Awarded Vendor
0000042270
Intergraph Corporation dba Hexagon Geospatial
305 Intergraph Way
Madison, AL 35758

Attn: Doug Hawkins, Contracts Manager
Telephone No.: (256) 730-1369

Ship To:
All State of New Mexico Agencies, Commissions, Institutions, Political Subdivisions and Local Public Bodies allowed by law.

Invoice:
As Requested

Price Agreement Number: 60-000-16-00039AB
Price Agreement Amendment No.: One
Term: December 8, 2016 – November 30, 2020

Procurement Specialist: Debra Saiz
Telephone No.: (505) 827-0521
eMail: DebraS.Saiz@state.nm.us

Title: Geospatial Information Technology Software as a Service (SaaS)
Standalone Software and Other Related Services

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

This amendment is issued to reflect the following effective modifications immediately.

- The TERM of the Price Agreement is extended from November 30, 2018 through November 30, 2020.

Except as modified by this amendment, the provisions of the Contract shall remain in full force and effect.

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 12/17/2018

Purchasing Division, 1100 St. Francis Drive 87505, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472

DS
THIS AGREEMENT is made and entered into by and between the State of New Mexico, Department of Information Technology, hereinafter referred to as the “Procuring Agency”, and Intergraph Corporation d/b/a Hexagon Geospatial hereinafter referred to as the “Contractor”.

The purpose of this Amendment is to extend the term of the agreement for two years to November 30 2020 as outlined in Article 5 – Term.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING PROVISIONS OF THE ABOVE-REFERENCED CONTRACT ARE AMENDED AS FOLLOWS:

1. **Terms and Conditions.**
   a. **ARTICLE 5 – TERM**
      THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT AND THE STATE PURCHASING AGENT. This Agreement shall terminate on November 30, 2020, unless terminated pursuant to Article 6 with no remaining renewals. The contract term, including extensions and renewals, shall not exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

      All other Articles and Deliverables of the original contract remain the same.
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By: Estevan Lujan, Acting Cabinet Secretary
Department of Information Technology
Date: 12/10/18

By: Michael Patton, Sr. Div. Counsel & Director of
Global Contracts
Intergraph Corporation d/b/a Hexagon Geospatial
Date: 11/19/2018

Approved for legal sufficiency:

By: Maria R. Sanchez, General Counsel
Department of Information Technology
Date: Nov 29 2018

By: Donna M. Sandoval, Chief Financial Officer
Department of Information Technology
Date: 12/17/2018
The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes:

CRS ID Number: **02020233004**

By: [Signature]  
Taxation & Revenue Department  
Date: **12-17-18**

Approved as to information technology contractual specifications and compliance with the Department of Information Technology Act, Chapter 9, Article 27 NMSA 1978 and Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico.

By: [Signature]  
Maria R. Sanchez, Acting State Chief Information Officer  
Department of Information Technology  
Date: **Nov 29 2018**

This Agreement has been approved by the State Purchasing Agent:

By: [Signature]  
Lawrence O. Maxwell  
Purchasing Agent for the State of New Mexico  
Date: **12/17/18**
State of New Mexico
General Services Department

Statewide Price Agreement

Awarded Vendor
0000042270
Intergraph Corporation d/b/a Hexagon Geospatial
305 Intergraph Way
Madison, AL 35758
Attn: Doug Hawkins, Contracts Manager
Telephone No. 256-730-1369

Ship To:
New Mexico Department of Information Technology
715 Alta Vista Street
Santa Fe, NM 87505

Invoice:
Same as “Ship To”

For questions regarding this contract please contact:
Gar Clarke 505-827-1663

Contract Number: 60-000-16-00039AB
Payment Terms: Net 30
F.O.B.: See Contract
Delivery: See Contract

Procurement Specialist: Debra Saiz DS
Telephone No.: 505-827-0521

Title: Geospatial Information Technology Software as a Service (SAAS)
Standalone Software Products and Other Related Services

Term: December 08, 2016 through November 30, 2018

This Statewide Price Agreement is made subject to the “terms and conditions” shown on the attached pages, and as indicated in this Agreement.

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 12/08/2016

NM State Purchasing Division, 1100 St. Francis Drive, PO Box 6850, Santa Fe, NM 87502-6850 Ph:(505) 827-0472 DS
State of New Mexico

STATEWIDE PRICE AGREEMENT

GEOSPATIAL INFORMATION TECHNOLOGY SOFTWARE PRODUCTS

AND RELATED SERVICES

Price Agreement No. 60-000-16-00039AB

THIS Information Technology Agreement ("Agreement" or "Contract") is made by and between the State of New Mexico, Department Information Technology hereinafter referred to as the "Procuring Agency" and Intergraph Corporation d/b/a Hexagon Geospatial hereinafter referred to as the "Contractor" and collectively referred to as the "Parties".

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 et. seq; and Procurement Code Regulations, NMAC 1.4.1 et.seq; the Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

WHEREAS, all terms and conditions of the RFP#60-000-16-00039, "Geospatial Information Technology Software as a Service (SaaS) or Standalone Software Products and Other Related Services and the Contractor's response to such document(s) are incorporated herein by reference; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1 – DEFINITIONS

A. "Acceptance" or "Accepted" shall mean the approval, after Quality Assurance, of all Deliverables by an Executive Level Representative of the Procuring Agency.

B. "Application Deployment Package" shall mean the centralized delivery of business critical applications including the source code (for custom software), documentation, executable code and deployment tools required to successfully install application software fixes including additions, modifications, or deletions produced by the Contractor.

C. "Business Days" shall mean Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for federal or state holidays.

D. "Change Request" shall mean the document utilized to request changes or revisions in the Scope of Work – Exhibit A, attached hereto and incorporated herein.

E. "Chief Information Officer ("CIO") shall mean the Cabinet Secretary/CIO of the Department of Information Technology for the State of New Mexico or Designated Representative.
F. "Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of: (1) confidential client information as such term is defined in State or Federal statutes and/or regulations; (2) all non-public State budget, expense, payment and other financial information; (3) all attorney-client privileged work product; (4) all information designated by the Procuring Agency or any other State agency as confidential, including all information designated as confidential under federal or state law or regulations; (5) unless publicly disclosed by the Procuring Agency or the State of New Mexico, the pricing, payments, and terms and conditions of this Agreement, and (6) State information that is utilized, received, or maintained by the Procuring Agency, the Contractor, or other participating State agencies for the purpose of fulfilling a duty or obligation under this Agreement and that has not been publicly disclosed.

G. "Contract Manager" shall mean a Qualified person from the Procuring Agency responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager shall be the General Services Department State Purchasing Division in coordination with the Department of Information Technology.

H. "Default" or "Breach" shall mean a violation of this Agreement by either failing to perform one's own contractual obligations or by interfering with another Party's performance of its obligations.

I. "Deliverable" shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.

J. "Designated Representative" shall mean a substitute(s) for a title or role, e.g. Contract Manager, when the primary is not available.

K. "DoIT" shall mean the Department of Information Technology.

L. "DFA" shall mean the Department of Finance and Administration; "DFA/CRB" shall mean the Department of Finance and Administration, Contracts Review Bureau.

M. "Escrow" shall mean a legal document (such as the software source code) delivered by the Contractor into the hands of a third party, and to be held by that party until the performance of a condition is Accepted; in the event Contractor fails to perform, the Procuring Agency receives the legal document, in this case, Source Code.

N. "Enhancement" means any modification including addition(s), modification(s), or deletion(s) that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an error correction.

O. "Executive Level Representative" shall mean the individual empowered with the authority to represent and make decisions on behalf of the Procuring Agency's executives or his/her Designated Representative.

P. "GRT" shall mean New Mexico gross receipts tax.

Q. "Intellectual Property" shall mean any and all proprietary information developed pursuant to the terms of this Agreement.

R. "Independent Verification and Validation ("IV&V")" shall mean the process of evaluating a Project and the Project's product to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an entity independent of the Procuring Agency.
“Know How” shall mean all technical information and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.

“Payment Invoice” shall mean a detailed, certified and written request for payment of services by and rendered from the Contractor to the Procuring Agency. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the Payment Invoice is submitted.

“Performance Bond” shall mean a surety bond which guarantees that the Contractor will fully perform the Contract and guarantees against breach of contract.

“Project” shall mean a temporary endeavor undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The Project terminates once the Project scope is achieved and the Project approval is given by the Executive Level Representative and verified by the Procuring Agency CIO to the DoIT.

“Project Manager” shall mean a Qualified person from the Procuring Agency responsible for the application of knowledge, skills, tools, and techniques to the Project activities to meet the Project requirements from initiation to close. Under the terms of this Agreement, the Project Manager shall be identified by the procuring agency when contracting for services.

“Qualified” means demonstrated experience performing activities and tasks with Projects.

“Quality Assurance” shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.

“Services” shall mean the tasks, functions, and responsibilities assigned and delegated to the Contractor under this Agreement.

"State Purchasing Agent (SPA)" shall mean the State Purchasing Agent for the State of New Mexico or his/her Designated Representative.

“State Purchasing Division (SPD)” shall mean the State Purchasing Division of the General Services Department for the State of New Mexico.

“Software” shall mean all operating system and application software used by the Contractor to provide the Services under this Agreement.

“Software Maintenance” shall mean the set of activities which result in changes to the originally Accepted (baseline) product set. These changes consist of corrections, insertions, deletions, extensions, and Enhancements to the baseline system.

“Source Code” shall mean the human-readable programming instructions organized into sets of files which represent the business logic for the application which might be easily read as text and subsequently edited, requiring compilation or interpretation into binary or machine-readable form before being directly usable by a computer.

“Turnover Plan” means the written plan developed by the Contractor and approved by the Procuring Agency in the event that the work described in this Agreement transfers to another vendor or the Procuring Agency.
**Additional Terms:**

A. "Commercial off the shelf" or "COTS" or "COTS Product(s)" means a product that is used as-is. Specifically, COTS products are pre-developed and pre-packaged by Contractor at its own expense and its own specifications. COTS Software products per Exhibit A of this Agreement are designed to be installed and to interoperate with standard existing system components.

B. "Hourly Rate" means the proposed fully loaded maximum hourly rates must include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

C. "Software as a Service (SaaS)" means the capability provided to the customer to use the Contractor's software products/applications running on a cloud infrastructure. The software products/applications are accessible from various client devices through a thin client interface such as a Web browser (e.g., Web-based email), a mobile application, or a program interface. The customer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings. The customer subscribes to the service getting the right to use the software, , for as long as the customer pays the recurring subscription fees, the Contractor makes both major and minor updates to the software for free (no added fees to the subscription fee), and the customer automatically gets the updates as part of the subscription fee.

D. "Standalone Software" means software that is installed and maintained on the customer's computer and the software and hardware management is handled by the customer, unless it is included in the software maintenance and support provided by the Contractor. This software does not work from the cloud or over the internet, it works from files saved to the customer's computer or network.

E. "Work made for hire" as used in this Price Agreement means an order for IT Professional Services performed by Contractor that is related to COTS software as it applies to Appendix C-3 of Exhibit A outlined in this Agreement.

**ARTICLE 2 – SCOPE OF WORK**

A. **Scope of Work.** The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference.

1. The Contractor shall be limited to the GIT Products in this Price Agreement as outlined in Exhibit A to include any approved amendments, attached hereto and incorporated herein by reference. There are no volume or purchase commitments as to any specific dollar amount which will be contracted by the Procuring Agency or the State as a whole.

2. Under the terms and conditions of this Price Agreement all State all State of New Mexico agencies, commissions, institutions, political subdivisions, and local public bodies allowed by law (hereinafter “Authorized Entities”) may issue orders for products and/or services described herein. The terms and conditions of this Price Agreement shall govern and control each order issued hereunder. However, the State is not responsible for the transactions between the Contractor and non-state entities.
3. The Price Lists found in Exhibit A, attached hereto and incorporated herein by reference will remain fixed for the first two (2) years. Any increase in pricing thereafter from year to year may be negotiated by the Parties. Any pricing reductions will be submitted to DoIT and SPD for review and approval.

4. The IT Professional Services Contract with the terms and conditions from this Agreement must be used for any contracted services from Appendix C-3, see link [http://www.doit.state.nm.us/contracts.html](http://www.doit.state.nm.us/contracts.html).

5. The Contractor may make changes to its GIT product price list outlined in Exhibit A by submitting its updated list to DoIT for review and approval. The Contractor must clearly identify the reason for the update by providing the following information:
   a. New GIT Products: The new GIT Price Listing submitted by the Contractor MUST NOT include the same products outlined in Exhibit A of this Agreement and must be labeled as “New GIT Price Listing” using the same format as outlined in Exhibit A of this Agreement.
   b. Upgrades to the Existing GIT Products: Any upgrades to the GIT Price Listing submitted by the Contractor must be labeled as “Upgrades to Existing GIT Price Listing” with reference to the item number and description of the existing price listings and using the same format as outlined in Exhibit A of this Agreement.
   c. Discontinued GIT Products: any discontinued products must be clearly identified as “Discontinued Products to Existing GIT Price Listing” using the item number and description in the existing price listing and using the same format as outlined in this Agreement.

B. Performance Measures. The Contractor shall substantially perform to the satisfaction of the Procuring Agency the Performance Measures set forth in Exhibit A. In the event the Contractor fails to obtain the results described in Exhibit A, the Procuring Agency may provide written notice to the Contractor of the Default and specify a reasonable period of time in which the Contractor shall advise the Procuring Agency of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in this Section shall be construed to prevent the Procuring Agency from exercising its rights pursuant to Article 6 or Article 16.

C. Schedule. The Contractor shall meet the due dates, as set forth in Exhibit A, which due dates shall not be altered or waived by the Procuring Agency without prior written approval, through the Amendment process, as defined in Article 25.

D. License. The Contractor provides a license for use of its proprietary COTS Software. The software license is referred to herein as End User License Agreement, See Exhibit B-Attachment D-End User License Agreement.

The right to copy the Software is limited to the following purposes: archival, backup and training. All archival and backup copies of the Software are subject to the provisions of this Agreements, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.
If the Contractor ceases to do business or ceases to support this Project or Agreement and it does not make adequate provision for continued support of the Software it provided the Procuring Agency; or, if this Agreement is terminated, or if the Contractor Breaches this Agreement, the Contractor shall make available to the Procuring Agency: 1) the latest available Software program Source Code and related documentation meant for the Software provided or developed under this Agreement by the Contractor and listed as part of the Services; 2) the Source Code and compiler/utilities necessary to maintain the system; and, 3) related documentation for Software developed by third parties to the extent that the Contractor is authorized to disclose such Software. In such circumstances, Procuring Agency shall have an unlimited right to use, modify and copy the Source Code and documentation.

E. **Source Code.** Not Applicable. The Parties agree there is no Source Code to be held in escrow.

F. **The Procuring Agency’s Rights.**
   1. **Rights to Software.** The Parties agree the Contractor will provide the Procuring Agency and Authorized Entity rights to the COTS software based on the Contractor’s End User License Agreement attached as Exhibit B Attachment D.
   2. **Proprietary Rights.** Not Applicable. The Parties agree the Procuring Agency does not have proprietary rights to the COTS Software outlined in Exhibit A of this Agreement.
   3. **Rights to Data.** Not Applicable. The Parties agree the Procuring Agency will not be storing any data on the Contractor’s servers or within the Contractor’s custody as it applies to this Agreement.

**ARTICLE 3 - COMPENSATION**

A. **Compensation Schedule.** The Procuring Agency shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit A, less retainage, if any, as identified in Paragraph D.

B. **Payment.** The total compensation under this Agreement shall not exceed the cost to be paid for Geospatial Information Technology Software Products and Other Related Services rendered and accepted, per the schedule outlined in Exhibit A. The cost schedule(s) outlined in Exhibit A exclude New Mexico gross receipts tax. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Procuring
Agency when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.

Payment shall be made upon Acceptance of each Deliverable according to Article 4 and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the Procuring Agency no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

C. Taxes.

The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage. For any work made for hire, the Procuring Agency shall retain twenty percent (20%) of the fixed-price Deliverable cost for each Deliverable that is the subject of this Agreement as security for full performance of this Agreement. All amounts retained shall be released to the Contractor upon Acceptance of the final Deliverable.

E. Performance Bond. Not Applicable. The Parties agree there is no Performance Bond.

**ARTICLE 4 – ACCEPTANCE**

A. Submission. Upon completion of agreed upon Deliverables as set forth in Article 2 and Exhibit A, Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the Procuring Agency. Each Payment Invoice shall be for the fixed Deliverable price as set forth in Article 2 and Exhibit A, less retainage as set forth in Article 3(D).
B. **Acceptance.** In accord with Section 13-1-158 NMSA 1978, the Executive Level Representative shall determine if the Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been Accepted, in writing, by the Executive Level Representative. In order to Accept the Deliverable, the Executive Level Representative, in conjunction with the Project Manager, will assess the Quality Assurance level of the Deliverable and determine, at a minimum, that the Deliverable:

1. Complies with the Deliverable requirements as defined in Article 2 and Exhibit A;
2. Complies with the terms and conditions of the **RFP#60-000-16-00039**
3. Meets the performance measures for the Deliverable(s) and this Agreement;
4. Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
5. Complies with all the requirements of this Agreement.

If the Deliverable is deemed Acceptable under Quality Assurance by the Executive Level Representative or their Designated Representative, the Executive Level Representative will notify the Contractor of Acceptance, in writing, within fifteen (15) Business Days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice.

C. **Rejection.** Unless the Executive Level Representative gives notice of rejection within the fifteen (15) Business Day Acceptance period, the Deliverable will be deemed to have been Accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (15) Business Days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have ten (10) Business Days to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within fifteen (15) Business Days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall be deemed as in breach of this Agreement. The Procuring Agency may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the Procuring Agency may terminate this Agreement.
ARTICLE 5 – TERM

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT AND THE STATE PURCHASING AGENT. This Agreement shall terminate on November 30, 2018, or two years from the date on which it is executed by all Parties, unless terminated pursuant to Article 6. The Agreement shall be for two calendar years in duration with the option to renew on an annual basis or for another 2 (two) years. The contract term, including extensions and renewals, shall not exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

ARTICLE 6 – TERMINATION

A. Grounds. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency’s uncured, material breach of this Agreement.

B. Appropriations. By the Procuring Agency, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement. The Procuring Agency’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency terminates this Agreement pursuant to this subsection, the Procuring Agency shall provide the Contractor written notice of such termination at least fifteen (15) Business Days prior to the effective date of the termination.

C. Notice; Agency Opportunity to Cure.

1. Except as otherwise provided in Paragraph (3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency’s material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor’s notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.
3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, “Appropriations”, of this Agreement.

D. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency’s sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor’s receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party’s liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination.
ARTICLE 7 – TERMINATION MANAGEMENT

A. Contractor: In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:

1. Transfer, deliver, and/or make readily available to the Procuring Agency property in which the Procuring Agency has a financial interest and any and all data, property of the Procuring Agency;
2. Incur no further financial obligations for materials, Services, or facilities under the Agreement without prior written approval of the Procuring Agency;
3. Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the Procuring Agency may direct, for orderly completion and transition;
4. Take such action as the Procuring Agency may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
5. Agree that the Procuring Agency is not liable for any costs arising out of termination and that the Procuring Agency is liable only for costs of Deliverables Accepted prior to the termination of the Agreement;
6. Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of Procuring Agency’s programs;
7. In the event that this Agreement is terminated due to the Contractor’s course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the Procuring Agency’s receipt of program funds from any governmental agency, the Contractor shall remit to the Procuring Agency the full amount of the reduction;
8. Should this Agreement terminate due to the Contractor’s Default, the Contractor shall reimburse the Procuring Agency for all costs arising from hiring new Contractor/subcontractors at potentially higher rates and for other costs incurred;
9. In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall develop and submit to the Procuring Agency for approval an Agreement Termination Plan at least ten (10) Business Days prior to the effective date of termination. Such Turnover Plan shall describe the Contractor’s policies and procedures that will ensure: (1) the least disruption in the delivery of Services during the transition to a substitute vendor; and (2) cooperation with the Procuring Agency and the substitute vendor in transferring information and Services. The Turnover Plan shall consist of the orderly and timely transfer of files, data, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the Procuring Agency or
created by the Contractor under this Agreement, to the Procuring Agency, including but not limited to, user manuals with complete documentation, functional technical descriptions of each program and data flow diagrams. At the request of the Procuring Agency, the Contractor shall provide to the Procuring Agency a copy of the most recent versions of all files, software, Know How, Intellectual Property and documentation, whether provided by the Procuring Agency or created by the Contractor under this Agreement.

B. **Procuring Agency.** In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Procuring Agency shall:
   1. Not including Contractor’s intellectual property for work made for hire, retain ownership of all work products and documentation created pursuant to this Agreement; and
   2. Pay the Contractor all amounts due for Services Accepted prior to the effective date of such termination or expiration.

### ARTICLE 8 – INDEMNIFICATION

A. **General.** The Contractor shall defend, indemnify and hold harmless the Procuring Agency, the State of New Mexico and its employees from all actions, proceedings, claims, demands, costs, damages, attorneys’ fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, during the time when the Contractor, its officer, agent, employee, servant or subcontractor thereof has or is performing Services pursuant to this Agreement. In the event that any action, suit or proceeding related to the Services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable, but no later than two (2) Business Days after it receives notice thereof, notify, by certified mail, the legal counsel of the Procuring Agency, the Risk Management Division of the New Mexico General Services Department, and the DoIT.

B. The indemnification obligation under this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Agreement. Money due or to become due to the Contractor under this Agreement may be retained by the Procuring Agency, as necessary, to satisfy any outstanding claim that the Procuring Agency may have against the Contractor.

C. The indemnification obligations stated in this Article and Article 10 are conditioned upon the following: (1) Procuring Agency will work cooperatively with Contractor in the defense of
the indemnified claim and any negotiations for its settlement or compromise provided Contractor may not agree to any settlement that involves injunctive or equitable relief affecting the Procuring Agency or the State of New Mexico or an admission of liability by Procuring Agency or the State of New Mexico without first obtaining its written consent, which shall not be unreasonably withheld; (2) the Procuring Agency shall cooperate with Intergraph in its defense of any indemnified claim; (3) the indemnified claim is not the result of the negligence or willful misconduct of the Procuring Agency;

**ARTICLE 9 – INTELLECTUAL PROPERTY**

For work made for hire, under this Agreement the Contractor retains ownership of all Intellectual Property and hereby acknowledges and grants to the Procuring Agency and the State of New Mexico, a license to use the Intellectual Property and Know How created or conceived pursuant to, or as a result of, performance of this Agreement. Any professional services provided by the Contractor shall be in support of the Contractor’s COTs software products outlined in Exhibit A.

**ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION**

A. Intellectual Property Indemnification. The Contractor shall defend, at its own expense, the Procuring Agency, the State of New Mexico and/or any other State of New Mexico body against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall pay all costs, damages and attorney’s fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the Procuring Agency based upon Contractor’s trade secret infringement relating to any product or Services provided under this Agreement, the Contractor agrees to reimburse the Procuring Agency for all costs, attorneys’ fees and the amount of the judgment. To qualify for such defense and/or payment, the Procuring Agency shall:
1. Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
2. Work with the Contractor to control the defense and settlement of the claim; and
3. Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

B. Procuring Agency Rights. If any product or service becomes, or in the Contractor’s opinion is likely to become, the subject of a claim of infringement, the Contractor shall, at its sole expense:
1. Provide the Procuring Agency the right to continue using the product or service and fully indemnify the Procuring Agency against all claims that may arise out of the Procuring Agency’s use of the product or service;
2. Replace or modify the product or service so that it becomes non-infringing; or
3. Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's
obligation will be void as to any product or service modified by the Procuring Agency to the extent such modification is the cause of the claim.

**ARTICLE 11 - WARRANTIES**

**A. General.** The Contractor hereby expressly warrants the Deliverable(s) as being correct and compliant with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverable(s) and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases.

The Contractor’s products are warranted, when properly installed, to operate in substantial conformity with product specifications during the initial warranty period and for any extended warranty or maintenance period that may be purchased thereafter. The Contractor’s products are provided with a warranty (5 days per week, 8 hours per day) up to the point of Sub-system Cutover to live operation. The cost of this warranty is included in the price of the Sub-system. After the initial warranty period, the Procuring Agency may purchase an extended warranty or maintenance services that include mission critical support (7 days per week, 24 hours per day). The cost and length of time for an extended warranty or maintenance services if purchased, is reflected in Exhibit A, Exhibit C-2.

**B. Software.** The Contractor warrants that any software or other products delivered under this Agreement shall comply with the terms of this Agreement, Contractor’s official published specification(s) and technical specifications of this Agreement and all generally accepted industry standards. The Contractor further warrants that the software provided under this Agreement will meet the applicable specifications for 30 days from the date of receipt by the Procuring Agency and after Acceptance by the Executive Level Representative and implementation by the Procuring Agency. If the software fails to meet the applicable specifications during the warranty period, the Contractor will correct the deficiencies, at no additional cost to the Procuring Agency, so that the software meets the applicable specifications.

The Contractor warrants that any COTS software products delivered under Agreement shall comply with the terms of this Agreement, Contractor's official published Documentation and media on which the Software, and Documentation are free from Defects in materials and workmanship under normal use and for a period of thirty (30) days from the date of receipt by the Procuring Agency, If the software fails to meet the Documentation during the warranty period, the Contractor will correct the deficiencies, at no added cost to the Procuring Agency, so that the software meets the published Documentation.
ARTICLE 12 – CONTRACTOR PERSONNEL

A. **Key Personnel.** Contractor’s key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:
   - Project Manager
   - Program Manager
   - Training Specialist Trainer
   - Industry Consultant
   - Developer
   - Lead Developer
   - Lead Implementer
   - Architect
   - Data Specialist
   - Data Implementation
   - Tester Support Lead Support Implementer

B. **Personnel Changes.** Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor’s personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor’s personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency’s expectations.

ARTICLE 13 – STATUS OF CONTRACTOR

A. **Independent Contractor.** The Contractor and its agents and employees are independent contractors performing professional Services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.
B. **Subject of Proceedings.** Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the Procuring Agency.

**ARTICLE 14 - CHANGE MANAGEMENT**

A. **Changes.** Contractor may only make changes or revisions within the Scope of Work as defined by Article 2 and Exhibit A after receipt of written approval by the Executive Level Representative. Such change may only be made to Tasks or Sub-Task as defined in the Exhibit A. Under no circumstance shall such change affect the:

1. Deliverable requirements, as outlined in Exhibit A;
2. Due date of any Deliverable, as outlined in Exhibit A;
3. Compensation of any Deliverable, as outlined in Exhibit A;
4. Agreement compensation, as outlined in Article 3; or
5. Agreement termination, as outlined in Article 5.

B. **Change Request Process.** In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria:

1. The Project Manager shall draft a written Change Request for review and approval by the Executive Level Representative to include:
   (a) the name of the person requesting the change;
   (b) a summary of the required change;
   (c) the start date for the change;
   (d) the reason and necessity for change;
   (e) the elements to be altered; and
   (f) the impact of the change.

2. The Executive Level Representative shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the Executive Level Representative are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.
ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

A. If IV&V professional Services are used or required to be used for the Project associated with this Agreement, the Contractor hereby agrees to cooperate with the IV&V vendor. Such cooperation shall include, but is not limited to:
   1. Providing the Project documentation;
   2. Allowing the IV&V vendor to sit in on the Project meetings; and
   3. Supplying the IV&V vendor with any other material as directed by the Project Manager.

B. If this Agreement is for IV&V professional Services then the Contractor agrees to:
   1. Submit all reports directly to the Department of Information Technology, Project Oversight and Compliance Division (ivandv.reports@state.nm.us) according to the DoIT IV&V Reporting Template and Guidelines found on the DoIT website, http://www.doit.state.nm.us/project_templates.html, and copy the Procuring Agency.
   2. Use a report format consistent with the current DoIT IV&V Reporting Template and Guidelines found on the DoIT website, http://www.doit.state.nm.us/project_templates.html.

ARTICLE 16 – DEFAULT/BREACH

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs, subject to the limitations of liability contained herein.

ARTICLE 17 – EQUITABLE REMEDIES

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency’s obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency’s rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

ARTICLE 18 - LIABILITY

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property at any time, in any way, if and to the extent that the injury or damage was caused by or due to the fault or negligence of the Contractor or a defect of any equipment provided or installed, provided in whole or in part by the Contractor pursuant to the Agreement.
Contractor shall not be liable for damages arising out of, or caused by, alterations made by the Procuring Agency to any equipment or its installation or for losses caused by the Procuring Agency’s fault or negligence. Nothing in this Agreement shall limit the Contractor’s liability, if any, to third parties and/or employees of the Procuring Agency or the State of New Mexico, or any remedy that may exist under law or equity in the event a defect in the manufacture or installation of the equipment, or the negligent act or omission of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

Except for damages arising under indemnification responsibilities, in no event shall the Contractor be liable for any indirect, incidental, consequential, punitive or special damages regardless of the legal theory under which such damages are incurred. Except for damages arising under indemnification responsibilities, Contractor’s total liability for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause shall not exceed two (2) times the contract amount. Except as otherwise provided by applicable law, no claim, regardless of form, arising out of or in connection with this Agreement may be brought by CUSTOMER more than two (2) years after the cause of action has occurred.

ARTICLE 19 – ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of this Agreement's approval authorities.

ARTICLE 20 – SUBCONTRACTING

A. General Provision. The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the Procuring Agency. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting oblige payment from the Procuring Agency.

B. Responsibility for subcontractors. The Contractor must not disclose Confidential Information of the Procuring Agency or of the State of New Mexico to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of the Contractor under this Agreement.

ARTICLE 21 – RELEASE

The Contractor’s Acceptance of final payment of the amount due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.
ARTICLE 22 – CONFIDENTIALITY

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

ARTICLE 23 – CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or Services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee have been followed.

ARTICLE 24 - RECORDS AND AUDIT

A. The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of Services rendered during this Agreement’s term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, CIO, SPA, and DFA and the New Mexico State Auditor’s Office. The Procuring Agency shall have the right to audit billings both before and after payment. Payment for Services under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

ARTICLE 25 - AMENDMENT

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities. Amendments are required for the following:

1. Deliverable requirements, as outlined in Exhibit A;
2. Due Date of any Deliverable, as outlined in Exhibit A;
3. Compensation of any Deliverable, as outlined in Exhibit A;
4. Agreement Compensation, as outlined in Article 3; or
5. Agreement termination, as outlined in Article 5.

ARTICLE 26 – NEW MEXICO EMPLOYEES HEALTH COVERAGE

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: http://insurenewmexico.state.nm.us/.

D. For Indefinite Quantity, Indefinite Delivery contracts (state price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the Contractor reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of $250,000.

ARTICLE 27 – NEW MEXICO EMPLOYEES PAY EQUITY REPORTING

A. The Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for Agreements up to one (1) year in duration. If Contractor has (250) or more employees Contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for Agreements up to one (1) year in duration. For Agreements that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual Agreements anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the Agreements, whichever comes first. Should Contractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed
the size requirement for reporting, Contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

B. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than ten percent (10%) of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of this Agreement. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.

C. Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

**ARTICLE 28 – MERGER, SCOPE, ORDER OF PRECEDENCE**

A. **Severable.** The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or agency or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.

B. **Merger/Scope/Order.** This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement. In the event of any inconsistencies between various documents comprising this Agreement, the order of precedence will apply in ascending order of control: (1) This Agreement, (2) the Exhibit A to the Agreement, (3) the RFP including RFP amendments, (4) and other exhibits to this Agreement. Contractor agrees all purchases made under or resulting from this Price Agreement shall be controlled and governed by the terms and conditions as set forth in this Agreement regardless of type of purchase or language in subsequent agreements including
but not limited to end user licenses, leases, scopes of work, other license agreements, or quotes provided by the Contractor or a third party. This Agreement will be the controlling and governing document for any claims questions or differences between the parties arising from purchases made from this Agreement.

**ARTICLE 29 – NOTICES**

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or upon telephone confirmation by Contractor to the sender of receipt of a facsimile communication that is followed by a mailed hard copy from the sender. Notices shall be addressed as follows:

**For PROCURING AGENCY**

To SPA:
State Purchasing Agent  
Purchasing Division  
Joseph M. Montoya State Building, Room 2016  
1100 St. Francis Dr.  
Phone: (505) 827-0472

With a copy to DoIT:
Phil Bachicha, Procurement Specialist  
Contracts and Procurement Bureau  
Department of Information Technology  
715 Alta Vista  
Santa Fe, NM 87502  
Phone: (505) 476-3469

**For CONTRACTOR**

Doug Hawkins, Contracts Manager  
Hexagon Geospatial,  
Doug.hawkins@hexagonsi.com  
305 Intergraph Way  
Madison, AL 35758  
Office: 256 730-1369

Any change to the Notice individual or the address, shall be effective only in writing.

**ARTICLE 30 – GENERAL PROVISIONS**

A. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, including but not limited to:
1. **Civil and Criminal Penalties.** The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

2. **Equal Opportunity Compliance.** The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

3. **Workers Compensation.** The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

**B. Applicable Law.** The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits arising under or out of any term of this Agreement.

**C. Waiver.** A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**D. Headings.** Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

**ARTICLE 31 - SURVIVAL**

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement.
ARTICLE 32 - TIME

Calculation of Time. Any time period herein calculated by reference to "days" means calendar days, unless Business Days are used; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

ARTICLE 33 – FORCE MAJEURE

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or Default in performing hereunder if such delay or Default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

ARTICLE 34 – ADDITIONAL PROVISIONS

1. Proprietary Owner of GIT Software Products. The Contractor must be the proprietary owner of the GIT products for this Agreement.

2. GIT Open Source Software. The Contractor is responsible for the open source used in its GIT Software Products that is used in its software solution for SaaS to meet the needs of the State of New Mexico.

3. Tracking GIT Software Product Licenses and Purchases. The Contractor must provide a report on all product and services associated from any sales using this Agreement to the NM Geospatial and Broadband Program Manager at nm.geospatial@state.nm.us with the New Mexico Department of Information Technology based on the following schedule:

<table>
<thead>
<tr>
<th>Period End</th>
<th>Report Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 30</td>
<td>October 31</td>
</tr>
<tr>
<td>December 31</td>
<td>January 31</td>
</tr>
<tr>
<td>March 31</td>
<td>April 30</td>
</tr>
<tr>
<td>June 30</td>
<td>July 31</td>
</tr>
</tbody>
</table>

The periodic report must include the following elements:

a. The product and/or service line item description related to any sales using the same description documented in the price listings in this Agreement.

b. The gross total sales for the period subtotaled by procuring agency or local public body name.

4. Notification to the Purchasing Entity for GIT Software Product Upgrades, Appendix H Standalone: The Contractor will notify the purchasing entity of any updates to include major or minor updates by submitting the information provided in the “Notification Form to Customer for Software Updates”, Appendix H at least 5 calendar days before the update is
released or made available to the customer by email, newsletter, and website to the GIS Manager/Coordinator for that purchasing entity. This is at no added cost to the Standalone Software Products.

5. Technical Support Availability for Maintenance and Support of GIT Software Products
   Standalone: The Contractor will provide technical support for its maintenance and support services from 8:00 am – 5:00 pm MDT excluding holidays. This is at no added cost to the purchase cost of the standalone software product and the maintenance and support services.

6. Maintenance and Support Response Time for GIT Software Products. The Contractor will meet the minimum quality service metrics in the table below to meet the State’s quality service needs for Standalone maintenance and support for its GIT products.

<table>
<thead>
<tr>
<th>No</th>
<th>Severity Level</th>
<th>Description of Severity Level</th>
<th>Response from Contractor upon Receipt of Problem from Customer</th>
<th>Response time to Fix the Problem Reported</th>
<th>Notification from Contractor to Customer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Priority 1</td>
<td>A problem or issue impacting a significant group of customers or any mission critical issue affecting a single customer. This would include issues of loss of data or data corruption where no workaround is available.</td>
<td>Contractor will respond via telephone M-F, 7:00AM-7:00PM Central Time – Immediate* to the customer upon receipt of a problem. Other such as logged by the web – within two business hours of notification.</td>
<td>Due to the unpredictable nature of these issues an escalation procedure is available to the customer to arrange for requesting a patch for the Priority 1 issue they file. Once escalated the customer can be informed of the status as progress is made on the requested fix.</td>
<td>Once escalated updates can be provided at intervals requested by the customer.</td>
</tr>
<tr>
<td>2</td>
<td>Priority 2</td>
<td>Non critical but significant issue affecting a single user; or an issue that is degrading the performance and reliability of supported services; however, the services are still operational. Support issues that could escalate to Critical if not</td>
<td>Contractor will respond via telephone M-F, 7:00AM-7:00PM Central Time – Immediate* to the customer upon receipt of a problem. Other such as logged by the web – within</td>
<td>Due to the unpredictable nature of these issues an escalation procedure is available to the customer to arrange for</td>
<td>Once escalated updates can be provided at intervals requested by the customer.</td>
</tr>
<tr>
<td>Priority</td>
<td>Support Level</td>
<td>Description</td>
<td>Notes</td>
<td></td>
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</tr>
<tr>
<td>3</td>
<td>Routine support requests that impact a single user or non-critical software or hardware error. Software is productive but may result in an incomplete operation. Workarounds or configurable options are generally available.</td>
<td>Contractor will respond via telephone M-F, 7:00AM-7:00PM Central Time – Immediate* to the customer upon receipt of a problem. Other such as logged by the web – within eight business hours of notification.</td>
<td>Issues in this priority class will be reviewed and scheduled as part of the regular product release cycles. Upon Request</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

7. Availability of Service Level Commitment for Maintenance and Support of GIT Software Products

Standalone: The Contractor will provide maintenance and support for its GIT Software Products available 24/7 through the Support Portal which allows customers to log service requests and use the self-help tools available to them. Phone support is available for logging service requests Monday through Friday from 8:00 am – 5 pm MDT. Problems reports which are found to be defects in the software have a change request filed for them and submitted to development. The Contractor will review the change requests on a regular basis and prioritized for inclusion in a future release. The Contractor will provide an escalation process that allows the Customer to work through the Contractor’s contacts to escalate a change request and a solution will be provided outside the normal review and scheduling cycle.

8. Availability of Service for Maintenance and Support of GIT Products. The Contractor will provide maintenance and support and does not rely on other providers.

9. Service Outages for Maintenance and Support of GIT Software Products Standalone unscheduled outages

The Contractor’s standalone software maintenance and support for Standalone Software Products is the same response as item #7 above.

10. Service Credits for Maintenance and Support of GIT Software Products.

The Contractor does not include service credits for standalone GIT products.

11. Standard Service Level Agreement (SLA) for GIT Software Products, Appendix J
Standalone:  The Contractor’s Service Level Agreement can be found in Appendix J outlined in Exhibit A.

12. GIT Software Maintenance Agreement, Appendix K
   Standalone: The Contractor’s maintenance agreement can be found in Appendix K, outlined in Exhibit A.

13. GIT Software Product Training Services, Appendix L
   Standalone: The Contractor will provide the training services for Standalone GIT Software Products found in Appendix C-4, “GIT Training Course Form” as Appendix L.Part2.

14. Standard Features for GIT Software Products, Appendix M
   Standalone: The Contractor will provide Standard Features for its GIT Software Products found in Appendix M outlined in Exhibit A.

15. Security Capabilities for GIT Software Products, Appendix N
   Standalone: The Contractor will provide the security features built-in to its proposed Standalone GIT software products found in Appendix N, “Standard Security Features for GIT Software Products” Part 2.

16. GIT Software Products that Integrate with Third Party DBMS, Appendix O
   Standalone: The Contractor will provide the Standalone GIT software products that integrate with third party data base management systems (DBMS) products listed on Appendix O.Part 2 - Standalone, “GIT Software Products Integrate with Third Party DMBS.

17. GIT Software Products that Integrate with GNSS, Appendix P

18. Value Added Options
   The Contractor will provide Enterprise Licensing and related pricing as a value added service found in Appendix Q.
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the
signature by the required approval authorities below.

By: [Signature]  Date: 8 DEC 2016
Darryl M. Ackley, State CIO and Cabinet Secretary
Department of Information Technology

By: [Signature]  Date: 8-25-2016
Jennifer Williams
Director, Intergraph Corporation d/b/a Hexagon Geospatial

Approved for legal sufficiency:

By: [Signature]  Date: DEC 8 2016
Maria R. Sanchez
Department of Information Technology, General Counsel

By: [Signature]  Date: 
Donna Sandoval
Department of Information Technology, Chief Financial Officer

The records of the Taxation and Revenue Department reflect that the Contractor is registered
with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and
compensating taxes:

CRS ID Number: 02020233004

By: [Signature]  Date: 8-29-2016
Taxation & Revenue Department

Approved as to information technology contractual specifications and compliance with the
Department of Information Technology Act, Chapter 9, Article 27 NMSA 1978 and Executive
Orders relating to Information Technology issued by the Governor of the State of New Mexico.

By: [Signature]  Date: 8 DEC 2016
Darryl M. Ackley, State CIO and Cabinet Secretary
Department of Information Technology

This Agreement has been approved by the State Purchasing Agent:

By: [Signature]  Date: 12/8/16
Lawrence O. Maxwell
Purchasing Agent for the State of New Mexico