

RFP-WR-393021517

## Request For Proposal (RFP)

- Hot Beverage Brewing System,  
Service and Supplies

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## PART 1 – REQUEST FOR PROPOSAL (RFP)

### SECTION 1.0 - INTRODUCTION/OVERVIEW:

#### 1.1 Introduction / Background

It is the intention of Wayne RESA/CoPro+ to competitively bid and award a Master Agreement to a contractor(s) in the category of Hot Beverage Brewing System, Service and Supplies. As a result of this RFP, Wayne RESA/CoPro+ members will have access to the successfully awarded supplier(s) for Hot Beverage Brewing System, Service and Supplies. This contract will enable school districts, non-profit organizations, and public municipalities to purchase on an “as needed” basis from a competitively awarded contract.

Responses shall be received no later than the deadline in the offices of Wayne RESA. Immediately following the deadline, all responses will be opened and the respondents recorded. Any response received later than the specified deadline, whether delivered in person or mailed, will be disqualified.

#### 1.2 Statewide Contract

Wayne RESA, as the Lead Public Agency has partnered with Michigan Association of Counties (“MAC”) to make the resultant contract “Master Agreements” from this solicitation available to other public agencies statewide, including state and local governmental entities, local municipalities, school districts, and higher education institutions, and other government agencies and nonprofit organizations, public and private, and agencies for the public benefit (“Public Agencies”), through Collaborative Procurement Plus (“CoPro+”) program. Wayne RESA is acting as the contracting agency for any other Participating Public Agency that elects to utilize and issue purchase orders off of the resulting Master Agreements. Use of the Master Agreements by any Public Agency is preceded by their registration as a Participating Public Agency in Collaborative Procurement Plus (“CoPro+”) program.

With corporate, pricing and sales commitments from the Supplier, CoPro+ provides marketing support for the Supplier that directly promotes the Supplier’s products and services to Participating Public Agencies through multiple channels, each designed to promote specific products and services to Public Agencies. Public Agencies benefit from pricing based on aggregate spend and the convenience of a contract that has already been advertised and competed. The Supplier benefits from a contract that allows Participating Public Agencies to directly purchase Hot Beverage Brewing System, Service and Supplies without the Supplier’s need to respond to additional competitive solicitations. As such, the Supplier must be able to accommodate a statewide demand for Hot Beverage Brewing System, Service and Supplies, and to fulfill obligations as a statewide Supplier.

#### **Purpose of CoPro+ Consortium**

1. Provide governmental agencies opportunities for greater efficiency and economy in procuring goods and services.
2. Take advantage of state-of-the-art purchasing procedures to insure the most competitive contracts.
3. Provide competitive price and bulk purchasing for multiple government agencies that yields economic benefits unobtainable by the individual entity.
4. Provide quick and efficient delivery of goods and services.
5. Equalize purchasing power for smaller agencies that are unable to command the best contracts for themselves.
6. Help in assisting with use of best business practices.

**Customer Service**

1. CoPro+ is dedicated to making our contracts successful for both our members and our awarded vendors.
2. CoPro+ is committed to providing governmental agencies and awarded vendors with high quality service.
3. CoPro+ has dedicated staff available to answer questions, offer guidance and help in any way possible.

**Purchasing Procedures**

1. Purchase orders are issued by participating governmental agencies to the awarded vendor indicating on the PO "Per WAYNE RESA Contract"
2. Awarded vendor delivers goods/services directly to the participating agency.
3. Awarded vendor invoices the participating agency directly.
4. Awarded vendor receives payment directly from the participating agency.
5. Awarded vendor reports sales monthly/quarterly to WAYNE RESA.

**1.3 RFP Timetable**

The timetable for this RFP is as follows:

Release of RFP:	February 23, 2017
Proposers Questions Due:	March 02, 2017
Questions and Answers Responses:	March 09, 2017
Proposals Due by (5:00 pm/ EDT):	March 16, 2017
Evaluation/Clarifications/Negotiations:	March 18, 2017
Notice to Award:	March 24, 2017
Master Agreement Award Date:	March 28, 2017

**1.4 Scope**

It is the intention of Wayne RESA to competitively pre-qualify suppliers in the following category: Hot Beverage Brewing System, Service and Supplies. As a result of this RFP, Wayne RESA/CoPro+ members will have access to a pool of pre-qualified providers available for these vehicles and equipment. The vendors will be competitively selected as having been qualified as defined within the qualification section of this RFP.

**1.5 Master Agreement Term**

The term of the Master Agreement may be for a period of two (2) years from the date of award, with three (3) additional 12-month extension options, which may be exercised at the discretion of Wayne RESA. The term of the Master Agreement can be changed during the award process.

**1.6 Final Agreement Award Determination**

Wayne RESA reserves the right to make one total award, one award for each section, multiple awards, or a combination of awards, and to exercise its judgment concerning the selection of one or more proposals, the

terms of any resultant agreement(s), and the determination of which, if any, proposal(s) best serves the interests of Wayne RESA.

Additionally, participation in the statewide program is not a mandatory component or requirement in this solicitation in order for a Proposer to receive an award. Proposers have the option to be considered for a local agreement only, or for both a local and national program agreement.

## 1.7 Overview of Solicitation Document

The solicitation is composed of the following 2 parts:

### **PART 1: REQUEST FOR PROPOSAL**

- Section 1.0: INTRODUCTION/OVERVIEW: Specifies the information regarding the requirements of the solicitation process.
- Section 2.0: SCOPE OF WORK: Sets forth a description of the required Product and Service Offerings, Product Specifications, Product Categories, Service Capabilities, Order/Delivery/Reporting/Customer Service
- Section 3.0: BIDDING EVALUATION, SELECTION & AWARD PROCESS: Includes information on how proposals will be evaluated, selected and awarded.
- Section 4.0: TERMS AND CONDITIONS:

### **PART 2: PROPOSAL (Vendor's Response)**

- Section 5.0: RESPONSE TO REQUIREMENTS/STATEMENT OF WORK (SOW): Vendor will outline and describe how they propose to delivery and provide Hot Beverage Brewing System, Service and Supplies to ordering entities.
- Section 6.0: BIDDER/VENDOR INFORMATION (FORMS): Vendor will fill out the requisite forms that will be utilized in determining whether the vendor is a responsible bidder that has the capacity and capability to deliver and provide products under this agreement.
- Section 7.0: PRICING SCHEDULE: Vendor will provide pricing information that will be utilized when evaluating price competitiveness. Please see Excel Spreadsheet Appendix A.

## 1.8 Minimum Mandatory Requirements

Interested and qualified Proposers that can demonstrate their ability to successfully provide the goods and services requested under this RFP are invited to submit proposal(s), provided they meet the following requirements:

- 1) Proposer must have three (3) years' experience, within the last five (5) years, providing a range of Hot Beverage Brewing System, Service and Supplies equivalent or similar to the products and services being requested by Wayne RESA as described herein.
- 2) If awarded, supplier will be required to receive and transmit all order information via cxml
- 3) If awarded, supplier will be required to present all product information in electronic catalogs; CoPro+ will assist with all catalog and technology requirements.

## 1.9 Wayne R.E.S.A Rights & Responsibilities

Wayne RESA has the right to amend this RFP by one or more written addendums. Wayne RESA is responsible only for that which is expressly stated in the solicitation document and any authorized written addenda thereto. Each addendum shall be made available to each person or organization, which Wayne RESA records indicate has received this RFP.

Should any such addendum require additional information not previously requested, failure to address the requirements of such addendum may result in the Proposal not being considered, as determined in the sole discretion of Wayne RESA. Wayne RESA is not responsible for and shall not be bound by any representations otherwise made by any individual acting or purporting to act on its behalf.

## 1.10 Contacts with Wayne R.E.S.A Personnel

All contact with Wayne RESA regarding this RFP or any matter relating thereto must be in writing and mailed, e-mailed or faxed as follows:

**Wayne RESA Administrator: Charles Wofford**  
33500 Van Born Road  
Wayne, Michigan 48184  
Email address: copro@resa.net

If it is discovered that a Proposer contacted and received information regarding this Solicitation from any Wayne RESA personnel other than the person specified above, Wayne RESA, in its sole discretion, may disqualify its proposal from further consideration. Only those communications made by Wayne RESA in writing will be binding with respect to this RFP.

## 1.11 Conflict of Interest

No Wayne RESA employee or agent whose position in Wayne RESA enables him/her to influence the selection of a Supplier for this RFP, or any competing RFP, nor any spouse or economic dependent of such employees, shall be employed in any capacity by a Proposer or have any other direct or indirect financial interest in the selection of a Supplier.

## 1.12 Gratuities

It is improper for any Wayne RESA officer, employee or agent to solicit consideration, in any form, from a Proposer with the implication, suggestion or statement that the Proposer's provision of the consideration may secure more favorable treatment for the Proposer in the award of the Master Agreement or that the Proposer's failure to provide such consideration may negatively affect Wayne RESA's consideration of the Proposer's submission.

A Proposer shall not offer or give either directly or through an intermediary, consideration, in any form, to a Wayne RESA officer, employee or agent for the purpose of securing favorable treatment with respect to the award of the Master Agreement.

## 1.13 Terms and Definitions

For the purposes of this RFP the following terms shall apply: Bidder – When referring to vendors who have to provide specific information or meet requirements to be considered for award. (Proposer = Bidder);

whereas Contract/Vendor – Is referring to the Bidder(s) who is selected. This is used to describe what they are required to do “if” they are awarded a Contract.

## SECTION 2.0 – SCOPE OF WORK

### 2.1 Product and Service Offerings

It is the intention of Wayne RESA to competitively award vendor(s) for Hot Beverage Brewing System, Service and Supplies. Awarded vendor(s) shall provide products and perform covered services under the terms of this agreement.

Respondents shall provide purchase and rental equipment and service pricing based on a discount from manufacturer's price list and educational list price. Catalog and/or price lists must accompany the proposal. The Catalog/price list must be the regular, common available catalog/price list distributed to schools and/or government entities that are published by the manufacturer. Include a copy of the catalog/price list electronically from which discount is calculated. Multiple percentage discount structure is also acceptable. Please specify where different percentage discounts apply. Additional pricing and/or discounts may be included. If respondent has existing cooperative contracts in place, Wayne RESA requests equal or better than pricing to be submitted.

Wayne RESA is seeking a service provider that has the depth, breadth and quality of resources necessary to provide the following products under this solicitation:

#### **Hot Beverage Brewing System, Service and Supplies**

Bidders are to provide manufacturer's price lists/catalogs for the following type of Hot Beverage Brewing System, Service and Supplies. Bidders are to include detailed product specifications for a coffee beverage dispensing machine that features. Bidders are to indicate in the pricing section of this solicitation the percentage discount off each of the items bid. (There are 3 market basket categories.)

1. Hot Beverage Brewing System
2. Hot Beverage Supplies for System
3. Hot Beverage Brewing System Service (local service)
4. Hot Beverage Product Catalog Discount

### 2.2 Product and/or Service Specifications

#### *2.2.1 Reservation of Rights*

All products being bid shall be certified as new and unused. Please bid top-of-the-line products. Generics are not preferred. The product lines of nationally recognized manufacturers who regularly advertise, promote and distribute catalog products to the school and local government market are preferred. However, the Wayne RESA will evaluate the merits of all bids submitted and reserves the right, in its sole and absolute discretion, to accept or reject, in whole or in part, any or all bids or portions of bids with or without cause. Wayne RESA further reserves the right to waive any irregularity or informality in the RFP process or any bid, and the right to award to one or multiple vendors. Wayne RESA reserves the right to add or delete products from the bid, extend agreements, or change vendors, in order to best serve the eligible agencies. These changes will follow approved bidding laws. Wayne RESA may use the individual product cost, or the sum of groups of products, may group similar products, and/or total cost of ownership, to evaluate prices and award bids. Wayne RESA reserves the right to request additional information from any or all bidders. Wayne RESA also reserves the right to select one or more vendors to award a contract to under this RFP. In the event a bid is accepted by Wayne RESA and the vendor asserts exceptions, special considerations or conditions after acceptance,

Wayne RESA, in its sole and absolute discretion, reserves the right to reject the bid and award other bidder(s). *The relationship of the Contractor to Wayne RESA and/or Ordering Entities shall at all times be that of an independent contractor, and no liabilities or benefits such as worker's compensation, pension, insurance, Affordable Care Act benefits or any other employee right shall arise or accrue as a result of the performance by the awarded contractor of the Contract for services.*

### 2.2.2 Competition Promoted

The name of a model, manufacturer or brand in Wayne RESA bid documents shall not be considered as exclusive of other brands unless "NO SUBSTITUTE" is stated in the item description. Bidders may offer a variety of brands and models, as it is the intent of Wayne RESA to provide a multitude of options to the eligible agencies. Wayne RESA expects all supplies, materials, equipment or products bid to meet or exceed the specifications set forth in this RFP. Further, it is Wayne RESA's intent that this RFP permit competition. Accordingly, the use of any patent, proprietary name or manufacturer's name is for demonstrative purposes only and is not intended to curtail competition. Whenever any supplies, materials, equipment or products requested in this RFP are specified by patent, proprietary name or by the name of the manufacturer, unless stated differently, such specification shall be considered as if followed by the words "or comparable equivalent," whether or not such words appear. Wayne RESA, in its sole and absolute discretion, shall have the right to determine if the proposed equivalent products/brands submitted by bidder meet the specifications contained in this RFP and possess equivalent and/or better qualities. It is the bidder's responsibility to notify Wayne RESA in writing if any specifications or suggested comparable equivalent products/brands require clarification by Wayne RESA prior to the due date for bids.

## 2.3 Product Categories

The following product categories are included in this RFP:

1. Hot Beverage Brewing System (deJongDUKE Virtu or equal)
  - a. Customizable touchscreen interface
  - b. High capacity whole and ground coffee beans
  - c. Coffee, Espresso, Hot Chocolate, and Tea beverage combinations
  - d. Fresh Milk system
  - e. Payment System (Optional)
  - f. Base or Counter System
  - g. Cup Stand
2. Hot Beverage Supplies for System
3. Hot Beverage Brewing System Service (local service)
4. Hot Beverage Product Catalog Discount

## 2.4 Service Capabilities

### 2.4.1 Communication Plan/Contract Management

Bidders shall identify their company standards of communication as they relate to contract performance, issue management, and change management. An issue is an identified event that, if not addressed, may affect schedule, scope, service, delivery, quality, or budget. A change is identified as a change in corporate leadership, structure, merger or acquisition.

### 2.4.2 Primary Account Representative

Bidders must identify by name and location the primary account representatives who will be responsible for the performance of a resulting contract, as well as contact persons for reports and bid documents.

## 2.5 Quotes/Order/Delivery Reporting/Customer Service

### 2.5.1 Generally

Requests for quotes will be initiated by participating agencies as specific needs arise. Participating agencies will issue individual detailed specifications to the pre-qualified vendor pool along with specific response information required, deliverables, and any special terms and conditions. The vendors will respond directly to the requesting agency within the timeframe specified in the request for quote. The participating agency will evaluate the responses and determine the vendor that will be awarded a purchase order (PO).

### 2.5.2 Ordering Process Capabilities

Bidders shall identify their ordering/customer service capabilities. This includes having the capacity to receive orders electronically, by phone, facsimile, and by written order.

The Vendor shall provide a state-wide toll-free phone number for phone orders. The Vendor agrees to have internal controls to ensure that authorized individuals place orders.

It is preferred that the Vendor have an accessible customer service department with an individual specifically assigned to the Wayne RESA. Customer inquiries should be responded to within 48 hours or two (2) business days.

Eligible Agencies will issue POs directly to the Vendor. Vendors should consider all orders from Eligible Agencies in Michigan to be Wayne RESA orders regardless of whether or not the PO makes any reference to Wayne RESA, unless specifically directed otherwise by the ordering agency. Issuance and order placement by an Eligible Agency hereby executes Wayne RESA contract terms and conditions and supersedes other terms and conditions that conflict on the PO. Resulting orders are to be shipped and billed directly to these institutions.

All products furnished must be in conformity with the participating agency specifications and will be subject to inspection and acceptance by the individual customers at delivery. The right is reserved to reject and return at the risk and expense of the vendor.

### 2.5.3 Delivery Capabilities/Options

Bidders shall identify their delivery capabilities as part of the Vendor Profile.

Summer Deliveries -Deliveries that occur in the summer months (outside school operational calendars) must be coordinated with each customer. Many schools are closed during the summer. We suggest that, if schools do not include summer shipping directions, the vendor should contact them for clarification.

### 2.5.4 Delivery Time Frames

If there are supplies or regions of the state that might require a longer delivery time-frame please denote in the Additional Information column of the Pricing Schedule for the respective item.

### 2.5.5 Reporting Capabilities

Bidders are required to submit quarterly sales reports as described in the Fees Agreement and other reporting documents.

### 2.5.5 Shipping Errors

The receiving agencies have been instructed to make immediate inspection on receipt of units and to process payment documents promptly. Payment documents, however, will be delayed if the vehicle/equipment fails to comply with specification requirements. Therefore, close pre-delivery inspection is crucial.

## 2.6 Pricing Terms

### 2.6.1 Price Guarantee

Price Stability Guarantee - For the first twelve months of the Agreement, the vendor must guarantee to provide the products at the proposed rates. The vendor can propose price increases or decreases after the above stated time period.

Promotional Pricing —Bidder may offer promotional pricing for awarded products and/or services during the contract term. Upon promotion expiration, the pricing must return to previous item price and remain in compliance with the Price Stability Guarantee.

### Free On Board (F.O.B) Delivered/Destination (Required)

Prices shall be quoted "F.O.B. Delivered/Destination" to each Customer with transportation charges prepaid on all orders of one (1) or more.

### 2.6.2 Bid Pricing

Bid pricing must reflect Net 30 payment terms, including applicable F.O.B. Delivered/Destination shipping and handling charges.

Catalog/price list discount pricing shall be based on a discount percentage from Education List Price. Percentage discount(s) shall not decrease for the contract term. Bidders have the option to provide high-volume pricing. Bidders who offer high-volume pricing may be evaluated more favorably than those who do not. Bidders should specify this discount option in the column specified.

### 2.6.3 Quantity Term

Vendor agrees to supply the complete quantity and products that each customer requires.

### 2.6.4 Rebates and Special Promotional Capabilities

All vendors are encouraged to make manufacturer promotions, rebates and special pricing opportunities available. Wayne RESA must approve promotional materials referring to the Wayne RESA/CoPro+ Agreement prior to release. Wayne RESA/CoPro+ will post rebate and special pricing information on its web site.

Guidelines for Vendor /Contractor promotions for Wayne RESA/CoPro+ awarded items:

- A. Submit all promotions for approval
- B. Identify the Wayne RESA item number
- C. Identify the Wayne RESA awarded price
- D. Identify the savings amount
- E. Identify the final price
- F. Specify the time period in which a purchase must be made
- G. Identify the link to a rebate form (preferred) or provide the form

## 2.7 Marketing/Promotional Capabilities

### 2.7.1 Marketing Plan

The responsibility for marketing will be jointly shared with the Vendor and CoPro+. Bidders must submit a marketing plan that includes all of the following:

- A. Contract Launch "Kick-Off" Transition Plan (press releases, catalog, order forms)
- B. Marketing Methodology (mailings, meetings, seminars, press releases, personal contacts, proposed dates and locations of activities)
- C. Staff Servicing the Contract (include specific names, titles, locations and responsibilities)
- D. Tools and Resources (online ordering, comparison tools, webinars, videos). Provide the URL of a Wayne RESA-specific or similar site and provide a test user name and password if logging in is required to view the site.
- E. Marketing Materials (Attach examples) and any other value added items. All marketing materials are subject to WAYNE RESA/CoPro+ review and approval prior to release.
- F. Co-branded Landing Page / Website.
- G. Conference Exhibit Participation

*2.7.2 Vendors Will Be Promoted on CoPro+ "Marketplace" and Website*

Vendors will be required to receive and transmit all order information via cxml. Vendors will be required to present all product information in electronic catalogs; CoPro+ will assist with all catalog and technology requirements.

**SECTION 3.0 – BIDDING, EVALUATION, SELECTION & AWARD PROCESS**

This section contains key project dates and activities as well as instructions to proposers on how to prepare and submit their proposal:

**RFP Timetable** - The timetable for this RFP is as follows:

Release of RFP:	February 23, 2017
Proposers Questions Due:	March 02, 2017
Questions and Answers Responses:	March 09, 2017
Proposals Due by (5:00 pm/ EDT):	March 16, 2017
Evaluation/Clarifications/Negotiations:	March 18, 2017
Notice to Award:	March 24, 2017
Master Agreement Award Date:	March 28, 2017

**3.1 Wayne RESA Responsibility**

Wayne RESA is not responsible for representations made by any of its officers or employees prior to the execution of the Master Agreement unless such understanding or representation is included in the Master Agreement.

**3.2 Truth and Accuracy of Representations**

False, misleading, incomplete, or deceptively unresponsive statements in connection with a proposal shall be sufficient cause for rejection of the proposal. The evaluation and determination in this area shall be at Wayne RESA Administrator/Purchasing agent designee's sole judgment and his/her judgment shall be final.

**3.3 Bidders Questions**

Proposers may submit written questions regarding this RFP by e-mail to the individual identified below. All questions must be received by 5:00 pm EDT (Eastern Daylight Time) on 03/02/2017. All questions, without identifying the submitting company, will be compiled with the appropriate answers and issued as an addendum to the RFP.

When submitting questions please specify the RFP section and paragraph number, and quote the language that prompted the question. This will ensure that the question can be quickly found in the RFP. Wayne RESA reserves the right to group similar questions when providing answers. Questions should be addressed to:

**Wayne RESA Administrator: Charles Wolford**  
 33500 Van Born Road  
 Wayne, Michigan 48184  
 E-mail address: copro@resa.net

Wayne RESA may modify the RFP at any time during the bid process. All changes to the RFP will be posted under the bid number and each posting officially revises the RFP.

### 3.4 Preparation of the Proposal

Each bidder must submit a complete proposal in response to this RFP. The proposal must remain valid for at least 120 days from the due date for responses to this RFP.

The Proposer will be responsible for completing all three sections under Part 2 of this RFP, which is titled Proposal – Vendor’s Response. The three sections that are required to be completed are the following:

- Section 5.0 – Response to Requirements/SOW - The bidder’s proposal must include detailed responses to each of the outlined requirements.
- Section 6.0 – Bidder’s Information – The bidder will be required to download the forms in this section. Complete the forms, including signature, and then upload the forms. It is expected that a responsive bidder will complete each of the forms requested.
- Section 7.0 – Pricing Schedule – The bidder will be required to print out or download the excel spreadsheets that make up the pricing schedule. Then complete and upload or PDF the pricing schedule upon completion.

There are no unique formatting requirements. Information provided shall be organized and in a readable format.

### 3.5 Bid Submission Deadline

- A. The Deadline for receipt of Bids is: **March 16, 2017, 5:00 PM EDT (the "Due Date")**.
- B. Submit an electronic version of your Bid to Wayne RESA via email to [copro@resa.net](mailto:copro@resa.net) not later than **5:00 p.m. on March 16, 2016**. Wayne RESA has no obligation to consider any proposal that is not timely received. Note: Timely delivery is regarded as to the time and date that the e-mail arrives within Wayne RESA not when the e-mail was sent. Proposals will not be accepted via U.S. mail or any other delivery method.

APPLICANTS ARE RESPONSIBLE FOR ASSURING THAT THE FOLLOWING IDENTIFYING INFORMATION APPEARS IN THE SUBJECT LINE OF YOUR EMAIL: *"RFP-WR-393021517" with Company Name, and "message 1 of 3" as appropriate if the proposal consists of multiple emails. Note: All e-mails from a bidder must be received by Wayne RESA by the stated time and date in order for the proposals to be deemed submitted on time.*

### 3.6 Business Proposal Format

The content and sequence of the proposal will be as follows:

#### Part 2

#### Section 5.0 – Response to Scope of Work (Sections 2.1 thru 2.7)

- 5.1 Product and Service Offerings
- 5.2 Product Specifications
- 5.3 Product Categories
- 5.4 Service Capabilities

- 5.5 Ordering/Delivery/Reporting/Customers
- 5.6 Pricing (See Section 7)
- 5.7 Marketing/Promotional Capabilities

**Section 6.0 – Bidder’s Information & Certifications**

- 6.1: Company Profile
- 6.2: Supplier References
- 6.3.A: Contractor’s Employment Eligibility
- 6.3.B: Business Operations in Sudan, Iran
- 6.3.C: Exceptions to Terms, Conditions and Specifications

**Section 7.0 – Cost Proposal/Pricing Schedule**

- 1. Appendix A
- 2. Administrative Fees & Discounts (Under Miscellaneous fees and options)

**3.7 Evaluations and Selection Process**

Wayne RESA reserves the sole right to judge the contents of the proposals submitted pursuant to this RFP and to review, evaluate and select the successful proposal(s). The selection process will begin with receipt of the proposal.

An Evaluation Committee selected by Wayne RESA Administrator will make evaluation of the proposals. The committee will evaluate the proposals and will use the evaluation approach described herein to recommend a prospective supplier for award.

All proposals will be evaluated based on Section 3.10 below. All proposals will be scored and ranked in numerical sequence from high to low. Wayne RESA may also, at its option, invite proposers being evaluated to make a verbal presentation or conduct site visits, if appropriate. The Evaluation Committee may utilize the services of appropriate experts to assist in this evaluation.

After a prospective supplier has been selected, Wayne RESA and the prospective supplier(s) will negotiate a Master Agreement. If a satisfactory Master Agreement cannot be negotiated, Wayne RESA may, at its sole discretion, begin negotiations with the next qualified proposer who submitted a proposal, as determined by Wayne RESA. It is anticipated that pre-qualified contract awards will be made to multiple vendors.

**3.8 Adherence to Mandatory Requirements (Pass/Fail)**

Wayne RESA Administrator or designee shall review Part 2, Section 6.0 – Bidder’s Information, and determine if the Proposer meets the minimum requirements as outlined in this RFP.

Failure of the proposer to comply with the minimum mandatory requirements may eliminate its proposal from any further consideration. Wayne RESA may elect to waive any informality in a proposal if the sum and substance of the proposal is present.

**3.9 Evaluation Process**

All Bids will be reviewed for compliance with the mandatory requirements stated within this RFP. Bids deemed non-responsive will be eliminated from further consideration.

- A. Wayne RESA may contact the Bidder for clarification of the Bidder's Bid.
- B. Wayne RESA may use other sources of information to perform the evaluation.

- C. Wayne RESA may require the Bidder to submit additional and/or supporting materials.
- D. Responsive bids will be evaluated on the factors identified in this RFP. The bidder(s) whose bid is advantageous to the Eligible Agencies, taking into consideration the evaluation factors, will be recommended to for award approval.

### 3.10 Evaluation Criteria

#### 3.10.1 *Pricing factors as determined by Wayne RESA (40 points)*

1. Products, services, warranties, etc. price list.
2. Prices listed will be used to establish both the extent of a manufacturer's product lines, services, warranties, etc. available from a particular bidder and the pricing per item. The maximum number of possible points will be awarded to the lowest cost proposal in each of the two product categories. All other proposals will be compared to the proposal which is lowest in cost and points will be awarded accordingly.

#### 3.10.2 *Additional Discounts (10 points)*

The Proposer will be evaluated on additional discounts offered, such as Quick Payment Discounts, Volume Discounts, Catalog Discounts (other than market basket items). Discount amounts are to be completed in Attachment A.

#### 3.10.3 *Delivery and Acceptance (20 points)*

The Proposer will be evaluated based on procedures and process regarding the following:

1. Delivery to all locations in Michigan;
2. Time frames for delivery;
3. Carriers used for deliveries;
4. Ordering procedures;
5. Policies and procedures for accepting delivery;
6. Proposed warranty period and terms;
7. Financial Stability via review of Dun & Bradstreet
8. Quality of catalogs for use by entities that do not have electronic access.

#### 2.10.4 *Value Added Services/Products (10 points)*

Proposer will be evaluated on ordering/customer service capabilities, issue management, change management, dispute resolution, and communication plan/standards of communication.

#### 3.10.5 *References (5 points)*

Minimum of Five (5) customer references for product and/or services of similar scope dating within the past 3 years.

#### 3.10.6 *Technology for supporting the program (15 points)*

1. Electronic on-line catalog, order entry use by and suitability for the entity's needs
2. Quality of vendor's on-line resources for WAYNE RESA members.
3. Specifications and features offered by respondent's products and/or services.
4. Technology Services related to maintaining and servicing the equipment

### 3.11 Optional Tools to Enhance Evaluation Process

Wayne RESA during the evaluation of proposals may find it necessary to utilize one or multiple tools, as listed below, to facilitate their understanding of the proposal(s) in order to select the best offering to Wayne RESA.

#### 3.11.1 Clarifications

Wayne RESA may issue a clarification request, in writing, to one or all bidders. A clarification request does not allow a bidder to change its proposal.

**3.11.2 Deficiency Report**

Wayne RESA may issue a Deficiency Report and Clarification Request (DR/CR) to each bidder determined to be in the competitive range. The DR/CR response may include any changes to the bidder's proposal to address the listed deficiencies or clarifications, including alterations to the bidder's price proposal to address correction of the deficiencies.

**3.11.3 Oral Presentation**

Wayne RESA may require an oral presentation of the bidder's proposal. This presentation provides an opportunity for the bidder to clarify its proposal.

**3.11.4 Site Visit**

Wayne RESA may conduct a site visit to tour and inspect the bidder's facilities.

**3.11.5 Best and Final Offer (BAFO)**

Wayne RESA may request a Best and Final Offer (BAFO) from each bidder determined to be in the competitive range.

**3.12 Negotiations**

After a prospective Supplier has been selected, Wayne RESA and the prospective Supplier(s) will negotiate a Master Agreement. If a satisfactory Master Agreement cannot be negotiated, Wayne RESA may, at its sole discretion, begin negotiations with the next qualified Proposer who submitted a proposal, as determined by Wayne RESA.

**3.13 Wayne RESA Option to Reject Proposals**

Wayne RESA may, in its sole and absolute discretion, reject any or all proposals submitted in response to this RFP. Wayne RESA shall not be liable for any costs incurred by the Proposer in connection with the preparation and submission of any proposal. Wayne RESA reserves the right to waive inconsequential disparities in a submitted proposal.

**3.14 Freedom of Information Act**

This contract and all information submitted to Wayne RESA by the Contractor and bidders is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, et seq.

Wayne RESA shall not, in any way, be liable or responsible for the disclosure of any such record or any parts thereof, if disclosure is required or permitted under the Michigan Freedom of Information Act or otherwise by law. The Proposer(s) must specifically label only those provisions of the proposal, which are actually trade secrets, confidential, or proprietary in nature. A blanket statement of confidentiality or the marking of each page of the proposal as "Trade Secret", "Confidential", or "Proprietary" shall not be permitted. Any such designation will be disregarded.

By submitting a response to this RFP, the Proposer shall be deemed to have agreed to indemnify and hold harmless Wayne RESA for any liability arising from or in connection with Wayne RESA's failure to disclose, in response to a request under the Michigan Freedom of Information Act, any portion or portions of the Proposer's response to this RFP which have been marked "Trade Secret," "Confidential," or "Proprietary."

## SECTION 4.0 - TERMS AND CONDITIONS

### 4.1 Contract Term & Options to Extend Contract

#### 4.1.1 *General Authority*

The Contract term begins 04/01/17 and expires 03/31/19. All outstanding Purchase Orders will expire upon the termination of the Contract for any of the reasons listed in section 4, Termination by Wayne RESA, unless otherwise agreed to in writing by Wayne RESA Administrator or designee. Absent an early termination, Purchase Orders issued, but not expired, by the end of the Contract's term will remain in effect for the balance of the fiscal year for which they were issued.

#### 4.1.2 *Option to Extend Contract Term*

Wayne RESA may exercise the option to extend the contract term for 12 months. Wayne RESA will have three one-year (1 year) options. Wayne RESA can exercise the option unilaterally six months prior to the expiration date of 09/14/18 with written notice. Any options exercised within the 6 months prior to the expiration must be done by mutual written agreement by both parties.

### 4.2 Laws

#### 4.2.1 *General Authority*

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

#### 4.2.2 *Compliance with Laws*

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

#### 4.2.3 *Jurisdiction*

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

#### 4.2.4 *Nondiscrimination*

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

#### 4.2.5 *Unfair Labor Practices*

Under 1980 PA 278, MCL 423.321, et seq., Wayne RESA must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States

National Labor Relations Board. A Contractor of Wayne RESA, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, Wayne RESA may void any Contract if, after award of the Contract, the name of the Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of the Contractor appears in the register.

#### 4.2.6 *Environmental Provision*

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

- (a) The Contractor must use, handle, store, dispose of, process, transport, and transfer any Hazardous Material according to all federal, State, and local laws. Wayne RESA must immediately advise the Contractor of the presence of any known Hazardous Material at the work site. If the Contractor encounters material reasonably believed to be Hazardous Material that may present a substantial danger, the Contractor must: (i) immediately stop all affected work; (ii) notify Wayne RESA in accordance with Section 2.3.6, Notices; (iii) notify any entities required by law; and (iv) take appropriate health and safety precautions.
- (b) Wayne RESA may issue a Stop Work Order if the material is a Hazardous Material that may present a substantial danger and the Hazardous Material was not brought to the site by the Contractor, or does not wholly or partially result from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials. Wayne RESA may remove the Hazardous Material, render it harmless, or terminate the affected work for Wayne RESA's convenience.
- (c) If the Hazardous Material was brought to the site by the Contractor, or wholly or partially results from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to applicable laws.  
The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the products and services.

#### 4.2.7 *Freedom of Information*

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

#### 4.2.8 *Abusive Labor Practices*

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

"Forced or indentured child labor" means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

### 4.3 General Provisions

#### 4.3.1 *Bankruptcy and Insolvency*

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

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

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

#### 4.3.2 *Media Releases*

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

#### 4.3.3 *Antitrust Assignment*

The Contractor assigns to Wayne RESA any claim for overcharges resulting from county or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the contract.

#### 4.3.4 *Legal Effect*

Wayne RESA is not liable for costs incurred by the Contractor or for payment(s) under this contract until the Contractor is authorized to perform under Section 1.2.4, Ordering.

#### 4.3.5 *Entire Agreement*

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

#### 4.3.6 *Order of Precedence*

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

- (a) Mandatory sections (Contract Term, Legal Effect, Insurance, Indemnification, Termination, Governing Law, Limitation of Liability):
  - (b) The most recent Statement of Work related to this contract;
  - (c) All sections from Section 4 - Terms and Conditions, not listed in subsection (a);
  - (d) Any attachment or exhibit to the contract documents;
  - (e) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under the contract; and
  - (f) Bidder Responses contained in any of the RFP documents.

#### 4.3.7 *Headings*

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

4.3.8 *Reformation and Severability*

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

4.3.9 *Approval*

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

4.3.10 *No Waiver of Default*

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

4.3.11 *Survival*

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

4.3.12 *Electronic Payment Requirement*

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

4.3.13 *Cooperation with Third Parties*

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

4.3.14 *Relationship of the Parties*

*The relationship of the Contractor to Wayne RESA and/or Ordering Entities is that of independent contractor to client and no liabilities or benefits such as worker's compensation, pension, insurance, Affordable Care Act benefits or any other employee right shall arise or accrue as a result of the performance by the awarded contractor of the Contract for services.* No agent, employee, or servant of the Contractor, or any of its subcontractors, is an employee, agent or servant of Wayne RESA. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, and subcontractors during the performance of the Contract.

4.3.15 *Time of Performance*

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

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

4.3.16 *Excusable Failure*

Neither party will be liable for any default, damage or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, forces of nature or acts of God, delays or failures of transportation, equipment

shortages, suppliers' failures, acts or omissions of common carriers, fire, riots, civil disorders, labor disputes, embargoes, injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused), or any other cause beyond the reasonable control of a party; provided the non-performing party and any Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

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

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

The Contractor will not have the right to any additional payments from Wayne RESA as a result of any Excusable Failure or to payments for deliverable(s) not provided as a result of the Excusable Failure. The Contractor will not be relieved of a default or delay caused by acts or omissions of its Subcontractors except to the extent that a Subcontractor experiences an Excusable Failure and the Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

#### 4.3.17 *Retention of Records*

- (a) The Contractor must retain all financial and accounting records related to this Contract for a period of seven years after the Contractor performs any work under this contract (Audit Period).
- (b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

#### 4.3.18 *Examination of Records*

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

#### 4.3.19 *Audit Resolution*

If necessary, the Contractor and Wayne RESA will meet to review any audit report promptly after its issuance. The Contractor must respond to each report in writing within 30 days after receiving the report, unless the report specifies a shorter response time. The Contractor and Wayne RESA must

develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

**4.3.20 Errors**

(a) If an audit reveals any financial errors in the records provided to Wayne RESA, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of the contract. If a balance remains after four invoices, the remaining amount will be due as a payment or refund within 45 days of the last invoice on which the balance appeared or upon termination of the contract, whichever is earlier.

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

**4.3.21 Disclosure of Litigation**

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

(i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;

(ii) A parole or probation proceeding;

(iii) A proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and

(iv) A civil proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.

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

(c) If any proceeding that is disclosed to Wayne RESA or of which Wayne RESA otherwise becomes aware, during the term of this Contract, would cause a reasonable party to be concerned about:

(i) the ability of the Contractor (or a Subcontractor) to continue to perform this Contract; or

(ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of this contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide Wayne RESA all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this contract.

**4.3.22 Other Disclosures**

The Contractor must notify Wayne RESA Administrator within 30 days of:

(a) becoming aware that a change in the Contractor's ownership or officers has occurred or is certain to occur; or

(b) any changes to company affiliations.

**4.3.23 CoPro+ Requirements**

(a) The Contractor will work with CoPro+ to ensure that all purchasers are members before extending the Contract pricing.

(b) To the extent that CoPro+ Members purchase Deliverable(s) under this contract, the quantities of Deliverable(s) purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

(c) The Contractor must submit invoices to and receive payment from CoPro+ Members, Participating Entities, on a direct and individual basis.

#### 4.3.24 *Remittance/Administrative Fee*

The Contractor must collect an administrative fee on all sales transacted under this contract and remit the fee within 30 days after the end of each quarter. The remittance fee for this contract will be 2% on all sales through the use of this contract.

## 4.4 Insurance

### 4.4.1 *Liability Insurance*

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

(a) The following apply to all insurance requirements:

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

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

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

(b) The Contractor must:

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

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

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

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

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

(vi) pay all deductibles.

#### 4.4.2 *Subcontractor Insurance Coverage*

Except where Wayne RESA has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 4.4.1, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

#### 4.4.3 *Certificates of Insurance and Other Requirements*

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that Wayne RESA and its agents, officers, and employees are listed as additional insured's under each commercial general liability and commercial automobile liability policy. The Contractor must provide Wayne RESA Administrator with all applicable certificates of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in Section 4.4.1, Liability Insurance. Each certificate must be on the standard "accord" form or equivalent and MUST CONTAIN THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER. Each certificate must be prepared and submitted by the insurer and must contain a provision indicating that the coverage afforded will not be cancelled, materially changed, or not renewed without 30 days prior notice, except for 10 days for nonpayment of premium, to Wayne RESA Administrator.

### 4.5 Indemnification

#### 4.5.1 *General Indemnification*

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

#### 4.5.2 *Employee Indemnification*

In any claims against Wayne RESA, its departments, agencies, commissions, officers, employees, and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts, the *Affordable Care Act*, or other employee benefit acts. *This indemnification clause is intended to be comprehensive and, without limiting the scope of the foregoing, shall also apply to any claims made by employees of Contractor for benefits including but not limited to those under the Affordable Care Act.* Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

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

(a) To the extent permitted by law, the Contractor must indemnify and hold Wayne RESA harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest, and penalties) resulting from any action threatened or brought against Wayne RESA to the extent that

the action is based on a claim that any piece of equipment, software, commodity, or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

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

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

#### 4.5.4 *Continuing Obligation*

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

#### 4.5.5 *Limitation of Liability*

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

## 4.6 Warranties

### 4.6.1 *Warranties and Representations*

The Contractor represents and warrants:

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

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

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

- (d) If the Contractor procures any equipment, software, or other Deliverable(s) for Wayne RESA (including equipment, software, and other Deliverable(s) manufactured, re-marketed or otherwise sold by the Contractor or under the Contractor's name), then the Contractor must assign or otherwise transfer to Wayne RESA or its designees, or afford Wayne RESA the benefits of, any manufacturer's warranty for the Deliverable(s).
- (e) The contract signatory has the authority to enter into this contract on behalf of the Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any affiliates, nor any employee of either, has, will have, or will acquire, any interest that would conflict in any manner with the Contractor's performance of its duties and responsibilities to Wayne RESA or otherwise create an appearance of impropriety with respect to the award or performance of this contract. The Contractor must notify Wayne RESA about the nature of any conflict or appearance of impropriety within two days of learning about it.
- (h) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will accept anything of value based on an understanding that the actions of the Contractor, its affiliates, or its employees on behalf of Wayne RESA would be influenced. The Contractor must not attempt to influence any Wayne RESA employee by the direct or indirect offer of anything of value.
- (i) Neither the Contractor nor any affiliates, nor any employee of either, has paid or agreed to pay any person, other than bona fide employees and consultants working solely for the Contractor or the affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The Contractor arrived at its proposed prices independently, without communication or agreement with any other bidder for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this contract to any other bidder before the award of the contract. The Contractor made no attempt to induce any other person or entity to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by the Contractor to Wayne RESA in connection with the award of this contract fairly and accurately represent the Contractor's business, properties, financial condition, and results of operations as of the respective dates covered by the financial statements, reports, or other information. There has been no material adverse change in the Contractor's business, properties, financial condition, or results of operation.
- (l) All written information furnished to Wayne RESA by or for the Contractor in connection with the award of this contract is true, accurate, and complete, and contains no false statement of material fact nor omits any material fact that would make the submitted information misleading.
- (m) It will immediately notify Wayne RESA Administrator if any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the contract is awarded.

4.6.2 *Warranty of Merchantability*

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

4.6.3 *Warranty of Fitness for a Particular Purpose*

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

4.6.4 *Warranty of Title*

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

4.6.5 *Consequences for Breach*

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in Section 4.6, Warranties, the breach may be considered a material default.

4.7 **Contract Administration**

4.7.1 *Issuing Office*

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

4.7.2 *Contract Administrator*

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

4.7.3 *Contract Changes*

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

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

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

4.7.4 *Price Changes*

Prices quoted for all Hot Beverage Brewing System, Service and Supplies, are the maximum for a period of 365 days from the date the contract becomes effective. Requested changes may include increases or decreases in price and must be accompanied by supporting information indicating market support of proposed modifications (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics).

(a) Wayne RESA may request a review upon 30 days written notice that specifies what deliverable is being reviewed. At the review, each party may present supporting information including information created by, presented, or received from third parties.

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

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

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

- (e) If the supporting information reveals a reduction in prices is necessary and the parties are unable to reach agreement, then Wayne RESA may eliminate all remaining contract renewal options.
- (f) Any changes based on the review must be implemented through the issuance of a Contract Change Notice.

**4.7.5** *Covenant of Good Faith*

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

**4.7.6** *Assignments*

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

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

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

**4.8** **Acceptance of Deliverables**

**4.8.1** *Delivery Responsibilities*

Unless otherwise specified by Wayne RESA, the following are applicable to all deliveries:

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

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

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

**4.8.2** *Process for Acceptance of Deliverable(s)*

Wayne RESA's review period for acceptance of the deliverable(s) is governed by the applicable Statement of Work, and if the Statement of Work does not specify Wayne RESA's review period, it is by default 30 days for a deliverable (Wayne RESA Review Period). Wayne RESA will notify the Contractor by the end of Wayne RESA Review Period that either:

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

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

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

If Wayne RESA delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Days resubmit the deliverable(s) with an explanation that demonstrates all corrections have been made to the original deliverable(s). The Contractor's

correction efforts will be made at no additional charge. Upon receipt of a corrected deliverable from the Contractor, Wayne RESA will have a reasonable additional period of time, not to exceed 30 Days, to accept the corrected deliverable.

#### 4.8.3 *Acceptance of Deliverable(s)*

(a) Wayne RESA's obligation to comply with any Wayne RESA Review Period is conditioned on the timely delivery of the deliverable(s). Wayne RESA Review Period will begin on the first business day following Wayne RESA's receipt of the deliverable(s).

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

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

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

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

## 4.9 Stop Work Order & Termination

### 4.9.1 *Stop Work Order*

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

### 4.9.2 *Termination of Stop Work Order*

The Contractor must resume work if Wayne RESA terminates a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, if: (a) the Stop Work Order results in an increase in the time required for, or the Contractor's costs properly allocated to, the performance of the Contract; and (b) the Contractor asserts its right to an equitable adjustment within 20 days after the end of the Stop Work Order by submission of a request for adjustment to Wayne RESA; provided that, Wayne RESA may receive and act upon the Contractor's request submitted at any time before final payment. Any adjustment will conform to the requirements of Section 4.7.3, Contract Changes.

4.9.3 *Allowance of the Contractor's Costs*

If Wayne RESA fully or partially terminates the work covered by the Stop Work Order, for reasons other than material breach, the termination is a termination for convenience under Section 4.9.6, Termination by Wayne RESA, and Wayne RESA will pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. Wayne RESA is not liable to the Contractor for lost profits because of a Stop Work Order issued under Section 4.9, Stop Work.

4.9.4 *Notice and Right to Cure*

If the Contractor breaches the Contract, and Wayne RESA, in its sole discretion, determines that the breach is curable, Wayne RESA will provide the Contractor notice of the breach and a period of at least 30 days to cure the breach. Wayne RESA does not need to provide notice or an opportunity to cure for successive or repeated breaches or if Wayne RESA determines, in its sole discretion, that a breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

4.9.5 *Termination for Cause*

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

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

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

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

4.9.6 *Termination for Convenience*

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

4.9.7 *Termination for Criminal Conviction*

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

4.9.8 *Rights and Obligations upon Termination*

(a) If Wayne RESA terminates this Contract for any reason, the Contractor must:

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

(b) If Wayne RESA terminates this Contract under Section 4.9.6, Termination for Convenience, Wayne RESA must pay the Contractor all charges due for deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by Wayne RESA. All completed or partially completed deliverable(s) prepared by the Contractor, at the option of Wayne RESA, become Wayne RESA's property, and the Contractor is entitled to receive equitable compensation for those deliverable(s). Regardless of the basis for the termination, Wayne RESA is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to deliverable(s) not actually completed.

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

4.9.9 *Reservation of Rights*

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

4.9.10 *Contractor Transition Responsibilities*

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

4.9.11 *Termination by Contractor*

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

The Contractor may terminate this Contract if Wayne RESA: (a) materially breaches its obligation to pay the Contractor undisputed amounts due; (b) breaches its other obligations to an extent that

makes it impossible or commercially impractical for the Contractor to complete the deliverable(s); or (c) does not cure the breach within the time period specified in a notice of breach. The Contractor must discharge its obligations under Section 4.10, Dispute Resolution, before it terminates the contract.

**PART 2 – PROPOSAL (VENDOR’S RESPONSE)**

**SECTION 5.0 – RESPONSE TO SOW REQUIREMENTS** Note: Please review section 2.1 through section 2.7 for responses within this section.

**5.1 Pricing**

Respondents should provide pricing based on a discount from a manufacturer's price list. Catalog and/or price lists must accompany the proposal. The Catalog/price list must be the regular, common available catalog/price list distributed to schools and/or government entities that are published by the manufacturer. Include a copy of the catalog/price list electronically from which discount is calculated. Multiple percentage discount structure is also acceptable. Please specify where different percentage discounts apply. Additional pricing and/or discounts may be included. If respondent has existing cooperative contracts in place, Wayne RESA requests equal or better than pricing to be submitted.

Bidder Response:

In addition to completing the pricing information in Attachment A, provide any additional comments regarding pricing as well as information on other cooperative contracts held by respondent.

**5.2 Discounts**

The Proposer may provide percentage discount based on order quantities. Additional discounts may be included and should be explained here. Additional discounts may include Quick Payment Discounts, Volume Discounts, and Rebates. Discount amounts are to be completed in Attachment A. Wayne RESA is seeking a general catalog discount for all items ("non-market" basket items) ordered outside of Attachment A.

Bidder Response:

In addition to completing the discount information in Attachment A, provide any additional comments regarding discounts being offered.

**5.3 Delivery & Acceptance**

Proposer should address the following items in their proposal:

- Delivery to all locations in Michigan;
- Identify FOB terms;
- Time frames for delivery;
- Carriers used for deliveries;
- Ordering/customer service capabilities and procedures;
- Policies and procedures for accepting delivery;
- Proposed warranty period and terms;
- Financial Stability
- Quality of catalogs for use by entities that do not have electronic access.

Bidder Response:

**5.4 Value-Added Services/Products**

Proposer should address ordering/customer service capabilities and dispute resolution process. Proposers should also identify and address their company standards of communication as they relate to contract performance, issue management, and change management. An issue is an identified event that, if not addressed, may affect schedule, scope, service, delivery, quality, or budget. A change is identified as a change in corporate leadership, structure, merger or acquisition.

Bidder Response:

**5.5 Technology for Supporting the Program**

1. Electronic on-line catalog, order entry use by and suitability for the entity's needs
2. Quality of vendor's on-line resources for WAYNE RESA members.
3. Specifications and features offered by respondent's products and/or services.
4. Technology Services related to maintaining and servicing the equipment

## SECTION 6.0 – BIDDER’S INFORMATION & CERTIFICATIONS

### 6.1 Company Profile

#### Information about Your Company

Please provide the following:

1. Company’s official registered name.
2. Brief history of your company, including the year it was established.
3. Company’s Dun & Bradstreet (D&B) number.
4. Company’s organizational chart of those individuals that would be involved in the contract.
5. Corporate office location.
  - a. List the number of sales and service offices/locations in Michigan.
  - b. List the names of key contacts at each with title, address, phone and e-mail address.
6. Define your standard terms of payment.
7. Who is your competition in the marketplace?
8. What is your market share?
9. Are you gaining market share, losing market share, or maintaining market share?
10. What is your strategy to increase market share?
11. What differentiates your company from competitors?
12. Describe how your company will market this contract if awarded.
13. Describe how you intend on introducing WAYNE RESA to your company.
14. Describe your firm’s capabilities and functionality of your on-line catalog/ordering website.
15. Describe your company’s Customer Service Department (hours of operation, number of service centers, etc.)
16. Has your company been debarred by the Federal Government? Yes  No   
If yes, has it been lifted and if so, when?
17. Has your company been debarred by State Governments? Yes  No   
If yes, has it been lifted and if so, when?

### 6.2 References

Provide a minimum of five (5) customer references for product and/or services of similar scope dating within the past 3 years. Please try to provide an equal number of references for K12, Higher Education and City/County entities.

Provide the following information for each reference:

- Entity Name
- Contact Name and Title
- City and State
- Phone Number
- Years Serviced
- Description of Services
- Annual Volume

**6.3 Certifications**

Contractor Certification

**A. CONTRACTOR'S EMPLOYMENT ELIGIBILITY**

By entering the contract, Contractor warrants compliance with ARS subsection 41-4401, ARS subsection 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations. The Contractor further warrants that it is in compliance with the various state statutes of the states it will operate this contract in.

Participating Government Entities including School Districts may request verification of compliance from any Contractor or subcontractor performing work under this Contract. These Entities reserve the right to confirm compliance in accordance with applicable laws. Should the Participating Entities suspect or find that the Contractor or any of its subcontractors are not in compliance, they may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

The vendor complies and maintains compliance with FINA, ARS 41-4401 and 23-214 which requires compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.

Contractor shall comply with governing board policy of the WAYNE RESA Participating entities in which work is being performed.

\_\_\_\_\_  
Signature of Respondent

\_\_\_\_\_  
Date

**B. BUSINESS OPERATIONS IN SUDAN, IRAN**

In accordance with A.R.S. 35-391 and A.R.S. 35-393, the Contractor hereby certifies that the contractor does not have scrutinized business operations in Sudan and/or Iran.

\_\_\_\_\_  
Signature of Respondent

\_\_\_\_\_  
Date

**D. Exceptions to Terms, Conditions and Specifications**

*Note: This is a sample form. Actual data must be provided on disk, and printed. Original must be signed and inserted in the bid after it is printed.*

Company Name \_\_\_\_\_

Any exceptions to the Terms, Conditions, Specifications or Bid Forms contained herein shall be noted in writing and included with the bid submittal.

Page Number	
Outline Number or Paragraph	
Term, Condition or Specification	
Exception	
Signature (same signature as on Bid Affidavit Signature and Acceptance form)	

## SECTION 7.0 – PRICING REQUIREMENTS & SCHEDULE

### 7.1 Pricing Schedule

#### 7.1.1 Pricing Schedule Worksheets

Please see Attachment A for pricing schedule and complete the following information: Manufacturer name, model number, unit price, and percentage discounts for each item being bid.

#### 7.1.2 Tax Excluded from Price

(a) Sales Tax: Wayne RESA and local units of government are exempt from sales tax for direct purchases. The bidder's prices must not include sales tax.

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

#### 7.1.3 Special Incentives

Wayne RESA is interested in any other special programs and alternative recommendations that vendor's may have. Please discuss these programs, such as customer employee retail discounts, return policies, trade-in programs allowing the return of new product not needed, quantity discounts, green product offering, Michigan made products, etc.

### 7.2 Pricing

The awarded vendor agrees to provide pricing to WAYNE RESA and its participating entities that are the lowest pricing available and the pricing shall remain so throughout the duration of the contract. The awarded vendor agrees to promptly lower the cost of any product purchased through WAYNE RESA following a reduction in the manufacturer or publisher's direct cost. Price increases must be approved by WAYNE RESA. However, the awarded vendor must honor previous prices for thirty (30) days after approval and written notification from WAYNE RESA if requested. If respondent has existing cooperative contracts in place, Wayne RESA requests equal or better than pricing to be submitted.

**All pricing submitted to WAYNE RESA shall include (2.0%) remittance/administrative fee to be remitted to CoPro+ by the awarded vendor. It is the awarded vendor's responsibility to keep all pricing up to date and on file with WAYNE R.E.S.A./CoPro+. All price changes shall be presented to WAYNE RESA for acceptance, using the same format as was accepted in the original contract.**

All deliveries shall be freight prepaid, F.O.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing.

### 7.3 Pricing Information

1. In addition to the current typical unit pricing furnished herein, the Vendor agrees to offer all future product introductions at prices that are proportionate to Contract Pricing. Yes  No

If answer is no, attach a statement detailing how pricing for WAYNE RESA participants would be calculated.

2. Pricing submitted includes the required WAYNE RESA administrative fee. Yes  No

Vendor agrees to remit to WAYNE RESA the required administrative fee. Yes  No

Additional discounts for purchase of a guaranteed quantity? Yes  No

**7.4 Cooperatives**

List any other cooperative or state contracts currently held or that your company is in the process of securing.

## General Pricing Information – Attachment A Electronic Price Lists

1. Respondents must submit products, services, warranties, etc. in price list.
2. Prices listed will be used to establish the extent of a manufacturer's product lines, services, warranties, etc. that are available from a particular bidder and the pricing per item.
3. Product price lists must contain the following:
  - Manufacturer part #
  - Vendor part # (if different from manufacturer part #)
  - Description
  - Manufacturers Suggested List Price and Net Price
  - Net price to WAYNE RESA (including freight)
4. Media submitted for price list must include the respondent's company name, name of the solicitation, and date on CD, DVD or Flash Drive (i.e. Pin or Jump Drives).
5. Please submit price lists in electronic format only

### Not to Exceed Pricing

1. WAYNE RESA requests pricing be submitted as not to exceed for any participating entity.
2. Unlike fixed pricing the awarded vendor can adjust submitted pricing lower if needed, but cannot exceed original pricing submitted for solicitation. Volume or spot market conditions may allow for one time discounts for participating entities.
3. Vendor must allow for lower pricing to be available for similar product and service purchases under the same market conditions.

### Pricing

1. It is the intent of WAYNE RESA to always provide the best price and value to its participants. The Vendor must be able to provide a pricing methodology for its products and services that will insure that WAYNE RESA is always getting the best and most competitive price available.
2. Interested Vendors must provide proposed pricing methodology that would insure the best price and include all methods available for acquisition.
3. Any maintenance contract is between the buyer (WAYNE RESA member) and the contractor and must be signed by the ordering agency and the contractor. No maintenance contract will be automatic.
4. Maintenance contracts shall include all parts, labor, travel, service.
5. Any and all contracts for maintenance shall be at the discretion of the ordering agency.
6. Vendors shall have a full parts and service facility within a reasonable distance from each ordering agency's garage. State location and distance.
7. A qualified technician shall provide complete training to each ordering agency's personnel at its garage. Training shall include safety, operation, maintenance and service.
8. Bidder shall attach a copy of manufacturer's warranty and all drawings, certifications and technical information for model being bid.
9. Wayne RESA reserves the right to request a demonstration of specific model bid prior to award of contract. Unit demonstrated shall have all systems and equipment required by the bid specifications.
10. Manufacturer's warranty shall be not less than one (1) year on entire vehicle, including all parts and labor.
11. The Hot Beverage Brewing System, Service and Supplies, with all components, shall have a factory warranty of one (1) year including all parts and labor.

**MISCELLANEOUS fees and options:**

**Administrative fee: 2%**

Note: administrative fee is percentage (%) of the unit cost that gets redistributed to CoPro+/Wayne R.E.S.A. upon a purchase for costs associated for handling the end-to-end procurement cycle.

**Additional Services**

Bidder will supply information, including pricing, for additional services offered. This may include technical services, maintenance services or any other service related to this proposal.

Please include any additional products and/or services not included in the scope of the solicitation you think will enhance and **add value** to this contract for WAYNE RESA participating agencies. Any other type of services or products that are related but not listed in this RFP should be included in this section.