

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
 PROCUREMENT  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

June 27, 2012

**CHANGE NOTICE NO. 4**  
 to  
**CONTRACT NO. 071B8200052**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
WSI Corporation 400 Minuteman Road Andover, MA 01810	Elizabeth Reti	<a href="mailto:ereti@wsi.com">ereti@wsi.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(978) 983-6614	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	MDOT	Steve Schultz	(517) 335-9627	<a href="mailto:schultzs@michigan.gov">schultzs@michigan.gov</a>
BUYER:	DTMB	Klatra Pickett	(517) 373-7374	<a href="mailto:pickettk@michigan.gov">pickettk@michigan.gov</a>

CONTRACT SUMMARY:			
DESCRIPTION: Aviation Weather Briefing Systems for Michigan Department of Transportation			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS	CURRENT EXPIRATION DATE
October 1, 2007	October 1, 2010	2, 1 Yr. Options	October 1, 2012
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45 Days	Destination	Various	Various
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
No Minimum Delivery Requirement			

DESCRIPTION OF CHANGE NOTICE:		
OPTION EXERCISED: <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES	IF YES, EFFECTIVE DATE OF CHANGE:	NEW EXPIRATION DATE:
<p>The change is to add \$25,500.00 to the Contract until a new bid can be issued. The total number of systems have been increased to 51 throughout the State and upgrades to existing systems have depleted the amount of dollars on the Contract. This system allows pilots to check weather conditions prior to departure to ensure that inclement weather will not affect their flight plans.</p> <p>All other terms, conditions, specifications, and pricing remain unchanged.</p> <p>Per agency and vendor agreement and DTMB Procurement approval.</p>		
VALUE/COST OF CHANGE NOTICE:	\$25,500.00	
ESTIMATED REVISED AGGREGATE CONTRACT VALUE:	\$282,731.00	

**STATE OF MICHIGAN**  
**DEPARTMENT OF TECHNOLOGY MANAGEMENT AND BUDGET**      February 16, 2012  
**PROCUREMENT**  
**P.O. BOX 30026, LANSING, MI 48909**  
 OR  
**530 W. ALLEGAN, LANSING, MI 48933**

**CHANGE NOTICE NO. 3**  
**TO**  
**CONTRACT NO. 071B8200052**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>WSI Corporation</b> <b>400 Minuteman Road</b> <b>Andover, MA 01810</b>	TELEPHONE: Elizabeth Reti <b>p(978) 983-6614</b> <b>f (866) 683-8450</b>
	VENDOR NUMBER/MAIL CODE
Email: <a href="mailto:ereti@wsi.com">ereti@wsi.com</a>	BUYER/CA (517) 373-7374 <b>Klatra Pickett</b>
Contract Compliance Inspector: Steve Schultz <b>Aviation Weather Briefing Systems for Michigan Department of Transportation</b>	
CONTRACT PERIOD:                      From: <b>October 1, 2007</b> To: <b>October 1, 2012</b>	
TERMS  <p style="text-align: center;"><b>Net 30 Days</b></p>	SHIPMENT  <p style="text-align: center;"><b>N/A</b></p>
F.O.B.  <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM  <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE(S):**

**Effective immediately, the buyer for this contract is hereby CHANGED to Klatra Pickett.**

**All other terms, conditions, pricing, and specifications remain unchanged.**

**AUTHORITY/REASON:**

**Per DTMB Procurement**

**TOTAL ESTIMATED CONTRACT VALUE:      \$257,231.00**

**STATE OF MICHIGAN  
 DEPARTMENT OF MANAGEMENT AND BUDGET  
 PURCHASING OPERATIONS  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933**

August 2, 2011

**CHANGE NOTICE NO. 2  
 TO  
 CONTRACT NO. 071B8200052  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>WSI Corporation          400 Minuteman Road          Andover, MA 01810</b>	TELEPHONE: Elizabeth Reti <b>p(978) 983-6614          f (866) 683-8450</b>
	VENDOR NUMBER/MAIL CODE
Email: <a href="mailto:ereti@wsi.com">ereti@wsi.com</a>	BUYER/CA (517) 241-2005 <b>Irene Pena, Buyer Specialist</b>
Contract Compliance Inspector: Steve Schultz <b>Aviation Weather Briefing Systems for Michigan Department of Transportation</b>	
CONTRACT PERIOD: From: <b>October 1, 2007</b> To: <b>October 1, 2012</b>	
TERMS <p style="text-align: center;"><b>Net 30 Days</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE(S):**

**Effective August 2, 2011, the State of Michigan hereby utilizes the second and final Option Year available on the Contract. The new Contract end date is October 1, 2012. In addition, funds in the amount of \$26,000.00 are hereby added to this Contract.**

**All other terms, conditions, pricing, and specifications remain unchanged.**

**AUTHORITY/REASON:**

**Per agency request, agreement from the vendor (Liz Reti) dated July 8, 2011, and DTMB Purchasing Operations, and State Administrative Board approval dated August 2, 2011.**

**INCREASE: \$26,000.00**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$257,231.00**

STATE OF MICHIGAN  
DEPARTMENT OF MANAGEMENT AND BUDGET  
PURCHASING OPERATIONS  
P.O. BOX 30026, LANSING, MI 48909  
OR  
530 W. ALLEGAN, LANSING, MI 48933

June 9, 2010

CHANGE NOTICE NO. 1  
TO  
CONTRACT NO. 071B8200052  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR  <b>WSI Corporation 400 Minuteman Road Andover, MA 01810</b>  <b>Email: ereti@wsi.com</b>	TELEPHONE: Elizabeth Reti <b>p(978) 983-6614 f (866) 683-8450</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-2005 <b>Irene Pena, Buyer Specialist</b>
Contract Compliance Inspector: Steve Schultz <b>Aviation Weather Briefing Systems for Michigan Department of Transportation</b>	
CONTRACT PERIOD: From: <b>October 1, 2007</b> To: <b>October 1, 2011</b>	
TERMS <b>Net 30 Days</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	
MISCELLANEOUS INFORMATION:	

**NATURE OF CHANGE(S):**

Effective immediately the State of Michigan hereby utilizes the first Contract Option Year. The new Contract end date is now October 1, 2011. Funds in the amount Of \$72,000.00 are hereby add to the total Contract value.

Note: the Buyer for this Contract is now Irene Pena (517) 241-1647  
WSI Contact has been updated from Ed Magliano to Liz Reti.

**AUTHORITY/REASON:**

Per vendor email (Liz Reti) dated March 25, 2010, DTMB Purchasing Operations and State Administrative Board approval on May 18, 2010.

**INCREASE: \$72,000.00**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$231,231.00**

STATE OF MICHIGAN  
DEPARTMENT OF MANAGEMENT AND BUDGET  
PURCHASING OPERATIONS  
P.O. BOX 30026, LANSING, MI 48909  
OR  
530 W. ALLEGAN, LANSING, MI 48933

November 26, 2007

NOTICE  
OF  
CONTRACT NO. 071B8200052  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR  <b>WSI Corporation</b> <b>400 Minuteman Road</b> <b>Andover, MA 01810</b>  <b>Email: emagliano@wsi.com</b>	TELEPHONE: Ed Magliano <b>(978) 983-6783</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-2005 <b>Lisa Morrison, Buyer</b>
Contract Compliance Inspector: Steve Schultz <b>Aviation Weather Briefing Systems for Michigan Department of Transportation</b>	
CONTRACT PERIOD: From: <b>October 1, 2007</b> To: <b>October 1, 2010</b>	
TERMS <b>Net 30 Days</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	
MISCELLANEOUS INFORMATION:	

The terms and conditions of this Contract are those of ITB #07117200194, this Contract Agreement and the vendor's quote dated May 21, 2007. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: \$159,231.00

**STATE OF MICHIGAN  
 DEPARTMENT OF MANAGEMENT AND BUDGET  
 PURCHASING OPERATIONS  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933**

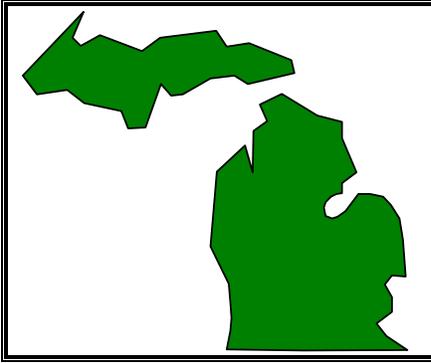
**CONTRACT NO. 071B8200052  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>WSI Corporation          400 Minuteman Road          Andover, MA 01810</b>  <p style="text-align: right;">Email: <a href="mailto:emagliano@wsi.com">emagliano@wsi.com</a></p>	TELEPHONE: Ed Magliano <b>(978) 983-6783</b> VENDOR NUMBER/MAIL CODE  BUYER/CA (517) 241-2005 <b>Lisa Morrison, Buyer</b>
Contract Compliance Inspector: Steve Schultz <p style="text-align: center;"><b>Aviation Weather Briefing Systems for Michigan Department of Transportation</b></p>	
CONTRACT PERIOD: From: <b>October 1, 2007</b> To: <b>October 1, 2010</b>	
TERMS <p style="text-align: center;"><b>Net 30 Days</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION: <b>The terms and conditions of this Contract are those of ITB #07117200194, this Contract Agreement and the vendor's quote dated May 21, 2007. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.</b>	
<b>Estimated Contract Value: \$159,231.00</b>	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 07117200194. Orders for delivery will be issued directly by the Department of Transportation through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

<p><b>FOR THE VENDOR:</b></p> <p style="text-align: center;"><b>WSI Corporation</b>          _____          Firm Name</p> <p style="text-align: center;">_____          Authorized Agent Signature</p> <p style="text-align: center;">_____          Authorized Agent (Print or Type)</p> <p style="text-align: center;">_____          Date</p>	<p><b>FOR THE STATE:</b></p> <p style="text-align: center;">_____          Signature  <b>Jeffrey A. White, Buyer Manager</b>          _____          Name/Title  <b>Commodities Division, Purchasing          Operations</b>          _____          Division</p> <p style="text-align: center;">_____          Date</p>
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STATE OF MICHIGAN  
Department of Management and Budget  
Purchasing Operations

**Contract No. 071B8200052**  
**Weather Briefing Systems Aviation Weather Data Service and Maintenance**

**Buyer Name: Lisa Morrison**  
**Telephone Number: (517) 241-2005**  
**E-Mail Address: morrisonl1@michigan.gov**



**Weather Briefing Systems Aviation Weather Data Service and Maintenance**

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- APPENDIX B—PRICE PROPOSAL SHEETS



## Article 1 – Statement of Work (SOW)

### 1.0 Introduction

#### 1.001 DEFINING DOCUMENT

#### 1.002 PROJECT TITLE AND DESCRIPTION

The purpose of this Contract is to provide and install (if necessary) dedicated weather briefing systems, designed for aviation, at fifty-three locations currently being served in Michigan, and any future locations as determined by the Michigan Department of Transportation (MDOT), Bureau of Aeronautics and Freight Services (AERO). These systems must be fast, easy to use, and will provide users reliable access to real-time, accurate, and comprehensive pre-flight weather information, hereinafter referred to as Aviation Weather Data, have the capability for the user to file flight plans directly with the FAA, and be compatible with current production color printers. Access to this service must be twenty-four hours a day, three hundred sixty-five days a year. The contract will include vendor maintenance of the briefing systems, at no additional cost.

#### 1.003 PROJECT CONTROL

##### Project Control

- a. **The Vendor will carry out this project under the direction and control of the Michigan Department of Transportation (MDOT).**
- b. **Although there will be continuous liaison with the Vendor team, the client agency's project director will meet monthly as a minimum, with the Vendor's project manager for the purpose of reviewing progress and providing necessary guidance to the Vendor in solving problems that arise.**
- c. **The Vendor will submit brief written summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the client agency's project director; and notification of any significant deviation from previously agreed-upon work plans. A copy of this report will be forwarded to the named buyer in Purchasing Operations.**
- d. **Within five (5) working days of the award of the Contract, the Vendor will submit to the MDOT project director for final approval a work plan, which must include the following:**

**The Vendor's project organizational structure.**

- (1) **The Vendor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.**
- (2) **The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.**
- (3) **The time-phased plan in the form of a graphic display, showing each event, task, and decision point in your work plan.**

##### Reports

**The vendor will submit a status report that contains those items listed below, in the frequency indicated for each report. Included will be any information of problems or concerns, that MDOT**



should be made aware of. These reports will be submitted to the Contract Administrator. It can be sent via electronic mail to [schultzs@michigan.gov](mailto:schultzs@michigan.gov), or via fax at (517) 321-6422.

### **Installation and Implementation of Systems**

Should it be necessary for the vendor to provide and install Systems to perform the services, the vendor will provide a bi-weekly progress report of the installation and implementation of these Systems. Information in this report will include 1) A brief description of work accomplished since the last bi-weekly progress report, 2) A projection of work to be accomplished in the next bi-weekly period, 3) Problems encountered (if any) in the installation and implementation of Systems at any sites during that bi-weekly period, and 4) Any other information the vendor feels MDOT should be aware of. The first report will be due to the Contract Administrator on the second Tuesday after the contract is awarded, and every other Tuesday thereafter, until installation and implementation of all systems at all sites has been completed. At that time, the vendor will provide a summary report of the installation and implementation of all sites. Once all sites are completed, and the summary report is filed, the vendor is no longer required to provide this information, until such time as any new sites are added which require the installation and implementation of systems. The preferred format for this report is a Word document or Excel spreadsheet. The vendor may send this report via email to [schultzs@michigan.gov](mailto:schultzs@michigan.gov), or via fax to (517) 321-6422.

#### 1.004 COMMENCEMENT OF WORK

Vendor shall show acceptance of this agreement by signing a copy of this contract and returning it to the contract administrator. Vendor shall not proceed with performance of the work to be done under this agreement, including the purchase of necessary materials, until both parties have signed this agreement to show acceptance of its terms.

#### 1.1 Product Quality

##### 1.101 SPECIFICATIONS

### **Services Requested**

It is the intention of the State of Michigan to contract for the services listed below. These contracted services shall comply with all referenced specifications and shall be in affect for the entire period of this contract.

### **Supply and Install a New Weather Briefing System (at MDOT's option)**

At any future location, and any or all current locations that are replaced, the vendor will provide current production weather briefing systems that will meet the needs of the State of Michigan and the users at each location. The vendor must provide and install (if selected to do so by MDOT) each system within thirty (30) days of receiving an order from MDOT, and will retain ownership of all system components they provide. If the vendor cannot meet the thirty day requirement, they must contact the Contract Administrator and make other arrangements. MDOT, at their option, will decide if they will install the weather briefing system(s), or have the vendor install the system(s). Should MDOT elect to have the vendor perform one or all installations, it is necessary for the vendor to perform those installations in a manner that is satisfactory with the Airport Owner and/or Fixed Base Operator, and AERO (see the paragraph entitled "Coordination with Airport Owner and Clean Up" in Section 1.031 for further details). The vendor must take all precautions necessary to protect the weather briefing system components and all structures (including any buildings that house the systems), from damage, and protect all occupants from harm caused by lightning induced transients transmitted through the systems. In designing a protection plan, the vendor is urged to use the "National Electrical Code (NEC 2005)", "Lightning Protection, Grounding, Bonding, and Shielding Requirements for Facilities (FAA STD-019C)", and "Standard for the Installation of Lightning Protection Systems 2000 Edition (NFPA 780)".

### **Aviation Weather Data Service**

The vendor will deliver Aviation Weather Data Service which provides instant access to the graphic and alphanumeric weather data available on the Federal Aviation Data system and generally used for aviation, without the necessity of any on demand or usage sensitive telephone connection with



computers not on site. This Aviation Weather Data Service can be delivered via satellite, or be accessible via the vendors' web site. MDOT will select the preferred method on a site by site basis. When providing access via the web site, the weather briefing system must be "locked down" to prevent any user from accessing any other web site than that which provides the Aviation Weather Data.

#### Maintenance Services

The vendor is responsible for all maintenance, including upkeep and repairs, of all weather briefing system components (even if this maintenance is provided by a sub-contractor). If the existing fifty-three WSI PilotBrief systems are included in this contract, the vendor is responsible for the maintenance of these systems as well. Such on demand repairs and maintenance shall be available 24 hours a day, 365 days a year, and shall be of such quality that the system components remain in good working order and are able to function in accordance with the specifications for such system components when they are new. Should any component become defective or does not operate as when it was new, the vendor will replace that component, at no additional cost to the State or the local community, and pay the cost of shipping the replacement and defective component, at no additional cost to the State or the local community where the component is located. The vendor is responsible for any other equipment supplied by the vendor. The vendor will provide on demand maintenance service to correct a system and/or restore the system to its proper operation. When it is necessary for the vendor, or their representative, to provide for on demand corrective maintenance that involves the assistance of someone who works at the airport or an onsite technician, it will do so during the normal business hours of the airport where the defective component is located, unless other prior arrangements are made with the airport. If this on demand corrective maintenance can be accomplished via telephone, satellite, or some other means that does not involve the assistance of someone onsite, the vendor will perform this maintenance at any hour, regardless if it is during the normal business hours of the airport. Once the vendor receives notice of a system problem, it shall contact the affected airport(s) within a minimum of three (3) vendor business hours to begin to determine the cause of the problem. When necessary, the vendor will provide a qualified technician onsite within forty-eight (48) hours of notification (not counting weekends or *holidays, unless the vendor is working on those days*). If the vendor cannot meet the time frames shown in this section, it must contact the MDOT Contract Administrator.

#### Coordination with Airport Owner and Clean Up

During all phases of the installation of new or replacement systems, and maintenance of any system covered under this contract, the vendor will coordinate its activities with the Airport Owner. Coordination of any appropriate closures or issuances of NOTAMs shall be the responsibility of the vendor, unless arrangements are made otherwise. Disruption of normal activity shall be kept to a minimum, but safety shall be the first priority. When the vendor performs installation activities and/or onsite maintenance, it will remove from the site, and other ground occupied by it in connection with the work, all surplus and discarded materials, equipment, trash, and temporary structures; and all parts of the work shall be left in a condition acceptable to the Airport Owner and MDOT. The vendor will restore the site, including paved and unpaved areas, to their original condition upon completion of the installation and/or maintenance.

#### System Requirements

MDOT did not draft technical specifications for the weather briefing systems, as current off-the-shelf product lines available from prospective vendors are more than adequate and satisfactory to provide the services requested by this contract. The weather briefing system database shall be satellite fed or accessible on the vendors' web site. MDOT will select the method of database access on a site by site basis. No usage sensitive data or access fees are to be assessed. Upgrades – new service products, software updates, system hardware options, upgrades, and configuration changes will be negotiated when and if appropriate.



## 1.103 QUALITY ASSURANCE PROGRAM - RESERVED

## 1.104 WARRANTY FOR PRODUCTS OR SERVICES

**This shall include the warranty associated with the actual product being proposed, as well as the warranty associated with any service work performed under the contract. Vendors shall also discuss how they will handle any repairs that need to be made due to damaged or defective product, how installation problems will be rectified, and the process State agencies should follow to report warranty issues.**

## 1.2 Service Capabilities

## 1.201 CUSTOMER SERVICE/ORDERING

**This includes having the capacity to receive orders electronically, by phone, facsimile, and by written order. The Vendor shall provide a statewide toll-free phone number for phone orders. Vendor shall have internal controls, approved by Purchasing Operations, to insure that authorized individuals with the State place orders. The Vendor shall verify orders that have quantities that appear to be abnormal or excessive.**

**The Vendor shall have an accessible customer service department with an individual specifically assigned to State of Michigan accounts. The Vendor shall have experienced sales representatives make timely personal visits to State accounts. The Vendor's customer service must respond to State agency inquiries promptly. The Vendor shall provide a statewide toll-free number for customer service calls.**

**Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule.**

**All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.**

**If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods.**

## 1.202 TRAINING

**The Vendor shall provide training to individual agencies, when necessary, on aspects of ordering, shipping, billing, and receiving. At the request of the Contract Administrator, the Vendor shall provide in-service training to agency personnel on products, installation, and product safety issues. The Vendor shall also provide agency training jointly with the State as needed during the period covered by the contract at no additional charge.**

## 1.203 REPORTING

**Vendor shall be able to provide various reports, when requested by the State. Examples include itemized report of total items (commodities and services) purchased by all agencies or individual agencies, open invoice reports, delivery compliance reports, quantity reports, service compliance reports, etc.**

## 1.204 SPECIAL PROGRAMS

**The State is interested in any other special programs that vendor's may have, such as return policies, trade-in programs allowing the return of new product not needed, quantity discounts, etc.**



## 1.205 SECURITY

The resulting Contract may require frequent deliveries to State of Michigan facilities. This shall include, but is not limited to, performance of security background checks on all personnel assigned to State of Michigan facilities (i.e. delivery people) and how they are performed, what the security check consists of, the name of the company that performs the security checks, use of uniforms and ID badges, etc. If security background checks are performed on staff, vendors shall indicate the name of the company that performs the check as well as provide a document stating that each employee has satisfactorily completed a security check and is suitable for assignment to State facilities. Upon request by the State, vendors shall provide the results of all security background checks.

The State may decide to also perform a security background check. If so, vendors will be required to provide to the State a list of all delivery people that will service State of Michigan facilities, including name and date of birth (social security number of driver license number would also be helpful).

The Vendor and its subcontractors shall comply with the security access requirements of individual State facilities.

## 1.3 Delivery Capabilities

## 1.301 TIME FRAMES

It is requested that all orders be delivered within 30 calendar days after receipt of order. However, vendors shall discuss in detail the various delivery programs available. The State is interested in both a standard delivery program and a quick-ship program. Please discuss the delivery time associated with each program, as well as if there are quantity and other limitations for the quick ship program.

## 1.302 MINIMUM ORDER

It is requested that the minimum order is one (1) unit.

## 1.303 PACKAGING

Packaging and containers, etc., shall be in accordance with supplier's commercial practice and shall meet the requirements of Department of Transportation (D.O.T.) and rail and motor carrier freight classifications in effect at time of shipment, which will permit application of the lowest freight rate.

## 1.304 PALLETIZING

Shipments shall be palletized whenever possible and shall conform to the following:

- Manufacturers standard 4-way shipping pallets are acceptable.
- Maximum height: 5'6"; including pallet.
- Maximum weight: 3500 pounds; including pallet.
- Pallets are to be securely banded or shrink-wrapped.
- The cost of palletizing must be included in the unit price.

## 1.305 DELIVERY TERM

F.O.B. \_\_\_\_\_ State Facility

Prices shall be quoted "F.O.B. Delivered" with transportation charges prepaid on all orders of 1 unit or more to the State, or on all orders totaling or in excess of the vendor's minimum order requirement stated on the Item Listing .



**Freight Charges** - Should an agency order below the minimum order requirement of a Contract, the Vendor, for shipping products, must use one of the following carriers. Orders being shipped from or to in the State of Michigan or the States of Illinois, Indiana, Ohio, and Wisconsin, use Alvan Motor Freight (Tel: (800) 632-4172, attention Earl Batenburg); orders being shipped from or to ALL other states, use Roadway Express, Inc. (Tel: (800) 253-3193, attention David Lewis).

United Parcel Service (UPS) must be used in instances where the weight of the shipment is less than 150 lbs., or where shipments could be separated into smaller parcels such as three (3) 50 lb. packages. Also, if the shipment weighs less than 150 lbs, but costs \$3000 or more, it must be sent by the appropriate carrier listed above.

If the Vendor fails to follow these shipping instructions, the State shall pay the carrier used and deduct the difference from the Vendor's invoice for the amount that was charged and the amount that would have been charged if the requested carrier had been used.

### 1.306 RESERVED FOR ACCEPTANCE OF DELIVERABLES/PARE EXPLANATION

#### 1.4 Project Price 1.401 PROPOSAL PRICING

**See appendix B.**

#### 1.402 QUICK PAYMENT TERMS - RESERVED

#### 1.403 PRICE TERM

**(X) Fixed with prospective re-determination at an agreed upon time**

Prices quoted are the maximum for a period of 365 days from the date the Contract becomes effective.

Prices are subject to change at the end of each 365-day period. Such changes shall be based on changes in actual costs incurred. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change. Purchasing Operations reserves the right to consider various pertinent information sources to evaluate price increase requests (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics). Purchasing Operations also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request. Changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the remainder of the contract period unless further revised at the end of the next 365-day period.

Requests for price changes shall be RECEIVED IN WRITING AT LEAST TEN DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the CONTRACT may be cancelled. The continued payment of any charges due after September 30th of any fiscal year will be subject to the availability of an appropriation for this purpose.

#### 1.5 Quantity term

**(X) Requirements – Vendor agrees to supply all that the state requires**

#### 1.6 Other Terms and Conditions Needed for this Contract



## Article 2 – General Terms and Conditions

### 2.0 Introduction

#### 2.001 GENERAL PURPOSE

The Contract is for a **Weather Briefing Systems Aviation Weather Data Service and Maintenance** for the State of Michigan. Exact quantities to be purchased are unknown, however the Vendor will be required to furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities. Orders for delivery will be issued directly to the Vendor by various State Agencies on the Purchase Order Contract Release Form.

#### 2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

The Contract is issued by Purchasing Operations, State of Michigan, Department of Management and Budget, hereinafter known as Purchasing Operations, for the Michigan Department of Transportation, hereinafter known as *MDOT*. Where actions are a combination of those of Purchasing Operations and the State agencies, the authority will be known as the State.

Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the commodities and/or services described herein. Purchasing Operations is the only office authorized to negotiate, change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract. Purchasing Operations will remain the **SOLE POINT OF CONTACT** throughout the procurement process.

Vendor proceeds at its own risk if it takes negotiation, changes, modification, alterations, amendments, clarification, etc., of the specifications, terms, or conditions of the contract from any individual or office other than Purchasing Operations and the listed contract administrator

**All communications covering this procurement must be addressed to contract administrator indicated below:**

Department of Management and Budget  
Purchasing Operations  
**Attn: Laura Gyorkos**  
2nd Floor, Mason Building  
P.O. Box 30026  
Lansing, Michigan 48909  
**(517) 373-1455**  
[gyorkosl@michigan.gov](mailto:gyorkosl@michigan.gov)

#### 2.003 NOTICE

Any notice given to a party under this Contract must be written and shall be deemed effective, if addressed to such party as addressed below upon (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

#### 2.004 CONTRACT TERM

The term of this Contract will be for three (3) years and will commence with the issuance of a Contract. This will be approximately October 1, 2007 through October 1, 2010.

Option. The State reserves the right to exercise two (2) one-year options, at the sole option of the State. Vendor performance, quality of products, price, cost savings, and the Vendor's



ability to deliver on time are some of the criteria that will be used as a basis for any decision by Purchasing Operations to exercise an option year.

Extension. At the sole option of the State, the contract may also be extended. Vendor performance, quality of products, price, cost savings, and the Vendor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Purchasing Operations to exercise an option year.

Written notice will be provided to the Vendor within 30 days, provided that the State gives the Vendor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension. If the Government exercises this option, the extended contract shall be considered to include this option clause.

#### 2.005 GOVERNING LAW

The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. By signing this agreement, vendor consents to personal jurisdiction in the state of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

#### 2.006 APPLICABLE STATUTES

The following statutes, rules, and laws are applicable to the performance of this contract; some statutes are reflected in the clauses of this contract. This list is NOT exhaustive.

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)

MI OSHA MCL §§ 408.1001 – 408.1094

Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.

Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.

MI Consumer Protection Act MCL §§ 445.901 – 445.922

Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.

Department of Civil Service Rules and regulations

Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.

Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.

MCL §§ 423.321, et seq.

MCL § 18.1264 (law regarding debarment)

Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.

Contract Work Hours and Safety Standards Act (CWHSAA) 40 USCS § 327, et seq.

Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795

Rules and regulations of the Environmental Protection Agency

Internal Revenue Code

Rules and regulations of the Equal Employment Opportunity Commission (EEOC)

The Civil Rights Act of 1964, USCS Chapter 42

Title VII, 42 USCS §§ 2000e et seq.

The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.

The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.

The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.

The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.

The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106

Sherman Act, 15 U.S.C.S. § 1 et seq.

Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.

Clayton Act, 15 U.S.C.S. § 14 et seq.

#### 2.007 RELATIONSHIP OF THE PARTIES



The relationship between the State and the Vendor is that of client and independent Vendor. No agent, employee, or servant of the Vendor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Vendor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

2.008 HEADINGS

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of this Contract.

2.009 MERGER

This document constitutes the complete, final, and exclusive agreement between the parties. All other prior writings and negotiations are ineffective.

2.010 SEVERABILITY

Each provision of the Contract shall be deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect.

2.011 SURVIVORSHIP

Any provisions of the Contract that impose continuing obligations on the parties including, but not limited to the Vendor's indemnity and other obligations shall survive the expiration or cancellation of the Contract for any reason.

2.012 NO WAIVER OF DEFAULT

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term or any other term of the Contract.

2.013 PURCHASE ORDERS

Orders for delivery of commodities and/or services may be issued directly by the State Departments through the issuance of a Purchase Order Form referencing this Contract (Blanket Purchase Order) agreement and the terms and conditions contained herein. Vendor is asked to reference the Purchase Order Number on all invoices for payment.

2.1 Vendor/Contractor Obligations

2.101 ACCOUNTING RECORDS

The Vendor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Michigan. Financial and accounting records shall be made available, upon request, to the State of Michigan, its designees, or the Michigan Auditor General at any time during the Contract period and any extension thereof, and for three years from expiration date and final payment on the Contract or extension thereof.

2.102 NOTIFICATION OF OWNERSHIP

The Vendor shall make the following notifications in writing:



1. When the Vendor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Vendor shall notify Purchasing Operations within 30 days.
2. The Vendor shall also notify the Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

The Vendor shall:

1. Maintain current, accurate, and complete inventory records of assets and their costs;
2. Provide Purchasing Operations or designated representative ready access to the records upon request;
3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Vendor's ownership or officer changes; and
4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Vendor ownership or officer change.

#### 2.103 SOFTWARE COMPLIANCE

The vendor warrants that all software for which the vendor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure year 2000 compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

#### 2.104 RESERVED

#### 2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE) - RESERVED

#### 2.106 PREVAILING WAGE

The rates of wages and fringe benefits to be paid each class of individuals employed by the Vendor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Vendor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Consumer and Industry Service, Bureau of Safety and Regulation, Wage/Hour Division schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Vendor shall include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Vendor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Vendor shall keep posted on the work



site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Consumer and Industry Services, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Vendor, it is understood that the trades omitted shall also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

#### 2.107 PAYROLL AND BASIC RECORDS

Payrolls and basic records relating to the performance of this contract shall be maintained by the Vendor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Vendors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

The Vendor shall submit a copy of all payrolls to the Contract Administrator upon request. The payrolls submitted shall set out accurately and completely all of the information required to be maintained as indicated above.

The Prime Vendor is responsible for the submission of copies of payrolls by all subcontractors upon request from the Contract Administrator

The Vendor or subcontractor shall permit the Contract Administrator or representatives of the Contract Administrator or the State of Michigan to interview employees during working hours on the job.

If the Vendor or subcontractor fails to submit required records or to make them available, the Contract Administrator may, after written notice to the Vendor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment.

#### 2.108 COMPETITION IN SUB-CONTRACTING

The Vendor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

#### 2.109 CALL CENTER DISCLOSURE

Vendor and/or all subcontractors involved in the performance of this contract providing call or contact center services to the State of Michigan must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information shall be a material breach of this agreement.

### 2.2 Contract Performance

#### 2.201 TIME IS OF THE ESSENCE - RESERVED



## 2.202 CONTRACT PAYMENT SCHEDULE

The specific payment schedule for any Contract(s) entered into, as the State and the Vendor(s) will mutually agree upon the result of this contract. The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15th day of the following month.

## 2.203 POSSIBLE PROGRESS PAYMENTS

The Government may make progress payments to the Vendor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Vendor must show verification of measurable progress at the time of requesting progress payments.

## 2.204 POSSIBLE PERFORMANCE-BASED PAYMENTS (Actual performance rendered)

- a. *Vendor request for performance-based payment.* The Vendor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contract Administrator. Unless otherwise authorized by the Contract Administrator, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled.
- b. *Approval and payment of requests.*
  - (1) The Vendor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contract Administrator shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contract Administrator may, at any time, require the Vendor to substantiate the successful performance of any event or performance criterion, which has been or is represented as being payable.
  - (2) A payment under this performance-based payment clause is a contract financing payment under the Quick Payment clause (1.402) of this contract.
  - (3) The approval by the Contract Administrator of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Vendor from performance of obligations under this contract.

## 2.205 ELECTRONIC PAYMENT AVAILABILITY

Electronic transfer of funds is available to State Vendors. Vendor is required register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically at [www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us).

## 2.206 PERFORMANCE OF WORK BY VENDOR - RESERVED

## 2.3 Contract Rights and Obligations

### 2.301 INCURRING COSTS

The State of Michigan is not liable for any cost incurred by the Vendor prior to signing of the Contract. The State fiscal year is October 1st through September 30th. The Vendor(s) should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the State is limited to terms and conditions of the Contract.



## 2.302 VENDOR RESPONSIBILITIES

The Vendor will be required to assume responsibility for all contractual activities, whether or not that Vendor performs them. Further, the State will consider the Vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve subcontractors and to require the Vendor to replace subcontractors found to be unacceptable. The Vendor is totally responsible for adherence by the subcontractor to all provisions of the Contract. Any change in subcontractors must be approved by the State, in writing, prior to such change.

## 2.303 ASSIGNMENT AND DELEGATION

The Vendor shall not have the right to assign this Contract, to assign its rights under this contract, or delegate any of its duties or obligations under the Contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State. Any purported assignment in violation of this Section shall be null and void. Further, the Vendor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Purchasing Operations.

The Vendor shall not delegate any duties or obligations under the Contract to a subcontractor other than a subcontractor named and approved in the bid unless the Director of Purchasing Operations has given written consent to the delegation.

Vendor must obtain the approval of the Director of Purchasing Operations before using a place of performance that is different from the address that vendor provided in the bid.

## 2.304 TAXES

**Sales Tax:** For purchases made directly by the State of Michigan, the State is exempt from State and Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

**Federal Excise Tax:** The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent to the Vendor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.

The State's Tax Exempt Certification is available for vendor viewing upon request to the Contract Administrator.

## 2.305 INDEMNIFICATION

### General Indemnification

To the fullest extent permitted by law, the Vendor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

1. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Vendor or any of its subcontractors under this Contract.



2. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Vendor of any representation or warranty made by the Vendor in the Contract;
3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Vendor is required to insure against as provided for in this Contract;
4. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Vendor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;
5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Vendor or any of its subcontractors in its or their capacity as an employer of a person.

#### **Patent/Copyright Infringement Indemnification**

To the fullest extent permitted by law, the Vendor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Vendor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the Vendor's opinion be likely to become the subject of a claim of infringement, the Vendor shall at the Vendor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Vendor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Vendor, (iii) accept its return by the State with appropriate credits to the State against the Vendor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

#### **Code Indemnification**

To the extent permitted by law, the Vendor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Vendor's breach of the No Surreptitious Code Warranty.

#### **Indemnification Obligation Not Limited**

In any and all claims against the State of Michigan, or any of its agents or employees, by any employee of the Vendor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Vendor or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This



indemnification clause is intended to be comprehensive. Any overlap in sub clauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other sub clause.

#### Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect notwithstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

#### Indemnification Procedures

The procedures set forth below shall apply to all indemnity obligations under this Contract.

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Vendor of such claim in writing and take or assist Vendor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Vendor. No failure to so notify Vendor shall relieve Vendor of its indemnification obligations except to the extent that Vendor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Vendor shall notify the State in writing whether Vendor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Vendor of a claim and prior to the State receiving Vendor's Notice of Election, the State shall be entitled to defend against the claim, at Vendor's expense, and Vendor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.
- (b) If Vendor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the Defense; (ii) Vendor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Vendor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Vendor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Vendor given within ten (10) days after the State's receipt of Vendor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Vendor has failed to demonstrate to the reasonable satisfaction of the State Vendor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.
- (c) If Vendor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Vendor. If it is determined that the claim was one against which Vendor was required to indemnify the State, upon request of the State, Vendor shall promptly reimburse the State for all such reasonable costs and expenses.



## 2.306 LIMITATION OF LIABILITY

Except as set forth herein, neither the Vendor nor the State shall be liable to the other party for indirect or consequential damages, even if such party has been advised of the possibility of such damages. Such limitation as to indirect or consequential damages shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Vendor; to claims covered by other specific provisions of this Contract calling for liquidated damages; to Vendor's indemnification obligations (2.305); or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Vendor shall be limited to the value of the Contract.

## 2.307 CONTRACT DISTRIBUTION

Purchasing Operations shall retain the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

## 2.308 FORM, FUNCTION, AND UTILITY

If the Contract is for use of more than one State agency and if the good or service provided under this Contract do not meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the good or service from another source.

## 2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the bidder hereby assigns, sells and transfers to the State of Michigan all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of payment and which relate solely to the particular goods, commodities, or services purchased or procured by this State pursuant to this transaction.

## 2.310 PURCHASING FROM OTHER STATE AGENCIES

State agencies are exempt from utilizing the resulting Contract if they would instead prefer to purchase similar items from the following State agencies:

- Michigan State Industries (MSI), which provides valuable training opportunities for inmates at State correctional facilities.
- Department of Management and Budget, Print and Graphics Services

## 2.311 TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Vendor must provide for up to 3 months after the expiration or cancellation of this Contract, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Vendor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance.

## 2.312 RESERVED



2.313 RESERVED

2.314 WEBSITE INCORPORATION

**State expressly states that it will not be bound by any content on the Vendor's website, even if the Vendor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representation of the State.**

2.4 Contract Review and Evaluation

2.401 CONTRACT COMPLIANCE INSPECTOR

**Upon receipt at Purchasing Operations of the properly executed Contract Agreement(s), the person named below will be allowed to oversee the Contract performance on a day-to-day basis during the term of the Contract. However, overseeing the Contract implies no authority to negotiate, change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract(s). That authority is retained by Purchasing Operations. The Contract Compliance Inspector for this project is:**

**Steve Schultz**  
**Department of Transportation**  
**Aeronautics & Freight Services**  
**2700 E. Airport Service Drive**  
**Lansing, MI 48906**  
**[schultzs@michigan.gov](mailto:schultzs@michigan.gov)**  
**(517) 335-9627**

2.402 PERFORMANCE REVIEWS

**Purchasing Operations in conjunction with the Michigan Department of Transportation may review with the Vendor their performance under the Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Vendor's past performance with the State. Performance reviews shall include, but not limited to, quality of products/services being delivered and provided, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of the Contract.**

**Upon a finding of poor performance, which has been documented by Purchasing Operations, the Vendor shall be given an opportunity to respond and take corrective action. If corrective action is not taken in a reasonable amount of time as determined by Purchasing Operations, the Contract may be canceled for default. Delivery by the Vendor of unsafe and/or adulterated or off-condition products to any State agency is considered a material breach of Contract subject to the cancellation provisions contained herein.**

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

**The Vendor agrees that the State may, upon 24-hour notice, perform an audit at Vendor's location(s) to determine if the Vendor is complying with the requirements of the Contract. The Vendor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.**

2.5 Quality and Warranties

2.501 PROHIBITED PRODUCTS

**The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be**



considered default by the Vendor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change.

#### 2.502 QUALITY ASSURANCE

The State reserves the right to periodically test products, which have been received to verify compliance with specifications. If laboratory analysis shows that the product does not meet specifications or fails to perform satisfactorily at any time, the Vendor shall be responsible for:

1. All costs of testing and laboratory analysis.
2. Disposal and/or replacement of all products which fail to meet specifications.
3. All costs of repair and/or replacement of equipment deemed to have been damaged by substandard products as determined by the State.

#### 2.503 INSPECTION

All goods are subject to inspection and testing. In the event goods are defective in material or workmanship, or otherwise fail to meet the requirements of the Contract, the State shall have the right to reject the goods or retain the goods and correct the defects. The Vendor shall pay the State for expenses incurred in correcting defects. Rejected goods will be held for 45 days after delivery. The Vendor must arrange for the return of said goods, including paying for handling, packing, and transportation costs. The State has the authority to dispose of the goods without further liability to the State in the event the Vendor fails to make arrangements within the specified time period.

#### 2.504 GENERAL WARRANTIES (goods)

***Warranty of Merchantability*** – Goods provided by vendor under this agreement shall be merchantable. All goods provided under this contract shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the vendor or on the container or label.

***Warranty of fitness for a particular purpose*** – When vendor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the vendor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

***Warranty of title*** – Vendor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by vendor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by vendor, under this agreement, shall be delivered free of any rightful claim of any third person by or infringement or the like.

#### 2.505 VENDOR WARRANTIES

The Contract will contain customary representations and warranties by the Vendor, including, without limitation, the following:

1. The Vendor will perform all services in accordance with high professional standards in the industry;
2. The Vendor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services;
3. The Vendor will use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State;



4. The Vendor will use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance;
5. The Vendor will perform the services in a manner that does not infringe the proprietary rights of any third party;
6. The Vendor will perform the services in a manner that complies with all applicable laws and regulations;
7. The Vendor has duly authorized the execution, delivery and performance of the Contract;
8. The Vendor is capable in all respects of fulfilling and shall fulfill all of its obligations under this contract.
9. The contract appendices, attachments, and exhibits identify all equipment and software services necessary for the deliverable(s) to perform and operate in compliance with the contract's requirements.
10. The Vendor is the lawful owner or licensee of any Deliverable licensed or sold to the state by Vendor or developed by Vendor under this contract, and Vendor has all of the rights necessary to convey to the state the ownership rights or license use, as applicable, of any and all Deliverables.
11. If, under this Contract, Vendor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Vendor under Vendor's name), then in addition to Vendor's other responsibilities with respect to such items as set forth in this Contract, Vendor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
12. The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter this contract, on behalf of Vendor.
13. The Vendor is qualified and registered to transact business in all locations where required.
14. Neither the Vendor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Vendor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Vendor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
15. All financial statements, reports, and other information furnished by Vendor to the State as part of its response to the ITB or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Vendor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Vendor. All written information furnished to the State by or behalf of Vendor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.



## 2.506 STAFF

The State reserves the right to approve the Vendor's assignment of Key Personnel to this project and to recommend reassignment of personnel deemed unsatisfactory by the State.

The Vendor shall not remove or reassign, without the State's prior written approval any of the Key Personnel until such time as the Key Personnel have completed all of their planned and assigned responsibilities in connection with performance of the Vendor's obligations under this Contract. The Vendor agrees that the continuity of Key Personnel is critical and agrees to the continuity of Key Personnel. Removal of Key Personnel without the written consent of the State may be considered by the State to be a material breach of this Contract. The prohibition against removal or reassignment shall not apply where Key Personnel must be replaced for reasons beyond the reasonable control of the Vendor including but not limited to illness, disability, resignation or termination of the Key Personnel's employment.

## 2.507 RESERVED

## 2.508 EQUIPMENT WARRANTY

To the extent Vendor is responsible under this Contract for maintaining equipment/system(s), Vendor represents and warrants that it will maintain such equipment/system(s) in good operating condition and will undertake all repairs and preventive maintenance in accordance with the applicable manufacturer's recommendations for the period specified in this Contract.

The Vendor represents and warrants that the equipment/system(s) shall be in good operating condition and shall operate and perform to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for a period of one (1) year commencing upon the first day following Final Acceptance.

Within three (3) business days of notification from the State, the Vendor shall adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Vendor shall assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Vendor shall provide a toll-free telephone number to allow the State to report equipment failures and problems to be remedied by the Vendor.

The Vendor agrees that all warranty service it provides under this Contract shall be performed by original equipment manufacturer (OEM) trained, certified and authorized technicians.

The Vendor shall act as the sole point of contact for warranty service. The Vendor warrants that it shall pass through to the State any and all warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

## 2.509 RESERVED

## 2.6 Breach of Contract

## 2.601 BREACH DEFINED

Failure to comply with articles, sections, or subsections of this agreement, or making any false statement in this agreement will be considered a material breach of this agreement giving the state authority to invoke any and all remedies available to it under this agreement.

In addition to any remedies available in law and by the terms of this contract, if the Vendor breaches Sections 2.508, 2.509, or 2.510, such a breach may be considered as a default in the performance of a material obligation of this contract.



## 2.602 NOTICE AND THE RIGHT TO CURE

In the event of a curable breach by the Vendor, the State shall provide the Vendor written notice of the breach and a time period to cure said breach described in the notice. This section requiring notice and an opportunity to cure shall not be applicable in the event of successive or repeated breaches of the same nature or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage or destruction of any real or tangible personal property.

## 2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another Vendor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.
2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Vendor as of the date specified by the State in a written notice of cancellation to the Vendor. The Vendor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Vendor which are caused by acts or omissions of its subcontractors will not relieve the Vendor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Vendor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

## 2.7 Remedies

## 2.701 CANCELLATION

The State may cancel this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents, and employees for any of the following reasons:

1. **Material Breach by the Vendor.** In the event that the Vendor breaches any of its material duties or obligations under the Contract, which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the



State, or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of cancellation to the Vendor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.

In the event that this Contract is cancelled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Vendor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.

In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are cancelled.

In the event this Contract is cancelled for cause pursuant to this section, and it is therefore determined, for any reason, that the Vendor was not in breach of contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a cancellation for convenience.

2. **Cancellation For Convenience By the State.** The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Vendor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.
3. **Non-Appropriation.** In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Vendor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Vendor. The State shall give the Vendor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.
4. **Criminal Conviction.** In the event the Vendor, an officer of the Vendor, or an owner of a 25% or greater share of the Vendor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Vendor's business integrity.
5. **Approvals Rescinded.** The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963,



Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Vendor or may be effective as of the date stated in such written notice.

#### 2.702 RIGHTS UPON CANCELLATION

Termination Assistance. If this Contract (or any Statement of Work issued under it) is terminated for any reason prior to completion, Vendor agrees to provide for up to six (6) months after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of this Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. Such termination assistance shall be at no additional charge to the State if the termination is for Vendor's Default pursuant to Section 2.602; otherwise the State shall compensate Vendor for such termination assistance on a time and materials basis in accordance with the Amendment Labor Rates identified within this Contract agreement.

#### 2.703 LIQUIDATED DAMAGES

- A. The State and the Vendor hereby agree to the specific standards set forth in this Contract. It is agreed between the Vendor and the State that the actual damages to the State as a result of Vendor's failure to provide promised services would be difficult or impossible to determine with accuracy. The State and the Vendor therefore agree that liquidated damages as set out herein shall be a reasonable approximation of the damages that shall be suffered by the State as a result thereof. Accordingly, in the event of such damages, at the written direction of the State, the Vendor shall pay the State the indicated amount as liquidated damages, and not as a penalty. Amounts due the State as liquidated damages, if not paid by the Vendor within fifteen (15) days of notification of assessment, may be deducted by the State from any money payable to the Vendor pursuant to this Contract. The State will notify the Vendor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date the State deducts such sums from money payable to the Vendor. No delay by the State in assessing or collecting liquidated damages shall be construed as a waiver of such rights.
- B. The Vendor shall not be liable for liquidated damages when, in the opinion of the State, incidents or delays result directly from causes beyond the control and without the fault or negligence of the Vendor. Such causes may include, but are not restricted to, acts of God, fires, floods, epidemics, and labor unrest; but in every case the delays must be beyond the control and without the fault or negligence of the Vendor.

#### 2.704 STOP WORK

1. The State may, at any time, by written stop work order to the Vendor, require that the Vendor stop all, or any part, of the work called for by this Contract for a period of up to 90 days after the stop work order is delivered to the Vendor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this section. Upon receipt of the stop work order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either:
- a) Cancel the stop work order; or
  - b) Cancel the work covered by the stop work order as provided in the cancellation section of this Contract.



2. If a stop work order issued under this section is canceled or the period of the stop work order or any extension thereof expires, the Vendor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
  - a) The stop work order results in an increase in the time required for, or in the Vendor's costs properly allocable to the performance of any part of this Contract; and
  - b) The Vendor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
3. If the stop work order is not canceled and the work covered by the stop work order is canceled for reasons other than material breach, the State shall allow reasonable costs resulting from the stop work order in arriving at the cancellation settlement.
4. If a stop work order is not canceled and the work covered by the stop work order is canceled for material breach, the State shall not allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

An appropriate equitable adjustment may be made in any related contract of the Vendor that provides for adjustment and is affected by any stop work order under this section. The State shall not be liable to the Vendor for loss of profits because of a stop work order issued under this section.

#### 2.705 SUSPENSION OF WORK

The Contract Administrator may order the Vendor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contract Administrator determines appropriate for the convenience of the Government.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contract Administrator in the administration of this contract, or (2) by the Contract Administrator's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Vendor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

A claim under this clause shall not be allowed:

- (1) For any costs incurred more than 20 days before the Vendor shall have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
- (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

#### 2.8 Changes, Modifications, and Amendments

##### 2.801 APPROVALS

The Contract may not be modified, amended, extended, or augmented except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.



## 2.802 TIME EXTENTIONS

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of performance as described in the statement of work. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

## 2.803 MODIFICATION

Purchasing Operations reserves the right to modify this contract at any time during the contract term. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service is to be performed, addition or deletion of tasks to be performed, addition or deletion of items, and/or any other modifications deemed necessary. Any changes in pricing proposed by the Vendor resulting from the proposed changes are subject to acceptance by the State. Changes may be increases or decreases. **IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.**

The State reserves the right to add an item(s) that is not described on the item listing and is available from the Contract vendor. **The item(s) may be included on the Contract, only if prior written approval has been granted by Purchasing Operations.**

## 2.804 AUDIT AND RECORDS UPON MODIFICATION

**DEFINITION: records includes books, documents, accounting procedures and practices, and other data, regardless of whether such items are in written form, electronic form, or in any other form**

Vendor shall be required to submit cost or pricing data with the pricing of any modification of this contract to the Contract Administrator in Purchasing Operations. Data may include accounting records, payroll records, employee time sheets, and other information the state deems necessary to perform a fair evaluation of the modification proposal. Contract Administrator or authorized representative of the state shall have the right to examine and audit all of the Vendor's records, including computations and projections, related to:

1. The proposal for modification;
2. The discussions conducted on the proposal, including those related to negotiation;
3. Pricing of the modification; or
4. Performance of the modification.

Vendor shall make available at its office at all reasonable times the materials described in the paragraphs above.

If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

## 2.805 CHANGES

(a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.



- (b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Vendor gives the Contract Administrator written notice stating:**

  - (1) The date, circumstances, and source of the order; and**
  - (2) That the Vendor regards the order as a change order.**
  
- (c) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Vendor to an equitable adjustment.**



## **APPENDIX A—LIST OF CURRENT SITES OF WEATHER BRIEFING SYSTEMS**

The locations of the fifty-three (53) weather briefing systems are as follows:

**Gratiot Community Airport, Alma, MI**  
**Alpena County Regional Airport, Alpena, MI**  
**Ann Arbor Municipal Airport, Ann Arbor, MI**  
**Huron County Memorial Airport, Bad Axe, MI**  
**Beaver Island Airport, Beaver Island, MI**  
**Antrim County Airport, Bellaire, MI**  
**Southwest Michigan Regional Airport, Benton Harbor, MI**  
**Roben - Hood Airport, Big Rapids, MI**  
**Wexford County Airport, Cadillac, MI**  
**Canton-Plymouth-Mettetal Airport, Canton, MI**  
**Tuscola Area Airport, Caro, MI**  
**Charlevoix Municipal Airport, Charlevoix, MI**  
**Fitch H. Beach Municipal Airport, Charlotte, MI**  
**Cheboygan County Airport, Cheboygan, MI**  
**Branch County Memorial Airport, Coldwater, MI**  
**Delta County Airport, Escanaba, MI**  
**Dow Memorial Airport, Frankfort, MI**  
**Gaylord Regional Airport, Gaylord, MI**  
**Abrams Municipal Airport, Grand Ledge, MI**  
**Grosse Ile Municipal Airport, Grosse Ile, MI**  
**Sawyer International Airport, Gwinn, MI**  
**Houghton County Memorial Airport, Hancock, MI**  
**Harbor Springs Municipal Airport, Harbor Springs, MI**  
**Hillsdale Municipal Airport, Hillsdale, MI**  
**Tulip City Airport, Holland, MI**  
**Livingston County Airport, Howell, MI**  
**Ford Airport, Iron Mountain, MI**  
**Jackson County – Reynolds Field, Jackson, MI**  
**Toledo Suburban Airport, Lambertville, MI**  
**MDOT – Bureau of Aeronautics & Freight Services, Lansing, MI**  
**Mason County Airport, Ludington, MI**  
**Mackinac Island Airport, Mackinac Island, MI**  
**Schoolcraft County Airport, Manistique, MI**  
**Brooks Field, Marshall, MI**  
**Mason Jewett Field, Mason, MI**  
**Monroe Custer Airport, Monroe, MI**  
**Mt. Pleasant Municipal Airport, Mt. Pleasant, MI**  
**Luce County Airport, Newberry, MI**  
**Oscoda - Wurtsmith Airport, Oscoda, MI**  
**Owosso Community Airport, Owosso, MI**  
**Pellston Regional Airport of Emmet County, Pellston, MI**  
**St. Clair County International Airport, Port Huron, MI**  
**Presque Isle County / Rogers City Airport, Rogers City, MI**  
**Romeo State Airport, Romeo, MI**  
**Saginaw County - H. W. Browne Airport, Saginaw, MI**  
**Chippewa County Airport, Sault Ste Marie, MI**  
**Sault Ste Marie – Sanderson Airport, Sault Ste Marie, MI**  
**South Haven Area Regional Airport, South Haven, MI**  
**Mackinac County Airport, St. Ignace, MI**



**Kirsch Municipal Airport, Sturgis, MI**  
**Cherry Capital Airport, Traverse City, MI**  
**Oakland / Troy Airport, Troy, MI**  
**West Branch Community Airport, West Branch, MI**



## APPENDIX B—PRICE PROPOSAL SHEETS

### A. Standard System for Providing Aviation Weather Data Services (as Defined) via Access to the Vendors Web-Site (Locked Down Version Only):

Monthly Cost for Delivery of Aviation Weather Data Service (each site)	\$ <u>    N.A.    </u> Per Site
Number of Current Sites	<u>    x 53    </u> Sites
Total Cost for Delivery of Aviation Weather Data Services at all Current Sites for One Month	\$ <u>    N.A.    </u> All Current Sites
Months Per Year	<u>    x 12    </u> Months
Annual Cost for Monthly Services (all sites)	\$ <u>    N.A.    </u> Annual Cost
Cost for Shipping of Components (each site)	\$ <u>    N.A.    </u> Per Site
Number of Current Sites	<u>    x 53    </u> Sites
Total Cost for Shipping of Components to all Current Sites	\$ <u>    N.A.    </u> All Current Sites
Cost for Vendor Installation of One Web Accessible Weather Briefing System	\$ <u>    N.A.    </u> One Site
Number of Current Sites	<u>    x 53    </u> Sites
Total Cost for Vendor to Install All Sites	\$ <u>    N.A.    </u> All Sites

**B. Standard System for Providing Aviation Weather Data Services (as Defined) via Satellite:**

Monthly Cost for Delivery of Aviation Weather Data Service (each site)	\$ <u>110</u> Per Site
Number of Current Sites	<u>x 53</u> Sites
Total Cost for Delivery of Aviation Weather Data Services at all Current Sites for One Month	\$ <u>5,830</u> All Current Sites
Months Per Year	<u>x 12</u> Months
Annual Cost for Monthly Services (all sites)	\$ <u>69,960</u> Annual Cost
Cost for Shipping of Components (each site)	\$ <u>75</u> Per Site
Number of Current Sites	<u>x 50</u> Sites
Total Cost for Shipping of Components to all Current Sites	\$ <u>3,750</u> All Current Sites
Cost for Vendor Installation of One Web Accessible Weather Briefing System	\$ <u>-na-</u> One Site
Number of Current Sites	<u>x 53</u> Sites
Total Cost for Vendor to Install All Sites	\$ <u>-na-</u> All Sites

New sites would be charged under the same schedule plus \$400 installation fee if necessary.

**C. Standard System for Providing Aviation Weather Data Services (as Defined) via Satellite:**

Monthly Cost for Delivery of Aviation Weather Data Service (each site)	\$ <u>110</u> Per Site
Number of Current Sites	<u>x 53</u> Sites
Total Cost for Delivery of Aviation Weather Data Services at all Current Sites for One Month	\$ <u>5,830</u> All Current Sites
Months Per Year	<u>x 12</u> Months
Annual Cost for Monthly Services (all sites)	\$ <u>69,960</u> Annual Cost
Cost for Shipping of Components (each site)	\$ <u>75</u> Per Site
Number of Current Sites	<u>x 50</u> Sites
Total Cost for Shipping of Components to all Current Sites	\$ <u>3,750</u> All Current Sites
Cost for Vendor Installation of One Web Accessible Weather Briefing System	\$ <u>-na-</u> One Site
Number of Current Sites	<u>x 53</u> Sites
Total Cost for Vendor to Install All Sites	\$ <u>-na-</u> All Sites

**New sites would be charged under the same schedule plus \$400 installation fee if necessary.**