



**STATE OF MICHIGAN PROCUREMENT**  
 Department of Technology, Management, and Budget  
 525 W. Allegan, Lansing, MI 48933

**NOTICE OF CONTRACT**

NOTICE OF CONTRACT NO. 210000001311  
 between  
 THE STATE OF MICHIGAN  
 and

<b>CONTRACTOR</b>	Nearmap US, Inc.
	10897 S River Front Parkway St 150
	South Jordan, UT 84095
	Tyler Behle
	801-860-6094
	tyler.behle@nearmap.com
	CV0129435

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

<b>CONTRACT SUMMARY</b>			
<b>DESCRIPTION: Oblique Imagery</b>			
<u>INITIAL EFFECTIVE DATE</u>	<u>INITIAL EXPIRATION DATE</u>	<u>INITIAL AVAILABLE OPTIONS</u>	<u>EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW</u>
3/1/2021	2/28/2024	5, 1 Year	
<u>PAYMENT TERMS</u>		<u>DELIVERY TIMEFRAME</u>	
Net 45			
<u>ALTERNATE PAYMENT OPTIONS</u>			<u>EXTENDED PURCHASING</u>
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<u>MINIMUM DELIVERY REQUIREMENTS</u>			
<u>MISCELLANEOUS INFORMATION</u>			
<u>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION</u>			<b>\$0.00</b>

**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 Nearmap US, Inc. (“**Contractor**”), a Delaware corporation. This Contract is effective on March 1, 2021 (“**Effective Date**”), and unless terminated, expires on February 28, 2024.

This Contract may be renewed for up to 5 additional 1 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.

- 2. 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]	General Counsel
[Street Address]	10897 S River Front Pkwy, Suite 150
[City, State, Zip]	South Jordan, Utah 84095
[Email]	legal@nearmap.com
[Phone]	+1 801 509 5933

7. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the reasonable 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 reasonable opinion of the State, it will ensure performance of the 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
<b>Commercial General Liability Insurance</b>	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 General Aggregate	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04.
<b>Automobile Liability Insurance</b>	
<u>Minimum Limits:</u> \$1,000,000 Per Accident	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; and (2)



	include Hired and Non-Owned Automobile coverage.
<b>Workers' Compensation Insurance</b>	
<u>Minimum Limits:</u>  Coverage according to applicable laws governing work activities	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<u>Minimum Limits:</u>  \$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](http://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 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. The State is granted a license to access and use the Work Products only as permitted under the terms of this Agreement and any applicable Statement of Work.
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.

**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, provided such novation is not detrimental to the Contractor (as reasonably determined by the Contractor), 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. A change of control also does not include a change in ownership through a transaction or series of transactions relating to listed securities occurring on the Australian Securities Exchange.

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.** At all times, 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, then, to the extent within the control of the Contractor, 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 is 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 Contract Activities from other sources.

- 29. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part 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 all reasonable costs, as determined by the State, for State approved Transition Responsibilities. Where the State exercises its right to terminate for convenience, the State agrees that Contractor may retain all prepaid fees and charges under this Agreement, and will not provide a refund to the State.
- 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) INTENTIONALLY OMITTED; 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), 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 by Contractor; and (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 while performing Contract Activities (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.** NEITHER PARTY WILL 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 AGGREGATE LIABILITY OF EITHER PARTY 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.** If the 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) INTENTIONALLY OMITTED; (b) personally identifiable information ("**PII**") provided by the State to the Contractor in connection with 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**") provided by the State to the Contractor in connection with 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. INTENTIONALLY OMITTED.
- d. INTENTIONALLY OMITTED.
- e. Loss or Compromise of Data. 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 five (5) calendar days of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available materials required to comply with applicable law or as otherwise reasonably 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; (g) 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 twenty (20) 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. INTENTIONALLY OMITTED.

**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. Cooperation to Prevent Disclosure of Confidential Information. 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.
- e. 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.

**38. Data Privacy and Information Security.**

- a. Undertaking by Contractor. 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. INTENTIONALLY OMITTED.
- c. Right of Audit by the State. 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. Audit Findings. 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. State's Right to Termination for Deficiencies. 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.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey licensed use; (b) Contractor will perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (c) Contractor will meet or exceed the

performance and operational standards, and specifications of the Contract; (d) Contractor will provide all Contract Activities in good quality, with no material defects; (d) Contractor will not interfere with the State's operations; (e) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (f) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third-party; (g) INTENTIONALLY OMITTED; (h) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (g) the Contract signatory has the authority to enter into this Contract; (h) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (i) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (j) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606.

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. **INTENTIONALLY OMITTED.**
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:

<b>Schedule A</b>	Statement of Work
<b>Exhibit 1 to Schedule A</b>	Business Specification Worksheet
<b>Exhibit 2 to Schedule A</b>	Nearmap's Products Agreement
<b>Schedule B</b>	Pricing and Fees
<b>Schedule C</b> (as applicable)	Terms for Contractor Hosted Software and Services
<b>Exhibit 1 to Schedule C</b> (as applicable)	Support Services and Service Level Agreement for Hosted Services
<b>Schedule D</b> (as applicable)	Data Hosting and Security for Hosted Software and Services
<b>Exhibit 1 to Schedule D</b> (as applicable)	Contractor's Disaster Recovery Plan
<b>Schedule E</b> (as applicable)	Federal Provisions Addendum
<b>Exhibit 1 to Schedule E</b> (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.

# Oblique Imagery

## SCHEDULE A – STATEMENT OF WORK

**THIS STATEMENT OF WORK SETS OUT A DESCRIPTION AND OVERVIEW OF THE CONTRACT ACTIVITIES AND DELIVERABLES. THE LEGAL TERMS UNDER WHICH A LICENSE TO ACCESS AND USE THE DELIVERABLES ARE SET OUT AS AN EXHIBIT TO THIS 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
CONTIGUOUS 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 oblique imagery as an option. For many years, interested Michigan counties have had to research and negotiate oblique imagery purchases on their own. During MiSAIL stakeholder meetings conducted over the last 24 months, it was a frequent request that the MiSAIL program include oblique imagery 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 oblique imagery and services 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)

To the extent applicable to aerial imagery data only, 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](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\\_Standard\\_458958\\_7.pdf](https://www.michigan.gov/documents/dtmb/1340.00.01_Acceptable_Use_of_Information_Technology_Standard_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**

To the extent that software items are provided by the Contractor on a work-for-hire basis, all software items must adhere to the State of Michigan Application/Site Standards which can be found at [www.michigan.gov/standards](http://www.michigan.gov/standards).

**Mobile Responsiveness**

To the extent applicable to aerial imagery, the Contractor's Solution must utilize responsive design practices to ensure the application is accessible via a mobile tablet device.

**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**

INTENTIONALLY OMITTED.

**8. DATA RETENTION**

INTENTIONALLY OMITTED.

**9. SECURITY**

The Solution will be storing public data.

Contractor's solution must meet the State's data security requirements:

- Must be encrypted in transit using AES 128 bit or higher encryption.
- Must remain compliant with FISMA and the NIST Special Publication 800.53 (most recent version) LOW controls using minimum control values as established in the applicable SOM PSP's.
- Must maintain an annual audit for the Solution based on SOM required NIST low controls.

**10. END-USER OPERATING ENVIRONMENT**

The software must accommodate the latest browser versions as well as some pre-existing browsers. To ensure that users with older browsers are still able to access online services, 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.

Contractor where reasonably practicable will support the current and future State standard environment at no additional cost to the State.

#### **11. SOFTWARE**

Contractor will be using technology developed by Nearmap.

#### **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 which it will discuss and mutually agree with Nearmap.

#### **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**

Contractor offers two types of online training services for end-users transitioning to customer self-sufficiency. Prerecorded workflow videos of the Oblique Imagery tool will be released to the State upon request. Live training via a Nearmap supported platform is also available to the following limitations:

- Email – response time will be within 1 hour during business hours (9:00am ET – 5:00pm ET). If after hours

responses will be the following business day.

- Phone support – 9:00am ET – 5:00pm ET

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Type of Attendees	Maximum number of attendees
Chat Function Available	300
Video, Audio and chat functions available	20

#### **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 reasonable 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 which are published at <https://docs.nearmap.com/display/ND/PRODUCT+DOCUMENTATION> and updated from time to time.

## 20. TRANSITION SERVICES

Upon termination or expiration of the agreement, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the agreement to continue without interruption or adverse effect, and to facilitate the orderly transfer of the services to the State or its designees. Such transition assistance may include but is not limited to: (a) continuing to perform the services at the established rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable services 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 (in a format specified by the State) to the State all data stored in the solution; and (d) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

## 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.

<b>Contractor</b>
<b>Name: Tyler Behle</b> <b>Address: 10897 S River Front Parkway Suite 150, South Jordan, Ut. 84095</b> <b>Phone: 801 860-6094</b> <b>Email: tyler.behle@nearmap.com</b>

**Contractor Project Manager.** 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.

<b>Contractor</b>
<b>Name: Brett Clark</b> <b>Address: 10897 S River Front Parkway Suite 150, South Jordan, Ut. 84095</b> <b>Phone: 317-775-2319</b> <b>Email: brett.clark@nearmap.com</b>

**Contractor Acquisition Manager.** the name of individual to serve as acquisition manager responsible for all facets of the acquisition process for orthoimagery, lidar, and/or oblique imagery as applicable.

<b>Contractor</b>
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<b>Name: Sean Kelly</b> <b>Address: 10897 S River Front Parkway Suite 150, South Jordan, Ut. 84095</b> <b>Phone: 301-980-9106</b> <b>Email: sean.kelly@nearmap.com</b>
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**Contractor Production Manager.** the name of individual to serve as production manager responsible for the creation of required deliverables for orthoimagery, lidar, and/or oblique imagery as applicable.

<b>Contractor</b>
<b>Name: Sanchit Agarwal</b> <b>Address: 10897 S River Front Parkway Suite 150, South Jordan, Ut. 84095</b> <b>Phone: +1 (801) 403-4362</b> <b>Email: sanchit.agarwal@nearmap.com</b>

### 23. CONTRACTOR PERSONNEL REQUIREMENTS

The Contractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT and drug tests for all staff identified for assignment to this project.

In addition, proposed Contractor personnel will be required to complete and submit an RI-8 Fingerprint Card for the National Crime Information Center (NCIC) Fingerprints, if required by project.

Contractor will pay for all costs associated with ensuring their staff meets all requirements.

### 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**

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.

All 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.

## **27. MILESTONES AND DELIVERABLES**

Reserved.

## **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

## Oblique Imagery

Covering more than 61% of the total US population - over 137,500square miles collected annually.

Nearmap Panorama imagery is an uninterrupted perspective map for each cardinal direction, giving users the ability to zoom from a regional view, to a community level, down to a neighborhood view. This proposal also includes access to Nearmap Oblique which are the unaltered images as captured by the HC2 system. Nearmap Oblique enables multiple view angles (typically from 15° to 45°) giving users options to see features. Users can access and save Panorama and Oblique images in PNG or JPG image format. The patented HC2 system uses a unique sweeping frame camera system that photographs points of interest at multiple view angles such as 15°, 30°, and 45° from nadir, providing multiple viewing options for the user and minimizing feature obscuration.

OBLIQUE SPECIFICATIONS	
Ground Sampling Distance (GSD)	3" or 7.5 cm
Vertical Measurement Accuracy	6" or 15 cm within one photo
Datum / Projection	WGS84 / Spherical Mercator
Image Bands	Natural RGB Color

### MapBrowser

All Nearmap accounts provide access to MapBrowser, Nearmap’s web-based platform designed to help quickly navigate the library of high-resolution captures. MapBrowser includes easy-to-use width, height, area, pitch and additional measurement tools that provide accurate estimates, eliminating the cost for multiple site visits.

Using MapBrowser, Nearmap imagery can be annotated with notes, shapes and images. Users can highlight specific areas, add notes, or use a library of real-world objects to design logistical site plans.

MapBrowser offers:

- ✓ **Intelligent Search:** Quickly search by address, point of interest, latitude/longitude, or use the “Locate Me” tool in the field for on-site geo-location.
- ✓ **Flexible View:** Smooth unrestricted panning and zooming; full on-screen image rotation.
- ✓ **Precise Measurement:** Accurate measurement of height, width, area, radius, or pitch with instant unit conversion and dynamic adjustment.
- ✓ **Rich Visual Analysis:** Access to current and historical captures with a Split View tool for analyzing change over time.
- ✓ **Purpose-Built Export:** Save georeferenced, time-indexed images with or without measurement drawings and road overlays.
- ✓ **Powerful Integration:** An open API allows for easy and seamless integration of imagery as a base layer in GIS, CAD and other 3rd-party applications.

As mentioned above, MapBrowser provides the user access to current and historical imagery in the following forms: vertical, panorama, and oblique captures throughout the area of interests set out in the images above. Users can easily change image types and orientation through menu and click/touch gestures.

Additionally, MapBrowser provides a number of measurement tools enabling area, linear, and height measurements across vertical and oblique images. The tools allow the user to zoom-in for accurate pixel selection as well as vertex editing to enable quick modifications. Accessing the archived imagery is easily done on MapBrowser by incrementally clicking through the imagery timeline, or by selecting a specific capture date. Nearmap’s MapBrowser enables users to review change over time with a side-by-side view and a sliding swipe tool for both vertical and panorama imagery. Further, the location pin will provide the user with the precise date and time of the area in the imagery. As these are mosaicked images from different flight lines or surveys, the date and time may contain a range over time.



### Powerful Integration through APIs and On-Demand Export

In addition to accessing imagery through MapBrowser, Nearmap also delivers aerial content through custom web map service (WMS) and API integrations. Nearmap's APIs offer integration with Esri ArcGIS, Autodesk, Bentley, CAMA and CAD systems, and other leading GIS and CAD technologies via standard Industry protocols Including WMS, WMTS, Tile, and the DSM API. In addition to API Integrations, we also have developed an Esri Marketplace item which offers seamless integration to Nearmap Vertical Imagery within the Esri ArcGIS Suite.

### **Oblique Imagery Application Software**

In addition to accessing Oblique imagery through MapBrowser, we offer Oblique integration for Esri Portal for ArcGIS as well as ArcGIS Online developed as a custom WebApp Builder widget which enables measurable obliques from all 4 cardinal directions. Pass-through widgets may be developed and deployed within third-party CIMA and GIS applications to access MapBrowser and other custom developed applications with Nearmap imagery.

2D and 3D data may be viewed and exported directly through MapBrowser on-demand. In a matter of minutes, users can export Nearmap 3D content types including textured mesh, point cloud, digital surface model (DSM), digital elevation model (DEM), and true ortho for a selected area of Interest (AOI). From there users may import Nearmap 3D content into ArcGIS Pro, Bentley, QGIS, InfraWorks, and other popular platforms, not only for creating high-end visuals but for performing analysis on the 2D and 3D data combination - all collected on the same survey capture date. There's high value having immediate access to a wide variety of georeferenced content and format types which are all up-to-date, current, consistent, and clear. All Nearmap users gain immediate access to the aerial imagery, available in spatial reference systems they need across the entire application ecosystem.

## **Implementation Plan(Technical Approach, Methodology, Time Frame and Deliverables)**

### **Nearmap's Technology**

Nearmap has fully automated the process of creating very high definition photo maps, developing a complete pipeline of technologies which enable coverage of vast areas with unprecedented currency and clarity. The key elements of this technology solution include:

- Nearmap's proprietary aerial camera system, HC1 and HC2, which has been designed and developed internally by Nearmap. These aerial camera systems are designed to capture about 1 gigabyte of raw image data every second, at a small fraction of the operating and capital costs of alternative camera systems;
- Nearmap's HyperVision processing solution runs on super-computer hardware clusters which automatically performs image analysis to process the individual photos, aerial triangulation, geo-positioning, bundle adjustment, color-balancing, and mosaicking within the reliable, secure Amazon Web Services cloud computing platform. HyperVision can produce a complete city-wide coverage within a few days, compared to several months with alternative solutions, creating orthorectified and multi-view imagery as well as terrain data simultaneously; and
- Nearmap's innovative imagery delivery solution, which serves the many terabytes of aerial imagery to online consumers through the Nearmap web portal, MapBrowser, and is designed to support hundreds of thousands of simultaneous users which enables fast and secure access to any historic imagery captured by Nearmap.

The technology developed by Nearmap creates very high-resolution aerial imagery with multiple angle views at a fraction of the cost compared to traditional solutions. Our breakthrough technology enables our aerial imagery to be updated much more frequently than other providers, whose images can be, at best,

many months if not years out of date. As a result, for the first-time people can see the environment change over time, as Nearmap's aerial imagery within MapBrowser allows users to move back and forward through time to see changes occur in specific locations or across a wide area.

## **Control Processes**

Changes to the operating environment that require a more immediate response will be communicated and managed by Nearmap's account manager. These may include, but are not limited to, day-to-day changes relating to weather, major aircraft or equipment maintenance of an unscheduled nature and minor changes in capture priorities.

Due to the nature of its business, Nearmap is adept at identifying and adapting to changes in prevailing weather conditions. Our experience in conducting work for other Government departments has been that this issue requires constant monitoring, communication and a flexible approach to ensure deliverables can be achieved.

## **Quality Assurance and Quality Control**

Nearmap imagery, for a technical description, are mosaics of orthorectified images. This means that each process applied, including removal of terrain distortions, lens distortions, etc. Individual orthoimages are then merged together into a mosaic, which is the imagery that is published to Nearmap's MapBrowser. To accomplish the removal of these terrain distortions, we generate high resolution elevations maps as a necessary part of the rectification process.

During Nearmap's processing adjustments, using our patented processing system, the processing system performs full interior and exterior orientation of cameras and photos, including self-calibration of cameras. Self-calibration is the most accurate form of computing the metric camera interior orientation and lens parameters. A unique feature of Nearmap's imagery that comes from our HyperCamera systems are that they capture several photos observing a given point on the ground (e.g. very high photo redundancy) compared to older aerial camera systems. The higher redundancy of observations results in high fidelity tie-points matching in the Aerial Triangulation process. This results in robust relative accuracy of the images and very precise measurements of the end-product. Also, since we capture the same footprint multiple times a year, we leverage all the vintages to ensure the absolute accuracy of the orthos and relative alignment between vintages. Our HyperVision processing is fully automated and designed to create consumable imagery anywhere in the world, without requiring any ground control point data at all. This also allows us to capture accurate imagery in adverse conditions where ground point data is not available, is obscured, has moved or is inaccurate.

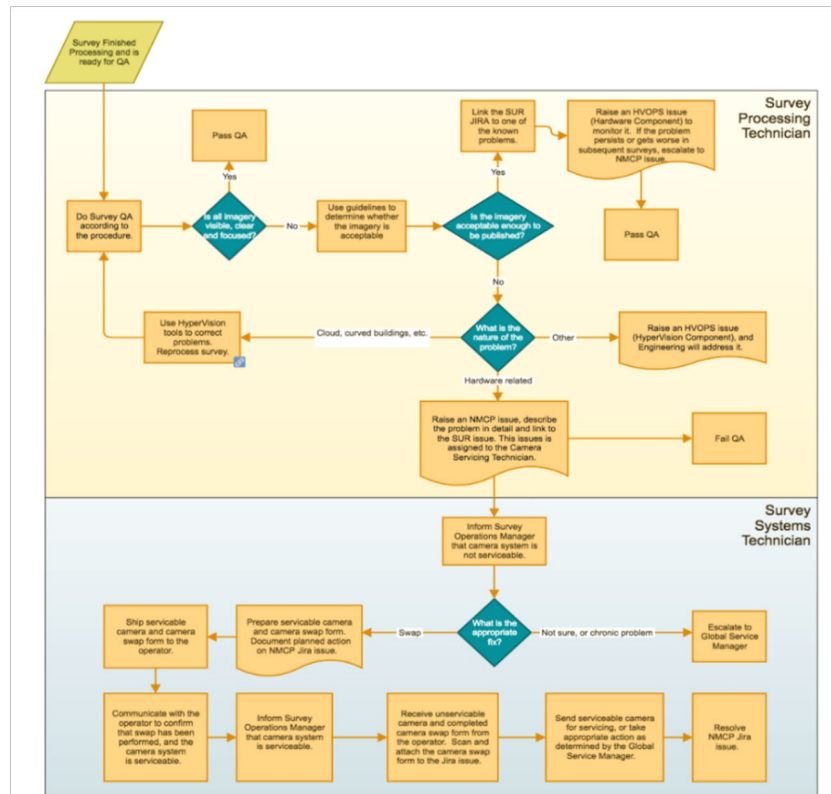
# Delivery Schedule Risk

With all the moving parts in any aerial mapping program, delivery on schedule is identified as a potential risk. Any possible delay on deliveries will be communicated to the State.

# Cloud Processing

The Amazon Web-based cloud processing pipeline allows Nearmap to scale infinitely to speed up production. The access to cloud processing pipelines significantly reduces the schedule risk on the program.

Nearmap’s formal QA/QC process is an important part of delivering our high-quality imagery. The flow chart below illustrates the measures we take.



QA/QC Process

## Risk Management

Nearmap maintains an integrated system of risk management arrangements at both a corporate level and in conjunction with our flight operators to minimize risk across our business. In terms of our operational activities, Nearmap has rapidly developed a deep understanding of the risks involved in flying, processing and serving very high-resolution aerial imagery and terrain data and how they are most effectively mitigated. As part of our regular operations, we capture, process and serve aerial imagery covering around 1,360,000 km<sup>2</sup> globally for FY20 at a resolution of typically captured at 7.5cm GSD or better for both aerial camera systems used by Nearmap. Since our commercial launch in 2008, we have implemented a number of mitigation strategies that treat those risks that are likely to occur and would result in unacceptable consequences. These mitigation strategies include treatment of risks relating to:

- **Timely Data Acquisition:** Due to heavy dependence on the weather conditions, air traffic control restrictions and other operational factors; timely data acquisition can be at risk in any aerial mapping program. Here are some specific steps employed in order to ensure that all aerial data collection is completed in time:
  - **Sensor Efficiency:** The number of clear days required to collect imagery is directly proportional to the efficiency of the camera systems. The camera systems employed by Nearmap are large format cameras with very high operational efficiency. The state of the art Nearmap sensor can capture up to 3-inch imagery from higher than 12000 ft+ elevation above ground level. This allows us to capture big-swaths of datasets in each pass resulting in very efficient data acquisition.
  - **ATC Coordination:** Nearmap has experience in flying through complex air traffic controlled air-spaces where required.
- **Accuracy Risk:** The relative and absolute accuracy of the final deliverables is paramount to the success of the aerial mapping program. Often, the statistical numbers from the aerial triangulation report fail to highlight the possible breakdown in the accuracy of the datasets. These issues are often caught by the customer due to the observed misalignment of features and vectors with respect to the delivered imagery.

## Camera Malfunction

To further mitigate the unlikely risks of camera failures, we ensure that our flight operators have a sufficient supply of cameras and data recorders. Due to our ability to capture vast areas at high resolution, if the data we process isn't to our standards, we recapture the area of interest promptly and at our cost. On the few occasions this has occurred, this remedial action had not impeded capture schedules significantly.

## Survey Operations

Nearmap captures imagery in favorable conditions to allow for optimal image quality, avoiding cloud cover, haze, smoke and scheduling captures around air traffic control as required. Our survey operations manager reviews each Nearmap flights dashboard and consults with the pilot at the time of capture. Capturing our surveys with a sun elevation of 30-degrees or greater enables Nearmap to collect imagery with minimal environmental obstructions.



## **Time Frame**

From the date of capture, Nearmap can process imagery for online viewing within a 4-week timeframe (at the latest).

SCHEDULE A, EXHIBIT 1 - BUSINESS SPECIFICATION WORKSHEET

**Oblique Imagery**

A	B
<b>Business Specification Number</b>	<b>Business Specification</b>
1.0	Contractor must provide oblique imagery products and associated hosting services
2.0	Ability to acquire, produce and deliver oblique imagery
3.0	Provide a secure online internet oblique imagery hosting and viewing solution
4.0	Solution must enable users to measure on screen: the width, length, area, and height of any feature on the image

SCHEDULE A, EXHIBIT 2 – NEARMAP PRODUCT TERMS AND CONDITIONS

# STATE OF MICHIGAN

## SCHEDULE B – PRICING AND FEES

<b>Nearmap Pricing</b>	<b>3-inch Obliques</b>	<b>6-inch Obliques</b>
	<b>Contiguous Sq Miles</b>	<b>Contiguous Sq Miles</b>
<b>1-50</b>	N/A	N/A
<b>51-250</b>	\$160	N/A
<b>251-500</b>	\$148	N/A
<b>501-1000</b>	\$136	N/A
<b>1001-2500</b>	\$120	N/A
<b>&gt;2500</b>	\$100	N/A

<b>Accessibility</b>	<b>Nearmap</b>
<b>Costs</b>	
<b>0-50,000</b>	<b><u>Annual Cost Per Concurrent Users</u></b>
0 - 50,000	\$6,000
50,001 – 100,000	\$12,000
100,001 – 200,000	\$25,000
200,001 – 300,000	\$45,000
300,001 – 450,000	\$65,000
450,001 – 650,000	\$100,000
650,001 – 850,000	\$150,000
850,001 – 1,000,000	\$200,000
1,000,001 – 2,000,000	\$300,000
>2,000,000	\$425,000

<b>Optional Access to Historic Obliques</b>	<b>Nearmap</b>	<b>Nearmap</b>
<b>Accessibility</b>		
<b>Costs</b>		
	<b>Annual Cost <u>per AOI</u></b>	<b>Annual Cost <u>for All AOIs</u></b>
<b>Within Existing Oblique Footprint dating back to 2017 (requires accessibility fee in above table)</b>		
<b>1-10</b>		no additional cost
<b>11-50</b>		no additional cost
<b>51-100</b>		no additional cost
<b>101-200</b>		no additional cost
<b>201-500</b>		no additional cost
<b>&gt;500</b>		no additional cost



# 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 Contractor License Grant. Contractor hereby grants to the State, exercisable by and through its Authorized Users, a nonexclusive, royalty-free, irrevocable (except as provided herein) right and license during the Term and such additional periods, if any, as Contractor is required to perform Services under this Contract or any Statement of Work, to:

(a) access and use the Hosted Services, including in operation with other software, hardware, systems, networks and services, for the State's business purposes, including for Processing State Data;

(b) generate, print, copy, upload, download, store reasonable number of copies and otherwise Process all GUI, audio, visual, digital and other output, displays and other content as may result from any access to or use of the Hosted Services;

(c) prepare, reproduce, print, download and use a reasonable number of copies of the Specifications and Documentation for any use of the Hosted Services under this Contract; and

(d) access and use the Hosted Services for all such non-production uses and applications as may be necessary or useful for the effective use of the Hosted Services hereunder, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support and repair, which access and use will

be without charge and not included for any purpose in any calculation of the State's or its Authorized Users' use of the Hosted Services, including for purposes of assessing any Fees or other consideration payable to Contractor or determining any excess use of the Hosted Services as described in **Section 2.2**.

2.2 License Restrictions. The State will not: (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make the Hosted Services available to any third-party, except as expressly permitted by this Contract or in any Statement of Work; or (b) use or authorize the use of the Hosted Services or Documentation in any manner or for any purpose that is unlawful under applicable Law.

2.3 Use. 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 Software-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 Source Code Escrow. 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 Hosted Service Preparation. 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, including any applicable milestone date or dates set forth in such Statement of Work.

3.2 Intentionally Omitted.

(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 8 am and 5 pm, EST;

(c) provide unlimited online support 24 hours a day, seven days a week;

(d) 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

(e) respond to and Resolve Support Requests as specified in **Exhibit 1** to this **Schedule C**.

## **5. Software and Service Warranties.**

5.1 Contractor represents and warrants to the State that:

(a) Contractor has, and throughout the Term and any additional periods during which Contractor does or is required to perform the Services, including Hosted Services, will have, the unconditional and irrevocable right, power and authority, including all permits and licenses required, to provide the Services and grant and perform all rights and licenses granted or required to be granted by it under this Contract;

(b) neither Contractor's grant of the rights or licenses hereunder nor its performance of any Services or other obligations under this Contract does or at any time will: (i) conflict with or violate any applicable law, including any law relating to data privacy, data security or personal information; (ii) require the consent, approval or authorization of any governmental or regulatory authority or other third-party; or (iii) require the provision of any payment or other consideration by the State or any Authorized User to any third-party, and Contractor shall promptly notify the State in writing if it becomes aware of any change in any applicable law that would preclude Contractor's performance of its material obligations hereunder;

(c) as accessed and used by the State or any Authorized User in accordance with this Contract and the Specifications, the Hosted Services, Documentation and all other Services and materials provided by Contractor under this Contract will not infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of any third-party;

(d) there is no settled, pending or, to Contractor's knowledge as of the Effective Date, threatened action, and it has not received any written, oral or other notice of any action (including in the form of any offer to obtain a license): (i) alleging that any access to or use of the Services, Hosted Services, or Software does or would infringe, misappropriate or otherwise violate any Intellectual Property Right of any third-party; (ii) challenging Contractor's ownership of, or right to use or license, any software or other materials used or required to be used in connection with the performance or receipt of the Services, or alleging any adverse right, title or interest with respect thereto; or (iii) that, if decided unfavorably to Contractor, would reasonably be expected to have an actual or potential adverse effect on its ability to perform the Services, including Hosted Services, or its other obligations under this Contract, and it has no knowledge after reasonable investigation of any factual, legal or other reasonable basis for any such litigation, claim or proceeding;

(e) the Software, Services (including Hosted Services) will in all material respects conform to and perform in accordance with the Specifications and all requirements of this Contract, including the Availability and Availability Requirement provisions set forth in Exhibit 1 to this **Schedule C**;

(f) all Specifications are, and will be continually updated and maintained so that they continue to be, current, complete and accurate and so that they do and will continue to fully describe the Hosted Services in all material respects such that at no time during the Term or any additional periods during which Contractor does or is required to perform the Services will the Hosted Services have any material undocumented feature;

(g) the Contractor Systems and Services (including Hosted Services) are free of Harmful Code and that Contractor will use its commercial reasonable efforts to ensure that it remains free of Harmful Code;

(h) Contractor will not advertise through the Hosted Services (whether with adware, banners, buttons or other forms of online advertising) or link to external web sites that are not approved in writing by the State;

(i) Contractor will perform all Services in a timely, professional and workmanlike manner with a level of care, skill, practice and judgment consistent with generally recognized industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to

meet Contractor's obligations (including the Availability Requirement and Support Service Level Requirements) under this Contract;

(j) During the term of this Contract, any audit rights contained in any third-party software license agreement or end user license agreement for third-party software incorporated in or otherwise used in conjunction with the Services, will apply solely to Contractor's (or its subcontractors) facilities and systems that host the Services (including any disaster recovery site), and regardless of anything to the contrary contained in any third-party software license agreement or end user license agreement, third-party software providers will have no audit rights whatsoever against State systems or networks; and

(k) Contractor acknowledges that the State cannot indemnify any third parties, including but not limited to any third-party software providers that provide software that will be incorporated in or otherwise used in conjunction with the Services, and that notwithstanding anything to the contrary contained in any third-party software license agreement or end user license agreement, the State will not indemnify any third-party software provider for any reason whatsoever.

5.2 DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS CONTRACT, CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE UNDER OR IN CONNECTION WITH THIS CONTRACT OR ANY SUBJECT MATTER HEREOF.

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

**1.** Nearmap will ensure that its Website and API are generally available to the Licensee 99.5% of the time, 24 hours per day, 365 days per week, excluding reasonable scheduled downtime for system maintenance and updates. Nearmap shall use commercially reasonable efforts to provide the Licensee with prior notice of scheduled downtime at least seven (7) days in advance via its Website at <http://status.nearmap.com/>. Nearmap agrees that, wherever possible, all planned maintenance will be done out of normal operational hours to ensure optimal uptime of its API. When Nearmap becomes aware of any fault, Nearmap will use commercially reasonable efforts to: (i) allocate such resources as may be necessary to remedy the fault; and (ii) otherwise take all commercially reasonable steps to remedy the fault so as to minimize any disruption to the Licensee's use of the Website and API.

## 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 reasonable inquiries regarding the security of the State Data in 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 reasonably expected of a business similar to the Contractor.

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. Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will:
  - a. INTENTIONALLY OMITTED.
  - b. for Hosted Services provided directly by the Contractor, maintain an annual audit based on State required NIST low controls for the Hosted Services throughout the Term;
  - c. ensure that the Software and State Data is securely hosted, supported, administered, and accessed in a data center and backup data center that resides in the continental United States, and use its commercially reasonable efforts to minimally meets Uptime Institute Tier 3 standards ([www.uptimeinstitute.com](http://www.uptimeinstitute.com)), or its equivalent;
  - d. maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State's Confidential Information that comply with the requirements of the State's data security policies as set forth in the Contract, and must, at a minimum, remain compliant with generally with the NIST cybersecurity framework in connection with the security of any data stored or held by Contractor ;
  - e. provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling or processing of such information that ensure a level of security appropriate to the risks presented by the processing of the State's Confidential Information and the nature of such Confidential Information, consistent with best industry practice and standards;
  - f. take all reasonable measures to:
    1. secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Services against "hackers" and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use Contractor Systems or the information found therein; and
    2. prevent (i) the State and its Authorized Users from having access to the data of other customers or such other customer's users of the Services; (ii) INTENTIONALLY OMITTED; and (iii) unauthorized access to any of the State's Confidential Information;
  - g. ensure that State Data is encrypted in transit using best practice encryption modules with a key size of 128 bits or higher;
  - h. INTENTIONALLY OMITTED
  - i. if requested by State, it will ensure the Hosted Services support Identity Federation capabilities using Security Assertion Markup Language (SAML) or comparable mechanisms;
  - j. INTENTIONALLY OMITTED
  - k. INTENTIONALLY OMITTED

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") and shall prevent unauthorized access to State systems through the Contractor Systems.
  
7. **Security Audits.** During the Term, Contractor will:
  - a. maintain complete and accurate records relating to its data protection practices, IT security controls, and the security logs of its data generally, including any backup, disaster recovery or other policies, practices or procedures relating to all of its data generally;
  - b. upon the State's request, make records, and relevant materials in respect of State Data connected with the Contractor Services available during normal business hours for inspection, 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 inspection 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; and
  
8. **INTENTIONALLY OMITTED**
  
9. **INTENTIONALLY OMITTED**
  
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 where such breach remains uncured by Contractor for a period of 5 days following notice of the breach from the State 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 [41 CFR Part 60-1.3](#), and except as otherwise may be provided under [41 CFR Part 60](#), 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 [Executive Order 11246](#) 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 [Executive Order 11246](#) 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 ([40 USC 3141-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "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 29C.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) Contractor. 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) Subcontracts. 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) Breach. 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 [40 USC 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)), 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) Subcontracts. 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 ([42 USC 7401-7671q](#)) and the Federal Water Pollution Control Act ([33 USC 1251-1387](#)), and during performance of this Contract the Contractor agrees as follows:

### **Clean Air Act**

1. 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.
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.

### **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 [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management](#) (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement [Executive Orders 12549](#) (51 FR 6370; February 21, 1986) and 12689 (54 FR 34131; August 18, 1989), “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 [2 CFR 200.322](#), 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) **Access to Records.** 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.**

**The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.**

\_\_\_\_\_  
**Signature of Contractor's Authorized Official**

\_\_\_\_\_  
**Name and Title of Contractor's Authorized Official**

\_\_\_\_\_  
**Date**