

NEW

State of Maine**Master Agreement****Effective Date:** 01/01/17**Expiration Date:** 12/31/19**Master Agreement Description:** Collect, Prepare, and Deliver Statewide Orthoimagery**Buyer Information**

Terry Demerchant 207-624-7334 ext. TERRY.L.DEMERCHANT@MAINE.GOV

Issuer Information

Joseph Young 207-624-2664 ext. joseph.young@maine.gov

Requestor Information

Thomas Howker 207-624-8878 ext. Thomas.n.howker@maine.gov

Authorized Departments

ALL

Vendor Information**Vendor Line #:** 1**Vendor ID**

VS0000013749

Vendor Name

Woolpert, Inc.

Alias/DBA**Vendor Address Information**

4454 Idea Center Blvd

Dayton, OH 45430

US

Vendor Contact Information

Molly Lickert

937-461-5660 ext.

molly.lickert@woolpert.com

Commodity Information

Vendor Line #: 1

Vendor Name: Woolpert, Inc.

Commodity Line #: 1

Commodity Code: 90505

Commodity Description: Collect, Prepare, and Deliver Statewide Orthoimagery

Commodity Specifications: Collect, Prepare, and Deliver Statewide Orthoimagery as per the attached Contract Agreement.

Quantity

0.00000

UOM

Unit Price

\$0.00

Delivery Days

Free on Board

Contract Amount

\$0.00

Service Start Date

01/01/17

Service End Date

12/31/19

Catalog Name

Discount

0.0000 %

Discount Start Date

Discount End Date

Commodity Terms and Conditions

Vendor Line #: 1

Commodity Line #: 1

T&C #: 165

T&C Name: Payment Terms

T&C Details: Net 30

STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
OFFICE OF INFORMATION TECHNOLOGY
Agreement to Purchase Services

THIS AGREEMENT, made this 21st day of November, 2016, is by and between the State of Maine, Department of Administrative and Financial Services, Office of Information Technology, Maine GeoLibrary, hereinafter called "Department," and Woolpert, Inc., located at 4454 Idea Center Blvd., Dayton, OH 45430-1500, telephone number (937) 461-4660 hereinafter called "Provider", for the period of January 1, 2017 to December 31, 2022.

The AdvantageME Vendor/Customer number of the Provider is #VS0000013749

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

- Rider A - Specifications of Work to be Performed
- Rider B-IT - Payment and Other Provisions
- Rider C – Exceptions to Rider B
- Rider D – RFP#201607146 Ortho Imagery Acquisition Services
- Rider E – RFP#201607146 Ortho Imagery Acquisition Services – Amendment 1
- Rider F – Woolpert, Inc. Response to RFP#201607146
- Rider G – Identification of Country in Which Contracted Work will be Performed\
- Rider H – Debarment Form

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in one original copy.

**DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL
SERVICES
OFFICE OF INFORMATION TECHNOLOGY**

By: *B. Victoria Charnoff* 29 DEC 2016
FOR James R. Smith, Chief Information Officer

and

Woolpert, Inc.

By: *Jeff Lovin*
Jeff Lovin, Director of Geospatial Services

Total Agreement Amount: \$ 0 (Based on Usage)

Approved: _____

Chair, State Purchases Review Committee

BP54 (Rev 1/12)

The use of this standard form of agreement is controlled by and subject to revision by the Division of Purchases. The current version of this form is available at the Division website (<http://www.maine.gov/purchases/info/forms.html>), or at 9 State House Station, Augusta, Maine 04333-0009.

RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

The contract herein establishes a Master Agreement contract under which Orthoimagery services may be purchased from the Provider. This contract was competitively awarded through RFP#201607146 for Orthoimagery Acquisition Services. This contract is contingent upon suitable funding being available.

The initial term of the Master Agreement will be for three years. The Department may opt to renew the contract for one, three year period subject to continued availability of funding and satisfactory performance.

This Master Agreement contract may be used by other agencies within Maine State Government, towns, cities, counties, and educational units within Maine, at their choice. Non-State Government contracts will be directly between the contractor and contracting unit.

A. Scope of Work

The Provider will, on a work-order basis, collect, prepare, and deliver statewide orthoimagery, as outlined in the State of Maine RFP#201607146 (attached as Rider D), the Maine GeoLibrary Orthoimagery Subcommittee Report and Recommendations (attached as Rider E) and the Woolpert's response to that RFP (attached as Rider F) for the entire period of the contract and any contract extensions.

B. Area of Interest and Pricing

The areas of interest to be collected by the Provider are initially defined in Rider D., but may be altered by the Department as needed to accommodate differing budget scenarios or other alternations that may be necessary to the Department. Pricing for area interest will be as outlined in Rider F cost schedule. Buy-up prices are to be added to the appropriate base cost for the total price of a buy-up.

All imagery shall be collected in accordance with the parameters outlines in Riders D, E, and F.

C. Process

Individual Delivery Orders (ordering documents) will be initiated by the State of Maine under this Master Agreement Contract for specific work product and services. The Delivery Orders will be for fixed price statement of work/change orders with fixed deliverables.

Request for Quote (RFQ) - The State shall define an Area of Interest to the Provider. The State shall define quality standards required and any buy-up options to be executed. The RFQ will contain sufficient detail to allow the Provider to respond with a complete and accurate quote, and at a minimum will contain: contact information including technical, administrative, and program area contacts; any draft or final drawings or area specifications; quality requirements, any deadlines for delivery of quote or deadlines related to final delivery.

Pricing for areas of interest will not exceed outline in Rider B. Cost schedule. Buy-up prices area to be added to the appropriate base cost of the total price of a buy-up.

RFP Response - Provider will respond to the RFQ with a firm price, fixed cost response. As necessary, the RFQ response would include any design and planning documents or other specifications that describe in detail the work to be performed. The RFQ Response shall include a project plan for completing the work. If the RFQ response is delivered to the Department is not acceptable, the Department may reject the response or the Department and the Provider may work together to refine the RFQ response to better meet the desired outcomes of the Department, at which time the Provider will resubmit an RFQ response. The RFQ response will detail mutually agreeable payment milestones. Expected payment milestones must be tied to specific goals, such as collection of ground control, development of elevation models, etc. At least 25% of the total cost will be retained until the final deliverables are provided. Payment will be based on delivery of work product and acceptance of that product after suitable State review.

Delivery Order- Upon mutual acceptance of the RFQ Response the Department shall issue a Delivery Order authorizing the work, attaching the RFQ Response signed by both parties.

D. Deliverables

The Provider shall deliver the resulting services in accordance with in the approved work plan. For each work order, the Provider shall provide:

- One hard copy and one digital copy of the Project plan
- One hard copy and once digital copy of the Flight Plan/Control Diagram/Sheet Index
- One hard copy and one digital copy of the Survey Report
- One hard copy and one digital copy of the Aerial Photography Report
- One hard copy and one digital copy of the Aerial Triangulation Report
- One digital copy of each 4-Band Digital orthoimagery files in GeoTIFF format with TFW "world file", delivered on external USB hard drive.
- FGDC complaint Metadata delivered (along with the orthoimagery) on external hard drive

E. Review and Approval

Upon receipt of the deliverables, the Department shall have 30 days to review the deliverables for conformance with the specifications. The Department shall provide a written report of any deficiencies back to the Provider by the end of this 30 day period. The Provider shall then have 15 days to correct such deficiencies and make delivery of the corrected product to the Department. Upon receipt of acceptable products, the Provider may invoice the Department for the remainder of the work order balance.

RIDER B

METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$ 0 (Based on usage). This is a Master Agreement for orthoimagery services based on the prices listed below:

Base Resolution Cost Proposal			
Resolution	<2,000 cost per sq. mi.	2,000 to 4,000 cost per sq. mi.	> 4,000 cost per sq. mi.
18" (45cm) at 63.6cm RMSE Horizontal Accuracy	\$49.00	\$39.00	\$36.00

Buy-Up Pricing	
Resolution	Cost/sq. mi.
3" (7.5 cm GSD), at 15cm RMSE horizontal accuracy	\$483.00
6" (15cm GSD), at 30cm horizontal accuracy	\$155.00
3" (7.5 cm GSD), at 30cm RMSE horizontal accuracy	\$446.00
6" (15cm GSD), at 60 cm RMSE horizontal accuracy	\$145.00

Product		Cost/Community
Non-orthorectified, uncompressed imagery and project files, aero triangulation data, and the creation of stereo pairs.		\$950.00
Projection buy-ups:		
	Maine State Plane East NAD 83, US Survey Foot (FIPS Zone 1801)	\$3,000.00
	Maine State Plane West NAD 83, US Survey Foot (FIPS Zone 1802)	\$3,000.00
	WGS 1984 Web Mercator Auxiliary Sphere.	\$3,000.00
Additional quality control check points (Per Point)		\$400.00
Oblique imagery		Price as needed
Tide coordination +/- 200 minutes of predicted mean low tide.		\$5,000.00
Mr SID Mosaic (Cost/Square Mile)		
	3" (7.5cm)	\$750.00
	6" (15cm)	\$750.00
	12"(30cm)	\$750.00
	18"(50cm)	\$750.00
12 or 16 bit Color Depth		\$4,000.00

Alternate Base Resolution Cost Proposal			
Resolution	<2,000 cost per sq. mi.	2,000 to 4,000 cost per sq. mi.	> 4,000 cost per sq. mi.
12" (30cm) at 42.4cm RMSE Horizontal Accuracy	\$59.00	\$56.00	\$52.00

2. **INVOICES AND PAYMENTS** The Department will pay the Provider as outlined in Rider A.

The charges described in this Agreement are the only charges to be levied by the Provider for the products and services to be delivered by it. There are no other charges to be made by the Provider to the Department, unless they are performed in accordance with Rider A. The Provider shall maintain documentation for all charges against the Department under this agreement.

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State

Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

5. **DEPARTMENT'S REPRESENTATIVE** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

6. **AGREEMENT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name: Joe Young
Title: GeoLibrary Executive Director
Address: 51 Commerce Drive, Augusta Maine
Email: joseph.young@maine.gov

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

7. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

9. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

10. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:

a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.

f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.

g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5

MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13. **WARRANTY** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO RECORDS** As a condition of accepting a contract for services under this section, a contractor must agree to treat all records, other than proprietary information, relating to personal services work performed under the contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the contractor and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the contract and information concerning employee and contract oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

15. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

16. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

17. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

19. **NOTICE OF CLAIMS** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

20. **APPROVAL** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

21. **LIABILITY INSURANCE** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State

by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a "risk retention group" insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

23. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

24. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

26. **SET-OFF RIGHTS** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

27. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the

terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

RIDER C
EXCEPTIONS TO RIDER B

18. STATE HELD HARMLESS The Provider agrees to indemnify and save harmless the State, its officers, and employees from claims, costs, expenses, injuries, liabilities, losses and damages, including reasonable defense attorney's fees (hereinafter in this paragraph referred to as "claims") to the extent caused by the willful misconduct or negligent performance of this Agreement by the Provider, its employees, agents, or subcontractors, Claims to which this indemnification also include: (i) claims suffered or incurred by contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity retained by the Provider (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; and (iii) Claims arising out of a libelous or other unlawful matter used or developed by Provider, or its in connection with this Agreement. This indemnification does not extend to a claim to that extent caused by (i) the Department's negligence or unlawful act, (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement, or (iii) misuse or modification by Client of any deliverable in connection with this Agreement resulting in a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other similar right.