

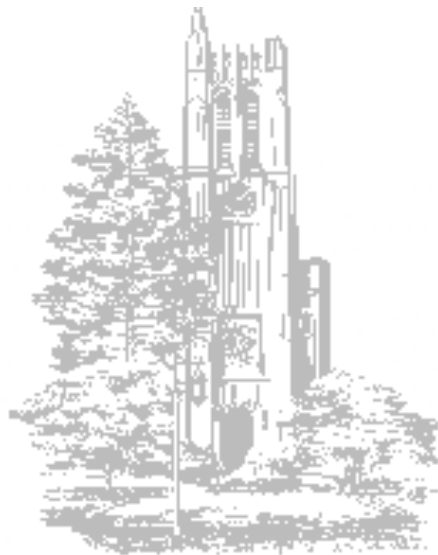


# Request for Proposal

**HTM Board RFP #47-01032018 -001**

**ISSUE DATE: January 4, 2018**

**RESPONSE DATE: February January 25, 2018**



## University Contact:

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**For questions relating to this Request for Proposal:**

Janice Croswhite

Senior Purchasing Agent

Purchasing Department

(517) 432-7255

Email: [croswhit@msu.edu](mailto:croswhit@msu.edu)

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## Scope of Proposal

Michigan State University (MSU) on behalf of the Department of Physics and Astronomy is seeking proposals from interested manufacturing/assembly companies for assistance to build a HTM Board, which is a standard ATCA card.

This will be a collaborative effort, and MSU is very interested in critical feedback and good advice that will drive success into the finished product.

The MSU designer anticipates right of entry to the chosen company facilities and is willing to travel to the manufacturing site to oversee assembly and to be a “ready resource” for any questions about the design.

Twenty (20) fully assembled HTM Boards are to be delivered to MSU.

All final design data needed to build the HTM Board will be released on or about April 1<sup>st</sup>, 2018. Vendors should bid this project based on an 8 week schedule, from release of final design data to delivery of 20 finished boards. Schedule for this project is a premium, and earlier delivery dates will be favorably considered.

## Bidding Instructions

1. Declare your intent to provide a proposal.
  - a. Submit intent **to propose form (Schedule 1) and return it on or before January 10, 2018 by 5:00 P.M. Eastern Time** to Janice Croswhite email to: [Croswhit@msu.edu](mailto:Croswhit@msu.edu).
2. Any questions or clarifications pertaining to this request are to be submitted in writing via email to **Janice Croswhite** at [Croswhit@msu.edu](mailto:Croswhit@msu.edu) . **Questions submitted by close of business January 10, 2018 will be responded by January 15, 2018.** All questions will be responded to in writing and emailed to all participating suppliers.
3. All proposals are to be submitted, *electronically* on or before **January 25, 2018 at 2:00 PM Eastern time** to **Janice Croswhite** at [Croswhit@msu.edu](mailto:Croswhit@msu.edu).
4. Proposals are to be submitted electronically in One (1) coherent and comprehensive file. The Subject Line on your email will read: {SUPPLIER NAME} Response to RFP # 47-01032018 -001 HTM Board
  - a. Late submittals will not be considered
  - b. Supplier responses are to address all elements of this RFP. Failure to fully respond may result in disqualification of the bidder’s response.
  - c. Michigan State University (MSU) reserves the right to waive any irregularities, accept in whole or in part, or reject any or all proposals.
  - d. Michigan State University further reserves the right to select the Suppliers which, in the sole opinion of the university, best serves the needs of the institution.
  - e. Supplier submittals will serve as the basis for Supplier selection.
  - f. Michigan State University reserves the right to further negotiate in its own best interest.

5. Upon completion of a final award, the Supplier agrees that the Terms and Conditions of the University Agreement will govern all subsequent Purchase Orders, and shall constitute the entire, and exclusive, agreement between Michigan State University and any Supplier or contractor receiving an award. In the event of a conflict between the bidder's standard terms of sale, these conditions or more specific provisions as contained in this document shall govern.
6. All communication between Michigan State University and the Supplier pertaining to any award or contract shall be agreed to in writing and signed by both parties.
7. Any information that is received from any source at Michigan State University other than the Purchasing Department relative to this bid is to be considered as non-authoritative in nature.
8. **NOTE: Elaborate proposals (e.g., expensive artwork or excessive documentation), beyond that sufficient to present a complete and effective proposal, are not necessary or desired.**

## Evaluation Criteria

- Agreement and ability to meet the Requirements
- Lead time
- Availability of value added services (engineering design consulting)
- Value and Total cost

## Proposal Organization

Intent to propose form is included in this document.

Suppliers shall use the following information to organize and supply the requested information:

### Section 1: Schedule 1: Intent to Propose Form/Signed offer

MSU requests return of the intent **to propose form using the format provided on page 5 of this RFP.**

Along with submission of the proposal, MSU requests a signed transmittal letter from a signatory of your company who is authorized to bind your firm to the work proposal.

### Section 2: References

The supplier is requested to provide name and contact information for up to three clients who have used your manufacturing and or design services.

Provide name, address, phone number, and company name.

### Section 3: Company Information

Provide the company name

Address

Telephone number

Fax number

Website address

Email address

Primary point of contact for your company;

Provide the name of the company owner and/or principals, and the name of the individual who is authorized to contract on behalf of the company.

**Section 4: Response to Requirements**

Response to the requirements should include an acknowledgement and narrative response to the “Questions and Design Review “section of this RFP.

**Section 5: Price Proposal**

Your price proposal must provide a detailed breakdown of the type of charges that will be passed through to MSU. Including but not limited to:

Fees for prototype assembly service, Stencils, Tooling, Fees for production unit pricing, Fixtures, Parts (circuit boards, dummy components) Heat testing, and engineering services.

**Section 6: Exceptions or comments on the MSU Standard Terms and Conditions.**

Exceptions if any should be identified in this **Section**. If there are no exceptions, it would be appropriate to return a signed copy of the Terms and conditions with your proposal. Exceptions may be provided in a redline format for MSU review.

**SCHEDULE 1 – INTENT TO PROPOSE FORM**

Please email to MSU by January 10, 2018 by 5:00 P.M. Eastern Time.

To:

croswhit@msu.edu

Janice Croswhite

**RFP # 47-01032018 -001 HTM Board**

Supplier Name:

Contact Person:

Address:

Telephone:

Fax:

Email:

Supplier representative has received a copy of the above noted RFP and

\_\_\_\_\_ Yes, will be responding to the RFP.

\_\_\_\_\_ No, will not be responding for the following reason:

I understand that if I do not submit a proposal, this will not affect our company's status as a potential supplier to Michigan State University in the future.

Signature:

Title:

Date

## Questions and Design Review

	Requirement	Acknowledgement/Response
1	First article review will <u>NOT</u> be requested by MSU.	
2	MSU reserves “right of entry” to your facility and is interested in being present to observe and or be present to discuss the assembly process. MSU anticipates at most two (2) persons will enter the facility. MSU personnel agree to follow all safety rules identified by the Supplier for their facility.	
3	Identify your principal engineer(s) and any details about their training, experience or background that qualify them to work on this project.	
4	Outline the steps your company takes to setup the assembly of a complex PCB like the HTM Board.	
5	<p>MSU will provide the specification. It is important to note that the specification is <i>not final</i>. Feedback on the design is both desired and appreciated. Review the specification documents at:</p> <p><a href="https://web.pa.msu.edu/hep/atlas/l1calo/htm/hardware/manufacturing/release_1_for_bid/">https://web.pa.msu.edu/hep/atlas/l1calo/htm/hardware/manufacturing/release_1_for_bid/</a></p> <p>Are there any problems or recommendations for improvement indicated?</p>	
6	The MSU design of this board is not considered to be proprietary, a candidate for a license or any royalty, but, it must be understood that this board is export controlled and may not be produced for any other end user.	
7	The specification should not use any lead, CFC or other environmentally prohibited content. This product may be used by MSU in Switzerland, and thus must meet the environmental standards of the European Union.	
8	Once a final specification is determined, including MSU agreement to the design of the bare PCB – MSU requires change control –provide your change control process and any templates that will be required for use.	

9	MSU will perform all functional testing on the board. The supplier will perform all thermal profile tests using dummy components for the expensive parts.	
10	MSU will provide one kit that includes all components to be placed on the boards. Scrap goal for this project is "zero". Suppliers are encouraged to utilize "dummy" components for a test build. Suppliers will be responsible for purchase of the bare PCB.	
13	What your estimated lead-time after finalization of the specification?	
14	Shipping product will not be required; MSU will pick up product at the manufacturing facility.	
15	Following first article acceptance, a onetime order will be placed. No subsequent orders are anticipated. This is a small lot scientific board.	
16	Scrap goal is "zero", due to the expense of the components and the limited number of boards that will be built, however, a scrap allowance of one (1) will be built into the funding and project plan by the MSU researchers. Scrap boards in excess of one (1) will be at the expense of the Supplier.	
17	In the event machinery and tooling cannot be used for 100% of the placement of components on the board, MSU accepts responsibility for "final hand assembly" provided it has been mutually agreed between MSU and the Supplier that this method reduces risk and will maximize yield.	
18	All work must meet the IPC standards as called for in the Specification.	

# Terms and Conditions

## MICHIGAN STATE UNIVERSITY

### GENERAL TERMS AND CONDITIONS OF PURCHASE

- 1. Terms, Amendment, Choice of Law and Forum.** These terms and conditions, terms and conditions on the face of the applicable Purchase Order, and exhibits attached or incorporated by reference are the entire agreement between Michigan State University (“University”) and Seller (“Agreement”). University rejects any different or additional terms suggested before or after this Agreement. Any performance hereunder is an acceptance of this Agreement. No amendments to this Agreement will be effective unless in writing, signed by both parties. Seller is deemed to be on notice that University objects to any additional or different terms and conditions contained in any acknowledgement, invoice, or other communication from Seller, notwithstanding University’s acceptance or payment for any delivery of goods and/or services, or any similar act by University. If this Agreement follows a Request for Proposal (“RFP”) or a Request for Quotation (“RFQ”), the following order of precedence will apply: (a) Agreement, (b) RFP or RFQ, and (c) Seller’s Response to the RFP or RFQ. Michigan law, without regard for choice of law considerations, will govern this Agreement. The Michigan Court of Claims or Federal District Court for the Western District of Michigan will hear any action arising out of this Agreement, and Seller consents to jurisdiction in Michigan. “Seller” includes Seller’s employees, officers, directors, agents, and sub-contractors. “University” includes University’s employees, officers, directors, trustees, students, agents, and contractors.
- 2. Warranty.** Seller warrants that all goods and services provided under this Agreement (“Goods and Services”) (a) are new, unused, and free from defects in material and workmanship and sufficient for the purpose intended; (b) are performed by individuals with the requisite skill, experience and qualifications necessary; (c) are the quality and dimensions ordered; (d) comply with representations in Seller’s advertisements, correspondence, or RFP or RFQ response; (e) conform to the specifications, drawings, samples or other descriptions furnished or specified by University (f) comply with applicable laws, regulations, ordinances, or codes; and (g) are not restricted by, or infringe upon, rights of third parties. These warranties shall survive inspection, acceptance, passage of title and payment by University. Seller represents that it is not debarred or suspended or listed on the General Services Administration’s List of Parties Excluded from Federal Procurement or Nonprocurement Programs. Seller will notify University if it is debarred or suspended during the term of this Agreement. Seller will correct any breach of warranty at Seller’s sole expense. University does not waive any warranty by acceptance of goods, services or payment, and reserves all rights and remedies.
- 3. Inspections.** University will have a reasonable time after receipt to inspect Goods and Services and reject any that are nonconforming or in excess of quantities ordered. University may refuse Goods and Services or cancel all or any part of this Agreement if Seller fails to deliver all or any part of the Goods or Services in accordance with this Agreement. University’s failure to inspect Goods and Services will not relieve Seller of such responsibility. University’s acceptance or payment will not be deemed a waiver of any defect in Goods or Services.
- 4. Shipping.** Delivery will be FOB Destination/Seller to pay shipping and freight. If delivery is FOB Origin, Seller will insure shipment for its full value, and prepay freight. In any case, Seller is responsible for packing, crating, marking, transporting, and loss or damage in transit. Risk of loss will pass to University upon University’s actual receipt and acceptance of Goods or Services. As applicable, Seller will confirm before shipment, that all doorways, hallways, elevators, room sizes, service access spaces, and utilities are present



before making any delivery of Goods or Services. This confirmation should be made immediately upon receipt of order and any discrepancies or impediments to delivery and installation will be called immediately to the attention of the designated University personnel. Electrical plug size shall be compatible with the existing outlet at the installation, set-up and calibration.

5. **Payment.** Unless otherwise specified in the Purchase Order, University shall pay invoices within (30) days (a) from the date the invoice is received by the University at the address indicated in the “Bill To” field on the face of the purchase order or (b) from the date of acceptance of the Goods or Services by the University, whichever is later. Invoices presented for payment must be submitted in accordance with instructions contained on the Purchase Order including reference to the Purchase Order number and submittal to the correct address for processing. The University may withhold payment in whole or in part for Goods or Services found by the University to be defective, untimely, unsatisfactory, or otherwise non-conforming, or not in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations.
6. **Tax Exempt Status.** The University is a tax-exempt institution, granted such status by authorized taxing units of State of Michigan, and is exempt from Federal Excise Tax and Michigan General Sales Tax (see Michigan Public Act 167 of 1933, section 4 as amended).
7. **Changes.** At any time by a written notice, the University may change the drawings, designs, specifications, materials, packaging, and the time and place of delivery. Promptly upon the receipt of such notice, Seller will either advise that the change will not affect its costs, or give notice of changes in costs, compensation, and the time of completion.
8. **Audit and Retention of Books and Records.** Upon the University’s request, Seller will inform the University of its accounting procedures and practices. The University may inspect and copy Seller’s books, records, and documents in any medium to verify Seller’s performance and expenses submitted pursuant to this Agreement. Seller will make such items available for inspection during normal business hours at Seller’s place of business. Seller will retain all such items during the term of this Agreement and for a period of three years after the delivery of the Goods and Services. Seller will retain any items relating to a claim arising out of the performance of this Agreement until the claim has been resolved.
9. **Termination.** The University may terminate this Agreement in whole or in part at its convenience upon 30 days’ notice to Seller. Upon notice of such termination, Seller shall immediately stop all work including shipment of the Goods or Services and shall cause its suppliers and/or subcontractors to cease their work related to this Agreement. Seller shall be paid a reasonable charge for Goods or Services satisfactorily provided or performed. In no event shall Seller be paid for costs incurred or Services performed after receipt of notice of termination, or for costs that reasonably could have been avoided. University may terminate the Agreement in whole or in part for cause upon seven (7) days written notice if Seller fails to comply with any material term or condition. Late delivery of Goods or Services, or delivery of defective or non-conforming Goods or Services shall, without limitation, be cause for termination. In the event of such termination, the University will not be liable for any damages; and reserves all rights and remedies and Seller shall be liable to the University for all losses, damages, and expenses, including, without limitation, the excess cost of re-procuring similar products or services; shipping charges for any items the University may at its option return to Seller, including items already delivered, but is no longer able to use for the intended purpose because of Seller’s default; and amounts paid by the University for any items the University has received but returns to Seller. If a determination is made that the University improperly terminated the Agreement for cause, then the termination shall be deemed to have been for the University’s convenience.

- 10. Indemnity.** Seller shall indemnify and hold harmless the University from and against any and all actions, claims (including, but not limited to, claims of negligence), liabilities, demands, costs and expenses (including, but not limited to, attorney's fees, and costs related to Data breaches and Notification events as noted in Section 13), which arise out of or are incident to Seller's acts or omissions under this Agreement.
- 11. Seller Damage to University Property.** Without regard to any other section of the Agreement, Seller shall be responsible for the costs to return to "as was" condition from any damage caused to the building, grounds, or other equipment and furnishings caused in whole or part by Seller while performing activities arising under this Agreement. Seller shall immediately report in writing the occurrence of any damage to the appropriate University building or project manager.
- 12. Removal of Seller Personnel.** If any Seller personnel repeatedly fails to perform in a competent manner or is found to be unsuitable for the work, in the University's sole discretion, and the University notifies Seller that such Seller personnel is no longer acceptable to the University, citing the grounds and specific supporting facts, then, after written notification from the University, Seller shall no longer schedule the Seller personnel to provide or support Services for the University under this Agreement or any other agreement with the University.
- 13. University Data.** To the extent Seller shall have access to, use of, or disclosure of University Data, it agrees to the provisions of this Section. "Data" means any and all electronic or other information that is in the University's possession and control, and any and all such Data that has been disclosed to Seller. Data may include but is not limited to, information that is: (i) identified with a specific individual (e.g., "personally identifiable information" or "PII"); (ii) subject to proprietary rights under patent, copyright, trademark, or trade secret law; (iii) privileged against disclosure in a civil lawsuit (e.g., data subject to attorney-client or doctor-patient privileges); (iv) subject to laws, regulations, rules or standards that prohibit or limit disclosure (e.g., the Family Educational Rights and Privacy Act ("FERPA"), the Export Administration Act ("EAR"), the International Traffic in Arms Regulations ("ITAR"), the Health Insurance Portability and Accountability Act ("HIPAA"), the Genetic Information Nondiscrimination Act ("GINA"), the Gramm-Leach-Bliley Act; and the Payment Card Industry Security Standards Council requirements); or (v) ought in good faith to be treated as sensitive, proprietary, or confidential.
- a. **Prohibition of Unauthorized Use of Data.** Seller agrees to hold Data in strict confidence. Seller shall not use or disclose Data received from or on behalf of the University except as required by law, or as otherwise authorized in writing by the University. Seller agrees that any and all Data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of Seller, or passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by the University.
- b. **Security Standards.** Seller agrees that it will comply with all state and federal laws relating to data privacy and security, and at all times under the following standards:
- i. **Network Security.** Seller shall at all times maintain network security that includes, at a minimum: network firewall provisioning, intrusion detection, and regular third party penetration testing of the network and all relevant computer/data storage devices. Upon University's request, Seller agrees to provide University access to its penetration test results and documentation of its network standards. If Seller will process or hold payment card information, Seller shall maintain network security that conforms to the latest PCI/DSS standards.

- ii. **Data Security.** Seller shall protect and maintain the security of Data with protection that is at least as good as or better than that maintained by University. These security measures include maintaining secure environments that are patched and up to date with all appropriate security updates as designated, for example, by Microsoft notification.
  - iii. **Data Transmission.** Seller shall ensure that any and all transmission or exchange of Data with University and/or any other parties expressly designated by Purchaser shall take place by secure means, *e.g.*, HTTPS or FTPS.
  - iv. **Data Storage.** Seller shall ensure that any and all Data will be stored, processed, and maintained solely on designated target servers and that no Data at any time will be processed on or transferred to any portable or laptop computing device or any other portable storage medium, unless that storage medium is in use as part of the Seller's designated backup and recovery process.
  - v. **Data Encryption.** Seller shall store and backup Data as part of its designated backup and recovery processes in encrypted form, using no less than 128 bit key.
- c. **Return or Destruction of Data.** Upon cancellation, termination, expiration, or other conclusion of the Agreement, Seller shall erase, destroy, and render unreadable all Data, including copies, in possession of Seller, its subcontractors and agents and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of the request of University, whichever shall come first.
  - d. **Notification of Network Data Breach.** Seller shall immediately report in writing to the University any network breach and/or use or disclosure of Data not authorized by the Agreement, including any reasonable belief that unauthorized access to Data has occurred. Seller shall make the report to the University not less than two (2) business days after Seller reasonably believes that there has been such unauthorized use or disclosure. Seller's report shall identify: (i) the nature of the unauthorized use or disclosure; (ii) the network element(s) and/or Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what Seller has done, or shall do, to mitigate any negative effect of the unauthorized disclosure; and (v) what corrective action Seller has taken, or shall take, to prevent future unauthorized use or disclosure. Seller shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally-identifiable information, or any other event requiring such notification (a "Notification Event"). The University may, in its sole discretion, choose to provide notice to any or all parties affected by a Network or Data Breach, but the Seller shall reimburse the University for its costs in providing any credit monitoring or similar services that are necessary as a result of any Network or Data Breach.
- 14. EIT Accessibility.** University is committed to providing an accessible, usable, and integrated experience for all people. Electronic and information technology ("EIT") is information technology and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term electronic and information technology includes, but is not limited to, telecommunications products, information kiosks and transaction machines, Internet and Intranet websites, web-delivered content, software, electronic books and electronic book reading systems, search engines and databases, multimedia, classroom technology, and office equipment.

Seller warrants that (i) Web-based EIT products provided under this Agreement conform WCAG 2.0 AA and (ii) non-web-based EIT meets or exceeds the applicable accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. Seller agrees to indemnify and hold harmless University from any claims arising out of its failure to comply with the foregoing accessibility standards.

Seller agrees to provide evidence of compliance with these requirements before this Agreement becomes effective and any other time upon reasonable request of the University. In the event EIT provided under this Agreement does not fully conform to the to the standards set forth above, Seller will promptly advise University in writing of the nonconformance and provide detailed information regarding the plans to achieve conformance, including but not limited to an intended timeline. Seller agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services. Failure to comply with these accessibility standards shall constitute a breach of this Agreement.

- 15. Confidentiality.** Seller shall keep confidential and not disclose to third parties any information provided by the University or by private individuals, organizations or public agencies during the course of this Agreement, including University's Data, unless Seller has received the prior written consent of the University to make the disclosure or unless required by law or legal process. Only Seller Personnel with a need to know may have access to or use University Data. This obligation of confidentiality does not extend to information that is, or shall become through no fault of Seller, available to the general public. Upon the completion or termination of this Agreement, Seller shall immediately return all confidential information to the University or shall make other disposition of the confidential information as directed by the University.
- 16. Insurance.** Unless more specific insurance provisions are specified by the University, Seller shall, at Seller's expense at all times during its performance under this Agreement, obtain and keep in force: i) Commercial general liability insurance, including contractual products and completed operations insurance (\$1 million per occurrence/\$2 million annual aggregate); ii) Employers Liability with a minimum limit of \$500,000; and iii) Workers' Compensation to statutory limits as required by the State of Michigan; iv) in the event that professional services are to be provided as a part of this Agreement, Professional liability/errors and omissions insurance with limits no less than \$1 million; and v) if the Agreement includes activity related to hazardous materials or hazardous waste: Environmental liability insurance (\$1 million per occurrence/\$2 million annual aggregate); if Seller or any of its sub-contractors transport hazardous waste or material, they must provide evidence of automobile liability insurance coverage in an amount of at least \$1 million per accident for all owned, non-owned, and hired vehicles and the Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980 (Form MCS-90) must also be attached. Prior to the commencement of work, Seller shall provide a certificate of insurance evidencing such insurance, which shall name the Trustees of Michigan State University as an additional insured. Seller shall provide for notification to the University within at least thirty (30) days prior to expiration or cancellation of such insurance. Compliance with the foregoing requirements as to carrying insurance and furnishing evidence of it will not relieve the Seller of its liabilities and obligations under this Agreement.
- 17. Force Majeure.** Neither Seller nor the University shall be liable for failure to perform its respective obligations under the Agreement when failure is caused by fire, explosion, flood, act of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy related closings, or like causes beyond the reasonable control of the party ("Force Majeure Event"). In the event that either party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, the party shall: (a) as soon as practicable notify the other party in writing of the Force Majeure Event and its expected duration; (b) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible, including, as applicable, abiding by the disaster plan in place for the University. In the event that any Force Majeure Event delays a party's performance for more than thirty (30) calendar days following notice by the delaying party pursuant to this Agreement, the other party may terminate this Agreement immediately upon written notice.

- 18. Compliance with Laws.** Seller shall be responsible for compliance with any and all applicable federal, state and local laws, ordinances, regulations, and the University's policies and rules, found at <http://trustees.msu.edu>, with respect to the provision of Goods and Services under this Purchase Order. Unless otherwise expressly provided for in the Purchase Order, Seller shall obtain and comply with all permits, licenses and similar authorizations that are necessary to provide the Goods and Services. By merit of submitting a proposal, Seller warrants and represents that it has all legally required licenses and permits needed to provide the Goods and Services.
- 19. Nondiscrimination.** Seller warrants that Seller is an equal opportunity employer and that, during the performance of this Agreement, it will comply with Federal Executive Order 11246, as amended, The Rehabilitation Act of 1973, as amended, and the respective regulations thereunder, and the Michigan Civil Rights Act of 1976. Pursuant to Section 209 of the Michigan Elliot-Larsen Civil Rights Act and Section 209 of the Michigan Persons with Disabilities Civil Rights Act, in filling this order, the Seller and its contractor(s) agree not to discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of age, color, familial status, height, marital status, national origin, race, religion, sex, weight, or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. If applicable, this Seller and any subcontractor shall abide by the requirements of 41 CFR §§60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.
- 20. Criminal Background Checks.** Seller may be required to perform criminal background checks of its personnel working on MSU's campus pursuant to applicable MSU background check policies. In such circumstances, the University reserves the right to audit compliance with the policy requirements and may require documentation of compliance from Seller. Seller agrees to provide documentation of compliance with criminal background check requirements upon request from the University within a reasonable time period, not to exceed fifteen (15) business days.
- 21. Federal Procurement.** If University notifies Seller that it is using federal funds to procure the Goods or Services provided, this Agreement will incorporate the federal requirements set forth at <http://usd.msu.edu/purchasing/about/federal-procurement.html> and Seller will adhere to such additional requirements.
- 22. ITAR.** Before shipping goods, software, or technical data subject to the International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120-130, Seller will notify University that such items are ITAR-controlled. Seller will only ship ITAR-controlled items after University has furnished written confirmation that University is prepared to accept delivery of such items.
- 23. Prevailing Wage.** If this Agreement is for Goods or Services for work on state project by a construction mechanic (as such terms are defined in MCL 408.551) ("Workers") during the term of the Agreement, the Seller and subcontractors at all tiers ("Firms") will pay such Workers performing work on a University site at least the applicable Prevailing Wage Rate determined by the Michigan Occupational Safety and Health Administration Agency, Wage and Hour Division. A listing of the prevailing wage pay scales and associated

benefits will be provided by the University, upon request. Seller is responsible for compliance by all Firms. At University's request, Firms will furnish copies of certified payroll records for Workers to University's designated prevailing wage contract agent within seven days of the date of the request. University will retain copies of the certified payroll records and make them available to Michigan's Wage and Hour Division at its request. Not complying with this section is a material breach of this Agreement. Seller will hold University harmless and indemnify University from all loss, cost or expense arising out of Seller's or Firms' failure to pay Prevailing Wage Rates or overtime.

- 24. Freedom of Information Act.** Nothing in this Agreement shall in any way limit the ability of the University to comply with any laws or legal process concerning disclosures by public bodies. Seller acknowledges that any responses, materials, correspondence or documents provided to the University are subject to the State of Michigan Freedom of Information Act ("Act") and may be released to third parties in compliance with that Act or any other law.
- 25. Use of the University Name, Logo and Marks.** The University acknowledges that Seller may make public statements regarding the existence of the contract, its terms and conditions and an accurate description of the products or services being supplied without the consent of the University. However, other than as permitted by the previous sentence, Seller will not use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the University, or the name of any representative of the University without the prior written permission of the University in each instance.
- 26. Conflict of Interest.** Seller warrants that to the best of Seller's knowledge, there exists no actual or potential conflict between Seller and the University, and its Goods and Services under this Agreement, and in the event of change in either Seller's private interests or Goods or Services under this Agreement, Seller will inform the University regarding possible conflict of interest which may arise as a result of the change. Seller also affirms that, to the best of Seller's knowledge, there exists no actual or potential conflict between a University employee and Seller.
- 27. Independent Contractor.** The relationship between the parties is solely that of independent contractors, not partners, joint venturers, employees, agents or otherwise. Neither will have any authority to bind the other in any manner, and will not represent or imply that it has such authority.
- 28. No Third Party Rights.** Nothing in this Agreement shall be construed as creating or giving rise to any rights in third parties or persons other than the named parties to this Agreement.
- 29. Assignment.** Seller may not assign this Agreement, nor any money due or to become due without the prior written consent of the University. Any assignment made without such consent shall be deemed void.
- 30. Notices.** Any notice to either party must be in writing and will be delivered either personally, by electronic mail with confirmed delivery, by a recognized overnight courier service, or by the United States mail (first-class, certified or registered with postage prepaid, return receipt requested), to the other party at its address as set forth on the face of the Purchase Order.

- 31. Severability.** If any provision of this Agreement is invalid or unenforceable, the remainder of the provisions, or the application of such provisions to person other than those as to which it is held invalid or unenforceable, will not be affected and the remainder of the provisions will be valid and enforceable to the fullest extent permitted by law.
- 32. Assurance.** If University determines in good faith that it is insecure with respect to Seller’s ability or intent to fully perform, Seller will provide University with written assurance of Seller’s ability and intent to fully perform. Seller will provide such assurance within the time and in the manner specified by the University. Seller will immediately notify the University of any circumstances that may cause Seller to fail to fully perform. Upon University’s good faith determination that Seller cannot or will not perform, the University may deem the Seller to have breached and terminated this contract.
- 33. Survivability.** All of the terms and conditions of this Agreement will survive delivery of Goods, the provision of Services, and expiration or termination of this Agreement.

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

Name: \_\_\_\_\_

Title / Position: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_