

PICTOMETRY INTERNATIONAL CORP.  
GENERAL LICENSE TERMS AND CONDITIONS

THIS AGREEMENT is made as of the date set forth below (the "Effective Date") by and between Pictometry International, Corp., a Delaware corporation with offices at 100 Town Centre Drive, Suite A, Rochester, NY 14623 ("Pictometry"), and \_\_\_\_\_ with offices located at \_\_\_\_\_ (the "Licensee").

Intending to be legally bound, Pictometry and the Licensee (each a "party") hereby agree:

**1. ARTICLE – DEFINITIONS** for purposes of this Agreement:

- 1.1 **"Pictometric Licensed Images" ("Licensed Images")** means orthogonal and oblique digital images of portions of the earth's surface, captured from airborne platforms using Pictometry's patented and proprietary hardware and software capture system.
- 1.2 **"Commissioner"** means the New State Office of General Services.
- 1.3 **"Community Images" ("CI")** means a set of views, each covering an entire Image Sector. One view from directly overhead and other views from different oblique angles.
- 1.4 **"Neighborhood Images" ("NI")** means a set of overlapping, orthogonal and oblique views blanketing the entire sector, providing for a higher degree of detail than Community Images.
- 1.5 **"Image Sector"** means a portion of an image collection project and defined as approximately one square mile in area.
- 1.6 **"Geographic MetaData" ("Metadata")** means data supplied by Pictometry that is captured from airborne platforms using Pictometry's patented and proprietary hardware and software capture system.
- 1.7 **"Electronic Field Study" ("EFS")** means a proprietary software and file structure package that allows for the display, navigation, measurement, annotation and analysis of Pictometric Licensed Images.
- 1.8 **"Pictometry Licensed Software" ("Licensed Software")** means any proprietary software provided by Pictometry. This includes, but is not limited to, programs such as EFS and Change Analysis and program modules such as 911 or GIS integration / interfaces.
- 1.9 **"Image Warehouse" ("IW")** means a hierarchical storage system of Pictometric Images, as well as data and elevation models, that allows fast, random access by geo-location.
- 1.10 **"Digital Elevation Model" ("DEM")** means a general definition for a file containing ground elevation data. This may be a digital elevation model, a digital terrain model, or a reflective surface model and is meant to encompass all means of production, including LIDAR and stereo pairs.
- 1.11 **"Licensed Documentation" ("Documentation")** means written and/or electronic materials containing instructions and other information related to the use of the Licensed Images and the Licensed Software.

**2. ARTICLE – GENERAL**

- 2.1 **Licensed Products.** This Agreement pertains to the particular Images described in Schedule A and attached to this Agreement (the "Licensed Images"), the particular copies of the Software listed in Schedule A (the "Licensed Software"), the associated Metadata (the "Licensed Metadata"), and the DEM described in Schedule A attached to this Agreement (the "Licensed DEM"), all of which, along with the Documentation, are together referred to as the "Licensed Products." The terms and conditions of this Agreement may also apply to other products or services that may from time to time be licensed from Pictometry by the Licensee.
- 2.2 **System Installation.** Pictometry shall install a copy of the Licensed Products on storage media either provided by Licensee or purchased from Pictometry, as specified in Schedule A. With the assistance of Pictometry, the Licensee will install the Licensed Products from that media onto computers, including server computers. The Licensee will be responsible for assuring that the computer system being used for these purposes will satisfy the minimum system requirements set forth on Schedule A. Licensee and its Authorized Subdivisions (as provided in Section 2.3) may use and execute the Licensed Software for official purposes only.
- 2.3 **Licensee May Authorize Subdivisions and Users.** The Licensee may authorize any department, sub unit, or location within the Licensee (hereinafter "Authorized Subdivisions") to have the Licensed Products installed on computers owned (or leased) and used by those Authorized Subdivisions. The installation of the Licensed Imagery and EFS, and the training of the Licensee and Authorized Subdivision Personnel ("Authorized Users"), may be performed only by Pictometry or by the Licensee's employees who have received special training from Pictometry. All Authorized Subdivisions and Authorized Users shall operate under this Agreement as agents of the Licensee and comply with all obligations of Licensee with respect to the use and distribution of the Licensed Products, and Pictometry may look to the Licensee alone for assuring compliance with the terms and conditions of this Agreement. Licensee agrees: (a) that it will not allow any persons other than Authorized Users to use or operate, or to have any other access to, any of the Licensed Products (other than as described in Article 3.1 of this Agreement), (b) that it will not allow access to any of the Licensed Software except through Licensee and Authorized Subdivisions workstations, and (c) that it will cause all Authorized Users to comply with all of the terms, conditions, and limitations applicable to the Licensee under this Agreement.

**3. ARTICLE - GRANT OF LICENSE**

- 3.1 **License Grant, Uses and Certain Fees.** In consideration for the payment of the License Fees provided for in Article 4 below, and subject to the other terms and conditions of this Agreement, Pictometry hereby grants to Licensee, and Licensee hereby accepts, a nonexclusive, nontransferable, limited license (the "License") for the following:
  - (a) **Installation.** To install the Image Warehouse on servers and install related Licensed Products on workstations, all of which shall be owned (or leased) by, shall be located on the owned or leased property of, shall be under the control of, and shall be used only by the Licensee or by Authorized Subdivisions. None of the Licensed Products (except Licensed Images) shall be accessed except through such designated servers and workstations.

- (b) **Documentation.** To copy and use the related Documentation included in the Licensed Products in connection with the activities described in this Section 3.1.
- (c) **Uses.** Through Authorized Users only, to use and operate the Licensed Software on those designated servers and workstations in the conduct of the public business of the Licensee, or of the Authorized Subdivisions, and to use the Licensed Products in the following activities (and no others):
  - (1) **For Internal Business.** To use and execute the Licensed Products for internal pursuit of its or their public responsibilities.
  - (2) **For Persons Doing Business With Licensee** ("Project Participants"). Under the supervision of Authorized Users, allow representatives of persons doing business with the Licensee or an Authorized Subdivision on Licensee Projects (defined below) to use and execute the Licensed Software at the Licensee's or Authorized Subdivisions' facilities only. For these purposes, "Licensee Projects" shall mean any plan or effort, tangible or intangible, such as construction, real estate disposition, facilities management, environmental studies, or public information brochures or notices used or to be used by the Licensee or an Authorized Subdivision in pursuit of its public responsibilities. The Licensee or Authorized Subdivisions shall cause each Project Participant to agree to use the hard copies (or jpg copies) of Licensed Images solely in connection with the Licensee's or Authorized Subdivision's Project.
  - (3) **For Public Use.** Through Authorized Users only, to use and execute the Licensed Software solely for the purpose of making hard copies and/or digital copies of Licensed Images for persons desiring them (which copies may contain annotations of information stored in the Licensed Software and related to the property shown). Reproductions of individual (or limited quantities of) Licensed Images using the Licensed Software, or reproduction or copying of the Licensed Images in any form by any other means by Licensee or an Authorized Subdivision thereof, shall be permitted for distribution to Licensee's or Subdivision's constituency. Licensee may charge reproduction fees or no fees to the persons or entities receiving the Images.

**3.2 Limitations on License.** Licensee agrees: (a) that nothing under this Agreement authorizes it to engage in any service bureau work, to exercise or provide any multiple-user license, or to enter into any time-sharing arrangement, except as expressly authorized with respect to Authorized Subdivisions, (b) that Licensee will not authorize or allow any remote access, by any unauthorized persons, to the Licensed Products except as expressly provided in this Agreement for Licensee and Authorized Subdivisions workstations, (c) that Pictometry shall not be obligated to revise, improve, or otherwise change the Licensed Software in any way, (d) that the Licensee is responsible for selecting Authorized Users who are qualified to operate the Licensed Products on licensee workstations and are familiar with the Licensed Products and trained as provided in Section 2.3, (e) that the Licensee and its Authorized Subdivision may not copy, download, store, publish, transmit, transfer, sell, or otherwise install or use the Licensed Products (except for Licensed Images) in any form or by any means, except (i) as expressly permitted by this Agreement, (ii) with Pictometry's prior written permission, or (iii) to the extent not expressly prohibited by this Agreement, as allowed under the fair use provision of the Copyright Act (17 U.S.C. § 107). Licensee agrees that it will deliver to all recipients of any hard copies, and to any other persons who may have access to any of the Images, all such disclaimers and other information so as to assist those persons in understanding the limitations on the accuracy of the information developed through the Licensed Products. For purposes of this Agreement, service bureau work shall be deemed to include, without limitation, use of the Licensed Products to process or to generate output data for the benefit of or for purposes of, rendering services to, any third party over the Internet or other public communications medium.

**3.3 Pictometry's Reserved Rights.** Pictometry reserves the right, at its sole discretion and without liability to Licensee, to create new versions of, or modules, with additional functionality for any part of the Licensed Products, which may be acquired on a nonexclusive basis by Licensee under a separate agreement. Pictometry may, in addition, produce upgrades to enhance operations of the Licensed Products, which will be supplied without additional cost to Licensee during the initial term of this License Agreement.

#### **4. ARTICLE - LICENSE FEES**

**4.1 License Fees.** In consideration for the License, and subject to the other terms and conditions of this Agreement, the Licensee hereby agrees to pay to Pictometry the fees described on Schedule A (altogether the "License Fees") and payment shall be made as provided in Schedule A. Any tax, including sales tax, is in addition to the License Fees and is the responsibility of the Licensee unless documentation of tax exemption is provided to Pictometry. All License Fees shall be earned on the date Licensed Products are shipped. For the convenience of the Licensee, the payment of these fees may be spread over the initial term of this Agreement as provided on the attached Schedule A.

#### **5. ARTICLE - OBLIGATIONS OF LICENSEE**

**5.1 Geographic Data.** If available, Licensee agrees to provide to Pictometry geographic data in industry standard format, shape, DBF, etc., including digital elevation models, street centerline maps, tax parcel maps, centroids, etc., which data, to the extent practicable, shall be incorporated into the Image Library licensed to the Licensee. Licensee agrees that any of this data that is owned by the Licensee, may be distributed by Pictometry with the Image Library that is used in the Pictometry On-Line product and in licensing the Image Library to other licensees. At no time shall Pictometry claim ownership of that data.

**5.2 Notification.** Licensee will: (a) notify Pictometry in writing of any claim or proceeding involving any of the Licensed Products within ten (10) days after Licensee learns of the claim or proceeding; and (b) report promptly to Pictometry all claimed or suspected defects in any Licensed Product.

#### **6. ARTICLE - ASSIGNMENT**

**6.1 General.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns, but shall not be assignable by either party except as provided in Sections 6.2 and 6.3 below.

**6.2 Assignment By Licensee.** This Agreement will not be assignable by Licensee, and Licensee may not delegate its duties hereunder without the prior written consent of Pictometry.

**6.3 Assignment By Pictometry.** Pictometry shall have the right to assign its rights to receive License Fees under this Agreement, but no such assignment shall affect Pictometry's obligations hereunder. In addition, Pictometry shall have the right to assign all its rights to any person or entity, provided the assignee has assumed all of Pictometry's obligations under this Agreement. Except as provided above in this Section 6.3, this Agreement will not be assignable by Pictometry.

#### **7. ARTICLE - DURATION AND TERMINATION OF LICENSE**

**7.1 Initial Term.** The initial term of this Agreement shall commence upon the shipment of substantially all of the Image Warehouse and the initial term shall expire as indicated on Schedule A, unless the parties enter into a written agreement extending that initial term. At the end of that initial term of this Agreement, and after all License Fees for the initial term have been paid, this License shall automatically convert to a royalty-free, perpetual license and Pictometry shall allow the Licensee to keep, use, and operate the Licensed Products forever. Licensee will be responsible for ongoing support/maintenance/upgrade fees for this Perpetual License unless the Licensee has renewed this License for additional Image Libraries. Under the Perpetual License, Licensee's obligations under this agreement shall continue in perpetuity except for its obligations to pay License Fees. Pictometry shall have no obligations under this Agreement except for those with regard to the additional

Support, Upgrades and Maintenance for their Licensed Software. If Licensee renews this License Agreement for an additional term, all support, upgrades and maintenance on Licensed Products under a perpetual license shall be provided at no charge to Licensee during the term of the renewal. Effective as of the expiration of the initial term as provided in Schedule A, Licensee will no longer be able to add images to the existing Image Library unless a renewal occurs.

**7.2 Termination for Cause.** In addition to any rights provided in the Security Systems and Solutions RFP #20191 Terms and Conditions, including but not limited to Sections 60 and 63 of Appendix B, this Agreement may be terminated by either party in the event that the other party has failed to perform a material obligation or has otherwise breached a material term of this Agreement, and if that other party has failed to cure that failure or breach within thirty (30) days after receipt of written notice thereof from the other party.

## **8. ARTICLE - INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP**

**8.1 Licensed Products.** The parties acknowledge and agree that Pictometry shall have and retain sole and exclusive ownership and all right, title, and interest in and to any Licensed Images, Licensed Metadata, Licensed Software, Licensed DEM and Licensed Documentation provided under this Agreement and all copyrights, patents, trademarks, trade names, logos, trade secrets, and other proprietary rights in or associated with each of the Licensed Products (altogether the "Proprietary Rights"). Licensee agrees; (a) that it will never assert or claim any interest in, or do anything that may adversely affect the validity of, or infringe on, or affect Pictometry's right, title, and interest in, any Proprietary Right, and (b) that it will use reasonable efforts to protect the Proprietary Rights, including placing or maintaining all copyright, patent, and other notices and other indications of Pictometry's ownership thereof on all Licensed Products and on all copies of Licensed Images and all other property of Pictometry when instructed by Pictometry, and (c) that it will notify Pictometry promptly after learning about any actual or suspected breach of any Proprietary Rights.

**8.2 Use of Pictometry's Marks.** Licensee agrees not to attach any additional trademarks, trade names, logos or designations to any Licensed Products or to any copies of any of the Licensed Images without prior written approval from Pictometry. Licensee may, however, include a Licensee seal and Licensee's contact information so long as the seal and contact information in no way obscure or deface the Pictometry marks. Licensee further agrees that Licensee will not use any Pictometry trademark, trade name, logo, or designation in connection with any product or service other than the Pictometry Licensed Images and the other Pictometry Licensed Products. Licensee's non-exclusive right to use Pictometry's trademarks, trade name, logos, and designations is co-terminous with this Agreement.

**8.3 Electronic and Other Publishing.** Except as provided in Article 3.1 of this Agreement, Licensee is specifically prohibited from publishing any Licensed Products (other than Licensed Images) in any way, whether separately or as part of any other publication. For these purposes, publishing includes, making available on the Internet or World Wide Web or any other general access electronic network, method or medium.

**8.4 Confidentiality of Licensed Products.** The Licensed Products are commercially valuable, proprietary products owned by Pictometry, the design and development of which reflect an investment of considerable time, effort, and money. The Licensed Products are treated by Pictometry as confidential and contain substantial trade secrets of Pictometry. Licensee agrees that it will not disclose, provide a copy of, or disseminate the Licensed Products (other than Licensed Images) or any part thereof to any person who does not need to obtain access thereto consistent with Licensee's rights and obligations under this Agreement. Licensee agrees to use its best efforts to assure (a) that all its personnel, and any others afforded access to the Licensed Products, will protect the Products against unauthorized use, disclosure, copying, and dissemination, and (b) that access to the Licensed Products and each part thereof will be strictly limited. Licensee understands that Pictometry does not disclose source code and Licensee agrees that it will take all reasonable actions to assure that persons who might access the Licensed Software will not "unlock" or "reverse engineer" any part of the Licensed Software so as to find or uncover the source code or other trade secrets included therein.

## **9. ARTICLE - LIMITED WARRANTY; DISCLAIMER OF WARRANTIES; LIMITED REMEDIES**

**9.1 Limited Warranties.** Pictometry warrants that the Licensed Images and the Licensed Products installed by Pictometry on any Authorized Workstation supplied by Licensee pursuant to this Agreement will be true and usable copies as of the date of capture. Upon notice to Pictometry of any breach of that warranty, Pictometry will use its reasonable efforts to correct the problem so as to allow the Licensed Products to produce Images and related data that are usable for the general purposes intended.

**9.2 Limitations and Exclusions of Remedies.** The remedy set forth in Section 9.1 is one of the remedies provided for breach of the warranty given.

**ADDITIONAL WARRANTIES** Where Pictometry, product manufacturer or service provider, generally offers additional or more advantageous warranties than set forth below, Pictometry shall offer or pass through any such warranties to Authorized Users. Pictometry hereby warrants and represents:

**a. Product Performance** Pictometry warrants and represents that Products delivered pursuant to this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.

**b. Title and Ownership Warranty** Pictometry warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Products transferred to Authorized User under this Contract. Pictometry shall be solely liable for any costs of acquisition associated therewith. Pictometry fully indemnifies the Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.

**c. Pictometry Compliance** Pictometry represents and warrants to pay, at its sole expense, for all applicable permits, licenses, tariffs, tolls and fees to give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Pictometry must establish to the satisfaction of the NYS OGS Commissioner that it meets or exceeds all requirements of the Bid/Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for worker's compensation, and shall provide such proof as required by the Commissioner. Failure to do so may constitute grounds for the Commissioner to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner.

**d. Product Warranty** Unless recycled or recovered materials are available in accordance with the "Recycled or Recovered Materials" clause, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice. Pictometry further warrants and represents that components or deliverables specified and furnished by or through Pictometry shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project warranty period"). During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Pictometry shall be repaired or replaced by Pictometry at no cost or expense to the Authorized User. Pictometry shall extend the Project warranty period for individual component(s), or for the System as a whole, as

applicable, by the cumulative period(s) of time, after notification, during which an individual component or the System requires servicing or replacement (down time) or is in the possession of the Pictometry, its agents, officers, SubPictometrys, distributors, resellers or employees (“extended warranty”). Where Pictometry, the Independent Software Vendor “ISV,” or other third party manufacturer markets any Project Deliverable delivered by or through Pictometry with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Pictometry from, Pictometry’s warranty obligations during the project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the Project warranty or extended warranty period(s), Pictometry shall be responsible for the coordination during the Project warranty or extended warranty period(s) with ISV or other third party manufacturer(s) for warranty repair or replacement of ISV or other third party manufacturer’s Product.

Where Pictometry, ISV or other third party manufacturer markets any Project Deliverable with a standard commercial warranty which goes beyond the Project warranty or extended warranty period(s), Pictometry shall notify the Authorized User and pass through the manufacturer’s standard commercial warranty to Authorized User at no additional charge; provided, however, that Pictometry shall not be responsible for coordinating services under the third party extended warranty after expiration of the Project warranty and extended warranty period(s).

**e. Replacement Parts Warranty** If during the regular or extended warranty period’s faults develop, the Pictometry shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period shall be borne solely by the Pictometry, and the State or Authorized User shall in no event be liable or responsible therefor.

Any part of component replaced by the Pictometry under the Contract warranty shall be replaced at no cost to the Authorized User and guaranteed for the greater of: a) the warranty period under paragraph (d) above; or b) if a separate warranty for that part or component is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.

**f. Virus Warranty** The Pictometry represents and warrants that Licensed Software contains no known viruses. Pictometry is not responsible for viruses introduced at Licensee’s site.

**g. Date/Time Warranty** Pictometry warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Pictometry proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Pictometry is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Pictometry warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Pictometry’s business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Pictometry shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Pictometry’s or Product manufacturer/developer’s stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

**h. Workmanship Warranty** Contract warrants that all components or deliverables specified and furnished by or through Pictometry under the Project Definition/Work Order meet the completion criteria set forth in the Project Definition/Work Order and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.

**i. Survival of Warranties** All warranties contained in this Contract shall survive the termination of this Contract

**9.3 LIMITATION OF LIABILITY** Except as otherwise set forth in the Indemnification Paragraphs above, the limit of liability shall be as follows:

**a.** Pictometry’s liability for any claim, loss or liability arising out of, or connected with the Products and services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and services, or parts thereof forming the basis of the Authorized User’s claim, (said amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) one million dollars (\$1,000,000), whichever is greater.

**b.** The Authorized User may retain such monies from any amount due Pictometry as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Pictometry at the time of the presentation of claim shall demonstrate to the Authorized User’s satisfaction that sufficient monies are set aside by the Pictometry in the form of a bond or through insurance coverage to cover associated damages and other costs.

**c.** Notwithstanding the above, neither the Pictometry nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Pictometry, or by others.

With respect to any other claims that Licensee may have at any time against Pictometry on any matter relating to this Agreement, or the installation, operation, design, distribution, or use of the Licensed Products, the total liability of Pictometry shall in the aggregate be limited to the aggregate amounts of money that Licensee has paid to Pictometry under this Agreement. In addition, because of scheduling and other considerations in preparing current Licensed Images, Pictometry cannot assure delivery of the Licensed Products on a specified delivery date; however, it will make best effort to deliver the image libraries within 60 days after image capture has concluded. Pictometry shall not be liable for any such late delivery except in a case of its gross negligence or willful misconduct. IN NO EVENT SHALL EITHER PARTY BE LIABLE, UNDER ANY CAUSE OF ACTION OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE LICENSED PRODUCTS, OR IMAGES (INCLUDING UNDER THEORIES INVOLVING TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR BREACH OF WARRANTY), FOR ANY LOST PROFITS OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR OTHER SPECIAL DAMAGES SUFFERED BY THE OTHER PARTY OR BY ITS CUSTOMERS OR OTHERS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**9.4 Imagery Specifications.** Ground Sample Distance (“GSD”) may be affected by Air Traffic Control or terrain restrictions. Images shall have an unobstructed view of the ground. In controlled airspace around airports (and other areas) and in areas of rapid elevation changes, the image footprint sizes and resolutions may vary. There may be varying degrees of ground illumination and color variations due to lighting and cloud shadows. Pictometry’s Orthogonal images provide the coordinate accuracy fulfilling most planimetric requirements. Pictometry data, however,

are not intended for authoritative or definitive mapping or surveying replacement. If there is a need for authoritative mapping products, additional work is required by licensed individuals in order to certify Pictometry's orthogonal imagery.

## 10. ARTICLE - GENERAL

- 10.1 Entire Agreement.** This Agreement, which includes the attached Schedules and the Security Systems and Solutions RFP #20191 Terms and Conditions, contains the entire agreement between the parties and supersedes all written or oral agreements, descriptions, representations, and understandings with respect to the subject matter hereof. Where differences occur between the main body of the Agreement and the attached Schedules, the Schedules shall supersede the Agreement. Licensee acknowledges that it is not entering into this Agreement on the basis of any representations not expressly contained herein. Any modifications of this Agreement must be in writing and signed by a duly authorized officer of each party.
- 10.2 Rights of Others.** This Agreement is solely intended to provide rights to and be enforceable by Pictometry and Licensee (including its Authorized Subdivisions). No other person shall acquire or enforce any rights or any representations or warranties given under this Agreement.
- 10.3 Waiver.** The waiver by either party of any default by the other shall not waive subsequent defaults of the same or different kind.
- 10.4 Notices.** All notices and demands hereunder shall be in writing and shall be delivered by personal service, mail, courier service, or confirmed facsimile transmission at the address of the receiving party set forth below (or at such different address as may be designated by one party by written notice to the other). All notices or demands by mail shall be sent by certified or registered United States mail, return receipt requested, and all notices and demands shall be deemed complete upon receipt.

**If to Licensee:**

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**If to Pictometry:**

Company: Pictometry International, Corp.

Address: 100 Town Centre Drive, Suite A  
Rochester, NY 14623

Attention: Michael J. Neary

Email: mike.neary@pictometry.com

Phone: (585) 486-0093 Fax: (585) 486-0098

- 10.5 Export Control.** Licensee agrees to comply fully with the export laws and regulations of the United States Government with respect to the Licensed Products supplied by Pictometry. Accordingly, Licensee agrees that all technical data, software, or other information or assistance (other than publicly available information) furnished by Pictometry, and any product thereof, shall not be re-exported by Licensee, or its authorized transferees, if any, directly or indirectly from the United States unless explicitly permitted by U.S. export control laws and regulations. These obligations of the Licensee shall survive any satisfaction, termination, or discharge of this Agreement.
- 10.6 Severability.** In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be enforced to the maximum extent permissible and the remaining portions of this Agreement shall remain in full force and effect.
- 10.7 Force Majeure.** Pictometry shall not be responsible for any failure to perform due to force majeure which shall include, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Pictometry or the Commissioner in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot be prevented. Pictometry shall provide the Commissioner with written notice of any force majeure occurrence as soon as the delay is known.

Neither the Pictometry nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Pictometry and the Commissioner to be necessary to enable complete performance by the Pictometry if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may:

- a. Accept allocated performance or deliveries from the Pictometry. The Pictometry, however, hereby agrees to grant preferential treatment to Authorized Users with respect to Product subjected to allocation; and/or
- b. Purchase from other sources (without recourse to and by the Pictometry for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State; or
- c. Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Pictometry; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Pictometry's performance that continued performance of the Contract would result in a substantial loss.

- 10.8 Modification to License Agreement.** Pictometry agrees to the terms and conditions of Appendix B of the Security Systems and Solutions RFP #20191.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective on the latest of the signature dates specified below.

PICTOMETRY INTERNATIONAL CORP.

Licensee Name: \_\_\_\_\_

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: 100 Town Centre Drive, Suite A  
\_\_\_\_\_

Address: \_\_\_\_\_

Rochester, NY 14623  
\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachments:**

Schedule A: Description of Licensed Products – **Must be initialed by Licensee**

Schedule C: Imagery Specifications (if attached)

Schedule D: Sectorized Map - **Must be initialed by Licensee**

NOTE: "*Notices*" information must be entered in Article 10.4 of this Agreement.