Pb Agreement

THIS PARTICIPANT AGREEMENT (the "Participant Agreement") made in duplicate, is effective as of July 20, 2020

BETWEEN:

Her Majesty the Queen in right of Ontario,
as represented by the Minister of Natural Resources and Forestry

(hereinafter referred to as the "Ministry")

AND:

The Regional Municipality of Niagara

(referred to as the "Participant")

WHEREAS in 2011, the Ministry developed its Ontario Imagery Strategy, to help guide the Province and participating organizations towards a predictable refresh cycle for the acquisition of leaf off (spring) imagery, entailing the acquisition, storage and management of high resolution imagery in southern Ontario, parts of Central Ontario and parts of Northern Ontario ("the Project"), to be implemented through five phases;

AND WHEREAS the participating organizations herein referred to as "the Participants", including the Ministry and Participant, agreed that the Ministry would assume the role of issuing the procurement for the selection of the supplier for the Project, contract management with such supplier, to act as liaison with the supplier and Participants; and to coordinate the creation and distribution of the deliverables provided by the supplier to the Ministry as licensed products to the Participants, pursuant to their respective participant agreements with the Ministry;

AND WHEREAS the Ministry issued a Request for Proposal ("RFP") dated September 11, 2017 for the Project; and as a result of such RFP, the Ministry entered into the agreement ("Supplier's Agreement") as of January 26, 2018, with Aeroquest Mapcon Inc. ("Supplier"), in which the Supplier agreed to create and provide the Deliverables that include orthophotography and associated products including the Intellectual Property Rights created in the Deliverables in five phases for the Project;

AND WHEREAS pursuant to the Supplier's Agreement and for ease of distribution of the Deliverables among the Participants referable to their respective geographic areas, the Ministry shall be the owner and custodian of the Deliverables;

AND WHEREAS the Queen's Printer for Ontario holds title on behalf of the Crown in right of Ontario to the copyright subsisting in the Deliverables and has delegated to the Ministry its authority to sign the Participant Agreement;

AND WHEREAS this phase of the Project is the third phase in respect of the geographic region of south-western Ontario;

AND WHEREAS the Participant wishes to have use of the Deliverables described herein as the "Licensed Products", and has agreed to enter into this Participant Agreement;

NOW THEREFORE the Ministry and Participant agree as follows:

ARTICLE 1 – DEFINITIONS

1.1 **Defined Terms**

When used in this Participant Agreement, the following words or expressions have the following meanings:

"Business Day" means any working day, Monday to Friday inclusive, but excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day which the Ministry has elected to be closed for business;

"Claim" means any liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings;

"Deliverables" means everything developed for, or provided to, the Ministry by the Supplier in the course of performing under the Supplier's Agreement for this Phase of the Project or agreed to be provided to the Ministry under the Supplier's Agreement, and includes the Licensed Products;

"Derivative Product"means a digital, GIS compatible, output file created or developed by the Participant or any authorized end user that utilizes the spectral signatures, quality and spatial resolution of any of the Licensed Products to identify, interpret, classify and delineate certain spatial features for the purposes, *inter alia*, of mapping new information, updating current databases, creating map products and publications using the Licensed Products and conducting GIS analysis and modeling for development and creation of other works, but a Derivative Product shall not include any of the pixel values in the original underlying Licensed Product;

"Effective Date of the Licence" means the later of the date on which the Participant's Contribution is paid in full or the date the Licensed Products have been received by the Participant;

"Emergency" means a situation or an impending situation, that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise;

"HST" refers to Ontario's Harmonized Sales Tax;

"Intellectual Property Rights" means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity;

"GIS" means "geographic information system";

"Geospatial Web Service" or **"GWS"** refers to any online resource that can be utilized by user(s) directly, through desktop software, or indirectly, through web-based applications to find, access and sometimes manipulate (collectively referred to as "consume") data of interest on the web dynamically from a distributed network. By way of description but not to limit the generality of the foregoing, GWS is designed to collect data once and update or edit such data in real time. Geospatial Web Service is tightly-coupled to a geospatial data set; in effect allowing the use of data without requiring a local, physical, copy of the data. For example, with GWS, a map, data or other products can be displayed, used and manipulated in a geospatial environment;

"Licence" means the licence in respect of the Licensed Products granted to the Participant by the Ministry, in accordance with this Participant Agreement;

"Licensed Products" means that portion of the Deliverables that are listed in Schedule 1 referable to the Participant's geographic area(s) shown on the map attached as Schedule 2, that are to be delivered to the Participant by the Supplier in accordance with the Supplier's Agreement and to which the Ministry is granting a licence to the Participant, in accordance with this Participant Agreement.

"Ministry Address" and **"Ministry Representative"** mean:

Ministry Representative:

Name:	**Larissa Mathewson-Brake**
Title:	**Director**
Organization:	**Ministry of Natural Resources and Forestry** **Corporate Management and Information Division** **Mapping and Information Resources Branch**
Address:	**300 Water Street, Peterborough, ON K9J 3C7**
Phone:	**(705) 755-2158**
Email:	**larissa.mathewson-brake@ontario.ca**

Primary Contact for the Ministry:

Name:	**Bryce Matthews**
Title:	**Mapping and Geomatics Project Manager**
Organization:	**Ministry of Natural Resources and Forestry** **Corporate Management and Information Division** **Mapping and Information Resources Branch**
Address:	**300 Water Street, 2nd Floor N,** **Peterborough, ON K9J 3C7**
Phone:	**(705) 755-2243**
Email:	**bryce.matthews@ontario.ca**

"Participant Address" and **"Participant Representative"** mean:

Participant's Representative:
Name: **Nicole Guglielmi**
Title: **Information & Analytics Manager, IT Solutions**
Organization: **Regional Municipality of Niagara**
Address: **1815 Sir Isaac Brock Way**
P.O. Box 1042, Thorold, ON L2V 4T7
Phone: **(905) 685-4225 Ext 3494**
Email: nicole.guglielmi@niagararegion.ca

Primary Contact for the Andrew McNaughton
Title: **Sr. GIS Analyst, IT Solutions**
Organization: **Regional Municipality of Niagara**
Address: **1815 Sir Isaac Brock Way**
P.O. Box 1042, Thorold, ON L2V 4T7
Phone: **(905) 685-4225 Ext 3217**
Email: andrew.mcnaughton@niagararegion.ca

"Participant's Contribution" means the sum to be paid to the Ministry by the Participant for its use of the Licensed Products, being **$6,764.03**, and HST, where applicable, in accordance with this Participant Agreement, and is subject to adjustment as provided in section 2.2 and section 2.3;

"Participants" means those organizations, including the Ministry and Participant that has agreed to participate in this Phase;

"Party" means either of the Ministry or the Participant and "**Parties**" means both of them;

"Performance Warranty Expiry Date" is the second anniversary of the date that the Supplier has provided the last Deliverable for this Phase of the Project and is the date by which the performance warranty in the Supplier's Agreement shall expire for this Phase of the Project;

"Person" if the context allows, includes any individual, person, firm, partnership or corporation, or any combination thereof;

"Phase" means the third phase of the Project for the geographic area of south-western Ontario and is referred to as "SWOOP 2020";

"Project" is comprised of the five (5) phases, for the planning, acquisition and delivery of digital orthophotography and associated deliverables for five respective geographic areas that encompass all of southern Ontario and selected parts of central and northern Ontario and includes the creation and distribution of a portion of the Deliverables to the Participant, in accordance with the Supplier's Agreement;

"Requirements of Law" mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws or regulations, that now or at any time hereafter may be applicable to any of the Participation Agreement, Participant or the Licensed Products or any part of them;

"Queen's Printer" means the Queen's Printer for Ontario and any duly authorized representative thereof;

"Supplier" means Aeroquest Mapcon Inc.;

"Supplier's Agreement" means the agreement made as of January 26, 2018 between the Ministry and the Supplier and includes the RFP through which the Supplier was selected and its proposal; and

"Term" means the period of time set out in section 6.1.

ARTICLE 2 - THE MINISTRY'S ROLES AND RESPONSIBILITIES

2.1 The Ministry's principal role and responsibilities pertain to:

2.1.1 **The Supplier's Agreement** - The Ministry shall, for this Phase of the Project:

a) use commercially reasonable efforts to require the Supplier to fulfill its obligations under the Supplier's Agreement, including the Supplier's obligations to correct errors or omissions in the Licensed Products;

b) issue a rectification notice to the Supplier, in the event the Ministry receives notification from the Participant that any of the Licensed Products have been inadequately provided by the Supplier or require correction to meet the requirements of the Supplier's Agreement, provided that the Participant's notification is received by the Ministry, on or before the Performance Warranty Expiry Date;

c) carry out its obligations in the Supplier's Agreement, including any payments to be made to the Supplier, in accordance with the Supplier's Agreement, provided the Supplier is not in default of the Supplier's Agreement;

d) coordinate and be the point of contact on behalf of the Participants with respect to any of the matters that the Supplier has agreed to insure or indemnify in the Supplier's Agreement;

e) ensure that the liability insurance that the Supplier is to provide in accordance with the Supplier's Agreement includes the Participant as an additional insured for this Phase of the Project;

f) notify the Participants shortly after the Supplier has provided the last Deliverable for this Phase of the Project and confirm the Performance Warranty Expiry Date;

g) advise the Participants in the event that the Supplier provides the Ministry with a reporting mechanism for this Phase of the Project that can be accessed by the Participants to monitor the progress of the acquisition, delivery and error correction phases of the Deliverables, and the means by which the Participant may access such reporting mechanism;

h) forward the Participant's shapefile to the Supplier for the delivery by the Supplier of the Licensed Products to the Participant.

i) provide the Supplier with the Participant Address for the delivery of the Licensed Products; and

j) approve the Deliverables.

2.1.2 **Coordination with the Participants** - The Ministry shall be the coordinator and main point of contact for the Participants and the Supplier for this Phase. In its role of coordinator, the Ministry shall manage the various participation agreements between the Ministry and the respective Participants for this Phase. The Ministry, together with the Queen's Printer shall be the owners of the newly created Intellectual Property Rights in the Deliverables and licensee of the Supplier's Intellectual Property Rights in the Deliverables and shall grant licences to the Participants for the various licenced products through participation agreements, in the form of the Licence included in this Participant Agreement.

2.2 The Ministry shall keep the Participant informed of the progress of the Supplier in its performance and provision of the Deliverables for this Phase, including any delays or issues that would be of concern to the Participant. In particular, the Ministry shall notify the Participant as soon as is practicable of the date of notification by the Supplier to the Ministry that an event of force majeure has continued for a period that affects the ability of the Supplier to acquire the imagery according to the specifications in the Supplier's Agreement; the time frame for continuing with this Phase, as may be agreed to by the Supplier and the Ministry; and in the event that the delay lasts longer than a year, the Ministry shall keep the Participant apprised of any change in the associated rates provided for under the Supplier's Agreement as agreed to by the Supplier and the Ministry, with the Participant's Contribution to be adjusted accordingly.

2.3 The Ministry shall notify the Participant in the event that any of the Participants no longer wishes to participate in this Phase, together with the revised Participant's Contribution, where applicable, recalculated by the Ministry using the same arithmetic formula that the Ministry used to derive the monetary amount of the Participant's Contribution.

2.4 Where applicable, the Ministry shall invoice and collect harmonized sales tax (HST) from the Participant for the Participant's Contribution and remit same in accordance with the provisions of the *Excise Tax Act*, R.S.C. 1985, c.E-15, as amended or replaced from time to time.

ARTICLE 3 – THE PARTICIPANT'S ROLES AND RESPONSIBILITIES

3.1 The Participant shall:

(a) notify the Ministry when it receives the Licensed Products from the Supplier;

(b) meet its obligations in respect of the Licence, including paying the Ministry the Participant's Contribution and HST, where applicable;

(c) receive the Licensed Products, as the referable Deliverables are approved by the Ministry, in such format provided in the Supplier's Agreement from the Supplier at the

address set out in section 1 in the definition of "Participant Address" where the Licensed Products are to be delivered; and

(d) notify the Ministry of any error or omission in the Licensed Products as soon as possible after discovery thereof by the Participant and before the Performance Warranty Expiry Date (provided discovery of such error or omission occurs before the Performance Warranty Expiry Date).

3.2 The Participant agrees that it shall not have any communications or dealings directly with the Supplier in respect of the Deliverables or any product associated with any of the Deliverables, except for receiving the Licensed Products, as provided under section 3.1.

ARTICLE 4 – THE LICENCE

4.1 Ministry's Warrantees

The Ministry represents and warrants that the Queen's Printer for Ontario holds title on behalf of the Crown in right of Ontario to the copyright subsisting in the Licensed Products and has delegated to the Ministry its authority to sign the Participant Agreement and that the Ministry is properly entitled to grant rights over such Licensed Products.

4.2 Upon the Effective Date of the Licence, the Ministry shall grant to the Participant a perpetual, non-exclusive, transferable, royalty free, fully paid, world-wide right and licence to use the Licensed Products, to:

(a) make and distribute an unlimited number of copies of the Licensed Products, provided that prior to the date March 31, 2023 it may only do so for use internally within the Participant's organization;

(b) create, develop, produce and distribute Derivative Products, using the Licensed Products;

(c) where the Participant is an upper-tier municipality, the Participant may sub-license any of the Licensed Products to any lower-tier municipality that forms part of the Participant,(the upper-tier municipality), for municipal purposes (with "upper-tier municipality" and "lower-tier municipality" having their respective meanings, as set out in the *Municipal Act, 2001*, S.O. 2001, c.25, as amended from time to time. Section 4.9 (i) shall not apply to any such sub-licence;

(d) grant sub-licenses in respect of the Licensed Products, in accordance with section 4.3 of this Agreement;

(e) to provide, any of the Licensed Products to contracted service supplier(s) for any of the uses described in this section, provided that the Participant takes such steps as are reasonably necessary to ensure that such contracted service suppliers use the Licensed Products only for the purpose of providing the contracted service and upon completion of the contracted service dispose of the Licensed Products either by destroying them or returning them to the Participant. The Participant shall be responsible for ensuring that a contracted service supplier uses and disposes of the Licensed Products in accordance with the terms of this Participation Agreement; and

(f) provide the Licensed Products where and as required by any Requirements of Law.

4.3 The Participant may grant any Person who wishes to obtain Licensed Products from it the right to use the Licensed Products by way of a sub-licence agreement and any such sub-licence agreement shall impose upon those parties the same terms and conditions, in favour of the Ministry as are set out in this Participant Agreement, as may be applicable, which shall in any case include sections 4.6, 4.7,4.8, 4.9, Article 5, the provision respecting the Ministry's right to terminate the Licence as provided in section 6.2; and section 6.5.

4.4 The Participant shall pay the Participant's Contribution by cheque payable to the Minister of Finance (Ontario) and delivered to the Primary Contact for the Ministry, within thirty (30) days of the date of delivery by the Supplier of the Licensed Products to the Participant, and upon receipt of an invoice from the Ministry.

4.5 The Participant acknowledges that the Licence does not constitute a transfer or assignment of copyright from the Queen's Printer of the Licensed Products and the Queen's Printer retains the copyright in full of the Licensed Products.

4.6 The Participant shall not alter or remove any copyright notice or proprietary legend contained in or on the Licensed Products. The Participant agrees that any embodiment of the Licensed Products permitted under this Participant Agreement shall contain the following notice ("Queen's Printer Notice"): "**INCLUDES MATERIAL © 2020 OF THE QUEEN'S PRINTER FOR ONTARIO. ALL RIGHTS RESERVED.**" The Participant shall also ensure that the terms and conditions of its website include the Queen's Printer Notice for any Licensed Products (or any embodiment permitted under this Participant Agreement) posted on its website and that any Licensed Products (or any embodiment permitted under this Participant Agreement) posted or transmitted through the internet shall include the Queen's Printer Notice.

4.7 The Crown in right of Ontario has the sole ownership of all of the logos, brands, trade-marks and official marks of the Province of Ontario, (collectively referred to as "Provincial Marks") and the Participant may not copy, print or display any of the Provincial Marks on any Derivative Product or promotional advertising or use any of the Provincial Marks for any purpose whatsoever, without the express written permission from the Ministry, on behalf of the Crown in right of Ontario.

4.8 The Participant shall not state, indicate, or imply that the Participant represents or acts as agent of the Ministry, the Queen's Printer or Government of Ontario. This restriction shall include, but not be limited to, the use of the name of the "Ministry of Natural Resources and Forestry", "Minister of Natural Resources and Forestry" or "Queen's Printer for Ontario".

4.9 The Ministry shall be paying the Supplier for the Deliverables in accordance with the Supplier's Agreement and relying upon the Participants to pay the Ministry the respective Participants' contributions in accordance with the respective participant agreements. Therefore, the Participant agrees, that during the period from the Effective Date of the Licence to the date March 31, 2023:

(i) where it chooses to provide, sell, transfer or sub-license the use of the ortho-rectified imagery tiles of the Licensed Products, it shall do so, (other than when

sublicensing pursuant to Section 4.2(d) or Section 4.2(e)), at a cost/sub-licence fee calculated at no less than $50.00 per orthophotography tile comprising the Licensed Products, unless the Participant has obtained the prior written consent of the Ministry or in the event of an Emergency, where to do so is necessary and appropriate, and upon notice thereof to the Ministry;

(ii) it will not provide Geospatial Web Service to any user external to the Participant, that would afford such user with access to the Licenced Products through desktop software or the internet and the capability to consume any of the Licenced Products; and

(iii) it shall not acquire any of the Licensed Products or other Deliverables from the Supplier (except as provided in this Participant Agreement) or from another Participant or enter into an agreement with the Supplier or any other Participant for the use of any of the Licensed Products or other Deliverables.

Upon the expiry of the Licence on March 31, 2023, this section 4.9 shall be of no further effect. It is understood and agreed that this section 4.9 shall not apply to any Derivative Product.

4.10 All Intellectual Property Rights in the Derivative Products, effected by or for the Participant, shall vest in the Participant or in such Person as the Participant shall decide.

ARTICLE 5 – LIMITATION OF LIABILITY, ETC.

5.1 The Participant agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors. This paragraph is in addition to any and all of the Participant's liabilities under the Participant Agreement and under the general application of law. The Participant shall advise the foregoing individuals and entities of their obligations under the Participant Agreement and shall ensure their compliance with the applicable terms of the Participant Agreement. In addition to any other liabilities of the Participant pursuant to this Participant Agreement or otherwise at law or in equity, the Participant shall be liable for any Claim arising from any breach of this Participant Agreement resulting from the actions of the above mentioned individuals and entities.

5.2 The Ministry's liability for any Claim arising out of or in connection with this Participant Agreement, whether arising in contract, tort (including negligence and strict liability), breach of warranty or any other legal theory, shall be limited to the amount of the Participant's Contribution paid to the Ministry by the Participant. Further, the Participant expressly waives as against the Ministry and Queen's Printer any Claim in respect of implied warranties or conditions of merchantable quality and fitness for a particular purpose of the Licensed Products and those arising by statute or otherwise in law or from course of dealing or usage of trade.

5.3 The Participant agrees that the Ministry, including the Minister and the Queen's Printer, any of their appointees, employees, agents, representatives and contractors, shall not be responsible to any third party for any and all Claims arising out of the Participant's (or that of its sub-licensee(s)) possession, use, disclosure or publication of the Licensed Products or Derivative Products or out of a breach of any term of this Participant Agreement by the Participant.

5.4 The Participant shall indemnify the Ministry and Queen's Printer, any of their appointees, employees, agents and contractors from all Claims against the Ministry and Queen's Printer, any of their appointees, employees, agents of contractors arising out of the possession or use of the Licensed Products and Derivative Products by either the Participant or any sub-licensee of the Participant, save and to the extent that any such Claim has arisen or been contributed by the negligence or gross misconduct of the Supplier or the Ministry.

5.5 Neither Party shall be liable for any indirect damages, including lost profits or lost opportunity costs, suffered by the other Party with respect to any Claim arising out of or in connection with this Participant Agreement, including any Claim referred to in section 5.2, section 5.3 and section 5.4.

5.6 Notwithstanding anything else in this Participant Agreement to the contrary, any express or implied reference to the Ministry providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the Ministry, whether at the time of execution of this Participant Agreement or at any time during the Term, shall be void and of no legal effect.

5.7 The limitations, exclusions and disclaimers expressed in this Article 5 or elsewhere in this Participant Agreement shall apply irrespective of the nature of any Claim, including but not limited to breach of contract, negligence, strict liability, tort or any other theory of law, and irrespective of whether such Claim relates to loss of rights, loss of or damage to property, injury or death, and shall survive any fundamental breach and any termination or expiration of this Participant Agreement.

ARTICLE 6 – TERM AND TERMINATION

6.1 **Term**

This Participant Agreement is in effect from the date first written above and shall expire on the date that is three (3) years thereafter unless and until it is terminated in accordance with this Article.

6.2 **Termination for Cause**

Either Party may immediately terminate the Participant Agreement upon notice to the other Party, where the other Party's acts or omissions constitute a material breach of its obligations under this Participant Agreement, and such breach is not remedied within seven (7) days following written notice received from the non-breaching Party.

6.2.1 In addition to the foregoing, the Ministry may immediately terminate the Participant Agreement, upon written notice to the Participant, in the event:

(a) the Participant is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Participant's insolvency;

(b) the Participant undergoes a change in control that adversely affects the Participant's ability to satisfy some or all of its obligations under this Participant Agreement;

(c) the Participant assigns this Participant Agreement without first obtaining the written approval of the Ministry;

(d) any information appearing in the Derivative Products in which the Licensed Products are reproduced in whole or in part is objectionable to the Ministry, acting reasonably and the Participant has had an opportunity to remove or alter such information but has failed to do so within seven (7) days of having been provided with a written notice from the Ministry, that set out which information is objectionable; or

(e) the business practices of the Participant or the Derivative Products in which the Licensed Products are reproduced in whole or in part jeopardize or cause loss of respect to the Ministry and/or the other Participants.

6.3 **Termination for Convenience**
Either Party may terminate this Participant Agreement at any time upon one hundred and twenty (120) days' prior notice to the other Party.

6.4 **Termination by Ministry**
In addition to the provisions of section 6.3, the Ministry may terminate the Participant Agreement, upon written notice to the Participant, in the event that the Supplier's Agreement is terminated or the work required of the Supplier for this Phase of the Project is terminated by the Ministry.

6.5 **Termination of Licence**
Upon termination of this Participant Agreement by reason that the Participant is in material breach of its obligations hereunder and such breach has not been remedied within seven (7) days following written notice from the Ministry or any other event listed in section 6.2.1, the Licence shall also terminate. The Participant shall immediately cease using any of the Licensed Products; it shall use commercially reasonable efforts to delete and/or destroy all Licensed Products and shall provide the Ministry with written confirmation thereof.

6.6 **No Reimbursement for the Participant's Contribution in the event of Termination**
In the event of termination of this Participation Agreement for any reason, the Ministry shall not be required to reimburse the Participant's Contribution, or part thereof to the Participant.

ARTICLE 7 – General

7.1 Each Party represents and warrants that it has the full right and power to enter into this Participant Agreement and there is no agreement with any other Person which would in any way interfere with the rights of the other Party under this Participant Agreement.

7.2 The Parties represent that their respective representatives have the authority to legally bind them to the extent permissible by law. The Parties may designate a different representative by providing notice in writing in accordance with the terms of this Participant Agreement.

The Primary Contact of each Party shall be responsible for administrative and/or technical matters as between the Parties that are associated with the Participation Agreement and/or

including arranging meetings between the Parties and sending/receiving invoices and payments.

7.3 Any failure by a Party to insist in one or more instances upon strict performance by the other Party of any of the terms or conditions of this Participant Agreement shall not be construed as a waiver by the Party of its right to require strict performance of any such terms or conditions, and the obligations of the Participant with respect to such performance shall continue in full force and effect.

7.4 This Participant Agreement embodies the entire agreement between the Parties and supersedes any prior understanding or agreement, collateral, oral or otherwise, existing between the Parties at the date of execution of this Participant Agreement.

7.5 If any term or condition of this Participant Agreement, or the application thereof to the Parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of this Participant Agreement, and the application of such term or condition to the Parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

7.6 The headings in this Participant Agreement are for convenience of reference only and in no manner modify, interpret or construe this Participant Agreement.

7.7 Neither Party shall be liable for damages caused by delay or failure to perform its obligations under this Participant Agreement where such delay or failure is caused by an event beyond its reasonable control. The Parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in this Participant Agreement would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the Parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services or lack of money or ability to pay any amounts owing under the Participant Agreement. If a Party seeks to excuse itself from its obligations under this Participant Agreement due to a force majeure event, that Party shall immediately notify the other Party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance.

7.8 Notices shall be in writing and shall be delivered by postage-prepaid mail, personal delivery, email or facsimile and shall be addressed to, respectively, the Ministry Address to the attention of the Ministry Representative and to the Participant Address to the attention of the Participant Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid mail, five (5) Business Days after such notice is mailed; or (b) in the case of personal delivery, email or facsimile one (1) Business Day after such notice is received by the Party to whom such notice is given. In the event of a postal disruption, notices must be given by personal delivery, email or by facsimile. Unless the Parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

7.9 Any changes to this Participant Agreement shall be by written amendment signed by the Ministry and Participant. No changes shall be effective or shall be carried out in the absence of such an amendment.

7.10 All sections intended to survive, including without limitation Article 4.0, shall survive the expiry or termination of this Participant Agreement.

7.11 This Participant Agreement shall enure to the benefit of and be binding upon the Parties and their successors, executors, administrators and their permitted assigns.

7.12 This Participant Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

7.13 This Participant Agreement may be executed in counterparts, including facsimile or "pdf" counterparts (all of which shall together constitute one and the same agreement).

IN WITNESS WHEREOF the Parties have executed this Participant Agreement for SWOOP 2020 imagery effective as of the date first above written.

Her Majesty the Queen in right of Ontario as represented by the Minister of Natural Resources and Forestry

Larissa Mathewson Digitally signed by Larissa Mathewson
DN: c=ca, st=on, o=Government of Ontario, ou=People, serialNumber=DSAP103896, cn=Larissa Mathewson
Date: 2020.09.29 11:36:01 -04'00'

Name: Larissa Mathewson-Brake
Title: Director, Mapping and Information Resources Branch

The Regional Municipality of Niagara

Signature
Name: Stuart Hendrie
Title: Chief Information Officer
I/we have authority to bind the Participant

SCHEDULE 1 – LICENSED PRODUCTS

Licenced Products/Deliverables – Subset listing

NOTE: The following Licenced Products will be provided to the Participant on appropriate media directly from the Supplier. Additional Licenced Products that are not included in this Subset of Deliverables, such as the stereo data, may be requested at a later date by contacting the Primary Contact for the Ministry.

All georeferenced Licenced Products will be delivered using the Coordinate System of:
Coordinate system(s): UTM 17_NAD83CSRS_CGVD2013_CGG2013_meters

1. Project Level Data
    a. Flight_Lines
        i. Shapefiles with flight lines and way points
        ii. Includes acquisition dates of when the imagery was acquired.
    b. Metadata
        i. Metadata that includes details about the project and data in .html format.
        ii. Readme Files: .txt format describing products
    c. SWOOP2020_Participant_Tile_Index
        i. Shapefile containing the tiles selected of the area(s) of interest for an organization and will be used to "clip" a subset
        ii. Defines the geographic extent for each delivery/organization
        iii. Provided directly to the acquisition vendor by MNRF, as determined with each participating organization

2. SWOOP2020_16cm_8BIT_Orthophotography
    a. All tiles will be labelled/named with the following convention/scheme: (Sample tile label: *1km173000487202020SWOOP.tiff*) --- where:
        i. *1km* – tile extent (1km x 1km)
        ii. *17* – UTM zone that the imagery is located/projected in
        iii. *3000* – truncated easting value of the lower left corner of the tile
        iv. *48720* – truncated northing value of the lower left corner of the tile
        v. *2020* – year of acquisition of the imagery
        vi. SWOOP – Project name or identifier
        vii. *.tiff* – file format
        viii. *NOTE*: other associated image related files, such as world files etc. will be included, where applicable

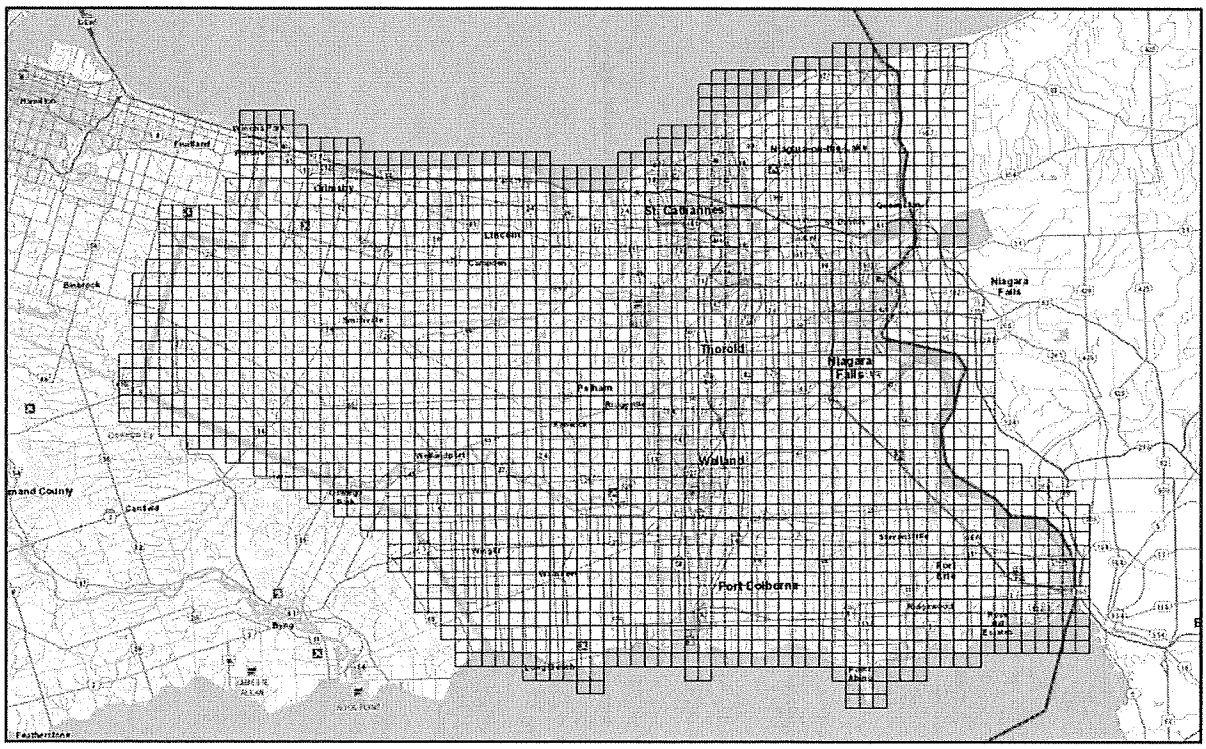
    b. GEOTIFF
        i. Full resolution (16cm) RGBNiR geotiff tiles matching organizational area(s) of interest tile index
        ii. Images provided in 1 km x 1km tiles as per prescribed naming conventions.
        iii. Separated by UTM zone, where applicable

SCHEDULE 2 - MAP DEPICTING THE GEOGRAPHIC AREA(S) OF THE PARTICIPANT

All products to be delivered in UTM Zone 17 georeferenced coordinate system

Total # sq. km. (tiles) = 2,356

Cost per sq. km. (tile) = $2.8710

Total Cost: $6,764.03

Regional Municipality of Niagara
SWOOP 2020 Tile Selection
Total Tiles: 2,356