

Wayne County Airport Authority Terms and Conditions of Purchase Order (“Terms and Conditions”)

1. **Goods and Services.** Any and all goods, supplies, products and other tangible items provided by Seller to the Wayne County Airport Authority (“Authority”) shall be known as “Goods.” Any and all services, tasks and actions performed and/or provided by the Seller shall be known as “Services.” The Seller is solely responsible for any and all necessary labor, materials, tools, equipment, planning, supervision and other necessary services and costs to provide the Goods and/or perform the Services (collectively referred to hereinafter as the “Work”).

2. **Michigan Law Prevails.** The laws of the State of Michigan shall govern the interpretation and enforcement of the Purchase Order and these Terms and Conditions. Seller, and any of its subcontractors, agents, suppliers and/or subSellers, and all Goods or Services provided under the Purchase Order and these Terms and Conditions, shall strictly comply with all laws, treaties, ordinances, judgment, decrees, injunctions, writs and orders of any court or governmental agency or authority, and any and all rules, regulations, codes, orders, interpretations of any federal, state, county, municipal, regional, environmental or other governmental body, instrumentality, agency, authority and/or court having jurisdiction over these Terms and Conditions or any activity or event connected with these Terms and Conditions (collectively “Applicable Law”). The failure to comply with Applicable Law shall be a material breach of these Terms and Conditions. The Seller shall be solely responsible for the safety of its employees, subcontractors, subSellers, agents, invitees and suppliers, and shall indemnify the Authority and the County of Wayne from any and all costs and/or liabilities arising from the Seller’s failure to maintain safety.

3. **Terms and Conditions Control.** Seller is deemed to have accepted these Terms and Conditions upon the first to occur: (a) Seller signing and returning an acknowledged copy of these Terms and Conditions; (b) Seller’s shipment of any of the Goods or the performance of any Services. In the event the Authority does not receive a signed acknowledgement of these Terms and Conditions within ten (10) days after issuance to the Seller, the Authority reserves the right to cancel the same without any obligation to the Authority. Seller’s acceptance of these Terms and Conditions is limited to the acceptance of the express terms of the offer contained herein. Any quote, proposal and/or other documentation provided by the Seller for terms additional to or different from the Purchase Order and these Terms and Conditions or any attempt by Seller to vary the terms hereof is objected to and rejected by the Authority. In the event of a conflict between any of the requirements of the Purchase Order and these Terms and Conditions, the more stringent requirement shall control as determined in the sole and absolute discretion of the Authority.

4. **Warranties and remedies.** Seller expressly warrants: (a) that any and all of the Goods provided to the Authority: (i) shall be merchantable in the trade as goods strictly of the kind and quality required to be furnished by the Seller under the Purchase Order; (ii) shall be new, unused (unless refurbished Goods are specifically ordered) and of good quality and free from latent and patent defects in design, material, manufacture and workmanship; (iii) are of the quality, size, dimension and specifications ordered by the Authority; (iv) are not restricted in any way by patents, copyrights, trade secrets, security interest, lien and/or other encumbrances or rights of third parties that would affect the Authority’s use of the Goods; (v) have been properly stored, labeled, handled and shipped; (vi) shall be safe for use and comply with all Applicable Law; (vii) shall strictly conform to the requirements of the Purchase Order; and (viii) shall be fit for the particular purpose for which the Authority intends to use the Goods; and (b) that any of all of the Services performed for the Authority: (i) shall be performed in a workmanlike manner; (ii) are to be performed by the Seller’s employees, subcontractors and agents; (iii) shall be performed by persons who possess the necessary skills, experience, registrations, licenses, certifications and qualifications required to perform the Services; (iv) and shall strictly comply with the requirements and expectations of the Authority. The Seller further warrants: (i) there is no actual or potential conflict of interest between the Seller and the Authority; (ii) the Seller shall comply with any applicable provisions of the Authority’s Ethics Ordinance; (iii) the Seller is an equal opportunity employer; and (iv) the Seller is a legally organized entity in good standing under the laws of the state of its organization and, where required, in good standing under the laws of the State of Michigan. If the Goods or Services are determined by the Authority not to conform with Seller’s warranties stated above, the Seller shall promptly upon receipt of written notice of such nonconformity from the Authority, and at no cost to the Authority, repair the Goods and/or reperform the Services so that they conform with the Seller’s representations or replace them with conforming Goods and/or Services. In lieu of such repair or replacement by Seller, the Authority may, at its option and not in limitation of any other right or remedy it may have, do any of the following: (i) reject the non-conforming Goods; (ii) revoke acceptance of nonconforming Goods after the discovery of the nonconformance; (ii) reject the Services; and (iv) require Seller to refund the Total Purchase Order Amount (in whole or in part) for any Goods and/or Services for which a breach of warranty exists and remove the nonconforming items. Seller shall be liable for any and all amounts, liabilities and/or damages incurred and sustained by the Authority in connection with any breach of warranty, including but not limited to the removal, replacement, repair, shipping, receiving, storage and reinstallation costs and all other incidental and consequential damages. Seller’s warranties and related obligations shall survive final payment and acceptance of the Goods and Services, as well as the termination of these Terms and Conditions. Seller shall perform all inspections and tests with respect to the Goods and Services as is required by the Purchase Order and normal trade practices. Notwithstanding any inspection, acceptance of the Goods and Services shall be at the delivery point. Any inspection or test by the Authority shall not relieve Seller of any warranty obligation or liability with respect to the Goods and Services, nor shall any such inspection or test or failure to inspect or test be interpreted as, or in any way imply, acceptance of the Goods or Services.

5. **Delivery Schedule.** Seller agrees to keep the Authority fully informed regarding its delivery schedule for the Goods and Services, and shall immediately advise the Authority in writing of any delay or anticipated delay. In order to comply with the Authority’s stated need for the Goods, the Seller shall ship the Goods by a more expensive way than specified in the Purchase Order, and any increase in the transportation costs resulting there from shall be paid by the Seller. Seller shall not ship the Goods under any reservation of rights. The Authority shall have the right to inspect the Goods before or after payment.

6. **Title and Risk of Loss.** Seller warrants that it has the right to sell the Goods and the ability to deliver good title to all Goods and Services. Title to the Goods shall pass to the Authority upon the earlier of: (a) the date the Authority paid for the Goods; or

(ii) the date the Goods are received and accepted by the Authority. In addition to its other insurance obligations, Seller shall insure the full value of the Goods while in transit and in storage prior to the delivery of the Goods and acceptance of the Authority. Seller shall have retained the risk of loss with respect to the Goods (regardless of the Authority's title thereto) until the Goods have been delivered to and accepted by the Authority at the delivery point specified in the Purchase Order. Seller shall promptly execute and provide the Authority with any and all documentation necessary to transfer title to the Goods or evidence of the Authority's title thereto.

7. **Indemnity.** To the fullest extent permitted by applicable law, the Seller shall defend, hold harmless and indemnify the Authority and the County of Wayne, and any respective director, officer, board member, employee, agent, successor and assign of the Authority and/or the County of Wayne, from and against any and all damages and liabilities involving any of the following:

- (a) Any actual or alleged infringements of any patent, trademark, copyright or other intellectual property right related to arising from the Goods and/or Services;
- (b) Any actual or alleged injury or death to any person, or damage to or destruction of property (including the loss of use thereof), or any other damage or loss by whomsoever suffered resulting from or arising out of or in connection to the Goods and/or Services, whether or not such damage or loss is due to the negligence of any kind or character on the part of the Authority;
- (c) Any actual or alleged failure or material breach of the Seller to comply with the Purchase Order;
- (d) Any actual or alleged failure of the Goods or Services to comply with the Purchase Order; and
- (e) Any lien, claim or encumbrance (of any type) in which any person or entity seeks or claims an interest in the Goods or Services which is in conflict with or otherwise impairs the Authority's sole and exclusive right to the Goods and Services.

The foregoing indemnification obligations shall: (i) not be affected or limited by, in any way, any insurance required by the Seller; and (ii) survive the termination and expiration of these Terms and Conditions.

8. **Changes.** The Authority shall have the right at any time and in its sole and absolute discretion, without invalidating or breaching the Purchase Order, to direct Seller by written notice to add to, reduce, suspend or otherwise change the scope of the Purchase Order and to make changes to the quantities, type, specifications and character of the Goods, the sequence of the performance of the Services, scope of Services, time for performance of the Services, as well as the materials, packaging, time and place of delivery and method of transportation of the Goods (any such addition to, reduction, suspension or other change by the Authority defined as a "Change"). In the event of a Change, the Total Purchase Order Amount may be adjusted by the agreement of the Authority and the Seller. The Seller shall have no right to suspend the performance of the Work following a Change by the Authority.

9. **Payment.** The total amount of money due from the Authority to the Seller and as stated on the Purchase Order shall be the "Total Purchase Order Amount." Payment shall be paid only for Goods and/or Services that are specifically named in the Purchase Order and these Terms and Conditions. No additional costs for items, services, overtime, holiday pay, premium pay and the like will be paid by the Authority without its prior express written consent. The Total Purchase Order Amount shall not include any federal excise taxes or sales taxes imposed by any state or municipal government. Notwithstanding anything to the contrary herein, the Seller shall not be pre-paid for any Goods or Services, and shall only be entitled to invoice for Goods provided to and accepted by the Authority and Services completed for and accepted by the Authority. The Total Purchase Order Amount may include annual estimated orders, established solely for the convenience of the Authority. Should the actual Goods and/or Services be less than the Total Purchase Order Amount, the Authority shall not be obligated to utilize or pay for any unused balance. In no event shall the Seller be entitled to invoice for or collect any amount in excess of the Total Purchase Order Amount. The Seller waives any and all claims for additional compensation for which it did not receive the prior written approval of the Authority, it being expressly agreed the Seller shall not exceed the Total Purchase Order Amount without the prior written approval of the Authority. Seller shall be responsible for all charges related to the Goods and Services in excess of the Total Purchase Order Amount, but shall nonetheless deliver the Goods to the Authority and perform the Services for the Authority. The Authority will pay all undisputed sums for the Goods supplied and Services provided pursuant to these Terms and Conditions. The Seller and the Authority agree the Authority is vested with the absolute and unconditional right to withhold payment of any sum or amount otherwise claimed due from the Authority and which the Authority determines is disputed. The Seller shall continue to provide the Goods and perform the Services despite the Authority's decision to withhold payment for disputed sums or amounts.

On a monthly basis (and no later than forty-five (45) days after the Seller provides any Good or performs any Services), the Seller shall invoice the Authority by sending all invoices via email to the following address: AP@wcaa.us Each and every invoice shall contain all pertinent and necessary information required for the Authority to adequately review the Goods provided and the Services completed for which the Seller has submitted an invoice. Prior to the submission of any invoice, the Seller shall ensure an IRS FORM W-9 is on file with the Authority. Should the Seller fail to timely invoice the Authority as required by these Terms and Conditions, the Seller irrevocably waives any and all claims for payment resulting from or relating to any invoices which the Seller failed to timely submit as required herein.

10. **Time for Performance.** Seller acknowledges and agrees the Authority's time period(s) for the delivery of the Goods and performance of the Services are essential conditions to the Purchase Order. Accordingly, the Authority reserves the right without liability, in addition to any other right it may have, to terminate these Terms and Conditions on notice to Seller as to Goods not accepted and to Work substitute Goods elsewhere and charge the Seller for any loss incurred, as well as to Services performed incorrectly or in contravention to the Authority's scheduling requirements.

11. **Termination for Default.** When the Seller has not performed or has unsatisfactorily performed the obligations required by these Terms and Conditions, payment shall be withheld in the sole and absolute discretion of the Authority. Failure on the part of the Seller to fulfill Purchase Order obligations shall be considered just cause for termination of the Purchase Order and the Seller shall only be entitled to recover any undisputed costs incurred by the Seller up to the date of termination, and Seller waives any and all claims for costs resulting from termination (including but not limited to consequential damages, lost profits, demobilization costs, termination costs, etc).

12. **Termination for Convenience.** At any time, the Authority may terminate these Terms and Conditions, in whole or in part, without showing cause upon written notice to the Seller specifying the extent and the effective date of the termination. In connection with such termination, the Authority shall pay Seller, as Seller's sole and exclusive remedy, a termination payment comprised of any amounts due for the Work the Authority accepted prior to the termination date and Seller's reasonable and necessary direct costs resulting from the termination which are substantiated by evidence satisfactory to the Authority (and determined in the sole and absolute discretion of the Authority). In no event shall the Seller be entitled to any payment or profit for any Work not accepted by the Authority, nor shall the Seller be entitled to any consequential damages of any type arising from the termination.

13. **Disputes.** Any and all disputes arising out of or related to the Purchase Order and these Terms and Conditions shall be resolved only in the courts located in Wayne County Michigan, the Michigan Court of Appeals or the Michigan Supreme Court, it being agreed Seller does business in Wayne County Michigan and is subject to jurisdiction of the courts located in Wayne County, Michigan. At the Authority's sole and exclusive option, for which separate consideration is acknowledged as received, any disputes between the parties shall be resolved by arbitration before the American Arbitration Association in accordance with the applicable rules of the American Arbitration Association, and any judgment or award issued by the arbitrators shall be final and may be entered in any court having jurisdiction thereof. Any arbitration shall occur in Wayne County, Michigan, and the Seller agrees the Authority may join third parties to any arbitration proceeding as the Authority deems fit. The initiating party shall pay all arbitration filing fees. In the event the parties are involved in any arbitration or court proceedings arising out of these Terms and Conditions, the Authority shall be entitled to recover all of its actual attorneys' fees, interest, costs, arbitration fees (including case administration fees and the arbitrator(s) fees), and expert witness fees if the Authority is the prevailing party.

14. **Limitation of Liability.** In no event shall the Authority, or any respective director, board member, officer, employee, agent, successor and assign of the Authority, be liable to Seller, or anyone claiming through or related to Seller, whether based on the Purchase Order, tort, negligence, warranty, indemnity, strict liability, delay, error or omission, or otherwise, for any consequential, special, incidental, indirect, punitive, exemplary or multiple damage or damages arising from or in connection with loss of use or loss of revenue or profit, actual or anticipated, increased expense of manufacturing or operation, loss of use, or cost of capitals, and the Seller hereby releases the Authority and the County of Wayne, and any respective director, officer, board member, employee, agent, successor and assign of the Authority and the County of Wayne, from any such liability. The Authority's total liability to the Seller shall not exceed the Total Purchase Order Amount. Any and all claims and causes of action resulting from any alleged breach by the Seller and against the Authority must be commenced within two years of the date of these Terms and Conditions or the Seller will have deemed to irrevocably waived any and all such claims and causes of action.

15. **Retention of Records.** The Seller shall retain and maintain any and all records and documents relating to these Terms and Conditions for three years after final payment and shall make them available for inspection and audit by authorized representatives of the Authority. The Authority, or any agent appointed by the Authority, may review and audit the books and records of the Seller in relation to these Terms and Conditions at any time, upon written notice to the Seller. The Seller shall immediately cooperate, in all respects, with any audit request from the Authority.

16. **Force Majeure.** The Authority shall not be liable for delaying delivery and/or acceptance of the Goods and Services, for its failure to accept any Goods or Services, or for its failure to perform hereunder or breach hereof due to the following: (i) fire; (ii) explosion; (iii) flood; (iv) riot; (v) strike; (vi) war; (vii) insurrection; (viii) acts of terrorism; (ix) acts of God; (x) regional energy outages; and (xi) other like causes beyond the reasonable control of any party (events (i) through (xi) are hereinafter collectively referred to as "Force Majeure Events"). The Seller shall not be liable for a delay in the performance of one or more of its obligations under the Purchase Order due to Force Majeure Events, but only to the extent and upon conditions that Seller completes all of the following: (i) the Seller provides written notice to the Authority of the event which seeks relief with all of the following; (ii) the Seller's written notice conspicuously indicates in the notice's subject heading "CLAIM FOR FORCE MAJURE RELIEF"; (iii) the Seller identifies one of the Force Majeure Events set forth herein; and (iv) the Seller's provides written notice to the Authority not later than seven (7) business days after the first occurrence of the Force Majeure Events. Under no circumstances shall the Seller be entitled to, and the Seller specifically waives, any additional compensation or costs related to any Force Majeure Events, and the Seller's sole and exclusive remedy, provided notice was properly and timely provided, is an extension of time to provide the Goods and/or Services.

17. **Insurance and Performance/Payment Bonds.** Seller shall, as a cost included in the Total Purchase Order Amount and without any additional cost or reimbursement from the Authority, take out, carry and maintain the following insurance coverages:

A. Workers' Compensation Insurance, including Employer's Liability Insurance, complying with the laws of the State of Michigan. Employer's Liability Insurance shall be provided with a limit not less than Five Hundred Thousand Dollars (\$500,000.00);

B. Comprehensive General Liability Insurance, including Purchase Order Liability and Products-Completed Operations Liability as well as coverage on all Seller's equipment (other than motor vehicles licensed for highway use) owned, hired or used in the performance of these Terms and Conditions with limits not less than One Million Dollars (\$1,000,000.00) or Five Million Dollars (\$5,000,000.00) if the Purchase Order requires access to the Airfield – Bodily Injury and Property Damage combined each occurrence and aggregate; and

C. Automobile Liability Insurance, including Purchase Order Liability, concerning all motor vehicles owned, hired or used in the performance of these Terms and Conditions, with limits not less than One Million Dollars (\$1,000,000.00) or Five Million Dollars (\$5,000,000.00) if the Purchase Order requires access to the Airfield – Bodily Injury and Property Damage combined each occurrence.

All insurance policies must be issued by recognized, responsible insurers licensed or approved by the Insurance Bureau of the State of Michigan and shall have a financial rating no lower than XI and a policy holder's service rating no lower than [A] as listed in A.M. Best's Key Rating Guide, current edition or interim report. All insurance policies must name the Seller as insured, name the Authority and the County of Wayne, Michigan as additional insureds with respect to general and automobile liability coverages, and shall not be canceled, terminated or materially changed without at least thirty (30) days prior

written notice from the Seller to the Authority. Certificates evidencing such insurance must be submitted by Seller to the Authority prior to the Seller providing any Goods or Services, and at least fifteen (15) days prior to the expiration dates of expiring policies. The Authority reserves the right to request complete copies of any insurance policies required by these Terms and Conditions if deemed necessary to ascertain the details of coverage not provided by the Certificates. Such copies shall be "Originally Signed Copies" and so designated. The Seller shall provide complete copies of any insurance policies no later than thirty (30) days following the request of the Authority.

Seller waives any rights of subrogation for personal injury or property damage against the Authority, its board members, officers, employees, assigns and agents arising from or related to the Purchase Order and these Terms and Conditions. In the event of any payment by any insurer of Seller, such insurer will not be subrogated to any of Seller's rights of recovery therefore against the Authority, its board members, officers, employees, assigns and agents. Seller shall not execute, nor deliver any instruments or other documents, nor take any other action to secure any such rights for Seller's insurer(s) against the Authority, its board members, officers, employees and agents. In addition, Seller forever and irrevocably waives any rights of recovery it may have against the Authority, its Board members, officers, employees and agents for insured losses occurring to any property insured by Seller in accordance with the Purchase Order and these Terms and Conditions.

If the Authority directs Seller in writing, the Seller shall deliver to the Authority, by or before the commencement of the Services to be performed herein, and for the full and faithful performance by the Seller of all terms, conditions and covenants of these Terms and Conditions, payment and performance bonds, issued by a surety approved by the Authority, in amounts equal to fifty percent (50%) of the value of the Total Purchase Order Amount. Bonds shall be on the AIA 311 or 312 form.

18. **Entire Agreement.** These Terms and Conditions form the entire understanding between the Authority and Seller, and supersede all prior representations or agreements, whether written or oral. The Seller warrants it has not relied upon any representation of the Authority in entering these Terms and Conditions. The Seller further warrants it has, prior to entering into these Terms and Conditions, done all of the following: (i) carefully reviewed all areas where the Work is to be performed; (ii) considered all conditions of any type affecting or relating to the Goods and/or Services; and (iii) concluded it can deliver the Goods and perform the Services within the time period specified by the Authority. The Seller waives any all claims for conditions which it should have or could have reasonably been aware of at the time the Purchase Order was executed. No oral agreements, representations, course of conduct or dealings, or usage of trade shall be relevant to supplement, explain, contradict or vary in any way, any provision contained herein or any express or implied warranties of the Seller.

19. **Assignment.** Seller may not assign or pledge these Terms and Conditions without the express written consent of the Authority. With notice, the Authority may assign these Terms and Conditions.

20. **Interpretation.** Wherever possible, each provision of the Purchase Order shall be interpreted in such a manner as to be effective and valid under the laws of the State of Michigan, but if any provision of these Terms and Conditions shall be prohibited or invalid under such law, said provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Purchase Order. The Authority and Seller agree these Terms and Conditions is the by product of joint negotiations between the parties, and irrespective of any rule of construction, these Terms and Conditions shall be construed as if both parties drafted these Terms and Conditions.

21. **Waiver.** Any failure of the Authority to, at any time, enforce or require strict compliance with and performance of the Seller of any of its obligations under the Purchase Order shall not constitute a waiver of the Authority of a breach of any such term or conditions or any other breaches, or the right of the Authority to avail itself of the remedies it may have for any such breach, and no waiver shall in any event be effective unless in writing and signed by the Authority. The remedies provided to the Authority in these Terms and Conditions are not exclusive, and shall not otherwise limit the Authority's rights.

22. **Headings.** The paragraph headings in these Terms and Conditions are inserted for convenience only and shall not be construed to be either limit or modify the scope of any of the terms and conditions herein.

23. **Independent Seller.** The Seller is an independent Seller to the Authority. The Seller shall be solely responsible for the means and methods associated with the Work. No direction or directive from the Authority shall relieve the Seller of its sole and absolute responsibility for the means and methods.

24. **Notices.** All notices required or related to these Terms and Conditions shall be sent certified mail/return receipt requested or via facsimile and email to the addresses and recipients listed on the Purchase Order.

25. **Federal Government Agreement.** This Purchase and these Terms and Conditions shall be subordinate to the terms, conditions, and covenants of any existing or future agreements between the Authority and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

26. **National Emergency.** All provisions of this Purchase Order and these Terms and Conditions shall be subordinate to the rights of the United States of America to lease or otherwise assume control over the Airport or any part thereof during time of war or national emergency for military or naval use, and provisions of this Agreement inconsistent with the rights of the United States of America shall be suspended thereby.