



THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION



101 Beards

CHRISTOPHER D. CLEMENT, SR.
COMMISSIONER

JEFF BRILLHART, P.E.
ASSISTANT COMMISSIONER

May 7, 2014
Bureau of Traffic

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Transportation to enter into a contract with Southwest Research Institute (SwRI), San Antonio, TX, (Vendor #257260) in an amount not to exceed \$4,167,745 for the Advanced Transportation Management System (ATMS)/Traveler Information System (TIS) effective upon Governor and Council approval through May 7, 2019. 100% Federal Funds.

Funding is available as follows for FY 2014 and FY 2015 and is contingent upon the availability and continued appropriation of funds for FY 2016 through FY 2018.

Table with 6 columns: Account, FY 2014, FY 2015, FY 2016, FY 2017, FY 2018. Rows include Consolidated Federal Aid and Transportation Management Center.

PROJECT FINANCIAL RESPONSIBILITIES OF MaineDOT, VTrans and NHDOT:

The total cost of the Project shall not exceed Four Million One Hundred Sixty-Seven Thousand Seven Hundred Forty Five dollars(\$4,167,745). Of that total, thirty and one half percent (30.5%) of project costs in the amount of One Million One Hundred Sixty-Nine Thousand Thirty-three dollars and fifty-six cents (\$1,269,033.56) shall be the responsibility of the MaineDOT, and thirty and eight tenths percent (30.8%) of project costs in the amount of One Million Two Hundred Eighty-six Thousand Ninety-six dollars and ninety-nine cents (\$1,286,096.99) shall be the responsibility of VTrans, and a total of thirty-eight and seven tenths percent (38.7%) of the project costs in the amount of One Million Six Hundred Twelve Thousand Six Hundred Fourteen dollars and forty-five cents (\$1,612, 614.45) shall be the responsibility of NHDOT as illustrated in the following table:

AGENCY	NHDOT	VTRANS	MAINE DOT	TOTAL
<b>COST</b>	\$1,612,614.45	\$1,286,096.99	\$1,269,033.56	\$4,167,745
<b>PERCENT</b>	38.7%	30.8 %	30.5%	100%

All three states are purchasing a base software system. NHDOT and VTrans total cost will be higher due to the additional modules that they will be purchasing as referenced in the table below.

NHDOT	VTRANS	MAINEDOT
Road and Weather Systems	Road and Weather Systems	n/a
Weather Forecasting	n/a	n/a
Travel Times	n/a	n/a
SP CADD Integration	n/a	n/a

### **EXPLANATION**

The State of New Hampshire, acting through the New Hampshire Department of Transportation (NHDOT), and on behalf of the Vermont Agency of Transportation "VTrans" and Maine Department of Transportation "MaineDOT", is procuring a Commercial-Off-The-Shelf (COTS) modular software solution, the "System". The Contracted Vendor shall design, install, integrate, test and maintain the System that includes central ATMS system software, a regional Traveler Information System (TIS) and a "Data Fusion Hub" for the primary purpose of consolidation of ATMS and TIS data.

The System shall be a Vendor hosted system that meets NHDOT, VTrans and MaineDOT specific requirements for functionality, security, and interoperability with other systems. The System shall be open in nature, mature and capable of performing the specific tasks outlined herein.

The System shall consist of software applications and data servers, as needed, along with all supporting communications and linkages to third party and external systems necessary to provide the required system functionality outlined herein.

The System includes three major software components:

1) ATMS - A modular based Advanced Transportation Management System (ATMS) that will include, at a minimum, an Event Management Module, monitoring and control of ITS field devices, provide automated incident response scenarios that will streamline notification, detection and verification of an incident, and provide a robust performance management system to report, manage and review incidents and events. The ATMS will consist of a single code base system with three separately configured and installed systems, one for each state that will create a single platform to allow for shared control of all existing and planned Intelligent Transportation System (ITS) devices and data throughout the States. Customization and configuration services shall be required to implement the COTS software to meet the functional requirements of the system.

2) TIS - A Regional Traveler Information System (TIS) that will provide a traveler information website and email/text alerts subscription service, and;

3) Data Fusion Hub - A Data Fusion Hub, which will primarily facilitate the exchange of information between the ATMS, the 1201 data feed to the private sector, the TIS and regional partners and stakeholders.

SwRI shall make all connections to the existing NHDOT, VTrans and MaineDOT communications system/network as required for a fully functioning system. The System shall be fully warranted and maintained according to the terms of the contract.

On December 12, 2012 the Advanced Transportation Management System (ATMS) Traveler Information System (TIS) RFP 2013-051 was released. The deadline for proposal submittal was March 21, 2013 in which seven responses were received. The following scoring formula (Table 1) was used in the selection process:

Table 1

Criteria for Selection	Relative Weight
Qualifications/Experience	25 pts
ATMS Solution	20 pts
TIS Solution	20 pts
HUB Solution	15 pts
Cost	20 pts
<b>Total Weight</b>	<b>100 pts</b>

A consistent scoring committee was established and put in place through the entire evaluation process with representation from Maine Department of Transportation (MaineDOT), Vermont Agency of Transportation (VTrans) and New Hampshire Department of Transportation (NHDOT). NHDOT representation included Transportation Management Center and Department of Information Technology. A non-scoring Federal Highway representative also participated in the entire evaluation process

The following table outlines the scoring throughout the selection process.

Table 2

Vendor	Experience	ATMS Solution	TIS Solution	HUB Solution	Cost	Total
SwRI	23.1	17.9	16.9	13.2	18.0	89.1
Open Roads	21.0	17.9	16.0	13.4	16.0	84.3
Schneider	17.4	12.9	14.0	10.7	15.0	70.0
Delcan	16.1	14.3	14.1	10.3	12.0	66.8
IBI	19.3	14.4	13.7	10.5	8.0	65.9
Real Time Solutions	11.9	10.8	12.0	6.6	20.0	61.3
Transcore	16.6	14.3	15.3	10.6	0.0	56.8

Southwest Research Institute is recommended as the vendor for the procurement of this new system. Through the selection process, SwRI demonstrated that they possessed the background, experience and capabilities to perform the necessary engineering and technical services as well as the project management experience in order to bring this project to fruition in a timely manner.

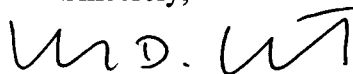
New Hampshire Project Funding is 80% Federal Funds with 20% State Funds. Turnpike toll credit is being utilized for the NH Department of Transportation match requirement where allowed, effectively using 100% Federal Funds.

The Capital Budget Overview Committee, pursuant to the provisions of RSA 228:12-a, on January 9, 2013, approved the request of the Department of Transportation, Bureau of Traffic, to use up to \$300,000 of Turnpike Toll Credit, based on estimated costs of \$1,500,000, to meet funding match requirements for; Statewide project 20248, development of the Phase 2 Automated Traffic Management System (ATSM), as specified in the request dated December 18, 2012.

The Agreement has been approved by the Attorney General as to form and execution. Copies of the fully executed contract are on file at the Secretary of State's Office and the Department of Administrative Services Office. Subsequent to Governor and Council approval, the Agreement will be on file at the Department of Transportation.

Your approval of this contract is respectfully requested.

Sincerely,

A handwritten signature in black ink, appearing to read "C.D. Clement, Sr.", with a stylized flourish at the end.

Christopher D. Clement, Sr.  
Commissioner



**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF INFORMATION TECHNOLOGY**

27 Hazen Dr., Concord, NH 03301  
Fax: 603-271-1516 TDD Access: 1-800-735-2964  
www.nh.gov/doit

**Peter C. Hastings**  
*Commissioner*

April 1, 2014

William Janelle  
Director of Operations  
State of New Hampshire  
Department of Transportation  
John O. Morton Bldg., 7 Hazen Drive  
Concord, NH 03302-0483

Dear Director Janelle:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved your agency's request to conclude a contract with Southwest Research Institute (SwRI), to provide services as described below and referenced as DOIT No. 2013-051.

The State of New Hampshire, acting through the Department of Transportation and on behalf of the Vermont Agency of Transportation (VTrans) and the Maine Department of Transportation (MaineDOT) procuring a Commercial-Off-The-Shelf modular software solution, the "System". SwRI will design, install, integrate, test and maintain the system which includes central Advanced Transportation Management System (ATMS) software, a regional Traveler Information System (TIS) and a data fusion hub for the primary purpose of consolidation of ATMS and TIS data.

The system shall be a vendor hosted system that meets NHDOT, VTrans and MaineDOT specific requirements for functionality, security and interoperability with other systems. The system shall consist of software applications, data servers as needed and linkages to third party and external systems as necessary. The system shall be open in nature and mature. This contract will become effective upon Governor and Executive Council approval and for five (5) years from that date. The contract amount is not to exceed \$4,167,745.99.

A copy of this letter should accompany the Department of Transportation submission to the Governor and Executive Council for approval.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter C. Hastings", written over a horizontal line.

Peter C. Hastings

PCH/dcp  
DOT 2013-051

cc: Gail Hambleton




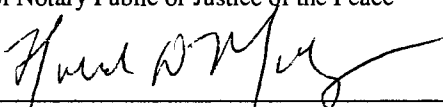
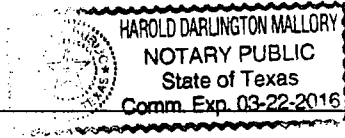
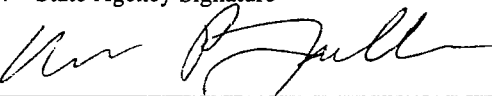
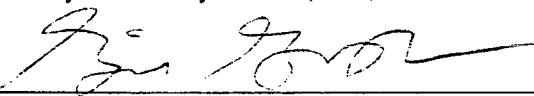
Subject: Advanced Transportation Management System / Traveler Information System FORM NUMBER P-37 ( version 1/09)

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name Department of Transportation		1.2 State Agency Address PO Box 483, 110 Smokey Bear Blvd, Concord, NH 03302-0483	
1.3 Contractor Name Southwest Research Institute		1.4 Contractor Address 6220 Culebra Road, San Antonio, Texas 78238	
1.5 Contractor Phone Number 210-522-2231	1.6 Account Number 04-96-96-963515-305Y-046- 500404 04-96-96-960515-3052-0321 500193	1.7 Completion Date 5-7-19	1.8 Price Limitation \$4,167,745
1.9 Contracting Officer for State Agency William P. Janelle, P.E.		1.10 State Agency Telephone Number 603-271-1697	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory R.B. Kalmbach, Executive Director, Contracts	
1.13 Acknowledgement: State of <u>Texas</u> , County of <u>Bexar</u> On <u>March 7, 2014</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] 			
1.13.2 Name and Title of Notary or Justice of the Peace <u>HAROLD D. Mallory</u> Notary Public			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory <u>William P. Janelle, Director of ops</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>5/8/14</u>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**  
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").  
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**  
Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**  
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.  
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.  
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.  
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.  
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**  
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.  
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.  
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials DB/C  
Date 2/7/14



## 8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

## 9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

**13. INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

## 14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.**

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

**STATE OF NEW HAMPSHIRE**  
**Department of Transportation**  
**Advanced Transportation Management System /Traveler Information System**  
**(ATMS)/(TIS)**  
**CONTRACT 2013-051**  
**CONTRACT AGREEMENT –PART 2**

**TERMS AND DEFINITIONS**

The following general contracting terms and definitions apply except as specifically noted elsewhere in this document.

<b>Acceptance</b>	Notice from the State that a Deliverable has satisfied Acceptance Test or Review.
<b>Acceptance Letter</b>	An Acceptance Letter provides notice from the State that a Deliverable has satisfied Acceptance Tests or Review.
<b>Acceptance Period</b>	The timeframe during which the Acceptance Test is performed
<b>Acceptance Test Plan</b>	The Acceptance Test Plan provided by the Vendor and agreed to by the State that describes at a minimum, the specific Acceptance process, criteria, and Schedule for Deliverables.
<b>Acceptance Test and Review</b>	Tests performed to determine that no Defects exist in the application Software or the System
<b>Access Control</b>	Supports the management of permissions for logging onto a computer or network
<b>Agreement</b>	A contract duly executed and legally binding.
<b>Appendix</b>	Supplementary material that is collected and appended at the back of a document
<b>ATMS</b>	Advanced Transportation Management System
<b>Audit Trail Capture and Analysis</b>	Supports the identification and monitoring of activities within an application or system
<b>Best and Final Offer (BAFO)</b>	For negotiated procurements, a Vendor's final offer following the conclusion of discussions.
<b>CCB</b>	Change Control Board
<b>CCP</b>	Change Control Procedures
<b>Certification</b>	The Vendor's written declaration with full supporting and written Documentation (including without limitation test results as applicable) that the Vendor has completed development of the Deliverable and certified its readiness for applicable Acceptance Testing or Review.
<b>Change Control</b>	Formal process for initiating changes to the proposed solution or process once development has begun.
<b>Change Order</b>	Formal documentation prepared for a proposed change in the Specifications.
<b>Completion Date</b>	End date for the Contract

**STATE OF NEW HAMPSHIRE**  
**Department of Transportation**  
**Advanced Transportation Management System /Traveler Information System**  
**(ATMS)/(TIS)**  
**CONTRACT 2013-051**  
**CONTRACT AGREEMENT –PART 2**

<b>Confidential Information</b>	Information required to be kept Confidential from unauthorized disclosure <i>under the Contract</i>
<b>Contract</b>	This Agreement between the State of New Hampshire and a Vendor, which creates binding obligations for each party to perform as specified in the Contract Documents.
<b>Contract Conclusion</b>	Refers to the conclusion of the Contract, for any reason, including but not limited to, the successful Contract completion, termination for convenience, or termination for default.
<b>Contract Documents</b>	Documents that comprise this Contract (See Contract Agreement, Section 1.1)
<b>Contract Managers</b>	The persons identified by the State and the Vendor who shall be responsible for all contractual authorization and administration of the Contract. These responsibilities shall include but not be limited to processing Contract Documentation, obtaining executive approvals, tracking costs and payments, and representing the parties in all Contract administrative activities. (See Section 4: <i>Contract Management</i> )
<b>Contracted Vendor/Vendor</b>	The Vendor whose proposal or quote was awarded the Contract with the State and who is responsible for the Services and Deliverables of the Contract.
<b>COTS</b>	Commercial off the Shelf
<b>CM</b>	Configuration Management
<b>CR</b>	Change Request
<b>Cure Period</b>	The thirty (30) day period following written notification of a default within which a contracted vendor must cure the default identified.
<b>Custom Code</b>	Code developed by the Vendor specifically for this project.
<b>Custom Software</b>	Software developed by the Vendor specifically for this project.
<b>Data</b>	State's records, files, forms, Data and other documents or information, in either electronic or paper form, that will be used /converted by the Vendor during the Contract Term
<b>DBA</b>	Database Administrator
<b>Deficiencies/Defects</b>	A failure, deficiency or defect in a Deliverable resulting in a Deliverable, the Software, or the System, not conforming to its Specifications.  <b>Class A Deficiency</b> – <i>Software</i> - Critical, does not allow System to operate, no work around, demands immediate action; <i>Written Documentation</i> - missing significant portions of information or

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	<p>unintelligible to State; <i>Non Software</i> - Services were inadequate and require re-performance of the Service.</p> <p><b>Class B Deficiency</b> – <i>Software</i> - important, does not stop operation and/or there is a work around and user can perform tasks; <i>Written Documentation</i> - portions of information are missing but not enough to make the document unintelligible; <i>Non Software</i> - Services were deficient, require reworking, but do not require re-performance of the Service.</p> <p><b>Class C Deficiency</b> – <i>Software</i> - minimal, cosmetic in nature, minimal effect on System, low priority and/or user can use System; <i>Written Documentation</i> - minimal changes required and of minor editing nature; <i>Non Software</i> - Services require only minor reworking and do not require re-performance of the Service.</p>
<b>Deliverable</b>	A Deliverable is any Written, Software, or Non-Software Deliverable (letter, report, manual, book, other), provided by the Vendor to the State or under the terms of a Contract requirement.
<b>DoS</b>	Denial of Service
<b>Department</b>	An agency of the State
<b>Department of Information Technology (DoIT)</b>	The Department of Information Technology established under RSA 21-R by the Legislature effective September 5, 2008.
<b>Documentation</b>	All information that describes the installation, operation, and use of the Software, either in printed or electronic format.
<b>Digital Signature</b>	Guarantees the unaltered state of a file
<b>Effective Date</b>	The Contract and all obligations of the parties hereunder shall become effective on the date the Governor and the Executive Council of the State of New Hampshire approves the Contract
<b>Encryption</b>	Supports the encoding of data for security purposes
<b>Enhancements</b>	Software artifacts not derived from an existing software artifact that result in new intellectual property.
<b>Existing Software Artifacts</b>	Software artifacts licensed from the Florida Department of Transportation or Texas Department of Transportation through Southwest Research Institute.
<b>Firm Fixed Price Contract</b>	A Firm-Fixed-Price Contract provides a price that is not subject to increase, i.e., adjustment on the basis of the Vendor's cost experience in performing the Contract
<b>Fully Loaded</b>	Rates are inclusive of all allowable expenses, including, but not limited to: meals, hotel/housing, airfare, car rentals, car mileage, and out of

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	pocket expenses
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>Governor and Executive Council</b>	The New Hampshire Governor and Executive Council.
<b>Identification and Authentication</b>	Supports obtaining information about those parties attempting to log on to a system or application for security purposes and the validation of those users
<b>Implementation</b>	The process for making the System operational for processing the Data.
<b>Installation/Migration Plan</b>	Sets forth the transition from development of the System to full operation, and includes without limitation, training, business and technical procedures.
<b>Information Technology (IT)</b>	Refers to the tools and processes used for the gathering, storing, manipulating, transmitting, sharing, and sensing of information including, but not limited to, Data processing, computing, information systems, telecommunications, and various audio and video technologies.
<b>Input Validation</b>	Ensure the application is protected from buffer overflow, cross-site scripting, SQL injection, and canonicalization
<b>Intrusion Detection</b>	Supports the detection of illegal entrance into a computer system
<b>Invoking Party</b>	In a dispute, the party believing itself aggrieved
<b>Key Project Staff</b>	Personnel identified by the State and by the contracted Vendor as essential to work on the Project.
<b>Leidos</b>	Traveler Information Vendor
<b>MaineDOT</b>	Maine Department of Transportation
<b>Modifications</b>	Alteration of existing software artifact including source code, documentation, database schema, etc. A modification maintains the intellectual property owner.
<b>MOMA</b>	Memorandum of Maintenance Agreement
<b>NHDoIT</b>	New Hampshire Department of Information Technology
<b>NHDOT</b>	New Hampshire Department of Transportation
<b>Non Exclusive Not to Exceed (NTE) Contract</b>	A contract executed by the State that does not restrict the State from seeking alternative sources for the Deliverables or Services provided under the Contract but specifies a financial limitation.
<b>Non-Software Deliverables</b>	Deliverables that are not Software Deliverables or Written Deliverables,

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	e.g., meetings, help support, services, other
<b>Normal Business Hours</b>	Normal Business Hours – 8:00 a.m. to 4:00 p.m. EST, Monday through Friday excluding State of New Hampshire holidays. State holidays are: New Year’s Day, Martin Luther King Day, President’s Day, Memorial Day, July 4 <sup>th</sup> , Labor Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day. Specific dates will be provided
<b>Notice to Proceed (NTP)</b>	The State Contract Manager’s written direction to the Vendor to begin work on the Contract on a given date and time
<b>Open Data Formats</b>	A data format based on an underlying Open Standard.
<b>Open Source Software</b>	Software that guarantees the user unrestricted use of the Software as defined in NH RSA 21-R:10 and RSA 21-R:11.
<b>Open Standards</b>	Specifications for the encoding and transfer of computer data that is defined in NH RSA 21-R:10 and RSA 21-R:13.
<b>Operating System</b>	System is fully functional, all Data has been loaded into the System, is available for use by the State in its daily operations.
<b>Operational</b>	Operational means that the System is operating and fully functional, all Data has been loaded; the System is available for use by the State in its daily operations, and the State has issued an Acceptance Letter.
<b>Order of Precedence</b>	The order in which Contract/Documents control in the event of a conflict or ambiguity. A term or condition in a document controls over a conflicting or ambiguous term or condition in a document that is lower in the Order of Precedence
<b>Project</b>	The planned undertaking regarding the entire subject matter of an RFP and Contract and the activities of the parties related hereto.
<b>Project Team</b>	The group of State employees and contracted Vendor’s personnel responsible for managing the processes and mechanisms required such that the Services are procured in accordance with the Work Plan on time, on budget and to the required specifications and quality
<b>Project Management Plan</b>	A document that describes the processes and methodology to be employed by the Vendor to ensure a successful Project.
<b>Project Managers</b>	The persons identified who shall function as the State’s and the Vendor’s representative with regard to Review and Acceptance of Contract Deliverables, invoice sign off, and review and approval of Change Requests (CR) utilizing the Change Control Procedures (CCP)
<b>Project Staff</b>	State personnel assigned to work with the Vendor on the Project
<b>Proposal</b>	The submission from a Vendor in response to the Request for a

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	Proposal or Statement of Work
<b>Regression Test Plan</b>	A plan integrated into the Work Plan used to ascertain whether fixes to Defects have caused errors elsewhere in the application/process.
<b>Review</b>	The process of reviewing Deliverables for Acceptance
<b>Review Period</b>	The period set for review of a Deliverable. If none is specified then the Review Period is five (5) business days.
<b>RFP (Request for Proposal)</b>	A Request For Proposal solicits Proposals to satisfy State functional requirements by supplying data processing product and/or Service resources according to specific terms and conditions
<b>Role/Privilege Management</b>	Supports the granting of abilities to users or groups of users of a computer, application or network
<b>RSA</b>	New Hampshire Revised Statutes Annotated
<b>SaaS- Software as a Service</b>	Occurs where the COTS application is hosted but the State does not own the license or the code. The vendor allows the use of the software as a part of their service.
<b>Schedule</b>	The dates described in the Work Plan for deadlines for performance of Services and other Project events and activities under the Contract
<b>Service Level Agreement (SLA)</b>	A signed agreement between the Vendor and the State specifying the level of Service that is expected of, and provided by, the Vendor during the term of the Contract.
<b>Services</b>	The work or labor to be performed by the Vendor on the Project as described in the Contract.
<b>Software</b>	All custom Software and COTS Software provided by the Vendor under the Contract
<b>Software Artifact</b>	Software and its associated documentation including (not limited to) source code, object code, requirements specifications, design documents, release notes, version description documents, user manuals, online user help, test plans, test procedures, etc.
<b>Software Deliverables</b>	COTS Software and Enhancements
<b>Software License</b>	Licenses provided to the States.
<b>Solution</b>	The Solution consists of the total Solution, which includes, without limitation, Software and Services, addressing the requirements and terms of the Specifications. The off-the-shelf Software and configured Software customized for the State provided by the Vendor in response to this RFP.
<b>Specifications</b>	The written Specifications that set forth the requirements which include,



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	without limitation, this RFP, the Proposal, the Contract, any performance standards, Documentation, applicable State and federal policies, laws and regulations, State technical standards, subsequent State-approved Deliverables, and other Specifications and requirements described in the Contract Documents. The Specifications are, by this reference, made a part of the Contract as though completely set forth herein.
<b>State</b>	STATE is defined as:  State of New Hampshire Department of Transportation 110 Smokey Bear Boulevard Concord, NH 03301  Reference to the term “State” shall include applicable agencies
<b>Statement of Work (SOW)</b>	A Statement of Work clearly defines the basic requirements and objectives of a Project. The Statement of Work also defines a high level view of the architecture, performance and design requirements, the roles and responsibilities of the State and the Vendor. The Contract Agreement SOW defines the results that the Vendor remains responsible and accountable for achieving.
<b>State’s Confidential Records</b>	State’s information regardless of its form that is not subject to public disclosure under applicable state and federal laws and regulations, including but not limited to <u>RSA Chapter 91-A</u>
<b>State Data</b>	Any information contained within State systems in electronic or paper format.
<b>State Fiscal Year (SFY)</b>	The New Hampshire State Fiscal Year extends from July 1 <sup>st</sup> through June 30 <sup>th</sup> of the following calendar year
<b>State’s Project Manager (PM)</b>	State’s representative with regard to Project management and technical matters. Agency Project Managers are responsible for review and Acceptance of specific Contract Deliverables, invoice sign off, and Review and approval of a Change Proposal (CP).
<b>Subcontractor</b>	A person, partnership, or company not in the employment of, or owned by, the Vendor, which is performing Services under this Contract under a separate Contract with or on behalf of the Vendor
<b>SwRI</b>	Southwest Research Institute
<b>System</b>	All Software, specified hardware, and interfaces and extensions, integrated and functioning together in accordance with the Specifications.
<b>TBD</b>	To Be Determined

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<b>Technical Authorization</b>	Direction to a Vendor, which fills in details, clarifies, interprets, or specifies technical requirements. It must be: (1) consistent with Statement of Work within statement of Services; (2) not constitute a new assignment; and (3) not change the terms, documents of specifications of the Contract Agreement
<b>Test Plan</b>	A plan, integrated in the Work Plan, to verify the code (new or changed) works to fulfill the requirements of the Project. It may consist of a timeline, a series of tests and test data, test scripts and reports for the test results as well as a tracking mechanism.
<b>Term</b>	Period of the Contract from the Effective Date through termination.
<b>TIS</b>	Traveler Information System
<b>Transition Services</b>	Services and support provided when the contracted vendor is supporting System changes.
<b>UAT</b>	User Acceptance Test
<b>Unit Test</b>	Developers create their own test data and test scenarios to verify the code they have created or changed functions properly as defined.
<b>User Acceptance Testing</b>	Tests done by knowledgeable business users who are familiar with the scope of the Project. They create/develop test cases to confirm the System was developed according to specific user requirements. The test cases and scripts/scenarios should be mapped to business requirements outlined in the user requirements documents.
<b>User Management</b>	Supports the administration of computer, application and network accounts within an organization
<b>Vendor/ Contracted Vendor</b>	The Vendor whose proposal or quote was awarded the Contract with the State and who is responsible for the Services and Deliverables of the Contract.
<b>Verification</b>	Supports the confirmation of authority to enter a computer system, application or network
<b>VTrans</b>	Vermont Agency of Transportation
<b>Walk Through</b>	A step-by-step review of a Specification, usability features or design before it is handed off to the technical team for development
<b>Warranty Period</b>	A period of coverage during which the Contracted Vendor is responsible for providing a guarantee for products and Services delivered as defined in the Contract.
<b>Warranty Releases</b>	Code releases that are done during the Warranty Period.

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<b>Warranty Services</b>	The Services to be provided by the Vendor during the Warranty Period.
<b>Work Plan</b>	The overall plan of activities for the Project created in accordance with the Contract. The plan and delineation of tasks, activities and events to be performed and Deliverables to be produced under the Project as specified in Appendix C. The Work Plan shall include a detailed description of the Schedule, tasks/activities, Deliverables, critical events, task dependencies, and the resources that would lead and/or participate on each task.
<b>Written Deliverables</b>	Non-Software written deliverable Documentation (letter, report, manual, book, other) provided by the Vendor either in paper or electronic format.

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**INTRODUCTION**

This Contract is by and between the State of New Hampshire, acting through the Department of Transportation (“State”), and Southwest Research Institute, (“SwRI” or “the Contracted Vendor”), having its principal place of business at 6220 Culebra Road, San Antonio, TX 78238.

The State of New Hampshire, acting through the New Hampshire Department of Transportation (NHDOT), and on behalf of the Vermont Agency of Transportation “VTrans” and Maine Department of Transportation “MaineDOT”, is procuring a Commercial-Off-The-Shelf (COTS) modular software solution, the “System”. The Contracted Vendor shall design, install, integrate, test and maintain the System that includes central ATMS system software, a regional Traveler Information System (TIS) and a “Data Fusion Hub” for the primary purpose of consolidation of ATMS and TIS data.

The System shall be a Vendor hosted system that meets NHDOT, VTrans and MaineDOT specific requirements for functionality, security, and interoperability with other systems. The System shall be open in nature, mature and capable of performing the specific tasks outlined herein.

The System shall consist of software applications and data servers, as needed, along with all supporting communications and linkages to third party and external systems necessary to provide the required system functionality outlined herein.

The System includes three major software components:

1) ATMS - A modular based Advanced Transportation Management System (ATMS) that will include, at a minimum, an Event Management Module, monitoring and control of ITS field devices, provide automated incident response scenarios that will streamline notification, detection and verification of an incident, and provide a robust performance management system to report, manage and review incidents and events. The ATMS will consist of a single code base system with three separately configured and installed systems, one for each state that will create a single platform to allow for shared control of all existing and planned Intelligent Transportation System (ITS) devices and data throughout the States. Customization and configuration services shall be required to implement the COTS software to meet the functional requirements of the system.

The data for each state must be kept separate and in a manner, such that any state can withdraw from this contract and maintain a working system and retain their data. It is also recognized that by its very nature the TIS will present a common data set to the public from all states.

2) TIS - A Regional Traveler Information System (TIS) that will provide a traveler information website and email/text alerts subscription service, and;

3) Data Fusion Hub - A Data Fusion Hub, which will primarily facilitate the exchange of information between the ATMS, the 1201 data feed to the private sector, the TIS and regional partners and stakeholders.

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The System shall encompass all systems and devices (hardware and software) that support the ATMS, TIS and Data Hub functions.

SwRI shall make all connections to the existing NHDOT, VTrans and MaineDOT communications system/network as required for a fully functioning system. These connections shall represent the demarcation point between the Vendor and DOT systems. Communications from individual state facilities to existing field equipment are not the responsibility of SwRI.

All components of the System (ATMS, TIS and Data Fusion Hub) shall be fully tested according to all NHDOT, NHDOT, VTrans, and MaineDOT standards and as referenced herein. Any testing under this contract shall be completed such that the NHDOT, VTrans and MaineDOT can maintain full operation of their existing traffic management operations at all times. The Testing requirements are outlined in Contract Part 3, Exhibit F.

The Vendor shall develop a structured training program that includes formal instruction on all components of the System (ATMS, TIS and Data Hub) according to the requirements outlined in NHDOT Contract Part 3, Exhibit L. Select NHDOT, NHDOT, VTrans and MaineDOT staff shall be fully trained on the System before system acceptance.

The System shall be fully warranted according to the terms of the contract. During the System Warranty period, the System shall receive all necessary corrective, adaptive, perfective, and preventive maintenance, repairs, troubleshooting, and security patches necessary for the System to meet or exceed its specified performance standards at no additional charge to NHDOT.

**RECITALS**

The State desires to have SwRI provide a Commercial-off-the-shelf Software System, and associated Services for the State.

SwRI wishes to provide a Commercial-off-the-Shelf Software System and associated Services for the State.

The parties therefore agree as follows:

**1. CONTRACT DOCUMENTS**

**1.1 Contract Documents**

This Contract is comprised of the following documents (Contract Documents):

- A. Part 1 – The State of New Hampshire Terms and Conditions, Form P-37-Contract Agreement, Part I
- B. Part 2 – The Contract Agreement
- C. Part 3 – Consolidated Exhibits  
Exhibit A- Contract Deliverables

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Exhibit B- Price and Payment Schedule  
Exhibit C- Special Provisions  
Exhibit D- Administrative Services  
Exhibit E- Installation/Migration Services  
Exhibit E-1 – Security and Infrastructure  
Exhibit F- System Testing Services  
Exhibit G- Warranty and Warranty Services  
Exhibit H- Maintenance and Support Services  
Exhibit I- System Requirements Matrix, revised per BAFO  
Exhibit J- Work Plan  
Exhibit K- SwRI/NHDOT Software License and related Terms  
Exhibit L- Training Services  
Exhibit M- NHDOT ATMS/TIS RFP 2013-051 with Addenda, by reference  
Exhibit N- SwRI Proposal, by reference  
Exhibit O- Certificates and Attachments

### **1.2 Order of Precedence**

In the event of conflict or ambiguity among any of the text of the Contract Documents, the following Order of Precedence shall govern:

- a. *The State of New Hampshire Terms and Conditions*, Form P-37-Contract Agreement, Part 1
- b. State of New Hampshire, NHDOT Contract 2013-051, Parts 2 and 3.
- c. *General Contract Requirements* in Appendix H of the NHDOT ATMS/TIS RFP 2013-051.
- d. Best and Final Offer (BAFO) Requirements Traceability Matrix
- e. NHDOT ATMS/TIS RFP 2013-051, dated November 30, 2012 and Addenda incorporated; then
- f. Technical Proposal Response to NHDOT RFP 2013-051 submitted by the Southwest Research Institute Team, dated March 21, 2013.

### **1.3 Contract Term**

The Contract and all obligations of the parties hereunder shall become effective after full execution by the parties, and the receipt of required governmental approvals, including, but not limited to, Governor and Executive Council of the State of New Hampshire approval (“Effective Date”).

The Contract shall begin on the Effective Date and extend for five years from Governor Council approval or for an initial term to include 3 years of maintenance after system acceptance, whichever term is the longer. The Term may be extended up to three (3) years, (“Extended Term”) at the sole option of the State, subject to the parties prior written agreement on applicable fees for each extended term.

SwRI shall commence work upon issuance of a Notice to Proceed by the State.

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The State does not require the Contracted Vendor to commence work before the Effective Date; however, if the Contracted Vendor commences work before the Effective Date and a Notice to Proceed, such work shall be performed at the sole risk of the Contracted Vendor. In the event that the Contract does not become effective, the State shall be under no obligation to pay the Contracted Vendor for any costs incurred or Services performed; however, if the Contract becomes effective, all costs incurred before the Effective Date shall be paid under the terms of the Contract.

**2. COMPENSATION**

**2.1 Contract Price**

The Contract price, method of payment, and terms of payment are identified and more particularly described in Contract Exhibit B: *Price and Payment Schedule*.

**2.2 Non-Exclusive, NOT TO EXCEED Contract**

This is a Non-Exclusive, Not to Exceed (“NTE”) Contract with price and term limitations as set forth in the Contract.

The State reserves the right, at its discretion, to retain other contractors to provide any of the Services or Deliverables identified under this procurement or make an award by item, part or portion of an item, group of items, or total Proposal. The Contracted Vendor shall not be responsible for any delay, act, or omission of such other contractors, except that the Contracted Vendor shall be responsible for any delay, act, or omission of the other contractors if such delay, act, or omission is caused by or due to the fault of the Contracted Vendor.

Notwithstanding any other provision of the Contract to the contrary, in no event shall total payments under the Contract exceed \$4,167,745.

**3. CONTRACT MANAGEMENT**

The Project will require the coordinated efforts of a Project Team consisting of both the Contracted Vendor and State personnel. The Contracted Vendor shall provide all necessary resources to perform its obligations under the Contract. The Contracted Vendor shall be responsible for managing the Project to its successful completion.

**3.1 The Vendor’s Contract Manager**

The Contracted Vendor shall assign a Contract Manager who shall be responsible for all Contract authorization and administration. The Contracted Vendor’s Contract Manager is:

Mary Anne Boll  
Contract Specialist  
PO Drawer 28510  
6220 Culebra Road  
San Antonio, TX 78228-0510

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Tel: 210-522-3582  
Fax: 210-522-3559  
Email: maryanne.boll@swri.org

### **3.2 The Vendor's Project Manager**

The Contracted Vendor shall assign a Project Manager who meets the requirements of the Contract, including but not limited to, the requirements set forth in the RFP. The Contracted Vendor Project Manager shall be subject to the prior written approval of the State. The State's approval process may include, without limitation, at the State's discretion, review of the proposed the Contracted Vendor Project Manager's resume, qualifications, references, and background checks, and an interview. The State may require removal or reassignment of the Contracted Vendor's Project Manager who, in the sole judgment of the State, is found unacceptable or is not performing to the State's satisfaction.

The Contracted Vendor Project Manager must be qualified to perform the obligations required of the position under the Contract, shall have full authority to make binding decisions under the Contract, and shall function as the Contracted Vendor's representative for all administrative and management matters. The Contracted Vendor's Project Manager shall perform the duties required under the Contract, including, but not limited to, those set forth in Contract Part 3, Exhibit J, Section 2. The Contracted Vendor's Project Manager must be available to promptly respond during Normal Business Hours within two (2) hours to inquiries from the State, and be at the site as needed. The Contracted Vendor's Project Manager must work diligently and use his/ her best efforts on the Project.

The Contracted Vendor shall not change its assignment of the Contracted Vendor Project Manager without providing the State written justification and obtaining the prior written approval of the State. State approvals for replacement of the Contracted Vendor's Project Manager shall not be unreasonably withheld. The replacement Project Manager shall have comparable or greater skills than the Contracted Vendor Project Manager being replaced; meet the requirements of the Contract, (including but not limited to, the requirements set forth in RFP); and be subject to reference and background checks described above in Contract Agreement Part 2, Section 3.2: *Vendor Project Manager*, and in Contract Agreement Part 2, Section 3.6: *Reference and Background Checks*, below. The Contracted Vendor shall assign a replacement for the Contracted Vendor Project Manager within ten (10) business days of the departure of the prior Contracted Vendor Project Manager, and the prior Contracted Vendor Project Manager shall continue during the ten (10) business day period to provide competent project management services through the assignment of a qualified interim Vendor Project Manager.

Notwithstanding any other provision of the Contract, the State shall have the option, at its discretion, to terminate the Contract, declare the Contracted Vendor in default and pursue its remedies at law and in equity, if the Contracted Vendor fails to assign a Contracted Vendor Project Manager meeting the requirements and terms of the Contract.



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The Contracted Vendor Project Manager is:

Robert Heller, Ph.D  
Program Director  
PO Drawer 28510  
6220 Culebra Road  
San Antonio, TX 78228-0510  
Tel: 210-522-3824  
Fax: 210-522-3396  
Email: Robert.Heller@SwRI.Org

**3.3 The Contracted Vendor Key Project Staff**

The Contracted Vendor shall assign Key Project Staff who meet the requirements of the Contract, and can implement the Software Solution meeting the requirements set forth in Exhibit I: *BAFO System Requirements Traceability Matrix*. The State may conduct reference and background checks on the Contracted Vendor Key Project Staff. The State reserves the right to require removal or reassignment of the Contracted Vendor's Key Project Staff. Any background checks shall be performed in accordance with the Contract Agreement- Part 2, Section 3.6: *Reference and Background Checks*.

The Contracted Vendor shall not change any of the Contracted Vendor Key Project Staff commitments without providing the State written justification and obtaining the prior written approval of the State. State approvals for replacement of the Contracted Vendor Key Project Staff will not be unreasonably withheld. The replacement the Contracted Vendor Key Project Staff shall have comparable or greater skills than the Contracted Vendor Key Project Staff being replaced; meet the requirements of the Contract, including but not limited to the requirements set forth in Exhibit I: *BAFO System Requirements Traceability Matrix* and be subject to reference and background checks described in Contract Agreement-Part 2, Section 3.6: *Reference and Background Checks*,

Notwithstanding any other provision of the Contract to the contrary, the State shall have the option to terminate the Contract, declare the Contracted Vendor in default and to pursue its remedies at law and in equity, if the Contracted Vendor fails to assign Key Project Staff meeting the requirements and terms of the Contract or if it is dissatisfied with the Contracted Vendor's replacement Project staff.

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The Contracted Vendor Key Project Staff shall consist of the following individuals in the roles identified below:

**The Contracted Vendor's Key Project Staff:**

<u>Key Member(s)</u>	<u>Title</u>
Robert Heller, Ph.D	SwRI Project Manager
Amit Misra	SwRI Software Project Manager
Clay Weston	SwRI Deputy Software Project Manager
Thomas Phillips	SAIC TIS Project Manager
Giedrius Praspaliauskas	SAIC TIS Technical Support

**3.4 State Contract Manager**

The State shall assign a Contract Manager who shall function as the State's representative with regard to Contract administration. The State Contract Manager is:

Denise Markow, P.E.  
TMC/ITS Project Manager  
New Hampshire Department of Transportation  
Bureau of Traffic  
e-mail: [dmarkow@dot.state.nh.us](mailto:dmarkow@dot.state.nh.us)

**3.5 State Project Manager**

The State shall assign a Project Manager. The State Project Manager's duties shall include the following:

- a. Leading the Project;
- b. Engaging and managing all the Contracted Vendors;
- c. Managing significant issues and risks.
- d. Reviewing and accepting Contract Deliverables;
- e. Invoice sign-offs;
- f. Review and approval of change proposals; and
- g. Managing stakeholders' concerns.

The State Project Manager is:

Denise Markow, P.E.  
TMC/ITS Project Manager  
New Hampshire Department of Transportation  
Bureau of Traffic  
e-mail: [dmarkow@dot.state.nh.us](mailto:dmarkow@dot.state.nh.us)

**3.6 Reference and Background Checks**

The State may, at its sole expense, conduct reference and background screening of the Contracted Vendor Project Manager and the Contracted Vendor Key Project Staff during the project. The

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State shall maintain the confidentiality of background screening results in accordance with the Contract Agreement, Part 2-Section 11: *Use of State's Information, Confidentiality.*

**4. DELIVERABLES**

**4.1 Vendor Responsibilities**

The Contracted Vendor shall be solely responsible for meeting all requirements, and terms and conditions specified in this Contract, regardless of whether or not a Subcontractor is used.

The Contracted Vendor may subcontract Services subject to the provisions of the Contract, including but not limited to, the terms and conditions in Section 6: *General Contract Requirements* herein and the *Contract Agreement Part 1: State of New Hampshire Terms and Conditions-P-37*. The Contracted Vendor must submit all information and documentation relating to the Subcontractor, including terms and conditions consistent with this Contract.

The State will consider the Contracted Vendor to be wholly responsible for the performance of the Contract and the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

**4.2 Deliverables and Services**

The Contracted Vendor shall provide the State with the Deliverables and Services in accordance with the time frames in the Work Plan for this Contract, and as more particularly described in Contract Exhibit A: *Contract Deliverables*.

Upon its submission of a Deliverable or Service, the Contracted Vendor represents that it has performed its obligations under the Contract associated with the Deliverable or Service.

**4.3 Non-Software and Written Deliverables Review and Acceptance**

After receiving written Certification from the Contracted Vendor that a Non-Software or Written Deliverable is final, complete, and ready for Review, the State will Review the Deliverable to determine whether it meets the Requirements outlined in Contract Exhibit A: *Contract Deliverables*. The State will notify the Contracted Vendor in writing of its Acceptance or rejection of the Deliverable within twenty one (21) business days of the State's receipt of the Contracted Vendor's written Certification. If the State rejects the Deliverable, the State shall notify the Contracted Vendor of the nature and class of the Deficiency and the Contracted Vendor shall correct the Deficiency within the period identified in the Work Plan. If no period for the Contracted Vendor's correction of the Deliverable is identified, the Contracted Vendor shall correct the Deficiency in the Deliverable within five (5) business days. Upon receipt of the corrected Deliverable, the State shall have fourteen (14) business days to review the Deliverable and notify the Contracted Vendor of its Acceptance or rejection thereof, with the option to extend the Review Period up to five (5) additional business days. If the Contracted Vendor fails to correct the Deficiency within the allotted time period, the State may, at its option, continue reviewing the Deliverable and require the Contracted Vendor to continue until the Deficiency is

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corrected, or immediately terminate the Contract, declare the Contracted Vendor in default, and pursue its remedies at law and in equity.

**4.4 System/Software Testing and Acceptance**

System/Software Testing and Acceptance shall be performed as set forth in the Test Plan and more particularly described in Exhibit F: *Testing Services*.

**4.5 Security**

The Contracted Vendor must ensure that appropriate levels of security are implemented and maintained in order to protect the integrity and reliability of its information technology resources, information, and services. State resources, information, and services must be available on an ongoing basis, with the appropriate infrastructure and security controls to ensure business continuity and safeguard State networks, Systems and Data.

IT Security involves all functions pertaining to the securing of State Data and Systems through the creation and definition of security policies, procedures and controls covering such areas as identification, authentication and non-repudiation.

All components of the Software shall be reviewed and tested to ensure they protect the State's hardware and software and its related Data assets. See RFP Section 2.2.1 – *Preliminary System Design, Security Diagram, Contract Agreement Part 3, Exhibit E-1: Security and Infrastructure and Contract Agreement –Part 3 – Exhibit F: Testing* for detailed information on requirements for Security testing.

**5. SOFTWARE**

**5.1 COTS Software and Documentation**

The Contracted Vendor shall provide Maine, New Hampshire and Vermont with separate software licenses and documentation as particularly described in Exhibit K: *Software License Agreement and Related Term and as attached in Exhibit O, Certificates and Attachments*.

**5.2 System Maintenance**

The Contracted Vendor shall provide the State with System Maintenance and Support Services set forth in the Contract as described in Exhibit H: *System Maintenance and Support Services*. Services will be performed on a Time and Materials (T&M) basis with a NTE amount as shown in Part 3, Exhibit B: *Price and Payment Schedule*.

**5.3 Restrictions**

The State will adhere to the software restrictions as outlined in Exhibit K: *Software License Agreement and Related Terms*.

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**5.4 Title**

The State will adhere to the title restrictions as outlined in Exhibit K: *Software License Agreement and Related Terms*.

**5.5 Ancillary Software Licenses**

Any additional ancillary software licenses required for this project shall be considered incidental to the project cost and shall be owned by the State.

**6. WARRANTY**

The Contracted Vendor shall provide the Warranty and Warranty Services set forth in the Contract, and particularly described in Exhibit G: *Warranty and Warranty Services*.

**7. SERVICES**

The Contracted Vendor shall provide the Services required under the Contract Documents.

**7.1 Administrative Services**

The Contracted Vendor shall provide the State with the administrative Services set forth in the Contract, and particularly described in Exhibit D: *Administrative Services*.

**7.2 Installation/Migration Services**

The Contracted Vendor shall provide the State with the Installation/Migration Services set forth in the Contract, and particularly described in Exhibit E: *Installation/Migration Services*.

**7.3 Testing Services**

The Contracted Vendor shall perform testing Services for the State set forth in the Contract, and particularly described in Exhibit F: *Testing Services*.

**7.4 Training Services**

The Contracted Vendor shall provide the State with training Services set forth in the Contract, and particularly described in Exhibit L: *Training Services*.

**7.5 System Maintenance and Support Services**

The Contracted Vendor shall provide the State with System Maintenance and Support Services for the Software set forth in the Contract, and particularly described in Exhibit H: *System Maintenance and Support*.

**8. WORK PLAN DELIVERABLE**

The Contracted Vendor shall provide the State with a Work Plan that shall include, without limitation, a detailed description of the Schedule, Tasks, Deliverables, Major Milestones, Task Dependencies, and Payment Schedule.

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The initial Work Plan shall be a separate Deliverable and is set forth in Contract Exhibit J: *Work Plan*. The Contracted Vendor shall update the Work Plan as necessary, but no less than every month, to accurately reflect the status of the Project, including without limitation, the Schedule, Tasks, Deliverables, Major Milestones, Task Dependencies, and Payment Schedule. Any such updates to the Work Plan must be approved by the State, in writing, prior to final incorporation into Contract Exhibit J: *Work Plan*. The updated Contract Exhibit J: *Work Plan*, as approved by the State, is incorporated herein by reference.

Unless otherwise agreed in writing by the State, changes to the Contract Exhibit J: *Work Plan* shall not relieve the Contracted Vendor from liability to the State for damages resulting from the Contracted Vendor's failure to perform its obligations under the Contract, including, without limitation, performance in accordance with the Schedule.

In the event of any delay in the Schedule, the Contracted Vendor must immediately notify the State in writing, identifying the nature of the delay, i.e., specific actions or inactions of the Contracted Vendor or the State causing the problem; its estimated duration period to reconciliation; specific actions that need to be taken to correct the problem; and the expected Schedule impact on the Project.

In the event additional time is required by the Contracted Vendor to correct Deficiencies, the Schedule shall not change unless previously agreed in writing by the State, except that the Schedule shall automatically extend on a day-to-day basis to the extent that the delay does not result from the Contracted Vendor's failure to fulfill its obligations under the Contract. To the extent that the State's execution of its major tasks takes longer than described in the Work Plan, the Schedule shall automatically extend on a day-to-day basis.

Notwithstanding anything to the contrary, the State shall have the option to terminate the Contract for default, at its discretion, if it is dissatisfied with the Vendor's Work Plan or elements within the Work Plan.

**9. CHANGE ORDERS**

The State may make change requests for revisions at any time by written Change Order. Within five (5) business days of the Contracted Vendor's receipt of a Change Order Request, the Contracted Vendor shall advise the State, in detail, of any impact on cost (e.g., increase or decrease), the Schedule, or the Work Plan.

The Contracted Vendor may request a change within the scope of the Contract by written Change Order, identifying any impact on cost, the Schedule, or the Work Plan. The State shall attempt to respond to the Contracted Vendor's requested Change Order within five (5) business days. The State must approve all Change Orders in writing. The State shall be deemed to have rejected the Change Order if the parties are unable to reach an agreement in writing.

All Change Order requests from the Contracted Vendor to the State, and the State acceptance of the Contracted Vendor's estimate for a State requested change, will be acknowledged and responded to,

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either acceptance or rejection, in writing by the State Contract Manager. If accepted, the Change Order(s) shall be subject to the Contract amendment process, as determined to apply by the State.

**9.1 Change Control Board (CCB)**

NHDOT, MaineDOT and VTrans have established a Change Control Board (CCB) to oversee System change management.

The CCB, through the Memorandum of Maintenance Agreement (MOMA) shall control the System development, operation and maintenance, changes and enhancements..

Consultant participants and subject matter experts may participate as necessary.

The Contracted Vendor is required to participate in the CCB process as requested. This will include, but not be limited to: prepare change request documentation (including cost and risk attributes), coordinate activities with the CCB participants, and respond to technical requests as necessary.

**10. INTELLECTUAL PROPERTY**

The State shall hold all ownership, title, and rights in any Custom Software developed in connection with performance of obligations under the Contract, or modifications to the Software, and their associated Documentation including any and all performance enhancing operational plans and Vendors' special utilities. The State shall have sole right to produce, publish, or otherwise use such Software, modifications, and Documentation developed under the Contract and to authorize others to do so in accordance with Exhibit K: *Software License Agreement and Related Terms*.

**10.1 State's Data**

All rights, title and interest in State Data shall remain with the State.

**10.2 Vendor's Materials**

Subject to the provisions of this Contract, the Contracted Vendor may develop for itself, or for others, materials that are competitive with, or similar to, the Deliverables. In accordance with the confidentiality provision of this Contract, the Contracted Vendor shall not distribute any products containing or disclose any State Confidential Information. The Contracted Vendor shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques that are acquired or used in the course of its performance under this Contract, provided that such is not obtained as the result of the deliberate memorization of the State Confidential Information by the Contracted Vendor employees or third party consultants engaged by the Contracted Vendor.

Without limiting the foregoing, the parties agree that the general knowledge referred to herein cannot include information or records not subject to public disclosure under New Hampshire RSA Chapter 91-A, which includes but is not limited to the following: records of grand juries and petit juries; records of parole and pardon boards; personal school records of pupils; records pertaining to internal

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personnel practices, financial information, test questions, scoring keys and other examination data use to administer a licensing examination, examination for employment, or academic examination and personnel, medical, welfare, library use, video tape sale or rental, and other files containing personally identifiable information that is private in nature.

### **10.3 State Website Copyright and Intellectual Property Rights**

All right, title and interest in the State WWW site, including copyright to all Data and information, shall remain with the State. The State shall also retain all right, title and interest in any user interfaces and computer instructions embedded within the WWW pages.

### **10.4 Custom Software Source Code**

The Contracted Vendor shall provide the State with a copy of the source code for the Custom Software, which shall be subject to the License rights outlined in Exhibit K: Software License Agreement and Related Terms.

### **10.5 Survival**

Intellectual Property shall survive the termination of the Contract as defined in Exhibit K: *Software License Agreement and Related Terms*.

## **11. USE OF STATE'S INFORMATION, CONFIDENTIALITY**

### **11.1 Use of State's Information**

In performing its obligations under the Contract, the Contracted Vendor may gain access to information of the State, including State Confidential Information. "State Confidential Information" shall include, but not be limited to, information exempted from public disclosure under New Hampshire RSA Chapter 91-A: *Access to Public Records and Meetings* (see e.g. RSA Chapter 91-A: *5 Exemptions*). The Contracted Vendor shall not use the State Confidential Information developed or obtained during the performance of, or acquired, or developed by reason of the Contract, except as directly connected to and necessary for the Contracted Vendor's performance under the Contract.

### **11.2 State Confidential Information**

The Contracted Vendor shall maintain the confidentiality of and protect from unauthorized use, disclosure, publication, and reproduction (collectively "release"), all State Confidential Information that becomes available to the Contracted Vendor in connection with its performance under the Contract, regardless of its form.

Subject to applicable federal or State laws and regulations, Confidential Information shall not include information which: (i) shall have otherwise become publicly available other than as a result of disclosure by the receiving party in breach hereof; (ii) was disclosed to the receiving party on a non-confidential basis from a source other than the disclosing party, which the receiving party believes is not prohibited from disclosing such information as a result of an obligation in favor of the disclosing party; (iii) is developed by the receiving party independently of, or was known by the receiving party prior to, any disclosure of such information made by the disclosing party; or (iv) is



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disclosed with the written consent of the disclosing party. A receiving party also may disclose Confidential Information to the extent required by an order of a court of competent jurisdiction.

Any disclosure of the State Confidential Information shall require the prior written approval of the State. the Contracted Vendor shall immediately notify the State if any request, subpoena or other legal process is served upon the Contracted Vendor regarding the State Confidential Information, and the Contracted Vendor shall cooperate with the State in any effort the State undertakes to contest the request, subpoena or other legal process, at no additional cost to the State.

In the event of the unauthorized release of State Confidential Information, the Contracted Vendor shall immediately notify the State, and the State may immediately be entitled to pursue any remedy at law and in equity, including, but not limited to, injunctive relief.

### **11.3 Vendor Confidential Information**

Insofar as the Contracted Vendor seeks to maintain the confidentiality of its confidential or proprietary information, the Contracted Vendor must clearly identify in writing all information it claims to be confidential or proprietary. The Contracted Vendor acknowledges that the State is subject to State and federal laws governing disclosure of information including, but not limited to, RSA Chapter 91-A. The State shall maintain the confidentiality of the identified Confidential Information insofar as it is consistent with applicable State and federal laws or regulations, including but not limited to, RSA Chapter 91-A. In the event the State receives a request for the information identified by the Contracted Vendor as confidential, the State shall notify the Contracted Vendor and specify the date the State will be releasing the requested information. At the request of the State, the Contracted Vendor shall cooperate and assist the State with the collection and review of the Contracted Vendor's information, at no additional expense to the State. Any effort to prohibit or enjoin the release of the information shall be the Contracted Vendor's sole responsibility and at the Contracted Vendor's sole expense. If the Contracted Vendor fails to obtain a court order enjoining the disclosure, the State shall release the information on the date specified in the State's notice to the Contracted Vendor, without any liability to the Contracted Vendor.

### **11.4 Survival**

This Contract Agreement Section 11, *Use of State's Information, Confidentiality*, shall survive termination or conclusion of the Contract.

## **12. LIMITATION OF LIABILITY**

### **12.1 State**

Subject to applicable laws and regulations, in no event shall the State be liable for any consequential, special, indirect, incidental, punitive, or exemplary damages. Subject to applicable laws and regulations, the State's liability to the Contracted Vendor shall not exceed the total Contract price set forth in Contract Agreement, Section 1.8 of the *Contract Agreement –Part 1-General Provisions*.

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Notwithstanding the foregoing and any provision of this Contract to the contrary, in no event does the State waive its sovereign immunity or any applicable defenses or immunities.

**12.2 The Contracted Vendor**

Subject to applicable laws and regulations, in no event shall the Contracted Vendor be liable for any consequential, special, indirect, incidental, punitive or exemplary damages and the Contracted Vendor's liability to the State shall not exceed two times (2X) the total Contract price set forth in Contract Agreement, Section 1.8 of the *Contract Agreement –Part 1-General Provisions*.

Notwithstanding the foregoing, the limitation of liability in this SOW Section 12.2 shall not apply to the Contracted Vendor's indemnification obligations set forth in the *Contract Agreement Part 1-Section 13: Indemnification* and confidentiality obligations in Contract Agreement-Part 2- Section 11: *Use of State's Information, Confidentiality*, which shall be unlimited.

**12.3 State's Immunity**

Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive termination or Contract conclusion.

**12.4 Survival**

This Contract Agreement- Part 2-Section 12: Limitation of Liability shall survive termination or Contract conclusion.

**13. TERMINATION**

This Section 13 shall survive the termination or Contract Conclusion.

**13.1 Termination for Default**

Any one or more of the following acts or omissions of the Contracted Vendor shall constitute an event of default hereunder ("Event of Default")

- a. Failure to perform the Services satisfactorily or on schedule;
- b. Failure to submit any report required; and/or
- c. Failure to perform any other covenant, term or condition **of the Contract**

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- 13.1.1** Upon the occurrence of any Event of Default, the State may take any one or more, or all, of the following actions:
- a. Unless otherwise provided in the Contract, the State shall provide the Contracted Vendor written notice of default and require it to be remedied within, in the absence of a greater or lesser specification of time, within thirty (30) days from the date of notice, unless otherwise indicated within by the State (“Cure Period”). If the Contracted Vendor fails to cure the default within the Cure Period, the State may terminate the Contract effective two (2) days after giving the Contracted Vendor notice of termination, at its sole discretion, treat the Contract as breached and pursue its remedies at law or in equity or both.
  - b. Give the Contracted Vendor a written notice specifying the Event of Default and suspending all payments to be made under the Contract and ordering that the portion of the Contract price which would otherwise accrue to the Contracted Vendor during the period from the date of such notice until such time as the State determines that the Contracted Vendor has cured the Event of Default shall never be paid to the Contracted Vendor.
  - c. Set off against any other obligations the State may owe to the Vendor any damages the State suffers by reason of any Event of Default;
  - d. Treat the Contract as breached and pursue any of its remedies at law or in equity, or both.
  - e. Procure Services that are the subject of the Contract from another source and the Contracted Vendor shall be liable for reimbursing the State for the replacement Services, and all administrative costs directly related to the replacement of the Contract and procuring the Services from another source, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs; all of which shall be subject to the limitations of liability set forth in the Contract.
- 13.1.2** The Vendor shall provide the State with written notice of default, and the State shall cure the default within thirty (30) days.
- 13.1.3** Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive termination or Contract Conclusion.

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**13.2 Termination for Convenience**

**13.2.1** The State may, at its sole discretion, terminate the Contract for convenience, in whole or in part, by thirty (30) days written notice to the Contracted Vendor. In the event of a termination for convenience, the State shall pay the Contracted Vendor the agreed upon price, if separately stated in this Contract, for Deliverables for which Acceptance has been given by the State. Amounts for Services or Deliverables provided prior to the date of termination for which no separate price is stated under the Contract shall be paid, in whole or in part, generally in accordance with Contract Exhibit B, *Price and Payment Schedule*, of the Contract.

**13.2.2** During the thirty (30) day period, the Contracted Vendor shall wind down and cease Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on the State from such winding down and cessation of Services.

**13.3 Termination for Conflict of Interest**

**13.3.1** The State may terminate the Contract by written notice if it determines that a conflict of interest exists, including but not limited to, a violation by any of the parties hereto of applicable laws regarding ethics in public acquisitions and procurement and performance of Contracts.

In such case, the State shall be entitled to a pro-rated refund of any current development, support, and maintenance costs. The State shall pay all other contracted payments that would have become due and payable if the Contracted Vendor did not know, or reasonably did not know, of the conflict of interest.

**13.3.2** In the event the Contract is terminated as provided above pursuant to a violation by the Contracted Vendor, the State shall be entitled to pursue the same remedies against the Contracted Vendor as it could pursue in the event of a default of the Contract by the Contracted Vendor.

**13.4 Termination Procedure**

**13.4.1** Upon termination of the Contract, the State, in addition to any other rights provided in the Contract, may require the Contracted Vendor to deliver to the State any property, including without limitation, Software and Written Deliverables, for such part of the Contract as has been terminated.

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13.4.2 After receipt of a notice of termination, and except as otherwise directed by the State, the Contracted Vendor shall:

- a. Stop work under the Contract on the date, and to the extent specified, in the notice;
- b. Promptly, but in no event longer than thirty (30) days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the State to the extent required, which approval or ratification shall be final for the purpose of this Section;
- c. Take such action as the State directs, or as necessary to preserve and protect the property related to the Contract which is in the possession of the Contracted Vendor and in which the State has an interest;
- d. Transfer title to the State and deliver in the manner, at the times, and to the extent directed by the State, any property which is required to be furnished to the State and which has been accepted or requested by the State; and
- e. Provide written Certification to the State that the Contracted Vendor has surrendered to the State all said property.
- f. Assist in Transition Services, as reasonably requested by the State at no additional cost.

**14. CHANGE OF OWNERSHIP**

In the event that the Contracted Vendor should change ownership for any reason whatsoever, the State shall have the option of continuing under the Contract with the Contracted Vendor, its successors or assigns for the full remaining term of the Contract; continuing under the Contract with the Contracted Vendor, its successors or assigns for such period of time as determined necessary by the State; or immediately terminate the Contract without liability to the Contracted Vendor, its successors or assigns.

**15. ASSIGNMENT, DELEGATION AND SUBCONTRACTS**

15.1 The Contracted Vendor shall not assign, delegate, subcontract, or otherwise transfer any of its interest, rights, or duties under the Contract without the prior written consent of the State. Such consent shall not be unreasonably withheld. Any attempted transfer, assignment, delegation, or other transfer made without the State's prior written consent shall be null and void, and may constitute an event of default at the sole discretion of the State.

15.2 The Contracted Vendor shall remain wholly responsible for performance of the entire Contract even if assignees, delegates, Subcontractors, or other transferees ("Assigns") are used, unless otherwise agreed to in writing by the State, and the Assigns fully assumes in writing any and all



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The allotted time for the first level negotiations shall begin on the date the Invoking Party's notice is received by the other party. Subsequent allotted time is days from the date that the original Invoking Party's notice is received by the other party.

**17. GENERAL PROVISIONS**

**17.1 Travel Expenses**

The State will not be responsible for any travel or out of pocket expenses incurred in the performance of the Services.

The Vendor must assume all travel and related expenses by "fully loading" the proposed labor rates to include, but not limited to: meals, hotel/housing, airfare, car rentals, car mileage, and out of pocket expenses.

**17.2 Shipping and Delivery Fee Exemption**

The State will not pay for any shipping or delivery fees unless specifically itemized in the Contract.

**17.3 Project Workspace and Office Equipment**

The State agency will work with the Contracted Vendor to determine the requirements for providing all necessary workspace and office equipment, including desktop computers for the Contracted Vendor's staff.

**17.4 Access/Cooperation**

As applicable, and reasonably necessary, and subject to the applicable State and federal laws and regulations and restrictions imposed by third parties upon the State, the State shall provide the Contracted Vendor with access to all program files, libraries, personal computer-based systems, software packages, network systems, security systems, and hardware as required to complete contracted services.

The State shall use reasonable efforts to provide approvals, authorizations, and decisions reasonably necessary to allow the Contracted Vendor to perform its obligations under the Contract.

**17.4.1 Facility Access / NHDOT, NHDIT and NHDOS Cooperation**

As applicable, and subject to the applicable laws and regulations, the State will provide the Vendor with access to all NHDOT program files, libraries, personal computer-based systems, software packages, network systems, security systems, and hardware and office locations as required.

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The NHDOT TMC facility will be occupied by the New Hampshire Department of Safety (NHDOS) and NHDOT during the System installation and acceptance testing process. As a result, the Vendor and any project subcontractors that access the facility will be required to submit to security measures, including background checks and personnel escorts. In addition, Vendors are required to conform to NHDOT / NHDOIT policies as described in sections **H-25.12.8 IT Required Work Procedures, H-25.12.14 Confidential Information**. The selected Vendor's staff will be required to complete a Non-Disclosure form for NHDOT/NHDOIT.

**17.4.1.1 NHDOT Escort**

The Vendor and any subcontractor will require an escort for all on-site activities. The escort will arrange access to the facility through NHDOS and monitor contractor activities. NHDOT will provide this escort at no fee to the Vendor for activities that will occur during normal business hours.

NH DoIT's hours of operation are 8:00 AM to 4:00 PM Monday through Friday. DoIT Operations authorized personnel are required to perform all system administration functions on all NHDOT owned production systems. Non-emergency infrastructure (Production systems) changes require a seven-business day DoIT manager approval cycle. Therefore, any/all NHDOT production system changes/updates require a 10-business day lead-time. These infrastructure changes include at a minimum software updates, system patches, hardware configurations, and upgrades are to be performed only by NH DoIT Operations authorized personnel

**17.4.1.2 Disruption of Operations**

NHDOT will cooperate with the Vendor to facilitate the System installation and Acceptance testing. NHDOT/DOS operations take precedent over Vendor activities. Resultantly:

- NHDOT reserves the right to deny an escort/facility access to the Vendor/project subcontractors due to staff availability or disruption of NHDOT/NHDOS Operations.
- NHDOT reserves the right to direct the Vendor or its subcontractors to cease activities and restore the TMC network to a previous condition in response to a disruption of NHDOT/NHDOS Operations.

The Vendor shall not be compensated by the NHDOT for failure to provide an escort / allow facility access or cease operations.

**17.4.1.3 Criminal Record Request**

The Vendor shall identify all individuals that will be working on this project and submit detailed background information for approval by NHDOT. No person shall work at the NHDOT TMC without prior written approval by NHDOT.



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All personnel (Vendor and any subcontractors) will be required to submit to a Criminal Record Request “background check”. The results of this check for each person requiring on-site access shall be submitted by the designated Vendor Project Manager to the NHDOT for approval at least fourteen (14) days before any on-site activities.

NHDOT reserves the right to deny facility access to the Vendor/project subcontractor personnel based on the results of the background check or changes to the criminal record of Vendor personnel. The Vendor shall not file a claim against the NHDOT for failure to provide facility access.

All costs associated with conducting Vendor Criminal Record Requests shall be the responsibility of the Vendor and shall be considered incidental to the project cost.

Information and application forms for a Criminal Record Request are available on the NHDOS website:

<http://www.nh.gov/safety/divisions/nhsp/ssb/crimrecords/index.html>

#### **17.5 Required Work Procedures**

All work done must conform to standards and procedures established by the Department of Information Technology and the State and as referenced in the Contract documents.

#### **17.6 Computer Use**

In consideration for receiving access to and use of the computer facilities, network, licensed or developed software, software maintained or operated by any of the State entities, systems, equipment, Documentation, information, reports, or data of any kind (hereinafter “Information”), the Contracted Vendor understands and agrees to the following rules:

- a. Every Authorized User has the responsibility to assure the protection of information from unauthorized access, misuse, theft, damage, destruction, modification, or disclosure.
- b. That information shall be used solely for conducting official State business, and all other use or access is strictly forbidden including, but not limited to, personal, or other private and non-State use and that at no time shall the Contracted Vendor access or attempt to access any information without having the express authority to do so.
- c. That at no time shall the Contracted Vendor access or attempt to access any information in a manner inconsistent with the approved policies, procedures, and /or agreements relating to system entry/access.
- d. That all non-Vendor software licensed, developed, or being evaluated by the State cannot be copied, shared, distributed, sub-licensed, modified, reverse engineered, rented, or sold, and that at all times the Contracted Vendor must use utmost care to protect and keep such software strictly confidential in accordance with the license or any other Agreement executed by the State. Only equipment or software owned, licensed, or being

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evaluated by the State, can be used by the Contracted Vendor. Personal software shall not be installed on any equipment.

- e. That if the Contracted Vendor is found to be in violation of any of the above-stated rules, the User may face removal from the State Contract, and/or criminal or civil prosecution, if the act constitutes a violation of law.

**17.7 Email Use**

Mail and other electronic communication messaging systems are State of New Hampshire property and are to be used for business purposes only. Email is defined as “internal Email systems” or “State-funded Email systems”. The Contracted Vendor understands and agrees that use of email shall follow State standard policy (<http://www.nh.gov/doi/internet/vendors.php>)

**17.8 Regulatory Government Approvals**

The Contracted Vendor shall obtain all necessary and applicable regulatory or other governmental approvals necessary to perform its obligations under the Contract.

**17.9 Force Majeure**

Neither the Contracted Vendor nor the State shall be responsible for delays or failures in performance resulting from events beyond the control of such party and without fault or negligence of such party. Such events shall include, but not be limited to, acts of God, strikes, lock outs, riots, and acts of War, epidemics, acts of Government, fire, power failures, nuclear accidents, earthquakes, and unusually severe weather.

Except in the event of the foregoing, Force Majeure events shall not include the Contracted Vendor’s inability to hire or provide personnel needed for the Contracted Vendor’s performance under the Contract.

**17.10 Insurance**

**17.10.1 The Contracted Vendor Insurance Requirement**

See Contract Agreement Part 1-Form P-37 Section 14.

**17.10.2** The ACORD Insurance Certificate should note the Certificate Holder in the lower lefthand block including State of New Hampshire, Department, name, name of the individual responsible for the funding of the contracts and his/her address.

**17.11 Exhibits**

The Exhibits referred to, in and attached to the Contract are incorporated by reference as if fully included in the text.

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**17.12 Venue and Jurisdiction**

Any action on the Contract may only be brought in the State of New Hampshire Merrimack County Superior Court.

**17.13 Survival**

The terms, conditions and warranties contained in the Contract that by their context are intended to survive the completion of the performance, cancellation or termination of the Contract shall so survive, including, but not limited to, the terms of the *Contract Agreement Exhibit D Section 3: Records Retention and Access Requirements*, *Contract Agreement Exhibit D Section 4: Accounting Requirements*, and *Contract Agreement Part 2-Section 11: Use of State's Information, Confidentiality* and *Contract Agreement Part 1- Section 13: Indemnification* which shall all survive the termination of the Contract.

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**1. DELIVERABLES, MILESTONES AND ACTIVITIES**

The Deliverables, Milestones and Activities are set forth in the Schedule described below in Section 2. By unconditionally accepting a Deliverable, the State reserves the right to reject any and all Deliverables in the event the State detects any Deficiency in the System, in whole or in part, through completion of all Acceptance Testing, including but not limited to, Software/System Acceptance Testing, and any extensions thereof.

Pricing for Deliverables is set forth in Exhibit B: *Price and Payment Schedule*. Pricing will be effective for the Term of this Contract, and any extensions thereof.

**2. DELIVERABLES, MILESTONES, AND ACTIVITIES SCHEDULE**

**2.1 Implementation Schedule – Activities / Deliverables / Milestones**

The list of deliverables provided below shall be made to all three states simultaneously; with the exception of those deliverables labeled with an (\*), which will be tailored to individual states.

Activity, Deliverable or Milestone	Deliverable Type	NTP + date
Complete Project Kickoff Meeting	Non Software	NTP + 1 week
Status Meetings	Non-Software	Weekly
System Performance Measures/Data Reports	Written	NTP + 45 days
Project Work Plan	Written	NTP + 60 days
Project Schedule	Written	NTP + 60 days
Existing System Memoranda*	Written	14 days prior to system design
Preliminary System Design:	Non Software	NTP + 90 days
System Installation/Migration Plan*	Written	NTP + 90 days
Configuration Management Plan	Written	NTP + 100 days
Final System Design:	Non Software	NTP + 128 days
Final System Requirements Matrix	Written	NTP + 6 mo
System Development Test Plan	Written	NTP + 7 mo
Software Development		
TIS Development Milestone 1	Software	NTP + 5 mo
Map & Map Tiles Integration Test Report	Written	NTP + 6 mo
TIS Development Milestone 2	Software	NTP + 6 mo
TIS Development Milestone 3	Software	NTP + 7 mo
Minimum Video Management Integration Test Report	Written	NTP + 7 mo
Misc (Coordinate, Joystick, Bookmarks) Integration Test Report	Written	NTP + 7 mo
User Interface Changes (Spell Check, etc.) Integration Test Report	Written	NTP + 7 mo

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<b>Activity, Deliverable or Milestone</b>	<b>Deliverable Type</b>	<b>NTP + date</b>
TIS Development Milestone 4	Software	NTP + 8 mo
Event Management Modifications Integration Test Report	Written	NTP + 9 mo
TIS Development Milestone 5	Software	NTP + 9 mo
Third Party Travel Time Integration Test Report	Written	NTP + 9 mo
Performance Measures Integration Test Report	Written	NTP + 10 mo
TIS Development Milestone 6	Software	NTP + 10 mo
1201 Feed Integration Test Report	Written	NTP + 10 mo
Event Management Highly Desirable Integration Test Report	Written	NTP + 10 mo
Logging Archiving, Device Testing Integration Test Report	Written	NTP + 10 mo
Weather (NWS, 1086 & RWIS) Integration Test Report	Written	NTP + 11 mo
TIS Development Milestone 7	Software	NTP + 11 mo
State Police CAD Integration Test Report	Written	NTP + 11 mo
Data Fusion Hub Implementation Integration Test Report	Written	NTP + 11 mo
Data Fusion Hub Operational Prep Report	Written	NTP + 11 mo
TIS Development Milestone 8	Software	NTP + 12 mo
TIS Development Milestone 9	Software	NTP + 13 mo
TIS Development Milestone 10	Software	NTP + 14 mo
Site Acceptance Testing Plan*	Written	NTP + 8 mo
System Training Plan	Written	NTP + 8 mo
State Development & Test Environments (SwRI Hosted)	Non Software	NTP + 10 mo
System Burn-In Plan	Written	NTP + 10 mo
System Maintenance Plan	Written	NTP + 10 mo
System Development Testing	Non Software	NTP + 17 mo
Site Acceptance Testing*	Non Software	NTP + 18 mo
Training*	Non Software	NTP + 18 mo
Documentation	Written	NTP + 18 mo
User Acceptance Testing (Burn-In)*	Non Software	NTP + 20 mo
Warranty Quarterly Payment 1	Non Software	NTP + 23 mo
Warranty Quarterly Payment 2	Non Software	NTP + 26 mo
Warranty Quarterly Payment 3	Non Software	NTP + 29 mo
Warranty Quarterly Payment 4	Non Software	NTP + 32 mo
Year 1 Hosting	Non-Software	NTP + 23 mo
Year 1 M&O	Non-Software	NTP + 23 mo
Year 2 Hosting	Non-Software	NTP + 35 mo
Year2 M&O	Non-Software	NTP + 35 mo

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Activity, Deliverable or Milestone	Deliverable Type	NTP + date
Year 3 Hosting	Non-Software	NTP + 47 mo
Year 3 M&O	Non-Software	NTP + 47 mo

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**PRICE AND PAYMENT SCHEDULE**

**1. DELIVERABLE PAYMENT SCHEDULE**

**1.1 Not to Exceed**

This is a Not to Exceed (NTE) Contract totaling \$4,167,745 for a five year period starting from the Effective Date of Governor Council approval. SwRI shall be responsible for performing its obligations in accordance with the Contract. This Contract will allow SwRI to invoice the State for the following Activities, Deliverables, or Milestones appearing in the price and payment tables below.

Activity, Deliverable or Milestone	Deliverable Type	Payment Amount
Complete Project Kickoff Meeting	Non Software	\$73,637
System Performance Measures/Data Reports	Written	\$3,040
Project Work Plan	Written	\$18,226
Project Schedule	Written	\$48,321
Existing System Memorandum	Written	\$122,309
Preliminary System Design:	Non Software	\$179,166
System Installation/Migration Plan	Written	\$48,676
Configuration Management Plan	Written	\$14,558
Final System Design:	Non Software	\$87,783
Final System Requirements Matrix	Written	\$29,036
System Development Test Plan	Written	\$27,885
Software Development		
TIS Development Milestone 1	Software	\$41,571
Map & Map Tiles Integration Test Report	Written	\$87,378
TIS Development Milestone 2	Software	\$41,571
TIS Development Milestone 3	Software	\$41,571
Minimum Video Management Integration Test Report	Written	\$51,622
Misc (Coordinate, Joystick, Bookmarks) Integration Test Report	Written	\$14,184
User Interface Changes (Spell Check, etc.) Integration Test Report	Written	\$92,441
TIS Development Milestone 4	Software	\$41,571
Event Management Modifications Integration Test Report	Written	\$266,373
TIS Development Milestone 5	Software	\$41,571
Third Party Travel Time Integration Test Report	Written	\$137,464
Performance Measures Integration Test Report	Written	\$51,307
TIS Development Milestone 6	Software	\$41,571
1201 Feed Integration Test Report	Written	\$23,905
Event Management Highly Desirable Integration Test Report	Written	\$15,969

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Activity, Deliverable or Milestone	Deliverable Type	Payment Amount
Logging Archiving, Device Testing Integration Test Report	Written	\$126,805
Weather (NWS, 1086 & RWIS) Integration Test Report	Written	\$95,605
TIS Development Milestone 7	Software	\$41,571
State Police CAD Integration Test Report	Written	\$69,862
Data Fusion Hub Implementation Integration Test Report	Written	\$56,324
Data Fusion Hub Operational Prep Report	Written	\$8,102
TIS Development Milestone 8	Software	\$41,571
TIS Development Milestone 9	Software	\$41,571
TIS Development Milestone 10	Software	\$41,571
Site Acceptance Testing Plan	Written	\$53,110
System Training Plan	Written	\$21,083
State Development & Test Environments (SwRI Hosted)	Non Software	\$43,629
System Burn-In Plan	Written	\$28,273
System Maintenance Plan	Written	\$15,324
System Development Testing	Non Software	\$128,058
Site Acceptance Testing	Non Software	\$84,444
Training	Non Software	\$93,408
Documentation	Written	\$63,425
User Acceptance Testing (Burn-In)	Non Software	\$153,675
Warranty Quarterly Payment 1	Non Software	\$46,313
Warranty Quarterly Payment 2	Non Software	\$46,313
Warranty Quarterly Payment 3	Non Software	\$46,313
Warranty Quarterly Payment 4	Non Software	\$46,313
Year 1 Hosting <sup>1</sup>	Non-Software	\$176,925
Year 1 M&O <sup>2</sup>	Non-Software	\$249,761
Year 2 Hosting <sup>1</sup>	Non-Software	\$176,925
Year 2 M&O <sup>3</sup>	Non-Software	\$200,541
Year 3 Hosting <sup>1</sup>	Non-Software	\$176,925
Year 3 M&O <sup>3</sup>	Non-Software	\$151,299

<sup>1</sup> Year 1, 2 and 3 Hosting billed at beginning of year.

<sup>2</sup> Year 1 M&O billed quarterly

<sup>3</sup> Year 2 and 3 M&O billed on SwRI 4 week accounting period



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**2. TOTAL CONTRACT PRICE**

Notwithstanding any provision in the Contract to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments made by the State exceed \$4,167,745 ("Total Contract Price"). The payment by the State of the total Contract price shall be the only, and the complete reimbursement to SwRI for all fees and expenses, of whatever nature, incurred by SwRI in the performance hereof.

**3. INVOICING**

SwRI shall submit correct invoices to the State for all amounts to be paid by the State. All invoices submitted shall be subject to the State's prior written approval, which shall not be unreasonably withheld. SwRI shall only submit invoices for Services or Deliverables as permitted by the Contract. Invoices must be in a format as determined by the State and contain detailed information, including without limitation: itemization of each Deliverable and identification of the Deliverable for which payment is sought, and the Acceptance date triggering such payment; date of delivery and/or installation; maintenance and support charges; any other Project costs or retention amounts if applicable.

Upon Acceptance of a Deliverable, and a properly documented and undisputed invoice, the State will pay the correct and undisputed invoice within thirty (30) days of invoice receipt. Invoices will not be backdated and shall be promptly dispatched.

Invoices shall be sent to:

NHDOT/TMC  
P.O. Box 483  
Concord, NH 03302-0483

**4. PAYMENT ADDRESS**

The preferred method of payment is by electronic funds transfer to the account of Southwest Research Institute:

Bank Name: Bank of America, N.A.  
300 Convent, 6th Floor  
San Antonio, TX 78205

Account Name: SOUTHWEST RESEARCH INSTITUTE

Account Number: 001390004879

SWIFT Account: BOFAUS3N

ABA Routing Number: 11100025  
(ACH only)

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ABA Routing Number: 026009593  
(Wires only)

CHIP Address: 0959

Bank of America Contact 1-888-715-1000 x 38149

Remittance: [remit@swri.org](mailto:remit@swri.org)

Please reference the applicable invoice number with the payment or provide remittance information by e-mail to [remit@swri.org](mailto:remit@swri.org). If this preferred method of payment is not feasible, please send all payments by check and/or any other information to the address identified on the invoice.

**5. OVERPAYMENTS TO SwRI**

SwRI shall promptly, but no later than fifteen (15) business days, return to the State the full amount of any overpayment or erroneous payment upon discovery or notice from the State.

**6. CREDITS**

The State may apply credits due to the State arising out of this Contract, against SwRI's invoices with appropriate information attached.

**7. PROJECT HOLDBACK**

The State shall withhold ten percent (10 %) of the price for each Deliverable, as set forth in the Payment Table above, until successful conclusion of the Warranty Period.

**8. MAINTENANCE AND SUPPORT SERVICES RATES**

The rates below are by State Fiscal Year (July 1 through June 30).

<b>SwRI Rates Pricing Worksheet (Hourly Rates)</b>						
<b>Position Title</b>	<b>SFY 2015</b>	<b>SFY 2016</b>	<b>SFY 2017</b>	<b>SFY 2018</b>	<b>SFY 2019</b>	<b>SFY 2020</b>
<b>SwRI Rates</b>						
Project Manager (Professional Level 4)	\$359.52	\$369.78	\$380.42	\$391.47	\$402.86	\$414.57
Software Project Manager (Professional Level 3)	\$252.71	\$259.91	\$267.40	\$275.15	\$283.17	\$291.41
Deputy Software Project Manager (Professional Level 2)	\$178.92	\$184.01	\$189.29	\$194.80	\$200.46	\$206.31
Senior Designer (Professional Level 3)	\$252.71	\$259.91	\$267.40	\$275.15	\$283.17	\$291.41

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<b>SwRI Rates Pricing Worksheet (Hourly Rates)</b>						
<b>Position Title</b>	<b>SFY 2015</b>	<b>SFY 2016</b>	<b>SFY 2017</b>	<b>SFY 2018</b>	<b>SFY 2019</b>	<b>SFY 2020</b>
Senior Designer (Professional Level 2)	\$178.92	\$184.01	\$189.29	\$194.80	\$200.46	\$206.31
Junior Developer/Support/QA (Professional Level 1)	\$134.79	\$138.61	\$142.62	\$146.74	\$151.01	\$155.41
Senior Technical	\$99.65	\$102.46	\$105.42	\$108.49	\$111.63	\$114.89
Technician	\$68.37	\$70.31	\$72.34	\$74.44	\$76.57	\$78.81
Clerical	\$71.10	\$72.97	\$74.92	\$76.83	\$78.74	\$80.58
Trainer	\$134.79	\$138.61	\$142.62	\$146.74	\$151.01	\$155.41
<b>Leidos Rates</b>						
Program Manager	\$195.70	\$198.67	\$202.03	\$208.09	\$214.51	\$221.13
Solutions Architect	\$195.23	\$198.51	\$202.19	\$208.26	\$214.70	221.34
Team Lead	\$185.00	\$188.09	\$191.58	\$197.33	\$203.41	\$209.68
Backend Developer	\$128.45	\$130.57	\$133.00	\$136.99	\$141.23	\$145.60
System Engineer	\$105.42	\$107.16	\$109.17	\$112.45	\$115.93	\$119.51
Database Administrator	\$122.03	\$124.06	\$126.39	\$130.18	\$134.21	\$138.36
Web Developer	\$128.45	\$130.57	\$133.00	\$136.99	\$141.23	\$145.60
GIS Developer	\$128.45	\$130.57	\$133.00	\$136.99	\$141.23	\$145.60
QA Analyst	\$73.62	\$74.84	\$76.24	\$78.53	\$80.96	\$83.46
Business Analyst	\$73.62	\$74.84	\$76.24	\$78.53	\$80.96	\$83.46
UX Designer	\$128.45	\$130.57	\$133.00	\$136.99	\$141.21	\$145.55
Web Lead	\$189.25	\$192.41	\$195.99	\$201.87	\$208.12	\$214.56
Project Control	\$191.87	\$195.10	\$198.72	\$204.68	\$211.00	\$217.51

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**SPECIAL PROVISIONS**

**1. Special Provisions**

1 a. Section 14.3 of the P-37 CONTRACT 2013-046 AGREEMENT- PART 1 shall be amended as follows:

New text to read:

Each certificate(s) of insurance shall contain a clause requiring the insurer, or its authorized representative, to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or except with respect to its umbrella liability policy, material modification (reduction/restriction) of the policy. The Contractor may provide notice of material modification for its umbrella liability policy.

Original Text:

Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

1 b. Section 20 of the P-37 CONTRACT 2013-046 AGREEMENT- PART 1 reads as follows

The parties hereto do not intend to benefit any third parties and this agreement shall not be construed to confer any such benefit.

Notwithstanding the provisions of paragraph 20, the function of the contract is to provide services to Vermont and Maine whom shall not be considered third parties.

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**1. STATE MEETINGS AND REPORTS**

The State believes that effective communication and reporting are essential to Project success.

SwRI Key Project Staff shall participate in meetings as requested by the State, in accordance with the requirements and terms of this Contract.

- a. **Introductory Meeting:** Participants will include SwRI key Project staff and Project leaders from NHDOT, NHDoIT, VTrans, and MaineDOT. This meeting shall be conducted “in person” and will enable leaders to become acquainted and establish any preliminary project procedures.
- b. **Project Kickoff Meeting:** Participants will include the State and SwRI Project Teams. This meeting is to establish a sound foundation for activities that will follow.
- c. **Status Meetings:** Participants will include, at a minimum, Vendor Project Manager, NHDOT Project Manager and representatives from Vermont and Maine. These meetings, which will be conducted at least weekly, will address overall Project status and any additional topics needed to remain on schedule and within budget. A status and error report from the Vendor will serve as the basis for discussion.
- c. **The Work Plan:** must be reviewed at each Status Meeting and updated, at minimum, monthly and presented at the first status meeting of the month or as directed by NHDOT.
- d. **System Design Meetings:** Participants will include, at a minimum, SwRI Project Manager, the State Project Manager and Key Project staff as required.
- e. **Change Control Board (CCB) Meetings:** Participants will include, at a minimum, SwRI Project Manager, CCB Members, and Key Project staff as required
- f. **Special Meetings:** Need may arise for a special meeting with State leaders or Project stakeholders to address specific issues.
- g. **Exit Meeting:** Participants will include Project leaders from SwRI and the State. Discussion will focus on lessons learned from the Project and on follow up options that the State may wish to consider.

The State expects SwRI to prepare agendas and background for and minutes of meetings. Drafting of formal presentations, such as a presentation for the introductory and/or kickoff meeting, will also be SwRI’s responsibility.

The SwRI Project Manager or SwRI Key Project Staff shall submit monthly status reports and perform weekly status meetings during the course of the development phase of the project in accordance with the Schedule and terms of this Contract. All status reports shall be prepared in formats approved by the State. The SwRI’s Project Manager shall assist the State’s Project Manager, or itself produce reports related to

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Project Management as requested by the State, all at no additional cost to the State. SwRI shall produce Project status reports, which shall contain, at a minimum, the following:

1. Project status related to the Work Plan;
2. Deliverable status;
3. Accomplishments during weeks being reported;
4. Planned activities for the upcoming two (2) week period;
5. Future activities; and
6. Issues and concerns requiring resolution.
7. Report and remedies in case of falling behind Schedule

SwRI shall provide support to the State with information or reports regarding the Project as requested. SwRI shall assist the State in preparing special reports and presentations relating to Project Management, as requested.

## **2. STATE-OWNED DOCUMENTS AND DATA**

SwRI shall provide the State access to all documents, State Data, materials, reports, and other work in progress relating to the Contract ("State Owned Documents"). Upon expiration or termination of the Contract with the State, SwRI shall turn over all State-owned documents, material, reports, and work in progress relating to the Contract to the State at no additional cost to the State. SwRI will establish and maintain a website or ftp site accessible by the State for the duration of the contract through which all contract deliverables will be available to the State. At the conclusion of the contract, SwRI will provide an electronic version of the documents on the website on media (e.g. CD, DVD, etc.) mutually acceptable by SwRI and the State.

## **3. RECORDS RETENTION AND ACCESS REQUIREMENTS**

SwRI shall agree to the conditions of all applicable State and federal laws and regulations, which are incorporated herein by reference, regarding retention and access requirements, including without limitation, retention policies consistent with the Federal Acquisition Regulations (FAR) Subpart 4.7 *Contractor Records Retention*.

SwRI and its Subcontractors shall maintain books, records, documents, and other evidence of accounting procedures and practices, which properly and sufficiently reflect all direct and indirect costs invoiced in the performance of their respective obligations under the Contract. SwRI and its Subcontractors shall retain all such records for three (3) years following termination of the Contract, including any extensions. Records relating to any litigation matters regarding the Contract shall be kept for one (1) year following the termination of all litigation, including the termination of all appeals or the expiration of the appeal period unless extended by the court.

Upon prior notice and subject to reasonable time frames, all such records shall be subject to inspection, examination, audit and copying by personnel so authorized by the State and federal officials so authorized by law, rule, regulation or Contract, as applicable. Access to these items shall be provided within Merrimack County of the State of New Hampshire, unless otherwise agreed by the State. Delivery of and access to such records shall be at no cost to the State during the three (3) year period following termination of the Contract and one (1) year term following litigation relating to the Contract, including all appeals or

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the expiration of the appeal period. SwRI shall include the record retention and review requirements of this section in any of its subcontracts.

The State agrees that books, records, documents, and other evidence of accounting procedures and practices related to SwRI's cost structure and profit factors shall be excluded from the State's review unless the cost of any other Services or Deliverables provided under the Contract is calculated or derived from the cost structure or profit factors.

**4. ACCOUNTING REQUIREMENTS**

SwRI shall maintain an accounting system in accordance with generally accepted accounting principles. The costs applicable to the Contract shall be ascertainable from the accounting system and SwRI shall maintain records pertaining to the Services and all other costs and expenditures.

**5. ON-SITE WORK HOURS**

SwRI personnel shall perform all on-site work during normal business hours, Monday through Friday, between 8:00 am and 4:00 pm EST, excluding state holidays. Changes to this schedule may be made upon agreement with the State Project Manager.

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**INSTALLATION/MIGRATION SERVICES**

SwRI shall provide the State with the following Installation/Migration Services for all software and hardware deliverables set forth in Contract Exhibit A.

**1. INSTALLATION/MIGRATION STRATEGY**

**1.1 Key Components**

- A. SwRI shall employ an Installation/Migration strategy with a timeline set forth in accordance with the migration strategy presented in the SwRI Proposal and summarized below:

The Draft System Installation/Migration Plan shall be submitted to NHDOT/MaineDOT/VTrans for each state no later than ninety (90) days after NTP. The Final System Installation/Migration Plan shall be submitted to NHDOT/MaineDOT/VTrans no later than 30 days prior to the scheduled date of installation and/or migration for each state. The final System Installation/Migration Plan shall be reviewed and accepted by NHDoIT/Maine OIT/Vermont IT prior to the Vendor proceeding with the deployment.

The System Installation/Migration Plan shall include, at a minimum:

- Scope and description of work – including plans and phasing schedules for all facilities, locations and subsystems by state.
- Prerequisites and their dependencies for each state
- Tools required for each state
- Key installation personnel and their roles for each state
- Planned access dates and times of installation/migration for each state
- NHDOT/VTrans/MeDOT resources required for each location
- Operational impact to NHDOT/VTrans/MeDOT facilities and services, if any
- Installation procedures for each component (hardware and software) of each subsystem, including any software and configuration setting and changes.
- Final Installation (as built) drawings for each state,
- Descriptions and drawings of any intermediate or temporary configurations required which differ from final configuration.
- Detailed physical layout drawings with parts-list keyed to layouts, if required.
- 

SwRI shall be responsible for providing all necessary personnel, tools, test equipment, transportation, hardware and supplies for the successful and complete installation of all equipment and software. The Vendor and all subconsultants shall be responsible for their own performance and safety. Installations shall be performed in accordance with all Federal, State and Local laws and regulations.

Once the Final System Installation/Migration Plan and the FSD is approved, the Contracted Vendor may begin installation.

All on-site installation activities shall take place during non-operational and/or non-peak hours unless approved by NHDOT. Installation during other hours shall be at the sole discretion of



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NHDOT. On-site installation activities may be suspended by NHDOT in the event of an emergency identified by NHDOT. The Vendor is not permitted to work at the TMC without an NHDOT staff member present.

Migration/Conversion of historical data from the existing system for performance reporting is not a requirement of this contract.

The Contracted Vendor is not permitted to take any ITS device type off-line for more than a ten (10) minute period during the installation without prior approval of NHDOT.

Data exchange between the existing NHDOT ATMS and the existing 511 TIS and ATIS public feed shall be maintained during all installation and migration activities.

- B.** SwRI and the State, acting on behalf of the Change Control Board (CCB) shall adhere to the Change Order process identified in Contract Part 2 - Section 9.0: Change Orders.

### **1.2 Installation/Migration Timeline**

SwRI shall propose an Installation/Migration time-line aligned with the overall Work Plan accepted by the NHDOT/MaineDOT/VTrans. Installation/Migration timing shall be structured to recognize interdependencies between applications and structure a cost effective and timely execution.

## **2. INSTALLATION/MIGRATION METHODOLOGY**

### **2.1 Hosted Server Access**

- a. Definition of "Hosted Server Production" - SwRI will:
- 1) Provide production access to a computer server or servers ("Hosted Server") with the operating system configuration specified in the Contract documents.
  - 2) Make available the "Hosted Server - Production" for customer access 24 hours per day, 7 days per week ("24x7") with 99.95% uptime.
- b. Definition of "Hosted Server Access" - SwRI will:
- 1) Provide non-production access to a computer server or servers ("Hosted Server") with the operating system configuration specified in the Contract documents.
  - 2) Make available the Hosted Server for customer access 24 hours per day, 7 days per week ("24x7") with the following exclusions:
    - a) Scheduled maintenance (at least once weekly – timing to be coordinated with the State);
    - b) Scheduled periods when backup of Hosted Server takes place – timing to be coordinated with the State;
    - c) Emergency (non-scheduled) outages,
    - d) Scheduled outages for application of patches or other modifications requested by the State;
    - e) Perform one (1) daily backup of development and test instances of SwRI programs and State test data present on the Hosted Server, and
    - f) Upon completion or termination of the Hosted Server Access, create a copy of State development and test instances, using a medium agreed upon in advance, to facilitate transition of such information to other computer hardware ("Decommission Backup").

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Transition and migration services are not provided as part of the Services but may be acquired separately from SwRI.

- c. Conditions and assumptions related to Hosted Server Access:
- 1) State use of Hosted Server is limited to development, test, and demonstration activities related to SwRI programs, and the State will not use the instance(s) for production purposes or for any other purpose not expressly stated herein.
  - 2) Multiple customers may share the same computer server; the State instances shall be separated from other instances located on the same server using password protection.
  - 3) The State acknowledges that SwRI may use server and network equipment owned by SwRI or third-party hosting provider.

The allocation of server resources is at SwRI's discretion

## **2.2 Network Services**

- a. Definition of "Network Services" - SwRI shall:
- 1) Assist with the configuration of network connectivity from the states to the hosting facility as specified in the Contract documents. The states shall access ("Hosted Server") systems using site-to-site Virtual Private Network (VPN) connections.
- b. Conditions and assumptions related to Network Services:
- 1) Costs for equipment, labor and services to maintain Internet connectivity between the Vendor facilities and the public internet shall be SwRI's responsibility.
  - 2) NHDOT/MaineDOT/VTran shall provide and be responsible for connections between their respective facilities and the public Internet.
  - 3) At NHDOT/MaineDOT/VTrans's option, authorized third parties (e.g., software implementers, network providers) may be given limited access by SwRI to certain levels of the States' hosted systems through a VPN or separate network connection, that meets SwRI's Specifications.
  - 4) SwRI is responsible for ensuring that all components of the SwRI's software are accessible through the states' VPN connections to the hosting facilities.
  - 5) SwRI is not responsible for network connection issues, problems or conditions arising on the States' internal network.

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**SECURITY AND INFRASTRUCTURE**

**1. SECURITY**

The Contracted Vendor shall ensure that appropriate levels of security are implemented and maintained in order to protect the integrity and reliability of the States' information technology resources, information, and services according to NHDoIT standards. State resources, information, and services must be available on an ongoing basis, with the appropriate infrastructure and security controls to ensure business continuity and safeguard State networks, systems and data.

The Preliminary System Design shall include Security Diagram(s) that show interconnections between the separate networks (i.e. NHDOT, VTrans, & MaineDOT IT Networks, Vendor networks, etc.) and what ports are open/closed in the diagram.

The Security Diagram shall include accompanying Excel document with access control lists and firewall rule sets.

SwRI shall provide the State resources, information, and Services on an ongoing basis, with the appropriate infrastructure and security controls to ensure business continuity and to safeguard the confidentiality and integrity of State networks, Systems and Data.

At a minimum, the security design shall include:

- Data center physical security and access control.
- Virtual Private Network (VPN) connectivity for user access to the ATMS servers granted on an as needed basis.
- Firewall network protection granted on an as needed basis for network connectivity to the ATMS servers. The ATMS servers will reside behind a second firewall to provide additional security from the Data Fusion Hub servers that interact with data exchange clients over the Internet.
- Carefully controlled access to user account credentials for physical and virtual servers. Periodic password credential changes will be mandatory.
- 24x7 monitoring and management against network intrusion attacks

In the event of an intrusion, SwRI shall :

- Notify NHDOT immediately of the intrusion by email (with copies to ME and VT)
- Follow-up with a formal letter outlining the intrusion once we are provided details (copies to NH, ME and VT)

The Security Design shall be approved by NHDOT and NHDoIT before Preliminary System Design acceptance.

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SwRI shall provide the following Products and Services described in this Exhibit F, including but not limited to:

**1. TESTING AND ACCEPTANCE**

SwRI shall bear all responsibilities for the full suite of Test Planning and preparation throughout the Project. SwRI will also provide training as necessary to the State staff responsible for test activities. SwRI shall be responsible for all aspects of testing contained in the Acceptance Test Plan including support, at no additional cost, during User Acceptance Test conducted by the State and the testing of the training materials.

The Test Plan methodology shall reflect the needs of the Project and be included in the finalized Work Plan. A separate Test Plan and set of test materials will be prepared for each Software function or module.

All Testing and Acceptance (both business and technically oriented testing) shall apply to testing the System as a whole, (e.g., software modules or functions, and Implementation(s)). This shall include planning, test scenario and script development, Data and System preparation for testing, and execution of Unit Tests, System Integration Tests, Conversion Tests, Installation tests, Regression tests, Performance Tuning and Stress tests, Security Review and tests, and support of the State during User Acceptance Test and Implementation.

In addition, SwRI shall provide a mechanism for reporting actual test results vs. expected results and for the resolution and tracking of all errors and problems identified during test execution. SwRI shall also correct Deficiencies and support required re-testing.

**1.1 Test Planning and Preparation**

SwRI shall provide the State(s) with an overall System Acceptance Test Plan that will guide all testing. The SwRI provided, State approved, Test Plan will include, at a minimum, identification, preparation, and Documentation of planned testing, a requirements traceability matrix, test variants, test scenarios, test cases, test scripts, test Data, test phases, unit tests, expected results, and a tracking method for reporting actual versus expected results as well as all errors and problems identified during test execution.

As identified in the System Acceptance Test Plan, and documented in accordance with the Work Plan and the Contract, State testing will commence upon SwRI's Project Manager's Certification, in writing, that SwRI's own staff has successfully executed all prerequisite SwRI testing, along with reporting the actual testing results, prior to the start of any testing executed by State staff. The State will be presented with a State approved System Acceptance Test Plan, test scenarios, test cases, test scripts, test data, and expected results.

The State will commence its testing within five (5) business days of receiving Certification from SwRI that the State's personnel have been trained and the System is installed, configured, completely tested, and ready for State testing. The Vendor's Project Manager must certify in writing, that the Vendor's own staff has successfully executed all prerequisite Vendor testing, along with reporting the actual testing results prior to the start of any testing executed by State staff. The testing will be conducted by the State staff in an environment independent from SwRI's development environment. SwRI must assist the State

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with testing in accordance with the Test Plan and the Work Plan, utilizing test and live Data to validate reports, and conduct stress and performance testing, at no additional cost.

Testing begins upon completion of the Software configuration as required and user training according to the Work Plan. Testing ends upon issuance of a letter of UAT Acceptance by the State.

Vendor must demonstrate that their testing methodology can be integrated with the State standard methodology.

<b>Unit Testing</b>	<p>Application components are tested on an individual basis to verify that the inputs, outputs, and processing logic of each application component functions without errors. Unit Testing is performed in either the development environment or a testing environment.</p> <p>The goal is to find errors in the smallest unit of Software. If successful, subsequent integration testing should only reveal errors related to the integration between application components.</p>
<b>Integration Testing</b>	<p>Integration testing shall ensure that all parts of the application that have a relationship to each other work properly together.</p> <p>a.) Validates the integration between the individual unit application components and verifies that the new System meets defined requirements and supports execution of interfaces and business processes. The Systems Integration Test is performed in a test environment.</p> <p>b.) Emphasizes end-to-end business processes and the flow of information across applications. It includes all key business processes and interfaces' being implemented, confirms data transfers with external parties, and includes the transmission or printing of electronic and paper documents.</p> <p>c.) NHDOT/MaineDOT/VTrans will conduct System Integration Testing, utilizing scripts developed, as identified in the Test Plan, to validate the functionality of the System and its interfaces. NHDOT/MaineDOT/VTrans will also use System Integration Testing to validate modifications; fixes and other System interactions with the Vendor supplied Software Solution.</p> <p>System testing should not begin until integration testing is complete.</p>
<b>System Testing</b>	<p>The System tests will focus on the behavior of the application and the system as a whole and shall provide verification of the system requirements as outlined in the Requirements Matrix. The Scenarios that shall be executed are:</p> <ul style="list-style-type: none"> <li>• from within the application</li> <li>• through file transfers to the Data Hub and to the TIS System</li> <li>• from Report generation selection screens</li> <li>• All other inputs, outputs or data checks</li> </ul> <p>The System Tests shall verify that the system successfully accomplishes the functions included in the scope of the project.</p>

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	<p>Test cases and scripts/scenarios shall be mapped to business requirements outlined in the Requirements Matrix, to ensure that all requirements have been addressed and tested.</p>
<b>Conversion /Migration Validation Testing</b>	<p>The Conversion/Migration Validation Testing should replicate the entire flow of the converted data throughout the Software Solution. As the Software Solution is interfaced to legacy or third-party applications, the testing verifies that the resulting converted legacy data performs correctly.</p>
<b>Installation Testing</b>	<p>All application components shall be able to be installed in the System's hosted test environment by Vendor staff to test the installation routines and shall be refined, for installation into the production environment. This activity serves as a dry run of the installation steps in preparation for configuring the production System.</p> <p>SWRI shall create a snapshot of the Production system prior to installing any new releases into Production to ensure that if a new build release to production doesn't go well the original build prior to the new production release can be restored.</p>
<b>Performance Testing</b>	<p>Vendor shall develop and document hardware and software configuration and tuning of System infrastructure as well as assist and direct NHDOT/MaineDOT/VTrans System Administrators and Database Administrators in configuring and tuning the infrastructure to support the software throughout the project</p> <p>The Vendor shall perform performance tests to ensure that:</p> <ul style="list-style-type: none"> <li>• The data entry process can be completed in a timely manner for each step. The response time required shall be determined by the user community.</li> <li>• File transfers are occurring at the right times and are completing with no interruption for the user community</li> <li>• Any / all batch jobs are completing in a reasonable amount of time and fit in appropriately with all other batch schedules occurring for this systems</li> <li>• Testing shall be conducted on a server with multiple databases to see how performance will be in a production environment where several databases are on the same server.</li> <li>• Testing shall be performed with a large enough volume to simulate higher data volumes to see how the database response time will be.</li> </ul> <p><b><u>Implementing Performance and Stress Test</u></b></p> <p>Performance and Stress test Tools used by State of New Hampshire are Tivoli ITM and ITCAM and CA Spectrum. The Vendor is open to use any open source product with the approval of State Team. Consideration must be given to licensing with respect to continued use for regression testing if tools, other than those that we are licensed for, are being recommended for this part of the project.</p> <p>During Performance testing the Vendor will design test case scenarios to determine if the system meets NHDOT/MaineDOT/VTrans performance criteria (i.e. A Login request shall be responded to in 1 second or less under a typical daily load of 1000</p>

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	requests per minute.). In both cases, the tester will determine the capacity of the system under a known set of conditions.
<b>Stress/Volume Testing Performance Tuning</b>	<p><b>Performance Tuning and Stress Testing</b></p> <p>The Stress / Volume Testing shall include:</p> <ul style="list-style-type: none"> <li>▪ Simulate the stress on the application and server(s) that is expected during peak active times such as during the commuting hours during the busiest workday, workweek, and month.</li> <li>▪ Simulate the highest volume of data that is expected in the production environment.</li> <li>▪ Create test scenarios for the highest numbers of users expected.</li> <li>▪ Include test cases that cover special situations like holidays, major events that could affect the timing and/or volume of event entries.</li> </ul> <p><b>Scope</b></p> <p>The scope of performance testing shall measure the system level metrics critical for the development of the applications infrastructure and operation of the applications in the production environment. It will include the measurement of response rates of the application for end-user transactions and resource utilization (of various servers and network) under various load conditions. These response rates shall become the basis for changes and retesting until optimum system performance is achieved.</p> <p>The application transactions shall be identified with specific roles and selected transactions shall be recorded for the performance measurements. These will be compared to baselines to determine if object and/or system performance increases as changes are made.</p> <p>Performance testing and tuning shall occur in the final production environment and shall use a copy of the final production database to provide the best results.</p> <p>The Vendor must lead this effort. Responsibilities include identifying appropriate tunable parameters and their default and recommended settings, developing scripts, which accurately reflect business load and coordinating reporting of results.</p> <p><b>Test types</b></p> <p>Performance testing shall use two different types of tests to determine the stability of the application. They are baseline tests and load tests</p> <p><b>Baseline Tests:</b> Baseline tests shall collect performance data and load analysis by running scripts where the output is broken down into business transactions or functions. The test is like a single user executing a defined business transaction. During baseline testing, each individual script is run to establish a baseline for transaction response time, throughput and other user-based metrics. Usually each business transaction is executed multiple times during a single test run to obtain an average for the user-based metrics</p>

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required for the performance testing evaluations. It must be noted that changes made to the code after baseline testing is completed will skew the results collected to date. All efforts will be made to provide an error free code base to be used for testing in the NHDOT/MaineDOT/VTrans environment before the establishment of the baseline, which shall be used in future testing and tuning efforts. Any changes introduced into the environment after performance testing has started can compromise the accuracy of the results and will force a decision by the NHDOT Project Manager to be made whether baseline results need to be recreated.

**Load Tests:** Load testing will determine if the behavior of a system can be sustained over a long period of time while running under expected conditions. Load testing helps to verify the ability of the application environment to continuously operate correctly under different load conditions based on workload distribution. System response times and utilization shall be measured and recorded.

**Tuning**

Tuning shall occur during the development of the application and load testing. Tuning is the process whereby the application performance is maximized. This can be the result of making code more efficient during development as well as making tuning parameter changes to the environment.

For infrastructure tuning, parameters will be identified for all components before undertaking the load testing effort. This should include a list of the variables, their definitions, the default settings, range of acceptable settings and the settings as testing begins. This will permit the team to identify the areas of most potential gain and a starting point. Tuning is a process, which is repeated until the team feels that the systems are running at or near optimum performance.

**Scheduling Performance and Stress Testing**

Vendor shall perform test planning. The steps for planning include identification of application functionality as well as what percentage of normal daily use is represented by each function. This information will become the foundation for scripting so that tests closely represent what loads in production will look like.

Vendor shall provide definition and expectations from testing. This definition should include who is in charge of testing and coordinating results, anticipated run times, logs required for tracking, their locations and which technician is responsible to track and provide them following each test to the team. Performance testing shall consider the full scope of the application infrastructure with emphasis on the most heavily used or shared transactions. Performance testing of the application will profile the identified user transactions and assist in identifying performance gaps to improve the most critical parts of the applications.

Initial test runs shall be completed to establish that the tests and data sets can be run to completion without errors. The ratio of types of transactions which makeup the test



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	<p>shall be reviewed prior to the beginning of testing and then again once testing has begun to make sure that testing accurately reflects the system performing in production.</p> <p>Initial tests shall be used to establish a baseline from which all subsequent tests will be compared. Tests will be considered for baseline status once two of them have been run within 2% of each other in key and overall performance areas. No changes to the test scripts or data sets (with the exception of restores after each test) can be done to the test environment once tuning has begun so as not to damage the comparison to baseline results. The systems must be restarted before each test run to assure all cache is cleaned out. All effort will be made to run these tests at a time when system and network infrastructure utilization does not impact the results. Tests will be run in close proximity to our infrastructure to eliminate the public network from our environment.</p> <p>Post test reporting and result assessment will be scheduled following each test. The team will compare these results to the baseline and a determination must be made to make additional changes to the parameter being tuned or return to the prior configuration and select another parameter to tune while keeping in mind that significant changes to any one parameter may require the retesting of some others. Careful work on identifying dependencies up front should minimize this impact.</p> <p>If defects are identified in the application during testing, they will be recorded; however, changes to the application code should be avoided if possible so as not to affect baseline comparisons. If a change to the application is required, new baselines will be established (and possibly the execution of prior tests to validate changes with the new application) before testing can continue.</p> <p>When performing capacity testing against a GUI the focus will be on the ability of the interface to respond to user input.</p> <p>During stress/load testing the tester will attempt to stress or load an aspect of the system to the point of failure. The goal being to determine weak points in the system architecture. The tester will identify peak load conditions at which the program will fail to handle required processing loads within required time spans.</p>
<p style="text-align: center;"><b>Regression Testing</b></p>	<p>Regression testing is done in order to ascertain whether fixes to defects have caused errors elsewhere in the application/process.</p> <p>Because of the testing activities, problems will be identified that require correction. NHDOT/MaineDOT/VTrans will notify the Vendor of the nature of the testing failure in writing. The Vendor will be required to perform additional testing activities in response to State and/or user problems identified from the testing results.</p> <p>Regression testing means selective re-testing to detect faults introduced during the modification effort, both to verify that the modifications have not caused unintended adverse effects, and to verify that the modified and related (possibly affected) System components still meet their specified requirements.</p>

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	<p>a.) For each minor failure of an Acceptance Test, the Acceptance Period shall be extended by corresponding time as defined in the Vendor Test Plan.</p> <p>b.) The Vendor shall notify NHDOT/MaineDOT/VTrans no later than five (5) business days from the Vendor's receipt of written notice of the test failure when the Vendor expects the corrections to be completed and ready for retesting by NHDOT/MaineDOT/VTrans. The Vendor will have up to five (5) business days to make corrections to the problem unless specifically extended in writing by NHDOT/MaineDOT/VTrans.</p> <p>c.) When a programming change is made in response to a problem identified during user testing, a regression Test Plan should be developed by the Vendor based on the understanding of the program and the change being made to the program.</p> <p>The Test Plan has two objectives:</p> <ol style="list-style-type: none"> <li>1. validate that the change/update has been properly incorporated into the program; and</li> <li>2. validate that there has been no unintended change to the other portions of the program.</li> </ol> <p>d.) The Vendor will be expected to:</p> <ol style="list-style-type: none"> <li>1. Create a set of test conditions, test cases, and test data that will validate that the change has been incorporated correctly;</li> <li>2. Create a set of test conditions, test cases, and test data that will validate that the unchanged portions of the program still operate correctly; and</li> <li>3. Manage the entire cyclic process.</li> </ol> <p>e.) The Vendor will be expected to execute the regression test, provide actual testing results, and certify its completion in writing to NHDOT prior to passing the modified Software application to the users for retesting.</p> <p>In designing and conducting such regression testing, the Vendor will be required to assess the risks inherent to the modification being implemented and weigh those risks against the time and effort required for conducting the regression tests. In other words, the Vendor will be expected to design and conduct regression tests that will identify any unintended consequences of the modification while taking into account Schedule and economic considerations.</p> <p>Vendors must acknowledge their responsibilities for regression testing as described in this section.</p>
<p><b>Documentation Test</b></p>	<p>Technical, Administrative and end user documentation for the system shall be developed by the vendor. The following checks will be conducted to ensure the accuracy of the documentation:</p> <ul style="list-style-type: none"> <li>▪ Check the accuracy of system documentation from a technical perspective.</li> </ul>

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	<ul style="list-style-type: none"> <li>▪ Check the accuracy of system documentation from a System Administration perspective.</li> <li>▪ End user testers will be personnel who are new system users so we can be sure the documented steps can be followed when the tester has never used the system.</li> <li>▪ Testers shall employ the user documentation to ensure that it is clear for the users to know how they are supposed to use the system.</li> </ul>
<p style="text-align: center;"><b>Backup and Recovery Test</b></p>	<p>During testing, we may encounter problems that require us to restore data in our test environment. As well as:</p> <ul style="list-style-type: none"> <li>▪ Perform regular backups</li> <li>▪ Test the recovery process to ensure that we can restore data back to specific points in time.</li> </ul> <p>This test will also be useful in ensuring that the production system can be restored to a point in time from backup when we go live. It is vitally important that all data is recovered after a system failure &amp; no corruption of the data occurred.</p>
<p style="text-align: center;"><b>User Acceptance Testing (UAT)</b></p>	<p>After system testing is complete, user acceptance testing will be conducted.</p> <p>The Vender shall:</p> <ul style="list-style-type: none"> <li>▪ Create test cases to cover appropriate scenarios of system use.</li> <li>▪ Confirm that the system is developed according to the specified user requirements. Test cases and scripts / scenarios shall be traced to the Requirements Matrix for requirement verification.</li> <li>▪ Document “bugs” that are found</li> <li>▪ Retest after bugs have been fixed</li> <li>▪ Regression test the system</li> <li>▪ Confirm that the system is ready for operational use.</li> </ul> <p>The User Acceptance Test (UAT) is a verification process performed in a copy of the production environment. The User Acceptance Test verifies System functionality against predefined Acceptance criteria that support the successful execution of approved business processes.</p> <p>a.) The Vendor’s Project Manager must certify in writing, that the Vendor’s own staff has successfully executed all prerequisite Vendor testing, along with reporting the actual testing results prior to the start of any testing executed by State staff.</p> <p>b.) NHDOT/MaineDOT/VTrans will be presented with a State approved Test Plan, test scenarios, test cases, test scripts, test data, and expected results, as well as written Certification of the Vendor’s having completed the prerequisite tests, prior to NHDOT staff involvement in any testing activities</p> <p>c.) UAT will also serve as a performance and stress test of the System. It may cover</p>

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	<p>any aspect of the new System, including administrative procedures such as backup and recovery. The results of the UAT provide evidence that the new System meets the User Acceptance criteria as defined in the Work Plan.</p> <p>d.) Upon successful conclusion of UAT and successful System deployment, NHDOT will issue a letter of UAT Acceptance and the respective Warranty Period shall commence as described in Section H-25.10.1: Warranty Period.</p>																						
<b>Security Review and Testing</b>	<p>IT Security involves all functions pertaining to the securing of State Data and Systems through the creation and definition of security policies, procedures and controls covering such areas as identification, authentication and non-repudiation.</p> <p>All components of the Software shall be reviewed and tested to ensure they protect NHDOT/MaineDOT/VTRans's hardware and software and its related Data assets.</p> <table border="1" data-bbox="422 867 1414 1845"> <thead> <tr> <th data-bbox="422 867 650 936"><b>Service Component</b></th> <th data-bbox="650 867 1414 936"><b>Defines the set of capabilities that:</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="422 936 650 1035">Identification and Authentication</td> <td data-bbox="650 936 1414 1035">Demonstrate that users and any interfacing applications are identified and that their identities are properly verified.</td> </tr> <tr> <td data-bbox="422 1035 650 1194">Authorization</td> <td data-bbox="650 1035 1414 1194">Demonstrate that users and client applications can only access Data and services for which they have been properly authorized. Vendor test plan shall illustrate that the system allows for management of permissions and conforms to all DoIT Security Standards.</td> </tr> <tr> <td data-bbox="422 1194 650 1293">Immunity Methods</td> <td data-bbox="650 1194 1414 1293">Provide verification of the immunity methods used to ensure that unauthorized malicious programs (e.g., viruses, worms and Trojan horses) do not infect the application.</td> </tr> <tr> <td data-bbox="422 1293 650 1392">Encryption</td> <td data-bbox="650 1293 1414 1392">Demonstrate that the system utilizes 128 Bit Encryption of data and the privacy methods used to ensure that confidential Data and sensitive communications are kept private.</td> </tr> <tr> <td data-bbox="422 1392 650 1491">Intrusion Detection</td> <td data-bbox="650 1392 1414 1491">Demonstrate intrusion detection methods used to ensure the detection, recording and review of attempted access or modification by unauthorized individuals.</td> </tr> <tr> <td data-bbox="422 1491 650 1551">Verification</td> <td data-bbox="650 1491 1414 1551">Demonstrate the confirmation of authority to enter a computer system, application or network.</td> </tr> <tr> <td data-bbox="422 1551 650 1619">Digital Signature</td> <td data-bbox="650 1551 1414 1619">Guarantees the unaltered state of a file</td> </tr> <tr> <td data-bbox="422 1619 650 1686">User Management</td> <td data-bbox="650 1619 1414 1686">Supports the administration of computer, application and network accounts within an organization.</td> </tr> <tr> <td data-bbox="422 1686 650 1753">Role/Privilege Management</td> <td data-bbox="650 1686 1414 1753">Supports the granting of abilities to users or groups of users of a computer, application or network</td> </tr> <tr> <td data-bbox="422 1753 650 1845">Audit Trail Capture and Analysis</td> <td data-bbox="650 1753 1414 1845">Demonstrate how the system supports the identification and monitoring of activities within an application or system</td> </tr> </tbody> </table>	<b>Service Component</b>	<b>Defines the set of capabilities that:</b>	Identification and Authentication	Demonstrate that users and any interfacing applications are identified and that their identities are properly verified.	Authorization	Demonstrate that users and client applications can only access Data and services for which they have been properly authorized. Vendor test plan shall illustrate that the system allows for management of permissions and conforms to all DoIT Security Standards.	Immunity Methods	Provide verification of the immunity methods used to ensure that unauthorized malicious programs (e.g., viruses, worms and Trojan horses) do not infect the application.	Encryption	Demonstrate that the system utilizes 128 Bit Encryption of data and the privacy methods used to ensure that confidential Data and sensitive communications are kept private.	Intrusion Detection	Demonstrate intrusion detection methods used to ensure the detection, recording and review of attempted access or modification by unauthorized individuals.	Verification	Demonstrate the confirmation of authority to enter a computer system, application or network.	Digital Signature	Guarantees the unaltered state of a file	User Management	Supports the administration of computer, application and network accounts within an organization.	Role/Privilege Management	Supports the granting of abilities to users or groups of users of a computer, application or network	Audit Trail Capture and Analysis	Demonstrate how the system supports the identification and monitoring of activities within an application or system
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Input Validation	Demonstrate the application is protected from buffer overflow, cross-site scripting, SQL injection, and unauthorized access of files and/or directories on the server.
System installed in a Locked-Down State	Demonstrate the ability of your Software to be installed in a "locked-down" fashion so as to turn off unnecessary features (user accounts, operating System services, etc.) thereby reducing the software's security vulnerabilities and attack surfaces available to System hackers and attackers.

The Vendors must acknowledge their responsibilities for security testing. Tests shall focus on the technical, administrative and physical security controls that have been designed into the System architecture in order to provide the necessary confidentiality, integrity and availability. Tests shall, at a minimum, cover each of the service components. Test procedures may include Penetration Tests (pen test) or code analysis and review.

Prior to the System being moved into production, the Vendor shall provide results of all security testing to the Department of Information Technology for review and acceptance. All Software and hardware shall be free of malicious code (malware). SwRI shall provide a security test plan and written test results from execution of the security test plan.

**1.2 Successful UAT Completion**

Upon successful completion of UAT, the State will issue a Letter of UAT Acceptance. The three individual State UAT's must be completed before NHDOT will issue the UAT. Upon issuance of the Letter of UAT Acceptance by the State, the respective Warranty Period shall commence as set forth in Contract Exhibit G: *Warranty and Warranty Services*.

**1.3 System Acceptance**

Upon completion of the Warranty Period, the State shall issue a Letter of Final System Acceptance.1.

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**SYSTEM WARRANTY AND WARRANTY SERVICES**

**1.0 WARRANTIES**

**1.1 Services**

SwRI warrants that the System will operate and conform to the Specifications, terms, and requirements of the Contract for a period of twelve (12) months following UAT System Acceptance.

The System Warranty shall include fixing defects in the software and deploying those fixes. If System Warranty claims are made that are not related to software defects, the effort will be completed as described in Exhibit H:– *System Maintenance and Support*.

**1.2 Software**

SwRI warrants that the Software, including but not limited to the individual modules or functions furnished under the Contract, is properly functioning within the System, compliant with the requirements of the Contract, and will operate in accordance with the Specifications and Terms of the Contract without defect.

For any breach of the delivered System, the State's remedy, and SwRI's entire liability, shall be: (a) the correction of program errors that cause breach of the warranty. If SwRI cannot substantially correct such breach in a commercially reasonable manner, the State may end its program and recover the fees paid to SwRI for the Deficient services.

**1.3 Non-Infringement**

SwRI warrants that it has good title to, or the right to allow the State to use, all Services, equipment, and Software ("Material") provided under this Contract, and that such Services, equipment, and Software do not violate or infringe any patent, trademark, copyright, trade name or other intellectual property rights or misappropriate a trade secret of any third party.

**1.4 Viruses; Destructive Programming**

SwRI warrants that the Software shall not contain any viruses, destructive programming, or mechanisms designed to disrupt the performance of the Software in accordance with the Specifications.

**1.5 Compatibility**

SwRI warrants that all System components, including but not limited to the components provided, including any replacement or upgraded System Software components provided by SwRI to correct Deficiencies shall operate with the rest of the System without loss of any functionality.

**1.6 Services**

SwRI warrants that all Services to be provided under the Contract will be provided expeditiously, in a professional manner, in accordance with industry standards and that Services will comply with performance standards, Specifications, and terms of the Contract.

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**1.7 Personnel**

SwRI warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

**1.8 Breach of Data**

The Vendor shall be solely liable for costs associated with any breach of State data housed at their location(s) including but not limited to notification and any damages assessed by the courts.

**2. WARRANTY SERVICES**

SwRI agrees to monitor, repair, and correct Deficiencies in the System Software, including but not limited to the individual modules or functions, during the Warranty Period, at no additional cost to the State, in accordance with the Specifications, Terms and requirements of the Contract, including, without limitation, correcting all errors, and Defects and Deficiencies; eliminating viruses or destructive programming; and replacing incorrect, Defective or Deficient Software and Documentation.

Warranty Services shall include, without limitation, the following:

- a. SwRI shall provide multiple levels of system monitoring during the System Warranty that include the following:
  - Hosting provider monitoring - SwRI subcontracted hosting providers will monitor the physical and virtual servers, database server software, and network connectivity 24x7.
  - ATMS, Data Fusion Hub, and TIS monitoring - the vendor will use tools to automate monitoring of the software processes that comprise the ATMS, Data Fusion Hub, and TIS software components.
  - Detection of a potential system error or incident will result in the incident notification procedures being followed as described in Section 2.1.
- b. Repair or replace the System Software or any portion thereof so that the System operates in accordance with the Specifications, terms and requirements of the Contract;
- c. SwRI shall have available to the State on-call telephone assistance, with issue tracking available to the State, twenty four (24) hours per day and seven (7) days a week with an email / telephone response within two (2) hours of request, with assistance response dependent upon issue severity;
- d. Maintain a record of the activities related to warranty repair performed for the State;
- e. For all Warranty Service calls, SwRI shall ensure the following information will be collected and maintained: 1) nature of the Deficiency; 2) current status of the Deficiency; 3) action plans, dates, and times; 4) expected and actual completion time; 5) Deficiency resolution information; 6) resolved by 7) Identifying number i.e. work order number; 8) issue identified by.
- f. SwRI must work with the State to identify and troubleshoot potentially large-scale Software failures or Deficiencies by collecting the following information: 1) mean time between reported Deficiencies with the Software; 2) diagnosis of the root cause of the problem; and 3) identification of repeat calls or repeat Software problems; and
- g. All Deficiencies found during the Warranty Period and all Deficiencies found with the Warranty Releases shall be corrected by SwRI no later than five (5) business days, unless specifically extended in writing by the State, and at no additional cost to the State.

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- h.** All System documentation and deliverables shall be updated during the System Warranty period, if needed.

**2.1 Incident Notification**

The vendors hosting providers and automated software monitoring tools will detect potential errors that could result in the loss of availability of the ATMS, Data Fusion Hub, and TIS components. These automated tools will alert the project team of any software issues and allow proactive management of the system. In addition, SwRI will provide a phone number to reach the vendor project team during business hours. After hours, incidents will be dispatched using a vendor subcontracted 24 x 7 answer service. In the event NHDOT, VTrans, or MaineDOT identifies an incident they can contact the vendor subcontracted answering service 24 x 7 and the vendor on-call staff will be contacted by the answering service.

Once a SwRI on-call staff member is contacted they will begin the troubleshooting / repair procedures as described in Section 2.2. The issue is entered into the Footprints issue tracking tool using the timestamp generated through the call log as the basis for initial call time and initial response time. Details regarding the issues requested are tracked in the tool.

**2.2 Troubleshooting/Repair**

Issues are categorized by their severity and impact to the system as discussed in the NHDOT RFP and in the table below. If the system is not returned to functionality within a specified interval, the issue is escalated to either the vendor's Project Manager (PM). The PM will mobilize other resources to work on the problem if the initial responder cannot resolve the issue. When the issue has been resolved, Vendor Project Manager will log updates to the issue into the Footprints issue tracking tool. NHDOT, VTrans, and MaineDOT will be provided access to the Footprints tool to review the status of all reported issues.

<b>Required Response Times and Deficiency Categories</b>			
<b>Category</b>	<b>Type</b>	<b>Definition</b>	<b>Response Time</b>
Class A Deficiency	Software	Critical, does not allow system to operate, no work around, demands immediate action;	Email or phone response within 30 minutes or remote assistance within 4 hours.
	Written Documentation	Missing significant portions of information or unintelligible to State;	Clarification or assistance provided within 4 hours.
	Non-Software	Services were inadequate and require re-performance of the Service.	Hardware malfunctions for hosted hardware provided within 48 hours if parts available, otherwise expedite shipping of parts.



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<b>Required Response Times and Deficiency Categories</b>			
<b>Category</b>	<b>Type</b>	<b>Definition</b>	<b>Response Time</b>
Class B Deficiency	Software	Important, does not stop operation and/or there is a work around and user can perform tasks;	Notification to SwRI by NHDOT/VTrans/MaineDOT shall occur during business hours. SwRI shall notify NHDOT/VTrans/MaineDOT within 4 hours of the planned corrective action.
	Written Documentation	Portions of information are missing but not enough to make the document unintelligible;	
	Non-Software	Services were deficient, require reworking, but do not require re-performance of the Service.	
Class C Deficiency	Software	Minimal impact, cosmetic in nature, minimal effect on System, low priority and/or user can use System;	
	Written Documentation	Minimal changes required and of minor editing nature;	
	Non-Software	Services require only minor reworking and do not require re-performance of the Service.	

SwRI shall make all connections to the existing NHDOT, VTrans and MaineDOT communications system/network as required for a fully functioning system. These connections shall represent the demarcation point between the Vendor and DOT systems. Communications from individual state facilities to existing field equipment are not the responsibility of SwRI.

**2.3 Scheduled Maintenance**

NHDOT shall schedule and coordinate routine Vendor maintenance on vendor network equipment and shall notify the Parties of work to be done seven (7) days in advance. When Parties conduct maintenance on non-shared equipment they shall notify NHDOT twenty-four (24) hours in advance. Conflicts with regards to scheduled maintenance shall be resolved by the affected Party whenever possible. NHDOT shall decide in the case of an unresolved conflict.

NHDOT shall schedule and coordinate software updates (“new builds”) under the guidance of NHDOT. NHDOT shall coordinate with VTrans and Vermont IT support, MaineDOT and Maine OIT support as appropriate and dependent on the Vendor solution.

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The vendor will be responsible for maintaining a software configuration management repository for merging any issues/patch releases with contracted enhancements or improvements in the software. On the agreed to software release schedule, the vendor will install the software on the cloud hosted systems. The user interface is thin-client software and will be automatically updated on the user's next restart of the web-based user-interface (reloading the website).

All Vendor software releases or updates shall be installed in the SwRI test environment, for NHDOT evaluation and approval, prior to scheduling a release to production.

Specific steps performed by the vendor for a release of the software include the following:

- Notify NHDOT, VTrans, and MaineDOT of the upcoming release
- Backup database and configuration files (in case of rollback needed)
- Provide a rollback strategy in the event that a new release to Production is unsuccessful
- Update the database using scripts provided with the release
- Upgrade the processes which have changed using the installers
- Run a series of test steps to ensure system works as expected
- Distribute updated documentation and release notes as applicable

Software releases and other scheduled maintenance tasks will be performed during non-peak operational periods (outside of morning and afternoon rush hours).

Conflicts with regards to scheduled maintenance and software updates shall be resolved by the affected Party whenever possible. NHDOT shall decide in the case of an unresolved conflict.

#### **2.4 Network Performance Monitoring**

The vendor subcontracted hosting providers will be responsible for monitoring the network connections between the remote hosting facilities and the Internet. This will include monitoring of the following:

- VPN / firewall appliances at the hosting facility
- Network connectivity
- Network denial of service attacks

If the hosting providers identify an issue or network performance concern, they will contact the vendor using the 24 x 7 answering service. The vendor will notify NHDOT, VTrans, and MaineDOT of the issue and begin troubleshooting and issue resolution procedures. NHDOT, VTrans, and MaineDOT will be responsible for the following regarding the network and access to the network:

- Providing the VPN / firewall appliance at the states facilities
- Providing VPN login access to the NHDOT, VTrans, and MaineDOT ITS networks.

In the event SwRI fails to correct a Deficiency within the allotted period of time, the State may, at its option,:

- 1) declare SwRI in default, terminate the Contract, in whole or in part, without penalty or liability to the State;
- 2) return SwRI's product and receive a full refund for all amounts paid to SwRI, including but not limited to,

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any applicable license fees within ninety (90) days of notification to SwRI of the State's intent to request a refund; and 3) to pursue its remedies available at law and in equity.

Notwithstanding any provision of this Contract, pursuant to Contract Agreement -Part 2 Section 13.1, the State's option to declare SwRI in default, terminate the Contract and pursue its remedies shall remain in effect until satisfactory completion of the full Warranty Period.

**2.5 Data Integrity**

SwRI shall ensure that critical data adheres to high availability access in real-time and is backed up to ensure the long-term data integrity in case of a disaster recovery situation.

<b>ATMS Data</b>	<b>High Availability Data Redundancy Design</b>	<b>Backup Frequency</b>	<b>Backup Policy</b>	<b>Backup Retention</b>
Device Configuration User Accounts Historical Data Archive	<ul style="list-style-type: none"> <li>Storage in a relational database (MS SQL Server and Oracle)</li> <li>Transaction archival and rollback capability</li> </ul>	Nightly	Database image stored on a separate high availability disk array. Periodic archiving to tape is also performed.	One Week
ATMS System Configuration System Logs Server and Database Configuration	<ul style="list-style-type: none"> <li>Storage to disk on a RAID disk drive</li> <li>Accessible from two replicated servers</li> </ul>	Nightly	File backup stored on a separate high availability disk array in a separate physical hosting facility.	One Week
ATMS Software Source Code Documentation	<ul style="list-style-type: none"> <li>Storage to disk on a RAID disk drive</li> <li>Configuration management / version control using AccuRev</li> </ul>	Nightly	File backup stored to backup tape that is transferred to a separate physical facility each day.	One Week Note: The CM tool can recreate any previous source code or documentation version
Server Images	<ul style="list-style-type: none"> <li>Available from a backup location in the event of disaster recovery or to prepare for planned maintenance</li> </ul>	As Needed	Backed up to tape array.	Most recent backup permanently retained

Backups shall be on-line and accessible from a redundant file system or an automated tape loader backup system. Critical system configuration information shall be stored on a separate high-availability disk array.

**3. WARRANTY PERIOD**

The Warranty Period shall commence upon the State's issuance of a Letter of Final System Acceptance for all three states and extend for twelve (12) months/365 days.

If within the last thirty (30) calendar days of the Warranty Period, the Software fails to operate in accordance with its Specifications, the Warranty Period will cease, SwRI shall correct the Deficiency, and a new thirty

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(30) day System Warranty Period will begin. Any further Deficiencies with the Software must be corrected and run fault free for thirty (30) consecutive calendar days.

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**EXHIBIT H**  
**MAINTENANCE AND SUPPORT SERVICES**

## **1. SYSTEM MAINTENANCE AND SUPPORT**

SwRI shall perform maintenance activities on the system as requested by the State. Maintenance activities shall include, but not be limited to enhancements, additional code improvements, general and security patches, program updates, general maintenance and selected functionality releases, and documentation or other activities assigned by the State. All System Maintenance and Support activities shall be compensated on a Time & Materials basis.

The costs presented in Exhibit B: Price and Payment Schedule include an upset limit for the projected Maintenance costs based on the estimated maintenance activities that will be required.

### **1.1 PREVENTIVE AND ROUTINE SYSTEM MAINTENANCE**

SwRI shall schedule and coordinate routine maintenance and shall notify the Parties of work to be done seven (7) days in advance. When Parties conduct maintenance on non-shared equipment they shall notify SwRI forty-eight (48) hours in advance.

The vendor will be responsible for maintaining a software configuration management repository for merging any issues/patch releases with contracted enhancements or improvements in the software. On the agreed to software release schedule, the vendor will install the software on the cloud hosted systems. The user interface is thin-client software and will be automatically updated on the user's next restart of the web-based user-interface (reloading the website).

All Vendor software releases or updates shall be installed by SwRI into a separate test environment for each state's ATMS system, for evaluation and approval, prior to scheduling a release to production.

Specific steps performed by the vendor for a release of the software into production shall include the following:

- Notify NHDOT, VTrans, and MaineDOT of the upcoming release
- Backup database and configuration files (in case of rollback needed)
- Provide a rollback strategy in the event that a new release to Production is unsuccessful
- Update the database using scripts provided with the release
- Upgrade the processes which have changed using the installers
- Run a series of test steps to ensure system works as expected
- Distribute updated documentation and release notes as applicable

Software releases and other scheduled maintenance tasks will be performed during non-peak operational periods (outside of morning and afternoon rush hours).

#### **1.1.1. Network Performance Monitoring**

Network Performance monitoring requirements during the Maintenance period are as described in Exhibit G: *System Warranty and Warranty Services*.

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**1.2 EMERGENCY SYSTEM MAINTENANCE – YEAR 2 & 3**

Emergency services shall include inspections and necessary tests to determine the causes of equipment or software malfunction or failure. The emergency services shall also include the furnishing and installation of components, parts, or software changes required to repair or replace malfunctioning system elements.

All Vendor software releases or updates shall be installed in the SwRI test environment, for NHDOT evaluation and approval, prior to scheduling a release to production.

Specific steps performed by the vendor for a release of the software into production shall include the following:

- Notify NHDOT, VTrans, and MaineDOT of the upcoming release
- Backup database and configuration files (in case of rollback needed)
- Provide a rollback strategy in the event that a new release to Production is unsuccessful
- Update the database using scripts provided with the release
- Upgrade the processes which have changed using the installers
- Run a series of test steps to ensure system works as expected
- Distribute updated documentation and release notes as applicable

Response times and Deficiency Categories shall be in accordance with Exhibit G: *Warranty and Warranty Services*.

**1.3 TECHNICAL SUPPORT SERVICES**

SwRI may be asked to perform on-site or remote technical support for services including, but not limited to modifications, implementation of new modules, evaluation of outside vendor software solutions and industry best practices.

Payment for the support services will be made on a time and materials basis. All Technical Support Services work shall be assigned through the use of Work Order (WO) documents. The WO documents shall define the specific work requested, the estimated time to complete, the required SwRI personnel required to complete the task, any required materials and equipment and any other information required by NHDOT for approval of the WO. WO documents shall be issued by NHDOT on an as-needed basis in writing.

**2. SUPPORT OBLIGATIONS AND TERM**

SwRI shall maintain a record of the activities related to maintenance activities performed for the State;

- 2.1** For all maintenance Services calls, SwRI shall ensure the following information will be collected and maintained: 1) nature of the maintenance activity; 2) current status of the System; 3) action

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plans, dates, and times; 4) expected completion time; 5) maintenance information, 6) Completed by, 7) Identifying number i.e. work order number., 8) Issue identified by; and

- 2.2** SwRI must work with the State to identify and troubleshoot potentially large-scale System failures or Deficiencies by collecting the following information: 1) mean time between reported Deficiencies with the Software; 2) diagnosis of the root cause of the problem; and 3) identification of repeat calls or repeat Software problems.
- 2.3** If SwRI fails to correct a Deficiency within the allotted period of time defined in Exhibit G: *System Warranty and Warranty Services*, SwRI shall be deemed to have committed an Event of Default, and the State shall have the right, at its option, to pursue the remedies in Part 2 Section 13.1.1.2, as well as to return SwRI's product and receive a refund for all amounts paid to SwRI, including but not limited to, applicable license fees, within ninety (90) days of notification to SwRI of the State's refund request
- 2.4** If SwRI fails to correct a Deficiency within the allotted period of time stated in Exhibit G: *Warranty and Warranty Services*, SwRI shall be deemed to have committed an Event of Default, and the State shall have the right, at its option, to pursue the remedies in Part 2 Section 13.1.1.2.

**2.5 Loaner Equipment**

If the State has been provided with any "loaner" communication or ancillary equipment during the Project, the State shall maintain the equipment in a secure location, in the condition it was received, and shall not permit any use of the equipment other than (a) in connection with the Services, and (b) for access to the Hosted Servers or to third-party servers agreed upon by SwRI and the State. The State shall return the equipment to SwRI upon termination of the Project. Charges for Loaner Equipment will continue until the State returns all equipment in operational condition or reimburses SwRI for any loaner equipment that is not returned. SwRI and the State shall agree to the price and payment terms for any Loaner Equipment prior to use.

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EXHIBIT I  
SYSTEM REQUIREMENTS MATRIX, REVISED PER BAFO

NHDOT ATMS/TIS RFP 2013-051, dated November 30, 2012: Table C-2: System Requirements Matrix, revised per BAFO

NHDOT ATMS RFP Requirements Consolidated as referenced in *Exhibit O, Certificates and Attachments* are included as binding Deliverables to this Contract.



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**EXHIBIT J**  
**WORK PLAN**

SwRI's Project Manager and the State Project manager shall finalize the Work Plan within 60 days of the Notice to Proceed and further refine the tasks required to implement the Project. The elements of the preliminary Work Plan are documented in accordance with SwRI's plan to implement the System. Continued development and management of the Work Plan is a joint effort on the part of SwRI and State Project Managers.

The preliminary Work Plan created by SwRI and the State is set forth at the end of this Exhibit.

In conjunction with SwRI's Project Management methodology, which shall be used to manage the Project's life cycle, the SwRI team and the State shall finalize the Work Plan at the onset of the Project.

**ASSUMPTIONS**

**A. General**

- The State shall provide team members with decision-making authority to support the Implementation efforts, as necessary. .
- All State tasks must be performed in accordance with the revised Work Plan.
- Any activities, decisions or issues taken on by the State that affect the mutually agreed upon Work Plan timeline, scope, resources, and costs shall be subject to the identified Change Control process.
- SwRI shall maintain an accounting system in accordance with Generally Accepted Accounting Principles (GAAP).
  - The State shall provide Virtual Private Network (VPN) access and access to any necessary internal State networks and/or software (within State standards).

**B. Project Management**

- The State shall approve the Project Management Methodology used for the Project.
- The State shall provide the Project Team with reasonable access to the State personnel as needed to complete Project tasks.
- A Project folder shall be created for centralized storage and retrieval of Project documents, work products, and other material and information relevant to the success of the Project and required by Project Team members. This central repository is secured by determining which team members have access to the Project folder and granting either view or read/write privileges. SwRI's Project Manager will establish and maintain this folder. The State Project Manager shall approve access for the State team. Final versions of all Documentation shall be available for download to the State System.

**C. Project Schedule**

- Deployment is planned to begin eighteen (18) months after Notice to Proceed with a planned go-live date of twenty (20) months after Notice to Proceed.

**1. ROLES AND RESPONSIBILITIES**

The Work Plan shall address the SwRI and State roles and responsibilities as defined in Section 4.0 of the Technical Proposal Response to NHDOT RFP 2013-051 submitted by the Southwest Research Institute Team, dated March 21, 2013.

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## **2. INTERFACES**

Interfaces shall be implemented in cooperation with the States. The System shall include the current interfaces to all existing conditions as defined in the NHDOT ATMS/TIS RFP 2013-051, dated November 30, 2012.

### **A. Interface Responsibilities**

- The SwRI Team shall provide the State SwRI Application Data requirements and examples, of data mappings and interfaces implemented on other Projects. The SwRI Team shall identify the APIs the State should use in the design and development of the interface.
- The SwRI Team shall lead the review of functional and technical interface Specifications.
- The SwRI Team shall provide the states with Interface Control Documents that define how components that communicate with other components interact.
- The SwRI Team shall provide the states with Interface documents for the Data Bus component that describe the format of data requests and responses that allow status data to be stored and disseminated to subscribers.
- The SwRI Team shall assist the State with the resolution of problems and issues associated with the development and Implementation of the interfaces.
- The SwRI Team shall document the functional and technical Specifications for the interfaces.
- The SwRI Team shall create the initial Test Plan and related scripts to Unit Test the interface. The State shall validate and accept.
- The SwRI Team shall develop and Unit Test the interface.
- The State and the SwRI Team shall jointly verify and validate the accuracy and completeness of the interface.
- The SwRI Teams shall construct test scripts and create any data needed to support testing the interfaces.
- SwRI is responsible for documenting the procedures required to run the interfaces in production.
- The State and SwRI will be responsible for the scheduling of interface operation in production.



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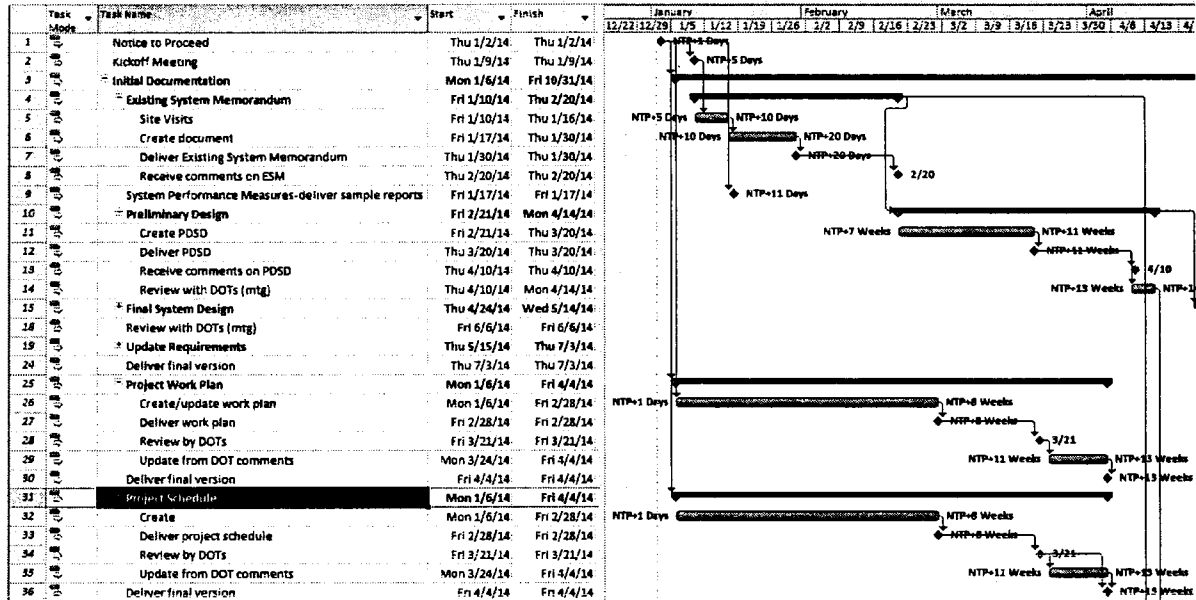


Figure 2 Tasks at the start of project include creating schedule, work plan and preliminary design

Once the preliminary design is complete, a design review meeting is held with NHDOT, VTrans, and MaineDOT. After the meeting, the design and configuration requirements for the three state base system as well as each state's unique modules are updated for comments received from the DOTs. Other documentation created at the beginning of the project includes the Configuration Management Plan (s) (CMP), the System Development Test Plan (s) (SDTP), and the System Installation/Migration Plan (s) (SIMP) as shown in Figure 3.

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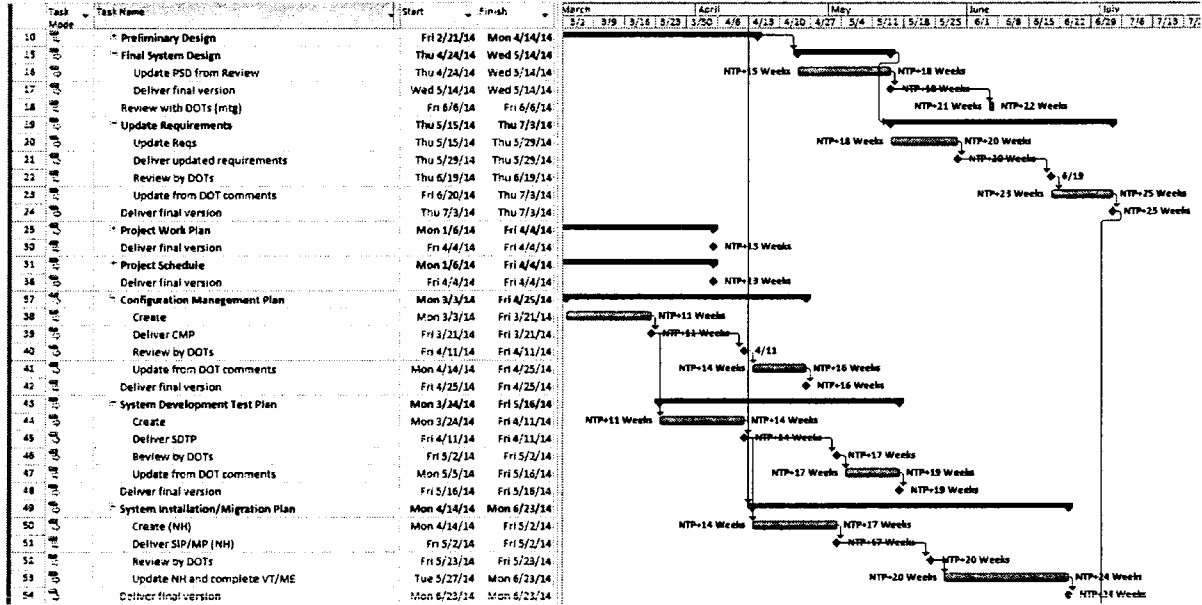


Figure 3 Next phase of schedule addresses final design, updating requirements, and the creation of additional documents. The creation of additional documents for testing, training, burn-in and maintenance is shown in Figure 4.

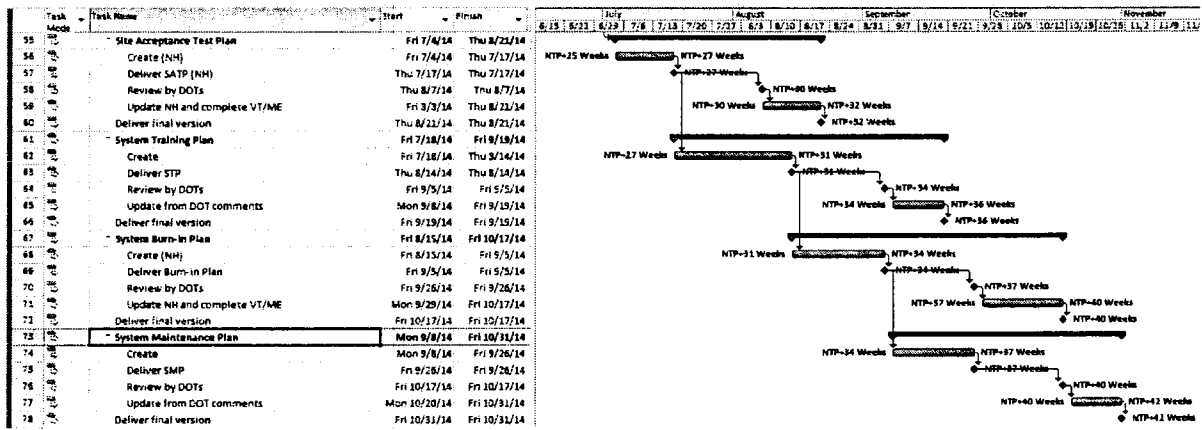


Figure 4 Schedule shows the creation of additional documents for testing and deployment.

Once initial documentation and planning artifacts are complete, implementation begins. The following table provides more detail of the ATMS implementation.

Modules				
3-state Base Modules	New Hampshire	Vermont	Maine	Comments

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Event Management	Note this module also contains requested modifications for all three states.			
DMS/VSL	Use Base Module	Use Base Module	Use Base Module	
Performance Measure Reports	Use Base Module	Use Base Module	Use Base Module	
Weather (NWS)	Use Base Module	Use Base Module	Use Base Module	
<b>State specific modules</b>				
Weather (RWIS)	Add modifications to system module	Add modifications to system module	Not included in original pricing proposal	
Weather (1086)	Add requirements to system for NH	Not included in original pricing proposal	Not included in original pricing proposal	
Travel Times	Add modifications to system module	Not included in original pricing proposal	Not included in original pricing proposal	
SP CADD Integration	Add modifications to system module	Not included in original pricing proposal	Not included in original pricing proposal	
Video	Use Base Module	Not included in original pricing proposal	Not included in original pricing proposal	NH to use base module for now
VSL's	Added to DMS base module	Not included in original pricing proposal	Not included in original pricing proposal	Requirements merged with DMS base module for NH
<b>Functionality to include at a later date:</b>				
Twitter	Not included	Not included	Not included	NH Removed requirements
Stream Gauge	Not included	Not included	Not included	NH Removed requirements
Vehicle Detector Sensor	Not included	Not included	Not included	Will incorporate later
AVL	Not included	Not included	Not included	
WIM	Not included	Not included	Not included	
VOIP	Not included	Not included	Not included	







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- **Operations Managers/Leads** – Operations managers or lead operators should be available to participate in meetings, reviews, testing, training and deployment. Design reviews will be crucial as screenshots and descriptions of expected behavior and outcomes will be discussed. SwRI expects that operations managers or lead operators would be capable of training additional staff as needed.
- **NH/VT/ME IT/TTS Support** – IT/TTS support personnel should be available to participate in at least some meetings and reviews. Participation during testing, and deployment is required to ensure firewall rules and network connectivity are appropriately addressed.
- **Operators/Maintenance** – Operators and maintenance staff should be available to participate in, at a minimum, testing, training and deployment.

### **Configuration Management**

SwRI performs configuration management as part of its project management process. Project staff develop custom Configuration Management Plans or use one of the default plans early in the project. SwRI has developed numerous configuration management plans for ATMS projects. The following information describes the approach for configuration management on this project.

SwRI will create a configuration management plan for the development, support and maintenance phases of the contract. Revision of this document is typically event driven. The configuration management plan describes how SwRI will:

- Identify and manage the source code
- Manage and identify the project documents and other deliverables
- Coordinate the development and maintenance activities for NHDOT, VTrans and MaineDOT

It is the intent of SwRI to maintain a single source code repository and do single builds. During installation, the installer selects which modules will be installed. The mix of installed modules will differ among the three states, but if a module is common between any of the states, that code base will be identical.

SwRI proposes to use the AccuRev SCM software tool for software and documentation developed on this project. This is the same tool used on ATMS projects for FDOT and TxDOT. AccuRev allows support for multiple concurrent support and development streams. When a release is created, a snapshot of the content of that release is taken in AccuRev. From this snapshot, SwRI can recreate any delivered version; including deliveries for installation in the Test, Development and Production environments.

Software documentation will use an identification format that will incorporate an acronym for the document name. For example, the Concept of Operations document would use COO followed by a series of numbers associated with either the software release with which the document is associated or a revision number associated with the published version. Depending on the particular project, examples of this document naming scheme may incorporate the particular component or the overall product, i.e. SG-COO-1.0.0, DMS-COO-1.0.0.

Software deliverables and supporting documents such as version description documents, system design documents and user manuals are updated as necessary for new releases or when new functionality is added. All documents have a revision table that shows the changes made to the current document and when the changes were made. SwRI will work with State staff to ensure that documents are current and reflect the functionality currently installed.



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in the Issue Management lifecycle including issue submission, updating, modification, and closure. Footprints will track the following attributes:

- Issue creation: creator, date of creation
- Owner: who owns the issue, i.e. to whom the issue is assigned for action
- Due date
- Status

Issues will only be closed after approval is received from the NHDOT PM.

**Schedule Variances**

The Project Status Meetings and Project Status Reports will summarize status of tasks that are in-progress and provide schedule updates. The Status Reports will clearly identify all schedule variances and provide strategies to mitigate risk to the project. By discussion in both the Status Meeting agenda and the project status report, the DOT will easily be able to monitor project progress.

**Risk Management**

SwRI will develop a Risk Management Plan for this project as it has for hundreds of clients over the past 10 years as part of its Program Management Approach. The Risk Management Plan will define the processes and procedures to identify, track, analyze and mitigate risks throughout the project. Using its well-defined project management philosophy, risks are tracked until they can be retired.

The Footprints Risk database will provide the following risk attributes as well as text fields for justification of the selected attribute values:

- Category: examples: Project management, product engineering, Cost, Schedule, etc.
- Risk severity: Negligible, Marginal, Critical/Major, Catastrophic
- Risk Probability: Very high, High, Medium, Low, Very Low

Analysis combines risk severity and risk probability to generate the criticality of the risk as illustrated in the table below. The criticality of the risk identifies the highest priority and drives the frequency at which SwRI and the state review the risk.

<b>Risk Criticality</b>	<b>Very High Probability</b>	<b>High Probability</b>	<b>Medium Probability</b>	<b>Low Probability</b>	<b>Very Low Probability</b>
Negligible Impact	4	3	2	1	0
Marginal Impact	6	5	3	2	1
Critical Impact	9	8	5	3	2
Catastrophic Impact	10	9	7	5	3

**Support and Maintenance with Technical Escalation Plan**

Once the enhanced Statewide ATMS, Data Fusion Hub and TIS systems have been deployed, the focus will shift to support and maintenance of the software. Maintenance for the software is described below.

**Software and Server Maintenance**

As the software runs on standard Windows servers, SwRI recommends performing OS Upgrades at regular intervals. As a precaution, these updates shall be installed on the test system before being applied to the

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production system. It is expected that NH DoIT will be responsible for the maintenance of the network and local domain, including New Hampshire hosted servers.

Software maintenance for the product is minimal and as such there are no standard maintenance logs. The Data Archive database allows archived data to be purged from the system on a configurable basis to maintain a reasonable database size. Database backups should be scheduled weekly with transaction logs backed up daily.

As part of standard support and maintenance, SwRI performs the following tasks that are then documented in the status reports:

- Backup of database and configuration before any modifications occur. Modifications include performing upgrades, changing any configuration values, and running database scripts.
- Review of the log files for the system for errors or abnormalities, including database system files to assure defined partition space is not exceeded.

### **Software Upgrades**

Software upgrades are a planned process. Prior to upgrading a production system, the test system is upgraded to ensure no issues are encountered. Once that is complete, the production system can be upgraded. Upgrades shall be installed by SwRI staff using the supplied installation documentation in the VDD and SII.

Common tasks which are performed as part of the upgrade include:

1. Backup/export of the production database.
1. Import the production system database into the test system.
2. Install the upgrade on the test system, including the database and software.
3. Run operational tests against the upgraded test system to ensure system readiness.
4. Move operations to the test system. *(This step is optional and based upon required uptime of the system and acceptable loss of data; typically, upgrades are completed in a few hours).*
5. Upgrade the production system including the database and software.
6. Move operations back to the production system.

This approach allows for minimum downtime yet provides a fully tested system with the least amount of data loss.

### **Tracking Support Issues**

Issues with configuration of the software, maintenance of the software, or software defects are reported to DOT help desk personnel and determined to require SwRI assistance are entered and tracked in Footprints. Critical issues are reported using the telephone support as detailed in the next section. As there is minimal maintenance required after an installation, transitioning responsibility to the NH DoIT staff shall be accomplished shortly after the software is deployed by SwRI. Documentation for the system includes an Administrator Reference Guide, which includes a section on troubleshooting errors.

### **Emergency Calls**

For emergency situations, a telephone support number will be provided, allowing a single number and answering point. As SwRI has years of experience providing 24x7 on call support for over twenty deployments, we understand the importance of a single access point to reach the on call support person.

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1. The call is documented via text messages and email messages to internal phone lists for record keeping and monitoring purposes.
2. The support staff member acknowledges the request and begins work to resolve the reported issue. This action will trigger an email and text message to internal phone lists for timestamp tracking purposes.
3. The issue is entered into Footprints using the timestamp generated through the call log as the basis for initial call time and initial response time. Details regarding the issue are requested and tracked in the tool.
4. When the issue has been resolved, the support member will log updates to the issue into Footprints.

**Technical Escalation.**

If the system is not returned to functionality within a specified interval, the issue is escalated according to the plan outlined below.

Time after Reporting	Responsible Party
4 Hour	Support Lead (Software Deputy Project Manager)
8 Hours	Software Project Manager Project Manager TSS Section Manager ISD Department Director

**Quality Assurance Plan / Product Review**

SwRI will apply its proven review and quality processes to ensure project deliverables will require minimal modifications when submitted for approval. SwRI has several levels of reviews and quality assurance checks that occur for deliverables to customers. To ensure customer satisfaction, these reviews occur throughout the project stages as outlined in the table below.

Project Stage	Deliverables	Types of Reviews	Expected Outcomes
Determination of Content	<ul style="list-style-type: none"> <li>• Concept of Operations</li> <li>• Requirements Development</li> </ul>	<ul style="list-style-type: none"> <li>• Internal peer reviews</li> <li>• Independent QA reviews</li> <li>• Customer storyboarding</li> <li>• Customer Reviews</li> </ul>	The first step to creating quality products is ensuring that the product specification is developed according to customer desires.
Development of Content	<ul style="list-style-type: none"> <li>• Software Development</li> <li>• Documentation</li> <li>• Training Plans and Content</li> </ul>	<ul style="list-style-type: none"> <li>• Screenshots for Customer Input</li> <li>• Internal peer reviews</li> <li>• Independent QA reviews</li> <li>• Customer Reviews</li> <li>• Mock run-throughs</li> </ul>	Involving the customer throughout the development process helps ensure there are no surprises when the product is delivered.
Acceptance Planning/Testing	<ul style="list-style-type: none"> <li>• Testing Readiness</li> <li>• Test Plan Content</li> <li>• Test Plan Scheduling</li> </ul>	<ul style="list-style-type: none"> <li>• Internal peer reviews</li> <li>• Independent QA reviews and readiness assessment</li> <li>• Customer Reviews</li> <li>• Dry runs of Tests</li> </ul>	Prepares the customer for what to expect during the acceptance testing process and ensures test plans are complete and thorough.

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Project Stage	Deliverables	Types of Reviews	Expected Outcomes
Deployments	<ul style="list-style-type: none"> <li>• Data Conversion Scripts</li> <li>• Installation Instructions</li> <li>• Deployment Plans</li> </ul>	<ul style="list-style-type: none"> <li>• Internal peer reviews</li> <li>• Independent QA reviews and readiness assessment</li> <li>• Customer Reviews</li> <li>• Dry runs of Conversions, Installations, Deployments</li> </ul>	Ensures installations and deployments are smooth with no unexpected problems by thoroughly testing the process beforehand.

The Quality Assurance (QA) process applies to documents, coding and other customer deliverables. SwRI's QA process includes review and monitoring by project team members and a SwRI QA department.

**Written Deliverables**

Prior to development of new project documents, SwRI will solicit input from the state by providing a proposed document outline. This provides the state with input into document structure and content. This process is multi-tiered starting with project level reviews of deliverables, quarterly audits by Institute Quality Systems (IQS) that the reviews are taking place as planned, quarterly reports by IQS of audit results to process sponsors and finally annual audits of the process implementation by independent IQS auditors.

SwRI will produce a document review plan based on SwRI proven processes for document reviews. SwRI will apply its "*Structured Walkthrough Peer Review*" to most document deliverables. In this review, the trained peer review leader guides selected peers of the document's author through the document and records comments gathered. The document author then revises the document and provides it to the peer review leader who verifies the author has revised the document per the comments. Following a successful peer review, a member of the SwRI project management team (PM, SPM, DSPM) reviews the document to ensure compliance with contract requirements prior to submittal to the state. Project staff keep the document history in configuration management including the peer review version, the management review version and the submittal versions. This process has proven its effectiveness on numerous projects since originally defined.

After the internal review process is complete, then the document can be provided to the customer for review and comments. The customer review process helps ensure customer satisfaction with deliverables.

**Software Deliverables**

SwRI tests deliverable software at several levels to assure quality of delivered software. The following summarizes the comprehensive testing approach that is used.

- **Unit Testing** – Software developers define and run unit tests during development of software modules. Once the module has successfully completed unit testing the product is promoted into the project integration stream for integration testing.
- **Integration Testing** – Project staff test modules in the integration stream using defined integration tests. Integration tests are developed against derived requirements and verify performance of the software with other modules with which the module interacts. For example: A subsystem is tested with UI functionality and device drivers. Upon successful completion of integration testing, the integration team promotes the software into the pre-ATP stream.
- **Acceptance Testing** – Project staff perform "dry-runs" of the Software Acceptance Test Procedures prior to submittal of the software to acceptance test. Performance tests are run on the completed system. Failures of the ATP dry run are noted and the software returned to the developer for correction. The software is not ready for ATP until this step is completed without issues.

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Prior to a release, configuration management audits are performed to ensure the integrity of the software. As part of this process, source code is retrieved from the CM tool, a build is performed, installers are built, and acceptance tests are run against a newly installed system. This process assists in providing assurance that the release contains the functionality expected and requirements are met.

**Other Deliverables**

SwRI will develop a project review plan for project non-software deliverables. Typically, non-software, non-document deliverables are service oriented; the deliverable is based on SwRI providing some service. An example of this type of deliverable is providing training. The plan will address these non-software deliverables and describe the methods through which they will be peer reviewed. For the most part these non-software deliverables are based on plans and often include deliverables in conjunction with the non-software deliverables (e.g., training includes development of training plans and training materials in addition to performance of the training). Peer reviews for these non-software deliverables include dry runs of the training to ensure flow of content. In addition, staff are trained in the basic skill used (i.e., presentation skills, familiarity with software), coached in delivering the service (e.g., delivery of the training or presentation to a group of peers), and provided feedback when the service is delivered to the client.

**Testing Plan**

SwRI will conduct testing in accordance with the Contract Exhibit F.

**Configuration Management Testing Support**

SwRI establishes a series of configuration management streams and test levels that correspond to the multi-phase testing described in the NHDOT Standard Testing Methodology. Software must pass corresponding testing levels prior to promotion of the baseline to its next stream level. The streams, test levels and released status are illustrated in the following table.

<b>Stream</b>	<b>Test Level for Promotion</b>	<b>Released</b>
Development	Unit Test conducted by developer	No
Integration	Integration test conducted by multiple developers	No
ATP	System Acceptance Test conducted with customer at SwRI	No
Site Testing	Site Acceptance Test conducted with customer at customer site	Yes

**Defect Tracking During Testing**

SwRI uses the Footprints tool for defect tracking both during integration testing and after deployment. SwRI project management and developers use the footprints tool to record, track progress and record resolution of identified defects.

**NHDOT Standard Testing Methodology**

SwRI will implement the NHDOT standard testing methodology as described in the contract Exhibit F.

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**Notes**

**Assumptions for Work Plan**

SwRI made the following assumptions when developing this work plan.

- DOT staff will be available for specific meetings and reviews (i.e., kickoff meeting, preliminary document reviews). Non-availability or pushing back of dates could impact the schedule and/or cost. Key dates have been noted in the plan by red milestone or tasks in the schedule and noted in the milestone table.
- Training of operations, administrators and maintenance staff that will use the ATMS software should occur prior to burn-in. SwRI assumes staff usage of the ATMS for operations as part of the burn-in testing.



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**SwRI/NHDOT SOFTWARE LICENSE AND AGREEMENT**

All provisions contained herein shall adhere to the executed Software License Agreements as referenced in *Exhibit O, Certificates and Attachments*.

SwRI shall provide the State with a sufficient number of hard copy versions of the Software's associated Documentation and one (1) electronic version in Microsoft WORD and PDF format. The State shall have the right to copy the Software and its associated Documentation for its internal business needs. The State agrees to include copyright and proprietary notices provided to the State by the Vendor on such copies.

**1. RESTRICTIONS**

Except as otherwise permitted under the Contract, the State agrees not to:

- a. Remove or modify any program markings or any notice of SwRI's proprietary rights;
- b. Make the programs or materials available in any manner to any third party for use in the third party's business operations, except as permitted herein; or
- c. Cause or permit reverse engineering, disassembly or recompilation of the programs.

**2. TITLE**

Title, right, and interest (including all ownership and intellectual property rights) in the Software, and its associated Documentation, shall remain with SwRI.

**3. VIRUSES**

SwRI shall provide Software that shall not contain any viruses, destructive programming, or mechanisms designed to disrupt the performance of the Software in accordance with the Specifications.

As a part of its internal development process, SwRI will use reasonable efforts to test the Software for viruses. SwRI shall also maintain a master copy of the appropriate versions of the Software, free of viruses. If the State believes a virus may be present in the Software, then upon its request, SwRI shall provide a master copy for comparison with and correction of the State's copy of the Software.

**4. AUDIT**

Upon forty-five (45) days written notice, SwRI may audit the State's use of the programs at SwRI's sole expense. The State agrees to cooperate with SwRI's audit and provide reasonable assistance and access to information. The State agrees that SwRI shall not be responsible for any of the State's reasonable costs incurred in cooperating with the audit. Notwithstanding the foregoing, SwRI's audit rights are subject to applicable State and federal laws and regulations.

**5. SOFTWARE NON-INFRINGEMENT**

SwRI warrants that it has good title to, or the right to allow the State to use all Services, equipment, and Software ("Material") provided under this Contract, and that such Services, equipment, and Software do not violate or infringe any patent, trademark, copyright, trade name or other intellectual property rights or misappropriate a trade secret of any third party.

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The warranty of non-infringement shall be an on-going and perpetual obligation that shall survive termination of the Contract. In the event that someone makes a claim against the State that any Material infringe their intellectual property rights, SwRI shall defend and indemnify the State against the claim provided that the State:

- a. Promptly notifies SwRI in writing, not later than 30 days after the State receives actual written notice of such claim;
- b. Gives SwRI control of the defense and any settlement negotiations; and
- c. Gives SwRI the information, authority, and assistance reasonably needed to defend against or settle the claim.

Notwithstanding the foregoing, the State's counsel may participate in any claim to the extent the State seeks to assert any immunities or defenses applicable to the State.

If SwRI believes or it is determined that any of the Material may have violated someone else's intellectual property rights, SwRI may choose to either modify the Material to be non-infringing or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, SwRI may end the license, and require return of the applicable Material and refund all fees the State has paid SwRI under the Contract. SwRI will not indemnify the State if the State alters the Material without SwRI's consent or uses it outside the scope of use identified in SwRI's user Documentation or if the State uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to the State at no additional cost. SwRI will not indemnify the State to the extent that an infringement claim is based upon any information design, Specification, instruction, Software, data, or material not furnished by SwRI. SwRI will not indemnify the State to the extent that an infringement claim is based upon the combination of any Material with any products or services not provided by SwRI without SwRI's consent.

## 6. SOFTWARE ESCROW

Escrow of source code is not required since the source code for each new production release will be provided to the States of NH/Maine/Vermont.

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**TRAINING SERVICES**

SwRI shall provide the following Training Services.

**A. TRAINING**

The Vendor shall develop a structured training program that includes formal instruction on all components of the System.

- System Operation Overview
- ATMS Administration
- TIS Administration
- Data Hub
- System User
- Maintenance
- IT and Network

The Vendor shall provide instructor led class training for NHDOT, VTrans and MaineDOT operations staff, maintenance staff, IT personnel and any other relevant operator/user of the new system.

The Training Plan shall be delivered to the NHDOT Project Manager in a format approved by the NHDOT Project Manager at least forty-five (45) days prior to the proposed training dates. The Training Plan shall include those who require training, the duration of the classes, a draft outline of the training materials, and the maximum number of people in each class. The Vendor shall provide training convenient to NHDOT, VTrans, and Maine DOT personnel that work different shifts at no additional cost to the NHDOT.

**1. Training General Requirements**

By means of training classes, augmented by individual instruction as necessary, the Vendor shall fully instruct NHDOT, VTrans and MaineDOT designated staff in the operation, adjustment, and maintenance of all products, equipment, and systems.

The training program shall cover the operation and maintenance of all equipment and software associated with the System. The training program shall instruct NHDOT, VTrans and MaineDOT personnel in the operation of the fully implemented and integrated System once all components are in place and functioning.

Each training program shall be divided into sessions to instruct NHDOT, VTrans, and Maine DOT personnel with various responsibilities. Different sessions are required for TMC Operators, TMC maintenance personnel, IT staff and administration, as required.

The Vendor shall provide one instructor for the duration of each program. The instructor shall speak fluent English in a clear and precise manner. Class content shall be coordinated and developed with NHDOT so that all procedures are covered. The class material shall include schematics, overview descriptions, complete user manuals, administrator manuals and other guides as necessary to ensure NHDOT, VTrans, and Maine DOT staff is fully capable of operating and maintaining the deployed System. NHDOT reserves the right to videotape all training sessions for future training purposes.

**STATE OF NEW HAMPSHIRE**  
**Department of Transportation**  
**Advanced Transportation Management System (ATMS)/Traveler Information System (TIS)**  
**CONTRACT 2013-051-PART 3**  
**EXHIBIT L**  
**TRAINING SERVICES**

**2. Training Materials**

The Vendor shall provide all documentation required for training NHDOT, VTrans and MaineDOT personnel. Documentation shall be provided for each student in the form of workbooks, manuals and presentation materials for students. The NHDOT Project Manager shall approve system manuals prior to commencement of training. Any identified deficiencies shall be corrected prior to System acceptance.

An instructional notebook or user's manual shall accompany every training course. The Vendor shall submit a printed copy of the user's manual to NHDOT thirty (30) days before beginning the training courses. NHDOT will review the structure and contents of the user's manuals. NHDOT will return comments to the Vendor within 15 business days, and the Vendor shall incorporate all comments into a revised user's manual before training.

The Vendor shall supply ten (10) copies in three-ring binders for each type of user's manual. In addition, all manuals and classroom training materials shall be submitted in electronic format on a zip drive, as required by the NHDOT Project Manager. The user's manuals shall be written in common English with appropriate photos, diagrams, and schematics to supplement the text.

The Vendor shall provide system manuals and drawings for maintaining the System. Five (5) copies of system manuals shall be provided. In addition, all manuals, schematics, and drawings shall be submitted in electronic format on a zip drives (two zip drives shall be supplied.) The system-level manuals shall identify all equipment and network communications. The system manuals shall include maintenance aids at the systems level. Parts list for the subsystem or electronics (at which level the manufacturer's manual takes over) shall be included.

Where manuals for commercially available equipment and/or software are provided, the Vendor shall produce supplemental information to ensure the commercial manuals accurately reflect the deployed System. The System is not considered delivered until documentation is delivered.

All training documentation provided in the above requirements will become the property of the State of NH for use by its staff in the operation of the provided systems.

**3. Classes**

The Vendor shall include a "Train the Trainer" plan within each of the training courses. The NHDOT trainers shall participate in the instruction of the various classes.

**3.1. TMC Operator**

Dispatchers shall be instructed in the use of controls and features of the System to aid in the operations of the System. Instruction shall cover all aspects of operations and report generation. For purposes of this contract, the Vendor may anticipate that a minimum of five Dispatchers shall receive operational instruction per class.

**3.2. IT and Network**

**STATE OF NEW HAMPSHIRE**  
**Department of Transportation**  
**Advanced Transportation Management System (ATMS)/Traveler Information System (TIS)**  
**CONTRACT 2013-051-PART 3**  
**EXHIBIT L**  
**TRAINING SERVICES**

NHDOT, VTrans and MaineDOT currently provide IT and network support for ATMS and TIS systems. NHDOT, VTrans and MaineDOT personnel shall be trained to efficiently monitor and control the System. This training shall include an overview of system architecture, operating system, security features, applications, database management, system diagnostics, back-up procedures and emergency recovery procedures.

**3.3. Technical Training**

Documentation for administration, installation and configuration of the system is critical for NHDoIT, Maine OIT and Vermont IT staff. It is required that staff is completely trained in all aspects of the system, including at minimum, system administration, system installation, and configuration. In addition, complete system documentation shall be provided.

**STATE OF NEW HAMPSHIRE**  
**Department of Transportation**  
**Advanced Transportation Management System (ATMS)/Traveler Information System (TIS)**  
**CONTRACT 2013-051-PART 3**  
**EXHIBIT M**  
**NHDOT RFP 2013-051 (WITH ADDENDA) INCORPORATED**

NH DOT RFP 2013-051, with all included addenda, are included by reference as binding Deliverables to this Contract.

STATE OF NEW HAMPSHIRE  
<DEPARTMENT>  
<TITLE>  
CONTRACT 2010-0XX-PART 3  
EXHIBIT N  
SwRI PROPOSAL BY REFERENCE

Technical Proposal Response to NHDOT RFP 2013-051 submitted by the Southwest Research Institute Team, dated March 21, 2013 is incorporated herein by reference.

**STATE OF NEW HAMPSHIRE**  
**Department of Transportation**  
**Advanced Transportation Management System (ATMS)/Traveler Information System (TIS)**  
**CONTRACT 2013-051- PART 3**  
**EXHIBIT O**  
**CERTIFICATES AND ATTACHMENTS**

Attached are:

- A. Contractor's Certificate of Vote/Authority
- B. Contractor's Certificate of Good Standing
- C. Contractor's Certificate of Insurance
- D. Required Contract Provisions Federal Aid Construction Contracts
- E. NHDOT/SwRI Sublicense Agreement
- F. MaineDOT/SwRI Sublicense Agreement
- G. VTrans/SwRI Sublicense Agreement
- H. NHDOT ATMS RFP Requirements Consolidated



## CERTIFICATE OF VOTE

I, Beth Ann Rafferty, Secretary of Southwest Research Institute, do hereby certify that:

- (1) I am the duly elected and acting Secretary of Southwest Research Institute, a Texas nonprofit corporation (the "Corporation");
- (2) I maintain and have custody of and I am familiar with the Seal and minute books of the Corporation;
- (3) I am duly authorized to issue certificates;
- (4) the following is a true, accurate and complete copy of the resolution adopted unanimously by the Board of Directors of the Corporation at a meeting of the said Board of Directors held on the 16<sup>th</sup> day of September, 2013, which meeting was duly held in accordance with Texas law and the by-laws of the Corporation:

NOW THEREFORE, BE IT RESOLVED THAT:

1. Southwest Research Institute submitted a proposal to the State of New Hampshire's Department of Transportation ("NHDOT") responding to NHDOT's Request for Proposal No. 2013-051. Southwest Research Institute has been awarded a contract with the State of New Hampshire, acting through its Department of Transportation, on behalf of the States of New Hampshire, Vermont and Maine, to provide a Commercial-Off-The-Shelf (COTS) modular software solution consisting of three (3) components:
  - (a) Design and implementation of an Advanced Transportation Management System (ATMS) that satisfies the various needs of the States of New Hampshire, Vermont and Maine;
  - (b) Design, implementation and operation of a new Regional Traveler Information System (TIS); and
  - (c) A Data Fusion Hub that will primarily facilitate the exchange of information between the ATMS, the TIS, and regional partners and stakeholders.
2. R. B. Kalmbach is authorized on behalf of Southwest Research Institute to enter the contract with the State of New Hampshire and to sign any and all documents, agreements and other instruments, and any amendments, revisions or modifications thereto, on behalf of Southwest Research Institute, as he may deem necessary, desirable or appropriate, and to bind Southwest Research Institute to the terms of the contract.

3. R. B. Kalmbach is the duly appointed Executive Director of Contracts of Southwest Research Institute.

The foregoing resolution has not been revoked, annulled or amended in any manner whatsoever, and remains in full force and effect as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand as the Secretary of the Corporation and have affixed its corporate seal this 7<sup>th</sup> day of March, 2014.

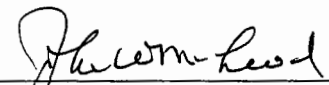
  
Beth Ann Rafferty, Secretary



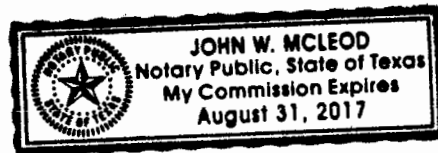
STATE OF TEXAS

COUNTY OF BEXAR

The foregoing instrument was acknowledged before me this 7th day of March, 2014, by Beth Ann Rafferty, Secretary of the Corporation.

  
John W. McLeod, Notary Public  
My Commission Expires: August 31, 2017

[NOTARY SEAL]



# State of New Hampshire Department of State

## CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that Southwest Research Institute, a(n) Texas nonprofit corporation, registered to do business in New Hampshire on January 31, 2013. I further certify that it is in good standing as far as this office is concerned, having filed the return(s) and paid the fees required by law.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 4<sup>th</sup> day of April, A.D. 2014

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State



# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
03/07/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Aon Risk Services Southwest, Inc. Houston TX Office 5555 San Felipe Suite 1500 Houston TX 77056 USA	<b>CONTACT NAME:</b> PHONE (A/C. No. Ext): (832) 476-6000      FAX (A/C. No.): (800) 953-4542 E-MAIL ADDRESS:														
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Lexington Insurance Company</td> <td>19437</td> </tr> <tr> <td>INSURER B: Zurich American Ins Co</td> <td>16535</td> </tr> <tr> <td>INSURER C: American Zurich Ins Co</td> <td>40142</td> </tr> <tr> <td>INSURER D: ACE Property &amp; Casualty Insurance Co.</td> <td>20699</td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Lexington Insurance Company	19437	INSURER B: Zurich American Ins Co	16535	INSURER C: American Zurich Ins Co	40142	INSURER D: ACE Property & Casualty Insurance Co.	20699	INSURER E:		INSURER F:
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INSURER E:															
INSURER F:															
<b>INSURED</b> Southwest Research Institute ATTN: Tanya Helms 6220 Culebra Road PO Drawer 28510 San Antonio TX 78228-0510 USA															

Holder Identifier :

**COVERAGES**      **CERTIFICATE NUMBER: 570053079860**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.      *Limits shown are as requested*

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURED	SUBROGATION	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			049159197 SIR applies per policy terms & conditions	04/09/2013	04/09/2014	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 SIR/Deductible \$250,000
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			BAP234719704	04/09/2013	04/09/2014	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
D	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000			M00517604 004	04/09/2013	04/09/2014	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC234719604	04/09/2013	04/09/2014	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000

Certificate No : 570053079860

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Re: SWRI Proposal No. 10-67233  
 State of New Hampshire, Department of Transportation, is included as additional insured with respect to the general liability of the named insured subject to policy provisions. Thirty (30) days prior written notice will be provided to certificate holder in the event of cancellation (except 10 days for non-payment) or material change (reduction/restriction) in coverage.

<b>CERTIFICATE HOLDER</b>  State of New Hampshire Department of Transportation Transportation Management Center Attn: Denise Markow, P.E. 110 Smokey Bear Blvd. Concord NH 03302 USA	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  <i>Aon Risk Services Southwest, Inc.</i>
---	--



Factory Mutual Insurance Company  
 5700 Granite Parkway  
 Granite Park Two  
 Suite 700  
 Plano, Texas  
 75024  
 United States of America  
 Tel: (1) 972 377-4808  
 Fax: (1) 972 731-1800

**POLICY INFORMATION FORM**

This document is issued as a matter of information only and confers no rights upon the document holder. This Policy Information Form does not amend, extend, or alter the coverage, terms, exclusions, conditions, or other provisions afforded by the policy. We hereby certify that insurance coverage is now in force with our Company as outlined below.

<b>Policy No.:</b>	JV662	<b>Policy Term</b>	
<b>Account No.:</b>	1-56763	<b>Effective Date:</b>	01 September 2012
		<b>Expiration Date:</b>	01 September 2014

**NAMED INSURED:**  
 SOUTHWEST RESEARCH INSTITUTE

**DESCRIPTION AND LOCATION OF PROPERTY COVERED:**

Personal Property	<b>Location No.:</b>	<b>INDEX No.:</b>
	1	074638.61
Headquarters 6220 Culebra Road San Antonio, Texas 78238-5166, USA		

**COVERAGE IN FORCE:** (subject to limits of liability, deductibles and conditions in the Policy)

<b>Insurance Provided:</b>	<b>Peril:</b>	<b>Limit Of Liability:</b>
Property Damage	All Risk	USD 1,000,000

**CERTIFICATE TERM:** **Effective:** 01 September 2012  
**Expires:** 01 September 2014

Personal Property consisting of property of others in Southwest Research Institute's care, custody or control to the extent of Southwest Research Institute's legal liability.

SwRI Proposal No. 10-67233

Certificate No: 00002-003  
 Replacing No: 00002-002

Authorized Signature / Issue Date  
 Allan Johnson/ 07 March 2014

New Hampshire Department of Transportation  
 Transportation Management Center  
 110 Smokey Bear Blvd.  
 Concord, New Hampshire 03302, USA

For questions, contact: Diane Culver



**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

**II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are



applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee ( e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\*\*\*\*\*

## 2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## 2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the



department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\*\*\*\*\*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\*\*\*\*\*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

## SOFTWARE SUBLICENSE AGREEMENT

This is a Software Sublicense Agreement, effective on the 17 day of April 2014, 2014, between SOUTHWEST RESEARCH INSTITUTE® (SwRI®) a nonprofit corporation organized under the laws of the State of Texas, with offices at 6220 Culebra Road, San Antonio, Texas 78238-5166 (hereinafter referred to as "SwRI") and THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, with offices at 7 Hazen Drive, Concord, New Hampshire 03301 (hereinafter referred to as "NHDOT"). SwRI agrees to grant to NHDOT, and NHDOT agrees to accept from SwRI, a nonexclusive, nontransferable, royalty free software sublicense in accordance with this Agreement during the term specified in Article 6.

### WHEREAS:

SwRI has obtained and currently has licenses from Florida and Texas to computer programs whose purposes are operation of traffic management centers, and SwRI has the right to sublicense the same under licenses obtained from Florida and Texas who own such computer programs; and

SwRI, as an authorized distributor of such computer programs, desires to market and sublicense those computer programs; and

SwRI and NHDOT wish to enter into an agreement authorizing NHDOT and/or any of its designated contractors to use copies of those computer programs for the benefit of NHDOT; and

NHDOT wishes to save development time and reduce costs by leveraging Florida and Texas Software.

### NOW, IT IS HEREBY AGREED:

#### 1.0 DEFINITIONS

1.1 Florida and Texas who are listed in the table of Exhibit A, mean the original issuers of licenses for individual or collective software programs to SwRI.

1.2 "Software" means the actual transportation management center computer programs, source code, and software modules under license to SwRI at the time of this Agreement.

1.3 "Documentation" means the user manuals and other materials, including issues lists in printed or electronic form, which facilitate the use of the Software by the NHDOT.

1.4 "Licensed Software" means any combination of the Software and Documentation covered by any of the license agreements listed in Exhibit A and furnished by SwRI to NHDOT.

1.5 "Modifications" mean any modifications, improvements, enhancements, or changes to the Licensed Software and any and all computer programs in any code form and associated documentation, derived from or based upon the Licensed Software, developed, or otherwise acquired by NHDOT, SwRI, or their employees, contractors, or agents.

1.6 "Geographic Limits" means the established geopolitical boundaries associated with New Hampshire.

## 2.0 SUBLICENSE

2.1 Sublicense Grant. In consideration of the premises put forth, and subject to all other conditions herein, SwRI hereby grants to NHDOT a nontransferable and nonexclusive license to use and modify the Licensed Software and its changes, modifications, or enhancements for its internal purposes, with no right to sublicense, sell, lease, assign, or transfer the Licensed Software.

2.2 Notwithstanding 2.1 herein and with SwRI's written approval, NHDOT may sublicense, royalty free, the executable code of the Sub-Sublicense to other governmental entities within the Geographic Limits.

2.3 Sublicense. This Sublicense, granted by SwRI in 2.1 herein, shall be only for use in the Geographic Limits.

2.4 Title in Licensed Software and Modifications. Title and all proprietary rights in the Licensed Software, including changes, modifications, or enhancements made by or for NHDOT, shall at all times remain the property of Florida and Texas.

2.5 No Support by Florida and Texas. NHDOT recognizes and agrees that Florida and Texas will not provide any support or maintenance and that any warranties provided are provided solely by SwRI and not on behalf of Florida and Texas.

2.6 NHDOT-Owned Modules. NHDOT will own all computer software programs that are created and/or developed for NHDOT, but are not changes, modifications, or enhancements of the Licensed Software, even though they are incorporated into a system that includes the Licensed Software.

## 3.0 CERTAIN SwRI OBLIGATIONS

3.1 Compliance. SwRI agrees to comply fully with all of its obligations under this Agreement.

3.2 Maintenance and Support. SwRI will solely and on behalf of itself, where appropriate, enter into agreements with the NHDOT for maintenance and support of the Licensed Software.

## 4.0 CERTAIN NHDOT OBLIGATIONS

4.1 NHDOT agrees to reproduce, and have reproduced on all permitted copies of Licensed Software existing copyright and other proprietary notices.

4.2 NHDOT agrees to require its employees, contractors, and agents to comply with the terms and conditions of this Agreement prior to permitting any access to use the Licensed Software by the individual and shall take all steps necessary to remedy any violation, including,

but not limited to, immediately terminating the individual's access to and use of the Licensed Software.

4.3 NHDOT agrees it will not authorize, permit, or allow the use or disclosure of the Licensed Software by its employees, contractors, or agents except as expressly authorized under this agreement.

4.4 NHDOT agrees that it retains no rights in the Licensed Software or its changes, modifications, or enhancements and other Licensed Software-related materials except for the limited rights specifically granted under this Agreement.

4.5 NHDOT agrees to inform SwRI of any changes, modifications, or enhancements to be made to the Licensed Software by NHDOT and/or any of its designated contractors.

4.6 NHDOT agrees to provide SwRI source code for all changes, modifications, or enhancements and documentation updates made to the Licensed Software by NHDOT and/or any of its designated contractors.

4.7 NHDOT agrees it will make no changes to the Licensed Software without corresponding changes also being made to applicable Documentation.

4.8 NHDOT agrees to utilize the issues database established by SwRI to track the identification and resolution of issues associated with the Licensed Software products utilized under this Agreement.

4.9 NHDOT agrees to provide a report to SwRI due not later than January 7, April 7, July 7, and October 7 of each year this license is in effect, detailing the use of the Licensed Software. The report will include a description of modifications made to the Licensed Software, specific name of NHDOT, NHDOT'S site location, and specific programs licensed.

4.10 NHDOT agrees the Licensed Software contains highly confidential information. NHDOT agrees to take all reasonable precautions to protect the Licensed Software and preserve its confidential, proprietary and trade secret status in perpetuity. NHDOT agrees it is responsible for the supervision, management, and control of its use of the Licensed Software.

4.11 NHDOT agrees to notify SwRI promptly and provide reasonable assistance to SwRI, Florida and Texas without charge in prosecution of any trade secret, copyright, trademark, or service mark infringements that come to the attention of NHDOT.

4.12 NHDOT agrees that if at any time it becomes aware of unauthorized use, copying, or disclosure of the Licensed Software, it shall immediately notify SwRI and fully cooperate with Florida and Texas to protect the proprietary rights of Florida and Texas. NHDOT shall agree that a breach or threatened breach of its obligation to protect the Licensed Software may cause immediate and irreparable harm, entitling Florida and Texas to seek immediate termination of the Sublicense. NHDOT's compliance with this paragraph shall not be construed in any way as a waiver of the rights of Florida and Texas to recover damages or obtain other relief against NHDOT for harm to the proprietary rights of Florida and Texas or for breach of contractual rights.

4.13 NHDOT agrees that any warranties provided are provided solely by SwRI and not on behalf of Florida and Texas. NHDOT agrees to accept the Limitation of Liability and Disclaimer of Warranty provisions included in this Agreement for the benefit of SwRI and Florida and Texas.

4.14 NHDOT agrees that Florida and Texas may make Modifications to the Licensed Software without notice to NHDOT. Florida and Texas shall not be required to provide any Modifications of the Licensed Software. If any copy of a Modification of the Licensed Software is received by NHDOT, NHDOT agrees that all the terms and conditions of their agreement with SwRI apply to the Modification.

## 5.0 LIMITATION OF LIABILITY and DISCLAIMER OF WARRANTY

5.1 EXCEPT AS OTHERWISE PROVIDED IN THE VENDOR CONTRACT , SWRI DISCLAIMS ALL WARRANTIES WITH REGARD TO THE LICENSED SOFTWARE SOLD OR LICENSED HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL OBLIGATIONS OR LIABILITIES FOR DAMAGES, INCLUDING BUT NOT LIMITED TO, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, OR PERFORMANCE OF THE SOFTWARE. SERVICES MAY BE WARRANTED IN A SERVICE AGREEMENT.

5.2 EXCEPT AS OTHERWISE PROVIDED HEREIN, FLORIDA AND TEXAS DISCLAIM ALL WARRANTIES WITH REGARD TO THE LICENSED SOFTWARE SOLD OR LICENSED HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OBLIGATIONS OR LIABILITIES ON THE PART OF FLORIDA AND TEXAS FOR DAMAGES, INCLUDING, BUT NOT LIMITED TO, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, OR PERFORMANCE OF THE LICENSED SOFTWARE.

## 6.0 TERM AND TERMINATION

6.1 This Agreement shall enter into force starting on the date that the vendor contract and the Memorandum of Maintenance Agreement (MOMA) has received approval from the New Hampshire Governor and Council and shall continue as long as SwRI's licenses from Florida and Texas are in force plus one year from the date Florida or Texas terminate the license to SwRI.

6.2 If the license from Florida or Texas to SwRI is terminated, or under termination, SwRI shall notify NHDOT within ten business days.

6.3 In the event that the license from Florida or Texas to SwRI is terminated as specified in 6.2, then NHDOT, if not in breach of any terms and conditions with this Agreement, may elect, with Florida or Texas approval, to continue with this Agreement directly with Florida and Texas under the same terms and conditions as were agreed between SwRI and Florida and Texas, as long as those terms are not more burdensome than the terms of the latest agreement between Florida and Texas and SwRI.

6.4 If either party fails to perform any other term, covenant, or condition of this Agreement, and has not performed such term, covenant, or condition within sixty (60) days after a notice of default has been received, the non-defaulting party shall have the right to forthwith terminate this Agreement by means of a written notice to the other party.

6.5. NHDOT agrees to immediately return or certify destruction of the Licensed Software Documentation, including any copies, information, or notes relating thereto except to the extent retention is necessary to keep the Traffic Management Centers ("TMCs") installed with Intelligent Transportation Systems ("ITS") Software operational for up to one (1) year or until NHDOT receives a license from Florida and Texas directly upon any sublicense termination under Article 6 of this Agreement.

## 7.0 REMEDIES

7.1 The rights of NHDOT and SwRI, pursuant to Article 6 hereof, are without prejudice to any other rights or remedies that NHDOT and SwRI may have. NHDOT's and SwRI's pursuit and enforcement of any one or more remedies shall not be deemed an election or waiver by NHDOT or SwRI of any other remedy.

## 8.0 NOTICES

Service of all notices under this Agreement by either party to the other shall be sufficient only if posted by certified or registered post, return receipt requested, or personally delivered and receipted. Either party may change its address for service of all notices by written notice to the other.

### AS TO SwRI:

Contracts: Director of Contracts  
Southwest Research Institute  
Post Office Drawer 28510  
San Antonio, Texas 78228-0510  
U.S.A.

Technical: ITS Department Director  
Southwest Research Institute  
Post Office Drawer 28510  
San Antonio, Texas 78228-0510  
U.S.A.

AS TO NHDOT:

Contracts: Denisc Markow, PE  
NHDOT TMC Program Manager  
Bureau of Traffic  
110 Smokey Bear Boulevard  
Concord, NH 03301

Technical: Denise Markow, PE  
NHDOT TMC Program Manager  
Bureau of Traffic  
110 Smokey Bear Boulevard  
Concord, NII 03301

#### 9.0 UNFORESEEN EVENTS

Neither party shall be responsible for any delay or failure to perform due to causes beyond reasonable control of the party, including, but not limited to, strikes, lockouts, or other labor disputes, riots, civil disturbances, actions, or inactions of governmental authorities or suppliers, epidemics, war, embargoes, severe weather (including hurricanes), fire, Acts of God or the public enemy, nuclear disasters, or default of a common carrier.

#### 10.0 SEVERABILITY

In the event that any one or more of the provisions of this Agreement shall for any reason be held unenforceable in any respect under the United States patent and copyright laws that are in effect, such unenforceability shall not affect any other provision, and this Agreement shall then be construed as if such unenforceable provision or provisions had never been contained herein.

#### 11.0 ENTIRE SUBLICENSE AGREEMENT

This Agreement and its Exhibit A constitutes the entire agreement governing the sublicense of Licensed Software from SwRI to NHDOT. SwRI acknowledges that it has not been induced to enter into this Agreement by representations or statements, oral or written, not expressly contained herein. This Agreement may be modified only in writing signed by duly authorized representatives of each party.



12.0 GENERAL CONDITIONS

12.1 Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of New Hampshire.

12.2 The headings and subheadings in this Agreement are for convenience only and do not form a part of this Agreement.

12.3 The failure of either party to enforce at any time any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce any such provisions.

**EXECUTED BY BOTH PARTIES AS PROVIDED BELOW:**

SOUTHWEST RESEARCH INSTITUTE

STATE OF NEW HAMPSHIRE

By: Joseph Arrambide

By: William P. Jarell

Name: Joseph Arrambide

Name: William P. Jarell

Title: Patent Counsel

Title: Director of Operations

Date: April 17, 2014

Date: 3/25/14

**EXHIBIT A**

<b>Software Name</b>	<b>Licensor</b>	<b>Date of License</b>
TxSoftware	TxDOT	May 30, 2006
SunGuide	FDOT	Sep 1, 2006

## SOFTWARE SUBLICENSE AGREEMENT

This is a Software Sublicense Agreement, effective on the 17 day of April, 2014, between SOUTHWEST RESEARCH INSTITUTE® (SwRI®) a nonprofit corporation organized under the laws of the State of Texas, with offices at 6220 Culebra Road, San Antonio, Texas 78238-5166 (hereinafter referred to as "SwRI") and THE STATE OF MAINE, with offices at Child Street, 16 State House Station, Augusta, ME 0433-0016 (hereinafter referred to as "MAINEDOT"). SwRI agrees to grant to MAINEDOT, and MAINEDOT agrees to accept from SwRI, a nonexclusive, nontransferable, royalty free software sublicense in accordance with this Agreement during the term specified in Article 6.

### WHEREAS:

SwRI has obtained and currently has licenses from Florida and Texas to computer programs whose purposes are operation of traffic management centers, and SwRI has the right to sublicense the same under licenses obtained from Florida and Texas who own such computer programs; and

SwRI, as an authorized distributor of such computer programs, desires to market and sublicense those computer programs; and

SwRI and MAINEDOT wish to enter into an agreement authorizing MAINEDOT and/or any of its designated contractors to use copies of those computer programs for the benefit of MAINEDOT; and

MAINEDOT wishes to save development time and reduce costs by leveraging Florida and Texas Software.

### NOW, IT IS HEREBY AGREED:

#### 1.0 DEFINITIONS

1.1 Florida and Texas who are listed in the table of Exhibit A, mean the original issuers of licenses for individual or collective software programs to SwRI.

1.2 "Software" means the actual transportation management center computer programs, source code, and software modules under license to SwRI at the time of this Agreement.

1.3 "Documentation" means the user manuals and other materials, including issues lists in printed or electronic form, which facilitate the use of the Software by the MAINEDOT.

1.4 "Licensed Software" means any combination of the Software and Documentation covered by any of the license agreements listed in Exhibit A and furnished by SwRI to MAINEDOT.

1.5 "Modifications" mean any modifications, improvements, enhancements, or changes to the Licensed Software and any and all computer programs in any code form and

associated documentation, derived from or based upon the Licensed Software, developed, or otherwise acquired by MAINEDOT, SwRI, or their employees, contractors, or agents.

1.6 "Geographic Limits" means the established geopolitical boundaries associated with Maine.

## 2.0 SUBLICENSE

2.1 Sublicense Grant. In consideration of the premises put forth, and subject to all other conditions herein, SwRI hereby grants to MAINEDOT a nontransferable and nonexclusive license to use and modify the Licensed Software and its changes, modifications, or enhancements for its internal purposes, with no right to sublicense, sell, lease, assign, or transfer the Licensed Software.

2.2 Notwithstanding 2.1 herein and with SwRI's written approval, MAINEDOT may sub-sublicense, royalty free, the executable code of the Sub-Sublicense to other governmental entities within the Geographic Limits.

2.3 Sublicense. This Sublicense, granted by SwRI in 2.1 herein, shall be only for use in the Geographic Limits.

2.4 Title in Licensed Software and Modifications. Title and all proprietary rights in the Licensed Software, including changes, modifications, or enhancements made by or for MAINEDOT, shall at all times remain the property of Florida and Texas.

2.5 No Support by Florida and Texas. MAINEDOT recognizes and agrees that Florida and Texas will not provide any support or maintenance and that any warranties provided are provided solely by SwRI and not on behalf of Florida and Texas.

2.6 MAINEDOT-Owned Modules. MAINEDOT will own all computer software programs that are created and/or developed for MAINEDOT, but are not changes, modifications, or enhancements of the Licensed Software, even though they are incorporated into a system that includes the Licensed Software.

## 3.0 CERTAIN SwRI OBLIGATIONS

3.1 Compliance. SwRI agrees to comply fully with all of its obligations under this Agreement.

3.2 Maintenance and Support. SwRI will solely and on behalf of itself, where appropriate, enter into agreements with the MAINEDOT for maintenance and support of the Licensed Software.

## 4.0 CERTAIN MAINEDOT OBLIGATIONS

4.1 MAINEDOT agrees to reproduce, and have reproduced on all permitted copies of Licensed Software existing copyright and other proprietary notices.

4.2 MAINEDOT agrees to require its employees, contractors, and agents to comply with the terms and conditions of this Agreement prior to permitting any access to use the

Licensed Software by the individual and shall take all steps necessary to remedy any violation, including, but not limited to, immediately terminating the individual's access to and use of the Licensed Software.

4.3 MAINEDOT agrees it will not authorize, permit, or allow the use or disclosure of the Licensed Software by its employees, contractors, or agents except as expressly authorized under this agreement.

4.4 MAINEDOT agrees that it retains no rights in the Licensed Software or its changes, modifications, or enhancements and other Licensed Software-related materials except for the limited rights specifically granted under this Agreement.

4.5 MAINEDOT agrees to inform SwRI of any changes, modifications, or enhancements to be made to the Licensed Software by MAINEDOT and/or any of its designated contractors.

4.6 MAINEDOT agrees to provide SwRI source code for all changes, modifications, or enhancements and documentation updates made to the Licensed Software by MAINEDOT and/or any of its designated contractors.

4.7 MAINEDOT agrees it will make no changes to the Licensed Software without corresponding changes also being made to applicable Documentation.

4.8 MAINEDOT agrees to utilize the issues database established by SwRI to track the identification and resolution of issues associated with the Licensed Software products utilized under this Agreement.

4.9 MAINEDOT agrees to provide a report to SwRI due not later than January 7, April 7, July 7, and October 7 of each year this license is in effect, detailing the use of the Licensed Software. The report will include a description of modifications made to the Licensed Software, specific name of MAINEDOT, MAINEDOT'S site location, and specific programs licensed.

4.10 MAINEDOT agrees the Licensed Software contains highly confidential information. MAINEDOT agrees to take all reasonable precautions to protect the Licensed Software and preserve its confidential, proprietary and trade secret status in perpetuity. MAINEDOT agrees it is responsible for the supervision, management, and control of its use of the Licensed Software.

4.11 MAINEDOT agrees to notify SwRI promptly and provide reasonable assistance to SwRI, Florida and Texas without charge in prosecution of any trade secret, copyright, trademark, or service mark infringements that come to the attention of MAINEDOT.

4.12 MAINEDOT agrees that if at any time it becomes aware of unauthorized use, copying, or disclosure of the Licensed Software, it shall immediately notify SwRI and fully cooperate with Florida and Texas to protect the proprietary rights of Florida and Texas. MAINEDOT shall agree that a breach or threatened breach of its obligation to protect the Licensed Software may cause immediate and irreparable harm, entitling Florida and Texas to seek immediate termination of the Sublicense. MAINEDOT's compliance with this paragraph

shall not be construed in any way as a waiver of the rights of Florida and Texas to recover damages or obtain other relief against MAINEDOT for harm to the proprietary rights of Florida and Texas or for breach of contractual rights.

4.13 MAINEDOT agrees that any warranties provided are provided solely by SwRI and not on behalf of Florida and Texas. MAINEDOT agrees to accept the Limitation of Liability and Disclaimer of Warranty provisions included in this Agreement for the benefit of SwRI and Florida and Texas.

4.14 MAINEDOT agrees that Florida and Texas may make Modifications to the Licensed Software without notice to MAINEDOT. Florida and Texas shall not be required to provide any Modifications of the Licensed Software. If any copy of a Modification of the Licensed Software is received by MAINEDOT, MAINEDOT agrees that all the terms and conditions of their agreement with SwRI apply to the Modification.

## 5.0 LIMITATION OF LIABILITY and DISCLAIMER OF WARRANTY

5.1 EXCEPT AS OTHERWISE PROVIDED IN THE VENDOR CONTRACT, , SWRI DISCLAIMS ALL WARRANTIES WITH REGARD TO THE LICENSED SOFTWARE SOLD OR LICENSED HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL OBLIGATIONS OR LIABILITIES FOR DAMAGES, INCLUDING BUT NOT LIMITED TO, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, OR PERFORMANCE OF THE SOFTWARE. SERVICES MAY BE WARRANTED IN A SERVICE AGREEMENT.

5.2 EXCEPT AS OTHERWISE PROVIDED HEREIN, FLORIDA AND TEXAS DISCLAIM ALL WARRANTIES WITH REGARD TO THE LICENSED SOFTWARE SOLD OR LICENSED HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OBLIGATIONS OR LIABILITIES ON THE PART OF FLORIDA AND TEXAS FOR DAMAGES, INCLUDING, BUT NOT LIMITED TO, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, OR PERFORMANCE OF THE LICENSED SOFTWARE.

## 6.0 TERM AND TERMINATION

6.1 This Agreement shall enter into force starting on the date that the vendor contract and the Memorandum of Maintenance Agreement (MOMA) has received approval from the New Hampshire Governor and Council and shall continue as long as SwRI's licenses from Florida and Texas are in force plus one year from the date Florida or Texas terminate the license to SwRI.

6.2 If the license from Florida or Texas to SwRI is terminated, or under termination, SwRI shall notify MAINEDOT within ten business days.

6.3 In the event that the license from Florida or Texas to SwRI is terminated as specified in 6.2, then MAINEDOT, if not in breach of any terms and conditions with this Agreement, may elect, with Florida or Texas approval, to continue with this Agreement directly with Florida and Texas under the same terms and conditions as were agreed between SwRI and

Florida and Texas, as long as those terms are not more burdensome than the terms of the latest agreement between Florida and Texas and SwRI.

6.4 If either party fails to perform any other term, covenant, or condition of this Agreement, and has not performed such term, covenant, or condition within sixty (60) days after a notice of default has been received, the non-defaulting party shall have the right to forthwith terminate this Agreement by means of a written notice to the other party.

6.5 MaineDOT agrees to immediately return or certify destruction of the Licensed Software, including any copies, information, or notes relating thereto if after one (1) year, upon any sublicense termination under Article 6 of this Agreement, MaineDOT is not able to receive a license from FL and TX.

## 7.0 REMEDIES

7.1 The rights of MAINEDOT and SwRI, pursuant to Article 6 hereof, are without prejudice to any other rights or remedies that MAINEDOT and SwRI may have. MAINEDOT's and SwRI's pursuit and enforcement of any one or more remedies shall not be deemed an election or waiver by MAINEDOT or SwRI of any other remedy.

## 8.0 NOTICES

Service of all notices under this Agreement by either party to the other shall be sufficient only if posted by certified or registered post, return receipt requested, or personally delivered and receipted. Either party may change its address for service of all notices by written notice to the other.

### AS TO SwRI:

Contracts: Director of Contracts  
Southwest Research Institute  
Post Office Drawer 28510  
San Antonio, Texas 78228-0510  
U.S.A.

Technical: ITS Department Director  
Southwest Research Institute  
Post Office Drawer 28510  
San Antonio, Texas 78228-0510  
U.S.A.

### AS TO MAINEDOT:

Contracts: Jennifer Chisum  
IT Planning, MaineDOT/OIT  
16 State House Station  
Augusta, ME 04330-0016

Technical: Jennifer Chisum  
IT Planning, MaineDOT/OIT  
16 State House Station  
Augusta, ME 04330-0016

## 9.0 UNFORESEEN EVENTS

Neither party shall be responsible for any delay or failure to perform due to causes beyond reasonable control of the party, including, but not limited to, strikes, lockouts, or other labor disputes, riots, civil disturbances, actions, or inactions of governmental authorities or suppliers, epidemics, war, embargoes, severe weather (including hurricanes), fire, Acts of God or the public enemy, nuclear disasters, or default of a common carrier.

## 10.0 SEVERABILITY

In the event that any one or more of the provisions of this Agreement shall for any reason be held unenforceable in any respect under the United States patent and copyright laws that are in effect, such unenforceability shall not affect any other provision, and this Agreement shall then be construed as if such unenforceable provision or provisions had never been contained herein.

## 11.0 ENTIRE SUBLICENSE AGREEMENT

This Agreement and its Exhibit A constitutes the entire agreement governing the sublicense of Licensed Software from SwRI to MAINEDOT. SwRI acknowledges that it has not been induced to enter into this Agreement by representations or statements, oral or written, not expressly contained herein. This Agreement may be modified only in writing signed by duly authorized representatives of each party.

## 12.0 GENERAL CONDITIONS

12.1 Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Maine.

12.2 The headings and subheadings in this Agreement are for convenience only and do not form a part of this Agreement.

12.3 The failure of either party to enforce at any time any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce any such provisions.



**EXECUTED BY BOTH PARTIES AS PROVIDED BELOW:**

SOUTHWEST RESEARCH INSTITUTE

By: Joseph Arrambide

Name: Joseph Arrambide

Title: Patent Counsel

Date: April 17, 2014

STATE OF MAINE

By: [Signature]

Name: Dele F. Doughty

Title: Mto Director

Date: 4/7/2014

**EXHIBIT A**

<b>Software Name</b>	<b>Licensor</b>	<b>Date of License</b>
TxSoftware	TxDOT	May 30, 2006
SunGuide	FDOT	Sep 1, 2006

## SOFTWARE SUBLICENSE AGREEMENT

This is a Software Sublicense Agreement, effective on the 17 day of April, 2014, between SOUTHWEST RESEARCH INSTITUTE® (SwRI®) a nonprofit corporation organized under the laws of the State of Texas, with offices at 6220 Culebra Road, San Antonio, Texas 78238-5166 (hereinafter referred to as "SwRI") and THE STATE OF VERMONT, with offices at One National Life Drive, Montpelier, VT 05633-0501 (hereinafter referred to as "VTRANS"). SwRI agrees to grant to VTRANS, and VTRANS agrees to accept from SwRI, a nonexclusive, nontransferable, royalty free software sublicense in accordance with this Agreement during the term specified in Article 6.

### WHEREAS:

SwRI has obtained and currently has licenses from Florida and Texas to computer programs whose purposes are operation of traffic management centers, and SwRI has the right to sublicense the same under licenses obtained from Florida and Texas who own such computer programs; and

SwRI, as an authorized distributor of such computer programs, desires to market and sublicense those computer programs; and

SwRI and VTRANS wish to enter into an agreement authorizing VTRANS and/or any of its designated contractors to use copies of those computer programs for the benefit of VTRANS; and

VTRANS wishes to save development time and reduce costs by leveraging Florida and Texas Software.

### NOW, IT IS HEREBY AGREED:

#### 1.0 DEFINITIONS

1.1 Florida and Texas who are listed in the table of Exhibit A, mean the original issuers of licenses for individual or collective software programs to SwRI.

1.2 "Software" means the actual transportation management center computer programs, source code, and software modules under license to SwRI at the time of this Agreement.

1.3 "Documentation" means the user manuals and other materials, including issues lists in printed or electronic form, which facilitate the use of the Software by the VTRANS.

1.4 "Licensed Software" means any combination of the Software and Documentation covered by any of the license agreements listed in Exhibit A and furnished by SwRI to VTRANS.

1.5 "Modifications" mean any modifications, improvements, enhancements, or changes to the Licensed Software and any and all computer programs in any code form and

associated documentation, derived from or based upon the Licensed Software, developed, or otherwise acquired by VTRANS, SwRI, or their employees, contractors, or agents.

1.6 "Geographic Limits" means the established geopolitical boundaries associated with Vermont.

## 2.0 SUBLICENSE

2.1 Sublicense Grant. In consideration of the premises put forth, and subject to all other conditions herein, SwRI hereby grants to VTRANS a nontransferable and nonexclusive license to use and modify the Licensed Software and its changes, modifications, or enhancements for its internal purposes, with no right to sublicense, sell, lease, assign, or transfer the Licensed Software.

2.2 Notwithstanding 2.1 herein and with SwRI's written approval, VTRANS may sub-sublicense, royalty free, the executable code of the Sub-Sublicense to other governmental entities within the Geographic Limits.

2.3 Sublicense. This Sublicense, granted by SwRI in 2.1 herein, shall be only for use in the Geographic Limits.

2.4 Title in Licensed Software and Modifications. Title and all proprietary rights in the Licensed Software, including changes, modifications, or enhancements made by or for VTRANS, shall at all times remain the property of Florida and Texas.

2.5 No Support by Florida and Texas. VTRANS recognizes and agrees that Florida and Texas will not provide any support or maintenance and that any warranties provided are provided solely by SwRI and not on behalf of Florida and Texas.

2.6 VTRANS-Owned Modules. VTRANS will own all computer software programs that are created and/or developed for VTRANS, but are not changes, modifications, or enhancements of the Licensed Software, even though they are incorporated into a system that includes the Licensed Software.

## 3.0 CERTAIN SwRI OBLIGATIONS

3.1 Compliance. SwRI agrees to comply fully with all of its obligations under this Agreement.

3.2 Maintenance and Support. SwRI will solely and on behalf of itself, where appropriate, enter into agreements with the VTRANS for maintenance and support of the Licensed Software.

## 4.0 CERTAIN VTRANS OBLIGATIONS

4.1 VTRANS agrees to reproduce, and have reproduced on all permitted copies of Licensed Software existing copyright and other proprietary notices.

4.2 VTRANS agrees to require its employees, contractors, and agents to comply with the terms and conditions of this Agreement prior to permitting any access to use the Licensed Software by the individual and shall take all steps necessary to remedy any violation, including, but not limited to, immediately terminating the individual's access to and use of the Licensed Software.

4.3 VTRANS agrees it will not authorize, permit, or allow the use or disclosure of the Licensed Software by its employees, contractors, or agents except as expressly authorized under this agreement.

4.4 VTRANS agrees that it retains no rights in the Licensed Software or its changes, modifications, or enhancements and other Licensed Software-related materials except for the limited rights specifically granted under this Agreement.

4.5 VTRANS agrees to inform SwRI of any changes, modifications, or enhancements to be made to the Licensed Software by VTRANS and/or any of its designated contractors.

4.6 VTRANS agrees to provide SwRI source code for all changes, modifications, or enhancements and documentation updates made to the Licensed Software by VTRANS and/or any of its designated contractors.

4.7 VTRANS agrees it will make no changes to the Licensed Software without corresponding changes also being made to applicable Documentation.

4.8 VTRANS agrees to utilize the issues database established by SwRI to track the identification and resolution of issues associated with the Licensed Software products utilized under this Agreement.

4.9 VTRANS agrees to provide a report to SwRI due not later than January 7, April 7, July 7, and October 7 of each year this license is in effect, detailing the use of the Licensed Software. The report will include a description of modifications made to the Licensed Software, specific name of VTRANS, VTRANS'S site location, and specific programs licensed.

4.10 VTRANS agrees the Licensed Software contains highly confidential information. VTRANS agrees to take all reasonable precautions to protect the Licensed Software and preserve its confidential, proprietary and trade secret status in perpetuity. VTRANS agrees it is responsible for the supervision, management, and control of its use of the Licensed Software.

4.11 VTRANS agrees to notify SwRI promptly and provide reasonable assistance to SwRI, Florida and Texas without charge in prosecution of any trade secret, copyright, trademark, or service mark infringements that come to the attention of VTRANS.

4.12 VTRANS agrees that if at any time it becomes aware of unauthorized use, copying, or disclosure of the Licensed Software, it shall immediately notify SwRI and fully cooperate with Florida and Texas to protect the proprietary rights of Florida and Texas. VTRANS shall agree that a breach or threatened breach of its obligation to protect the Licensed Software may cause immediate and irreparable harm, entitling Florida and Texas to seek immediate termination of the Sublicense. VTRANS's compliance with this paragraph shall not

be construed in any way as a waiver of the rights of Florida and Texas to recover damages or obtain other relief against VTRANS for harm to the proprietary rights of Florida and Texas or for breach of contractual rights.

4.13 VTRANS agrees that any warranties provided are provided solely by SwRI and not on behalf of Florida and Texas. VTRANS agrees to accept the Limitation of Liability and Disclaimer of Warranty provisions included in this Agreement for the benefit of SwRI and Florida and Texas.

4.14 VTRANS agrees that Florida and Texas may make Modifications to the Licensed Software without notice to VTRANS. Florida and Texas shall not be required to provide any Modifications of the Licensed Software. If any copy of a Modification of the Licensed Software is received by VTRANS, VTRANS agrees that all the terms and conditions of their agreement with SwRI apply to the Modification.

## 5.0 LIMITATION OF LIABILITY and DISCLAIMER OF WARRANTY

5.1 EXCEPT AS OTHERWISE PROVIDED IN THE VENDOR CONTRACT, SWRI DISCLAIMS ALL WARRANTIES WITH REGARD TO THE LICENSED SOFTWARE SOLD OR LICENSED HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL OBLIGATIONS OR LIABILITIES FOR DAMAGES, INCLUDING BUT NOT LIMITED TO, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, OR PERFORMANCE OF THE SOFTWARE. SERVICES MAY BE WARRANTED IN A SERVICE AGREEMENT.

5.2 EXCEPT AS OTHERWISE PROVIDED HEREIN, FLORIDA AND TEXAS DISCLAIM ALL WARRANTIES WITH REGARD TO THE LICENSED SOFTWARE SOLD OR LICENSED HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OBLIGATIONS OR LIABILITIES ON THE PART OF FLORIDA AND TEXAS FOR DAMAGES, INCLUDING, BUT NOT LIMITED TO, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, OR PERFORMANCE OF THE LICENSED SOFTWARE.

## 6.0 TERM AND TERMINATION

6.1 This Agreement shall enter into force starting on the date that the vendor contract and the Memorandum of Maintenance Agreement (MOMA) have received approval from the New Hampshire Governor and Council and shall continue as long as SwRI's licenses from Florida and Texas are in force plus one year from the date Florida or Texas terminate the license to SwRI.

6.2 If the license from Florida or Texas to SwRI is terminated, or under termination, SwRI shall notify VTRANS within ten business days.

6.3 In the event that the license from Florida or Texas to SwRI is terminated as specified in 6.2, then VTRANS, if not in breach of any terms and conditions with this

Agreement, may elect, with Florida or Texas approval, to continue with this Agreement directly with Florida and Texas under the same terms and conditions as were agreed between SwRI and Florida and Texas, as long as those terms are not more burdensome than the terms of the latest agreement between Florida and Texas and SwRI.

6.4 If either party fails to perform any other term, covenant, or condition of this Agreement, and has not performed such term, covenant, or condition within sixty (60) days after a notice of default has been received, the non-defaulting party shall have the right to forthwith terminate this Agreement by means of a written notice to the other party.

6.5 VTRANS agrees to immediately return or certify destruction of the Licensed Software Documentation, including any copies, information, or notes relating thereto except to the extent retention is necessary to keep the Traffic Management Centers ("TMCs") installed with Intelligent Transportation Systems ("ITS") Software operational for up to one (1) year or until VTRANS receives a license from Florida and Texas directly upon any sublicense termination under Article 6 of this Agreement.

## 7.0 REMEDIES

7.1 The rights of VTRANS and SwRI, pursuant to Article 6 hereof, are without prejudice to any other rights or remedies that VTRANS and SwRI may have. VTRANS's and SwRI's pursuit and enforcement of any one or more remedies shall not be deemed an election or waiver by VTRANS or SwRI of any other remedy.

## 8.0 NOTICES

Service of all notices under this Agreement by either party to the other shall be sufficient only if posted by certified or registered post, return receipt requested, or personally delivered and receipted. Either party may change its address for service of all notices by written notice to the other.

### AS TO SwRI:

Contracts: Director of Contracts  
Southwest Research Institute  
Post Office Drawer 28510  
San Antonio, Texas 78228-0510  
U.S.A.

Technical: ITS Department Director  
Southwest Research Institute  
Post Office Drawer 28510  
San Antonio, Texas 78228-0510  
U.S.A.

### AS TO VTRANS:

Contracts: Robert T. White

ConnectVermont ITS Administrator

1 National Life Drive

Dewey Building

Montpelier, VT 05633

Technical: Robert T. White

ConnectVermont ITS Administrator

1 National Life Drive

Dewey Building

Montpelier, VT 05633

## 9.0 UNFORESEEN EVENTS

Neither party shall be responsible for any delay or failure to perform due to causes beyond reasonable control of the party, including, but not limited to, strikes, lockouts, or other labor disputes, riots, civil disturbances, actions, or inactions of governmental authorities or suppliers, epidemics, war, embargoes, severe weather (including hurricanes), fire, Acts of God or the public enemy, nuclear disasters, or default of a common carrier.

## 10.0 SEVERABILITY

In the event that any one or more of the provisions of this Agreement shall for any reason be held unenforceable in any respect under the United States patent and copyright laws that are in effect, such unenforceability shall not affect any other provision, and this Agreement shall then be construed as if such unenforceable provision or provisions had never been contained herein.

## 11.0 ENTIRE SUBLICENSE AGREEMENT

This Agreement and its Exhibit A constitutes the entire agreement governing the sublicense of Licensed Software from SwRI to VTRANS. SwRI acknowledges that it has not been induced to enter into this Agreement by representations or statements, oral or written, not expressly contained herein. This Agreement may be modified only in writing signed by duly authorized representatives of each party.

## 12.0 GENERAL CONDITIONS

12.1 Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Vermont.

12.2 The headings and subheadings in this Agreement are for convenience only and do not form a part of this Agreement.



12.3 The failure of either party to enforce at any time any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce any such provisions.

**EXECUTED BY BOTH PARTIES AS PROVIDED BELOW:**

SOUTHWEST RESEARCH INSTITUTE

STATE OF VERMONT

By: Joseph Arrambide

By: Susan M. Minter

Name: Joseph Arrambide

Name: Susan M. Minter

Title: Patent Counsel

Title: Deputy Secretary, VTrans

Date: April 17, 2014

Date: 4/14/2014

**APPROVED AS TO FORM**

**DATE:** 4/10/14

Deirdre W. Wetcher  
**ASSISTANT ATTORNEY GENERAL**

**EXHIBIT A**

<b>Software Name</b>	<b>Licensors</b>	<b>Date of License</b>
TxSoftware	TxDOT	May 30, 2006
SunGuide	FDOT	Sep 1, 2006