the agreement or delivery order number, at Contract formation and within twenty (20) calendar days of the expiration date of the applicable policies; (ii) require that subcontractors maintain the required insurances contained in this Section; (iii) notify the Contract Administrator within five (5) business days if any policy is cancelled; and (iv) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

9. Administrative Fee and Reporting. Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states (including governmental subdivisions and

authorized entities). Administrative fee payments must be made by check payable to the State of Michigan and mailed to:

Department of Technology, Management and Budget

Cashiering

P.O. Box 30681

Lansing, MI 48909

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to MiDeal@michigan.gov.

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter.

10. Extended Purchasing Program. This contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal. Upon written agreement between the State and Contractor, this contract may also be extended to: (a) State of Michigan employees and (b) other states (including governmental subdivisions and authorized entities).

If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. The State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions.

Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

- 11. Independent Contractor. Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.
- 12. Intellectual Property Rights. Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Work Product produced as part of the Contract Activities, and all associated intellectual property rights, if any. In general, Work Product constitutes works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Work Product, and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Work Product, including all intellectual property rights therein. Contractor also irrevocably waives any and all claims Contractor may have now or hereafter have in any jurisdiction to so called "moral rights" or rights of droit moral with respect to the Work Product. If Contract Activities includes the purchase or use of software, such purchase, use, or access to Software shall be subject to Schedules C, D, or E of this Contract, as applicable.

- 13. Subcontracting. Contractor will not, without the prior written approval of the State, which consent may be given or withheld in the State's sole discretion, engage any Third-Party to perform Services. The State's approval of any such Third-Party (each approved Third-Party, a "Permitted Subcontractor") does not relieve Contractor of its representations, warranties or obligations under this Contract. Without limiting the foregoing, Contractor will: (a) be responsible and liable for the acts and omissions of each such Permitted Subcontractor (including such Permitted Subcontractor's employees who, to the extent providing Services or Deliverables, shall be deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor or its employees; (b) name the State a third-party beneficiary under Contractor's Contract with each Permitted Subcontractor with respect to the Services; (c) be responsible for all fees and expenses payable to, by or on behalf of each Permitted Subcontractor in connection with this Contract, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits; and (d) notify the State of the location of the Permitted Subcontractor and indicate if it is located within the continental United States.
- 14. Staffing. Contractor is solely responsible for all Contractor Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits. The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

15. RESERVED

- 16. Background Checks. Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks. Due to the nature of the content services, this clause does not apply to projects with licensed products or services or employees supporting the licensed data programs.
- 17. Assignment. Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third-party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
- 18. Change of Control. Contractor will notify within 30 days of any public announcement, or otherwise once legally permitted to do so, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

- **19. Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.
- 20. Acceptance. Unless otherwise provided in the Statement of Work or an applicable schedule, Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("State Review Period"), unless otherwise provided in Schedule A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities

are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with **Section 28**, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third-party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

- **21. Delivery.** Contractor must deliver all applicable Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Schedule A. All containers and packaging become the State's exclusive property upon acceptance.
- 22. Risk of Loss and Title. Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
- 23. Warranty Period. The warranty period, if applicable, for any Contractor Hosted Software s a fixed period commencing on the date specified in **Schedule A**. If the Contract Activities do not function as warranted during the warranty period, the State may reject or return such non-conforming Contractor Hosted Software to the Contractor for a full refund.
- 24. Terms of Payment. Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Schedule A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. All prices are exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at http://www.michigan.gov/SIGMAVSS to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

25. Payment Disputes. The State may withhold from payment any and all payments and amounts the State disputes in good faith, pending resolution of such dispute, provided that the State: (a) timely renders all payments and amounts that are not in dispute; notifies Contractor of the dispute prior to the due date for payment, specifying in such notice: (i) the amount in dispute; and (ii) the reason for the dispute set out in sufficient detail to facilitate investigation by Contractor and resolution by the parties; (b) works with Contractor in good faith to resolve the dispute promptly; and (c) promptly pays any amount determined to be payable by resolution of the dispute.

Contractor shall not withhold any Contract Activities or fail to perform any obligation hereunder by reason of the State's good faith withholding of any payment or amount in accordance with this **Section 25** or any dispute arising therefrom.

- 26. Liquidated Damages. Liquidated damages, if applicable, will be assessed as described in Schedule A. Amounts due the State as liquidated damages may be set off against any Fees payable to Contractor under this Contract, or the State may bill Contractor as a separate item and Contractor will promptly make payments on such bills.
- 27. Stop Work Order. The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or delivery order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
- 28. Termination for Cause. The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in **Section 29**, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the terminated Contract Activities from other sources.

- 29. Termination for Convenience. The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 30, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay for all products and services provided to the State on or before the date of termination and all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
- 30. Effect of Termination. Upon and after the termination or expiration of this Contract or one or more Statements of Work for any or no reason: (a) Contractor will be obligated to perform all Transition Responsibilities specified in Section 31; (b) all licenses granted to Contractor in State Data will immediately and automatically also terminate. Contractor must promptly return to the State all State Data not required by Contractor for its Transition Responsibilities, if any; (c) Contractor will: (i) return to the State all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the State's Confidential Information; (ii) permanently erase the State's Confidential Information from its computer systems; and (iii) certify in writing to the State that it

has complied with the requirements of this **Section 30** in each case to the extent such materials are not required by Contractor for Transition Responsibilities, if any.

- 31. Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days, "Transition Period"), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "Transition Responsibilities"). This Contract will automatically be extended through the end of the transition period.
- 32. General Indemnification. Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), to the proportionate extent arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third-party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any negligent acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

33. Infringement Remedies. If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

- 34. Limitation of Liability and Disclaimer of Damages. THE STATE WILL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.
- 35. Disclosure of Litigation, or Other Proceeding. Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
- 36. State Data. Fithe Contract Activities includes the hosting of State Data with Contractor or Permitted Subcontractors, Contractor must also comply with Schedule D Data Hosting and Security for Hosted Software and Services of this Contract
 - a. Ownership. The State's data ("State Data," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("PII") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("PHI") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.
 - b. Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract, applicable SOM PSP's, and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.
 - c. <u>Extraction of State Data</u>. Contractor must, within five (5) business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
 - d. <u>Backup and Recovery of State Data</u>. Unless otherwise specified in Schedule A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Schedule A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.
 - e. <u>Loss or Compromise of Data</u>. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as

applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (q) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. The parties agree that any damages relating to a breach of this Section 36 are to be considered direct damages and not consequential damages. This section survives termination or expiration of this Contract.

- f. State's Governance, Risk and Compliance (GRC) platform. Contractor is required to assist the State, at no additional cost, with development, completion and on-going maintenance of a system security plan (SSP) using the State's automated governance, risk and compliance (GRC) platform, which requires Contractor to submit evidence, upon request from the State, in order to validate Contractor's security controls within two weeks of the State's request. On an annual basis, or as otherwise required by the State such as for significant changes, re-assessment of the system's controls will be required to receive and maintain authority to operate (ATO). All identified risks from the SSP will be remediated through a Plan of Action and Milestones (POAM) process with remediation time frames based on the risk level of the identified risk. For all findings associated with the Contractor's solution, at no additional cost, Contractor will be required to create or assist with the creation of State approved POAMs and perform related remediation activities. The State will make any decisions on acceptable risk, Contractor may request risk acceptance, supported by compensating controls, however only the State may formally accept risk. Failure to comply with this section will be deemed a material breach of the Contract.
- **37. Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.
 - a. Meaning of Confidential Information. For the purposes of this Contract, the term "Confidential Information" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing

party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. <u>Cooperation to Prevent Disclosure of Confidential Information</u>. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires. Notwithstanding anything to the contrary in this paragraph, the State acknowledges and agrees that Recipient's computer system may automatically retain back-up copies of Confidential Information disclosed under this Agreement. To the extent that such computer back-up procedures create copies of the Confidential Information, Contractor may retain such copies in its archival or back-up computer storage for the period Contractor normally archives backedup computer records, and these computer copies are subject to the provisions of this Agreement until such records are destroyed or erased.

38. Data Privacy and Information Security.

a. <u>Undertaking by Contractor</u>. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the

- State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.
- b. <u>Audit by Contractor</u>. No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.
- c. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.
- d. <u>Audit Findings</u>. Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.
- e. <u>State's Right to Termination for Deficiencies</u>. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.
- 39. Records Maintenance, Inspection, Examination, and Audit. The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("Audit Period"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

40. Warranties and Representations. Not Used

- 41. Conflicts and Ethics. Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- **42. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.

43. Accessibility Requirements.

- a. All Software provided by Contractor under this Contract, including associated content and documentation, must conform to WCAG 2.0 Level AA. Contractor must provide a description of conformance with WCAG 2.0 Level AA specifications by providing a completed PAT for each product provided under the Contract. At a minimum, Contractor must comply with the WCAG 2.0 Level AA conformance claims it made to the State, including the level of conformance provided in any PAT. Throughout the Term of the Contract, Contractor must:
 - i. maintain compliance with WCAG 2.0 Level AA and meet or exceed the level of conformance provided in its written materials, including the level of conformance provided in each PAT;
 - ii. comply with plans and timelines approved by the State to achieve conformance in the event of any deficiencies;
 - ensure that no Maintenance Release, New Version, update or patch, when properly installed in accordance with this Contract, will have any adverse effect on the conformance of Contractor's Software to WCAG 2.0 Level AA;
 - iv. promptly respond to and resolve any complaint the State receives regarding accessibility of Contractor's Software;
 - v. upon the State's written request, provide evidence of compliance with this Section by delivering to the State Contractor's most current PAT for each product provided under the Contract; and
 - vi. participate in the State of Michigan Digital Standards Review described below.
- b. <u>State of Michigan Digital Standards Review.</u> Contractor must assist the State, at no additional cost, with development, completion, and on-going maintenance of an accessibility plan, which requires Contractor, upon request from the State, to submit evidence to the State to validate Contractor's accessibility and compliance with WCAG 2.0 Level AA. Prior to the solution going-live and thereafter on an annual basis, or as otherwise required by the State, re-assessment of accessibility may be required. At no additional cost, Contractor must remediate all issues identified from any assessment of accessibility pursuant to plans and timelines that are approved in writing by the State.
- c. Warranty. Contractor warrants that all WCAG 2.0 Level AA conformance claims made by Contractor pursuant to this Contract, including all information provided in any PAT Contractor provides to the State, are true and correct. If the State determines such conformance claims provided by the Contractor represent a higher level of conformance than what is actually provided to the State, Contractor will, at its sole cost and expense, promptly remediate its Software to align with Contractor's stated WCAG 2.0 Level AA conformance claims in accordance with plans and timelines that are approved in writing by the State. If Contractor is unable to resolve such issues in a manner acceptable to the State, in addition to all other remedies available to the State, the State may terminate this Contract for cause under Section 28.
- d. Contractor must, without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State arising out of its failure to comply with the foregoing accessibility standards
- Failure to comply with the requirements in this Section shall constitute a material breach of this Contract.

- **44. HIPAA Compliance**. The State and Contractor must comply with all obligations under HIPAA and its accompanying regulations, including but not limited to entering into a business associate agreement, if reasonably necessary to keep the State and Contractor in compliance with HIPAA.
- **45. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and Executive Directive 2019-09. Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.
- **46. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 47. Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or forum non conveniens. Contractor must appoint agents in Michigan to receive service of process.
- **48. Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- **49. Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third-party.
- 50. Dispute Resolution. The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

- **51. Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
- **52. Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
- **53. Schedules**. All Schedules and Exhibits that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

Schedule A Statement of Work

Schedule B Pricing and Fees

Schedule C (as applicable) Terms for Contractor Hosted Software

and Services

Exhibit 1 to Schedule C (as applicable) Support Services and Service Level

Agreement for Hosted Services

Schedule D (as applicable)

Data Hosting and Security for Hosted

Software and Services

Exhibit 1 to Schedule D (as applicable) Contractor's Disaster Recovery Plan

Schedule E (as applicable) Federal Provisions Addendum

Exhibit 1 to Schedule E (as applicable)

Byrd Anti-Lobbying Certification

- 54. Entire Agreement and Order of Precedence. This Contract, which includes Schedule A Statement of Work, and schedules and exhibits which are hereby expressly incorporated, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A Statement of Work; (b) second, Schedule A Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ITS AUTHORIZED USERS FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.
- **55. Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
- **56. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- **57. Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

Third-Party Service and Products

SCHEDULE A – STATEMENT OF WORK

1. **DEFINITIONS**

The following terms have the meanings set forth below. All initial capitalized terms that are not defined below shall have the respective meanings given to them in Section 1 of the Contract Terms and Conditions.

Term	Definition
DTMB	Department of Technology, Management and Budget
MiSAIL	Michigan Statewide Authoritative Imagery & Lidar
SOM	State of Michigan
State Partners	Entities including, but not limited to, Local, Federal, and Tribal Governments to which services and pricing established through this RFP may be extended
CONTIGOUS AOIs	Two or more AOIs (Areas of Interest) touching at any one point. AOIs can be of various GSDs (Ground Sample Distance)

2. BACKGROUND

The MiSAIL program did not previously offer third-party services and products as an option. For many years, interested Michigan counties have had to research and negotiate third-party purchases on their own. During MiSAIL stakeholder meetings conducted over the last 24 months, it was a frequent request that the MiSAIL program include third-party services purchasing options. The recently completed MiSAIL RFP process has accomplished that goal.

3. PURPOSE

It is the State's intent to establish this contract for third-party services and products to support State Agencies, State Partners, and local governments, providing them options that align with their data requirements and budget. Projects to be tasked under this contract are dependent on availability of funding.

4. CONTRACT TERM

The contract overall term is expected to be 3 years with 5, 1-year options.

5. SPECIFIC STANDARDS

IT Policies, Standards and Procedures (PSP)

Contractors agrees with the following PSP's.

Public IT Policies, Standards and Procedures (PSP): https://www.michigan.gov/dtmb/0,5552,7-358-82547 56579 56755---,00.html

Applicable non-publicly available PSP's are available after signing and returning to the State the required Nondisclosure Agreement (NDA) agreement.

Acceptable Use Policy

To the extent that Contractor has access to the State's computer system, Contractor must comply with the State's Acceptable Use Policy, see

https://www.michigan.gov/documents/dtmb/1340.00.01 Acceptable Use of Information Technology St andard 458958 7.pdf. All Contractor Personnel will be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State's system. The State reserves the right to terminate Contractor's access to the State's system if a violation occurs.

Look and Feel Standard

All software items provided by the Contractor must adhere to the State of Michigan Application/Site Standards which can be found at www.michigan.gov/standards.

Mobile Responsiveness

The Contractor's Solution must utilize responsive design practices to ensure the application is accessible via a mobile device.

Accessibility Requirements

The State is required to comply with the Americans with Disabilities Act of 1990 (ADA) and has adopted standards and procedures regarding accessibility requirements for websites and software applications. All websites, applications, software, and associated content and documentation provided by the Contractor as part of the Solution must comply with Level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0.

Contractor must provide a description of conformance with WCAG 2.0 Level AA specifications by providing a completed PAT for the Solution. If the Solution is comprised of multiple products, a PAT must be provided for each product. In addition to PATs, Contractors may include a verification of conformance certified by an industry-recognized third-party. If the Contractor is including any third-party products in the Solution, Contractor must obtain and provide the third-party PATs as well.

Each PAT must state exactly how the product meets the specifications. All "Not Applicable" (N/A) responses must be fully explained. Contractor must address each standard individually and with specificity; and clarify whether conformance is achieved throughout the entire product (for example - user functionality, administrator functionality, and reporting), or only in limited areas. A description of the evaluation methods used to support WCAG 2.0 Level AA conformance claims, including, if applicable, any third-party testing, must be provided. For each product that does not fully conform to WCAG 2.0 Level AA, Contractor must provide detailed information regarding the plans to achieve conformance, including timelines.

6. USER TYPE AND CAPACITY

Type of User	Access Type	Number of Users	Number of Concurrent Users
State Employees	Read Only	500	500
Trusted Third Parties	Read Only	250	250
Public Citizens	Read Only	400	400

Contractor can, at a minimum, meet the user type and capacity chart above.

7. ACCESS CONTROL AND AUTHENTICATION

The Contractor's solution must integrate with the State's IT Identity and Access Management (IAM) environment as described in the State of Michigan Digital Strategy (http://www.michigan.gov/dtmb/0,5552,7-150-56345 56351 69611-336646--,00.html), which consist of:

1. MILogin/Michigan Identity, Credential, and Access Management (MICAM)

a. An enterprise single sign-on and identity management solution based on IBM's Identity and Access Management products including, IBM Security Identity Manager (ISIM), IBM Security Access Manager for Web (ISAM), IBM Tivoli Federated Identity Manager (TFIM), IBM Security Access Manager for Mobile (ISAMM), and IBM DataPower, which enables the State to establish, manage, and authenticate user identities for the State's Information Technology (IT) systems.

2. MILogin Identity Federation

- a. Allows federated single sign-on (SSO) for business partners, as well as citizen-based applications.
- 3. MILogin Multi Factor Authentication (MFA, based on system data classification requirements)
 - a. Required for those applications where data classification is Confidential and Restricted as defined by the 1340.00 Michigan Information Technology Information Security standard (i.e. the proposed solution must comply with PHI, PCI, CJIS, IRS, and other standards).
- 4. MILogin Identity Proofing Services (based on system data classification requirements)
 - a. A system that verifies individual's identities before the State allows access to its IT system. This service is based on "life history" or transaction information aggregated from public and proprietary data sources. A leading credit bureau provides this service.

8. NOT USED

9. NOT USED

10. END-USER OPERATING ENVIRONMENT

The software must accommodate the latest browser versions (including mobile browsers) as well as some pre-existing browsers. To ensure that users with older browsers are still able to access online services, software applications must, at a minimum, display and function correctly in standards-compliant browsers and the state standard browser without the use of special plugins or extensions. The rules used to base the minimum browser requirements include:

- Over 2% of site traffic, measured using Sessions or Visitors (or)
- The current browser identified and approved as the State of Michigan standard

This information can be found at https://www.michigan.gov/browserstats. Please use the most recent calendar quarter to determine browser statistics. For those browsers with over 2% of site traffic, except Internet+- Explorer which requires support for at minimum version 11, the current browser version as well as the previous two major versions must be supported.

Contractor must support the current and future State standard environment at no additional cost to the State.

11. SOFTWARE

For third-party products that are being proposed as part of the overall Solution, Contractor must include any end-user license agreements that will be required to access and use such products. The end-user license agreements that will be required by the State to access the Solution is included as **Schedule D**.

12. SOLUTION REQUIREMENTS

See attached **Schedule A - Exhibit 1 Business Specification Worksheet** for more detail to solution requirements.

13. INTEGRATION

See Oblique Imagery section 4. Software Installation and Training for system integration information.

14. MIGRATION

There are no migration services needed at this time, however the State may need migration services in the future.

15. TESTING SERVICES AND ACCEPTANCE

See terms set forth in the Contract Terms and any applicable Schedules for more information on testing services and acceptance.

16. TRAINING SERVICES

The Contractor must provide administration and end-user training for implementation, go-live support, and transition to customer self-sufficiency. The Contractor must provide available training options and include details such as: typical class size, materials to be provided, class duration, on-site or web based. The Contractor must provide a training plan for go-live support and transition to self-support, including options and details such as the number of dedicated personnel, staff location, hours available and duration of go-live support.

Contractor must provide details on, and examples of, clearly written instructions and documentation to enable State administrators and end-users to successfully operate the Solution without needing to bring in additional Contractor support.

17. HOSTING

For any software that is not to be hosted by the State, Contractor must maintain and operate a backup and disaster recovery plan to achieve a Recovery Point Objective (RPO) of 2 hours, and a Recovery Time Objective (RTO) of 8 hours.

18. SUPPORT AND OPERATIONS

See the Maintenance and Support Schedule and SLA, identified as Exhibit 1 to Schedule C for more information related to support and operations.

Support Hours

The State requires the Contractor to provide Support Hours as 8 a.m. to 5 p.m. Eastern, Monday thru Friday.

19. DOCUMENTATION

At the State's request, Contractor will provide all user manuals, operating manuals, technical manuals and any other instructions, specifications, documents or materials, in any form or media, that describe the functionality, installation, testing, operation, use, maintenance, support, technical or other components, features or requirements of the Software.

The Contractor's user documentation must provide detailed information about all software features and functionality, enabling the State to resolve common questions and issues prior to initiating formal support requests.

20. TRANSITION SERVICES NOT USED

21. PRODUCTS AND SERVICES

Any additional products or services are properly identified throughout the contract.

22. CONTRACTOR PERSONNEL

Contractor Contract Manager. the individual appointed by it to (a) administer the terms of this Contract, and (b) approve and execute any Change Notices under this Contract.

Contractor

Name: Dave White

Address: 7320 Executive Way Frederick, MD 21704

Phone: (301) 948-8550

Email: dave.white@fugro.com

Contractor Project Manager. Contractor must identify the Contractor Project Manager who will serve as the primary contact regarding services who will have the authority to act on behalf of the Contractor in matters pertaining to the implementation services.

Contractor

Name: Keith Owens

Address: 7320 Executive Way Frederick, MD 21704

Phone:(775) 287-2661 Email: k.owens@fugro.com

Contractor Information Technology (IT) Manager. Contractor to provide name of individual who is the IT Manager responsible for the creation of required deliverables for third-party services and products and/or imagery hosting service as applicable.

Contractor

Name: Keith Owens

Address:7320 Executive Way Frederick, MD 21704

Phone: (775) 287-2661 Email: k.owens@fugro.com

Contractor Technical Support Manager. Contractor to provide name of individual who is the Technical Support Manager responsible for the creation of required deliverables for third-party services and products and/or imagery hosting service as applicable.

Contractor

Name: Keith Owens

Address: 7320 Executive Way Frederick, MD 21704

Phone: (775) 287-2661 Email: k.owens@fugro.com

23. NOT USED

24. STATE RESOURCES/RESPONSIBILITIES

The State will provide the following resources as part of the implementation and ongoing support of the Solution.

State Contract Administrator. The State Contract Administrator is the individual appointed by the State to (a) administer the terms of this Contract, and (b) approve and execute any Change Notices under this Contract.

State Project Manager. The State Project Manager will serve as the primary contact with regard to implementation Services who will have the authority to act on behalf of the State in approving Deliverables, and day to day activities.

Agency Business Owner. The Agency Business Owner will serve as the primary contact for the business area with regard to business advisement who will have the authority to act on behalf of the State in matters pertaining to the business Specifications.

State Technical Lead. The State Technical Lead will serve as the primary contact with regard to technical advisement.

25. MEETINGS

At start of the engagement, the Contractor Project Manager must facilitate a project kick-off meeting with the support from the State's Project Manager and the identified State resources to review the approach to accomplishing the project, schedule tasks and identify related timing, and identify any risks or issues related to the planned approach. From project kick-off until final acceptance and go-live, Contractor Project Manager must facilitate weekly meetings (or more if determined necessary by the parties) to provide updates on implementation progress. Following go-live, Contractor must facilitate monthly meetings (or more or less if determined necessary by the parties) to ensure ongoing support success.

26. PROJECT CONTROL & REPORTS

Unless otherwise provided in the Statement of Work, once the project kick-off meeting has occurred, the Contractor Project Manager will monitor project implementation progress and report on a weekly basis to the State's Project Manager the following:

- Progress to complete milestones, comparing forecasted completion dates to planned and actual completion dates
- Accomplishments during the reporting period, what was worked on and what was completed during the current reporting period
- Indicate the number of hours expended during the past week, and the cumulative total to date for the project. Also, state whether the remaining hours are sufficient to complete the project.
- Tasks planned for the next reporting period
- Identify any existing issues which are impacting the project and the steps being taken to address those issues
- Identify any new risks and describe progress in mitigating high impact/high probability risks previously identified
- Indicate the amount of funds expended during the current reporting period, and the cumulative total to date for the project.

Contractors must submit and enter weekly timesheets into the State of Michigan's Project Portfolio Management tool, Clarity PPM, for approval and reporting. The weekly Clarity PPM timesheet will contain hours worked for assigned project tasks. Due to the nature of the content services, this clause does not apply to projects for licensed products and services.

27. MILESTONES AND DELIVERABLES

The State's proposed milestone schedule and associated deliverables are set forth below.

Milestone Event	Associated Milestone Deliverable(s)	Schedule
Project Planning	Project Kick-off	Contract Execution + 10 days
Requirements and Design Validation	Validation sessions, Final Requirement Validation Document, Final Design Document, Final Implementation Document	Execution + 60 days
Configuration of software	Final Solution and Testing Document	Execution + 90 days
Acceptance	Final Training Documentation, Final Acceptance	Execution + 120 days

Production	Ongoing after Final Acceptance.	Ongoing
Support		
Services		

Contractor may propose alternative timeframes and deliverables, but Contractor must provide an explanation as to why the State's schedule and associated deliverables is not feasible.

Contractor must provide a Work Breakdown Structure (WBS) that corresponds with the milestone dates set forth above (or with Contractor's alternatively proposed schedule). The WBS must be detailed enough to identify all State and Contractor responsibilities.

The Contractor Project Manager will be responsible for maintaining an MS Project schedule (or approved alternative) identifying tasks, durations, forecasted dates and resources – both Contractor and State - required to meet the timeframes as agreed to by both parties.

Changes to scope, schedule or cost must be addressed through a formal change request process with the State and the Contractor to ensure understanding, agreement and approval of authorized parties to the change and clearly identify the impact to the overall project.

SUITE Documentation

Unless otherwise provided in the Statement of Work, in managing its obligation to meet the above milestones and deliverables, the Contractor is required to utilize the applicable State Unified Information Technology Environment (SUITE) methodologies, or an equivalent methodology proposed by the Contractor, where applicable.

SUITE's primary goal is the delivery of on-time, on-budget, quality systems that meet customer expectations. SUITE is based on industry best practices, including those identified in the Project Management Institute's PMBoK and the Capability Maturity Model Integration for Development. It was designed and implemented to standardize methodologies, processes, procedures, training, and tools for project management and systems development lifecycle management. It offers guidance for efficient, effective improvement across multiple process disciplines in the organization, improvements to best practices incorporated from earlier models, and a common, integrated vision of improvement for all project and system related elements.

While applying the SUITE framework through its methodologies is required, SUITE was not designed to add layers of complexity to project execution. There should be no additional costs from the Contractor, since it is expected that they are already following industry best practices which are at least similar to those that form SUITE's foundation.

SUITE's companion templates are used to document project progress or deliverables. In some cases, Contractors may have in place their own set of templates for similar use. Because SUITE can be tailored to fit specific projects, project teams and State project managers may decide to use the Contractor's provided templates, as long as they demonstrate fulfillment of the SUITE methodologies.

The Contractor is required to review http://www.michigan.gov/suite and demonstrate how each PMM/SEM requirement will be met. Contractors wishing to use their own documents must submit an example of the document that will be substituted. If the Contractor deems a document to be non-

applicable, please provide reasons for the determination. The State reserves the right to give final approval of substituted documents and items marked as non-applicable.

Contractor must describe how they will meet the requirements set forth above and note any exceptions for successful implementation and ongoing support of the Solution.

This clause does not apply to licensed products or services.

28. PRICING

See **Schedule B – Pricing and Fees** for a detailed description of all costs associated with implementing, maintaining and supporting the Solution.

If Contractor reduces its prices for any of the software or services during the term of this Contract, the State shall have the immediate benefit of such lower prices for new purchases. Contractor shall send notice to the State's Contract Administrator with the reduced prices within fifteen (15) Business Days of the reduction taking effect.

Travel and Expenses

The State does not pay for overtime or travel expenses.

29. ADDITIONAL INFORMATION

The State reserves the right to purchase any additional services or products from the Contractor during the duration of the Contract.

STATE OF MICHIGAN

Third-Party Services and Products

HxGN Content Program Technical Response

The HxGN Content Program provides the largest database of high-resolution aerial imagery and derived value-add products commercially available. The Program is in its third refresh cycle collecting, on average, over 3 million mi2 of data annually. Our volume-based approach leverages efficient acquisition to create cost savings that we pass on to program subscribers.

The standard HxGN Content Program consists of complete 12 in, leaf-on, imagery coverage for the State of Michigan (the State), provided via a license subscription data model over a three-year contract term. This offering includes immediate access to the current HxGN Content Program data for the State and any data refreshes of the State that occur during the subscription term.

As part of the HxGN Content Program we also offer HxGN+, a data offering specifically designed for large, established geospatial consumers. HxGN+ gives states a unique imagery program model delivering imagery data produced to state-defined specifications while leveraging the cost-saving benefits of a licensed product. Under the HxGN+ program, in addition to the custom state-specified collect, the State will also receive data collected on behalf of the HxGN Content Program during the term of the subscription.

Licensed Data Offering

Option 1 - The standard HxGN Content Program includes:

- The current, leaf-on, 12in orthoimagery for the State of Michigan and any additional refresh to thisdata completed during the new license period.
- The current, leaf-on 6in orthoimagery for the State of Michigan and any additional refresh to this data completed during the new license period.
- Leaf on data collected to HxGN Content Program specifications and timeline

Option 2 - HxGN+ includes:

- One data collection based on State specification (leaf off, 30/15cm etc.)
- All available leaf on data collected to HxGN Content Program specifications and timeline
- Current and future (during contract term)

Access to Services

HxGN+ provides the State with multiple data delivery and consumption models to serve constituents the data they need in the way that makes sense for their tools and workflows. All HxGN Content Program licensed imagery will be supplied to the State via the Valtus Streaming Service. The State may receive streaming services for all authorized users. If selected, the State will receive immediate access to existing data via the HxGN Content Program, including all 30 and 15cm data in the state via WMS/WMTS service. One hard copy deliverable for each collection will be provided in GeoTIFF format to the State at no additional cost.

The State will be granted use rights that will allow State agencies, participating counties, municipalities, and groups who support the State access to the data at no additional charge (see State EULA). The State may refer outside users requesting data to the HxGN Content Program. Enterprise and single-license subscription rates provided in Pricing Table.

Terms

- All data collected will become part of the HxGN Content Program as a licensed product
- The HxGN Content Program requires a minimum three-year commitment from the State
- HxGN+ can be provided to the State's requested term

- Program fees can be paid incrementally over the term of the contract, as mutually agreed to by both parties
- The licensed orthoimagery offered by the HxGN Content Program is regulated by the End User Access Agreement (State EUAA). Streaming access is provided for the term of the contract. Authorized usershave unrestricted, perpetual access to the orthoimagery data in hardcopy (pixel delivery) format

Accessibility

The HxGN Content Program offering is based on standards and guidelines used in photogrammetric mapping and web hosting. Combined with our decades of delivering products to federal, state, and local government, HxGN Content offers a smooth transition to a licensed model for the State and its Partners.

The Streaming Service helps the State deploy quickly with fast, reliable WMS/WMTS cloud streaming to support users wherever and however they work.

■ The HxGN+ streaming service is immediately available to all interested parties and is updated anytime new data comes online

The HxGN Content Program streaming service adheres to OGC (Open Geospatial Consortium) standards and protocols to ensure the State's GIS software is compatible with our hosted imagery.

- We have numerous clients leveraging the streaming service and can accommodate a variety of GISsoftware packages (Esri, Bentley, AutoCAD, QGIS, etc.) and will work to ensure compatibility with the State
- The State will receive streaming services for all authorized users.
- The State may also host the data for public viewing at 2x resolution

Table 23: HxGN Details

System Requirement	Description of vendor offering	Pricing	
Environmental conditions under which the imagery was acquired	See below and attached copies of the spec sheets as well	Offline copy pricing o be provided in Schedule B – Pricing and Fees	
Processing of imagery in accordance with industry standards including all calculated accuracy measurements	HxGN Content imagery is produced using all Leica Geosystems sensors, common processes and tools, ensuring the appearance and quality of the imagery is consistent across the entire state.	Offline copy pricing to be provided in Schedule B – Pricing and Fees	
Delivery of imagery data in accordance with industry standards	Streamed imagery access is provided via OGC standards. Pixel delivery will be to the State's specified delivery format	Offline copy pricing to be provided in Schedule B – Pricing and Fees	
Available imagery resolutions and color bands	12in (+ buy up options for HxGN+) Streaming Service: 3 (RGB) + 3 (CIR)	Offline copy pricing to be provided in Schedule B – Pricing and Fees	
	Cached and Rendered Layer optionsPixel Delivery: 4-band		
OPTIONAL Imagery access	Imagery access is provided via hosted streaming service;	To be provided in Schedule B – Pricing and Fees	
	OGC WMS / WMTS		
	ArcGIS REST/SOAP		
	and as a hard pixel delivery		
	The State may also host the data for		
	public viewing at 2x resolution		

All licensed imagery for the HxGN Content Program is hosted by Hexagon.	To be provided in Schedule B – Pricing and Fees	
All costs for hosting the licensed data are included in the service.		
The State may refer outside users	To be provided in Schedule B – Pricing and Fees	
Program. Enterprise and single-license subscription rates are available. Pricing Provided		
	Content Program is hosted by Hexagon. All costs for hosting the licensed data are included in the service. The State may refer outside users requesting data to the HxGN Content Program. Enterprise and single-license subscription rates are available. Pricing	

HxGN Content Program Imagery Specifications

*NOTE: If the State opts for the HxGN+ option, in addition to the standard HxGN Content Program offering the State will receive one data collection to the State's specifications.





AIRBORNE IMAGERY SPECIFICATIONS

Specification	15 cm Resolution	30 cm Resolution	
Allowable GSD	0.2 m nominal GSD with ADS100 HR mode	Maximum 0.4 m nominal GSD with ADS100 HR mode	
Accuracy	RMSE x/y = 0.5 m RMSEr = 0.71 m CE90 = 1.07 m CE95 = 1.22 m	RMSE x/y = 1.2 m RMSEr = 1.7 m CE90 = 2.6 m CE95 = 3.0 m	
Minimum sun angle	30° minimum, however, every effort should be made to acquire the downtown core as well as any tall building filler lines at the highest solar possible in the day.	30°	
Cloud/cloud shadow	Cloud cover: Must be less than 3% per 5 km by 5 km block, and less than 5% per square kilometre image. Any detail obscured must not include urban areas and housing or roads in rural areas. In mountainous areas these criteria may be relaxed to 10% obscured per 5 km by 5 km block provided housing and roads are not obscured. Provided the above criteria have been met, in instances where small areas of cloud remain and providing every effort has been made to remove cloud using adjoining imagery, there is no further requirement to manually edit remaining cloud. For the avoidance of doubt, in these limited circumstances, visible lines along cloud edges are acceptable. Cloud shadow: 6% per 5 km by 5 km is acceptable providing that real-world detail, such as road markings and street furniture, can be clearly viewed throughout the imagery.	≤ 10% and not obscuring HVA area or paved roads or other transportation network.	
Smoke/fire	See cloud cover	May be cause for rejection	
Persistent smoke	Volcano, factory, crop burn, etc.: See cloud cover	Allowable, not cause for rejection	
Snow/ice cover	Must be less than 3% per 5 km by 5 km block, and less than 5% per km² image. Any detail obscured must not be of high signifcance, e.g. any urban area and housing or roads in rural areas. In mountainous areas this may be relaxed to 10% obscured per 5 km by 5 km block, provided only small amounts of ground detail are affected.	Permanent snow/ice is acceptable	
Specular reflection	Must not be detrimental to the image appearance or impede the ability to extract information from the imagery when viewed at true scale (that is 1:1).	Allowable provided shoreline and surrounding features	
Maximum allowable image shear	≤3 pixels	≤3 pixels	
Band-to-band pixel misregistration	≤0.5 pixel and no perceivable colour fringing	≤ 0.5 pixel and no perceivable colour fringing	
Sidelap	Urban areas minimum 30% or greater with Leica ADS100 SH100 Urban areas minimum 15% or greater with Leica ADS100 SH120 See building lean below for supplemental flightlines	Minimum 27%	

Specification	15 cm Resolution	30 cm Resolution
Non-pixel data	DN value of 0 and 255 reserved for non-data	DN value of 0 and 255 reserved for non-data
Acceptable image blemishes, scratches, artifacts, etc.	Imagery should be blemish and artifact free	Imagery should be blemish and artifact free
Flooding/standing water	Must be less than 3% per 5 km by 5 km, and less than 1% per km² image. Any detail obscured must not be of high significance or represent key features on the ground, e.g. urban areas, housing, communication routes and field boundaries.	Acceptable as long as paved roads or agricultural field boundaries are not obscured.
Occlusions	Smearing from DEM inaccuracies or occlusions that exceed 3% of a 5 km x 5 km area are not acceptable	No stated policy but subject to call-out
Smearing	Smearing caused by turbulence is not acceptable	No stated policy but subject to call-out
Clipping	Cumulative luminosity pixel count for bins 0-5 and 250-255 shall not be less than 98%, preferably $>$ 99%.	Cumulative luminosity pixel count for bins 0-5 and 250-255 shall not be less than 98%, preferably > 99%
Contrast	Must be consistent across the block. The appearance of too much contrast where shadows become too dark or too little contrast where the appearance is of a flat nature must be avoided. This applies to all topography, including monotone.	Difference between cumulative pixel counts containing 99% and 1% of the data shall be greater than 59% of the bit depth, ±4% Target: 150 Minimum: 140 Maximum: 160
Brightness	Mean pixel count within ±7.5% of the middle DN value Minimum: 108 Maximum: 147	Mean pixel count within ±7.5% of the middle DN value Minimum: 108 Meximum: 147
Color balance	Neutral objects shall have a DN difference of no more than 5 for any RGB triplet. Should be consistent across the supplied block with minimal banding caused by vignetting or hot spots due to excessive light. The appearance of the image must be a realistic representation of the true colour on the ground. Pre-delivery samples may be requested.	Neutral objects shall have a DN difference of no more than 5 for any RGB triplet
Bridge warp/smear	Bridge/freeway/causeway warp/smear is not acceptable. Modifications undertaken to reduce pixel stretch must ensure that the resultant ortho image is a realistic representation of real-world features. Pixel stretch on man-made features, building, bridges, and other elevated features, where the geometric fidelity of the feature is compromised, may be reduced using image manipulation software provided there is no over simplification or unrealistic fabrication of real-world detail (for example buildings, roads and railways).	Bridge/freeway/causeway warp/smear is not acceptable
Building seamline sheer	Visible joins between ortho-images and flight lines within each block should be avoided but will be accepted under the following conditions: they do not hide detail or adversely affect the ability to extract information from the image; they do not stretch the entire length of the seamline, e.g. clearly outlining entire images; they do not impact geometric fidelity (no change in shape or alignment between images); there is no positional shift between images along visible lines; and the colour difference is slight and/or well graduated and consistent both within the block and with edgematched blocks in the imagery layer they are along any cloud edges remaining from the cloud cover conformity.	Within HVAs only
Building lean	Supplemental flightlines will be added as required to minimise building lean. Buildings over 60 ft tall that are not at nadir will be assessed for lean. Seamlines will be moved to use the most nadir data. The objective is to have the centre line of roads visible.	

About Hexagon

Hexagon is a leading global provider of information technologies that drive productivity and quality across geospatial and industrial enterprise applications.

Hexagon's solutions integrate sensors, software, domain knowledge and customer workflows into intelligent information ecosystems that deliver actionable information. They are used in a broad range of vital industries.

Hexagon (Nasdaq Stockholm: HEXA B) has more than 16,000 employees in 46 countries and net sales of approximately 3.4bn USD. Learn more at **hexagon.com** and follow us @ HexagonAB. Hexagon is a leading global provider of information technologies that drive productivity and quality across geospatial and industrial enterprise applications.

About HxGN Content Program

The HxGN Content Program meets the growing demand for high-quality, regularly updated geospatial content which powers intelligent decision making.

Collaborating with the most experienced collection partners, this program offers easy access to high-resolution, professional base map for either download or streaming.

The program provides aerial imagery at 15 cm resolution in urban areas with more than 50,000 population and 30 cm resolution for countries. This level of detail provides a good base to make the most informed decisions.

Visit **hxgncontent.com** for more information or to view the live coverage map. Follow us on Twitter @hxgncontent.

Image Acquisition and Processing

Aerial Triangulation Ground Control

Absolute georeferencing as specified for HxIP has an accuracy of 4.0m at the 95% confidence level.

To achieve this accuracy five (5) or more ground control points are required in each aerial triangulation (AT) block. Triangulation blocks are planned at approximately 1°x 2°.

Orthorectification

Aerial image acquisition is accomplished using advanced proven Leica digital aerial image sensor technology. The Leica sensor provides full color stereo RGBN in the forward, backward and nadir arrays and incorporates Novatel SPAN GNSS/IMU technology.

The orthorectification process, following rigorous industry standards, is accomplished using sophisticated processing methodologies provided by the Leica XProTM processing suite. Leica XProTM provides end-to-end processing. XProTM provides quality control tools for assessment of mission capture, direct georeferencing from Leica IPAS Inertial Positioning and Attitude System and fully analytical aero triangulation incorporating ground control positions using the well-known and proven ORIMA adjustment. Leica XProTM features full Radiometric Image Chain capabilities addressing atmospheric haze and bidirectional reflection effects (BRDF) and supports complete 4 band processing.

Elevation data is produced using advanced Semi-Global Matching (SGM) autocorrelation algorithms. The elevation data produced includes surface model point clouds (elevated features) that is subsequently smoothed to ground surface to produce an ortho quality Digital Elevation Model (DEM) required for orthorectification of the digital image data.

End User License Agreement

The HxGN Content State Program EUAA is attached

Compliance with State IT policies

Hexagon has reviewed the State IT standards, policies and procedures, as provided in the MiSAIL RFP, and can confirm general compliance, where applicable.

Specific to the hosted service, the HxGN Content Program has a standard Level Agreement (SLA). Hexagon is open to discussion if a more stringent SLA is required by the State

Compliance with Terms and Conditions

Hexagon has reviewed the T&Cs, and from our perspective as a third-party supplier there are no flow downs of concern.

HxGN Content Program & HxGN+ Overview

Leica Geosystems, Inc. (Hexagon)

Leica Geosystems, Inc. (Hexagon), a wholly owned subsidiary of Hexagon, was established in 1997. The Leica Geosystems portfolio is comprised of over 50 companies and brands that have prominent product and services market positions in all fifty U.S. States.

In 2014, Hexagon expanded its role in the geospatial content business through the launch of the HxGN Content Program. The cloud-based program, acquired on regular refresh with the latest Leica aerial sensors, provides the largest database of high-resolution aerial imagery and derived value-add products commercially available. The Program is in its third refresh cycle, with over 10 million mi2 of data collected to-date.

Third Party Offering - HxGN+

As part of the HxGN Content Program we offer HxGN+, a data offering specifically designed for large, established geospatial consumers.

HxGN+ gives states a unique imagery program model delivering imagery data produced to state-defined specifications while leveraging the cost-saving benefits of a licensed product. As the vehicle of choice for numerous statewide data programs, HxGN+ offers the following advantages to the State:

Scaled Data Collection & Access

HxGN+ makes it easy for the State to procure regularly refreshed, high-quality imagery and derived products for a large userbase.

- Our licensed model provides customized data refresh options, add-in services and delivery timelines not typically available under standard multi-year programs.
- Under HxGN+, the State gets access to any current or refreshed leaf-on imagery in the HxGN Content Program in addition to the negotiated standard collection.
- The HxGN+ model offers flexible use terms and delivery vehicles, making it quick and easy for the State to extend services and pricing to all program participants.
- The HxGN Content Program simplifies access for large and diverse user groups through simpleuser administration tools and guidance under a coordinated licensing approach with the State.

Delivery On-Demand

The HxGN+ model is the easiest way to support geospatial data needs across the State.

- HxGN+ provides the State with multiple data delivery and consumption models to serve constituents the data they need in the way that makes sense for their tools and workflows.
- The service helps the State deploy quickly with fast, reliable WMS/WMTS cloud streaming to support users wherever and however they work.
- The HxGN+ streaming service is immediately available to all interested parties and is updated anytime new data comes online.
- HxGN+ streaming keeps your hardware and admin costs down with minimal action required by ITresources.
- HxGN+ deliveries always include a hard pixel (GeoTIFF, MrSID) copy of the statewide data for backup and as an additional resource for the State and its Partners.

High quality without the high price tag

The HxGN Content Program is a cost-effective imagery solution designed specifically for the geospatial professional.

- HxGN+ imagery is produced using all Leica Geosystems sensors, common processes and tools, ensuring the
 appearance and quality of the imagery is consistent across the entire state.
- The HxGN Content Program collects, on average, over 3 million mi2 of data annually. Our volume-based approach leverages efficient acquisition to create cost savings that we pass on to programsubscribers.
- The HxGN Content Program streaming service adheres to OGC (Open Geospatial Consortium) standards and protocols to
 ensure the State's GIS software is compatible with our hosted imagery.

Experience

The HxGN Content Program is the geospatial platform of choice for government agencies in the US, Canada, Europe, and private sector organizations around the globe.

HxGN+ offers a cost-effective licensed imagery solution leveraged by multiple state partners, including Washington, North Dakota, Utah, Kansas and Texas. Our direct service experience combined with decades of delivering imagery programs to federal, state, and local government ensures a smooth transition for the State and its Partners.

HxGN Service Level Agreement

Hexagon has reviewed the State IT standards, policies, and procedures, as provided in the MiSAIL RFP, and can confirm general compliance, where applicable.

Specific to the hosted service, the HxGN Content Program meets the following Service Level Agreement (SLA) terms:

Service Level Agreement

This Service Level Agreement ("SLA") sets forth the terms agreed to by CLIENT and Licensor with respect to basic levels of services that Licensor will provide.

Service Availability and Monitoring:

The HxGN Content Program streaming systems and software are built to be inherently scalable and fault-tolerant.

HxGN Content will provide availability of 99.9% service excluding maintenance windows ("Uptime").

Performance:

The HxGN Content Program platform will ensure that the time between an initial request from client and the imagery server initiating a response of imagery, shall be no more than 2 seconds on average. For clarification, the preceding sentence does not apply to the overall time required for an end user to download an entire image for viewing purposes since that will be dependent on the network connection speed of the client.

Incident Management:

Hexagon will have qualified employees who will provide operations and infrastructure support Monday through Friday between 8:00-17:00 Eastern Standard Time or Eastern Daylight Savings Time.

Downtime Credits:

If Licensor fails to attain a guaranteed Service Level in any given calendar month, Licensor will discount the next Fees payable to Licensor by the Downtime Credit corresponding to the percentage of Uptime achieved for such month.

Table 24: Downtime Credit Details

Percentage of Monthly Uptime	Downtime Credit
≥99.98%	0%
99.0% - < 99.8%	10%
95.0% - < 99.0%	25%
< 95.0%	50%

The standard Service Level Agreement (SLA) for the HxGN Content Program hosted data services is provided. Hexagon is open to discussion if a more stringent SLA is required by the State.

SCHEDULE A, EXHIBIT 1 - BUSINESS SPECIFICATION WORKSHEET

Third-Party Imagery Services and Products

Α	В	D
Business Specification Number	Business Specificatio n	Bidder to explain how they will deliver the business Specification. Explain the details of any configuration/customization and the impacted risk that may be caused if configured or customized to meet the business specification.
MANDATORY MINIMUM		
1.0	Contractor must provide orthoimagery products and services acquired for third parties for which they have rights of distribution	Hexagon is a leading global provider of information technologies that drive productivity and quality across geospatial and industrial enterprise applications. The HxGN Content Program was created to meet the growing demand for high-quality, regularly updated airborne imagery to power
		intelligent decision making. Collaborating with the most experienced collection partners, this program offers easy access to high-resolution, professional airborne imagery for either download or streaming.
		The HxGN Content Program provides imagery at 15 cm resolution in urban areas with more than 50,000 population and 30 cm resolution for wide area coverage. This level of detail provides a good base to make the most informed decisions as landscapes change and become more complex. The program, provides valuable geospatial content and delivers professional-grade airborne images, including enhanced-resolution, four- band orthos, rasterized point clouds, and stereo imagery
2.0	Contractor must have the right to distribute the services and products offered	Fugro is an authorized reseller of the HxGN Content Program providing clients with selection and delivery of the appropriate data for various projects.
3.0	An offline copy of the imagery products must be made available to the State with rights to use in perpetuity	The HxGN content Program offers competitive pricing for both offline (pixel delivery) and hosted services.
4.0	Provide a secure online internet hosting and viewing solution for the products offered	Through a license agreement with the HxGN Content Program, the State will have access to the latest imagery as well as access to vintage datasets. Users are able to select between a cached or rendered layer when viewing the imagery. For users concerned with performance the cached layer can be used to view the latest imagery layer. For those not concerned with performance and require access to all imagery layers a rendered service is used. Each layer will be drawn individually, and the user has more control on what styles are viewed. The default style used for rendered service is set a Resolution, Date and Band. Each user will be provided unique credentials to access hosted imagery thought the HxGN portal or through ESRI products.

END USER ACCESS AGREEMENT

IMPORTANT - READ CAREFULLY BEFORE ACCESSING INFORMATION FROM THIS HEXAGON-ENABLED WEB SITE, DOWNLOADING INFORMATION OR USING SERVICES FROM HEXAGON. BY ACCESSING THIS HEXAGON-ENABLED WEB SITE OR OTHER MEANS OF ACCESSING OR DOWNLOADING INFORMATION, YOU ACCEPT THIS AGREEMENT. IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, DO NOT ACCESS THIS INFORMATION FROM ANY HEXAGON-ENABLED WEB SITE, OR OTHER MEANS OF ACCESSING OR DOWNLOADING INFORMATION. ACCESS TO THE GEOSPATIAL DATA IS GRANTED BY HEXAGON EXCLUSIVELY ON THESE TERMS OR OTHER TERMS EXPRESSLY AGREED IN WRITING AND SIGNED BY AN AUHORIZED OFFICER OF HEXAGON.

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

- 1. Access and Rights. During the subscription period as set forth in the ordering webpage, Hexagon grants access to various physical world data including but not limited to; 1) stereo, ortho-rectified, and/or oblique aerial imagery, 2) point cloud, elevation, and/or digital surface model data, 3) various derivative natural or humanmade geographic feature data, and 4) associated metadata or attribute information (the "Geospatial Data") through the online services provided by Hexagon (the "Services") to you and such other persons authorized by you to use the Services in accordance with the Acceptable Use Policy (you and such authorized users hereinafter being collectively referred to as the "Authorized End Users"), for which you have paid the required fees. You are responsible for compliance with the terms of this End User Access Agreement by the Authorized End Users you delegate or to whom you grant log-in credentials to the Services. During the subscription period set forth in the ordering webpage, and subject to payment of fees and compliance with this Agreement, Authorized End Users may (i) consume Geospatial Data through a desktop and/or web-based GIS application (to the extent compatible with the Geospatial Data), (ii) combine vector layers and other data sets with the Geospatial Data, (iii) create reports, marketing collateral, and other work product of yours ("Your Work Product") containing the Geospatial Data (iv) print images of Geospatial Data in hardcopy. You may deliver, or give access to, Your Work Product to your customers, provided your customers are bound not to distribute, copy or publish Your Work Product containing the Geospatial Data except for internal purposes and not for further sale or distribution, unless you are using an unpaid evaluation license, in which case you may not copy, give access to, or distribute Your Work Product that contains the Geospatial Data.
- **2. Attribution.** In Your Work Product (including work product created by you or your other Authorized End Users) that contains or reproduces the Geospatial Data, you shall give notice that the Geospatial Data is "Copyright 2019 Hexagon" or as adjusted to the then current year or such other notice as Hexagon may instruct from time to time in writing.
- **3. Ownership.** Geospatial Data is not sold to the Authorized End User and no ownership rights are transferred to the Authorized End User. The Geospatial Data is owned by Hexagon or its licensors.
- **4. Confidentiality.** "Confidential Information" means all information disclosed by Hexagon ("Disclosing Party") to an Authorized End User ("Receiving Party"), whether orally or in writing, that is designated as confidential or that relates to the Services, including the terms of this Agreement (including pricing). Confidential Information excludes any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind, but in no event less than reasonable care, to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who are under confidentiality obligations with the Receiving Party not materially less protective than those herein. The Receiving Party shall destroy Confidential Information in its possession upon termination of this agreement. Nothing in this section grants rights to Geospatial Data greater than those set forth in section 1 of this Agreement. D-2

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

- **5. Fees and Taxes.** The ordering web page sets forth the fees, subscription term and other terms related to access and use of the Geospatial Data, and is hereby incorporated into, and forms a part of, this Agreement. Fees are exclusive of all applicable sales, use, value added, GST, and other taxes (and all applicable tariffs, customs duties and similar charges), and you will be responsible for payment of all such taxes (other than taxes based on the net income of Hexagon), tariffs, duties and charges (and any related penalties and interest), payable in connection with this Agreement or the provision of Services hereunder. The total invoice amount for fees is subject to increase by the amount of any taxes which Hexagon is required to pay and/or which you are required to withhold, collect or pay upon the fees so that Hexagon receives the full amount of the fees invoiced. If you are claiming tax exemption status, you must provide a copy of a valid tax exemption certificate.
- 6. Restrictions. The Geospatial Data and Services may only be used by the Authorized End User or by individual users authorized in writing by Hexagon, and not by any other party, whether or not affiliated with the Authorized End User. Except as otherwise expressly provided in this End User Access Agreement, no part of the Geospatial Data, the Services or products derived therefrom, or any right granted under this Agreement may be copied, sold, rented, leased, lent, sublicensed, disclosed, or transferred to any other person or entity. The Authorized End User shall not use any part of the Geospatial Data or the Services to develop or derive any other product or service for distribution, disclosure, or commercial sale, whether by hardcopy, digital medium or web service, without a license specifically authorizing it to do so, with the understanding that no such right is granted under this Agreement except in connection with Your Work, which your customers may use for internal purposes, strictly as provided in paragraph 1. You have no other rights to the Geospatial except as expressly set forth in paragraph 1 or the ordering web page. Without limiting the foregoing, you may not re-sell or re-distribute or give access to the Geospatial Data as a web service. You may not use the Geospatial Data in connection with a service bureau or for time-sharing purposes or in any other way allow third parties to exploit the Geospatial Data, except your customers as specifically authorized by this End User Access Agreement. You shall not provide passwords or other log-in information to any third party, except as specifically authorized by this End User Access Agreement. The Authorized End User acknowledges that the Geospatial Data and Services contain and embody proprietary materials, valuable data, trade secrets, and copyrights of Hexagon and its licensors and suppliers. Unauthorized reproduction, modification, distribution, or display of the Geospatial Data or the Services in whole or in part, and in any manner not expressly authorized in this Agreement, are prohibited. The Authorized End User shall keep confidential and use its best efforts to protect the Geospatial Data and the Services and prevent their unauthorized disclosure or use. The Authorized End User shall immediately notify Hexagon upon discovering evidence of a current or threatened misuse or unauthorized use or disclosure of the Geospatial Data or Services by any party. The Authorized End User may not modify, distort, disassemble, decompile or in any way attempt to reverse engineer the Services or any software provided as part of the Geospatial Data or the Geospatial Data itself. Each Authorized End User shall comply with the Acceptable Use Policy.

The Authorized End User may not transfer the Geospatial Data to or store the Geospatial Data or the Services in any electronic network for use by more than the number of users authorized in writing by Hexagon, unless it obtains prior written permission from Hexagon and pays associated additional fees.

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

- **7. Evaluation Access.** Hexagon may grant a right to access the Services during an evaluation period. In addition to the restrictions set forth above, Authorized End Users, during an evaluation period, shall use the Services for evaluation only, and shall not use the Services for any commercial or profit-making activity, including, but not limited to, non-revenue commercial activities such as marketing, bid submission, and promotion. Upon termination of the evaluation period, the Authorized End Users shall return or destroy all Geospatial Data and any reports, documents or files incorporating the Geospatial Data.
- **8. Non-Hexagon Services.** Hexagon may offer certain Services, or features or functions within Services, made available by unaffiliated third parties ("Non-Hexagon Services"). Accessing such Non-Hexagon Services may cause your computer

to communicate with a third-party website. Such connectivity or access to third party websites or third-party materials is governed by the terms found on such sites, and access to and use of Non-Hexagon Services may require your agreement to separate terms. Linking to or use of Non-Hexagon Services constitutes your agreement with such terms. Hexagon Group Companies are not a party to such third-party agreements and are not responsible for such Non-Hexagon Services. Hexagon may at any time, for any reason, modify or discontinue the availability of any Non-Hexagon Services. D-3

- **9. Hexagon Affiliates.** You acknowledge that Hexagon has Affiliates and subcontractors worldwide. You acknowledge and agree that Hexagon affiliates and subcontractors are entitled to provide the Services to you.
- 10. Warranty Disclaimer and Limit of Liability. THE GEOSPATIAL DATA AND THE SERVICES ARE PROVIDED "AS IS," AND HEXAGON MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, UPTIME, ACCURACY, OR NON-INFRINGEMENT. IN NO EVENT WILL HEXAGON AND ITS AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES, HOWEVER CAUSED, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS AND LOST DATA. THE AUTHORIZED END USER ACKNOWLEDGES THAT ITS SOLE REMEDY UNDER THIS AGREEMENT IS TO REQUIRE HEXAGON TO REDELIVER THE GEOSPATIAL DATA GIVING RISE TO ANY BREACH OF THIS AGREEMENT OR BREACH OF DUTY. THE AGGREGATE LIABILITY OF HEXAGON FOR ALL OTHER LOSSES, LIABILITIES, CLAIMS, DAMAGES OR ASSESSMENTS, OF ANY KIND OR NATURE, SHALL NOT EXCEED THE LICENSE FEES PAID BY THE AUTHORIZED END USER TO HEXAGON WITH RESPECT TO THE GEOSPATIAL DATA OR THE SERVICES AT ISSUE IN ANY DISPUTE OR CLAIM.

The Authorized End User agrees that the limitations of liability and disclaimers set forth herein will apply regardless of whether the Authorized End User has accepted the Geospatial Data or any other product or service delivered by Hexagon. The Authorized End User acknowledges and agrees that Hexagon has set its prices and entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties. In addition, in no event shall Hexagon be liable for any third-party websites that appear in or are referenced by the Hexagon ordering web page.

- 11. Acceptable Use. You shall ensure all your Authorized End Users comply with the Acceptable Use Policy ("AUP"). The latest version of AUP posted https://hxgncontent.com/global/acceptable-use-policy, is incorporated herein by reference. An Authorized End User may be prompted with review and acceptance of the AUP to gain access to the Services. Hexagon reserves the right to change the AUP at any time. Any update to the AUP may require each Authorized End User to re-accept the modified AUP. Failure to comply with the AUP may result in suspension of the Services or termination of this Agreement for material breach. During any period of suspension, your will still be liable for payment of the applicable fees.
- **12. Term.** Hexagon may terminate this End User Access Agreement, which will terminate all access to the Services and the Geospatial Data, if the Authorized End User fails to comply with any term of this Agreement. In the event of termination, the Authorized End User must immediately return the Geospatial Data to Hexagon or destroy it and certify this destruction in writing to Hexagon.
- **13. Indemnity.** The Authorized End User agrees to defend, indemnify, and hold Hexagon, its affiliates, directors, employees, and agents harmless from and against any claim, action, proceeding, loss, cost, expense, damages, and liability, including reasonable legal fees, arising from or related to any breach of this Agreement by the Authorized End User.
- **14. Complete Agreement.** This Agreement and ordering web page set forth the complete and exclusive statement of the understanding between the Authorized End User and Hexagon with respect to the Geospatial Data and the Services and may be amended or modified only in a written instrument signed by a duly authorized representative of both parties. If any provision is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be valid and enforceable. Without the prior written consent of Hexagon, neither this Agreement nor any of the rights granted

by it may be assigned or transferred by the Authorized End User. This restriction on assignments or transfers shall apply to assignments or transfers by operation of law, as well as by contract, merger or consolidation.

- **15. Export.** You acknowledge that this Agreement and the performance thereof is subject to compliance with any and all applicable Swiss, Canadian, EU and United States laws, regulations, or orders relating to export. You expressly acknowledge and agree that you will not export, re-export, transfer or release the Geospatial Data in whole or in part to (a) any EU, Swiss, Canadian and/ or U.S. embargoed country (or to a national or resident of any EU, Swiss, Canadian and/ or U.S. embargoed country); (b) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (c) any person or entity on the U.S. Commerce Department's Table of Denial Orders; or (d) any person or entity on any EU or Swiss or US Denied Parties Lists; or (e) any person or entity where such export, re-export or provision violates any EU or Swiss or Canadian or U.S. export control laws or regulations including, but not limited to, the terms of any export license or licensing provision and any amendments and supplemental additions to EU or Swiss or Canadian or U.S. export laws as they may occur from time to time. D-4
- **16. Force Majeure.** Except for your payment obligations, neither party will be held liable or responsible for delay or failure to perform any of such party's obligations under this Agreement occasioned by any cause beyond its reasonable control, including but not limited to war; terrorist acts; civil disturbance; fire; flood; earthquake; acts or defaults of common carriers; governmental laws, acts, regulations, embargoes or orders; or any other cause, contingency or circumstance not subject to such party's reasonable control. The affected party will resume full performance of interrupted obligations as soon as practicable upon cessation of intervening causes.
- **17. Notices.** Notices permitted or required under this Agreement shall be in writing and delivered personally (including courier service), by certified or registered mail, return receipt requested, or by confirmed facsimile transmission. Notices shall be effective upon receipt. If notice is sent to Hexagon, it shall be directed to Attn: Legal Department.
- **18. Precedence.** In the event of a conflict or inconsistency in the Agreement documents, the following order of precedence shall apply: (i) the ordering webpage, (ii) the Acceptable Use Policy, and (iii) this End User Access Agreement. The English language version of this Agreement is legally binding in case of any inconsistencies between the English version and any translations.
- **19. Governing Law.** The interpretation, Agreement shall be governed by the following law: (a) if the Authorized End User is a government entity, the applicable laws of the Authorized End User, (b) in all other cases, the law of the state of Georgia, U.S.A., excluding its choice of law principles.
- **20. Restricted Rights to U.S. Federal Agencies.** As prescribed in FAR 27.409(f), the Geospatial Data is existing data, and is licensed to the U.S. government under clause: 52.227-18 Rights in Data-Existing Works.
- **21. No Joint Venture.** This Agreement shall not create any relationship between you and Hexagon as joint ventures, partners, associates, or principal and agent. Neither party is granted any right of authority and shall not create any obligation or responsibility for or on behalf of the other party. Neither party shall have the authority to bind the other party.
- **22. Electronic Agreement.** You expressly consent and agree that ordering webpages and related Hexagon forms may be electronically signed or acknowledged and agreed, and that such electronic signatures shall be treated, for purposes of validity, enforceability as well as admissibility, the same as written signatures.

The Addendum

Outlined within this Addendum are the Special Terms and Conditions, which are granted to State Government with regards to the End User Access Agreement.

Special Terms and Conditions

- 1. The following entities shall be allowed access licenses according to the agreed upon Service Level Agreement (SLA):
- a. State of Michigan (SOM): All State Government Agencies and Regents-level institutions
- b. State Partners: Entities including, but not limited to, Local, Federal, and Tribal Governments to which services and pricing established through this RFP may be extended

- 2. Authorized users shall be allowed to develop and publish, not for monetary gain, publicly available web applications, which utilize ortho-imagery or web map service(s), in a view-only mode with no download capability.
- 3. Authorized users shall be allowed to print and distribute, not for monetary gain, hardcopy format maps that display the orthoimagery.
- 4. At the end of the subscription period, the initial data will enter into a perpetual license. If the data is refreshed during the term of the agreement, the refresh data will enter into a perpetual license upon completion of a subsequent agreement. At the end of the period, the web services will no longer be provided. The state may retain a hard copy of the data, royalty free, perpetual use license.

STATE OF MICHIGAN

SCHEDULE B - PRICING AND FEES

THIRD PARTY IMAGERY PRICING: HxGN CONTENT PROGRAM			
Per Section 1.3 - Evaluation Criteria, in Attachment 4 - Contractor to provide product costs			
PRODUCT	PRODUCT COST Notes		
Offline copy for internal use in perpetuity - one time payment	Included	HxGN Content Program State subscriptions - State can request one hard copy deliverable for each collection at no additional cost.	
		Access to the standard HxGN Content Program data for the state over the contract term. This offering includes the current HxGN Content Program data for the State and any data refreshes of the State that occur during the subscription term.	
OPTIONAL Imagery access - annual cost	\$216,713.13	This annual cost requires a standard (minimum) 3-yr commitment to the Program.	
One time price for access to the standard HxGN Content Program data total cost	\$650,139.38		
OPTIONAL Imagery storage - annual cost	Included	Hexagon will store all HxGN Content Program collected data at no cost. Pricing can be provided to host non-Hexagon data on behalf of the State	
OPTIONAL Extended viewing - access annual cost		Streaming access only, no download	
Enterprise: 200 users* (Streaming)	\$237,500.00	*Open to defining sub-tiers w/ the State	
Zones Streaming: per user (Streaming):			
Zones: Single User - State	\$1,895.25		
Zones: Single User - Metro	\$945.25		
Zones: Single User County	\$660.25		
State hosted - for public viewing	Included	Under the HxGN Content Program the State may host the data for public viewing. Imagery data cannot be extracted or downloaded. Data cannot be used for commercial purposes.	



STATE OF MICHIGAN

SCHEDULE C - CONTRACTOR HOSTED SOFTWARE AND SERVICES

1. Definitions. In addition to the definitions found in the Contract Terms, for the purposes of this Contract, the following terms have the following meanings:

"Authorized Users" means all Persons authorized by the State to access and use the Software under this Contract, subject to the maximum number of users specified in the applicable Statement of Work.

"Harmful Code" means any: (a) virus, trojan horse, worm, backdoor or other software or hardware devices the effect of which is to permit unauthorized access to, or to disable, erase, or otherwise harm, any computer, systems or software; or (b) time bomb, drop dead device, or other software or hardware device designed to disable a computer program automatically with the passage of time or under the positive control of any Person, or otherwise prevent, restrict or impede the State's or any Authorized User's use of such software.

"Hosted Services" means the hosting, management and operation of the Software and other services for remote electronic access and use by the State and its Authorized Users as described in one or more written, sequentially numbered, statements of work referencing this Contract, including all Specifications set forth in such statements of work, which, upon their execution will be attached as **Schedule A** to this Contract and by this reference are incorporated in and made a part of this Contract.

"Integration Testing" has the meaning set forth in Section 4.2(c).

"Open-Source Components" means any software component that is subject to any open-source copyright license agreement, including any GNU General Public License or GNU Library or Lesser Public License, or other obligation, restriction or license agreement that substantially conforms to the Open Source Definition as prescribed by the Open Source Initiative or otherwise may require disclosure or licensing to any third-party of any source code with which such software component is used or compiled.

"Open-Source License" has the meaning set forth in Section 2.3.

"Operating Environment" means, collectively, the platform, environment and conditions on, in or under which the Software is intended to be installed and operate, as set forth in the Statement of Work, including such structural, functional and other features, conditions and components as hardware, operating software and system architecture and configuration.

"Service Error" means any failure of any Hosted Service to be Available or otherwise perform in accordance with this Schedule.

"**Specifications**" means the specifications for the Software set forth in the applicable Statement of Work and, to the extent consistent with and not limiting of the foregoing, the Documentation.

"State Materials" means all materials and information, including documents, data, know-how, ideas, methodologies, specifications, software, content and technology, in any form or media, directly or indirectly provided or made available to Contractor by or on behalf of the State in connection with this Contract.

"Support Services" means the Software maintenance and support services Contractor is required to or otherwise does provide to the State pursuant to this Schedule C and Exhibit 1 to this Schedule C.

"**Technical Specification**" means, with respect to any Software, the document setting forth the technical specifications for such Software and included in the Statement of Work.

"User Data" means all data, information and other content of any type and in any format, medium or form, whether audio, visual, digital, screen, GUI or other, that is input, uploaded to, placed into or collected, stored, processed, generated or output by any device, system or network by or on behalf of the State, including any and all works, inventions, metadata, analyses and other information and materials resulting from any use of the Software by or on behalf of the State under this Contract, except that User Data does not include the Software or data, information or content, including any GUI, audio, visual or digital or other display or output, that is generated automatically upon executing the Software without additional user input.

"Warranty Period" means, for Contractor Hosted Software, the ninety (90) calendar-day period commencing on the date of the State's Acceptance of the Software.

2. Hosted Software License Grant and Source Code Escrow

- 2.1 <u>Contractor License Grant</u>. The attached EUAA describes the grant for licensed products and services.
 - (a)
- 2.2 <u>License Restrictions</u>. The attached EUAA describes the restrictions for licensed products and services.
- 2.3 <u>Use</u>. The State will pay Contractor the corresponding Fees set forth in the Statement of Work for all Authorized Users access and use of the Hosted Services or Software. Such Fees will be Contractor's sole and exclusive remedy for use of the Hosted Services or Software, including any excess use.
- 2.4 Open-Source Licenses. For Contractor Hosted Software only (and not for the provision of Sof0tware-as-a-Service), any use hereunder of Open-Source Components shall be governed by, and subject to, the terms and conditions of the applicable open-source license ("Open-Source License"). Contractor shall identify and describe in an exhibit to the Statement of Work each of the Approved Open-Source Components of the Software, and include an exhibit attaching all applicable Open-Source Software Licenses or identifying the URL where these licenses are publicly available.

2.5 <u>Source Code Escrow.</u> The parties may enter into a separate intellectual property escrow agreement. Such escrow agreement will govern all aspects of Source Code escrow and release. Contractor hereby grants the State a license to use, reproduce, and create derivative works from the deposit material, provided the State may not distribute or sublicense the deposit material or make any use of it whatsoever except for such internal use as is necessary to maintain and support the Software. Copies of the deposit material created or transferred pursuant to this Contract are licensed, not sold, and the State receives no title to or ownership of any copy or of the deposit material itself. The deposit material constitutes Confidential Information of Contractor pursuant to Section 37.a of this Contract (provided no provision of Section 37.e calling for return of Confidential Information before termination of this Contract will apply to the deposit material).

3. Hosted Services Testing and Acceptance.

- 3.1 <u>Hosted Service Preparation</u>. Promptly upon the parties' execution of a Statement of Work, Contractor will take all steps necessary to make the Hosted Services procured thereunder ready and available for the State's use in accordance with the Statement of Work and this Contract and the EUAA, including any applicable milestone date or dates set forth in such Statement of Work.
 - 3.2 NOT USED
 - (a) .

4. Support Services.

- 4.1 **Maintenance and Support Services**. Contractor will provide Hosted Service maintenance and support services (collectively, "Support Services") in accordance with the provisions set forth in this Schedule C and in the Service Level Agreement, attached as **Exhibit 1** to this **Schedule C** (the "Support Services and Service Level Agreement").
- 4.2 **Maintenance Services**. Contractor will provide Hosted Service maintenance and support services (collectively, "**Software Support Services**") in accordance with the provisions of this **Schedule C**, including **Exhibit 1** to this **Schedule C**. The Software Support Services are included in the Services, and Contractor may not assess any additional fees, costs or charges for such Software Support Services. Contractor will continuously maintain the Hosted Services to optimize Availability that meets or exceeds the Availability Requirement as defined in **Exhibit 1** to this **Schedule C**. Such maintenance services include providing to the State and its Authorized Users:
- (a) all updates, bug fixes, enhancements, new releases, new versions and other improvements to the Hosted Services, including the Software, that Contractor provides at no additional charge to its other similarly situated customers; and
- (b) all such services and repairs as are required to maintain the Hosted Services or are ancillary, necessary or otherwise related to the State's or its Authorized Users' access to or use of the Hosted Services, so that the Hosted Services operate properly in accordance with the Contract and this **Schedule C**.

4.3 Support Service Responsibilities. Contractor will:

- (a) correct all Service Errors in accordance with the Support Service Level Requirements as defined in **Exhibit 1** to this **Schedule C**, including by providing defect repair, programming corrections and remedial programming;
 - (b) provide unlimited telephone support between the hours of 7 am and 7 pm, EST;
- (c) provide online access to technical support bulletins and other user support information and forums, to the full extent Contractor makes such resources available to its other customers; and
 - (d) respond to and Resolve Support Requests as specified in Exhibit 1 to this Schedule C.

5. Software and Service Warranties.

The attached EUAA describes the warranty for licensed services.

SCHEDULE C, EXHIBIT 1 – SUPPORT SERVICES AND SERVICE LEVEL AGREEMENT FOR HOSTED SERVICES

1. **Definitions.** For purposes of this **Exhibit 1** to **Schedule C**, the following terms have the meanings set forth below. All initial capitalized terms in this Schedule that are not defined in this **Section 1** shall have the respective meanings given to them in the Contract or its associated respective Schedules.

"Actual Uptime" means the total minutes in the Service Period that the Hosted Services are Available.

"Availability" has the meaning set forth in Section 3(a).

"Availability Requirement" has the meaning set forth in Section 3(a).

"Available" has the meaning set forth in Section 3(a).

"Contractor Service Manager" has the meaning set forth in Section 2.1.

"Corrective Action Plan" has the meaning set forth in Section 4.3.

"Critical Service Error" has the meaning set forth in Section 4.

"Exceptions" has the meaning set forth in Section 3.2.

"Force Majeure Event" has the meaning set forth in Section 5.1.

"High Service Error" has the meaning set forth in Section 4.

"Hosted Services" has the meaning set forth in Schedule C.

"Low Service Error" has the meaning set forth in Section 4.

"Medium Service Error" has the meaning set forth in Section 4.

"Resolve" has the meaning set forth in Section 4.1(a).

"Scheduled Downtime" has the meaning set forth in Section 3.3.

"Scheduled Uptime" means the total minutes in the Service Period.

"Service Availability Credits" has the meaning set forth in Section 3.6(a).

"Service Level Credits" has the meaning set forth in Section 4.2.

"Service Level Failure" means a failure to perform the Software Support Services fully in compliance with the Support Service Level Requirements.

"Service Period" has the meaning set forth in Section 3(a).

"Software" has the meaning set forth in the Contract.

"Software Support Services" has the meaning set forth in Section 4.1.

"State Service Manager" has the meaning set forth in Section 2.2.

"State Systems" means the information technology infrastructure, including the computers, software, databases, electronic systems (including database management systems) and networks, of the State or any of its designees.

"Support Request" has the meaning set forth in Section 4.

"Support Service Level Requirements" has the meaning set forth in Section 4.

"Term" has the meaning set forth in the Contract.

2. Personnel

- 2.1 <u>Contractor Personnel for the Hosted Services</u>. Contractor will appoint a Contractor employee to serve as a primary contact with respect to the Services who will have the authority to act on behalf of Contractor in matters pertaining to the receipt and processing of Support Requests and the Software Support Services (the "Contractor Service Manager").
- 2.2 <u>State Service Manager for the Hosted Services</u>. The State will appoint and, in its reasonable discretion, replace, a State employee to serve as the primary contact with respect to the Services who will have the authority to act on behalf of the State in matters pertaining to the Software Support Services, including the submission and processing of Support Reguests (the "**State Service Manager**").

3. Service Availability and Service Availability Credits.

(a) Availability Requirement. Contractor will make the Hosted Services Available, as measured over the course of each calendar month during the Term and any additional periods during which Contractor does or is required to perform any Hosted Services (each such calendar month, a "Service Period"), at least 99.98% of the time, excluding only the time the Hosted Services are not Available solely as a result of one or more Exceptions (the "Availability Requirement"). "Available" means the Hosted Services are available and operable for access and use by the State and its Authorized Users over the Internet in material conformity with the Contract. "Availability" has a correlative meaning. The Hosted Services are not considered Available in the event of a material performance degradation or inoperability of the Hosted Services, in whole or in part. The Availability Requirement will be calculated for the Service Period as follows: (Actual Uptime – Total Minutes in Service Period Hosted Services are not Available Due to an Exception) ÷ (Scheduled Uptime – Total Minutes in Service Period Hosted Services are not Available Due to an Exception) x 100 = Availability.

- 3.2 <u>Exceptions</u>. No period of Hosted Service degradation or inoperability will be included in calculating Availability to the extent that such downtime or degradation is due to any of the following ("**Exceptions**"):
 - (a) failures of the State's or its Authorized Users' internet connectivity;
 - (b) Scheduled Downtime as set forth in **Section 3.3**.
- 3.3 <u>Scheduled Downtime</u>. Contractor must notify the State at least twenty-four (24) hours in advance of all scheduled outages of the Hosted Services in whole or in part ("**Scheduled Downtime**"). All such scheduled outages will: (a) last no longer than five (5) hours; (b) be scheduled between the hours of 12:00 a.m. and 5:00 a.m., Eastern Time; and (c) occur no more frequently than once per week; provided that Contractor may request the State to approve extensions of Scheduled Downtime above five (5) hours, and such approval by the State may not be unreasonably withheld or delayed.
- 3.4 <u>Software Response Time</u>. Software response time, defined as the interval from the time the end user sends a transaction to the time a visual confirmation of transaction completion is received, must be less than two (2) seconds for 98% of all transactions. Unacceptable response times shall be considered to make the Software unavailable and will count against the Availability Requirement.
- 3.5 Service Availability Reports. Within thirty (30) days after the end of each Service Period, Contractor will provide to the State a report describing the Availability and other performance of the Hosted Services during that calendar month as compared to the Availability Requirement. The report must be in electronic or such other form as the State may approve in writing and shall include, at a minimum: (a) the actual performance of the Hosted Services relative to the Availability Requirement; and (b) if Hosted Service performance has failed in any respect to meet or exceed the Availability Requirement during the reporting period, a description in sufficient detail to inform the State of the cause of such failure and the corrective actions the Contractor has taken and will take to ensure that the Availability Requirement are fully met.

3.6 Remedies for Service Availability Failures.

(a) If the actual Availability of the Hosted Services is less than the Availability Requirement for any Service Period, such failure will constitute a Service Error for which Contractor will issue to the State the following credits on the fees payable for Hosted Services provided during the Service Period ("Service Availability Credits"):

Availability	Credit of Fees
≥99.98%	None
<99.98% but ≥99.0%	15%
<99.0% but ≥95.0%	50%
<95.0%	100%

- (b) Any Service Availability Credits due under this **Section 3.6** will be applied in accordance with payment terms of the Contract.
- (c) If the actual Availability of the Hosted Services is less than the Availability Requirement in any two (2) of four (4) consecutive Service Periods, then, in addition to all other remedies available to the State, the State may terminate the Contract on written notice to Contractor with no liability, obligation or penalty to the State by reason of such termination.
- 3.7 <u>Service Monitoring and Management</u>. Contractor will continuously monitor and manage the Hosted Services to optimize Availability that meets or exceeds the Availability Requirement. Such monitoring and management includes:
- (a) proactively monitoring on a twenty-four (24) hour by seven (7) day basis all Hosted Service functions, servers, firewall and other components of Hosted Service security;
- (b) if such monitoring identifies, or Contractor otherwise becomes aware of, any circumstance that is reasonably likely to threaten the Availability of the Hosted Service, taking all necessary and reasonable remedial measures to promptly eliminate such threat and ensure full Availability; and
- (c) if Contractor receives knowledge that the Hosted Service or any Hosted Service function or component is not Available (including by written notice from the State pursuant to the procedures set forth herein):
 - (i) confirming (or disconfirming) the outage by a direct check of the associated facility or facilities;
 - (ii) if Contractor's facility check in accordance with clause (i) above confirms a Hosted Service outage in whole or in part: (A) notifying the State in writing pursuant to the procedures set forth herein that an outage has occurred, providing such details as may be available, including a Contractor trouble ticket number, if appropriate, and time of outage; and (B) working all problems causing and caused by the outage until they are Resolved as Critical Service Errors in accordance with the Support Request Classification set forth in Section 4, or, if determined to be an internet provider problem, open a trouble ticket with the internet provider; and
 - (iii) notifying the State that Contractor has fully corrected the outage and any related problems, along with any pertinent findings or action taken to close the trouble ticket.
- 4. <u>Support Service Level Requirements</u>. Contractor will correct all Service Errors and respond to and Resolve all Support Requests in accordance with the required times and other terms and conditions set forth in this **Section 4** ("**Support Service Level Requirements**"), and the Contract.
- 4.1 <u>Support Requests</u>. The State will classify its requests for Service Error corrections in accordance with the descriptions set forth in the chart below (each a "**Support Request**"). The State Service Manager will notify Contractor of Support Requests by email, telephone or such other means as the parties may hereafter agree to in writing.

Support Request Classification	Description:	
	Any Service Error Comprising or Causing any of the Following Events or Effects	
Critical Service Error	Issue affecting entire system or single critical production function;	
	 System down or operating in materially degraded state; 	
	Data integrity at risk;	
	Declared a Critical Support Request by the State; or	
	Widespread access interruptions.	
High Service Error	 Primary component failure that materially impairs its performance; or 	
	 Data entry or access is materially impaired on a limited basis. 	
Medium Service Error	Hosted Service is operating with minor issues that can be addressed with an acceptable (as determined by the State) temporary work around.	
Low Service Error	 Request for assistance, information, or services that are routine in nature. 	

(a) Response and Resolution Time Service Levels. Response and Resolution times will be measured from the time Contractor receives a Support Request until the respective times Contractor has (i) responded to, in the case of response time and (ii) Resolved such Support Request, in the case of Resolution time. "Resolve" (including "Resolved", "Resolution" and correlative capitalized terms) means that, as to any Service Error, Contractor has provided the State the corresponding Service Error correction and the State has confirmed such correction and its acceptance thereof. Contractor will respond to and Resolve all Service Errors within the following times based on the severity of the Service Error:

Support Request Classification	Service Level Metric (Required Response Time)	Service Level Metric (Required Resolution Time)	Service Level Credits (For Failure to Respond to any Support Request Within the Corresponding Response Time)	Service Level Credits (For Failure to Resolve any Support Request Within the Corresponding Required Resolution Time)
Critical Service Error	One (1) hour	Three (3) hours	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and	Five percent (5%) of the Fees for the month in which the initial Service Level Failure begins and

			five percent (5%) of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	five percent (5%) of such monthly Fees for the first additional hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional one-hour increment.
High Service Error	One (1) hour	Four (4) hours	Three percent (3%) of the Fees for the month in which the initial Service Level Failure begins and three percent (3%) of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	Three percent (3%) of the Fees for the month in which the initial Service Level Failure begins and three percent (3%) of such monthly Fees for the first additional hour or portion thereof that the corresponding Service Error remains un-Resolved, which amount will thereafter double for each additional one-hour increment.
Medium Service Error	Three (3) hours	Two (2) Business Days	N/A	N/A
Low Service Error	Three (3) hours	Five (5) Business Days	N/A	N/A

- (b) <u>Escalation</u>. With respect to any Critical Service Error Support Request, until such Support Request is Resolved, Contractor will escalate that Support Request within sixty (60) minutes of the receipt of such Support Request by the appropriate Contractor support personnel, including, as applicable, the Contractor Service Manager and Contractor's management or engineering personnel, as appropriate.
- 4.2 <u>Support Service Level Credits</u>. Failure to achieve any of the Support Service Level Requirements for Critical and High Service Errors will constitute a Service Level Failure for which Contractor will issue to the State the corresponding service credits set forth in **Section 4.1(a)** ("**Service Level Credits**") in accordance with payment terms set forth in the Contract.
- 4.3 <u>Corrective Action Plan</u>. If two or more Critical Service Errors occur in any thirty (30) day period during (a) the Term or (b) any additional periods during which Contractor does or is required to perform any Hosted Services, Contractor will promptly investigate the root causes of these Service Errors and provide to the State within five (5) Business Days of its receipt of notice of the second such Support Request an analysis of such root causes and a proposed written corrective action plan for the State's review, comment and approval, which, subject to and upon the State's written approval, shall be a part of, and by this reference is incorporated in, the Contract as the parties'

corrective action plan (the "Corrective Action Plan"). The Corrective Action Plan must include, at a minimum: (a) Contractor's commitment to the State to devote the appropriate time, skilled personnel, systems support and equipment and other resources necessary to Resolve and prevent any further occurrences of the Service Errors giving rise to such Support Requests; (b) a strategy for developing any programming, software updates, fixes, patches, etc. necessary to remedy, and prevent any further occurrences of, such Service Errors; and (c) time frames for implementing the Corrective Action Plan. There will be no additional charge for Contractor's preparation or implementation of the Corrective Action Plan in the time frames and manner set forth therein.

5. Force Majeure.

- 5.1 <u>Force Majeure Events</u>. Subject to **Section 5.3**, neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached the Contract, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of the Contract, national or regional emergency, or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition (each of the foregoing, a "**Force Majeure Event**"), in each case provided that: (a) such event is outside the reasonable control of the affected party; (b) the affected party gives prompt written notice to the other party, stating the period of time the occurrence is expected to continue; (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.
- 5.2 <u>State Performance; Termination</u>. In the event of a Force Majeure Event affecting Contractor's performance under the Contract, the State may suspend its performance hereunder until such time as Contractor resumes performance. The State may terminate the Contract by written notice to Contractor if a Force Majeure Event affecting Contractor's performance hereunder continues substantially uninterrupted for a period of five (5) Business Days or more. Unless the State terminates the Contract pursuant to the preceding sentence, any date specifically designated for Contractor's performance under the Contract will automatically be extended for a period up to the duration of the Force Majeure Event.
- 5.3 <u>Exclusions; Non-suspended Obligations</u>. Notwithstanding the foregoing or any other provisions of the Contract or this Schedule:
 - (a) in no event will any of the following be considered a Force Majeure Event:
 - shutdowns, disruptions or malfunctions of Contractor Systems or any of Contractor's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to the Contractor Systems; or
 - the delay or failure of any Contractor Personnel to perform any obligation of Contractor hereunder unless such delay or failure to perform is itself by reason of a Force Majeure Event.

SCHEDULE D – DATA HOSTING AND SECURITY FOR HOSTED SOFTWARE AND SERVICES

1. **Definitions.** For purposes of this Schedule, the following terms have the meanings set forth below. All initial capitalized terms in this Schedule that are not defined in this **Section 1** shall have the respective meanings given to them in the Contract.

"Contractor Security Officer" has the meaning set forth in Section 2 of this Schedule.

"Contractor Systems" has the meaning set forth in Section 5 of this Schedule.

"FedRAMP" means the Federal Risk and Authorization Management Program, which is a federally approved risk management program that provides a standardized approach for assessing and monitoring the security of cloud products and services.

"FISMA" means the Federal Information Security Modernization Act of 2014 (Pub.L. No. 113-283 (Dec. 18, 2014).

"Hosted Services" means the hosting, management and operation of the information technology infrastructure, including all computing hardware, ancillary equipment, networking, Software, firmware, databases, data, other services (including support and subcontracted services), and related resources for remote electronic access and use by the State and its Authorized Users, including any services and facilities related to disaster recovery obligations.

"NIST" means the National Institute of Standards and Technology.

"PSP" means the State's IT Policies, Standards and Procedures

"PCI" means the Payment Card Industry.

"SSAE" means Statement on Standards for Attestation Engagements.

- 2. Contractor will appoint a Contractor employee to respond to the State's inquiries regarding the security of the Contractor Systems who has sufficient knowledge of the security of the Contractor Systems and the authority to act on behalf of Contractor in matters pertaining thereto ("Contractor Security Officer").
- 3. The State has established Information Technology (IT) PSP's to protect IT resources under the authority outlined in the overarching State 1305.00 Enterprise IT Policy. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, of which the publicly available ones are at https://www.michigan.gov/dtmb/0,5552,7-358-82547 56579 56755---,00.html.

This responsibility also extends to all service providers and subcontractors with access to State Data or an ability to impact the contracted solution. Contractor Responsibilities are determined from the PSP's based on the services being provided to the State, the type of IT solution, and the applicable laws and regulations.

- 4. Protection of the State Data.
- 5. Unauthorized Access. Contractor may not access, and shall not permit any access to, State systems, in whole or in part, whether through Contractor's Systems or otherwise, without the State's express prior written authorization. Such authorization may be revoked by the State in writing at any time in its sole discretion. Any access to State systems must be solely in accordance with the Contract and this Schedule, and in no case exceed the scope of the State's authorization pursuant to this Section 4. All State-authorized connectivity or attempted connectivity to State systems shall be only through the State's security gateways and firewalls and in compliance with the State's security policies set forth in the Contract as the same may be supplemented or amended by the State and provided to Contractor from time to time.
- 6. Contractor Systems. Contractor will be solely responsible for the information technology infrastructure, including all computers, hardware, networking, software, data, databases, electronic systems (including database management systems) and networks used by or for Contractor in connection with the Services ("Contractor Systems").
- 7. Security Audits. During the Term, Contractor will:
 - maintain complete and accurate records relating to its data protection practices, IT security controls, and the security logs of any of the State's Confidential Information, including any backup, disaster recovery or other policies, practices or procedures relating to the State's Confidential Information and any other information relevant to its compliance with this Schedule;
 - b. upon the State's request, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by the State or an independent data security expert that is reasonably acceptable to Contractor, provided that the State: (i) gives Contractor at least five (5) Business Days prior notice of any such audit; (ii) undertakes such audit no more than once per calendar year, except for good cause shown; and (iii) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of the Contract. The State may, but is not obligated to, perform such security audits, which shall, at the State's option and request, include penetration and security tests, of any and all Contractor Systems and their housing facilities and operating environments; and
- 8. if requested by the State, provide a copy of Contractor's FedRAMP System Security Plan(s) or SOC 2 Type 2 report(s) to the State within two weeks. The System Security Plan and SSAE audit reports will be recognized as Contractor's Confidential Information.
- 9. **Infrastructure Scanning**. For Hosted Services, Contractor must ensure the infrastructure and applications are scanned using an approved scanning tool (Qualys, Tenable, or other PCI Approved Vulnerability Scanning Tool) at least once every 30 days and provide the scan's assessments to the State in a format that can be uploaded by the State and used to track the remediation. Contractor will ensure that issues identified in the scan are remediated according to the remediation time requirements documented in the State PSPs.

10. **Nonexclusive Remedy for Security Breach**. Any failure of the Services to meet the requirements of this Schedule with respect to the security of any State Data or other Confidential Information of the State, including any related backup, disaster recovery or other policies, practices or procedures, is a material breach of the Contract for which the State, at its option, may terminate the Contract for cause immediately and Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination.

SCHEDULE E – FEDERAL PROVISIONS ADDENDUM

This addendum applies to purchases that will be paid for in whole or in part with funds obtained from the federal government. The provisions below are required and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. Equal Employment Opportunity

If this Contract is a "**federally assisted construction contract**" as defined in <u>41 CFR Part 60-1.3</u>, and except as otherwise may be provided under <u>41 CFR Part 60</u>, then during performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of <u>Executive Order 11246</u> of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by <u>Executive Order 11246</u> of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules,

regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. Davis-Bacon Act (Prevailing Wage)

If this Contract is a **prime construction contracts** in excess of \$2,000, the Contractor (and its Subcontractors) must comply with the Davis-Bacon Act (<u>40 USC 3141-3148</u>) as supplemented by Department of Labor regulations (<u>29 CFR Part 5</u>, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"), and during performance of this Contract the Contractor agrees as follows:

- (1) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- (2) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (3) Additionally, contractors are required to pay wages not less than once a week.

3. Copeland "Anti-Kickback" Act

If this Contract is a contract for construction or repair work in excess of \$2,000 where the Davis-Bacon Act applies, the Contractor must comply with the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled, and during performance of this Contract the Contractor agrees as follows:

- (1) <u>Contractor</u>. The Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) <u>Subcontracts</u>. The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA or the applicable federal

- awarding agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) <u>Breach</u>. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and Subcontractor as provided in 29 C.F.R. § 5.12.

4. Contract Work Hours and Safety Standards Act

If the Contract is **in excess of \$100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with <u>40 USC 3702</u> and <u>3704</u>, as supplemented by Department of Labor regulations (<u>29 CFR Part 5</u>), as applicable, and during performance of this Contract the Contractor agrees as follows:

- (1) Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The State shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) <u>Subcontracts</u>. The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

5. Rights to Inventions Made Under a Contract or Agreement

If the Contract is funded by a federal "funding agreement" as defined under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. Clean Air Act and the Federal Water Pollution Control Act

If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act (<u>42 USC 7401-7671q</u>) and the Federal Water Pollution Control Act (<u>33 USC 1251-1387</u>), and during performance of this Contract the Contractor agrees as follows:

Clean Air Act

- The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
- 3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

Federal Water Pollution Control Act

- 1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- 2 The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
- 3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

7. Debarment and Suspension

A "contract award" (see <u>2 CFR 180.220</u>) must not be made to parties listed on the government-wide exclusions in the <u>System for Award Management</u> (SAM), in accordance with the OMB guidelines at <u>2 CFR 180</u> that implement <u>Executive Orders 12549</u> (<u>51 FR 6370</u>; <u>February 21, 1986</u>) and 12689 (<u>54 FR 34131</u>; <u>August 18, 1989</u>), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- (1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the State. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification in Exhibit 1 – Byrd Anti-Lobbying Certification below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

9. Procurement of Recovered Materials

Under <u>2 CFR 200.322</u>, Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - 2. Meeting contract performance requirements; or

- 3. At a reasonable price.
- (2) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

10. Additional FEMA Contract Provisions.

The following provisions apply to purchases that will be paid for in whole or in part with funds obtained from the Federal Emergency Management Agency (FEMA):

- (1) <u>Access to Records</u>. The following access to records requirements apply to this contract:
 - a. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
 - b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
 - d. In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(2) Changes.

See the provisions regarding modifications or change notice in the Contract Terms.

(3) DHS Seal, Logo, And Flags

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

(4) Compliance with Federal Law, Regulations, and Executive Orders

This is an acknowledgement that if FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(5) No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract."

(6) Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

SCHEDULE E, EXHIBIT 1 – BYRD ANTI-LOBBYING CERTIFICATION

Contractor must complete this certification if the purchase will be paid for in whole or in part with funds obtained from the federal government and the purchase is greater than \$100,000.

APPENDIX A, 44 C.F.R. PART 18 - CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

addition, the Contractor understands an	, certifies or affirms the ment of its certification and disclosure, if any. In ad agrees that the provisions of 31 U.S.C. Chap. 38, ns and Statements, apply to this certification and
Signature of Contractor's Authorized Of	ificial
Name and Title of Contractor's Authoriz	ed Official

Date