

**Master Services Agreement #7539**

This Master Services Agreement ("MSA") is between the State of Oregon ("State") acting by and through its Department of Administrative Services ("DAS") on behalf of the Office of the Chief Information Officer, Geospatial Enterprise Office ("GEO"), other state agencies and members of the Oregon Cooperative Purchasing Program ("Authorized Purchasers") and Pictometry International Corp. ("Contractor") for oblique aerial imagery products and services.

**Recitals**

A. DAS desires to engage Contractor through this MSA to make available to DAS, GEO and other Authorized Purchasers certain oblique aerial imagery products and services, as described on Exhibit A ("Products" and "Services").

B. On or about May 8, 2017, DAS issued Special Procurement Notice # DASPS-2767-17 to provide authority to directly award contracts to Contractor and other providers of the Products and Services.

C. Contractor desires to provide the Products and perform the Services for DAS, agencies of the State of Oregon that are subject to DAS procurement authority according to ORS 279A.050 and 279A.140 and that are authorized to use this MSA through a delegation of authority according to OAR 125-246-0170 ("Authorized Agencies"), and any non-Authorized Agency participant in the Oregon Cooperative Purchasing Program operated by DAS ("ORCPP Member"), pursuant to the terms of this MSA. DAS, Authorized Agencies and ORCPP Members are collectively referred to as "Authorized Purchasers."

**Agreement**

DAS and Contractor agree as follows:

**Part 1: MSA Specific Terms**

**1. Purpose of MSA.** This MSA establishes terms and conditions applicable to Contractor and DAS in connection with the Products and Services, including but not limited to:

- 1.1. the form of the purchase order ("PO") to be used by Authorized Agencies and Contractor to enter into contracts for Products, Services or both (such contracts being hereinafter "Contracts");
- 1.2. the terms and conditions applicable to Contracts;
- 1.3. the process through which Contracts will be created; and
- 1.4. the pricing applicable to Contracts.

Authorized Agencies and Contractor will enter into binding and enforceable contracts for Products or Services or both by issuing POs, substantially in the form attached hereto as Exhibit B. Other Authorized Purchasers may enter into Contracts using POs substantially

Accepted by Yamhill County  
Board of Commissioners on  
9-28-17 by Board Order <sup>6/29/2017</sup>  
# 17-385

in the form of Exhibit B, but are not required to do so and may use forms or other ordering instruments as agreed upon by the Authorized Purchaser and Contractor.

Each Contract will specify the Products or Services to be provided.

GEO may access and use all or any portion of imagery made available to any other Authorized Purchaser pursuant to this MSA.

**2. Effective Date and Term.** This MSA is effective on the date the MSA has been executed by DAS and Contractor, and has been approved as required by applicable law ("Effective Date"). Unless terminated or extended, this MSA expires on June 30, 2019 ("Initial Term"). DAS and Contractor may extend this MSA by written agreement (Initial Term and extensions are collectively referred to as "MSA term"). MSA expiration or termination does not extinguish or prejudice any right to enforce this MSA with respect to any breach or any default under the MSA or any Contract prior to its respective expiration or termination.

**3. MSA Documents.** This MSA includes the MSA and its exhibits which are attached and incorporated by reference. If a conflict, inconsistency or ambiguity exists among any portion of this MSA and any other documents, then the issue must be interpreted in the following order of precedence:

3.1. This MSA less all exhibits;

3.2. Exhibit A, Description of Products and Services; Pricing;

3.3. Exhibit C, DAS Volume Sales Report Template - Data Requirement, Format and Layout;

3.4. Exhibit B, Purchase Order Form; and

3.5. Exhibits D-1 (Pictometry Delivered Content Terms and Conditions of Use), D-2 (Pictometry Online Services General Terms and Conditions), D-3 (Pictometry Software License Agreement) and D-4 (Pictometry Web Visualization Offering Terms and Conditions) or any other Contractor terms and conditions.

**4. Pricing Changes.** Contractor shall keep pricing specified in Exhibit A fixed for the Initial Term. Thereafter, DAS and Contractor may adjust pricing no more than once annually by MSA amendment. Contractor shall submit all pricing increase requests to DAS in writing and provide substantiating evidence that each request is based on demonstrable market changes impacting the cost of the Services. Pricing changes will apply to Contracts and amendments to Contracts entered on and after the effective date of the pricing change.

**5. Non-exclusive MSA; Contractor Selection.** This MSA is not exclusive. Each Authorized Purchaser retains the right to contract for Products or Services or both through any selection process authorized by law, or to perform the Services itself. Neither DAS

nor any other Authorized Purchaser guarantees that any specific number of Contracts will be entered or that any specific amount of Products or Services will be required.

In the event DAS awards more than one Master Services Agreement, Authorized Purchaser must conduct a best value comparison process to select the contractor for award based upon various factors, including: cost, Product or Services availability, time of performance, or other factors. Authorized Purchaser shall issue a request for quote to all Master Services Agreement holders detailing the Product or Service need and evaluation criteria, including: Product or Service availability, time for delivery or performance, costs, and any other factors. Authorized Purchaser shall award the Contract to the contractor with the offer that is in the best interest of Authorized Purchaser. Authorized Purchaser's determination is final.

## **6. Signed Contract Required for Products or Services.**

**6.1 Contract.** DAS and Authorized Agencies must use a PO in a form substantially similar to the form attached as Exhibit B. ORCPP Members may use their own form as agreed upon with Contractor. Each Contract shall include by reference the Contract Specific Terms and Conditions set forth in Part 2 of this MSA.

**6.2. Contract Rejection.** Contractor shall reject Contracts that do not comply with this section 6. Contractor also shall reject Contracts that are not from Authorized Purchasers. Contractor may verify ORCPP Members at:

<http://www.oregon.gov/das/Procurement/Pages/Orcppmember.aspx>

**6.3. Contract Creation.** Each fully executed Contract creates a separate contract between Authorized Purchaser and Contractor that is enforceable according to its terms and is independent of all other executed Contracts. Each Contract consists only of the terms specified for Contracts in this MSA and no other terms, regardless of source. DAS and GEO are intended beneficiaries under each Contract between Authorized Purchasers and Contractor. DAS is not obligated or liable to Contractor under any Contract unless DAS is purchasing the Products or Services as the Authorized Purchaser.

**6.4. Authorized Purchasers' Liability under Contracts.** Contractor shall look solely to the Authorized Purchaser for any rights and remedies Contractor may have at law or in equity arising under any Contract between Contractor and the Authorized Purchaser. Contractor acknowledges and agrees that DAS is not liable to Contractor under any Contract entered into between Contractor and an Authorized Agency or an ORCPP Member unless DAS is purchasing the Services as the Authorized Purchaser.

## **7. Products and Services; Descriptions and Pricing.**

**7.1. Products and Services.** Attached hereto as Exhibit A are the descriptions of the Products and Services available to Authorized Purchasers pursuant to this MSA, including the corresponding prices at which they are available and references to the corresponding license terms and conditions applicable to specific Products or

Services. All pricing of the Products and Services listed on Exhibit A applicable to a Contract will be determined in accordance with Exhibit A.

**7.2. License Terms.** Attached hereto as Exhibits D-1, D-2, D-3 and D-4 are the individual license terms that apply to the specific Products and Services available to Authorized Purchasers pursuant to this MSA (collectively, the "License Terms"). References in the Product Descriptions set forth on Exhibit A indicate which specific License Terms apply to which Products and Services. Provisions in the License Terms dealing with choice of law and forum for dispute resolution do not apply to Contracts entered into pursuant to this MSA.

**7.3. Ongoing Services, Maintenance and Support.** Additionally and as applicable, Contractor shall, at no additional charge to DAS, GEO or Authorized Purchaser (i) maintain software provided to each Authorized Purchaser for the respective period specified in the relevant Description of Products and Services or one year from the date of the applicable Contract, whichever is longer, (ii) maintain the online services provided pursuant to any Contract (including upgrades made generally available by Contractor to Contractor's customers) without additional charge) for the period for which the Authorized Purchaser has purchased and paid the required fee for such online services pursuant to the Contract. Contractor also shall inform Authorized Purchaser of the availability of enhancements of the Products or Services for which a separate license fee and license agreement are required. If an enhancement is licensed by Authorized Purchaser under an amendment to this Contract, this Contract will apply to such enhancement and additional fees may apply for such licensed Enhancement.

**7.4. Product and Service Specifications.** In its provision of the Products and Services, Contractor shall meet the specifications set forth in this MSA, including those set forth in Exhibits D-1 (Pictometry Delivered Content Terms and Conditions of Use), D-2 (Pictometry Online Services General Terms and Conditions), D-3 (Pictometry Software License Agreement) or D-4 (Pictometry Web Visualization Offering Terms and Conditions).

## **8. Volume Sales Report and Vendor Collected Administrative Fee.**

### **8.1. Volume Sales Report ("VSR").**

**8.1.1.** Contractor shall submit a VSR to DAS no later than thirty (30) Calendar days following the end of each calendar quarter through the MSA term ("Calendar Quarter"). The first Calendar Quarter begins on the Effective Date, and each subsequent Calendar Quarter begins the day following the end of the immediately preceding Calendar Quarter. Each Calendar Quarter ends on the earliest date of the following to occur after the beginning of the Calendar Quarter: March 31, June 30, September 30, or December 31.

Contractor shall include the following information in each VSR:

- Complete and accurate details of all payments received from Authorized Purchasers pursuant to Contracts, less any credits given or refunds issued, during the Calendar Quarter;
- All information requested in Exhibit C, DAS Volume Sales Report Template - Data Requirement, Format and Layout; and
- All other information that DAS may reasonably request.

If Contractor did not receive any payments from Authorized Purchasers pursuant to Contracts during the Calendar Quarter Contractor shall deliver a VSR to DAS within the timeframe specified in this subsection 8.1.1 that specifies no payments were received from Authorized Purchasers pursuant to Contracts during the Calendar Quarter covered by the report.

**8.1.2. Data Medium and Delivery Medium.** Contractor shall deliver VSRs in MS Excel (.xls) format to DAS by e-mail. DAS will not accept hard copies of VSRs. DAS will accept VSRs on CDs, jump drives or other mutually acceptable portable data storage media only if the size of the electronic VSR file prohibits transmission of the VSR to DAS by e-mail. DAS, through its MSA Administrator, may waive some or all of these requirements in writing.

**8.1.3. Receipt/Acceptance.** Contractor shall deliver the first VSR required under this MSA to the DAS Contract Administrator for review and approval. Upon approval, Contractor shall deliver this first VSR and all subsequent VSRs to VCAF.REPORTING@oregon.gov. DAS may challenge or dispute the validity of any VSR at any time during the term of this MSA.

DAS may terminate this MSA pursuant to section 12.3 if Contractor fails to deliver a VSR according to this section 8.1.

## **8.2. Vendor Collected Administrative Fee (“VCAF”).**

**8.2.1.** Contractor shall remit to DAS a VCAF in the amount of one percent (1%) of all payments received from Authorized Purchasers pursuant to Contracts, less any credits given or refunds issued, during each Calendar Quarter. Contractor shall not reflect the VCAF as a separate line item charge to Authorized Purchasers.

**8.2.2.** DAS will deliver an invoice the Contractor for the VCAF based on the information in each VSR.

**8.2.3.** Contractor shall remit each VCAF payment to DAS by check within sixty (60) Calendar Days following the end of each Calendar Quarter to:

State of Oregon  
Department of Administrative Services  
Attn: Shared Financial Services/PS  
155 Cottage Street NE  
Salem, Oregon 97301

DAS will not accept any other form of payment unless specifically approved by the DAS MSA Administrator.

**8.2.4.** Any VCAF payments Contractor makes or causes to be made to DAS after the payment due date shall accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until Contractor pays the overdue amount in full. DAS' right to interest on late payments does not preclude DAS from exercising any of its other rights or remedies pursuant to this MSA or otherwise with regards to Contractor's failure to make timely payment.

**8.2.5.** Contractor shall maintain all financial records under this MSA in accordance with generally accepted accounting principles, and all other records in such a manner as to clearly document Contractor's performance. Upon reasonable notice and during Contractor's customary business hours, Contractor shall permit DAS and any person authorized by DAS, to perform examinations and audits and make excerpts and transcripts of Contractor's records related to this MSA and Contracts to determine and verify the figures reported in any VSR. If any audit reveals VCAF underpayment, Contractor shall immediately pay the amount of underpayment, together with all applicable interest at the rate specified in section 8.2.5. At DAS' request, Contractor shall pay the reasonable cost of any audit that reveals a VCAF underpayment exists, as determined by DAS.

Contractor shall retain and keep accessible all such records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this MSA, or until the conclusion of any audit, controversy, or litigation arising out of or related to this MSA, whichever date is later

**9. Representations and Warranties:** Contractor represents and warrants to DAS that:

**9.1.** Contractor is not an "officer," "employee," or "agent" of DAS, as those terms are used in ORS 30.265;

**9.2.** Contractor fully understands and will perform its obligations under this MSA;

**9.3.** Contractor is qualified to do business in the State of Oregon and will remain qualified throughout the MSA term;

**9.4.** Contractor is not in arrears in the payment of any monies due and owing the State of Oregon, or any department or agency thereof, including but not limited to the payment of taxes and employee benefits, and will not become so during the MSA;

**9.5.** Contractor will comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to its performance under this MSA;

**9.6.** Contractor is not in violation of, charged with nor, to the best of Contractor's knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance or regulation or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to provision of the Services, and Contractor's provision of the Services shall not violate any such law, ordinance, regulation or order;

**9.7.** Contractor's performance under this Contract to the best of Contractor's knowledge creates no potential or actual conflict of interest, as defined by ORS 244, for either Contractor or any Contractor personnel that will perform the Services under this Contract;

**9.8.** Contractor represents and warrants that with respect to Contractor employees providing services under this Contract, Contractor withholds applicable income taxes from the pay of such employees; Contractor pays workers' compensation insurance premiums arising from the employment of such employees; Contractor makes all other applicable tax and related payments arising from that employment (including without limitation social security tax payments); and that Contractor provides employee benefits to its employees, including without limitation health insurance benefits, vacation benefits, and retirement benefits;

**9.9.** Contractor possesses and will maintain at its own expense all required licenses, certifications and permits necessary to deliver Services under this MSA and all Contracts;

**9.10.** Contractor has the power and authority to enter into and perform this MSA and each Contract;

**9.11.** This MSA, when executed and delivered, is a valid and binding obligation of Contractor enforceable according to its terms;

**9.12.** Contractor has the skill and knowledge possessed by well-informed members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor's employees and any authorized subcontractors provide the Products and perform the Services described in this MSA in accordance with the highest standards prevalent in the industry or business most closely involved in providing the Products and Services and Contractor shall, at all times during the term of this MSA and any Contract, be qualified, professionally competent, and duly licensed to provide the Products and perform the Services;

**9.13.** The Products and Services are free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the software, collect unlawful personally identifiable information on users, or prevent the software from performing as required under the terms and conditions of this MSA or a Contract. Notwithstanding the foregoing, this representation and warranty does not include a disabling device that limits, suspends or ends use of the Products or Services expressly permitted by the terms and conditions by the license under which it was provided: and

**9.14.** When used as authorized by this MSA and the applicable Contract, no Products or Services infringe, nor will Authorized Purchaser's use, of such Products or Services in accordance with this MSA, applicable Contract or the License Terms, infringe any copyright, patent, trade secret or other proprietary right of any third party.

The warranties set forth in this section 9 are in addition to, and not in lieu of, any other warranties provided in this MSA or in the applicable Contract.

**10. MSA Default.** Contractor is in default of this MSA if:

**10.1.** Contractor fails to honor pricing at or lower than the pricing specified in Exhibit A; or

**10.2.** Contractor violates or fails to perform any covenant, representation, warranty, obligation or certification under this MSA.

Before Contractor can be found in default of this MSA, DAS shall first deliver a notice of default to Contractor. The notice must describe the specific nature of the default, cite the specific provisions of this MSA that have been violated, indicate whether the default can be cured, and specify the time period in which the default must be cured, if cure is permitted.

**11. Remedies for Default.** If Contractor is in default under section 10, DAS may, at its option, pursue any or all remedies available to it under this MSA and at law or in equity, including without limitation, termination of this MSA pursuant to section 12 or pursuing a claim for damages, or both.

**12. Termination.**

**12.1. Mutual Termination.** The parties may terminate this MSA upon the date specified in written agreement.

**12.2. DAS' Right to Terminate.** DAS may, at its sole discretion, terminate this MSA as follows:

**12.2.1.** DAS may terminate this MSA upon thirty (30) calendar days' prior written notice to Contractor or any later date as specified in the written notice; or

**12.2.2.** DAS may terminate this MSA immediately if federal or state laws, regulations or guidelines are modified in such a way that would prohibit any party's performance under this MSA.

**12.3. DAS' Right to Terminate for Cause.** In addition to any other rights and remedies DAS may have under this MSA, DAS may terminate this MSA, in whole or in part, immediately upon Contractor being found in default under section 10.

**12.4. Effect of MSA Termination or Expiration.** Upon termination or expiration of this MSA, Contractor shall continue to provide the Products or Services and meet its obligations under all effective Contracts issued prior to MSA termination or expiration, unless such Contract is otherwise terminated pursuant to its terms. The termination or expiration of this MSA will be without prejudice to the rights of the parties accrued up to the date of such termination or expiration.

**13. Indemnity and Insurance.**

**13.1** Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and DAS, and their officers and employees from and against all third party claims, suits, actions, losses, damages, liabilities, statutory penalties, costs and expenses of any nature whatsoever, including personal injury, death, damage to real property and damage to tangible or intangible personal property resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this MSA or any Contract including:

**13.1.1.** Any claim that Contractor, a subcontractor, or Contractor's staff or a subcontractor's staff are employees of the State or Authorized Purchaser for any reason; and

**13.1.2.** Any claim that the Products or Services provided to an Authorized Purchaser pursuant to this MSA or use thereof infringe or violate any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; and

**13.1.3** Any claim against the State or Authorized Purchaser, which, if true, would constitute a breach by Contractor of any of the representations, warranties, or covenants set forth in this MSA.

Without limiting the generality of the foregoing, Contractor will have no obligation to indemnify the State of Oregon or DAS from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable solely to the acts or omissions of DAS, Authorized Purchasers or its or their officers, employees or agents.

**13.2. DAS or GEO Indemnity.** DAS' or GEO's liabilities or obligations to indemnify Contractor, if any, are subject to the provisions of Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 to 30.300).

**13.3 Insurance.** Contractor, at its sole cost, shall obtain and maintain the following minimum insurance coverages.

**13.3.1. Workers' Compensation & Employers' Liability.** All employers, including Contractor, shall provide workers' compensation insurance as required by applicable workers' compensation laws for persons performing work under this Contract, including Employers' Liability Insurance with limits not less than

\$500,000 each accident. Contractor shall require and ensure that each of its subcontractors complies with these requirements.

**13.3.2. Professional Liability.** Contractor shall provide Professional Liability insurance including the following:

A combined single limit of no less than \$1,000,000 per occurrence covering:

- Technology Errors and Omissions related to the professional services and products provided under this MSA;
- Network Security/Privacy Breach of Authorized Purchaser data;
- Coverage for regulatory fines and fees imposed against Agency due to failures in products and Services provided under this MSA, including defense cost.

Coverage must include errors, omissions, negligent acts, denial of service, media liability (including software copyright), dishonesty, fraudulent or criminal acts by a person or persons whether identified or not, intellectual property infringement, computer system attacks, unauthorized access and use of computer system, regulatory actions, and contractual liability. Coverage must extend to business associates and independent contractors providing professional services on behalf of or at the direction of Contractor. A primary policy or combination of a primary policy and excess policy is acceptable in order to meet the limits requirement.

**13.3.3. Commercial General Liability.** Contractor shall provide Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverage that are satisfactory to the State. This insurance must include personal injury liability, products and completed operations, and contractual liability coverage, in each case arising out of Contractor's negligence. Coverage must be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

**13.3.4. Automobile Liability Insurance.** Contractor shall provide Automobile Liability Insurance covering all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage.

**13.3.5. Additional Insured.** The Professional Liability insurance and Commercial General Liability insurance required under this MSA must include the State of Oregon, its officers and employees as Additional Insureds but only with respect to Contractor's activities to be performed under this MSA.

**13.3.6. Tail Coverage.** If any of the required insurance is on a claims-made basis and does not include an extended reporting period of at least twenty-four (24) months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the Effective Date of this MSA, for a minimum of twenty-four (24) months following the later of (i) Contractor's completion and

Authorized Purchaser's acceptance of all Services required under this MSA and any Contract, or, (ii) the expiration of all Warranty Periods provided under this MSA and any Contract.

**13.3.7. Certificates and Proof of Insurance.** Contractor shall provide to DAS Certificates of Insurance for all required insurance before performing any Services required under this MSA. The Certificates must list the State of Oregon and its officers and employees as a Certificate holder and as Additional Insured, specify that Contractor will pay for all deductibles, self-insured retention and self-insurance, if any, that all coverage will be primary and non-contributory with any other insurance and self-insurance, and confirm that either an extended reporting period of at least twenty-four (24) months is provided on all claims made policies or that tail coverage is provided. As proof of insurance DAS has the right to request copies of insurance policies relating to the insurance requirements in this MSA.

**13.3.8. Notice of Change or Cancellation.** Contractor or its insurer must endeavor to provide at least thirty (30) Calendar Days' written notice to DAS before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverages.

**13.3.9. Insurance Requirement Review.** Contractor agrees to periodic review of insurance requirements by DAS or GEO under this MSA and to meet updated requirements as mutually agreed upon by Contractor and DAS.

**14. Governing Law.** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this MSA, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

**15. Venue and Consent to Jurisdiction.** Any claim, action, suit, or proceeding (collectively, "Claim") between DAS and Contractor that arises from or relates to this MSA must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR BY EXECUTION OF THIS MSA HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 15. In no event may this section be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim, or (ii) consent by the State of Oregon to the jurisdiction of any court.

**16. MSA Contract Administrators.** The MSA Contract Administrators for DAS and for Contractor are the individuals identified in this section 16 or any other individual identified in writing as the MSA Administrator to the other party.

<b>DAS MSA Contract Administrator:</b>	<b>Contractor MSA Contract Administrator:</b>
Kimberly Mainwaring	Pictometry International Corp.
1225 Ferry St. SE	Attn: Contract Administration – OR MSA
Salem, OR 97301	25 Methodist Hill Drive
(503) 373-0763	Rochester, NY 14623
Kimberly.Mainwaring@oregon.gov	
<b>GEO Contract Manager:</b>	
Cy Smith	
155 Cottage St. NE	
Salem, OR 97301	
(503)378-6066	
Cy.Smith@oregon.gov	

**17. Amendment.** This MSA may be amended, modified, or supplemented only by a written amendment signed by DAS and Contractor. Any amendment that provides for additional Products or Services, goods or other services may only provide for Products, Services, goods or services directly related to the scope of Products and Services, goods and services described in the Special Procurement, and no amendment will be effective until all requisite signatures and approvals are obtained. Either DAS or Contractor may request a change to this MSA, including all Exhibits hereto, by submitting a written proposal describing the desired change to the other party.

**18. Integration.** This MSA and attached Exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this MSA.

**19. Contractor Data.** Contractor shall provide all information requested below. DAS, GEO or Authorized Purchaser may report this information to the Internal Revenue Service ("IRS") under the name and taxpayer identification number provided. (See IRS 1099 for additional instructions regarding taxpayer identification numbers.) Information not matching IRS records could subject Contractor to thirty-one percent (31%) backup withholding.

**Name (tax filing):** Pictometry International Corp., a Delaware corporation

**Address:** 25 Methodist Hill Drive, Rochester, NY 14623

**Citizenship:** Non-resident alien  Yes  No

**Business Designation (check one):**

Corporation    Partnership    Limited Liability Company

Limited Liability Partnership    Sole Proprietorship    Limited Partnership

**Federal Tax ID#: 16-1595473 or Social Security No.:** \_\_\_\_\_  
(These numbers are requested pursuant to ORS 305.385 and OAR 150-305.100.)

## Part 2: CONTRACT SPECIFIC TERMS

The following Contract Specific Terms and Conditions apply to and are incorporated into all POs or substantially similar documents authorized by the MSA ("Contracts") entered into by Contractor and any Authorized Purchaser pursuant to the MSA:

**1. Contract Documents and Order of Precedence.** Each Contract includes these Contract Specific Terms, including the terms set forth in Exhibits D-1, D-2, D-3, D-4 and the PO to the extent applicable. If a conflict, inconsistency or ambiguity arises in contract interpretation, the Contract must be interpreted in the following order of precedence:

- 1.1. MSA, Part 1, MSA Specific Terms;
- 1.2. MSA Part 2, Contract Specific Terms;
- 1.3. Exhibit D-1 (Pictometry Delivered Content Terms and Conditions of Use), Exhibit D-2 (Pictometry Online Services General Terms and Conditions), Exhibit D-3 (Pictometry Software License Agreement), Exhibit D-4 (Pictometry Web Visualization Offering Terms and Conditions) and other Contractor terms; and
- 1.4. Purchase Order or substantially similar documents authorized by the MSA

**2. Definitions.** In addition to any other terms defined elsewhere in this MSA, the following defined terms apply to each Contract:

- 2.1. **"Business Day"** means any day Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, excluding State of Oregon holidays and business closure days.
- 2.2. **"Calendar Day"** means any day on the Western calendar.
- 2.3. **"Contract"** means any Purchase Order ("PO") or other agreed upon ordering instrument entered into by Contractor and an Authorized Purchaser pursuant to the MSA in combination with these Contract Specific Terms, including all applicable terms incorporated by reference into these Contract Specific Terms.
- 2.4. **"Intellectual Property"** means any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right.

**3. Products and Services; Performance Metrics and Service Level Guarantees.** Contractor shall provide to Authorized Purchaser the Products and Services set forth on the Contract. The Contract includes the delivery and payment schedule for the Products and Services. Contractor shall provide the Products and Services according to the terms and conditions of this Contract, including meeting the performance metrics and service level guarantees set forth in Exhibit D-1 (Pictometry Delivered Content Terms and Conditions of Use), Exhibit D-2 (Pictometry Online Services General Terms and Conditions), Exhibit D-3 (Pictometry Software License Agreement), Exhibit D-4 (Pictometry Web Visualization Offering Terms and Conditions) or specifically in this Contract.

#### **4. Compensation, Invoices and Payment.**

**4.1** Authorized Purchaser will not pay Contractor any amount in excess of the amount set forth in the Contract and will not pay for any Products or Services provided before the Effective Date or after expiration or termination of the Contract.

**4.2. Invoices.** Contractor shall submit invoices for Products and Services in accordance with the payment schedule set forth in this Contract. Contractor shall submit invoices to Authorized Purchaser at the address specified in this Contract. Contractor shall include the MSA number and applicable Contract number on all invoices. Contractor also shall include a description of the Products and Services to which the invoice relates, applicable pricing, total amount invoiced and the address to which payment is to be remitted.

**4.3. Payment.** Authorized Purchaser shall pay all undisputed amounts within thirty (30) days following receipt of each invoice determined to be correct following Authorized Purchaser's review under section 4.4. Contractor may assess late payment charges only to the extent permitted by ORS 293.462.

**4.4. Invoice Review / Dispute Process.** Authorized Purchaser will review each invoice and will either approve payment of the amount invoiced or notify Contractor of any errors or disputed charges. Authorized Purchaser may withhold payment of any amounts that are disputed.

If an error or dispute arises concerning the amount charged in an invoice, Authorized Purchaser will notify Contractor of the disputed charge. Upon notification of dispute, Contractor shall submit to Authorized Purchaser all documentation Authorized Purchaser reasonably requests to substantiate the amount charged.

Authorized Purchaser, in its sole discretion, will determine if the supporting documentation provides sufficient substantiation for the disputed charges. If Authorized Purchaser determines that the supporting documentation is sufficient, Authorized Purchaser will notify Contractor and pay Contractor the amount charged in the invoice. If Authorized Purchaser determines the supporting documentation supports payment of an amount less than originally invoiced, Authorized Purchaser will notify Contractor of the amount Authorized Purchaser believes is due under the invoice, and Authorized Purchaser will pay the invoice in that lesser amount. Contractor reserves the right to challenge any determination by Authorized Purchaser that any portion of an invoiced amount will not be paid or any failure to pay an amount for which no determination is made within sixty (60) Calendar Days.

**4.5. Taxes and Other Charges.** To the extent that it is not otherwise exempt, Authorized Purchaser will pay any applicable use, excise, value-added, import/export duties or other tax or governmental charges imposed on the Products or Services. Authorized Purchaser will not pay freight, insurance or installation charges or reimburse any other expenses incurred by Contractor during the completion of the Services except as authorized in this Contract. Any such authorized travel expenses must comply with the Oregon Travel Policy available on the Internet at: <http://www.oregon.gov/das/cfo/sars/policies/oam/40.10.00.pdf>

**4.6. Funds Available and Authorized.** Contractor will not be compensated for Products or Services pursuant to this Contract by any other agency or department of the State of Oregon other than the Authorized Purchaser entering into this Contract. Authorized Purchaser believes it has sufficient funds currently available and authorized for expenditure to make payments required pursuant to this Contract within Authorized Purchaser's biennial appropriation or limitation. Contractor understands and agrees that Authorized Purchaser's payments under this Contract are contingent on Authorized Purchaser receiving appropriations, limitations, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract. Nothing in this Contract is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Agency represents that it has sufficient appropriations and limitation for the current biennium to make payments under this Contract.

## **5. Performance, Delivery and Acceptance.**

**5.1. Responsibilities of Contractor.** Contractor shall provide the Products and Services required to be delivered pursuant to this Contract and meet the specifications set forth in the descriptions on Exhibit A. Contractor shall cooperate with Authorized Purchaser and its designated third parties by providing access to and information regarding the Products and Services and their use.

**5.2. Delivery and Review of Deliverables.** Unless otherwise agreed in writing, within ten (10) Business Days following Contractor providing Authorized Purchaser with access to Authorized Purchaser's Products and Services required to be delivered pursuant to this Contract, Authorized Purchaser will review the Products and Services to determine whether they meet the Contract requirements. If Authorized Purchaser determines that the Products or Services meet the Contract requirements, Authorized Purchaser will notify Contractor of Authorized Purchaser's acceptance.

If Authorized Purchaser determines that any of Products or the Services, do not meet the Contract requirements, Authorized Purchaser will notify Contractor of Authorized Purchaser's determination and indicate Authorized Purchaser's rejection of such Products or Services. Within ten (10) Business Days following Contractor's receipt of Authorized Purchaser's rejection notice, Contractor shall determine whether such rejection is valid and, if so, indicate a course of action through which Contractor proposes to correct any deficiencies at Contractor's sole expense and the timetable for such corrective action. Authorized Purchaser will thereafter review of the revised Products or Services and notify Contractor of Authorized Purchaser's acceptance or rejection within a ten (10) Business Days following Authorized Purchaser's receipt of Contractor's revised Products or Services. This process is an iterative process. Notwithstanding anything else in this contract to the contrary, until Authorized Purchaser has accepted the Products and Services provided, Authorized Purchaser shall make no use of such Products or Services other than for evaluation to determine acceptance or rejection.

Contractor's failure to deliver Products or Services that meet the specifications set forth in the descriptions on Exhibit A after Authorized Purchaser's second review may constitute a default by Contractor, if Authorized Purchaser chooses not to allow Contractor any further attempts to revise the Products or Services. Upon such default, Contractor shall refund to Authorized Purchaser all amounts previously paid by Authorized Purchaser for the Products or Services.

**5.3. Responsibilities of Authorized Purchaser.** If this Contract requires Authorized Purchaser to provide any information or resources, and Authorized Purchaser fails to provide the requisite quality or quantity of such resources, or fails to provide such resources in a timely manner for a period that does not exceed ten (10) Calendar Days, Contractor's sole remedy is an extension of the applicable delivery dates resulting from such delay. If Authorized Purchaser's failure to provide such resources exceeds ten (10) Calendar Days, and Contractor can show to the reasonable satisfaction of Authorized Purchaser, that Authorized Purchaser's failure has resulted in an unavoidable delay or increase in the cost of providing the Products or Services in accordance with the original schedule, then Contractor will be entitled to recover from Authorized Purchaser the reasonable amount of such increased costs. Contractor's right to delay applicable delivery dates or recover for increased costs may be exercised only if Contractor provides Authorized Purchaser with reasonable notice of Authorized Purchaser's failure and Contractor uses commercially reasonable efforts to perform notwithstanding Authorized Purchaser's failure to perform.

## **6. Subcontracts; Successors and Assigns.**

**6.1. Subcontracts.** Contractor shall not enter into any subcontracts for any of the Services required by this Contract without Authorized Purchaser's prior written consent.

**6.2. Successors and Assigns.** Contractor shall not assign or transfer any of its interest in this Contract without Authorized Purchaser's prior written consent, provided, however, that this provision does not apply to assignments or transfers of Contractor's entire interest in this Contract to any entity owning, owned by, or under common control with Contractor. This Contract is binding upon and shall inure to the benefit of Authorized Purchaser and Contractor, and their respective successors and permitted assigns.

**6.3. Cooperation.** Contractor understands and agrees that, as part of this Contract, Contractor may be required to work with other Authorized Purchaser contractors who may be working on this or similar projects. Authorized Purchaser and Contractor acknowledge and agree that this cooperation is essential to the mutual goal of both parties for accurate and valuable use by Authorized Purchaser. Contractor shall create and maintain a cooperative working relationship between and among Authorized Purchaser and other entities and their respective representatives involved in representing Authorized Purchaser's priorities at the federal and statewide levels, to further the interests of Authorized Purchaser to result in the

Services begin successfully completed on time and within budget; provided however, that nothing in this obligation of cooperation requires Contractor to disclose or allow disclosure of Contractor's trade secrets to third parties or to grant licenses or otherwise allow third parties to utilize Contractor's Intellectual Property in a manner that Contractor determines, in its sole discretion, to be contrary to Contractor's interests.

In the event of a conflict between contractors who must cooperate, contractors shall notify the Authorized Purchaser's contract administrator to seek a mutually acceptable resolution.

**6.4. Authorized Purchaser Facilities and Networks; Access and Security.**

Authorized Purchaser shall permit Contractor and Contractor personnel access to Authorized Purchaser facilities and networks, provided Contractor and Contractor personnel comply with all Authorized Purchaser security and access policies, rules, procedures, and regulations for access to Authorized Purchaser's facilities and networks.

**7. Confidentiality / Non-Disclosure.**

**7.1. Confidential Information.** Each party acknowledges that it and its employees or agents may, in the course of performing its responsibilities under this Contract, be exposed to or acquire information that is confidential to the other party or the other party's clients. Any and all information of any form obtained by one party or its employees or agents in the performance of this Contract is confidential information of the other party ("Confidential Information"). The parties shall treat any reports or other documents or items (including software) which result from the use of the Confidential Information by the recipient of such information with respect to confidentiality in the same manner as the Confidential Information. Confidential Information does not include information that (i) is or becomes (other than by disclosure by the party acquiring such information) publicly known or is contained in a publicly available document; (ii) is furnished by the party disclosing such information to others without restrictions similar to those imposed by this Contract; (iii) is rightfully in the receiving party's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (iv) is obtained from a source other than the discloser without the obligation of confidentiality, (v) is disclosed with the written consent of the disclosing party, or; (vi) is independently developed by employees or agents of the receiving party who can be shown to have had no access to the Confidential Information.

**7.2. Duties of Care.** The recipient of Confidential Information shall hold Confidential Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own Confidential Information, and the recipient shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than required by law or otherwise as contemplated by this Contract or reasonably related thereto, including without limitation the use by Authorized Purchaser contractors who need to access

or use the Confidential Information for any valid business purpose, and to advise each of its employees and contractors of their obligations to keep Confidential Information confidential.

**7.3. Prevention of Unauthorized Use or Disclosure.** Each party shall use commercially reasonable efforts to assist the other in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, each party shall advise the other immediately in the event it learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will at its expense cooperate with the other in seeking injunctive or other equitable relief in the name of the other against any such person.

**7.4. Non-disclosure.** Each party agrees that, except as provided in this Contract or directed by the other, it will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Contract each party will turn over to the other all documents, papers and other matter in its possession which embody Confidential Information.

**7.5. Public Records Laws.** Authorized Purchaser's obligations of confidentiality, if any, are subject to the Oregon Public Records Laws, ORS 192.410 through ORS 192.505 and the Oregon Custody and Maintenance of Records Laws, ORS 192.005 through 192.170.

**7.6. Injunctive Relief and Other Remedies.** Each party acknowledges that breach of this section 7, including disclosure of any Confidential Information may give rise to irreparable injury which may be inadequately compensable in damages. Accordingly, each party may seek injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Each party acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the other and are reasonable in scope and content.

**7.7. Publicity.** Contractor agrees that it will not, without the prior written consent of Authorized Purchaser, disclose the form, content or existence of this Contract or any Deliverable in any advertising, press releases or other materials distributed to prospective customers, or otherwise attempt to obtain publicity from its association with Authorized Purchaser or the State of Oregon, to the extent such action implies an endorsement by Authorized Purchaser or the State of Oregon of Contractor's Products or Services.

## **8. Independent Contractor; Taxes and Withholding.**

**8.1.** Contractor shall perform all Services as an independent contractor. Although Authorized Purchaser reserves the right to determine the delivery schedule for the Services to be performed and evaluate the quality of the completed performance,

Authorized Purchaser cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.

**8.2.** If Contractor is currently performing services for the State of Oregon or the federal government, Contractor, by signing this Contract, declares and certifies that:

**8.2.1.** Contractor's delivery of Services creates no potential or actual conflict of interest as defined by ORS 244;

**8.2.2.** No rules or regulations of Contractor's employing agency (state or federal) would prohibit Contractor's Services under this Contract;

**8.2.3.** If applicable, Contractor meets the specific independent contractor standards of ORS 670.600; and

**8.2.4.** Contractor is not an "officer," "employee," or "agent" of Authorized Purchaser as those terms are used in ORS 30.265.

**8.3.** Contractor is responsible for all federal or state taxes applicable to compensation or payments to Contractor under this Contract and, unless Contractor is subject to backup withholding, Authorized Purchaser will not withhold from such compensation or payments any amounts to cover Contractor's federal or state tax obligations. Contractor is not eligible for any Social Security, unemployment insurance or workers' compensation benefits from compensation or payments to Contractor under this Contract, except as a self-employed individual.

## **9. Representations and Warranties.**

**9.1.** Contractor's General Representations and Warranties. Contractor represents and warrants to Authorized Purchaser that:

**9.1.1.** Contractor is not an "officer," "employee," or "agent" of DAS or Authorized Purchaser, as those terms are used in ORS 30.265;

**9.1.2.** Contractor fully understands and will perform its obligations under this Contract and will not make any claims for, or have any rights to relief based on its claim that it misunderstood the terms of this Contract, or lacked information related to its required performance under this Contract;

**9.1.3.** Contractor is qualified to do business in the State of Oregon and will remain qualified throughout the Contract term;

**9.1.4.** Contractor is not in arrears in the payment of any monies due and owing the State of Oregon, or any department or agency thereof, including but not limited to the payment of taxes and employee benefits, and will not become so during the Contract term;

**9.1.5.** Contractor will comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to its performance under this Contract.

**9.1.6.** Contractor is not in violation of, charged with nor, to the best of Contractor's knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance or regulation or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to provision of the Services, and Contractor's provision of the Services shall not violate any such law, ordinance, regulation or order;

**9.1.7.** Contractor's performance under this Contract to the best of Contractor's knowledge creates no potential or actual conflict of interest, as defined by ORS 244, for either Contractor or any Contractor personnel that will perform the Services under this Contract;

**9.1.8.** Contractor represents and warrants that with respect to Contractor's employees providing services under this Contract, Contractor withholds applicable income taxes from the pay of such employees; Contractor pays workers' compensation insurance premiums arising from the employment of such employees; Contractor makes all other applicable tax and related payments arising from that employment (including without limitation social security tax payments); and that Contractor provides employee benefits to its employees, including without limitation health insurance benefits, vacation benefits, and retirement benefits;

**9.1.9.** Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six (6) calendar years preceding the Effective Date of this Contract, Contractor faithfully has complied with:

- All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
- Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
- Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions;

**9.1.10.** Contractor possesses and will maintain at its own expense all required licenses, certifications and permits necessary to deliver Services under this Contract;

**9.1.11.** Contractor has the power and authority to enter into and perform this Contract;

**9.1.12.** This Contract, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms;

**9.1.13.** Contractor has the skill and knowledge possessed by well-informed members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor's employees and any authorized subcontractors perform the Services described in this Contract according to the highest standards prevalent in the industry or business most closely involved in providing the Services that Contractor is providing to Authorized Purchaser pursuant to this Contract;

**9.1.14.** The Products or Services provided by Contractor to Authorized Purchaser pursuant to this Contract will materially comply with any service descriptions, specifications, standards or requirements set forth in this Contract; and

**9.1.15** Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services.

**9.2. Contractor's Representations and Warranties.** Contractor represents and warrants to Authorized Purchaser that:

**9.2.1.** Contractor has the right and authority to grant to Authorized Purchaser the licenses specified in section 10, without violating any rights of any third party.

**9.2.2.** The Products and Services are free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the software, collect unlawful personally identifiable information on users, or prevent the software from performing as required under the terms and conditions of this MSA or a Contract. Notwithstanding the foregoing, this representation and warranty does not include a disabling device that limits, suspends or ends use of the Products or Services expressly permitted by the terms and conditions by the license under which it was provided; and

**9.2.3.** When used as authorized by this Contract, no Product or Service infringes, nor will Authorized Purchaser's use of such Product or Service infringe any copyright, patent, trade secret or other proprietary right of any third party.

**9.3. Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

## **10. Ownership, Use and License Terms.**

**10.1. Contractor Intellectual Property.** Contractor and its licensors retain ownership of all Intellectual Property rights in the Product and Services made available pursuant to this Contract. Contractor provides Authorized Purchaser the right to use the products in accordance with the applicable respective License Terms.

**10.2. No Rights in Intellectual Property or Marks.** Except as expressly set forth in this Contract, neither party grants the other any right, title, or interest in any intellectual property that a party now owns or subsequently owns or the right to use its trademarks, trade names, service marks or other designations in any promotion or publication without prior written consent. Each party grants only the licenses and rights specified in this Contract.

## **11. Indemnity.**

**11.1.** CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY AUTHORIZED PURCHASER AND THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AND EMPLOYEES FROM AND AGAINST ALL THIRD PARTY CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, STATUTORY PENALTIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT, INCLUDING (I) ANY CLAIM THAT CONTRACTOR, A SUBCONTRACTOR, OR A CONTRACTOR EMPLOYEE OR A SUBCONTRACTOR'S EMPLOYEE ARE EMPLOYEES OF THE STATE OR AUTHORIZED PURCHASER FOR ANY REASON, AND (II) ANY CLAIM AGAINST THE STATE OR AUTHORIZED PURCHASER WHICH, IF TRUE, WOULD CONSTITUTE A BREACH BY CONTRACTOR OF ANY OF THE REPRESENTATIONS, WARRANTIES, OR COVENANTS SET FORTH IN THIS CONTRACT.

**11.2.** IN ADDITION, CONTRACTOR, AT ITS OWN EXPENSE, SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY AUTHORIZED PURCHASER AND THE STATE OF OREGON, AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY THIRD PARTY CLAIM, DEMAND, CAUSE OF ACTION, DEBT, LIABILITY, STATUTORY PENALTIES, OR EXPENSE, INCLUDING REASONABLE ATTORNEYS' FEES, TO THE EXTENT THAT IT IS:

**11.2.1.** ARISING OUT OF THE FURNISHING OR PERFORMANCE OF THE CONTRACTOR'S INTELLECTUAL PROPERTY OR THIRD PARTY INTELLECTUAL PROPERTY, OR BOTH; OR

**11.2.3.** BASED UPON A CLAIM THAT EITHER THE CONTRACTOR'S INTELLECTUAL PROPERTY OR THIRD PARTY INTELLECTUAL PROPERTY, PROVIDED BY CONTRACTOR OR BOTH, USED HEREUNDER INFRINGES OR VIOLATES ANY PATENTS, COPYRIGHTS, TRADE SECRETS, LICENSES OR OTHER PROPERTY RIGHTS OF ANY THIRD PARTY.

**11.3.** THE OREGON ATTORNEY GENERAL MUST GIVE WRITTEN AUTHORIZATION TO ANY LEGAL COUNSEL PURPORTING TO ACT IN THE NAME OF, OR REPRESENT THE INTEREST OF, THE STATE OR ITS OFFICERS, EMPLOYEES AND AGENTS PRIOR TO SUCH ACTION OR REPRESENTATION.

FURTHER, THE STATE, ACTING BY AND THROUGH ITS DEPARTMENT OF JUSTICE, MAY ASSUME ITS OWN DEFENSE, INCLUDING THAT OF ITS OFFICERS, EMPLOYEES AND AGENTS, AT ANY TIME WHEN IN THE STATE'S SOLE DISCRETION IT DETERMINES THAT:

**11.3.1.** PROPOSED COUNSEL IS PROHIBITED FROM THE PARTICULAR REPRESENTATION CONTEMPLATED;

**11.3.2.** COUNSEL IS NOT ADEQUATELY DEFENDING OR ABLE TO DEFEND THE INTERESTS OF THE STATE, ITS OFFICERS, EMPLOYEES AND AGENTS;

**11.3.3.** IMPORTANT GOVERNMENTAL INTERESTS ARE AT STAKE; OR

**11.3.4.** THE BEST INTERESTS OF THE STATE ARE SERVED THEREBY.

CONTRACTOR'S OBLIGATION TO PAY FOR ALL COSTS AND EXPENSES INCLUDE THOSE INCURRED BY THE STATE IN ASSUMING ITS OWN DEFENSE AND THAT OF ITS OFFICERS, EMPLOYEES, OR AGENTS.

**11.4. Authorized Purchaser Indemnity.** Authorized Purchaser's liabilities or obligations to indemnify Contractor, if any, are subject to the provisions of Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 to 30.300), as applicable.

**12. ASSIGNMENT OF ANTITRUST RIGHTS.** CONTRACTOR IRREVOCABLY ASSIGNS TO AUTHORIZED PURCHASER ANY CLAIM FOR RELIEF OR CAUSE OF ACTION WHICH THE CONTRACTOR NOW HAS OR WHICH MAY ACCRUE TO THE CONTRACTOR IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO THE CONTRACTOR FOR THE PURPOSE OF CARRYING OUT THE CONTRACTOR'S OBLIGATIONS UNDER THIS CONTRACT, INCLUDING, AT AUTHORIZED PURCHASER'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM OR RELIEF OR CAUSE OF ACTION. CONTRACTOR SHALL REQUIRE ANY SUBCONTRACTORS HIRED TO PERFORM ANY OF CONTRACTOR'S DUTIES UNDER THIS AGREEMENT TO IRREVOCABLY ASSIGN TO AUTHORIZED PURCHASER, AS THIRD PARTY BENEFICIARY, ANY RIGHT, TITLE OR INTEREST THAT HAS ACCRUED OR WHICH MAY ACCRUE IN THE FUTURE BY REASON OF ANY VIOLATION OF 15 U.S.C. § 1-15 OR ORS 646.725 OR ORS 646.730, IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED TO THE SUBCONTRACTOR FOR THE PURPOSE OF CARRYING OUT THE SUBCONTRACTOR'S OBLIGATIONS TO THE CONTRACTOR IN PURSUANCE OF THIS CONTRACT, INCLUDING, AT AUTHORIZED PURCHASER'S OPTION, THE RIGHT TO CONTROL ANY SUCH LITIGATION ON SUCH CLAIM OR RELIEF OR CAUSE OF ACTION.

**13. Suspension; Termination.**

**13.1. Authorized Purchaser's Right to Suspend Performance.** Authorized Purchaser may, at its sole discretion, suspend Contractor's Services under this Contract, upon written notice by Authorized Purchaser to Contractor, setting forth the length of the proposed suspension.

**13.1.1 Stop-Work Notice.** Authorized Purchaser may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work required by this Contract for a period of up to ninety (90) Calendar Days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, Contractor shall immediately comply with the Stop-Work Notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the Stop Work Notice. Within a period of ninety (90) Calendar Days after issuance of the written notice, or within any extension of that period to which the parties have agreed, Authorized Purchaser will either:

- Cancel or modify the Stop Work Notice by a supplementary written notice; or
- Terminate the work as permitted by either the Default or the Convenience provisions of section 14, Termination.

If the Stop Work Notice is canceled, Authorized Purchaser may, after receiving and evaluating a request from Contractor, make an adjustment in the time required to complete this Contract and the Contract price by a duly executed amendment, inclusive of any ramp-up time required to for Contractor to resume Services.

**13.2. Parties' Right to Terminate for Mutual Consent.** This Contract may be terminated at any time by mutual written consent of the parties.

**13.3. Authorized Purchaser's Right to Terminate for Convenience.** Authorized Purchaser may, at its sole discretion, terminate this Contract, in whole or in part, upon thirty (30) Calendar Days written notice to Contractor.

**13.4. Authorized Purchaser's Right to Terminate for Cause.** Authorized Purchaser may terminate this Contract, immediately upon notice to Contractor, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events:

**13.4.1.** If Authorized Purchaser's funding from revenue sources is not obtained and continued at levels sufficient to allow for compensation for the Products or Services or both, in Authorized Purchaser's sole administrative discretion, this Contract may be terminated or modified to accommodate a reduction in funds;

**13.4.2.** If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the Services is no longer allowable or appropriate for purchase under this Contract;

**13.4.3.** If any license or certificate required by law or regulations to be held by the Contractor to provide the Services required by this Contract is for any reason denied, revoked, or not renewed;

**13.4.4.** If the Authorized Purchaser discovers that Contractor is in default for the payment of taxes or any other amount owed to a government entity; or

**13.4.5.** Contractor fails to perform the Services under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Services as to endanger Contractor's performance under this Contract according to its terms, and such breach, default or failure is not cured within ten (10) Calendar Days after delivery of Authorized Purchaser's notice, or such longer period as Authorized Purchaser may specify in such notice.

**13.5. Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract if Authorized Purchaser commits any material breach or default of any covenant, obligation or agreement under this Contract and Authorized Purchaser fails to cure the breach or default within thirty (30) Calendar Days after receipt of Contractor's written notice or such longer period of cure as Contractor may specify in such notice. Contractor shall state in the written notice of breach or default the termination date for Authorized Purchaser's failure to cure, which must not be less than thirty (30) Calendar Days following Authorized Purchaser's failure to cure.

**13.6. Contractor's Obligation Upon Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract unless Authorized Purchaser expressly directs otherwise in the notice of termination.

**14. Contract Breach.** Before a party can be found in breach of this Contract, the other party shall first deliver a notice of default to the other party. The notice must describe the specific nature of the default, cite the specific provisions of this Contract that have been defaulted, indicate whether the default can be cured, and specify the time period in which the default must be cured, if cure is permitted.

**14.1. Default by Contractor.** Contractor violates or is in default of this Contract if:

**14.1.1.** Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;

**14.1.2,** Contractor no longer holds a license or certificate that is required for Contractor to perform Contractor's obligations under this Contract; or

**14.1.3.** Contractor defaults any covenant, warranty, obligation or certification under this Contract, provided however that Contractor may cure the defaults within the period specified in Authorized Purchaser's notice of default when Authorized Purchaser determines the default is curable by Contractor.

**14.2. Default by Authorized Purchaser.** Authorized Purchaser violates or is in default of this Contract if:

**14.2.1.** Authorized Purchaser fails to pay Contractor any amount as required under this Contract, and Authorized Purchaser does not cure such failure to pay within thirty (30) Calendar Days after delivery of Contractor's notice of default or such longer period as Contractor may specify in such notice; or

**14.2.2.** Authorized Purchaser defaults any covenant, warranty, or obligation under this Contract and such default is not cured within thirty (30) Calendar Days after delivery of Contractor's notice of breach or such longer period as Contractor may specify in such notice.

## **15. Remedies for Default.**

**15.1.** If this Contract is terminated pursuant to section 13.2, 13.3, 13.4.1, 13.4.2, 13.4.3 or 13.5, Contractor's sole remedy shall be a claim for the price of Products or Services provided to Authorized Purchaser and for the costs incurred in preparing Products and Services not yet provided to Authorized Purchaser, less previous amounts paid to Contractor for such Products and Services and any claims which Authorized Purchaser has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Subsection, Contractor shall immediately pay any excess to Authorized Purchaser upon demand.

**15.2.** If this Contract is terminated pursuant to section 13.4.4 or 13.4.5, Authorized Purchaser shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under section 13.4.4 or 13.4.5, the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to section 13.3.

## **16. Compliance with Applicable Law.**

**16.1.** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Contract and the Products and Services provided hereunder.

**16.2.** Authorized Purchaser's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated into this Contract by reference. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

## **17. Contractor's Compliance with Tax Laws.**

**17.1.** Contractor shall, throughout the term of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this section, "tax laws" includes all the provisions described in subsection 9.1.9 of this Contract.

**17.2.** Any violation of subsection 17.1 of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty, in subsection 9.1.9 of this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle Authorized Purchaser to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

**17.2.1.** Termination of this Contract, in whole or in part;

**17.2.2.** Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's setoff right, without penalty; and

**17.2.3.** Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Authorized Purchaser shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Products or Services, a replacement contractor, or any of the above.

These remedies are cumulative to the extent the remedies are not inconsistent, and Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

**18. Governing Law.** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this MSA, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

## **19. Claim Venue and Consent to Jurisdiction**

**19.1. State Agency Venue and Consent to Jurisdiction.** Any claim, action, suit or proceeding (collectively, "Claim") between DAS, Authorized Agency or any other agency or department of the State of Oregon that is an ORCPP Member, and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, that if a Claim must be brought in a federal forum, then it shall be brought and adjudicated solely and exclusively within the

United States District Court for the District of Oregon. **CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURT(S).** In no event may this section be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim, or (ii) consent by the State of Oregon to the jurisdiction of any court.

**19.2. ORCPP Member Venue and Consent to Jurisdiction.** Any Claims between Contractor and an ORCPP Member other than an agency of the State of Oregon that arise from or relate to this Contract order shall be brought and conducted solely and exclusively within the Circuit Court of the county in which such ORCPP Authorized Purchaser resides, or at the ORCPP Authorized Purchaser's option, within such other county as the ORCPP Authorized Purchaser is entitled under the laws of the relevant jurisdiction to bring or defend Claims. If any such Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District in which such ORCPP Authorized Purchaser resides. **CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.** Nothing herein shall be construed as a waiver of ORCPP Authorized Purchaser's sovereign or governmental immunity, if any, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or consent to jurisdiction based thereon.

**20. Records Maintenance; Access.** Contractor shall maintain all fiscal records relating to this Contract and Contractor's performance hereunder, according to Generally Accepted Accounting Principles. In addition, Contractor shall maintain all other records relating to this Contract in such a manner as to clearly document Contractor's performance of its duties under this Contract. Contractor acknowledges and agrees that Authorized Purchaser and the Oregon Secretary of State's Office, the Oregon Department of Revenue, the Oregon Department of Justice and their duly authorized representatives shall have access to such records and other books, documents, papers, plans and writings of Contractor relating to this Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all fiscal and other records relating to this Contract, including books, documents, papers, plans, and writings, for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination or expiration of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

**21. Intended Beneficiaries.** Authorized Purchaser and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or will be construed to give or provide, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third

persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. DAS and GEO are intended beneficiaries of the terms of this Contract.

**22. Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies related to this Contract.

**23. Force Majeure.** Neither Authorized Purchaser nor Contractor will be responsible for delay or default caused by fire, riot, acts of God, terrorism, war or any other like cause which is beyond the party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. Authorized Purchaser may terminate this Contract upon written notice to Contractor after it determines that such delay or default will likely prevent successful performance of this Contract.

**24. Survival.** All Contract terms, which by their context are intended to survive contract termination or expiration, shall survive, as well as the following sections: Part 1: 3, 6, 7, 9, 11, 12, 13, 14, 15, and Part 2: 3, 4.5, 7, 9, 10, 11, 15, 16, 17, 18, 19, 20, 21, and 26.

**25. Time is of the Essence.** Contractor agrees that time is of the essence for delivering Services under this Contract.

**26. Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder must be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Authorized Purchaser at the email address, postal address or telephone number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this section 26. Any communication or notice so addressed and mailed is effective five (5) Business Days after mailing. Any communication or notice delivered by facsimile is effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against Authorized Purchaser, any notice transmitted by facsimile must be confirmed by telephone notice to Authorized Purchaser's Contract Administrator. Any communication or notice given by personal delivery is effective when actually delivered. Any notice given by email is effective when the sender receives confirmation of delivery, either by return email, or by demonstrating through other technological means that the email has been delivered to the intended email address.

**27. Severability.** The parties agree that if any term of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms is not be affected, and the rights and obligations of the parties are

construed and enforced as if this Contract did not contain the particular term held to be invalid.

**28. Counterparts.** This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

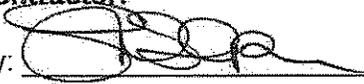
**29. Amendment.** This Contract may be amended, modified, or supplemented only by a written amendment signed by Authorized Purchaser and Contractor. Any amendment that provides for additional Products or Services, goods or other services may only provide for Products or Services directly related to the scope of Products and Services in the Special Procurement, and no amendment will be effective until all requisite signatures and approvals are obtained.

**30. Integration; Waiver.** This Contract, including incorporated exhibits, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change to the terms of this Contract shall bind either party unless in writing and signed by all parties and all approvals required by law have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Authorized Purchaser to enforce any provision of this Contract shall not constitute a waiver by Authorized Purchaser of that or any other provision.

**31. Reporting.** Authorized Purchasers who are state agencies are responsible for reporting this Contract to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing the Contractor's compensation under this Contract or (ii) exercising a right of setoff against Contractor's compensation under this Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

**Authorized Signatures:**

**Contractor:**

By:  \_\_\_\_\_

Title: Corporate Vice President

Date: June 20, 2017

The State of Oregon acting by and through its Department of Administrative Services

By: *Emily Beckett*

Title: *Pavement Services Manager* Date: *6/30/17*

Approved pursuant to ORS 291.047 – see file for email approval

Oregon Department of Justice

By: *Karen Johnson* Date: June 29, 2017  
Assistant Attorney General

**EXHIBIT A  
to Master Agreement #7539**

**Description of Products and Services; Pricing**

**\*\*\*\*PLEASE SEE ATTACHED PRODUCT DESCRIPTION AND PRICING\*\*\*\***

**Exhibit B  
to Master Agreement #7539**

**Purchase Order Form**

**\*\*\*\*PLEASE SEE ATTACHED PURCHASE ORDER FORM\*\*\*\***



**Exhibit D  
to Master Agreement #7539**

**Contractor License/Subscription Agreement**

**Exhibit D-1: PICTOMETRY DELIVERED CONTENT  
TERMS AND CONDITIONS OF USE**

**Exhibit D-2: PICTOMETRY ONLINE SERVICES  
GENERAL TERMS AND CONDITIONS**

**Exhibit D-3: PICTOMETRY SOFTWARE LICENSE AGREEMENT**

**Exhibit D-4: PICTOMETRY WEB VISUALIZATION OFFERING TERMS AND  
CONDITIONS**

The attached Exhibit D-1 (Pictometry Delivered Content Terms and Conditions of Use), Exhibit D-2 (Pictometry Online Services General Terms and Conditions), Exhibit D-3 (Pictometry Software License Agreement) and Exhibit D-4 (Pictometry Web Visualization Offering Terms and Conditions) are incorporated herein by this reference and made a part of this MSA. To the extent there is a conflict in any of the terms and conditions in any of the attached Exhibits D-1, D-2, D-3, D-4 and this MSA, the terms and conditions of the MSA control.

# EXHIBIT D-1

## PICTOMETRY DELIVERED CONTENT TERMS AND CONDITIONS OF USE

These Pictometry Delivered Content Terms and Conditions of Use (the "Delivered Content Terms and Conditions"), in combination with the corresponding Agreement into which these terms are incorporated, collectively set forth the terms and conditions that govern use of Delivered Content (as hereinafter defined) for use within computing environments operated by parties other than Pictometry. As used in the Delivered Content Terms and Conditions the terms "you" and "your" in uppercase or lowercase shall mean the Customer that entered into the Agreement into which the Delivered Content Terms and Conditions are incorporated.

### 1. DEFINITIONS

- 1.1 "Authorized Subdivision" means, if you are a county or a non-state consortium of counties, any political unit or subdivision located totally or substantially within your boundaries that you authorize to have access to Delivered Content pursuant to the Delivered Content Terms and Conditions.
- 1.2 "Authorized System" means a workstation or server that meets each of the following criteria (i) it is owned or leased by you or an Authorized Subdivision, (ii) it is located within and only accessible from facilities that are owned or leased by you or an Authorized Subdivision, and (iii) it is under the control of and may only be used by you or Authorized Subdivisions.
- 1.3 "Authorized User" means any employee of you or Authorized Subdivisions that is authorized by you to have access to the Delivered Content through an Authorized System.
- 1.4 "Delivered Content" means the images, metadata, data layers, models, reports and other geographic or structural visualizations or embodiments included in, provided with, or derived from the information delivered to you by or on behalf of Pictometry pursuant to the Agreement.
- 1.5 "Project Participant" means any employee or contractor of persons or entities performing services for compensation for you or an Authorized Subdivision that has been identified by written notice to Pictometry prior to being granted access to Delivered Content and, unless Pictometry expressly waives such requirement for any individual, has entered into a written agreement with Pictometry authorizing such access.

### 2. GRANT OF RIGHTS; RESTRICTIONS ON USE; OWNERSHIP

- 2.1 Subject to the terms and conditions of the Agreement, you are granted nonexclusive, nontransferable, limited rights to:
  - (a) install the Delivered Content on Authorized Systems;
  - (b) permit access and use of the Delivered Content through Authorized Systems by:
    - (i) Authorized Users for performance of public responsibilities of you or Authorized Subdivisions that are to be performed entirely within facilities of you or Authorized Subdivisions;
    - (ii) Project Participants under the supervision of Authorized Users for performance of tasks or preparation of materials using only hard copies (or jpg copies) of Delivered Content solely for fulfilling public responsibilities of you or Authorized Subdivisions to be performed entirely within facilities of you or Authorized Subdivisions; and
    - (iii) individual members of the public, but only through Authorized Users and solely for the purpose of making hard copies or jpg copies of images of individual properties or structures (but not bulk orders of multiple properties or structures) to the individual members of the public requesting them.
- 2.2 You may not reproduce, distribute or make derivative works based upon the Delivered Content in any medium, except as expressly permitted in the Delivered Content Terms and Conditions.
- 2.3 You may not offer any part of the Delivered Content for commercial resale or commercial redistribution in any medium.
- 2.4 You may not distribute or otherwise make available any Delivered Content to Google or its affiliates, either directly or indirectly.
- 2.5 You may not exploit the goodwill of Pictometry, including its trademarks, service marks, or logos, without the express written consent of Pictometry.
- 2.6 You may not remove, alter or obscure copyright notices or other notices contained in the Delivered Content.
- 2.7 All right, title, and interest (including all copyrights, trademarks and other intellectual property rights) in Delivered Content in all media belong to Pictometry or its third party suppliers. Neither you nor any users of the Delivered Content acquire any proprietary interest in the Delivered Content, or any copies thereof, except the limited use rights granted herein.

### 3. OBLIGATIONS OF CUSTOMER

- 3.1 **Geographic Data.** If available, you agree to provide to Pictometry geographic data in industry standard format (e.g., shape, DBF) including, but not limited to, digital elevation models, street centerline maps, tax parcel maps and centroids, which data, to the extent practicable, shall be incorporated into the Delivered Content. You agree that any of this data that is owned by you may be distributed and modified by Pictometry as part of its products and services, provided that at no time shall Pictometry claim ownership of that data.
- 3.2 **Notification.** You shall (a) notify Pictometry in writing of any claims or proceedings involving any of the Delivered Content within ten (10) days after you learn of the claim or proceeding, and (b) report promptly to Pictometry all claimed or suspected defects in Delivered Content.
- 3.3 **Authorized User Compliance.** You shall at all times be responsible for compliance by each Authorized User with the Delivered Content Terms and Conditions.
- 3.4 **Authorized Subdivision Compliance.** You shall at all times be responsible for compliance by each Authorized Subdivision with the Delivered Content Terms and Conditions.
- 3.5 **Project Participants.** Each notice to Pictometry identifying a potential Project Participant shall include a detailed description of the scope and nature of the Project Participants' planned work and the intended use of the Delivered Content in such work. Pictometry retains the right to restrict or revoke access to Delivered Content by any Project Participant who does not comply with the terms of the Delivered Content Terms and Conditions.

### 4. LICENSE DURATION; EFFECT OF TERMINATION

- 4.1 **Term.** The license granted to you in the Delivered Content Terms and Conditions is perpetual, subject to Pictometry's right to terminate the license in the event you do not pay in full the Fees specified elsewhere in the Agreement, the Agreement is terminated for any reason other than a breach of the Agreement by Pictometry, or as otherwise provided in the Agreement.
- 4.2 **Effect of Termination.** Upon termination of the license granted to you in the Delivered Content Terms and Conditions, you shall immediately cease all use of the Delivered Content, promptly purge all copies of the Delivered Content from all workstations and servers on which any of it may be stored or available at the time, and return hard drive/media containing Delivered Content to Pictometry.

### 5. TRADEMARKS; CONFIDENTIALITY

- 5.1 **Use of Pictometry's Marks.** You agree not to attach any additional trademarks, trade names, logos or designations to any Delivered Content or to any copies

of any Delivered Content without prior written approval from Pictometry. You may, however, include an appropriate government seal and your contact information so long as the seal and contact information in no way obscure or deface the Pictometry marks. You further agree that you will not use any Pictometry trademark, trade name, logo, or designation in connection with any product or service other than the Delivered Content. Your nonexclusive right to use Pictometry's trademarks, trade name, logos, and designations are coterminous with the license granted to you in the Delivered Content Terms.

- 5.2 **Confidentiality of Delivered Content.** The Delivered Content consists of commercially valuable, proprietary products owned by Pictometry, the design and development of which reflect an investment of considerable time, effort, and money. The Delivered Content is treated by Pictometry as confidential and contains substantial trade secrets of Pictometry. You agree that you will not disclose, provide a copy of, or disseminate the Delivered Content (other than as expressly permitted in the Delivered Content Terms and Conditions) or any part thereof to any person in any manner or for any purpose inconsistent with the license granted to you in the Delivered Content Terms and Conditions. You agree to use your best efforts to assure that your personnel, and any others afforded access to the Delivered Content, protect the Delivered Content against unauthorized use, disclosure, copying, and dissemination, and that access to the Delivered Content and each part thereof will be strictly limited.

## 6. LIMITED WARRANTY; DISCLAIMER OF WARRANTIES

- 6.1 **Limited Warranties; Exclusive Remedy.** Pictometry warrants that the Delivered Content will contain true and usable copies of the designated imagery as of the date of capture. As the sole and exclusive remedy for any breach of the foregoing warranty, Pictometry shall use reasonable efforts to correct any deficiency that precludes use of the Delivered Content in the manner intended.
- 6.2 **Disclaimer of Other Warranties.** Except as provided in Section 6.1, above, THE DELIVERED CONTENT IS PROVIDED TO YOU "AS IS" AND "WITH ALL FAULTS." PICTOMETRY MAKES NO OTHER WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY. ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ACCURACY, ARE HEREBY DISCLAIMED AND EXCLUDED BY PICTOMETRY.
- 6.3 **Limitation of Liability.** With respect to any other claims that you may have or assert against Pictometry on any matter relating to the Delivered Content, the total liability of Pictometry shall, in the aggregate, be limited to the aggregate amount received by Pictometry in payment for Delivered Content during the immediately preceding twenty-four (24) month period.

## 7. MISCELLANEOUS PROVISIONS

- 7.1 **Restricted Rights.** Delivered Content acquired with United States Government funds or intended for use within or for any United States federal agency is provided with "Restricted Rights" as defined in DFARS 252.227-7013, Rights in Technical Data and Computer Software and FAR 52.227-14, Rights in Data-General, including Alternate III, as applicable.
- 7.2 **Governing Law.** This License Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, excluding its conflicts of law principles.

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[END OF DELIVERED CONTENT TERMS AND CONDITIONS]

## EXHIBIT D-2

### PICTOMETRY ONLINE SERVICES GENERAL TERMS AND CONDITIONS

These Pictometry Online Services General Terms and Conditions (the "General Terms and Conditions"), in combination with the corresponding Pictometry order form, if any, collectively constitute the license agreement (the "License Agreement") that governs your use of the Pictometry online services (the "Online Services"), the images available in the Online Services, and all associated metadata and data layers included in, provided with, or derived from those images (the "Licensed Content") provided by Pictometry International Corp. and its affiliated companies (collectively, "Pictometry"). The terms "you" and "your" in uppercase or lowercase shall mean the individual, entity (e.g., corporation, limited liability company, partnership, sole proprietor, etc.) or government agency entering into the License Agreement.

#### 1. GRANT OF RIGHTS; RESTRICTIONS ON USE; OWNERSHIP

- 1.1 You are granted a nonexclusive, nontransferable, limited right to access and use the Online Services and the Licensed Content obtained or derived from the Online Services solely for your internal business purposes and not for resale or redistribution. The rights granted to you include, subject to the restrictions set forth below and on the Order Form, the right to copy limited portions of the Licensed Content onto your computer to facilitate preparation of hardcopies and work product records, and the right to make hardcopies of the Licensed Content, provided that the Licensed Content and the permitted copies thereof may not be sold, leased, loaned, distributed, or copied for use by anyone other than you.
- 1.2 You may not make the Online Services available to any other party.
- 1.3 You may not copy the Licensed Content or portions thereof onto any computer or storage device or media for the purpose of creating or maintaining one or more databases of that content for use in substitution for subsequent access to the content through the Online Services.
- 1.4 You may not distribute or otherwise make available any Licensed Content to Google or its affiliates, either directly or indirectly.
- 1.5 You may not exploit the goodwill of Pictometry, including its trademarks, service marks, or logos, without the express written consent of Pictometry.
- 1.6 You may not remove, alter or obscure copyright notices or other notices contained in the Licensed Content.
- 1.7 You may not offer any part of the Online Services or the Licensed Content for commercial resale or commercial redistribution in any medium.
- 1.8 You may not use the Online Services or the Licensed Content to compete with any businesses of Pictometry.
- 1.9 You may not use information included in the Online Services or the Licensed Content to determine an individual consumer's eligibility for (a) credit or insurance for personal, family, or household purposes; (b) employment; or (c) a government license or benefit. The term "consumer" is defined in the United States Fair Credit Reporting Act at 15 USC §1681.
- 1.10 You may not access the Online Services via mechanical, programmatic, robotic, scripted or any other automated means. Unless otherwise agreed by Pictometry in writing, use of the Online Services is permitted only via manually conducted, discrete, human-initiated individual search and retrieval activities.
- 1.11 All right, title, and interest (including all copyrights, trademarks and other intellectual property rights) in the Online Services and the Licensed Content in all media belong to Pictometry or its third party suppliers. Neither you nor any users of the Online Services or the Licensed Content acquire any proprietary interest in the Online Services, the Licensed Content, or any copies thereof, except the limited use rights granted herein.

#### 2. ACCESS TO SERVICES

- 2.1 Only you, your employees, and temporary or contract employees dedicated to performing work exclusively for you (each, an "Eligible User" and collectively, the "Eligible Users") are eligible to access and use the Online Services and the Licensed Content pursuant to the License Agreement. Each Eligible User to be provided access to the Online Service shall be assigned a unique login/password ("Pictometry Credential") for purposes of accessing the Online Services. You agree that each Pictometry Credential shall only be used by the Eligible User to whom it was originally assigned and that Pictometry Credentials may not be shared with, or used by, any other person, including other Eligible Users. You will promptly deactivate an Eligible User's Pictometry Credential in the event the Eligible User no longer meets the eligibility requirements or you otherwise wish to terminate the Eligible User's access to the Online Services. You are responsible for all use of the Online Services accessed with Pictometry Credentials issued to your Eligible Users, including associated charges, whether by Eligible Users or others. You will use reasonable commercial efforts to prevent unauthorized use of Pictometry Credentials assigned to your Eligible Users and will promptly deactivate any Pictometry Credentials you suspect are lost, stolen, compromised, or misused.
- 2.2 The Online Services, the Licensed Content, and features and functionality within the Online Services may be enhanced, added to, withdrawn, or otherwise changed by Pictometry without notice.
- 2.3 You are aware and understand that any user data collected or stored by the Online Services may be accessed by US law enforcement agencies under the US PATRIOT Act. You hereby release, and agree to hold Pictometry harmless from, all claims against Pictometry with respect to such access.

#### 3. DISCLAIMERS

- 3.1 The Online Services and the Licensed Content are provided for visualization purposes only, are not authoritative or definitive, and do not constitute professional engineering or surveying services.
- 3.2 The Online Services and the Licensed Content are not to be relied upon to precisely locate or determine property boundaries and should not be used in lieu of a professional survey where the accuracy of measurements, distance, height, angle, area and volume, may have significant consequences.
- 3.3 All measurements and reports generated by the Online Services or from the Licensed Content are based upon second order visualization and measurement data that do not provide authoritative or definitive measurement results suitable for professional engineering or surveying purposes.
- 3.4 Contour information obtained from the Online Services or contained in the Licensed Content is generated from undersampled elevation data, is provided for informational purposes only, and is not suitable for use as the basis for hydrographic computations, estimations or analyses.
- 3.5 While the Online Services and the Licensed Content may be considered useful supplements for life critical applications, they are not designed or maintained to support such applications and Pictometry and its third party suppliers of the Online Services and the Licensed Content hereby disclaim all liability for damages claims and expenses arising from such use.
- 3.6 Your reliance on the Online Services and the Licensed Content should only be undertaken after an independent review of their accuracy, completeness, efficacy, timeliness and adequacy for your intended purpose.
- 3.7 Pictometry and each third party supplier of any portion of the Online Services or the Licensed Content assume no responsibility for any consequences resulting from the use of the Online Services or the Licensed Content.
- 3.8 Pictometry and each third party supplier of any portion of the Online Services or the Licensed Content hereby disclaim all liability for damages, claims and expenses arising from or in any way related to the accuracy or availability of the Online Services and the Licensed Content.
- 3.9 By accepting these General Terms and Conditions or by using the Online Services or the Licensed Content, you waive any and all rights you may have against Pictometry, each third party supplier of any portion of the Online Services or the Licensed Content, and each of their directors, officers, members and employees, arising out of use of or reliance upon the Online Services or the Licensed Content.

#### 4. LIMITED WARRANTY

- 4.1 Pictometry represents and warrants that it has the right and authority to make the Online Services and the Licensed Content available to you and your Eligible Users as authorized expressly by this License Agreement.
- 4.2 EXCEPT AS OTHERWISE PROVIDED IN SECTION 4.1, THE ONLINE SERVICES AND LICENSED CONTENT ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND PICTOMETRY AND EACH THIRD PARTY SUPPLIER OF LICENSED CONTENT EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 5. LIMITATION OF LIABILITY

- 5.1 No Covered Party (as defined below) shall be liable for any loss, injury, claim, liability, or damage of any kind resulting in any way from (a) any errors in or omissions from the Online Services or the Licensed Content, (b) the unavailability or interruption of the Online Services or any features thereof or the Licensed Content, (c) your or an Eligible User's use of the Online Services or the Licensed Content, (d) the loss or corruption of any data or equipment in connection with the Online Services or the Licensed Content, (e) the content, accuracy, or completeness of the Licensed Content, all regardless of whether you received assistance in the use of the Online Service from a Covered Party, (f) any delay or failure in performance beyond the reasonable control of a Covered Party, or (g) any content retrieved from the Internet even if retrieved or linked to from within the Online Services.
- 5.2 "Covered Party" means (a) Pictometry and any officer, director, employee, subcontractor, agent, successor, or assign of Pictometry; and (b) each third party supplier of any Licensed Content, third party alliance entity, their affiliates, and any officer, director, employee, subcontractor, agent, successor, or assign of any third party supplier of any Licensed Content or third party alliance entity and their affiliates.
- 5.3 TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL THE AGGREGATE LIABILITY OF THE COVERED PARTIES IN CONNECTION WITH ANY CLAIM ARISING OUT OF OR RELATING TO THE ONLINE SERVICES OR THE LICENSED CONTENT OR THIS LICENSE AGREEMENT EXCEED THE LESSER OF YOUR ACTUAL DIRECT DAMAGES OR THE AMOUNT YOU PAID FOR THE ONLINE SERVICES IN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. YOUR RIGHT TO MONETARY DAMAGES IN THAT AMOUNT SHALL BE IN LIEU OF ALL OTHER REMEDIES WHICH YOU MAY HAVE AGAINST ANY COVERED PARTY.
- 5.4 TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, NEITHER YOU NOR THE COVERED PARTIES WILL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THE ONLINE SERVICES, THE LICENSED CONTENT, OR THE FAILURE OF ANY COVERED PARTY TO PERFORM ITS OBLIGATIONS. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO A PARTY'S INDEMNITY OBLIGATIONS OR YOUR (AND YOUR ELIGIBLE USERS') INFRINGEMENT OF INTELLECTUAL PROPERTY OR MISAPPROPRIATION OF PROPRIETARY DATA BELONGING TO PICTOMETRY OR ITS THIRD PARTY SUPPLIERS.
- 5.5 Notwithstanding anything to the contrary in this Section 5:
- (a) If there is a breach of the warranty in Section 4.1 above, then Pictometry, at its option and expense, shall either defend or settle any action and hold you harmless against proceedings or damages of any kind or description based on a third party's claim of patent, trademark, service mark, copyright or trade secret infringement related to use of the Online Services or the Licensed Content, asserted against you by such third party provided: (i) all use of the Online Services and the Licensed Content was in accordance with this License Agreement; (ii) the claim, cause of action or infringement was not caused by you modifying or combining the Online Services or the Licensed Content with or into other products, applications, images or data not approved by Pictometry; (iii) you give Pictometry prompt notice of such claim; and (iv) you give Pictometry the right to control and direct the investigation, defense and settlement of such claim. You, at Pictometry's expense, shall reasonably cooperate with Pictometry in connection with the foregoing.
- (b) In addition to Section 5.5(a), if the Online Services, the operation thereof or the Licensed Content become, or in the opinion of Pictometry are likely to become, the subject of a claim of infringement, Pictometry may, at its option and expense, either: (i) procure for you the right to continue using the Online Services or the Licensed Content, (ii) replace or modify the Online Services or the Licensed Content so that they become non-infringing; or (iii) terminate the License Agreement on notice to you and grant you a pro-rata refund or credit (whichever is applicable) for any pre-paid fees or fixed charges.
- (c) The provisions of Sections 5.5(a) and (b) shall constitute your sole and exclusive remedy for the respective matters specified therein.

## 6. MISCELLANEOUS

- 6.1 The terms and conditions of this License Agreement may be changed from time to time immediately upon notice to you. If any changes are made to this License Agreement, such changes will: (a) only be applied prospectively; and (b) not be specifically directed against you or your Eligible Users but will apply to all similarly situated Pictometry customers using the Online Services. You may terminate this License Agreement upon written notice to Pictometry if any change to the terms and conditions of this License Agreement is unacceptable to you. For termination to be effective under this Section 6.1, written notice of termination must be provided to Pictometry within 90 days of the effective date of the change. Continued use of the Online Services following the effective date of any change constitutes acceptance of the change, but does not affect the foregoing termination right. Except as provided above, this License Agreement may not be supplemented, modified or otherwise revised unless signed by duly authorized representatives of both parties. Furthermore, this License Agreement may not be supplemented, modified or otherwise revised by email exchange, even if the email contains a printed name or signature line bearing signature-like font. The foregoing does not prohibit the execution of electronic contracts bearing electronic signatures of authorized representatives of both parties, provided such signatures include digital certifications or are otherwise authenticated.
- 6.2 In the event of a breach of this License Agreement by you, any Eligible User or someone using the Pictometry Credential of an Eligible User, Pictometry may temporarily suspend or discontinue providing access to the Online Services to any or all Eligible Users without notice and Pictometry may pursue any other legal remedies available to it.
- 6.3 All notices and other communications hereunder shall be in writing or displayed electronically in the Online Services by Pictometry. Notices shall be deemed to have been properly given on the date deposited in the mail, if mailed; on the date first made available, if displayed in the Online Services; or on the date received, if delivered in any other manner. Legal notices to Pictometry should be sent to Pictometry, Attn: General Counsel, 25 Methodist Hill Drive, Rochester, New York 14623.
- 6.4 The failure of you, Pictometry, or any third party supplier of the Online Services or any Licensed Content to enforce any provision hereof shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.
- 6.5 Neither you nor any Eligible User may assign or otherwise transfer your rights or delegate your duties under this License Agreement without the prior written consent of Pictometry. Any attempt by you or any Eligible User to assign, transfer or delegate your rights or obligations under this License Agreement without Pictometry's consent shall be void, and shall also void the limited license granted to you by this License Agreement. This License Agreement and any amendment thereto shall be binding on, and will inure to the benefit of the parties and their respective successors and permitted assigns.
- 6.6 This License Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, excluding its conflicts of law principles. Unless you are a government entity, in the event that any legal proceedings are commenced with respect to any matter arising under this License Agreement, the parties specifically consent and agree that the courts of the State of New York or, in the alternative, the Federal Courts located in the State of New York

shall have exclusive jurisdiction over each of the parties and over the subject matter of any such proceedings, and that the venue of any such action shall be in Monroe County, New York or the U.S. District Court for the Western District of New York, as applicable.

- 6.7 This License Agreement will be enforced to the fullest extent permitted by applicable law. If any provision of this License Agreement is held to be invalid or unenforceable to any extent, then (a) such provision will be interpreted, construed and reformed to the extent reasonably required to render it valid, enforceable and consistent with its original intent and (b) such invalidity or unenforceability will not affect any other provision of this License Agreement.
- 6.8 Where applicable, each affiliated company of Pictometry and each third party supplier of the Online Services or any Licensed Content has the right to assert and enforce the provisions of this License Agreement directly on its own behalf as a third party beneficiary.
- 6.9 In the event of a breach of your obligations under this License Agreement or your payment obligations with respect to access to the Online Services or the Licensed Content, you agree to pay all of Pictometry's costs of enforcement and collection, including court costs and reasonable attorneys' fees.
- 6.10 This License Agreement constitutes the entire agreement of the parties with respect to its subject matter and replaces and supersedes any prior written or verbal communications, representations, proposals or quotations relating to that subject matter.

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[END OF ONLINE SERVICES GENERAL TERMS AND CONDITIONS]

# EXHIBIT D-3

## PICTOMETRY SOFTWARE LICENSE AGREEMENT

PLEASE READ THIS SOFTWARE LICENSE AGREEMENT ("LICENSE") CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING THE SOFTWARE. BY USING THE SOFTWARE, YOU AGREE TO THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE.

1. **GENERAL.** The software ("Pictometry Software") and any written materials that accompany the software ("Documentation") in any media or form are licensed, not sold, to you by Pictometry International Corp. ("Pictometry") for use only under the terms of this License. Pictometry reserves all rights not expressly granted to you in this License.
2. **LICENSE.** Subject to the terms and conditions of this License, you are granted a limited, non-transferable, terminable, non-sublicenseable, non-exclusive license to install and use the Pictometry Software and the Documentation (collectively, the "Proprietary Materials") solely for internal use. Use of the functionality provided by the Pictometry Software other than for your internal use is prohibited, except with the prior written approval of Pictometry. You may make one copy of the Pictometry Software in machine-readable form for backup purposes only; provided that the backup copy must include all copyright and other proprietary notices contained in the original. You will not and will not enable others to decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, create derivative works of, or tamper with or disable any security or monitoring features within the Pictometry Software. Any attempt to do so is a violation of the rights of Pictometry and its licensors.
3. **TITLE.** The Proprietary Materials are confidential information of, trade secrets of, and are proprietary to Pictometry. Title to the Proprietary Materials is and will remain in Pictometry and its licensors. All applicable rights to patents, copyrights, trademarks, trade secrets, and other intellectual property rights in the Proprietary Materials are and will remain in Pictometry and its licensors. You will not assert any right, title or interest in the Proprietary Materials provided to you under this License, except for the express license granted to you hereunder. You will not remove any copyright or other proprietary notice or legend contained on or included in any Proprietary Materials and you will reproduce all such information on all copies made hereunder. You will keep the Proprietary Materials free of all claims, liens and encumbrances.
4. **DISCLAIMERS OF WARRANTY.** USE OF THE PICTOMETRY SOFTWARE IS AT YOUR SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PICTOMETRY SOFTWARE IS PROVIDED "AS IS", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND PICTOMETRY HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE PICTOMETRY SOFTWARE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. PICTOMETRY DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN OR PROVIDED BY THE PICTOMETRY SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE PICTOMETRY SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE PROPRIETARY MATERIALS WILL BE CORRECTED.
5. **LIMITATION OF LIABILITY.** IN NO EVENT WILL PICTOMETRY BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES ARISING OUT OF OR RELATED TO YOUR USE OR INABILITY TO USE THE PICTOMETRY SOFTWARE, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE), EVEN IF PICTOMETRY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL PICTOMETRY'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW IN CASES INVOLVING PERSONAL INJURY) CAUSED BY, ARISING OUT OF OR IN ANY WAY RELATED TO THE PICTOMETRY SOFTWARE EXCEED THE AMOUNT OF FIFTY DOLLARS (\$50.00). THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
6. **TERMINATION.** This License will terminate automatically without notice from Pictometry if you fail to comply with any term of this License. Upon the termination of this License, you will cease all use of the Pictometry Software and destroy all copies, full or partial, of the Proprietary Materials.
7. **MISCELLANEOUS PROVISIONS.**
  - A. **Restricted Rights.** Pictometry Software acquired with United States Government funds or intended for use within or for any United States federal agency is provided with "Restricted Rights" as defined in DFARS 252.227-7013, Rights in Technical Data and Computer Software and FAR 52.227-14, Rights in Data-General, including Alternate III, as applicable. Pictometry must be notified in advance of any license grants to United States federal governmental entities. The Pictometry Software is developed for general use in a variety of applications and is not developed or intended for use in any inherently dangerous applications or applications that could lead to property damage, personal injury or death. If you use the Pictometry Software in such applications, then you will be responsible for taking all appropriate fail-safe, backup, redundancy, and other measures to ensure the safe use of the Pictometry Software in such applications, including but not limited to, in any nuclear, aviation, mass transit, public safety or medical applications.
  - B. **Foreign Trade Restrictions.** The parties acknowledge that certain information, software technology, accompanying documentation and technical information may be subject to United States export control laws. You will not directly or indirectly export or re-export the Pictometry Software in violation of the Export Administration Regulations of the U.S. Department of Commerce.
  - C. **Governing Law.** This License will be governed by and interpreted in accordance with the laws of the State of New York, excluding its conflict of laws principles.
  - D. **Assignment.** You may not assign this License without Pictometry's prior written consent. Any assignment in violation of this License will be null, void and of no force and effect. For all purposes under this License, any merger, consolidation, spin-off, acquisition or change-in-control will be deemed an assignment.
  - E. **Partial Invalidity; Survival.** If any provision of this License is held invalid or unenforceable by competent authority, that provision will be construed so as to be limited or reduced to be enforceable to the maximum extent compatible with the law as it will then appear. The total invalidity or unenforceability of any particular provision of this License will not affect its other provisions and this License will be construed in all respects as if the invalid or unenforceable provision were omitted. The provisions of this License that by their nature would survive its termination will survive indefinitely.

- F. **Force Majeure.** Neither party will be liable for any costs or damages due to nonperformance under this License arising out of any cause not within the reasonable control of such party and without its fault or negligence. Neither party will be liable for any delay or failure in the performance of its obligations under this License that directly results from any failure of the other party to perform its obligations as set forth in this License.
- G. **Waiver.** No waiver of a breach of any term of this License will be effective unless in writing and duly executed by the waiving party. No such waiver will constitute a waiver of any subsequent breach of the same or any other term of this License. No failure on the part of a party to exercise, and no delay in exercising any of its rights hereunder will operate as a waiver thereof, nor will any single or partial exercise by a party of any right preclude any other or future exercise thereof or the exercise of any other right. No course of dealing between the parties will be deemed effective to modify, amend or discharge any part of this License or the rights or obligations of any party hereunder.
- H. **Entire Agreement; Construction.** This License contains the entire understanding of the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous understandings regarding that subject matter. No amendment to or modification of this License will be binding unless in writing and signed by Pictometry. There are no representations, warranties, or obligations of any party not expressly contained herein. The headings in this License are for convenience only. They do not constitute a portion of this License and will not be used in any construction of it.

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[END OF SOFTWARE LICENSE AGREEMENT]

# EXHIBIT - D4

## PICTOMETRY WEB VISUALIZATION OFFERING TERMS AND CONDITIONS

These Pictometry Web Visualization Offering Terms and Conditions (the "WVO Terms and Conditions"), in combination with the corresponding Pictometry order form, if any, collectively constitute the license agreement (the "WVO License Agreement") that governs your use of Pictometry web visualization offerings (the "WVO Services"), the images available in the WVO Services, and all associated metadata and data layers included in, provided with, or derived from those images (the "WVO Licensed Content") provided by Pictometry International Corp. and its affiliated companies (collectively, "Pictometry"). The terms "you" and "your" in uppercase or lowercase shall mean the individual, entity (e.g., corporation, limited liability company, partnership, sole proprietor, etc.) or government agency entering into the WVO License Agreement.

### 1. GRANT OF RIGHTS; RESTRICTIONS ON USE; OWNERSHIP

- 1.1 You are granted a nonexclusive, nontransferable, limited right to use and to provide public access to, and use of, the WVO Services solely for purposes of providing access to WVO Licensed Content in response to human-initiated, discrete location-specific requests through a single web site operated exclusively by or for you to serve you and your public constituencies and not for resale or redistribution or commercial use of any nature.
- 1.2 You may not copy or retain copies of the WVO Licensed Content obtained through the WVO Services or portions thereof onto any computer or storage device or media for the purpose of creating or maintaining one or more databases of that content for use in substitution for subsequent access to the content through the WVO Services or any other Pictometry Services, nor will you authorize or permit any user of the WVO Services to do so.
- 1.3 You may not exploit the goodwill of Pictometry, including its trademarks, service marks, or logos without the express written consent of Pictometry.
- 1.4 You may not remove, alter or obscure copyright notices or other notices contained in the WVO Licensed Content.
- 1.5 You may not offer any part of the WVO Services or the WVO Licensed Content for commercial resale or commercial redistribution in any medium.
- 1.6 All right, title, and interest (including all copyrights, trademarks and other intellectual property rights) in the WVO Services and the WVO Licensed Content in all media belong to Pictometry or its third party suppliers. Neither you nor any users of the WVO Services or the WVO Licensed Content acquire any proprietary interest in the WVO Services, the WVO Licensed Content, or any copies thereof, except the limited use rights granted herein.

### 2. TERMS OF ACCESS TO WVO SERVICES

- 2.1 You shall provide to all end-users of the WVO Services on the page through which they access such services conspicuous notice of the following terms of access: (a) WVO Licensed Content available through the WVO is copyrighted material, (b) end-users of the WVO Services are granted the right to access and view the WVO Licensed Content through the WVO Services for personal use only and not for commercial purposes of any type, (c) end-users of the WVO Services are prohibited from reproducing, reselling, transferring, redistributing or creating derivative works from WVO Licensed Content, (d) all right, title, and interest (including all copyrights, trademarks and other intellectual property rights) in the WVO Services and the WVO Licensed Content in all media belong to Pictometry or its third party suppliers, and (e) THE WVO SERVICES AND WVO LICENSED CONTENT ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND PICTOMETRY AND EACH THIRD PARTY SUPPLIER OF WVO LICENSED CONTENT EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 2.2 The WVO Services, the WVO Licensed Content, and features and functionality within the WVO Services may be enhanced, added to, withdrawn, or otherwise changed by Pictometry without notice.
- 2.3 You are aware and understand that any user data collected or stored by the WVO Services may be accessed by US law enforcement agencies under the US PATRIOT Act. You hereby release, and agree to hold Pictometry harmless from, all claims against Pictometry with respect to such access.

### 3. DISCLAIMERS

- 3.1 The WVO Services and the WVO Licensed Content are provided for visualization purposes only, are not authoritative or definitive, and do not constitute professional engineering or surveying services.
- 3.2 The WVO Services and the WVO Licensed Content are not to be relied upon to precisely locate or determine property boundaries and should not be used in lieu of a professional survey where the accuracy of measurements, distance, height, angle, area and volume, may have significant consequences.
- 3.3 All measurements and reports generated by the WVO Services or from the WVO Licensed Content are based upon second order visualization and measurement data that do not provide authoritative or definitive measurement results suitable for professional engineering or surveying purposes.
- 3.4 Contour information obtained from the WVO Services or contained in the WVO Licensed Content is generated from undersampled elevation data, is provided for informational purposes only, and is not suitable for use as the basis for hydrographic computations, estimations or analyses.
- 3.5 While the WVO Services and the WVO Licensed Content may be considered useful supplements for life critical applications, they are not designed or maintained to support such applications and Pictometry and its third party suppliers of the WVO Services and the WVO Licensed Content hereby disclaim all liability for damages, claims and expenses arising from such use.
- 3.6 Your reliance on the WVO Services and the WVO Licensed Content should only be undertaken after an independent review of their accuracy, completeness, efficacy, timeliness and adequacy for your intended purpose.
- 3.7 Pictometry and each third party supplier of any portion of the WVO Services or the WVO Licensed Content assume no responsibility for any consequences resulting from the use of the WVO Services or the WVO Licensed Content.
- 3.8 Pictometry and each third party supplier of any portion of the WVO Services or the WVO Licensed Content hereby disclaim all liability for damages, claims and expenses arising from or in any way related to the accuracy or availability of the WVO Services and the WVO Licensed Content.
- 3.9 By accepting these WVO Terms and Conditions or by using the WVO Services or the WVO Licensed Content, you waive any and all rights you may have against Pictometry, each third party supplier of any portion of the WVO Services or the WVO Licensed Content, and each of their directors, officers, members and employees, arising out of use of or reliance upon the WVO Services or the WVO Licensed Content.

### 4. LIMITED WARRANTY

- 4.1 Pictometry represents and warrants that it has the right and authority to make the WVO Services and the WVO Licensed Content available to you as authorized expressly by this WVO License Agreement.
- 4.2 EXCEPT AS OTHERWISE PROVIDED IN SECTION 4.1, THE WVO SERVICES AND WVO LICENSED CONTENT ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND PICTOMETRY AND EACH THIRD PARTY SUPPLIER OF WVO LICENSED CONTENT EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### 5. LIMITATION OF LIABILITY

- 5.1 No Covered Party (as defined below) shall be liable for any loss, injury, claim, liability, or damage of any kind resulting in any way from (a) any errors in or omissions from the WVO Services or the WVO Licensed Content, (b) the unavailability or interruption of the WVO Services or any features thereof or the WVO Licensed Content, (c) your or any other party's use of the WVO Services or the WVO Licensed Content, (d) the loss or corruption of any data or equipment in connection with the WVO Services or the WVO Licensed Content, (e) the content, accuracy, or completeness of the WVO Licensed Content,

- all regardless of any assistance received in the use of the WVO Service from a Covered Party, (f) any delay or failure in performance beyond the reasonable control of a Covered Party, or (g) any content retrieved from the Internet even if retrieved or linked to from within the WVO Services.
- 5.2 "Covered Party" means (a) Pictometry, its affiliates and any officer, director, employee, subcontractor, agent, successor, or assign of Pictometry or its affiliates; and (b) each third party supplier of any WVO Licensed Content, third party alliance entity, their affiliates, and any officer, director, employee, subcontractor, agent, successor, or assign of any third party supplier of any WVO Licensed Content or third party alliance entity and their affiliates.
- 5.3 TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL THE AGGREGATE LIABILITY OF THE COVERED PARTIES IN CONNECTION WITH ANY CLAIM ARISING OUT OF OR RELATING TO THE WVO SERVICES OR THE WVO LICENSED CONTENT OR THIS WVO LICENSE AGREEMENT EXCEED THE LESSER OF YOUR ACTUAL DIRECT DAMAGES OR THE AMOUNT YOU PAID FOR THE WVO SERVICES IN THE TWENTY-FOUR MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CLAIM AROSE. YOUR RIGHT TO MONETARY DAMAGES IN THAT AMOUNT SHALL BE IN LIEU OF ALL OTHER REMEDIES WHICH YOU MAY HAVE AGAINST ANY COVERED PARTY.
- 5.4 TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, NEITHER YOU NOR THE COVERED PARTIES WILL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THE WVO SERVICES, THE WVO LICENSED CONTENT, OR THE FAILURE OF ANY COVERED PARTY TO PERFORM ITS OBLIGATIONS. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO A PARTY'S INDEMNITY OBLIGATIONS OR YOUR (OR ANY OTHER WVO SERVICES USERS') INFRINGEMENT OF INTELLECTUAL PROPERTY OR MISAPPROPRIATION OF PROPRIETARY DATA BELONGING TO PICTOMETRY OR ITS THIRD PARTY SUPPLIERS.
- 5.5 Notwithstanding anything to the contrary in this Section 5:
- (a) If there is a breach of the warranty in Section 4.1 above, then Pictometry, at its option and expense, shall either defend or settle any action and hold you harmless against proceedings or damages of any kind or description based on a third party's claim of patent, trademark, service mark, copyright or trade secret infringement related to use of the WVO Services or the WVO Licensed Content, asserted against you by such third party provided: (i) all use of the WVO Services and the WVO Licensed Content was in accordance with this WVO License Agreement; (ii) the claim, cause of action or infringement was not caused by you modifying or combining the WVO Services or the WVO Licensed Content with or into other products, applications, images or data not approved by Pictometry; (iii) you give Pictometry prompt notice of such claim; and (iv) you give Pictometry the right to control and direct the investigation, defense and settlement of such claim. You, at Pictometry's expense, shall reasonably cooperate with Pictometry in connection with the foregoing.
- (b) In addition to Section 5.5(a), if the WVO Services, the operation thereof or the WVO Licensed Content become, or in the opinion of Pictometry are likely to become, the subject of a claim of infringement, Pictometry may, at its option and expense, either: (i) procure for you the right to continue using the WVO Services or the WVO Licensed Content, (ii) replace or modify the WVO Services or the WVO Licensed Content so that they become non-infringing; or (iii) terminate the WVO License Agreement on notice to you and grant you a pro-rata refund or credit (whichever is applicable) for any pre-paid fees or fixed charges.
- (c) The provisions of Sections 5.5(a) and (b) shall constitute your sole and exclusive remedy for the respective matters specified therein.

## 6. MISCELLANEOUS

- 6.1 The terms and conditions of this WVO License Agreement may be changed from time to time immediately upon notice to you. If any changes are made to this WVO License Agreement, such changes will: (a) only be applied prospectively; and (b) not be specifically directed against you but will apply to all similarly situated Pictometry customers using the WVO Services. You may terminate this WVO License Agreement upon written notice to Pictometry if any change to the terms and conditions of this WVO License Agreement is unacceptable to you. For termination to be effective under this Section 6.1, written notice of termination must be provided to Pictometry within 90 days of the effective date of the change. Continued use of the WVO Services following the effective date of any change constitutes acceptance of the change, but does not affect the foregoing termination right. Except as provided above, this WVO License Agreement may not be supplemented, modified or otherwise revised unless signed by duly authorized representatives of both parties. Furthermore, this WVO License Agreement may not be supplemented, modified or otherwise revised by email exchange, even if the email contains a printed name or signature line bearing signature-like font. The foregoing does not prohibit the execution of electronic contracts bearing electronic signatures of authorized representatives of both parties, provided such signatures include digital certifications or are otherwise authenticated.
- 6.2 In the event of a breach of this WVO License Agreement by you or someone using the WVO Services, Pictometry may temporarily suspend or discontinue providing access to the WVO Services without notice and Pictometry may pursue any other legal remedies available to it.
- 6.3 All notices and other communications hereunder shall be in writing. Notices shall be deemed to have been properly given on the date deposited in the mail, if mailed or on the date received, if delivered in any other manner. Legal notices to Pictometry should be sent to Pictometry, Attn: General Counsel, 25 Methodist Hill Drive, Rochester, New York 14623.
- 6.4 The failure of you, Pictometry, or any third party supplier of the WVO Services or any WVO Licensed Content to enforce any provision hereof shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.
- 6.5 You may not assign or otherwise transfer your rights or delegate your duties under this WVO License Agreement without the prior written consent of Pictometry. Any attempt by you to assign, transfer or delegate your rights or obligations under this WVO License Agreement without Pictometry's consent shall be void, and shall also void the limited license granted to you by this WVO License Agreement. This WVO License Agreement and any amendment thereto shall be binding on, and will inure to the benefit of the parties and their respective successors and permitted assigns.
- 6.6 This WVO License Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, excluding its conflicts of law principles. Unless you are a government entity, in the event that any legal proceedings are commenced with respect to any matter arising under this WVO License Agreement, the parties specifically consent and agree that the courts of the State of New York or, in the alternative, the Federal Courts located in the State of New York shall have exclusive jurisdiction over each of the parties and over the subject matter of any such proceedings, and that the venue of any such action shall be in Monroe County, New York or the U.S. District Court for the Western District of New York, as applicable.
- 6.7 This WVO License Agreement will be enforced to the fullest extent permitted by applicable law. If any provision of this WVO License Agreement is held to be invalid or unenforceable to any extent, then (a) such provision will be interpreted, construed and reformed to the extent reasonably required to render it valid, enforceable and consistent with its original intent and (b) such invalidity or unenforceability will not affect any other provision of this WVO License Agreement.
- 6.8 Where applicable, each affiliated company of Pictometry and each third party supplier of the WVO Services or any WVO Licensed Content has the right to assert and enforce the provisions of this WVO License Agreement directly on its own behalf as a third party beneficiary.
- 6.9 In the event of a breach of your obligations under this WVO License Agreement or your payment obligations with respect to access to the WVO Services or the WVO Licensed Content, you agree to pay all of Pictometry's costs of enforcement and collection, including court costs and reasonable attorneys' fees.
- 6.10 This WVO License Agreement constitutes the entire agreement of the parties with respect to its subject matter and replaces and supersedes any prior written or verbal communications, representations, proposals or quotations relating to that subject matter.

[END OF WEB VISUALIZATION OFFERING TERMS AND CONDITIONS]

**EXHIBIT A - Product Descriptions and Pricing:**

<b>Product Name</b>	<b>Sectors</b>	<b>Price*</b>	<b>LTI Discounted Price *+</b>
<b>IMAGERY - 3in, 5-way, (N5) Per Sector</b> - Product includes: 3-inch GSD oblique frame images (4-way), 3-inch GSD orthogonal frame images, 1-meter GSD ortho mosaic sector tiles and one area-wide 1-meter GSD mosaic (ECW format). Orthogonal GSD: 0.25 feet/pixel; Nominal Oblique GSD (all values +/-10%): Front Line: 0.24 feet/pixel, Middle Line: 0.28 feet/pixel, Back Line: 0.34 feet/pixel. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	0-24	\$595.00	\$535.50
	25-49	\$525.00	\$472.50
	50-99	\$450.00	\$405.00
	100-299	\$450.00	\$405.00
	300-599	\$450.00	\$405.00
	600+	\$450.00	\$405.00
<b>IMAGERY - 4in, 5-way, (N5) Per Sector</b> - Product includes 4-inch GSD oblique frame images (4-way), 4-inch GSD orthogonal frame images, 1-meter GSD ortho mosaic sector tiles and one area-wide 1-meter GSD mosaic (ECW format). Orthogonal GSD: 0.32 feet/pixel; Nominal Oblique GSD (all values +/-10%): Front Line: 0.33 feet/pixel, Middle Line: 0.36 feet/pixel, Back Line: 0.44 feet/pixel. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	0-24	\$400.00	\$360.00
	25-49	\$400.00	\$360.00
	50-99	\$400.00	\$360.00
	100-299	\$400.00	\$360.00
	300-599	\$400.00	\$360.00
	600+	\$400.00	\$360.00
<b>IMAGERY - 6in, 5-way, (N5) Per Sector</b> - Product includes 6-inch GSD oblique frame images (4-way), 6-inch GSD orthogonal frame images, 1-meter GSD ortho mosaic sector tiles and one area-wide 1-meter GSD mosaic (ECW format). Orthogonal GSD: 0.5 feet/pixel; Nominal Oblique GSD (all values +/-10%): Front Line: 0.46 feet/pixel, Middle Line: 0.51 feet/pixel, Back Line: 0.60 feet/pixel. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	0-24	\$345.00	\$310.50
	25-49	\$295.00	\$265.50
	50-99	\$250.00	\$225.00
	100-299	\$250.00	\$225.00
	300-599	\$250.00	\$225.00
	600+	\$250.00	\$225.00
<b>IMAGERY - 9in (6in Ortho), 5-way, (C6) Per Sector</b> - Product includes: 9-inch GSD oblique frame images (4-way), 6-inch GSD orthogonal frame images, 1-meter GSD ortho mosaic sector tiles and one area-wide 1-meter GSD mosaic (ECW format). Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	0-24	\$250.00	\$225.00
	25-49	\$250.00	\$225.00
	50-99	\$200.00	\$180.00
	100-299	\$150.00	\$135.00
	300-599	\$125.00	\$112.50
	600+	\$125.00	\$112.50
<b>Product Name</b>	<b>Sectors</b>	<b>Price*</b>	<b>LTI Discounted Price *+</b>
	0-24	\$200.00	\$180.00

<b>IMAGERY - 9in, 5-way, (C5) Per Sector</b> - Product includes 9-inch GSD oblique frame images (4-way), 9-inch GSD orthogonal frame images, 1-meter GSD ortho mosaic sector tiles and one area-wide 1-meter GSD mosaic (ECW format). Orthogonal GSD: 0.75 feet/pixel; Nominal Oblique GSD (all values +/-10%): Front Line: 0.74 feet/pixel, Middle Line: 0.85 feet/pixel, Back Line: 1.00 feet/pixel. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use	25-49	\$200.00	\$180.00
	50-99	\$150.00	\$135.00
	100-299	\$100.00	\$90.00
	300-599	\$75.00	\$67.50
	600+	\$75.00	\$67.50
<b>RapidAccess - Disaster Response Program - ("DRP")</b> Emergency response program offering free or discounted fresh imagery for areas affected by qualifying emergencies or disasters for eligible customers. To be a qualifying emergency or disaster, the event must have occurred before second anniversary of initial delivery of the most recent imagery for the affected area. To be eligible for DRP, Customer must have paid all amounts due with respect to all prior imagery projects and be in good-standing with Pictometry. When requirements are met, DRP provides: A. Disaster Coverage Imagery at No Additional Charge – Pictometry will, upon request of Customer and at no additional charge, provide standard quality imagery of up to 200 square miles of affected areas (as determined by Pictometry) upon the occurrence of any of the following events during any period Customer is eligible for DRP: <ul style="list-style-type: none"> <li><input type="checkbox"/> Hurricane: areas affected by hurricanes of Category 2 and higher.</li> <li><input type="checkbox"/> Tornado: areas affected by tornados rated EF4 and higher.</li> <li><input type="checkbox"/> Terrorist: areas affected by damage from terrorist attack.</li> <li><input type="checkbox"/> Earthquake: areas affected by damage to critical infrastructure resulting from earthquakes measured at 6.0 or higher on the Richter scale.</li> <li><input type="checkbox"/> Tsunami: areas affected by damage to critical infrastructure resulting from tsunamis.</li> </ul> B. Discounted Rate – Coverage for areas affected by the events set forth above exceeding 200 square miles will be, subject to Pictometry resource availability, offered to Customer at the then current DRP rates. Also, coverage for areas affected by hurricanes below Category II, tornadoes below EF4 or earthquakes rated below 6.0 on the Richter scale will be, subject to Pictometry resource availability, offered to Customer at the then current DRP rates. C. Online Services – Use of Pictometry Connect Explorer™ – Pictometry’s DRP includes the use of Connect Explorer for a term of ninety days from the date of delivery of the DRP imagery. Customer shall have access to the DRP imagery for as long as they maintain an active Connect account.	\$ No charge with purchase of imagery product		
<b>Oblique Imagery Bundle with One (1) Year of EFS Maintenance &amp; Support</b> - Includes digital copy of the Licensed Documentation for the License Software, two (2) End User Training Sessions, one (1) Advanced User Technical Training, one (1) Administration / IT Training Session, five (5) hours of telephone support, one copy of Pictometry Electronic Field Study (EFS) software, latest version, on the storage media specified herein, and access to download updated versions of the EFS Licensed Software for a	\$ No charge for initial year with purchase of imagery product		

period of one years from the initial date of shipment of the EFS software, along with a copy of the updated documentation. Applicable Terms and Conditions: Software License Agreement	
<b>Pictometry Connect - CA - 50</b> - (Custom Access) provides up to 50 concurrent authorized users the ability to login and access the Pictometry-hosted custom imagery libraries specified elsewhere in this Agreement via a web-based, server-based or desktop integration. The default deployment is through web-based Pictometry Connect. 1 year term commences on date of activation. Applicable Terms and Conditions: Software License Agreement and Online Services General Terms and Conditions	\$2,200.00 / Year (charge waived for 1 <sup>st</sup> year following purchase of imagery project)
<b>Pictometry Connect - CA - 100</b> - (Custom Access) provides up to 100 concurrent authorized users the ability to login and access the Pictometry-hosted custom imagery libraries specified elsewhere in this Agreement via a web-based, server-based or desktop integration. The default deployment is through web-based Pictometry Connect. 1 year term commences on date of activation. Applicable Terms and Conditions: Software License Agreement and Online Services General Terms and Conditions	\$3,300.00/year
<b>Pictometry Connect - CA - 250</b> - (Custom Access) provides up to 250 concurrent authorized users the ability to login and access the Pictometry-hosted custom imagery libraries specified elsewhere in this Agreement via a web-based, server-based or desktop integration. The default deployment is through web-based Pictometry Connect. 1 year term commences on date of activation. Applicable Terms and Conditions: Software License Agreement and Online Services General Terms and Conditions	\$6,750.00/year
<b>Pictometry Connect - CA - 500</b> (Custom Access) provides up to 500 concurrent authorized users the ability to login and access the Pictometry-hosted custom imagery libraries specified elsewhere in this Agreement via a web-based, server-based or desktop integration. The default deployment is through web-based Pictometry Connect. 1 year term commences on date of activation. Applicable Terms and Conditions: Software License Agreement and Online Services General Terms and Conditions	\$12,000.00/year
<b>Pictometry Connect - CA - 1000</b> (Custom Access) provides up to 1000 concurrent authorized users the ability to login and access the Pictometry-hosted custom imagery libraries specified elsewhere in this Agreement via a web-based, server-based or desktop integration. The default deployment is through web-based Pictometry Connect. 1 year term commences on date of activation. Applicable Terms and Conditions: Software License Agreement and Online Services General Terms and Conditions	\$21,000.00/year

+ LTI = Long Term Incentives which are discounts available to Customers committing to multi-flight, long term contracts.

Eligibility for LTI discounts (10% per Project) requires that all Projects (flight) are completed within a six-year period and that successive Projects occur at a maximum interval of three years, as any of:

- 2 Projects contracted within 6 years
- 3 or more Projects within 6 years
- Annually

\* There is a \$20,000.00 minimum per imagery purchase which includes, at no additional charge (consistent with, but not duplicative of, descriptions indicated above):

- Pictometry's Rapid Access Disaster Response program
- Oblique Imagery Bundle with One (1) Year of EFS Maintenance & Support
- One seat of Change Analysis software
- Base level integration products (e.g. ArcGIS® integration)

In addition to the Pictometry products and services available at the prices listed above, the following products and services (“Supplemental Offerings”) may be available pursuant to this contract. Customer shall request availability and applicable pricing for such Supplemental Offerings before any contract for them may be concluded.

<b>Supplemental Offerings</b>
<b>Connect CA (Custom Access) Products</b> in addition to those listed above are available. Applicable Terms and Conditions: Software License Agreement and Online Services General Terms and Conditions
<b>Ortho tile</b> - Available with corresponding GSD imagery purchase; delivered at same GSD as image purchase. Corresponding GSD Mosaic Tiles in TIFF/JPG Format. Tiles are provided "as is." Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use
<b>Ortho mosaic</b> – Mosaic area-wide created from Ortho tile without additional processing beyond compression. Available with purchase of corresponding tile product. Delivered at same GSD as tile product in ECW or MrSID format. Applicable Terms and Conditions: Delivered Content Terms and Conditions of Use
<b>Pictometry CONNECTAssessment</b> - Pictometry CONNECTAssessment allows a user the ability to log in and access Pictometry ChangeFinder data and Pictometry-hosted imagery libraries which have otherwise been licensed to the Customer via a web-based application. The number of concurrent authorized users will depend upon Customer’s Connect agreement. Access runs concurrent with last activation (and scheduled expiration) of the Customer’s Connect account. This offering requires an active Pictometry CONNECT account. Applicable Terms and Conditions: Online Services General Terms and Conditions
<b>Pictometry Connect - Early Access</b> - Early Access provides authorized users the ability to login and access imagery captured as part of a specific imagery project immediately following preliminary processing and quality control checks and prior to final processing of the imagery from the project. Imagery will be posted to Pictometry Connect - Early Access incrementally as captured and processed, typically within two weeks following capture, and will remain available until final, fully processed imagery for the entire project is made available through other access means. This offering requires purchase of imagery project and an active Pictometry Connect Account. Applicable Terms and Conditions: Online Services General Terms and Conditions
<b>CONNECT Image Service - Connect Image Service - CA (Custom Access)</b> provides access via a secure web mapping service to existing orthomosaics available within customer’s Connect account. This service allows use by customer each calendar month of a total number of image request transactions equal to the product resulting from multiplying (a) the number of concurrent users authorized to use the Connect Image Service pursuant to this Agreement, by (b) 1500 (such product being the “Monthly Image Request Limit”). To the extent use of the Connect Image Service pursuant to this Agreement results in a total number of image request transactions in excess of the Monthly Image Request Limit, Pictometry may review the usage with customer, increase the price for customer’s Connect Image Service with customer’s consent or, in Pictometry’s discretion, suspend further access by customer to the Connect Image Service. This offering is provided solely for internal use within customer’s organization. Customer must maintain an active paid Pictometry Connect account in order to utilize the Connect Image Service. Applicable Terms and Conditions: Online Services General Terms and Conditions
<b>Integrated Pictometry Application</b> - Integrated Pictometry Applications are web based technologies that allow a developer to embed a web instance into a product / application that connects to a customer’s licensed Pictometry-hosted imagery. Currently supports JavaScript / iFrame applications for both Visualization (External or Public Facing) use and/or Analytics (Internal with Measurement Tools) use. Requires a Pictometry Connect or Pictometry Connect PFW / View Account depending on use type. Applicable Terms and Conditions: Software License Agreement and Online Services General Terms and Conditions
<b>Connect View – CA - Pictometry Connect View - CA (Custom Access)</b> provides visualization-only access to specified Pictometry-hosted custom imagery libraries via a web application or server based integration. Requires a customer-provided web application or server based application. With respect to imagery available through this product to third parties or the Public, Pictometry reserves the right to reduce the resolution of the imagery available. Term commences on date of activation. Applicable Terms and Conditions: Web Visualization Offering Terms and Conditions
<b>Esri Web AppBuilder</b> - Pictometry for Esri Web AppBuilder is a server based widget for installation on customer's server that allows users with valid Pictometry Connect accounts to access oblique and orthogonal imagery within web applications authored using Web AppBuilder for ArcGIS (Developer Edition) available separately from Esri. Requires a Pictometry Connect account. Applicable Terms and Conditions: Software License Agreement

[End of Exhibit A - Product Descriptions and Pricing]

**PURCHASE ORDER SUBMITTED BY**  
**\_\_\_\_\_ (“CUSTOMER”)**  
**PURSUANT TO MASTER SERVICES AGREEMENT # \_\_\_\_\_ BY AND BETWEEN**  
**THE STATE OF OREGON, DEPARTMENT OF ADMINISTRATIVE SERVICES, AND**  
**PICTOMETRY INTERNATIONAL CORP.**

1. This Purchase Order (“Order Form”) is submitted pursuant to the Master Services Agreement referenced above (the “MSA”) in combination with the contract components listed below, all of which are hereby incorporated by reference onto this Purchase Order as is fully set forth herein:

Contract Specific Terms set forth in Part 2 of the MSA  
 Description of Products and Services set forth in Exhibit A to the MSA  
 Contractor’s product-specific terms, conditions and licenses set forth in Exhibits D-1 through D-4 to the MSA  
 This Order Form

all of which, collectively, constitute this “Agreement” and set forth the entire understanding between Pictometry and Customer with respect to the subject matter hereof and supersedes all prior representations, agreements and arrangements, whether oral or written, relating to the subject matter hereof. Any modifications to this Agreement must be made in writing and be signed by duly authorized officers of each party.

2. In the event of any conflict among any contract components comprising this Agreement, order of precedence for resolving such conflict is specified in the MSA
3. All notices under this Agreement shall be in writing and shall be sent to the following respective addresses:

CUSTOMER NOTICE ADDRESS	PICTOMETRY NOTICE ADDRESS
	25 Methodist Hill Drive
	Rochester, NY 14623
Attn:	Attn: Contract Administration
Phone Fax:	Phone: (585) 486-0093 Fax: (585) 486-0098

Either party may change their respective notice address by giving written notice of such change to the other party at the other party’s then-current notice address. Notices shall be given by any of the following methods: personal delivery; reputable express courier providing written receipt; or postage-paid certified or registered United States mail, return receipt requested. Notice shall be deemed given when actually received or when delivery is refused.

This Agreement shall become effective upon execution by duly authorized officers of Customer and Pictometry and receipt by Pictometry of such fully executed document, such date of receipt by Pictometry being the “Effective Date.”

**PARTIES:**

CUSTOMER	PICTOMETRY
	<b>PICTOMETRY INTERNATIONAL CORP.</b>
(entity type)	a Delaware corporation
<b>SIGNATURE:</b>	<b>SIGNATURE:</b>
<b>NAME:</b>	<b>NAME:</b>
<b>TITLE:</b>	<b>TITLE:</b>
<b>DATE:</b>	<b>EXECUTION DATE:</b>
	<b>DATE OF RECEIPT (EFFECTIVE DATE):</b>

**SECTION A**

**ORDER FORM PRODUCT DESCRIPTIONS, PRICES AND PAYMENT TERMS**

Pictometry International Corp.  
 25 Methodist Hill Drive  
 Rochester, NY 14623

<b>ORDER #</b>

<b>BILL TO</b>

<b>SHIP TO</b>

<b>CUSTOMER ID</b>	<b>SALES REP</b>

FIRST PROJECT					
QTY	PRODUCT NAME	PRODUCT DESCRIPTION	LIST PRICE	DISCOUNT PRICE (%)	AMOUNT
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
SUBTOTAL - FIRST PROJECT					\$

SECOND PROJECT					
QTY	PRODUCT NAME	PRODUCT DESCRIPTION	LIST PRICE	DISCOUNT PRICE (%)	AMOUNT
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
SUBTOTAL - SECOND PROJECT					\$

THIRD PROJECT					
QTY	PRODUCT NAME	PRODUCT DESCRIPTION	LIST PRICE	DISCOUNT PRICE (%)	AMOUNT
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
SUBTOTAL - THIRD PROJECT					\$

Thank you for choosing Pictometry as your service provider.	<b>TOTAL</b>	\$
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<sup>1</sup>Amount per product = ((1-Discout %) \* Qty \* List Price)

**FEES; PAYMENT TERMS**

All amounts due to Pictometry pursuant to this Agreement ("Fees") are expressed in United States dollars and do not include any duties, taxes (including, without limitation, any sales, use, ad valorem or withholding, value added or other taxes) or handling fees, all of which are in addition to the amounts shown above and, to the extent applicable to purchases by Customer, shall be paid by Customer to Pictometry without reducing any amount owed to Pictometry unless documents satisfactory to Pictometry evidencing exemption from such taxes is provided to Pictometry prior to billing.

**FIRST PROJECT**

Due at Signing	\$
Due at Initial Shipment of Imagery	\$
Due at First Anniversary of Shipment of Imagery	\$
<b>Total Payments</b>	<b>\$</b>

**SECOND PROJECT**

Due at Initial Shipment of Imagery	\$
Due at First Anniversary of Shipment of Imagery	\$
<b>Total Payments</b>	<b>\$</b>

**THIRD PROJECT**

Due at Initial Shipment of Imagery	\$
Due at First Anniversary of Shipment of Imagery	\$
<b>Total Payments</b>	<b>\$</b>

**PRODUCT PARAMETERS**

**FIRST PROJECT  
IMAGERY**

**Product:**  
*Elevation Source:*  
*Leaf:*

**CONNECT**

**Product:**  
*Admin User Name:*  
*Admin User Email:*  
*Geofence:*

**SECOND PROJECT  
IMAGERY**

**Product:**  
*Elevation Source:*  
*Leaf:*

**CONNECT**

**Product:**  
*Admin User Name:*  
*Admin User Email:*  
*Geofence:*

**THIRD PROJECT  
IMAGERY**

**Product:**  
*Elevation Source:*  
*Leaf:*

**CONNECT**

**Product:**  
*Admin User Name:*  
*Admin User Email:*

*Geofence:*

### **STANDARD ORTHO MOSAIC PRODUCTS**

Pictometry standard ortho mosaic products are produced through automated mosaicking processes that incorporate digital elevation data with individual Pictometry ortho frames to create large-area mosaics on an extremely cost-effective basis. Because these products are produced through automated processes, rather than more expensive manual review and hand-touched corrective processes, there may be inherent artifacts in some of the resulting mosaics. While Pictometry works to minimize such artifacts, the Pictometry standard ortho mosaic products are provided on an 'AS IS' basis with respect to visible cutlines along mosaic seams resulting from the following types of artifacts:

- i. Disconnects in non-elevated surfaces generally caused by inaccurate elevation data;
- ii. Disconnects in elevated surfaces (e.g., roadways, bridges, etc.) generally caused by elevated surfaces not being represented in the elevation data;
- iii. Building intersect and clipping generally caused by buildings not being represented in the elevation data;
- iv. Seasonal variations caused by images taken at different times during a season, or during different seasons;
- v. Ground illumination variations caused by images taken under different illumination (e.g., sunny, high overcast, morning light, afternoon light, etc.) within one flight day or during different flight days;
- vi. Single GSD color variations caused by illumination differences or multiple-aircraft/camera captures;
- vii. Mixed GSD color variations caused by adjacent areas being flown at different ground sample distances (GSDs); and
- viii. Water body color variations caused by multiple individual frames being used to create a mosaic across a body of water (e.g., lakes, ponds, rivers, etc.).

Other Pictometry products may be available that are less prone to such artifacts than the Pictometry standard ortho mosaic products.

**SECTION C**

**NON-STANDARD TERMS AND CONDITIONS**

1. Online Services Eligible Users: Notwithstanding anything in the Online Services General Terms and Conditions incorporated in this Agreement to the contrary, the terms 'Eligible User' and 'Eligible Users' as defined in those Online Services General Terms and Conditions shall, for the purposes of this Agreement, also include each 'Authorized User' as that term is defined in the Delivered Content Terms and Conditions of Use incorporated in this Agreement.

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[END OF NON-STANDARD TERMS AND CONDITIONS]

**SECTOR MAP(S)**