State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor
0000091976
Data Transfer Solutions, LLC
3680 Avalon Park Blvd. E, Suite 200
Orlando, FL 32828
Telephone No.: (407) 382-5222

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

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

Invoice:
As Requested

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

[Signature]
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
State of New Mexico

DEPARTMENT OF INFORMATION TECHNOLOGY

Statewide Price Agreement
Geospatial Information Technology Software as a Service (SaaS) or
Standalone Software Products and Other Related Services

Price Agreement No. 60-000-16-00039AD
Amendment No. One

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 Data Transfer Solutions 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: ________________________________ Date: 12/10/18
Estevan Lujan, Acting Cabinet Secretary
Department of Information Technology

By: ________________________________ Date: 11/20/18
Allén Ibaugh, MCP
Data Transfer Solutions, LLC

Approved for legal sufficiency:

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

By: ________________________________ Date: 12/17/2018
Donna M. Sandoval, Chief Financial Officer
Department of Information Technology
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: 03-216609-00-5

Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.

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
0000091976
Data Transfer Solutions, LLC
3680 Avalon Park Blvd. E, Suite 201
Orlando, FL 32828
Attn: Allen Ibaugh
Telephone No. 407-382-5222

Contract Number: 60-000-16-00039AD
Payment Terms: Net 30
F.O.B.: See Contract
Delivery: See Contract
Procurement Specialist: Debra Saiz DS
Telephone No.: 505-827-0521

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

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

Signature

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. 60-000-16-00039AD

THIS Information Technology Agreement ("Agreement" or "Contract") is made by and between the State of New Mexico, Department of Information Technology, hereinafter referred to as the "Procuring Agency" and Data Transfer Solutions, LLC, 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 within 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.

S. "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.

T. "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.

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

V. "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.

W. "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.

X. "Qualified" means demonstrated experience performing activities and tasks with Projects.

Y. "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.

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

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

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

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

DD. "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.

EE. "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 useable by a computer.

FF. "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.

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

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 Standalone COTS Software. The software license is referred to herein as License Agreement, See Exhibit B-Attachment 1.

   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 Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

E. Source Code.
   Not Applicable. The Parties agree there is no Source Code.

F. The Procuring Agency’s Rights.
   1. Rights to Software. The Parties agree the Procuring Agency does not have rights to the COTS Software that support the Services outlined in Exhibit A in this Agreement.
2. **Proprietary Rights.** 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.** 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. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

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, Know How, Intellectual Property, inventions or 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 Turnover 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. 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.

ARTICLE 9 – INTELLECTUAL PROPERTY

Contractor hereby acknowledges and grants to the Procuring Agency and the State of New Mexico, a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property and Know How created or conceived pursuant to, or as a result of, performance of this Agreement. This includes 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.

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 ninety (90) days after date of purchase and Acceptance 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. During this period, the Contractor will replace at no cost any such defective media returned to the Contractor.

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:
   Allen Ibaugh, AICP, GISP
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 and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

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.

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 understandings 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, Supervisor
Contracts and Procurement Bureau
Department of Information Technology
715 Alta Vista

For CONTRACTOR

Allen Ibaugh, AICP, GISP
Data Transfer Solutions, LLC
(407) 382-5222
aibaugh@dtsgis.com

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 Standalone Software 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 to the GIS Manager/Coordinator for that purchasing entity. This is at no added cost to the Standalone Software Products and the maintenance and support services.

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 Offeror upon Receipt of Problem from Customer</th>
<th>Response time to Fix the Problem Reported</th>
<th>Notification from Offeror to Customer</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>Priority 0</td>
<td>Critical Issue: No user at the Customer site can log on to VUEWorks. The map does not display on any user computer at the Customer’s site. No user at the Customer’s site can create a Service Call or Work Order.</td>
<td>Contractor will respond via telephone or email to the customer immediately upon receipt of a problem</td>
<td>4 hours</td>
<td>Every hour</td>
</tr>
<tr>
<td>1</td>
<td>Priority 1</td>
<td>Severe Issue. A problem or issue impacting a significant group of customers or any mission critical issue affecting a single customer.</td>
<td>Contractor will respond via telephone or email to the customer immediately upon receipt of a problem.</td>
<td>One business day</td>
<td>Every 4 hours</td>
</tr>
<tr>
<td>Priority</td>
<td>Issue Description</td>
<td>Response Details</td>
<td>Response Time</td>
<td>Frequency</td>
<td></td>
</tr>
<tr>
<td>----------</td>
<td>-------------------</td>
<td>-----------------</td>
<td>---------------</td>
<td>-----------</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Priority 2</td>
<td>Important issue 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 issues that could escalate to Critical if not addressed quickly.</td>
<td>Contractor will respond via telephone or email to the customer immediately upon receipt of a problem.</td>
<td>5 business days</td>
<td>Daily</td>
</tr>
<tr>
<td>3</td>
<td>Priority 3</td>
<td>Low priority routine support requests that impact a single user or non-critical software or hardware error.</td>
<td>Contractor will respond via telephone or email to the customer immediately upon receipt of a problem.</td>
<td>10 business days</td>
<td>Bi-weekly</td>
</tr>
</tbody>
</table>

7. Availability of Service Level Commitment for Maintenance and Support of GIT Software Products Standalone. The Contractor will provide the right to grant the license to the VUE Works Software media provided in this Agreement to be free of defects as outlined in Article11 – Warranties.

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 will provide the procuring entity notification by email or by phone of any unscheduled outages. For any updates and patches performed during an unscheduled outage to the VUEWorks system can be done without taking the system offline.

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: The Contractor’s Service Level Agreement for this Agreement is the License Agreement that can be found in Exhibit B, Attachment 1.

12. GIT Software Maintenance Agreement.
   Standalone: The Contractor’s maintenance agreement can be found in Exhibit B, Attachment 2.

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 DBMS.

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: ___________________________ Date: 8 DEC 2016
Darryl M. Ackley, State CIO and Cabinet Secretary
Department of Information Technology

By: ___________________________ Date: 8/23/16
Allen Ibaugh, AICP
Data Transfer Solutions, LLC

Approved for legal sufficiency:

By: ___________________________ Date: 12/8/16
Maria R. Sanchez
Department of Information Technology, General Counsel

By: ___________________________ 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: 03-216609-00-5

By: ___________________________ 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: ___________________________ 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: ___________________________ Date: 12/8/16
Lawrence O. Maxwell
Purchasing Agent for the State of New Mexico
EXHIBIT A – SCOPE OF WORK

The Price Listings and/or Cost Schedules for the Geospatial Information Technology Software as a Service (SaaS) and Standalone Software Products and Other Related Services are outlined below:

1. Appendix C-1: GIT Software Product Discount
2. Appendix C-2: GIT Software Product Cost
   a. Part 1: Not Applicable. SaaS GIT Software Products
   b. Part 2: Standalone GIT Software Products
3. Appendix C-3: Additional GIT Service Labor Rate Cost Schedule
   a. Part 1: Not Applicable. SaaS Professional Service Category Rate Schedule
   b. Part 2: Standalone Professional Service Category Rate Schedule
4. Appendix C-4: GIT Training Cost Schedule
   a. Part 1: Not Applicable. SaaS Training Course(s)
   b. Part 2: Standalone Training Course(s)
5. Appendix C-5: Not Applicable. Enhanced Features for GIT Software Products
6. Appendix G: Operating Systems Supported for GIT Software Products (Reference Appendix C-2, column “Operating Systems Supported”)
   a. Part 1: Not Applicable. SaaS GIT Software Products
   b. Part 2: Standalone GIT Software Products
7. Appendix H: Notification Form to Customer for Software Updates
8. Appendix I – Not Applicable. SaaS GIT Software Products SLA
9. Appendix J – Standalone GIT Software Products SLA
10. Appendix K – GIT Software Maintenance Agreement
11. Appendix L - Reserved
12. Appendix M – Standard Features for GIT Software Products
14. Appendix O – GIT Software Products Integrate with Third Party DBMS
   a. Part 1: Not Applicable. SaaS GIT Software Products
   b. Part 2: Standalone GIT Software Products
15. Appendix P – GIT Software Products Integrate with GNSS
   a. Part 1: Not Applicable. SaaS GIT Software Products
   b. Part 2: Standalone GIT Software Products
16. Appendix Q – Value Added Options

EXHIBIT B – Other Attachments to the Agreement
1. ATTACHMENT 1 - Software License Agreement
2. ATTACHMENT 2 – Maintenance and Technical Support Policy
APPENDIX C-1 – GIT Software Product Discount Response Form

I. Standalone GIT Software Products

1. Standalone New Products: NEW Standalone GIT SOFTWARE PRODUCTS TO INCLUDE UPGRADES DISCOUNTED RATE: 10%

2. Standalone Annual Maintenance: ANNUAL Standalone GIT SOFTWARE PRODUCTS MAINTENANCE SERVICES DISCOUNTED RATE FOR NEW PRODUCTS: 2%
APPENDIX C-2 – GIT Software Product Cost

PART 1 – SAAS GIT SOFTWARE PRODUCTS: NOT APPLICABLE

PART 2 – STANDALONE SOFTWARE PRODUCTS:

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Product No.</th>
<th>Product Name</th>
<th>Product Description</th>
<th>Product Version</th>
<th>Operating System(s) Supported for Product</th>
<th>License Type (Single, Concurrent, Enterprise, or **Other)</th>
<th>Number of Users</th>
<th>Product Cost at the discounted rate</th>
<th>Annual Product Maintenance Cost at the discounted rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>VUEWorks</td>
<td>VUEWorks Enterprise CMMS</td>
<td>10.2</td>
<td>Windows</td>
<td>Enterprise</td>
<td>15</td>
<td>100,000</td>
<td>$18,000</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Server, SQL</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Server, IE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Chrome</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Firefox, iOS</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
I. PART 1 – SaaS Professional Service Category Rate Schedule: NOT APPLICABLE.

II. PART 2 – Standalone Professional Service Category Rate Schedule:

“Level One” means a qualified team member that has greater than ten (10) years of relevant past experience.

“Level Two” means a qualified team member that has five (5) to ten (10) years of relevant past experience.

“Level Three” means a qualified team member that has less than five (5) years of relevant past experience.
<table>
<thead>
<tr>
<th>No.</th>
<th>1) Title:</th>
<th>2) Professional Service Description</th>
<th>3) Onsite Maximum Hourly Rate ($)</th>
<th>4) Offsite Maximum Hourly Rate ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>Project Manager</td>
<td>$ 200.00</td>
<td>$ 200.00</td>
</tr>
<tr>
<td>a</td>
<td>Level One</td>
<td></td>
<td>$ 180.00</td>
<td>$ 180.00</td>
</tr>
<tr>
<td>b</td>
<td>Level Two</td>
<td></td>
<td>$ 160.00</td>
<td>$ 160.00</td>
</tr>
<tr>
<td>c</td>
<td>Level Three</td>
<td></td>
<td>$ 150.00</td>
<td>$ 150.00</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>Implementer</td>
<td>$ 175.00</td>
<td>$ 175.00</td>
</tr>
<tr>
<td>a</td>
<td>Level One</td>
<td></td>
<td>$ 150.00</td>
<td>$ 150.00</td>
</tr>
<tr>
<td>b</td>
<td>Level Two</td>
<td></td>
<td>$ 130.00</td>
<td>$ 130.00</td>
</tr>
<tr>
<td>c</td>
<td>Level Three</td>
<td></td>
<td>$ 125.00</td>
<td>$ 125.00</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td>Programmer</td>
<td>$ 200.00</td>
<td>$ 200.00</td>
</tr>
<tr>
<td>a</td>
<td>Level One</td>
<td></td>
<td>$ 175.00</td>
<td>$ 175.00</td>
</tr>
<tr>
<td>b</td>
<td>Level Two</td>
<td></td>
<td>$ 150.00</td>
<td>$ 150.00</td>
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<tr>
<td>c</td>
<td>Level Three</td>
<td></td>
<td>$ 125.00</td>
<td>$ 125.00</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td>Trainer</td>
<td>$ 100.00</td>
<td>$ 100.00</td>
</tr>
<tr>
<td>a</td>
<td>Level One</td>
<td></td>
<td>$ 80.00</td>
<td>$ 80.00</td>
</tr>
<tr>
<td>b</td>
<td>Level Two</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>Level Three</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX C-4 – GIT Training Course(s) Cost Schedule

a. Part 1: Not Applicable. SaaS Training Course(s)
b. Part 2: Standalone Training Course(s)

<table>
<thead>
<tr>
<th>#</th>
<th>Course Name</th>
<th>Type of Course (Webinar, Onsite, Other)</th>
<th>Brief Description</th>
<th>Class duration in hours</th>
<th>Number of Days</th>
<th>Min and Max Class Size</th>
<th>Cost per person including discounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>VUEWorks User Training</td>
<td>Onsite</td>
<td>End user training flat rate up to 20 users</td>
<td>15</td>
<td>3</td>
<td>15</td>
<td>$4,800</td>
</tr>
<tr>
<td>2</td>
<td>VUEWorks User Training</td>
<td>Online</td>
<td>End user training flat rate up to 20 users</td>
<td>15</td>
<td>5</td>
<td>15</td>
<td>$3,200</td>
</tr>
</tbody>
</table>
APPENDIX C-5 – Enhanced Features for GIT Software Products

**NOT APPLICABLE**

<table>
<thead>
<tr>
<th>No</th>
<th>Product No.</th>
<th>GIT Product Name</th>
<th>Enhanced Feature</th>
<th>Description of the Feature</th>
<th>Program Type (SaaS, Standalone, or Both)</th>
<th>Additional Cost, if any ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>VUEWorks</td>
<td>N/A</td>
<td>N/A</td>
<td>Standalone</td>
<td>N/A</td>
</tr>
</tbody>
</table>
APPENDIX G – Operating Systems Supported for GIT Software Products

a. Part 1 – SaaS GIT Software Products: **NOT APPLICABLE**
b. Part 2 – Standalone GIT Software Products:

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Product Number</th>
<th>Product Name</th>
<th>Product Description</th>
<th>Product Version</th>
<th>Operating System(s) Supported</th>
<th>License Type (Single, Concurrent, Enterprise, or <strong>Other</strong></th>
<th>Recommended System Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>VUEWorks</td>
<td>VUEWorks Enterprise CMDIS</td>
<td>10.2</td>
<td>Windows Server, SQL Server, IE, Chrome, Firefox, iOS, Android</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>3</td>
<td></td>
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<td>5</td>
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<td></td>
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</tr>
<tr>
<td>No.</td>
<td><strong>Software Product Name</strong></td>
<td><strong>Software Version</strong></td>
<td>(SaaS, Standalone, or Both)</td>
<td>Identify Type of Update (New Functionality, Update Existing Functionality, Deleted Functionality)</td>
<td>Description of Update</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>
APPENDIX I – SaaS GIT Software Products SLA

NOT APPLICABLE
APPENDIX J – Standalone GIT Software Products SLA

Reference Exhibit B – Attachment 1 – Software License Agreement
## APPENDIX M – Standard Features for GIT Software Products

<table>
<thead>
<tr>
<th>No</th>
<th>Product No.</th>
<th>GIT Product Name</th>
<th>Standard Feature</th>
<th>Description of the Feature</th>
<th>Program Type (Sa/S, Standalone, or Both)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>VUEWorks</td>
<td>Report Generation</td>
<td>Built-in report creation</td>
<td>Standalone</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td>Database Locking for a multi-user editing environment</td>
<td></td>
<td>Standalone</td>
</tr>
<tr>
<td>3</td>
<td>1</td>
<td>VUEWorks</td>
<td>Linear Referencing</td>
<td>From web mapping services</td>
<td>Standalone</td>
</tr>
<tr>
<td>4</td>
<td>1</td>
<td>VUEWorks</td>
<td>Scripting Languages Supported (i.e. JS, .NET, python, etc.)</td>
<td>JS and C#</td>
<td>Standalone</td>
</tr>
<tr>
<td>5</td>
<td>1</td>
<td>VUEWorks</td>
<td>Raster Formats supported</td>
<td>From web mapping services</td>
<td>Standalone</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td>Digital Terrain Model (DTM) creation process and surfacing editing</td>
<td></td>
<td>Standalone</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td>Coordinate Geometry (COGO) and geometric alignment and design capabilities, to include any bridge geometric layout capabilities.</td>
<td></td>
<td>Standalone</td>
</tr>
<tr>
<td>8</td>
<td></td>
<td></td>
<td>Survey Functionality (importing of raw data, support GNSS, LiDAR, other forms of field data), methods of adjustment, electronic field book creation, editing survey observations.</td>
<td></td>
<td>Standalone</td>
</tr>
<tr>
<td>9</td>
<td>1</td>
<td>VUEWorks</td>
<td>Geospatial data analysis and mapping</td>
<td>Web mapping interface</td>
<td>Standalone</td>
</tr>
<tr>
<td>10</td>
<td>1</td>
<td>VUEWorks</td>
<td>Import Functionality</td>
<td>Data linking and .xlsx</td>
<td>Standalone</td>
</tr>
<tr>
<td>11</td>
<td>1</td>
<td>VUEWorks</td>
<td>Export Functionality</td>
<td>Multiple Formats</td>
<td>Standalone</td>
</tr>
<tr>
<td>12</td>
<td>1</td>
<td>VUEWorks</td>
<td>Data Conversion Functionality</td>
<td>Data linking and imports</td>
<td>Standalone</td>
</tr>
<tr>
<td>13</td>
<td>1</td>
<td>VUEWorks</td>
<td>Web Interface</td>
<td>IE, Chrome, Firefox</td>
<td>Standalone</td>
</tr>
</tbody>
</table>

* Additional rows may be added if necessary for additional standard features

** Product No. should match the Product No. in Appendix C-2

***Product Name should match the Product Name in Appendix C-2

****Standard Feature means No added cost to the subscription fee for Sa/S GIT Software Products and No added cost to the purchase of the Standalone GIT Software Products.
**APPENDIX N – Standard Security Features for GIT Software Products**

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Product Name</th>
<th>Current Version</th>
<th>Supported Operating Platforms</th>
<th>Security Features Description</th>
<th>Program Type (SaaS, Standalone, Both)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>VUEWorks</td>
<td>10.2</td>
<td>Windows</td>
<td>Built-in or Active Directory or LDAP</td>
<td>Standalone</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Server</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Additional rows may be added if necessary for additional standard features

**Standard Feature: No added cost to the subscription fee for SaaS GIT Software Products and No added cost to the purchase of the Standalone GIT Software Products.*
APPENDIX O – Standard Security Features for GIT Software Products

Not Applicable for Part 1 - SaaS

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Proposed GIT Software Product Name</th>
<th>Current Version</th>
<th>Supported Operating Platforms</th>
<th>Integratable third party DBMS Product Names</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

b. Part 2 – Standalone:

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Proposed GIT Software Product Name</th>
<th>Current Version</th>
<th>Supported Operating Platforms</th>
<th>Integratable third party DBMS Product Names</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>VUEWorks</td>
<td>10.2</td>
<td>Windows</td>
<td>Any ODBC compliant DB</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Server</td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX P – GIT Software Products Integrate with GNSS

Not Applicable for Part 1 - SaaS

a. Part 1 – SaaS:

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Proposed GIT Software Product Name</th>
<th>Current Version</th>
<th>Supported Operating Platforms</th>
<th>Integratable GNSS Product Names</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

b. Part 2 – Standalone:

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Proposed GIT Software Product Name</th>
<th>Current Version</th>
<th>Supported Operating Platforms</th>
<th>Integratable GNSS Product Names</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>VUEWorks</td>
<td>10.2</td>
<td>Windows</td>
<td>Data linking any if API access is provided</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX Q – GIT Software Products Integrate with GNSS

For training credits, DTS provides free regional training workshops and free monthly webinars training that is available to all VUEWorks users.
EXHIBIT B

ATTACHMENT 1 – GIT Standalone Software License Agreement

LICENSE AGREEMENT

This License Agreement (this "Agreement") is made and entered into as of __________, 201_ (the "Effective Date") between VUEWorks, LLC, a Florida limited liability company ("VUEWORKS"), with place of business at 3680 Avalon Park Boulevard, Suite 200, Orlando, Florida 32828, and [__________], a ("Customer"), with a place of business at [__________]. All capitalized terms used but not otherwise defined in this Agreement have the meanings attributed to them in Section 10 (Certain Definitions).

1. Software.

1.1 Software License. Subject to the terms of this Agreement and each applicable Order Form, and as long as no payments due hereunder are past due, VUEWORKS hereby grants to Customer a perpetual, nonexclusive, non-transferable, non-sublicensable, limited license to install and use the Software, for solely its internal business purposes or municipal purposes in connection with the storage and processing of Customer Data.

1.2 Hosting. To the extent set forth on any Order Form, VUEWORKS shall host the Software for the benefit of Customer on servers owned, controlled, leased or licensed by VUEWORKS ("Hosted Software"). Customer is responsible for maintaining the security and confidentiality of all usernames and passwords used to access the Hosted Software. Customer is solely responsible for connection of Customer’s systems to a telecommunications service that provides Internet access for purposes of Customer’s access and use of the Hosted Software. For the avoidance of doubt, VUEWORKS may suspend Customer’s access to the Hosted Software and the Customer Data if Customer is past due in making any payments due hereunder. Customer shall pay to VUEWORKS the fees set forth on each applicable Order Form with respect to Hosted Software and shall comply with such other terms and conditions set forth on each applicable Order Form. The Hosted Software shall be available from VUEWORKS only as set forth on each Order Form but, provided Customer has made all payments due pursuant to the applicable Order Form, upon expiration or termination of each Order Form, VUEWORKS will deliver to Customer a copy of the Software, in object code form, together with all related Customer Data.

1.3 Appropriate Use of the Software.

a. Generally. When using the Software, Customer shall comply with all applicable laws, rules, regulations, and/or ordinances. Except as expressly authorized by this Agreement, Customer shall not license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or permit any third party to access or use the Software. In addition, Customer shall not directly or indirectly (i) decompile, disassemble, or reverse engineer the Software, (ii) use the Software or any Confidential Information to develop a competing service, (iii) provide, lease, lend, use for timesharing or service bureau purposes, or otherwise use or allow others to use the Software for the benefit of any third party, (iv) remove any copyright, trademark, proprietary rights, disclaimer, or warning notice included on or embedded in any part of the Software (including any screen displays, etc.), or (v) interfere with or disrupt the integrity of the Software or the data contained therein. If Customer becomes a direct competitor of VUEWORKS, Customer shall not access or use the Software, or monitor its availability, performance, or functionality.

Export Controls. VUEWORKS provides Software and uses software and technology that may be subject to U.S. export controls administered by the U.S. Department of Commerce, the U.S. Department of Treasury Office of Foreign Assets Control, and other U.S. agencies. Customer shall not access or use the Software or otherwise transfer or export or re-export to countries that the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury’s List of Specially Designated Nationals or the U.S. Department of Commerce’s Table of Denial Orders (collectively, "Designated Nationals"), each of which may change from time to time. By
using the Software, Customer represents and warrants that Customer is not located in, under the control of, or a national or resident of, an Embargoed Country or Designated National. The Software may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774.

1.4 Availability of Services.

a. **Uptime Commitment.** If Customer has selected the Hosted Software, VUEWORKS offers a performance commitment that the key features of the Hosted Software will be available for access and use by Customer at least 99% of the time per calendar quarter, excluding any period of Permitted Unavailability (the “**Uptime Commitment**”). Absent unusual circumstances, VUEWORKS shall schedule Planned Outages during non-peak hours. The Uptime Commitment are subject to the terms of this Section.

b. **Procedure.** When a period of unavailability is detected by Customer, Customer shall promptly contact VUEWORKS by email or phone and advise VUEWORKS’ staff of the problem.

c. **Limitations.** VUEWORKS is not responsible for periods of unavailability resulting from failure by Customer to make or approve reasonable modifications to the Software or the Hosted Software recommended by VUEWORKS to prevent periods of unavailability. In addition, VUEWORKS will not be responsible for periods of unavailability resulting from any of the following: (i) Customer modifications to or uses of the Software or Hosted Software that are not authorized by VUEWORKS or permitted under this Agreement, (ii) Permitted Unavailability or (iii) Customer errors in integration.

d. **Monitoring.** VUEWORKS does not guarantee that remote monitoring will detect all problems or interruptions at the time they occur.

1.5 Ownership. The Software is licensed, not sold. Except for the limited license granted in **Section 1.1** (Software License) to access and use the Software, VUEWORKS and its licensors reserve all right, title, and interest, express or implied, in and to the Services and systems, VUEWORKS’ web apps, and the data and information VUEWORKS provides (collectively, the **“Retained Rights”**). If Customer makes improvements or other modifications to the Retained Rights when using the Software, Customer hereby grants to VUEWORKS a nonexclusive, royalty-free, fully paid-up, irrevocable, perpetual, worldwide license (with the right to assign and sublicense) to use, display, copy, distribute, modify, make derivative works of, sell, and import such modifications and improvements. Nothing in the preceding sentence is to be construed as granting VUEWORKS any rights to Customer’s name, trade name, trade dress, logos, and the like.

1.6 Customer Data; Indemnity. Customer grants VUEWORKS the right to use, display, copy, distribute, and make derivative works of Customer Data for purposes of enabling VUEWORKS to offer and perform its services and fulfill its obligations. Customer represents and warrants that (a) it has obtained all rights, consents, and permissions necessary to input the Customer Data into the Software and to grant the foregoing rights to VUEWORKS, (b) Customer’s use, copying, displaying, and distribution of the Customer Data complies with all federal, state, and/or local laws, rules, regulations and/or ordinances and the terms and policies (including terms of use and privacy and security policies) of all websites from which the Customer Data originated and all websites to which the Customer Data is copied, distributed, displayed, or published using the Software, and (c) the Customer Data shall not include any personally identifiable healthcare data or financial data of any individual and/or any other data violative of third party rights and/or any applicable law, and/or any data relating to any person under the age of thirteen (13) years. Customer shall indemnify, defend, and hold harmless VUEWORKS and its affiliates and subsidiaries and their respective officers, directors, employees, members, representatives, and agents from and against any and all claims, losses, liability, damages, costs, and expenses (including reasonable out-of-pocket expenses and attorneys’ fees) arising out of or relating to (i) Customer’s breach of the foregoing representations and warranties and/or (ii) Customers use of the Software. VUEWORKS may refuse to distribute or publish, and may remove, any Customer Data that VUEWORKS determines to be in violation of the foregoing representations and warranties. VUEWORKS may combine the Customer Data with other information it gathers, develops, or licenses from others in offering and performing its services and fulfilling its
obligations, for purposes of improving the Software, and for purposes of establishing and/or developing customer usage benchmarks and studies.

1.7 Suspension of Access to Hosted Software. VUEWORKS may suspend Customer’s access to the Hosted Software (in whole or in part) for any of the following reasons: (a) to prevent damages to, or degradation of, the Hosted Software or VUEWORKS’ systems; (b) to comply with any law, court order, or other governmental request; (c) to otherwise protect VUEWORKS from potential legal liability; (d) if Customer violates the terms of this Agreement and fails to remedy such breach within the time frame set forth herein; or (e) in the event an invoice remains unpaid for more than thirty (30) days after the date on which payment is due under such invoice. VUEWORKS shall use reasonable efforts to provide Customer with notice before or promptly following any suspension of access to the Hosted Software. VUEWORKS shall restore access to the Hosted Software as soon as the event giving rise to suspension has been resolved to VUEWORKS’ satisfaction. Sections 1.5 and 1.6 are not to be construed as imposing any obligation or duty on VUEWORKS to monitor Customer’s use of the Hosted Software or the Customer Data or other content uploaded by Customer and/or its customers.

1.7 Certain Remedies. Should the Software and/or any other VUEWORKS’ software and/or service or use thereof become, or be likely to become in VUEWORKS’ reasonable opinion, the subject of any claim that the same infringes, violates or constitutes a wrongful use of any intellectual property right, VUEWORKS may, at its option: (i) procure for Customer the right to continue using the potentially infringing materials; (ii) replace or modify the potentially infringing materials to make them non-infringing, but substantially functionally equivalent; or (iii) terminate this Agreement and refund to Customer a pro-rated portion of any fees paid hereunder. THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF VUEWORKS, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT BY THE SOFTWARE, THE HOSTED SOFTWARE, AND/OR ANY OTHER VUEWORKS’ SOFTWARE AND/OR SERVICE.

1.8 Technical Support, Maintenance. Provided Customer has made all required payments hereunder, VUEWORKS shall provide technical support for the Hosted Software in accordance with VUEWORKS’ technical support policies (“Technical Support”). Provided Customer has purchased maintenance from VUEWORKS, in accordance with any applicable Order Form, and Customer has paid all amounts due under such Order Form, VUEWORKS will perform maintenance with respect to the Software (including the Hosted Software) in accordance with VUEWORKS’ maintenance policies (“Maintenance”).

2. Feedback. Customer may provide suggestions, comments, or other feedback (collectively, “Feedback”) to VUEWORKS with respect to its offerings and services, including the Software. Feedback is voluntary and VUEWORKS is not required to hold it in confidence. VUEWORKS may use Feedback for any purpose without obligation of any kind. Customer hereby grants VUEWORKS an irrevocable, non-exclusive, perpetual, fully-paid up, royalty-free license to use, display, copy, distribute, modify, make derivative works of, sell, and import the Feedback in connection with VUEWORKS’ business, including enhancement of the Software.

3. Customer Data Maintenance. To the extent that Customer selects the Hosted Software, Customer shall deliver to VUEWORKS Customer Data, including GIS Data, in a format specified by VUEWORKS. VUEWORKS shall present the GIS Data using symbols and line types determined by VUEWORKS. The maximum number of GIS Data Layers are set forth in each applicable Order Form. The total amount of Customer Data is limited to the Customer Data Amount set forth in each applicable Order Form. Customer may request that VUEWORKS provide services to update Customer Data including GIS Data so long as VUEWORKS continues to provide the Hosted Software. VUEWORKS shall invoice Customer for such requested services at its then current data maintenance rates (the “Data Maintenance”).

4. Term and Renewal. The initial term of this Agreement commences on the Effective Date and shall continue until such time that there are no Order Forms in effect. The license term (“License Term”) with respect to use of the Software is perpetual but VUEWORKS shall have no obligation to provide the Hosted Software beyond the term of each applicable Order Form.

5. Termination; Effect. Either party may terminate this Agreement (i) if the other party breaches any material provision of this Agreement and fails to cure such breach within thirty (30) days after receipt of notice from the
non-breaching party describing with specificity such breach or (ii) immediately by either party upon any insolvency or suspension of the other party’s operations or any petitions filed or proceeding made by or against such party under any state, federal or other applicable law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors or other similar proceedings or (iii) as otherwise expressly provided herein. The parties’ rights and obligations, which by their nature would continue beyond the expiration or termination of this Agreement shall survive any termination or expiration of this Agreement, including, but not limited to, the following Sections: 1.4 (Ownership), 1.5 (Customer Data; Indemnity), 1.7 (Certain Remedies), 2 (Feedback), 5 (Termination; Effect), 6 (Fees and Payment), 7 (Confidentiality), 8 (Disclaimer of Warranties), 9 (Limitation of Liability and Damages), 10 (Certain Definitions), and 11 (General Provisions). Upon any termination or expiration of this Agreement: (i) VUEWORKS shall cease providing access to the Hosted Software; (ii) VUEWORKS will cease performing all services being provided under this Agreement; (iii) all fees payable under this Agreement will be immediately due and payable; (iv) promptly following the written request of the other party, each party will promptly return to the other party or destroy (in accordance with the other party’s request) all property and equipment of the other party in its possession or control, including all copies thereof, and will certify in writing that it has complied with such request, and (v) provided Customer has paid all amounts due pursuant to this Agreement, VUEWORKS will deliver to Customer an object code version of the Software for installation by the Customer on the Customer’s servers. Additionally, upon written request of Customer, received by VUEWORKS within thirty (30) days of the date of termination or expiration of this Agreement, as the case may be, and provided that Customer has paid all amounts due hereunder, VUEWORKS will make available to Customer for download the Customer Data. After such 30-day period, VUEWORKS shall have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data.

6. Fees and Payment. Customer shall pay VUEWORKS the fees for the Software and Hosted Software as stated in each applicable Order Form, along with the fees for Technical Support, Maintenance and, if applicable, Data Maintenance. All such fees are due in full within thirty (30) days of the applicable invoice date. Payments not made within such time period are subject to late charges equal to the lesser of (a) one and one-half percent (1.5%) per month of the overdue amount, or (b) the maximum amount permitted under law. If Customer believes that an invoice is incorrect and Customer desires to obtain an adjustment of such invoice, Customer must provide VUEWORKS notice thereof including relevant details within fifteen (15) days of the invoice date. Customer is responsible for sales, use, and similar taxes associated with its receipt and use of Software, including the Hosted Software, Technical Support, Maintenance and Data Maintenance.

7. Confidentiality. As used herein, “Disclosing Party” and “Recipient” refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. Either VUEWORKS or Customer may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. Recipient will hold the Confidential Information of the Disclosing Party in confidence, using the same degree of care that it uses to protect its own information of similar importance, but will in any case use no less than a reasonable degree of care to protect Confidential Information. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to any third party without Disclosing Party’s advance express written authorization to do so. Recipient may disclose Confidential Information only to its employees or agents in the normal course of its business and only on a need-to-know basis; provided each such employee must either have agreed in writing to comply with confidentiality obligations no less restrictive than those set forth herein or must be bound by a recognized professional ethical duty of confidentiality that would prohibit disclosure of such Confidential Information. Notwithstanding the forgoing, a party will not be prohibited from disclosing the Confidential Information to the extent required by applicable law, statute, rule, regulation, or regulatory or administrative body. If disclosure is required by law, statute, rule, regulation or regulatory or administrative body (including any subpoena or other similar form of process), the party to which the request for disclosure is made shall (to the extent permissible by law) provide the other party with prior prompt written notice thereof and, if practicable under the circumstances, allow the other party to seek a restraining order or other appropriate relief. The party required to make such disclosure will cooperate with the efforts of the other party in obtaining such relief. If such relief cannot be obtained, the party required to disclose the Confidential Information shall cooperate with the other party’s efforts to obtain reasonable assurances that confidential treatment will be accorded to the information so disclosed. Each party
acknowledges that the other party will suffer irreparable injury as a result of any misuse, disclosure or duplication of its Confidential Information by the other party in violation of this clause. Accordingly, the injured party shall be entitled in such event to seek injunctive relief, without proving actual damage or posting a bond or other security, in addition to any other applicable remedies, including the recovery of damages. Such party shall be entitled to recover its costs and fees, including reasonable attorneys’ fees, incurred in obtaining such relief. The non-breaching party may immediately terminate this Agreement upon notice to the other party for any breach of that party’s obligation set forth in this Section.

8. Disclaimer of Warranties. EXCEPT TO THE EXTENT PERMITTED BY LAW, THE SOFTWARE, HOSTED SOFTWARE, TECHNICAL SUPPORT, MAINTENANCE, DATA MAINTENANCE AND ANY OTHER SERVICES ARE PROVIDED “AS IS” AND “AS-AVAILABLE,” WITH ALL FAULTS, AND WITHOUT WARRANTIES OF ANY KIND. VUEWORKS AND ITS VENDORS AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND TITLE/NON-INFRINGEMENT. CUSTOMER EXPRESSLY AGREES AND ACKNOWLEDGES THAT USE OF VUEWORKS SOFTWARE IS AT CUSTOMER’S SOLE RISK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY VUEWORKS OR ITS AUTHORIZED REPRESENTATIVES CREATES ANY OTHER WARRANTIES OR IN ANY WAY INCREASES THE SCOPE OF VUEWORKS’ OBLIGATIONS UNDER THIS AGREEMENT. THE VUEWORKS SOFTWARE MAY BE USED TO ACCESS AND TRANSFER INFORMATION, INCLUDING CONFIDENTIAL INFORMATION, OVER THE INTERNET. CUSTOMER ACKNOWLEDGES AND AGREES THAT VUEWORKS AND ITS VENDORS AND LICENSORS DO NOT OPERATE OR CONTROL THE INTERNET AND THAT (A) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE; OR (B) UNAUTHORIZED THIRD PARTIES (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE CUSTOMER’S DATA, WEBSITES, COMPUTERS, OR NETWORKS. VUEWORKS WILL NOT BE LIABLE FOR ANY SUCH ACTIVITIES NOR WILL SUCH ACTIVITIES CONSTITUTE A BREACH BY VUEWORKS OF ITS OBLIGATIONS UNDER THIS AGREEMENT. The Software (including the Hosted Software) may include gateways, links, or other functionality that allows Customer to access third party services (“Third Party Services”) and third party content and materials (“Third Party Materials”). VUEWORKS does not supply and is not responsible for any Third Party Services or Third Party Materials, which may be subject to their own licenses, end-user agreements, privacy and security policies, and terms of use. ALL THIRD PARTY MATERIALS ARE PROVIDED AS-IS, WITHOUT WARRANTIES OF ANY KIND. VUEWORKS MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, RELATING TO ANY PRESENT OR FUTURE METHODOLOGY EMPLOYED IN ITS GATHERING OR REPRODUCING ANY THIRD PARTY MATERIAL, OR AS TO THE ACCURACY, CURRENCY, OR COMPREHENSIVENESS OF THE SAME. ALL OF THE FOREGOING EXCLUSIONS AND DISCLAIMERS IN THIS SECTION ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE PRICES CHARGED FOR THE SOFTWARE, HOSTED SOFTWARE, TECHNICAL SUPPORT, MAINTENANCE, DATA MAINTENANCE AND ANY OTHER SERVICE PROVIDED IN CONNECTION WITH THIS AGREEMENT.

9. Limitation of Liability and Damages. EXCEPT IN THE CASE OF LIABILITY ARISING OUT OF A PARTY’S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS OR PURSUANT TO CUSTOMER’S INDEMNITY OBLIGATIONS, NEITHER PARTY WILL HAVE ANY LIABILITY TO THE OTHER FOR ANY LOSS OF PROFITS, SALES, BUSINESS, DATA, OR OTHER INCIDENTAL, CONSEQUENTIAL, OR SPECIAL LOSS OR DAMAGE, INCLUDING EXEMPLARY AND PUNITIVE DAMAGES, OF ANY KIND OR NATURE RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, THE SOFTWARE, HOSTED SOFTWARE, TECHNICAL SUPPORT, MAINTENANCE, DATA MAINTENANCE, OR ANY SERVICES RENDERED UNDER THIS AGREEMENT. THE TOTAL LIABILITY OF VUEWORKS TO CUSTOMER OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT, THE SOFTWARE, HOSTED SOFTWARE, TECHNICAL SUPPORT, MAINTENANCE, DATA MAINTENANCE, AND ANY SERVICES RENDERED UNDER THIS AGREEMENT FOR ANY AND ALL CLAIMS OR TYPES OF
DAMAGES WILL NOT EXCEED THE TOTAL FEES PAID HEREUNDER BY CUSTOMER DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY.

10. Certain Definitions. As used in this Agreement, the terms below when capitalized have the following meanings:

"Confidential Information" means all nonpublic information and material that from all the relevant circumstances should reasonably be assumed to be proprietary or otherwise confidential. Confidential Information of VUEWORKS includes, but is not limited to, nonpublic information related to the details and components of the Software (including the Hosted Software) and the terms of this Agreement, including those related to pricing. "Confidential Information" does not include information that (a) is or becomes generally known to the public or made available on the Internet at any time by any means other than a breach of the obligations under this Agreement of a receiving party; (b) was received by the receiving party from a third party who had a lawful right without restriction to disclose such information; (c) is independently developed by the receiving party without any use of or reliance on any Confidential Information; or (d) the receiving party lawfully had knowledge of, or access to, prior to the time of disclosure by the disclosing party.

"Customer Data" means GIS Data, VUEWORKS’ database files, Customer’s data base files, and all other electronic content and data stored on VUEWORKS’ computers for use by Customer with the Hosted Software. Amount of Customer Data to be stored shall be measured in bytes and be limited to the amount of disk space provided in each the applicable Order Form. Procedures by which Customer may store and access Customer Data via VUEWORKS’ servers shall be limited to the use of the Hosted Software. Customer acknowledges that VUEWORKS shall have no obligation to return to Customer any Customer Data if Customer has not paid all amounts due hereunder or does not comply with the notice procedure with respect to the return of Customer Data set forth in Section 5.1

"GIS Data" means spatial data as part of a geographic information system data.

"Order Form" means the order form set forth as the cover page to this Agreement or any other order form executed by the parties.

"Permitted Unavailability" means unavailability of the Hosted Software due to Planned Outages, a force majeure event (as provided in Section 11.8), any software, hardware, or telecommunication or digital transmission failures or interruptions, Internet slow-downs or failures, third party software, hardware, or service failures, or any actions or inactions of Customer or Customer’s vendors or service providers, that prevents, limits, or degrades the availability or use of some or all of the Hosted Software.

"Planned Outages" means the period of time during which VUEWORKS conducts standard systems maintenance.

"Software" means the VUEWORKS’ software listed on each applicable Order Form, which software may be Hosted Software. VUEWORKS may in its sole discretion update or make changes to the functionality of the Software from time to time.


11.1 Notices. Any notice, request, instruction, or other communication required or permitted to be given under this Agreement shall be in writing (collectively, “Notices”), delivered to the addresses first set forth above, to the attention of Chief Operating Officer, with respect to VUEWORKS, and to the attention of [ ], with respect to Company. Copies of all Notices to VUEWORKS shall also be delivered to David G. Mitchell, PA, Suite 500, 3780 Sand Lake Road, Orlando, Florida 32819 Attention: David G. Mitchell. All such Notices shall be effectively given: (i) upon personal delivery to the party to be notified; or (ii) upon receipt when delivered by a nationally recognized overnight courier, with written verification of receipt; or (iii) upon receipt as indicated by the date on the signed receipt when delivered by registered or certified mail, return receipt requested and postage prepaid; or (iv) if the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot
be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver. The parties may change their respective addresses for which Notices shall be received upon compliance with the terms of this Section.

11.2 Amendment; Waivers; Interpretations. No amendment, rescission, or termination of this Agreement or any of its terms is effective unless it is in writing and signed by the party against whom enforcement is sought. A party does not waive any right under this Agreement by failing to insist on compliance with any term of this Agreement or by failing to exercise any right hereunder. Any waiver granted hereunder is effective only if it is written and signed by the party granting such waiver. A waiver of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision of this Agreement. The parties agree that the terms and conditions of this Agreement are a result of mutual negotiations. Therefore, the rule of construction that any ambiguity shall apply against the drafter is not applicable and will not apply to this Agreement. Any ambiguities shall be reasonably construed as to its fair meaning and not strictly for or against one party regardless of who authored the ambiguous language.

11.3 Assignment. Customer may not assign this Agreement, in whole, or in part, without VUEWORKS’ express prior written consent. Any attempt to assign this Agreement in violation of this Section 11.3 shall be void. Subject to the foregoing, all terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

11.4 Governing Law. The laws of the State of Florida govern all matters arising out of or relating to this Agreement, including, without limitation, its interpretation, construction, performance, and enforcement, without giving effect to such state’s conflicts of law principles. The parties hereby irrevocably and unconditionally submit to the jurisdiction of the federal and state courts located in Orange County, Florida for the purpose of any suit, action, or other proceeding arising out of or based upon this Agreement, which courts are the exclusive forum for any such suit, action, or other proceeding.

11.5 Severability. If any provision of this Agreement is held to be unenforceable, then that provision is to be construed by modifying it to the minimum extent necessary to make it enforceable, unless such modification is not permitted by law, in which case that provision is to be disregarded. If an unenforceable provision is modified or disregarded in accordance with this Section, the rest of this Agreement is to remain in effect as written, and the unenforceable provision is to remain as written in any circumstances other than those in which the provision is held to be unenforceable.

11.6 Entire Agreement. This Agreement, together with the Order Forms, exhibits and attachments hereto and thereto, constitutes the entire and final agreement between the parties. It is the complete and exclusive expression of the parties’ agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations, term sheets, letters, memoranda, and other discussions and agreements, either oral or in writing, between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. No provision of this Agreement may be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied on any statement, representation, warranty, nor agreement of the other party except for those expressly contained in this Agreement. This Agreement shall prevail over any terms and conditions appearing on Customer's purchase orders or other ordering documents, regardless of when such purchase orders or other ordering documents are delivered to VUEWORKS to which notice of objection is hereby given.

11.7 Relationship of Parties. The parties to this Agreement are independent contractors; there is no relationship of agency, partnership, joint venture, employment, or franchise between the parties. Neither party has the authority to bind the other or to incur any obligation on its behalf.

11.8 Force Majeure. Neither party shall be liable to the other for delays or failure of performance (other than the failure to make any payment when due) resulting from acts beyond the reasonable control of such party, including, but not limited to, acts of God, governmental orders or restrictions, strikes, terrorism, power failures, riots, fires, floods or other natural disasters.
11.9 **No Third Party Beneficiaries.** Except for VUEWORKS' suppliers and licensors, this Agreement shall not be construed to make any person or entity a third party beneficiary hereof.

11.10 **Headings.** The descriptive headings of the sections and subsections of this Agreement are for convenience of reference only. They do not constitute a part of this Agreement and do not affect this Agreement's construction or interpretation.

11.11 **Publicity.** Neither party shall use the other party's name or refer to the other party directly or indirectly in any media release, public announcement, or public disclosure relating to this Agreement or its subject matter, including any promotional or marketing materials, lists, referral lists, or business presentations, without written consent from the other party for each such use or release. Such approval will not be unreasonably withheld.

11.12 **Counterparts.** If the parties sign this Agreement in counterparts, each counterpart constitutes an original, and all counterparts, collectively, constitute only one agreement. The signatures of all the parties need not appear on the same counterpart, and delivery of a signed counterpart signature page by fax or other electronic transmission is as effective as signing and delivering an original.

**IN WITNESS WHEREOF,** the parties hereto, by their duly authorized representatives, have signed this Agreement as of the Effective Date.

**VUEWORKS, LLC**

By:
Name: A.M. "Trey" Fragala, III
Title: COO

**[CUSTOMER]**

By:
Name: 
Title:
EXHIBIT B
ATTACHMENT 2 – GIT Standalone Software Maintenance & Technical Support Policy

MAINTENANCE & TECHNICAL SUPPORT POLICY

1. VUEWorks technical support is available from 8:00am to 5:00pm, Eastern Time, on all weekdays other than Federal holidays. VUEWorks’ support includes answering questions from Customer over the telephone or e-mail, and the commercially reasonable effort to have the VUEWorks Software functioning properly in accordance with the documented product features and specifications.

2. VUEWorks Support must be initiated either through calling the support line (800) 252-2402 x2 or Support Email: support@vueworks.com. VUEWorks recommends the use of email as it serves as a written record of the event.

3. Customer shall designate one individual to serve as the primary support contact for requests. Additionally, customer may designate as many as two (2) more secondary individuals who may contact VUEWorks directly for support issues. Other arrangements will be addressed on a case by case basis and must be agreed to in writing by Customer and VUEWorks.

4. The initial contact whether invoked by email or telephone for a particular issue defines the beginning of a support incident.

5. In cases where a VUEWorks staff member is unable to answer the phone, or when the Customer uses email for a support request, Customer will include in the message their name, their organization, a thorough description of the steps that preceded the problem, and a call back number. Screen shots and complete descriptions of the problem, activities leading to the problem and any related detail are most helpful. VUEWorks may not be able to respond if this information is not provided.

6. Common incidents include operational questions, improvement suggestions, problems related to changes in the customers’ GIS environment, problems related to changes in the customers’ VUEWorks implementation, and problems related to defects in the software.
a. If the incident involves a defect in the VUEWorks software, VUEWorks will provide the commercially reasonable effort to fix the defect(s) at no charge.
   i. A defect is defined as an issue with the software during the normal course of operation where the software does not function as documented due to an error in the software code.
   ii. A defect is often, but not always, accompanied by an error message.

1. VUEWorks software has many dependencies that could generate error messages that are delivered through VUEWorks but are not VUEWorks software defects. These include but are not limited to:
   2. ESRI GIS Software (ArcGIS Server or ArcIMS)
   3. MS SQL Server
   4. Server operating system
   5. Permissions
   6. Hardware
   7. Network connectivity
   8. Individual client computer issues
      a. Individual Client computer issues are identified when the issue occurs on a limited number of computers but not on all computers using the same VUEWorks user login.
      b. VUEWorks reserves the right to determine if an issue is caused by a VUEWorks software defect or not

7. If the issue is determined to be anything other than a defect in the VUEWorks software code then VUEWorks will provide up to 30 minutes of technical support at no charge. The Contractor must prove the issue is not a defect and written approval is required by the procuring entity for any work on non-defects by the Contractor. Followed by a charge of two hundred dollars ($200) per hour per incident.

8. VUEWorks technical services do not include support for ESRI Software. While VUEWorks staff may attempt, at its sole discretion, to resolve issues stemming from ESRI Software, the Customer recognizes that these types of issues are best supported through ESRI’s many support channels.

9. VUEWorks handles incident reports in the following manner
Each incident logged will be given a priority of 0 to 4 as determined by VUEWorks' technical support staff. VUEWorks will first attempt to resolve the issue with the Customer upon initial response. If the issue cannot be resolved during initial response then VUEWorks will respond to the request depending on the priority of the issue as defined in the following sections:

a. Priority 0. Critical Issue. VUEWorks will start working on the issue within 4 business hours of initial response and continue to work on the issue during normal business hours until the issue is resolved. Examples of Critical Issues:
   i. No user at the Customer site can log on to VUEWorks
   ii. The map does not display on any user computer at the Customer’s site.
   iii. No user at the Customer’s site can create a Service Call or Work Order

b. Priority 1. Severe Issue. VUEWorks will start working on the issue within one business day of initial response and continue to work on the issue during normal business hours until the issue is resolved if any of the following occurs:
   i. VUEWorks generates information that is obviously and substantially incorrect
   ii. A feature produces error messages that causes an application feature to stop functioning or not produce results

c. Priority 2. Important Issue. If the issue cannot be resolved through the initial response process then VUEWorks will start working on the issue within 5 business days and resolve the issue within 30 days thereafter if any of the following occurs:
   i. An issue reported by Customer that can be resolved by providing help on using a specific feature
   ii. Issues that cause an error message but do not cause the application to stop functioning or create results that are substantially incorrect
   iii. Issues acknowledged by VUEWorks as a defect that can be avoided without loss of functionality through a work around process

d. Priority 3. Low priority issues. If the issue cannot be resolved through the initial response process then VUEWorks will document the issue but not be obligated to respond within any specific time frame for the following types of issues:
   i. Issues or questions that are not directly related to the functionality of the product
   ii. Non-contractual application enhancement request (the "Wishlist"). A non-contractual request to provide features in VUEWorks that are not in the current product.

e. Priority 4. Issue is not directly related to VUEWorks software. If an issue is determined to be related to hardware, browser, or operating system malfunction VUEWorks will notify Customer that the issue must be resolved by the Customer. These cases are usually substantiated if the
issue occurs on only one user computer and cannot be replicated on another user computer or at VUEWorks' test environment. VUEWorks, LLC. will provide commercially reasonable effort based on the above guidelines. If it is determined that the effort required to resolve the issue is not included in this Annual Maintenance and Support policy, work will stop and the Customer will be advised that the work is not covered. At VUEWorks discretion, the customer may be provided an option for VUEWorks to continue the work at an agreed to cost and scope.

10. Direct Server Access: In order for VUEWorks to provide adequate support the Customer agrees to provide VUEWorks the means to remotely control and transfer files with the Customer's VUEWorks server, the GIS server and the SQL server through the Internet.

a. VUEWorks recommends LogMeIn software for remote access but will work with any commercially acceptable system that provides remote control and file transfer capabilities as preferred by the Customer.

b. This requirement allows VUEWorks support staff to:
   i. Offer the Customer software update services to install patches, updates, and upgrades that would otherwise require Customer resources.
   ii. Ability for VUEWorks staff to directly operate VUEWorks at the Customer site for the purpose of investigating issues reported by the Customer.
   iii. Attempt to resolve issues remotely that would otherwise require an On-Site visit.

c. Customers understands and agrees that if remote access to Customers servers is not provided then the all response times documented in item 10 above will not apply.
   i. VUEWorks agrees to not access any other data or applications other than required for VUEWorks support purposes.