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## KEY CONTRACT TERMS For Master Agreement 2015-WR-060-SK

<b><u>Contract Between:</u></b>	Wayne R.E.S.A. and Stertil-Koni
<b><u>Contract Purpose:</u></b>	Master Agreement for Vehicle Lifts and Accessories for Wayne R.E.S.A and authorized CoPro+ members (Michigan local entities)
<b><u>Contract Number:</u></b>	2015-WR-060-SK
<b><u>RFP Number:</u></b>	RFP-WR-0600100915
<b><u>Contractor Name:</u></b>	Stertil-Koni
<b><u>Contractor Address:</u></b>	Stertil-Koni USA, Inc. 200 Log Canoe Circle Stevensville, MD 21666  <b>Stertil-Koni's Michigan Distributor</b> , CTT Equipment, ATTN: Mike Hickey 4072 E. Old Pine Trail Midland, MI 48642
<b><u>Contractor Telephone:</u></b>	989-430-1463
<b><u>Contract Administrator:</u></b>	Wayne R.E.S.A Designee/CoPro+
<b><u>Contract Period:</u></b>	December 1, 2015 – December 31, 2019 (or signed agreement date whatever date is later)
<b><u>Base Contract Years:</u></b>	December 1, 2015 – December 31, 2016 (or signed agreement date whatever date is later)
<b><u>Option Years:</u></b>	January 1, 2017 – December 31, 2017 (Option Year 1) January 1, 2018 – December 31, 2018 (Option Year 2) January 1, 2019 – December 31, 2019

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(Option Year 3)

<b><u>Delivery/Shipment:</u></b>	Refer to Section 1.3
<b><u>Pricing:</u></b>	27% off list price (see additional discounts below) Refer to Section 2 and Attachment A
<b><u>Terms &amp; Conditions:</u></b>	Refer to Section 3
<b><u>F.O.B.:</u></b>	Destination
<b><u>Ordering Options:</u></b>	Phone, Fax, or Email
<b><u>Payment Options:</u></b>	Purchase Order or Direct Voucher (Please refer to section 2.3.1 for p-Card/Credit Card payments)
<b><u>Discounts/Rebates:</u></b>	27% off list price 31% off list price - 3 to 7 lifts 33.5% off list price – 8 or more lifts Refer to Section 2.2 for additional info on discounts
<b><u>Miscellaneous Information:</u></b>	THIS AGREEMENT IS EXTENDED TO AUTHORIZED COPRO+ MEMBERS In order to get best in class pricing this is a full buy program.

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Signature of Contractor's Duly Authorized Representative

THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF THE CONTRACTOR; ANY ALTERATIONS OR ERASURES TO THE OFFER MUST BE INITIALED IN INK BY THE UNDERSIGNED AUTHORIZED REPRESENTATIVE.

The undersigned acknowledges, attests and certifies individually an on behalf of the Contractor that:

(1) He/she is an Authorized Representative of the Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract, if any, issued, and to execute this Contract on behalf of Contractor; (2) Contractor is bound by and will comply with all requirements, specifications, and terms and conditions contained in this Contract (including all listed attachments and Addenda, if any, issued; (3) Contractor will furnish the designated Goods in accordance with the Contract specifications and requirements, and will comply in all respects with the terms of the resulting Contract upon award; and (4) All affirmations contained in the RFP are true and correct.

CONTRACTOR:

WAYNE R.E.S.A.:

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name/Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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## **SECTION 1.0 – CONTRACT REQUIREMENTS**

*\* Words italicized indicate adoption and integration of Stertil-Koni exact response into the Master Agreement.*

### **1.1 Pricing**

In accordance with the requirements of the solicitation, Attachment A provides high level pricing for this contract.

Stertil-Koni is incorporating quantity discounts for various purchase levels. Please see Attachment A and individual price lists with options and accessories for the multiple percentage discount structure as well as the various percentage discounts.

Contractor offers catalog price lists at the available pricing to schools and government entities, as published by each manufacturer. Contractor commits to offering this contract equal or better pricing, which exists in any other current cooperative contracts.

All pricing is FOB Destination and contractor agrees with Net 30 payment terms.

### **1.2 Discounts**

*Stertil-Koni offers a percentage discount based on the following quantities, ranging from 27%-31% off list price (see Attachment A).*

*27% off list price  
31% off list price - 3 to 7 lifts  
33.5% off list price – 8 or more lifts*

### **1.3. Delivery & Acceptance**

#### **1.3.1. Delivery to all locations in Michigan:**

*Contractor will provide delivery throughout the entire state.*

*All deliveries will be coordinated by Stertil-Koni's Michigan Distributor, CTT Equipment, headed by Mike Hickey, who is the owner and exclusive/sole source distributor in the State of Michigan.*

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Contact info is as follows: 4072 E. Old Pine Trail, Midland, MI 48642 – Phone Number: 989.430.1463 – EMAIL: cttequipment@gmail.com, WEB: cttequipment.net

### **1.3.2. Identify FOB terms:**

*Stertil-Koni will deliver products FOB Delivered/Destination.*

### **1.3.3. Time frames for delivery:**

*60 Days for stock items ARO*

*90 days for parallelogram lifts, in-ground lifts, 4 post lifts and 2 post lifts ARO*

### **1.3.4. Carriers used for deliveries:**

*Given the unique shape, weight and transportation considerations of our equipment, Stertil-Koni has developed a very responsive transportation network. We have very competitive rates with all our carriers and have an outstanding record of less than 0.1% in freight damage using our methods.*

### **1.4. Ordering/customer service capabilities and procedures:**

*All purchase orders shall be issued to Stertil-Koni USA, Inc. by: Email: orders@stertil-koni.com Mail: Stertil-Koni USA, Inc. 200 Log Canoe Circle, Stevensville, MD 21666 Fax: 410.643.8901*

*Stertil-Koni staffs an in-house service department to support our network of dedicated distributors and the company's end users. This service department includes a service manager and four highly trained service technicians. Please note that the service personnel are all full-time employees who are 100% dedicated to the SK product line. Three (3) of these service technicians are located in Stevensville, Maryland and one is located in the New York area to more efficiently serve customers nearby. The Stertil-Koni service department assists distributors by providing training as well as servicing and installing equipment. Further, as part of our commitment to the delivery of exceptional customer service, Stertil-Koni maintains and staffs a 24/7 telephone hotline in the event of a technical issue that requires immediate attention. Thus, customers of Stertil-Koni products have direct access to service and technical support around the clock, 24/7, 365 days per year.*

*Our Service Department consists of:*

- 1) Kevin Hymers (Director of Operations)*
- 2) Matthew Murray (Service Manager)*
- 3) Hans Herrera (Service Technician)*
- 4) Mike Nichols (Senior Service Technician)*

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5) Billy Pugliese (Service Technician located in the New York metropolitan area).

### **1.5 Policies and procedures for accepting delivery:**

*At the time of delivery, the equipment will be off loaded from the transportation vehicle by Stertil- Koni's Michigan Distributor, CTT Equipment. CTT will compare the listing of equipment from the PO to the bill of lading to ensure all items have been received. CTT will also inspect the equipment to ensure no shipping damage has taken place. Finally, CTT will coordinate with the end user for equipment set up/installation and training.*

### **1.6 Warranty period and terms:**

*All of our products are covered by the Stertil-Koni Standard Warranty: 1 year labor; 2 years parts; and 5 years parts (applicable in the third instance only on hydraulic cylinders used in our mobile lifting columns).*

*Conditions The warranty period commences from the effective date of acceptance by the customer. A warranty registration form or registration card must be submitted to Stertil-Koni within 30 days of receipt of equipment to establish such date; otherwise the invoice date will become the effective date of acceptance by the customer.*

*Requirements Stertil-Koni lifting equipment must be installed and serviced by Stertil-Koni factory trained and Stertil-Koni factory-authorized service technicians. Stertil-Koni lifting equipment not installed and serviced by Stertil-Koni factory- trained and Stertil-Koni factory-authorized service technicians will result in a voided warranty.*

*Claim Procedure Warranty service is handled through our network of distributors. Each distributor has an assigned geographic area they are responsible to cover. To obtain warranty service, the customer needs to contact their local distributor or Stertil-Koni. A service technician will be scheduled to visit the customer's location and repair the lift. All warranty paperwork will be handled by the local distributor. In the instance of Michigan, the local distributor is CTT Equipment.*

*Structure The local distributor will create the warranty paperwork. The distributor submits the claim paperwork to Stertil-Koni for documentation and processing. Stertil-Koni has a full-time staff that manages all warranty claims, replacement parts, and associated shipping requirements. Documentation of any failed parts is provided to manufacturing as part of the supplier quality control program.*

### **1.7 Reports:**

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The Contractor must submit the following periodic reports to CoPro+: usage reports, including quantity and dollars. The Contractor must submit reports of purchasing activities to the CoPro+ program coordinator that details each ordering activities usage information on a quarterly basis.

### **1.8 Shipping Errors:**

See Section 1.9

### **1.9 Ordering/Customer Service Capabilities and Dispute Resolution Process:**

*All equipment provided by Stertil-Koni and our network of dedicated distributors includes equipment setup and operational training as standard. At any time after the initial sale, the Stertil- Koni group can provide additional operator training. Further, training material is always available in print, web and video formats. Also, when requested by the end user, Stertil-Koni will additionally provide maintenance training on our equipment and accessories.*

*In addition, SK holds regular, ongoing sales and product training meetings at multiple locations around the U.S. At those meetings, equipment maintenance and training is conducted and evaluated in detail.*

*Further, to ensure contract compliance and proactively avoid potential errors, Stertil-Koni has established procedures and systems in place. These procedures and systems were driven in part to fully comply with existing purchasing contracts, such as Stertil-Koni USA's GSA schedule. Regarding the order processing side of the business, we have multiple checkpoints in place.*

- a) The purchase orders from WAYNE RESA customers will be reviewed by two different members of the staff.*
- b) All customer purchase orders are also checked for pricing, discount and all other terms and conditions before the order is entered into our central order process and accounting system (SAP). We have implemented this order entry review process to catch pricing and discount anomalies prior to the order being entered into our system.*
- c) Finally, we check the invoice for pricing and discount compliance before the invoice is sent to the customer. Consequently, if there should be an error in the original quote, an error in the purchase order from the WAYNE RESA customer, or an incorrect order entry input on Stertil-Koni USA's end, it will be discovered in our billing department before we create the invoice.*

*Regarding sales reporting to WAYNE RESA and contract fees payable to WAYNE RESA, we will "tag" all sales arriving from the contract with a special code in SAP. The tagging will*

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*be done in the Order Entry Department. This is a well-established process and will not be unique to WAYNE RESA. It is part of all order entries at Stertil-Koni. This is also the same procedure and system we are currently using for GSA sales and contract fee reporting. A recent GSA audit confirmed that the procedures and systems we have in place are working very well. The GSA auditor was very pleased with the audit, the procedures and systems in place at Stertil-Koni USA.*

***For Stertil Koni, the value added that we bring to the end users we interact with is the depth of our product understanding, the years of field experience of our team, and our commitment to radical customer service. At SK, if the customer is not happy will keep working the situation until we can deliver 100% customer satisfaction.***

*In terms of service capabilities and dispute resolution, our service program process and procedures are second to none. As such, Stertil-Koni (SK) maintains in-house a full line of professionals dedicated to supporting our sales, installation and marketing efforts. The company's in-house sales force consists of 10+ employees and a CAD engineer to provide sales, customer support and technical guidance. In addition, at our headquarters location in Stevensville, we have a dedicated operations/customer support and technical team (available 24/7) – as well as a complete warehousing operation with four employees, a marketing department with three professional employees as well as a financial department and related support staff.*

*The Stertil-Koni organization is dedicated to providing radical customer service with a commitment to a 24/7 response for sales, service and technical inquiries. Stertil-Koni also utilizes a web-based CRM system to track customer satisfaction and a state-of-the-art inventory management system for tracking financial results, product shipments and more.*

*Looking more closely at the process of order receipt, review, confirmation and final processing, our established protocols ensure that what is delivered to the end user meets (and typically exceeds) the end user's expectation.*

*That said, should there be a delay in delivery, the order processing staff will immediately inform the end user and execute a solution to minimize the delay.*

*Issues that could affect customer satisfaction include:*

- *Schedule for delivery and delivery delay: At the time of order confirmation, Stertil Koni provides to the end user a proposed delivery date based on product availability. If this delivery window does not meet the expectation of the end user, SK will make every effort to expedite delivery through advancing the production flow from either of our two manufacturing locations.*
- *Scope of work: For products such as those provided by SK, the scope of work generally refers to a set of support services that accompany the product described on the*



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*purchase order (PO). Since the acquisition of a heavy duty lift is the outcome of an in-depth consultative sales process, Stertil Koni ensures during the sales process that the scope of work to be delivered to the end user is identical to the scope of work expected by the end user. This scope of work is again detailed and confirmed as part of the OC process. Finally, if issues arise at the time of final product delivery with completion of the scope of support services, Stertil Koni will immediately schedule an onsite meeting to determine the exact nature of the dissatisfaction and expeditiously work to resolve the issue.*

- *Service: Service is an integral part of the SOW. That’s why SK maintains an exclusive network of factory trained distribution partners. These partners, as well as the service staff stationed and dispatched from the SK home office, ensure timely response to any issue that may arise.*
- *Quality: Stertil Koni prides itself on being a manufacturer dedicated solely to the heavy duty lifting market. SK produces only top quality products, the majority of which are third party tested and certified to the ANSI/ALI ALCTV-current edition. Stertil Koni is ISO 9001 certified and has in-house research and development capabilities and well as a stringent quality control program. But, if a quality issue arises the problem is quickly identified and rectified using our dedicated factory trained Stertil-Koni personnel.*
- *Budget: Any products or services that may be supplied by SK through a purchasing contract have been negotiated in advance and then confirmed through a multi-set order processing system. Stertil- Koni does not attempt to influence the budget of an end user. We also recognized that changes that could affect customer satisfaction include:*
  - *Corporate Leadership: A corporate management “tree” has been provided with the SK proposal to the Wayne County, Michigan RFP. If any substantial changes were to occur with this tree, it is our company policy that such a change would be communicated directly to all contracting agencies with which SK is involved.*
  - *Structure: SK has been expanding at 10+% annually. This continued growth only fuels the SK organization, which continues to expand to ensure radical customer service.*
  - *Merger or Acquisition: In the unlikely event that SK were to be involved in a merger or acquisition that could affect the ability of SK to perform under a contract obligation, as is company policy, this change would be communicated immediately to WAYNE RESA.*

**1.10 Communication & Marketing Plan to Government Customers:**

*Stertil-Koni takes great pride in being a highly proactive, professional and intensely focused marketing-oriented company that continuously leverages a broad portfolio of traditional and cutting edge techniques to further advance the sale of our heavy duty lifting systems across multiple customer audiences. Thus, upon an award from Wayne RESA, Stertil-Koni will already have in place a comprehensive Marketing Plan to build awareness of the award and generate orders via the new contract.*

*Key elements in our Marketing Plan would include (but not be limited to) the following:*

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- a. *Trade Shows: Stertil-Koni attends 100 trade shows annually, which draw visitors from across the U.S. and Canada. At appropriate venues, Stertil-Koni would provide professional signage, literature and visitor briefings on the topic of the partnership between Stertil-Koni and Wayne RESA.*
- b. *Website Feature: We will feature prominent coverage of the contract award on the homepage of [www.Stertil-Koni.com](http://www.Stertil-Koni.com) and on the "Purchasing" page of our site.*
- c. *Social Media Features on: Facebook, Twitter, Google+ and LinkedIn articles will be published regarding the new contract.*
- d. *eBlast/s: News distribution on a regular basis will be sent to 10,500 opt-in readers – customers, leads and prospects --who currently receive Stertil-Koni updates weekly. Naturally, we will focus on the Michigan marketplace.*
- e. *Blog Feature: Wayne RESA feature articles will be published on Stertil-Koni's blog, [www.VehicleLiftConnection.com](http://www.VehicleLiftConnection.com), throughout the calendar year.*
- f. *Distributor Relations: Email and phone alerts will be direct to Stertil-Koni's dedicated network of 29 exclusive heavy duty vehicle lift distributors across the U.S., Canada and the Caribbean. Again, while Michigan will be our principle area of focus, referrals from across our network – and leads from trade shows nationwide – can involve Michigan-centered projects. That is precisely why our reach extends beyond the borders of any one state.*
- g. *Sales Force Communications: Personal outreach will be made to Stertil-Koni's in-house sales representatives, serving the Michigan marketplace and beyond. Again, business is often referred from one region to another – given the cooperative nature of the SK sales environment.*
- h. *Newsletter: Feature articles will cover the new award in the Stertil-Koni Connection.*
- i. *Email Signatures: Stertil-Koni will encourage its internal team and distributor in the region to feature the Wayne RESA logo, and a description of the award.*
- j. *Press Releases: News alerts will be developed and delivered to municipalities across Michigan, notably leading transportation and procurement trade press, via Stertil-Koni's professional news distribution service, PR Web.*

***Stertil-Koni plans to implement a number of unique marketing techniques and methods to introduce WAYNE RESA to our company. These will be implemented with professional design and copywriting, shortly after contract award, and would include (but not be limited to) the following:***

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1. *eBlast: Stertil-Koni will deliver within 24 hours of the award a professionally designed email newsletter to all distributors, sales representatives and employees*
2. *Website, Social Media, Blog: Also within 24 hours of award, Stertil-Koni will have a featured news article on our website as well as social media and the company's blog.*
3. *"Special Edition" Newsletter: Stertil-Koni will design and produce a "Special Edition" of the company's newsletter – Stertil-Koni Connection – that will be sent to all audiences within the first week of the award.*
4. *Leveraging our Distributor Network: Stertil-Koni will prepare marketing materials that can immediately be used by the company's exclusive distributor network, comprised of 29 independently owned businesses serving and marketing to the U.S., Canada and the Caribbean.*
5. *Trade Shows: Stertil-Koni will produce signage and visual displays at the company's trade show calendar in the region*
6. *News Coverage: Stertil-Koni will issue a WAYNE RESA press release and initiate an ongoing, proactive media relations campaign to garner broad, public visibility of the contract award, notably in the State of Michigan.*
7. *Web Campaign: Stertil-Koni will also initiate a dedicated visibility campaign on the company's website and blog that will incorporate the WAYNE RESA logo and, in the instance of online ads, link to a special "Purchasing" page on the Stertil-Koni website.*
8. *Email Signatures: Stertil-Koni personnel will include news of the contract award on our email signatures, including the WAYNE RESA logo, with link back to the "Purchasing" page on our main website.*

*In sum, Stertil-Koni is focused on "getting out of the blocks quickly" to be up and running to support the award with a world-class marketing effort that will be second to none.*

### **1.11 Primary Account Representative:**

*All deliveries will be coordinated by Stertil-Koni's Michigan Distributor, CTT Equipment, **headed by Mike Hickey**, who is the owner and exclusive/sole source distributor in the State of Michigan. Contact info is as follows: 4072 E. Old Pine Trail, Midland, MI 48642 – Phone Number: 989.430.1463 – EMAIL: cttequipment@gmail.com, WEB: cttequipment.net*

### **1.12 Technology for Supporting the Program:**

1. *Electronic on-line catalog, order entry use by and suitability for the entity's needs.*

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*Stertil-Koni's heavy duty lifting systems are sold through our dedicated distributor network, consisting of 29 companies that are exclusive to SK in our marketplace. CTT Equipment is SK's dedicated distributor in the State of Michigan. Sales of our products are typically achieved in a consultative process and while customers may identify specific lifting systems online, the actual sales are not oriented to an E-procurement ordering process at this time*

2. *Quality of vendor's on-line resources for WAYNE RESA members.*

*SK maintains an extensive portfolio of online resources that WAYNE RESA members can access online at any time. These include, but are not limited to, the following:*

- *Product features, specifications and brochures*
- *Shop equipment and accessory information*
- *SK's video library which includes Product, Operational and Customer Testimonial videos*
- *News Announcements*
- *Contact information and our 24/7 live customer support phone number*
- *Distributor locations by zip code*
- *Sign-up for our SK newsletter*

3. *Specifications and features offered by respondent's products and/or services.*

*Many of the products offered by Stertil-Koni are unique and are not available from other manufacturers. Some of these features include:*

***o EARTHLIFT***, the first hydraulic green mobile column lift in the industry. The Active Retrieval System (AERS) allows operators to achieve 35% more lifting cycles at maximum lifting load.

***o EbrightSmartControlSystem***, incorporates a 7-inch, full color touchscreen, much like a computer tablet, for human/machine interface. This solution puts all the operations of the vehicle lift directly at the fingertips of the person who needs the information most – the busy technician on the shop floor. Further, future updates can be provided via software downloads; performance tracking is captured in a “black box” environment; and, the touch-screen interface is quick, easy-to-use and intuitive. Please note that the ebright Smart Control System is ALI/ETL certified and unmatched in the industry.

***o MechanicalLockingSystem***, starts at just 5 inches and continues up the entire height of the lift every 1 3/8th inches

***o SKYLIFT***: Platform Lift, a truly vertical platform lift which optimizes working space thanks to its vertical lifting design with no crossbeams or columns.

***o WashbayKit***, engineered to be used either outside (for heavy duty vehicles) or inside in a dedicated steam-cleaning bay, this model of the SKYLIFT is fully water-resistant and features with hot galvanized platforms.

***o Ebright Smart Control System***, incorporates a 7-inch, full color touch screen, much like a computer tablet, for human/machine interface. This solution puts all the operations of the vehicle lift directly at the fingertips of the person who needs the information most – the busy technician on the shop floor. Further, future updates can be provided via software

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*downloads; performance tracking is captured in a “black box” environment; and, the touch-screen interface is quick, easy-to-use and intuitive. Please note that the ebright Smart Control System is ALI/ETL certified and unmatched in the industry. Because Stertil-Koni always puts the customer first – and views the delivery of data to our end users as a key support element, further distinguishing our product line -- the ebright Smart Control System will be fully integrated into all of SK’s heavy duty lifting systems within the next 1-3 years.*

#### *4. Technology Services related to maintaining and servicing the equipment*

- Stertil-Koni and our dedicated network of distributors stand ready, 24/7, to supply any type of after-sales support, including extended warranties and onsite inspections/repairs or services on either a time and materials basis or under an established service contract.*
- Stertil-Koni “Kares”: Prominently posted on the SK homepage, it represents our company’s 10-point commitment to transit and municipal customers.*
- SK’s ebright Smart Control System –features vital data such as maintenance notifications, up to 42 individual fault codes affecting the lift, programmable lifting-height settings, tracking of specific operations, information codes and even the operator manual.*

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## **SECTION 2 PRICING INFORMATION/DISCOUNTS/ADMINISTRATIVE FEES**

### **2.1 Contract Pricing**

#### 2.1.1 Pricing

See Pricing Attachment

#### 2.1.2 Price Term

Prices quoted for all vehicle lifts and accessories will be valid until December 31, 2016. Thereafter, any price corrections that become necessary due to changes in market conditions must be mutually agreed upon by both parties. See Section 3.7.4.

#### 2.1.3 Tax Excluded from Price

(a) Sales Tax: Governmental entities are exempt from sales tax for direct purchases. The Contractor's prices must not include sales tax. CoPro+ will furnish exemption certificates for sales tax upon request.

(b) Federal Excise Tax: Governmental entities may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, the Contractor's prices must not include the Federal Excise Tax.

#### 2.1.4 Invoices

The Contractor's invoice must include the following: Date, Quantity, Deliverable, Unit Price, Shipping Cost (if any) and Total Price. In addition, invoices for orders placed using a purchase order must include the purchase order number.

Contractor will coordinate with CoPro+ and their designated technology company regarding the invoice process, billings, and collections.

Contractor shall provide monthly invoice statements/billings electronically to ordering entities and have the ability to provide automatic payment processing capability.

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## **2.2 Discounts/Rebates/Administrative Fee**

### 2.2.1 Prompt Payment Discount

Net 30 Days

### 2.2.1 Pricing and Quantity Discounts

Stertil-Koni is incorporating quantity discounts for various purchase levels. See Attachment A and individual price lists with options and accessories.

### 2.2.3 Administrative Fee

An administrative fee of 2.5% will be collected from Stertil-Koni on a quarterly basis. The fee will be calculated against the quarterly sales volume.

All administrative fees collected will be shared with the Wayne R.E.S.A., CoPro+ and CoPro+ members that order off of the contract.

Administrative Fees will be paid against actual sales volume for each month. At the completion of the year a reconciliation calculation will be done to make sure any payment adjustments, upwards or downwards, are made.

## **2.3 Additional Pricing Information**

### 2.3.1 Payment Options

There is no additional cost for utilizing a direct voucher or purchase order process.

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## SECTION 3.0 - TERMS AND CONDITIONS

### 3.1 Contract Term & Options to Extend Contract

#### 3.1.1 General Authority

The Contract term base year begins 12/01/2015 and expires 12/31/2016. Option year 1 begins 01/01/2017 and expires 12/31/2017. Option year 2 begins 01/01/2018 and expires 12/31/2018. Option year 3 begins 01/01/2019 and expires 12/31/2019. All outstanding Purchase Orders will expire upon the termination of the Contract for any of the reasons listed in section 3, Termination by Wayne R.E.S.A., unless otherwise agreed to in writing by the Wayne R.E.S.A. Administrator or designee. Absent an early termination, Purchase Orders issued, but not expired, by the end of the Contract's term will remain in effect for the balance of the fiscal year for which they were issued.

#### 3.1.2 Option to Extend Contract Term

Wayne R.E.S.A. may exercise the option to extend the contract term for 12 months. Wayne R.E.S.A. will have **three one-year (1 year) options**. Wayne R.E.S.A. can exercise the option unilaterally six months prior to the expiration of the respective option years dated, 06/30/2016, 06/30/2017 and 06/30/2018, with written notice. Any options exercised within the 6 months prior to the expiration must be done by mutual written agreement by both parties.

### 3.2 Laws

#### 3.2.1 General Authority

This Contract is governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of another jurisdiction to the extent not inconsistent with or preempted by federal law.

#### 3.2.2 Compliance with Laws

The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the products and services.

#### 3.2.3 Jurisdiction



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Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, the Contractor consents to venue in Wayne R.E.S.A., Michigan, and irrevocably waives any objections to this venue that it may have, such as lack of personal jurisdiction or forum non-conveniens. The Contractor must appoint agents in the State of Michigan to receive service of process.

### 3.2.4 Nondiscrimination

In the performance of the Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. The Contractor further agrees that every subcontract entered into for the performance of this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

### 3.2.5 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., Wayne R.E.S.A. must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A Contractor of Wayne R.E.S.A., in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, Wayne R.E.S.A. may void any Contract if, after award of the Contract, the name of the Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of the Contractor appears in the register.

### 3.2.6 Environmental Provision

For the purposes of this section, "Hazardous Materials" include asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state, or local laws governing the protection of the public health, natural resources, or the environment:

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(a) The Contractor must use, handle, store, dispose of, process, transport, and transfer any Hazardous Material according to all federal, State, and local laws. Wayne R.E.S.A. must immediately advise the Contractor of the presence of any known Hazardous Material at the work site. If the Contractor encounters material reasonably believed to be Hazardous Material that may present a substantial danger, the Contractor must: (i) immediately stop all affected work; (ii) notify Wayne R.E.S.A. in accordance with Section 2.3.6, Notices; (iii) notify any entities required by law; and (iv) take appropriate health and safety precautions.

(b) Wayne R.E.S.A. may issue a Stop Work Order if the material is a Hazardous Material that may present a substantial danger and the Hazardous Material was not brought to the site by the Contractor, or does not wholly or partially result from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials. Wayne R.E.S.A. may remove the Hazardous Material, render it harmless, or terminate the affected work for Wayne R.E.S.A.'s convenience.

(c) If the Hazardous Material was brought to the site by the Contractor, or wholly or partially results from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to applicable laws.

The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the products and services.

### 3.2.7 Freedom of Information

This Contract and all information submitted to Wayne R.E.S.A. by the Contractor is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, et seq.

### 3.2.8 Abusive Labor Practices

The Contractor may not furnish any Deliverable(s) that were produced fully or partially by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for

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its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

### 3.3 General Provisions

#### 3.3.1 Bankruptcy and Insolvency

Wayne R.E.S.A. may, without prejudice to any other right or remedy, fully or partially terminate this Contract and, at its option, take possession of the work-in-progress and finish the work-in-progress by whatever method Wayne R.E.S.A. deems appropriate if:

- (a) the Contractor files for bankruptcy protection;
- (b) an involuntary petition is filed against the Contractor and not dismissed within 30 days;
- (c) the Contractor becomes insolvent or a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can provide the Deliverable(s) under this Contract.

Contractor will place appropriate notices or labels on the work-in-progress to indicate ownership by Wayne R.E.S.A. To the extent reasonably possible, work-in-progress must be stored separately from other stock and marked conspicuously with labels indicating County ownership.

#### 3.3.2 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and this Contract or the project to which it relates will not be made without prior approval by Wayne R.E.S.A., and only in accordance with the instructions from Wayne R.E.S.A..

#### 3.3.3 Antitrust Assignment

The Contractor assigns to Wayne R.E.S.A. any claim for overcharges resulting from county or federal antitrust violations to the extent that those violations

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concern materials or services supplied by third parties toward fulfillment of the Contract.

### 3.3.4 Legal Effect

Wayne R.E.S.A. is not liable for costs incurred by the Contractor or for payment(s) under this Contract until the Contractor is authorized to perform under Section titled, Ordering.

### 3.3.5 Entire Agreement

This Contract constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter. All attachments referenced in this Contract are incorporated in their entirety and form part of this Contract.

### 3.3.6 Order of Precedence

Any inconsistency or conflict in the terms associated with this Contract will be resolved by giving precedence to the terms in the following descending order:

- (a) Mandatory sections (Contract Term, Legal Effect, Insurance, Indemnification, Termination, Governing Law, Limitation of Liability):
- (b) The most recent Statement of Work related to this Contract;
- (c) All sections from Section 3 - Terms and Conditions, not listed in subsection (a);
- (d) Any attachment or exhibit to the Contract documents;
- (e) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under the Contract; and
- (f) Bidder Responses contained in any of the RFP documents.

### 3.3.7 Headings

The captions and section headings used in this Contract are for convenience only and may not be used to interpret the scope and intent of this Contract.

### 3.3.8 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract. If any provision of this Contract is held unenforceable, then the Contract will be modified to reflect the parties' original intent. All remaining provisions of the Contract remain in full force and effect.

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### 3.3.9 Approval

Unless otherwise provided in this Contract, approval(s) must be in writing and must not be unreasonably withheld or delayed.

### 3.3.10 No Waiver of Default

Failure by a party to insist upon strict adherence to any term of the Contract does not waive that party's right to later insist upon strict adherence to that term, or any other term, of the Contract.

### 3.3.11 Survival

The provisions of this Contract that impose continuing obligations, including warranties, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

### 3.3.12 Electronic Payment Requirement

The Contractor must be able to receive electronic fund transfer (EFT) payments.

### 3.3.13 Cooperation with Third Parties

The Contractor and its Subcontractors must cooperate with Wayne R.E.S.A. and its agents and other contractors, including Wayne R.E.S.A.'s quality assurance personnel. The Contractor must provide reasonable access to its personnel, systems, and facilities related to the Contract to the extent that access will not interfere with or jeopardize the safety or operation of the systems or facilities.

### 3.3.14 Relationship of the Parties

The relationship between Wayne R.E.S.A. and Contractor is that of client and independent contractor. No agent, employee, or servant of the Contractor, or any of its subcontractors, is an employee, agent or servant of Wayne R.E.S.A.. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, and subcontractors during the performance of the Contract.

### 3.3.15 Time of Performance

(a) The Contractor must immediately notify Wayne R.E.S.A. upon becoming aware of any circumstances that may reasonably be expected to jeopardize the completion of any Deliverable(s) by the scheduled due dates in the latest County-approved delivery schedule and must inform Wayne R.E.S.A. of the projected actual delivery date.

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(b) If the Contractor believes that a delay in performance by Wayne R.E.S.A. has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must immediately notify Wayne R.E.S.A. and, to the extent practicable, continue to perform its obligations according to the Contract time periods. The Contractor will not be in default for a delay in performance to the extent the delay is caused by Wayne R.E.S.A..

### 3.3.16 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, acts or omissions of common carriers, fire, riots, civil disorders, labor disputes, embargoes, 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 a party; provided the non-performing party and any Subcontractors are without fault in causing the default or delay, and the 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.

If a party does not perform its contractual obligations for any of the reasons listed, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. The non-performing party must promptly notify the other party immediately after the excusable failure occurs, and when it abates or ends. Both parties must use commercially reasonable efforts to resume performance.

If any of the reasons listed substantially prevent, hinder, or delay the Contractor's performance of the Deliverable(s) for more than 10 Days, and Wayne R.E.S.A. reasonably determines that performance is not likely to be resumed within a period of time that is satisfactory to Wayne R.E.S.A., Wayne R.E.S.A. may: (a) procure the affected Deliverable(s) from an alternate source without liability for payment so long as the delay in performance continues; or (b) terminate any portion of the Contract so affected and equitably adjust charges payable to the Contractor to reflect those Deliverable(s) that are terminated. Wayne R.E.S.A. must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date.

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The Contractor will not have the right to any additional payments from Wayne R.E.S.A. as a result of any Excusable Failure or to payments for Deliverable(s) not provided as a result of the Excusable Failure. The Contractor will not be relieved of a default or delay caused by acts or omissions of its Subcontractors except to the extent that a Subcontractor experiences an Excusable Failure and the Contractor 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, including disaster recovery plans.

### 3.3.17 Retention of Records

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of seven years after the Contractor performs any work under this Contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

### 3.3.18 Examination of Records

Wayne R.E.S.A., upon 10 days' notice to the Contractor, may examine and copy any of the Contractor's records that relate to this Contract. Wayne R.E.S.A. does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with this Contract.

### 3.3.19 Audit Resolution

If necessary, the Contractor and Wayne R.E.S.A. will meet to review any audit report promptly after its issuance. The Contractor must respond to each report in writing within 30 days after receiving the report, unless the report specifies a shorter response time. The Contractor and Wayne R.E.S.A. must develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

### 3.3.20 Errors

(a) If an audit reveals any financial errors in the records provided to Wayne R.E.S.A., the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full.

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However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of the Contract. If a balance remains after four invoices, the remaining amount will be due as a payment or refund within 45 days of the last invoice on which the balance appeared or upon termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between Wayne R.E.S.A.'s actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs.

### 3.3.21 Disclosure of Litigation

(a) Within 30 days after receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") that arises during the term of this Contract, the Contractor must disclose the following to the Contract Administrator:

- (i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;
- (ii) A parole or probation Proceeding;
- (iii) A Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and
- (iv) A civil Proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.

(b) Information provided to Wayne R.E.S.A. from the Contractor's publicly filed documents will satisfy the requirements of this Section.

(c) If any Proceeding that is disclosed to Wayne R.E.S.A. or of which Wayne R.E.S.A. otherwise becomes aware, during the term of this Contract, would cause a reasonable party to be concerned about: (i) the ability of the Contractor (or a Subcontractor) to continue to perform this Contract; or (ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of this Contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide Wayne R.E.S.A. all requested reasonable assurances



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that the Contractor and its Subcontractors will be able to continue to perform this Contract.

### 3.3.22 Other Disclosures

The Contractor must notify County Administrator within 30 days of:

- (a) becoming aware that a change in the Contractor's ownership or officers has occurred or is certain to occur; or
- (b) any changes to company affiliations.

### 3.3.23 CoPro+ Requirements

- (a) The Contractor will work with CoPro+ to ensure that all purchasers are members before extending the Contract pricing.
- (b) To the extent that CoPro+ Members purchase Deliverable(s) under this Contract, the quantities of Deliverable(s) purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.
- (c) The Contractor must submit invoices to and receive payment from CoPro+ Members, Participating Entities, on a direct and individual basis.

### 3.3.24 Administrative Fee

The Contractor must collect an administrative fee on all sales transacted under this Contract and remit the fee within 30 days after the end of each month. The administrative fee will equal the stated percentage amount that is agreed upon by both Wayne R.E.S.A. and the supplier.

### 3.3.25 PCI Data Security Standard

- (a) Contractors that process, transmit or store credit/debit cardholder data, must adhere to the Payment Card Industry (PCI) Data Security Standards. The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the CoPro+ members or for other uses specifically authorized by law.
- (b) The Contractor must notify the CCI (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the Visa, MasterCard, Discover and state Acquirer representative(s), and/or a PCI approved third party to conduct a thorough security review. The Contractor must make the forensic

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report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.

(c) The Contractor must properly dispose of cardholder data, in compliance with PCI standards, when it is no longer needed. The Contractor must continue to treat cardholder data as confidential upon contract termination.

(d) Upon written request from the Contract Administrator, the Contractor must provide the CCI with an annual Attestation of Compliance (AOC) or a Report on Compliance (ROC) showing the contractor is in compliance with the PCI Data Security Standards. The Contractor must notify the CCI of all failures to comply with the PCI Data Security Standard.

### **3.4 Insurance**

#### **3.3.1 Liability Insurance**

For the purpose of this Section, "County" includes its departments, divisions, agencies, offices, commissions, officers, employees, and agents.

(a) The following apply to all insurance requirements:

(i) Wayne R.E.S.A., in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.

(ii) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, Wayne R.E.S.A. is entitled to coverage to the extent of the higher limits. The minimum limits of coverage specified are not intended, and may not be construed to limit any liability or indemnity of the Contractor to any indemnified party or other persons.

(iii) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without Wayne R.E.S.A.'s approval, Wayne R.E.S.A. may, after giving the Contractor at least 30 days notice, pay the premium or procure similar insurance coverage from another company or companies. Wayne R.E.S.A. may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.

(b) The Contractor must:

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(i) provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect Wayne R.E.S.A. from claims that are alleged or may arise or result from the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.

(ii) waive all rights against Wayne R.E.S.A. for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.

(iii) ensure that all insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by Wayne R.E.S.A..

(iv) obtain insurance, unless Wayne R.E.S.A. approves otherwise, from any insurer that has an A.M. Best rating of "A" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by Wayne R.E.S.A.. All policies of insurance must be issued by companies that have been approved to do business in Wayne R.E.S.A.

(v) maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three years following the termination of this Contract.

(vi) pay all deductibles.

(vii) pay for and provide the type and amount of insurance checked  below:

(A) Commercial General Liability Insurance

Minimal Limits:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations;

\$2,000,000 Products/Completed Operations Aggregate Limit;

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\$1,000,000 Personal & Advertising Injury Limit; and  
\$1,000,000 Each Occurrence Limit.

Deductable maximum:

\$50,000 Each Occurrence

Additional Requirements:

The Contractor must list Wayne R.E.S.A. of Montcalm, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insured's on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

(B) Umbrella or Excess Liability Insurance

Minimal Limits:

\$10,000,000 General Aggregate

Additional Requirements:

Umbrella or Excess Liability limits must at least apply to the insurance required in (A), General Commercial Liability. The Contractor must list Wayne R.E.S.A. of Montcalm, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insured's on the certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

(C) Motor Vehicle Insurance

Minimal Limits:

If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.

(D) Hired and Non-Owned Motor Vehicle Coverage

Minimal Limits:

\$1,000,000 Per Accident

Additional Requirements:

The Contractor must list Wayne R.E.S.A. of Montcalm, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insured's on the vehicle liability certificate. The Contractor must also provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

(E) Workers' Compensation Insurance

Minimal Limits:

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The Contractor must provide Workers' Compensation coverage according to applicable laws governing work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, the Contractor must provide proof of an approved self-insured authority by the jurisdiction of domicile.

For employees working outside of the state of the Contractor's domicile, the Contractor must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Additional Requirements:

The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable. Contractor must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

(F) Employers Liability Insurance

Minimal Limits:

\$100,000 Each Accident;

\$100,000 Each Employee by Disease

\$500,000 Aggregate Disease

Additional Requirements:

The Contractor must list Wayne R.E.S.A. of Montcalm, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insured's on the certificate.

### 3.4.2 Subcontractor Insurance Coverage

Except where Wayne R.E.S.A. has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 3.4.1, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

### 3.4.3 Certificates of Insurance and Other Requirements

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that Wayne R.E.S.A. and its agents, officers, and employees are listed as additional insured's under each commercial general liability and commercial automobile

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liability policy. The Contractor must provide Wayne R.E.S.A. Administrator with all applicable certificates of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in Section 3.4.1, Liability Insurance. Each certificate must be on the standard "accord" form or equivalent and **MUST CONTAIN THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER**. Each certificate must be prepared and submitted by the insurer and must contain a provision indicating that the coverage afforded will not be cancelled, materially changed, or not renewed without 30 days prior notice, except for 10 days for nonpayment of premium, to Wayne R.E.S.A. Administrator.

### **3.5 Indemnification**

#### **3.5.1 General Indemnification**

To the extent permitted by law, the Contractor must indemnify, defend, and hold Wayne R.E.S.A. harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor, any of its subcontractors, or by anyone else for whose acts any of them may be liable.

#### **3.5.2 Employee Indemnification**

In any claims against Wayne R.E.S.A., its departments, agencies, commissions, officers, employees, and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts, or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, 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 provisions.

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

(a) To the extent permitted by law, the Contractor must indemnify and hold Wayne R.E.S.A. harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest, and penalties) resulting from any action threatened or brought against Wayne R.E.S.A. to the extent that the action is based on a claim that any piece of equipment, software, commodity, or service supplied by the Contractor or its subcontractors, or its operation, use,

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or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

(b) If, in Wayne R.E.S.A.'s or the Contractor's opinion, any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, is likely to become the subject of an infringement claim, the Contractor must, at its expense: (i) procure for the State the right to continue using the equipment, software, commodity or service or, if this option is not reasonably available to the Contractor; (ii) replace or modify to Wayne R.E.S.A.'s satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if this option is not reasonably available to Contractor; (iii) accept its return by Wayne R.E.S.A. with appropriate credits to Wayne R.E.S.A. against the Contractor's charges and reimburse Wayne R.E.S.A. for any losses or costs incurred as a consequence of Wayne R.E.S.A. ceasing its use and returning it.

(c) Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend Wayne R.E.S.A. for, or to pay any costs, damages or attorneys' fees related to, any infringement claim based upon: (i) equipment, software, commodity or service developed based on written specifications of Wayne R.E.S.A.; (ii) use of the equipment, software, or commodity in a configuration other than implemented or approved by the Contractor, including any modification of the same by Wayne R.E.S.A.; or (iii) the combination, operation, or use of the equipment, software, or commodity with equipment, software, or commodities not supplied by the Contractor under this Contract.

#### 3.5.4 Continuing Obligation

The Contractor's duty to indemnify continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

#### 3.5.5 Indemnification Procedures

These procedures apply to all indemnity obligations:

(a) After Wayne R.E.S.A. receives notice of an action or proceeding involving a claim for which it will seek indemnification, Wayne R.E.S.A. must promptly notify the Contractor of the claim and take, or assist the Contractor in taking, any reasonable action to avoid a default judgment against the Contractor. Failure to notify the Contractor does not relieve the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the notification failure. Within 10 days following receipt of notice

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from Wayne R.E.S.A. relating to any claim, the Contractor must notify Wayne R.E.S.A. whether the Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying the Contractor of a claim and before Wayne R.E.S.A. receives the Contractor's Notice of Election, Wayne R.E.S.A. is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs, including attorney fees, incurred by Wayne R.E.S.A. in defending against the claim during that period.

(b) If the Contractor delivers a Notice of Election relating to any claim: (i) Wayne R.E.S.A. is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in handling the claim and to monitor and advise Wayne R.E.S.A. about the status and progress of the defense; (ii) the Contractor must, at the request of Wayne R.E.S.A., demonstrate the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise Wayne R.E.S.A. about the status and progress of the defense and must obtain prior approval of Wayne R.E.S.A. before entering into any settlement of the claim or ceasing to defend against the claim; and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, Wayne R.E.S.A. has the right, at its own expense, to control the defense of that portion of the claim. Wayne R.E.S.A. may retain control of the defense and settlement of a claim by notifying the Contractor within 10 days after Wayne R.E.S.A.'s receipt of the Contractor's information requested by Wayne R.E.S.A. under clause (ii) of this paragraph, if Wayne R.E.S.A. determines that the Contractor has failed to demonstrate to the reasonable satisfaction of Wayne R.E.S.A. the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of Wayne R.E.S.A., or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents Wayne R.E.S.A. under 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 the Contractor does not deliver a Notice of Election relating to any claim of which it is notified, Wayne R.E.S.A. may defend the claim in a manner it deems appropriate, at the cost and expense of the Contractor. If it is determined that the claim was one against which the Contractor was required to indemnify Wayne R.E.S.A., upon request of Wayne R.E.S.A., the Contractor must promptly reimburse Wayne R.E.S.A. for all reasonable costs and expenses.



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### 3.5.6 Limitation of Liability

Neither the Contractor nor Wayne R.E.S.A. is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this

## 3.6 Warranties

### 3.6.1 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable of fulfilling and will fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workmanlike manner and must meet the performance and operational standards required under this Contract.

(b) The Contract appendices, attachments, and exhibits identify the equipment, software, and services necessary for the Deliverable(s) to comply with the Contract's requirements.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to Wayne R.E.S.A. by Contractor or developed by the Contractor for this Contract, and Contractor has all of the rights necessary to convey to Wayne R.E.S.A. the ownership rights or licensed use, as applicable, of any Deliverable(s). None of the Deliverable(s) provided by Contractor to Wayne R.E.S.A., nor their use by Wayne R.E.S.A., will infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party.

(d) If the Contractor procures any equipment, software, or other Deliverable(s) for Wayne R.E.S.A. (including equipment, software, and other Deliverable(s) manufactured, re-marketed or otherwise sold by the Contractor or under the Contractor's name), then the Contractor must assign or otherwise transfer to Wayne R.E.S.A. or its designees, or afford Wayne R.E.S.A. the benefits of, any manufacturer's warranty for the Deliverable(s).

(e) The Contract signatory has the authority to enter into this Contract on behalf of the Contractor.

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(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, will have, or will acquire, any interest that would conflict in any manner with the Contractor's performance of its duties and responsibilities to Wayne R.E.S.A. or otherwise create an appearance of impropriety with respect to the award or performance of this Contract. The Contractor must notify Wayne R.E.S.A. about the nature of any conflict or appearance of impropriety within two days of learning about it.

(h) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will accept anything of value based on an understanding that the actions of the Contractor, its affiliates, or its employees on behalf of Wayne R.E.S.A. would be influenced. The Contractor must not attempt to influence any County employee by the direct or indirect offer of anything of value.

(i) Neither the Contractor nor any affiliates, nor any employee of either, has paid or agreed to pay any person, other than bona fide employees and consultants working solely for the Contractor or the affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The Contractor arrived at its proposed prices independently, without communication or agreement with any other bidder for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this Contract to any other bidder before the award of the Contract. The Contractor made no attempt to induce any other person or entity to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by the Contractor to Wayne R.E.S.A. in connection with the award of this Contract fairly and accurately represent the Contractor's business, properties, financial condition, and results of operations as of the respective dates covered by the financial statements, reports, or other information. There has been no material adverse change in the Contractor's business, properties, financial condition, or results of operation.

(l) All written information furnished to Wayne R.E.S.A. by or for the Contractor in connection with the award of this Contract is true, accurate, and complete, and contains no false statement of material fact nor omits any material fact that would make the submitted information misleading.

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(m) It will immediately notify Wayne R.E.S.A. Administrator if any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract is awarded.

#### 3.6.2 Warranty of Merchantability

The Deliverable(s) provided by the Contractor must be merchantable.

#### 3.6.3 Warranty of Fitness for a Particular Purpose

The Deliverable(s) provided by the Contractor must be fit for the purpose(s) identified in this Contract.

#### 3.6.4 Warranty of Title

The Contractor must convey good title to any Deliverable(s) provided to Wayne R.E.S.A. All Deliverable(s) provided by the Contractor must be delivered free from any security interest, lien, or encumbrance of which Wayne R.E.S.A., at the time of contracting, has no knowledge. Deliverable(s) provided by the Contractor must be delivered free of any rightful claim of infringement by any third person.

#### 3.6.5 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in Section 3.6, Warranties, the breach may be considered a material default.

### **3.7 Contract Administration**

#### 3.7.1 Issuing Office

This Contract is issued by Wayne R.E.S.A. on behalf of all counties and local units of government. Wayne R.E.S.A. Administrator or designee is the only entity authorized to modify the terms and conditions of this Contract, including the prices and specifications. The Contract Administrator will be designated at the time of the contract award.

#### 3.7.2 Contract Administrator

The Contract Administrator will monitor and coordinate Contract activities on a day-to-day basis.

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### 3.7.3 Contract Changes

(a) If Wayne R.E.S.A. requests or directs the Contractor to provide any Deliverable(s) that the Contractor believes are outside the scope of the Contractor's responsibilities under the Contract, the Contractor must notify Wayne R.E.S.A. before performing the requested activities. If the Contractor fails to notify Wayne R.E.S.A., any activities performed will be considered in-scope and not entitled to additional compensation or time. If the Contractor begins work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of Wayne R.E.S.A., retract any out-of-scope work that would adversely affect the Contract.

(b) Wayne R.E.S.A. or the Contractor may propose changes to the Contract. If the Contractor or Wayne R.E.S.A. requests a change to the Deliverable(s) or if Wayne R.E.S.A. requests additional Deliverable(s), the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, Wayne R.E.S.A. Administrator will prepare and issue a notice that describes the change, its effects on the Deliverable(s), and any affected components of the Contract (Contract Change Notice).

(c) No proposed change may be performed until Wayne R.E.S.A. issues a duly executed Contract Change Notice for the proposed change.

### 3.7.4 Price Changes

Prices quoted for all products will be valid until December 31, 2016. Thereafter, any price corrections that become necessary due to changes in market conditions must be mutually agreed upon by both parties. Requested changes may include increases or decreases in price and must be accompanied by supporting information indicating market support of proposed modifications (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics).

(a) Wayne R.E.S.A. may request a Review upon 30 days written notice that specifies what Deliverable is being reviewed. At the Review, each party may present supporting information including information created by, presented, or received from third parties.

(b) Following the presentation of supporting information, both parties will have 30 days to review the supporting information and prepare any written response.

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(c) In the event the Review reveals no need for modifications of any type, pricing will remain unchanged unless mutually agreed to by the parties. However, if the Review reveals that changes may be recommended, both parties will negotiate in good faith for 30 days unless extended by mutual agreement of the parties.

(d) If the supporting information reveals a reduction in prices is necessary and Contractor agrees to reduce rates accordingly, then Wayne R.E.S.A. may elect to exercise the next one-year option, if available.

(e) If the supporting information reveals a reduction in prices is necessary and the parties are unable to reach agreement, then Wayne R.E.S.A. may eliminate all remaining Contract renewal options.

(f) Any changes based on the Review must be implemented through the issuance of a Contract Change Notice.

### 3.7.5 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless otherwise provided in this Contract, the parties will not unreasonably delay, condition or withhold their consent, decision, or approval any time it is requested or reasonably required in order for the other party to perform its responsibilities under the Contract.

### 3.7.6 Assignments

(a) Neither party may assign this Contract, or assign or delegate any of its duties or obligations under the Contract, to another party (whether by operation of law or otherwise), without the prior approval of the other party. Wayne R.E.S.A. may, however, assign this Contract to any other County, or local unit of government without the prior approval of the Contractor.

(b) If the Contractor intends to assign this Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify Wayne R.E.S.A. and provide adequate information about the assignee at least 90 days before the proposed assignment or as otherwise provided by law or court order. Wayne R.E.S.A. may withhold approval from proposed assignments, subcontracts, or novations if Wayne R.E.S.A. determines, in its sole discretion, that the transfer of responsibility would decrease Wayne R.E.S.A.'s likelihood of receiving performance on the Contract or Wayne R.E.S.A.'s ability to recover damages.

(c) If Wayne R.E.S.A. permits an assignment of the Contractor's right to receive payments, the Contractor is not relieved of its responsibility to perform any of its contractual duties. All payments must continue to be made to one entity.

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### **3.8 Acceptance of Deliverables**

#### **3.8.1 Delivery Responsibilities**

Unless otherwise specified by Wayne R.E.S.A., the following are applicable to all deliveries:

(a) The Contractor is responsible for delivering the Deliverable(s) by the applicable delivery date to the location(s) specified in the SOW or individual Purchase Order.

(b) The Contractor must ship the Deliverable(s) "F.O.B. Destination, within Government Premises."

(c) Wayne R.E.S.A. will examine all packages at the time of delivery. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at the time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

#### **3.8.2 Process for Acceptance of Deliverable(s)**

Wayne R.E.S.A.'s review period for acceptance of the Deliverable(s) is governed by the applicable Statement of Work, and if the Statement of Work does not specify Wayne R.E.S.A.'s review period, it is by default 30 Days for a Deliverable (County Review Period). Wayne R.E.S.A. will notify the Contractor by the end of Wayne R.E.S.A. Review Period that either:

(a) the Deliverable is accepted in the form delivered by the Contractor;

(b) the Deliverable is accepted, but noted deficiencies must be corrected;  
or

(c) the Deliverable is rejected along with notation of any deficiencies that must be corrected before acceptance of the Deliverable.

If Wayne R.E.S.A. delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Days resubmit the Deliverable(s) with an explanation that demonstrates all corrections have been made to the original Deliverable(s). The Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from the Contractor, Wayne R.E.S.A. will have a reasonable additional period of time, not to exceed 30 Days, to accept the corrected Deliverable.

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### 3.8.3 Acceptance of Deliverable(s)

(a) Wayne R.E.S.A.'s obligation to comply with any County Review Period is conditioned on the timely delivery of the Deliverable(s). Wayne R.E.S.A. Review Period will begin on the first Business Day following Wayne R.E.S.A.'s receipt of the Deliverable(s).

(b) Wayne R.E.S.A. may inspect the Deliverable to confirm that all components have been delivered without material deficiencies. If Wayne R.E.S.A. determines that the Deliverable or one of its components has material deficiencies, Wayne R.E.S.A. may reject the Deliverable without performing any further inspection or testing.

(c) Wayne R.E.S.A. will only approve a Deliverable after confirming that it conforms to and performs according to its specifications without material deficiency. Wayne R.E.S.A. may, in its discretion, conditionally approve a Deliverable that contains material deficiencies if Wayne R.E.S.A. elects to permit the Contractor to correct those deficiencies post-approval. The Contractor remains responsible for working diligently to correct within a reasonable time at the Contractor's expense, all deficiencies in the Deliverable that remain outstanding at the time of County approval.

(d) If, after three opportunities the Contractor is unable to correct all deficiencies, Wayne R.E.S.A. may: (i) demand that the Contractor cure the failure and give the Contractor additional time to do so at the sole expense of the Contractor; (ii) keep the Contract in force and perform, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the Contract price plus an additional amount equal to 10% of Wayne R.E.S.A.'s cost to cure the deficiency; or (iii) fully or partially terminate the Contract for default by giving notice to the Contractor. Notwithstanding the foregoing, Wayne R.E.S.A. cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat County Review Period that could reasonably have been discovered during a prior County Review Period.

(e) Wayne R.E.S.A., at any time and in its reasonable discretion, may reject the Deliverable without notation of all deficiencies if the acceptance process reveals deficiencies in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable.

## 3.9 Stop Work Order & Termination

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### 3.9.1 Stop Work Order

Wayne R.E.S.A. may, by issuing a Stop Work Order, require that the Contractor fully or partially stop work for a period of up to 90 calendar days, and for any further period to which the parties agree. Upon receipt of the Stop Work Order, the Contractor must immediately take all reasonable steps to minimize incurring costs. Within the period of the Stop Work Order, Wayne R.E.S.A. must either: (a) terminate the Stop Work Order; or (b) terminate the work covered by the Stop Work Order.

### 3.9.2 Termination of Stop Work Order

The Contractor must resume work if Wayne R.E.S.A. terminates a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, if: (a) the Stop Work Order results in an increase in the time required for, or the Contractor's costs properly allocated to, the performance of the Contract; and (b) the Contractor asserts its right to an equitable adjustment within 20 days after the end of the Stop Work Order by submission of a request for adjustment to Wayne R.E.S.A.; provided that, Wayne R.E.S.A. may receive and act upon the Contractor's request submitted at any time before final payment. Any adjustment will conform to the requirements of Section 3.7.3, Contract Changes.

### 3.9.3 Allowance of the Contractor's Costs

If Wayne R.E.S.A. fully or partially terminates the work covered by the Stop Work Order, for reasons other than material breach, the termination is a termination for convenience under Section 3.9.6, Termination by Wayne R.E.S.A., and Wayne R.E.S.A. will pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. Wayne R.E.S.A. is not liable to the Contractor for lost profits because of a Stop Work Order issued under Section 3.9, Stop Work.

### 3.9.4 Notice and Right to Cure

If the Contractor breaches the Contract, and Wayne R.E.S.A., in its sole discretion, determines that the breach is curable, Wayne R.E.S.A. will provide the Contractor notice of the breach and a period of at least 30 days to cure the breach. Wayne R.E.S.A. does not need to provide notice or an opportunity to cure for successive or repeated breaches or if Wayne R.E.S.A. determines, in its sole discretion, that a 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.



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### 3.9.5 Termination for Cause

(a) Wayne R.E.S.A. may fully or partially terminate this Contract for cause by notifying the Contractor if the Contractor: (i) breaches any of its material duties or obligations (including a Chronic Failure to meet any SLA); or (ii) fails to cure a breach within the time period specified in a notice of breach provided by Wayne R.E.S.A..

(b) The Contractor must pay all reasonable costs incurred by Wayne R.E.S.A. in terminating this Contract for cause, including administrative costs, attorneys' fees and court costs, and any additional costs Wayne R.E.S.A. incurs to procure the Deliverable(s) from other sources. Re-procurement costs are not consequential, indirect, or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Deliverable(s).

(c) If Wayne R.E.S.A. partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those Deliverable(s) that are terminated. Wayne R.E.S.A. must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date. Any services or related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If Wayne R.E.S.A. terminates this Contract for cause and it is determined, for any reason, that the Contractor was not in breach of the Contract, the termination will be deemed to have been a termination under Section 2.16.3, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.

### 3.9.6 Termination for Convenience

Wayne R.E.S.A. may fully or partially terminate this Contract for its convenience if Wayne R.E.S.A. determines that a termination is in Wayne R.E.S.A.'s best interest. Reasons for the termination are within the sole discretion of Wayne R.E.S.A. and may include: (a) Wayne R.E.S.A. no longer needs the Deliverable(s) specified in this Contract; (b) a relocation of office, program changes, or changes in laws, rules, or regulations make the Deliverable(s) no longer practical or feasible for Wayne R.E.S.A.; (c) unacceptable prices for Contract changes; or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by Wayne R.E.S.A.. Wayne R.E.S.A. may terminate this Contract for its convenience by giving Contractor notice at least 30 days before the date of termination. If Wayne R.E.S.A. chooses to terminate this Contract in part, any charges payable to the Contractor must be equitably adjusted to reflect those Deliverable(s) that are terminated.

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### 3.9.7 Termination for Criminal Conviction

Wayne R.E.S.A. may terminate this Contract immediately and without further liability or penalty if the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor is convicted of a criminal offense related to a County, public, or private Contract or subcontract.

### 3.9.8 Rights and Obligations upon Termination

(a) If Wayne R.E.S.A. terminates this Contract for any reason, the Contractor must:

- (i) stop all work as specified in the notice of termination;
- (ii) take any action that may be necessary, or that Wayne R.E.S.A. may direct, to preserve and protect Deliverable(s) or other County property in the Contractor's possession;
- (iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of Wayne R.E.S.A.;
- (iv) transfer title in and deliver to Wayne R.E.S.A., unless otherwise directed, all Deliverable(s) intended to be transferred to Wayne R.E.S.A. at the termination of the Contract (which will be provided to Wayne R.E.S.A. on an "As-Is" basis except to the extent Wayne R.E.S.A. compensated the Contractor for warranty services related to the materials);
- (v) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies; and
- (vi) take all appropriate action to secure and maintain County information confidentially.

(b) If Wayne R.E.S.A. terminates this Contract under Section 3.9.6, Termination for Convenience, Wayne R.E.S.A. must pay the Contractor all charges due for Deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by Wayne R.E.S.A. All completed or partially completed Deliverable(s) prepared by the Contractor, at the option of Wayne R.E.S.A., become Wayne R.E.S.A.'s property, and the Contractor is entitled to receive equitable compensation for those Deliverable(s). Regardless of the basis for the

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termination, Wayne R.E.S.A. is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to Deliverable(s) not actually completed.

(c) If Wayne R.E.S.A. terminates this Contract for any reason, Wayne R.E.S.A. may assume, at its option, any subcontracts and agreements for Deliverable(s), and may pursue completion of the Deliverable(s) by replacement contract or as Wayne R.E.S.A. deems expedient.

### 3.9.9 Reservation of Rights

In the event of any full or partial termination of this Contract, each party reserves all rights or remedies otherwise available to the party.

### 3.9.10 Contractor Transition Responsibilities

If this Contract terminates under, Termination by Wayne R.E.S.A., the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to Wayne R.E.S.A. or a third party designated by Wayne R.E.S.A. within a reasonable period of time that does not exceed 30 days from the date of termination. The Contractor must provide any required reports and documentation.

### 3.9.11 Termination by Contractor

If Wayne R.E.S.A. breaches the Contract and the Contractor, in its sole discretion, determines that the breach is curable, the Contractor will then provide Wayne R.E.S.A. with notice of the breach and a time period (not less than 30 days) to cure the breach.

The Contractor may terminate this Contract if Wayne R.E.S.A.: (a) materially breaches its obligation to pay the Contractor undisputed amounts due; (b) breaches its other obligations to an extent that makes it impossible or commercially impractical for the Contractor to complete the Deliverable(s); or (c) does not cure the breach within the time period specified in a notice of breach. The Contractor must discharge its obligations under Section 3.10, Dispute Resolution, before it terminates the Contract.

## 3.10 Dispute Resolution

### 3.10.1 General

(a) The Contractor must submit any claim related to this Contract to Wayne R.E.S.A. in writing with all supporting documentation for the claim.

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(b) The representatives of the Contractor and Wayne R.E.S.A. must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information related to the claim.

(c) During the course of negotiations, each party will honor all reasonable requests made by the other for non-privileged information reasonably related to the claim.

### 3.10.2 Informal Dispute Resolution

(a) If, after a reasonable time following submission of a claim the parties are unable to resolve the claim, the parties must meet with Wayne R.E.S.A. Administrator Director or his or her designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings.

(b) Within 60 calendar days of the meeting with Wayne R.E.S.A. Administrator, or such other time as agreed to by the parties, Wayne R.E.S.A. Administrator will issue a written recommendation regarding settlement of the claim. The Contractor must notify County within 21 days after the recommendation is issued whether the Contractor accepts or rejects the recommendation. Acceptance by the Contractor constitutes the final resolution of the claim addressed in the recommendation, and the Contractor may not assert that claim in any future litigation or other proceeding between the parties.

(c) The recommendation of Wayne R.E.S.A. Administrator is not admissible in any future litigation or other proceeding between the parties. The conduct and statements made during the course of negotiations or dispute resolution are subject to Michigan Rule of Evidence 408 and are not admissible in any future litigation or other proceeding between the parties.

(d) This section will not be construed to prohibit either party from instituting formal proceedings to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 3.10.3, Injunctive Relief.

### 3.10.3 Injunctive Relief

A claim between Wayne R.E.S.A. and the Contractor is not subject to the provisions of Section 3.10.2, Informal Dispute Resolution, where a party makes a good faith determination that a breach of the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other injunctive relief is the only adequate remedy.

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#### 3.10.4 Continued Performance

Each party will continue performing its obligations under the Contract while a claim is being resolved, except to the extent the claim precludes performance and without limiting either party's right to terminate the Contract. A claim involving payment does not preclude performance.