

**MIDSTATES VRS, LLC SERVICE AGREEMENT**

This SERVICE AGREEMENT (the "Agreement") is made and entered into as of the 9th day of May, 2017 (the "Effective Date") by and between MidStates VRS, LLC ("MidStates") and North Dakota Department of Transportation ("Customer").

WHEREAS, MidStates operates and maintains a network of Continuously Operating Reference Stations (the "CORS") that create a Virtual Reference Station ("VRS").

WHEREAS, Customer desires to obtain certain services from MidStates using the VRS.

NOW THEREFORE, in consideration of the representations, warranties, covenants, and agreements hereinafter made, the parties agree as follows:

**1. SERVICES**

- (a) MidStates hereby agrees to furnish and provide the services described in Exhibit A attached hereto (the "Services") to Customer upon the terms and conditions herein provided. MidStates reserves the right to modify any procedures, methods of operation, security measures or other matters relating to the Services at any time and from time to time.
- (b) Customer shall use the Services and the resulting data (the "Results") exclusively for its own business use.
- (c) MidStates will issue to Customer technical data for connection to the Services, such as username, password, IP address or DNS hostname.
- (d) Upon any agreed upon change in the subscription quantities or other matters set forth in Exhibit A, the parties will execute an amended Exhibit A.

**2. FEE PAYABLE TO MIDSTATES**

During the Term of this Agreement, in consideration for Customer's use of the Services under this Agreement, Customer shall pay MidStates or its designated payee the fees set forth in Exhibit A.

**3. COVENANTS AND OBLIGATIONS OF CUSTOMER**

- (a) Customer covenants and agrees with MidStates as follows:
  - (i) to use the Services and the Results and all modifications, supplements, translations, updated works and compilations thereof in accordance with all applicable federal, state and local laws, rules and regulations;
  - (ii) not to use the Services or the Results for any purposes other than the use specified in Section 1 above in any manner.
  - (iii) to comply with any terms of use and any other reasonable rules or instructions adopted or provided by MidStates to regulate access, use, operation and security of the VRS.
  - (iv) not to (1) authorize or enable any other party to access the VRS, Services or Results on behalf of or for the benefit of any party other than Customer or (2) sell, rebroadcast, repeat a signal or otherwise allow any third party to access the VRS. Customer's breach of this provision will result in the immediate suspension of all Services.
- (b) Customer shall be responsible for obtaining, operating and maintaining, at its own expense, all hardware and software which are owned by Customer to enable Customer to access and use the Services and the Results. Customer acknowledges that certain hardware and software may not operate as intended with the current or future versions of the Services. Customer shall make any

necessary modifications, including upgrades, of its hardware and software to ensure that the Services functions properly.

- (c) Customer acknowledges that the Services are not warranted to be continuous and uninterrupted. MidStates shall not be liable in any manner for the unavailability of the Services. Customer expressly acknowledges that Services may be adversely impacted, including, without limitation, by orbital errors, clock errors, ionospheric and tropospheric delay, multipath errors, receiver noise, radio interference, power failures, atmospheric conditions or other natural or man-made phenomenon. Customer further acknowledges and agrees that (1) the Services are dependent on use of the internet and cellular communications and accordingly on services provided by third parties beyond the control of MidStates and (2) global positioning satellites used by the CORS are managed by the third parties who are solely responsible for the accuracy, daily operation, and maintenance of the satellite constellation. Satellite geometry and satellite health affect system accuracy. Customer is responsible for verifying current constellation status. MidStates cannot guarantee that any transmission of data will be private and confidential. MidStates accepts no responsibility for the accuracy of the Services.
- (d) Customer acknowledges and agrees that any and all use of the Services, the Results and any data, compilations, models or other analytical tools derived therefrom by Customer shall be at the sole risk and expense of Customer.

#### **4. TERM**

- (a) Term. This initial Term of this Agreement shall commence as of the Effective Date and shall continue through and including December 31 of year of this Agreement, unless earlier terminated as provided herein.

#### **5. CONFIDENTIALITY AND PROTECTION OF PROPRIETARY RIGHTS**

- (a) Customer agrees that MidStates is the exclusive owner of the copyrights, trademarks and other proprietary rights and interests in and to the Services and that any modifications made thereto are proprietary developments and constitute a valuable work product in the form of trade secrets, knowhow and confidential information which is the exclusive property of MidStates..

#### **6. TITLE TO THE SERVICES**

- (a) Customer's rights hereunder to the Services are those of a licensed end user only and are conditional upon Customer's compliance with the terms and conditions of this Agreement. MidStates and the license granted hereunder shall affect no transfer of any right, title, or interest in and to the Services, whether express or implied. MidStates and all modifications, supplements, translations, up-dated works and compilations thereof, are trade secrets and the exclusive proprietary property of MidStates. Title to MidStates and all modifications, supplements, translations, up-dated works and compilations thereof shall remain at all times with MidStates.

#### **7. TERMINATION AND OTHER REMEDIES**

- (a) Termination without Cause. Notwithstanding anything to the contrary contained herein, either Party hereto may terminate this Agreement without cause, by delivering to the other Party a written thirty (30) day notice of termination.
- (b) Termination for Cause. In the event a Party is in breach of any obligation under this Agreement (the "Breaching Party"), the other Party (the "Non-Breaching Party") shall have the right to terminate this Agreement by proceeding as follows: The Non-Breaching Party shall provide written notice to the Breaching Party of such breach of such obligation, which notice shall include a reasonable detailed description of such breach of such obligation. The Breaching Party shall have ten (10) days from receipt of such notice to remedy such breach. If the Breaching Party remedies such breach within such ten (10) day period, this Agreement shall not terminate but rather shall

continue in full force and effect. If the Breaching Party does not remedy such breach within such ten (10) day period, this Agreement may, at the option of the Non-Breaching Party, be terminated at any time upon written notice from the Non-Breaching Party to the Breaching Party.

- (c) **Immediate Termination.** Notwithstanding the foregoing, either Party may immediately terminate this Agreement upon occurrence of the following by giving the other party written notice: (1) if the other Party engages in any unethical or illegal conduct; (2) if the other Party engages in intentional misconduct reasonably likely to result in significant adverse consequences to the other Party; or (3) in the event of the other Party's bankruptcy, assignment for the benefit of creditors, inability to pay debts generally, or its liquidation, insolvency or dissolution.
- (d) The rights of the Parties to terminate this Agreement are not exclusive of any other rights and remedies available at law or in equity, and such rights shall be cumulative. The exercise of any such right or remedy shall not preclude the exercise of any other rights and remedies. No failure on the part of a Party in the exercise of any right or remedy shall operate as a waiver of or by such Party of their right to exercise any other right or remedy.
- (e) Notwithstanding any termination by either party of this Agreement, the parties will remain liable to each other for any liabilities or obligations that accrued prior to such termination.

#### **8. LIMITED WARRANTY AND LIMITATIONS ON LIABILITY**

- (a) **MIDSTATES MAKES NO EXPRESS, IMPLIED OR STATUTORY WARRANTIES WITH RESPECT TO THE SERVICES OR THE RESULTS, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF DESIGN, OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ARISING FROM A COURSE OF DEALING, TRADE USAGE OR TRADE PRACTICE. THE SALE OF THE SERVICES AND THE RESULTS IS ON AN "AS IS" BASIS WITH ALL FAULTS.**
- (b) Notwithstanding anything to the contrary, Customer agrees MidStates' total liability, whether arising out of contract, negligence, strict liability in tort or warranty, to any party arising out of this Agreement or the use of Services and/or the Results will not exceed the amount paid over pursuant to this Agreement for the 12 months preceding such claim(s) by Customer to MidStates hereunder.

#### **9. FORCE MAJEURE**

In the event that either Party is unable to perform obligations under this Agreement due to unforeseen circumstances (commonly referred to as Acts of God or force majeure) not within its reasonable control, that Party shall notify the other Party as soon as possible after the commencement of such circumstances. Such obligation will be suspended during the continuance of such occurrences. Neither Party shall be responsible for any failure to perform or delay in performing any of its obligations hereunder where and to the extent that such failure or delay results from causes outside the reasonable control of the Party.

#### **10. MISCELLANEOUS**

- (a) Customer shall not assign or sublicense to any other party all or any part of this Agreement, its obligations hereunder, or any other interest herein or any rights hereunder without MidState's prior written consent. MidStates, in its sole discretion and without the consent of Customer, may assign this Agreement to any third party, provided that such party assumes the obligations of MidStates hereunder.
- (b) This Agreement along with the Addendum hereto constitutes the entire agreement between the parties and may not be amended or modified by any previous negotiations or agreements between the parties. No subsequent amendment or modification hereof shall be effective unless in writing and signed by the party against which it is sought to be enforced.

- (c) If any part of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect.
- (d) The provisions of Sections 5, 6, and 8 shall survive the termination of this Agreement.
- (e) The article and section headings used herein are for convenience only and shall not be read or construed as limiting the substance or generality of such articles or sections of this Agreement.
- (f) All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of service if served personally on the party to whom notice is to be given, (b) on the second day after mailing, if mailed to the party to whom notice is to be given by registered or certified mail, postage prepaid, and properly addressed as set forth below:

To MidStates:                      MidStates VRS, LLC  
    Attn: Technology Manager  
    3401 33rd St SW  
    P.O. Box 9559  
    Fargo, ND 58106-9559

To Customer:                      North Dakota Department of Transportation  
    Attn: Gabriel Hoggarth  
    608 E Blvd Ave  
    Bismarck, ND 58505

- (g) The parties agree that this Agreement shall be governed by the laws of the State of North Dakota and further agree that the proper forum for the litigation of any issues arising out of this Agreement shall lie exclusively within the jurisdiction of the courts in the State of North Dakota. Customer agrees to submit to and waives any objection the jurisdiction of the North Dakota Courts and agrees that venue shall lie exclusively in the State of North Dakota.
- (h) This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument. MidStates may scan, and preserve electronically, this Agreement and other documents related to the Agreement. Once scanned, and electronically preserved, MidStates may destroy the paper originals of these documents. All such documents scanned electronically preserved by MidStates, may be treated as original documents for all purposes, at the discretion of MidStates.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the last date set forth below.

WITNESS:

Trisha Deitz  
Name (Type or Print)  
[Signature]  
Signature

MIDSTATES VRS, LLC

Christopher Lee  
Officer's Name (Type or Print)  
[Signature]  
Signature  
BOB Member / Treasurer  
Title  
5-11-17  
Date

WITNESS:

Sandra Gadsel  
Name (Type or Print)  
[Signature]  
Signature

NORTH DAKOTA DEPARTMENT OF  
TRANSPORTATION

Grant Levi  
Director  
[Signature]  
Signature  
5/17/17  
Date

APPROVED as to substance by:

Cal J Gendreau  
Division Director (Type or Print)  
[Signature]  
Signature  
5-16-2017  
Date

APPROVED as to execution this  
16<sup>th</sup> day of May 20 17  
ATTORNEY GENERAL  
By [Signature]  
SPECIAL ASST. ATTORNEY GENERAL

## EXHIBIT A

### MidStates VRS, LLC Subscriptions

#### Agriculture VRS Subscription

- Provides sub inch pass to pass accuracy
  - One License \$750 / year

#### High Precision VRS Subscription

- Provides corrections that are relatively the same as traditional RTK without the limitation of baseline lengths as long as you are in the network footprint
- Intended for Land Surveying, Construction and Machine Control, and Agricultural Water Management
  - One License \$1,650 / year

#### VRS Subscription Information

- Subscriptions renew each year on January 1
  - New accounts created after July 1 pay half of the yearly subscription
  - Renewals will be invoiced prior to the annual service period and all amounts will be due and payable upon invoice date.
  - Subscriptions may be cancelled based on the termination clause in user agreement but all amounts paid are non-refundable.
  - All fees are exclusive of sales taxes, which we will charge as applicable. You agree to pay any taxes applicable to your use of the Subscription Service.
- All Subscriptions are delivered via User ID and Password
  - Login info is not linked to a particular piece of equipment
  - No need to transfer licenses or equipment
  - No codes to enter each year
- VRS corrections are delivered via the internet
  - Cellular Data Plan is required and is not included in the VRS subscription
  - Verizon and AT&T are recommended; ensure selected carrier has adequate coverage across all areas of work
- Additional equipment may be required to receive VRS corrections
  - For Land Surveying and Trimble SPS Rover corrections, a cellular hotspot may be needed
  - For Machine Control, a Trimble SNM940 cellular modem is required
  - For Agriculture Guidance, a Trimble DCM300 cellular modem is required

#### Subscription Quantity:

☐ Agriculture (\$750) \_\_\_\_\_  
☒ High Precision (\$1,650) 8 \_\_\_\_\_

#### Total Fee/Year:

2017-\$8800.00  
2018-\$13,200.00  
Prorate May-Dec 31 2017 \$8800.00  
Jan1-Dec 31, 2018 \$13,200.00

Dated this- 9<sup>th</sup> day of May, 2017.

MIDSTATES VRS, LLC

NORTH DAKOTA DEPARTMENT OF  
TRANSPORTATION

By: [Signature]  
Name: Christopher  
Title: BoD Member / Treasurer

Director: Grant Levy  
Date: 5/17/17  
Signature: [Signature]

APPROVED as to execution this  
16 day of May 2017  
ATTORNEY GENERAL  
By: [Signature]  
SPECIAL ASST ATTORNEY GENERAL

**North Dakota Department of Transportation  
ADDENDUM TO AGREEMENT BETWEEN STATE OF NORTH DAKOTA  
AND MidStates VRS, LLC**

This Addendum is entered into between the State of North Dakota, acting through its Department of Transportation (NDDOT) and MidStates VRS, LLC (MidStates), to amend the MidStates VRS, LLC Service Agreement dated May 9<sup>th</sup>, 2016 (Agreement). The parties agree to the following terms and conditions and expressly agree that if any of the following terms and conditions are in conflict with any of the terms and conditions of the Agreement, then, notwithstanding any term in the Agreement, the following terms and conditions govern and control the rights and obligations of the parties. Any amendments to the Agreement, this Addendum, or any other amendments, must be in writing and executed by each party.

**1. Term Extending Beyond Biennium**

Payments by NDDOT beyond the current state biennium shall be contingent on sufficient funds being appropriated by the Federal Government or State Legislature for the Department. In the event of insufficient appropriations in future bienniums, NDDOT may give a minimum of 30 days' notice to terminate this Agreement and have no further obligation to MidStates.

**2. Termination**

- a. Notwithstanding anything to the contrary contained herein, Either Party hereto may terminate this Agreement without cause, by delivering to the other Party a written thirty (30) day notice of termination.
- b. NDDOT may terminate this Agreement effective upon delivery of written notice to MidStates, or at such later date as may be established by NDDOT, under any of the following conditions:
  - i. If NDDOT funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The Agreement may be modified by agreement of the parties in writing to accommodate a reduction in funds.
  - ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
  - iii. If any license or certificate required by law or regulation to be held by MidStates to provide the services required by the Agreement is for any reason denied, revoked, or not renewed.

Any such termination of this Agreement under (i), (ii), or (iii), above, shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

**3. Merger and Waiver**

The Agreement and this Addendum constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of the Agreement or this Addendum shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. MidStates, by the signature below of its authorized representative, hereby acknowledges that MidStates has read this agreement, understands it, and agrees to be bound by its terms and conditions.

#### **4. Severability**

If any term or provision of this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms and provisions shall not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain that term or provision.

#### **5. Assignments**

MidStates shall not assign nor transfer MidStates' interests or duties under this Agreement without the express written consent of NDDOT.

#### **6. Subcontracting**

MidStates shall not assign any portion of the work under this agreement, execute any contract, or obligate itself in any manner with a third party with respect to its rights and responsibilities to this Agreement without written consent of NDDOT. Any agreement with a subcontractor does not create a contractual relationship between the NDDOT and the subcontractor.

#### **7. Governing Law and Venue**

Notwithstanding any rules regarding the choice of law or venue, it is agreed by the parties that this Agreement shall be governed by and construed in accordance with applicable Federal Law and the laws of the state of North Dakota, at the time this Agreement was executed. All disputes arising from this Agreement shall be brought in the South Central District Court of the state of North Dakota.

#### **8. Risk Management**

The Risk Management Appendix, attached, is hereby incorporated into and made a part of this Agreement.

#### **9. Alternative Dispute Resolution – Jury Trial**

NDDOT does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to legal action to enforce available remedies. NDDOT does not waive any right to a jury trial.

#### **10. Ownership of Work Product**

All work products and copyrights of the Agreement which result from this Agreement are the exclusive property of NDDOT.



**11. Nondiscrimination – Compliance with Laws**

MidStates agrees to comply with all applicable laws and rules, including, but not limited to, those relating to nondiscrimination, accessibility, and civil rights.

**12. State Audit**

All records, regardless of physical form, and the accounting practices and procedures of MidStates relevant to this Agreement are subject to examination by the North Dakota State Auditor or the Auditor's designee. MidStates will maintain all such records for at least three years following completion of this Agreement.

### 13. Proprietary and Confidential Information

To the extent that Agreement requires NDDOT to protect any proprietary or confidential information of MidStates, NDDOT agrees to protect the information to the extent that such protection does not conflict with the North Dakota Open Records Law.

EXECUTED the date last below signed.

WITNESS:

Trisha Deitz  
NAME (TYPE OR PRINT)  
Trisha Deitz  
SIGNATURE

To be signed by Owner; Partner; Corp. Pres.,  
Vice Pres., or other authorized Corp. Officer.  
(If signed by other authorized Corp. Officer,  
please attach copy of Power of Attorney or  
other documentation showing authority to sign.)

WITNESS:

Sandra Goebel  
NAME (TYPE OR PRINT)  
Sandra Goebel  
SIGNATURE

MIDSTATES VRS, LLC:

Christopher Lee  
NAME (TYPE OR PRINT)  
Chris Z BOD Member/Treasurer  
SIGNATURE/TITLE  
5-11-17  
DATE

NORTH DAKOTA DEPARTMENT  
OF TRANSPORTATION

Grant Levi  
DIRECTOR (TYPE OR PRINT)  
Grant Levi  
SIGNATURE  
5/17/17  
DATE

APPROVED as to substance by:

Cal J Gendreau  
DIVISION DIRECTOR (TYPE OR PRINT)  
Cal J Gendreau  
SIGNATURE  
5-16-2017  
DATE

CLA 1016 (Div. 06)  
L.D. Approved 06-14-04; 09-09

APPROVED as to execution this  
16 day of May 2017  
ATTORNEY GENERAL  
By [Signature]  
SPECIAL ASST. ATTORNEY GENERAL

## **Risk Management Appendix**

### **Supply Contracts with Private Individuals, Companies, Corporations, Etc.:**

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Contractor, or Contractor's delivery agent, shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability** insurance.
- 2) **Workers compensation** insurance.

**Contractor shall produce certificates of insurance or copies of insurance policies upon request by the State.**

When a portion of a Contract is sublet, the Contractor shall obtain insurance protection (as outlined above) to provide liability coverage to protect the Contractor and the State as a result of work undertaken by the Subcontractor. In addition, the Contractor shall ensure that any and all parties performing work under the Contract are covered by public liability insurance as outlined above. All Subcontractors performing work under the Contract are required to maintain the same scope of insurance required of the Contractor. The Contractor shall be held responsible for ensuring compliance with those requirements by all Subcontractors.

RM Consulted 2007  
Revised 6-07

