

Sam

45



**THE STATE OF NEW HAMPSHIRE**  
DEPARTMENT OF TRANSPORTATION



*Victoria F. Sheehan*  
Commissioner

*William Cass, P.E.*  
Assistant Commissioner

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

Bureau of TSMO  
March 16, 2022

**REQUESTED ACTION**

Authorize the New Hampshire Department of Transportation to enter into a contract amendment with DTN, LLC, (Vendor 285139) of Omaha, Nebraska. The purpose of this amendment is to increase the contract amount by \$6,180.48 from \$56,351.00 to \$62,531.48 for additional user licenses, effective upon Governor and Council approval. The original agreement was approved by Governor and Council approval on November 18, 2020, Item #43. 52% Highway Funds, 48% Other Funds (Intra-Agency Transfers).

Funds to support this request are available in State FY 2022 and FY 2023, and funding is contingent upon the availability and continued appropriation of funds in State FY 2024, with the ability to adjust encumbrances between State Fiscal Years through the Budget Office, if needed and justified.

	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>
04-096-096-960515-3052 Trans Sys Mgmt & Operations			
038-500177 Software License / Maint	\$1,030.08	\$4,120.32	\$1,030.08

**EXPLANATION**

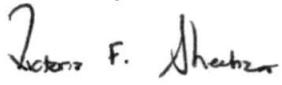
The Transportation Management Center (TMC) uses the weather forecasting services from DTN, LLC year-round.

These services provide real time forecasting information along with the ability to communicate with live forecasters that are available on a 24/7 basis. The TMC is able to send out real time storm alert information and track arrival and departure time of storms. All of this information is provided to maintenance personnel across the state to assist in their planning of day-to-day operations. This contract amendment is to increase the current amount of license users from ten (10) to fourteen (14). This will allow the distribution of additional license users to all regions of Highway Maintenance and Operations.

The contract amendment has been approved by the Attorney General as to form and execution. The Department has verified that the necessary funds are available. Copies of the fully executed agreement are on file at the Secretary of State's Office and the Department of Administrative Services, and subsequent to Governor and Council approval, will be on file at the Department.

We respectfully request your approval of this resolution.

Sincerely,

A handwritten signature in black ink that reads "Victoria F. Sheehan". The signature is written in a cursive style with a large initial 'V'.

Victoria F. Sheehan  
Commissioner

Attachments

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
DTN Weather Forecast Services  
RFP 2013-051  
CONTRACT AMENDMENT A

WHEREAS, the Governor and Council approved an agreement between the New Hampshire Department of Transportation (NHDOT) and DTN, LLC on November 18, 2020, Item #43 for the period of November 18, 2020 thru September 30, 2023;

WHEREAS, the Vendor, DTN, LLC and NHDOT have agreed to amend the Agreement in certain respects;

WHEREAS, NHDOT wishes to increase the DTN, LLC contract price by \$6,180.48 increasing the total contract price from \$56,351.00 to \$62,531.48.

WHEREAS, NHDOT wishes to increase the DTN, LLC license count by 4 licenses increasing the total licenses from ten (10) to fourteen (14).

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Agreement and set forth herein, the parties hereto do agree as follows:

Contract Agreement-General Provisions is hereby amended as follows:

1. Amend Section 1.8 of the General Provisions of the Agreement by increasing the Price Limitation by \$6,180.48 from \$56,351.00 to \$62,531.48.
2. Amend Exhibit B Scope of Services as described below:

Exhibit B: Scope of Services

- Fourteen (14) User Licenses

Except as provided herein, all provisions of the Agreement shall remain in full force and effect. This modification shall take effect upon the approval date from the Governor and the Executive Council.

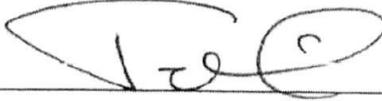
Initial and Date All Pages:  
Vendor Initials AD

Date: 3/11/22

Contract Amendment A  
Page 1 of 2

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
DTN Weather Forecast Services  
RFP 2013-051  
CONTRACT AMENDMENT A

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

  
\_\_\_\_\_

Tom Dilworth, CFO  
DTN, LLC

Date: 3/11/22

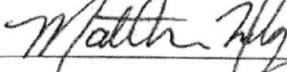
**Corporate Signature Notarized:**

STATE of Minnesota

COUNTY of Dakota

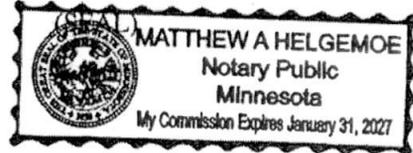
On this, the 11<sup>th</sup> day of March, 2022, before me, Matthew Helgemoe, the undersigned Officer Tom Dilworth, personally appeared and acknowledged her/himself to be the CFO of DTN, LLC, a corporation, and that she/he, as such CFO being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by her/himself as CFO.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

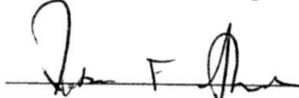
  
\_\_\_\_\_

Notary Public/Justice of the Peace

My Commission Expires: 1/31/27



**Department of Transportation**

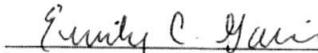
  
\_\_\_\_\_

Victoria F. Sheehan, Commissioner

State of New Hampshire Department of Transportation

Date: 3/25/22

**Approved by the Attorney General (Form, Substance and Execution)**

  
\_\_\_\_\_

State of New Hampshire, Department of Justice

Date: 4/4/2022

**Approved by NH Governor and Council**

\_\_\_\_\_

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

Initial and Date All Pages:

Vendor Initials TD

Date: 3/11/22

Contract Amendment A  
Page 2 of 2

# State of New Hampshire

## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that DTN, LLC is a Delaware Limited Liability Company registered to transact business in New Hampshire on November 02, 2009. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: **621616**

Certificate Number: **0005746128**



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 1st day of April A.D. 2022.

A handwritten signature in black ink, appearing to read "Wm Gardner".

William M. Gardner  
Secretary of State



March 11, 2022

New Hampshire Department of Transportation  
PO Box 483  
110 Smokey Bear Blvd  
Concord, New Hampshire 03302-0483  
Attn: Janelle Marquez

SUBJECT: Certificate of Vote

To whom it may concern:

This letter is to assure New Hampshire Department of Transportation that on March 11, 2022, Tom Dilworth was an Authorized Officer with the power to sign in the name of DTN, LLC, as set forth in its Second Amended and Restated LLC Agreement, dated July 17, 2017.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Helgemoe".

Matthew Helgemoe  
Senior Legal Counsel  
DTN, LLC  
[Matthew.Helgemoe@dtn.com](mailto:Matthew.Helgemoe@dtn.com)



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/7/2021

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

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

PRODUCER McGriff Insurance Services 1150 Julian Drive, Suite 200 Watkinsville, GA 30677	CONTACT NAME:	Elliott Johnson	
	PHONE (A/C, No, Ext):	678-726-0557	FAX (A/C, No):
	E-MAIL ADDRESS:	Elliott.Johnson@McGriff.com	
	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A:	Berkley National Insurance Company	38911
	INSURER B:	Tri-State Insurance Company of Minnesota	31003
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

INSURED  
DTN, LLC  
11400 Rupp Dr.  
Burnsville MN 55337

**COVERAGES**

CERTIFICATE NUMBER: 62187521

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:	<input checked="" type="checkbox"/>		TCP7010593-14	5/31/2021	5/31/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			TCP7010593-14	5/31/2021	5/31/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE  DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			TWC7010592-14	5/31/2021	5/31/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

New Hampshire Department of Transportation and their successors are named as additional insured with where required by written contract or agreement.

**CERTIFICATE HOLDER****CANCELLATION**

New Hampshire Department of Transportation  
PO Box 483  
110 Smokey Bear Blvd  
Concord NH 03302-0483

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Mike Breedlove

© 1988-2015 ACORD CORPORATION. All rights reserved.



Victoria F. Sheehan  
Commissioner

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION



William Cass, P.E.  
Assistant Commissioner

G+C #43  
Date 11/18/20

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

Bureau of TSMO  
September 28, 2020

**REQUESTED ACTION**

Authorize the Department of Transportation to enter into an agreement with DTN, LLC, Omaha, NE (Vendor # 285139) based upon a single bid received in the amount of \$56,351.00 for the DTN Weather Forecast Services effective upon Governor and Council approval or October 1, 2020, whichever is later, through September 30, 2023. 54% Highway Funds and 46% Turnpike Funds (Intra-Agency Transfers).

Funds to support this request are available in the following account in State FY 2021, and funding is contingent upon the availability and continued appropriation of funds in State FY 2022, State FY 2023, and State FY 2024, with the ability to adjust encumbrances between State Fiscal Years through the Budget Office if needed and justified:

	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>
04-096-096-960515-3052 Trans Sys Mgmt & Operations 038-500177 Software License / Maint.	\$14,087.75	\$18,783.67	\$18,783.67	\$4,695.91

**EXPLANATION**

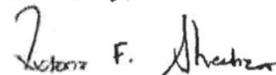
The Department is requesting approval to use DTN, LLC as the Departmental forecasting for this upcoming winter maintenance. Bid invitations were sent out on August 11, 2020. DTN, LLC was the sole bidder for this service.

By using these services, the Transportation Management Center (TMC) has the ability to provide real time forecasting information to the Department's winter maintenance personnel. These services include the ability to communicate with live forecasters available on a 24/7 basis, to send out real time storm alert information to affected winter maintenance areas, as well as to track actual arrival and departure times of the storms which helps to validate the weather information coming through the Road and Weather Information Systems (RWIS). DTN, LLC also includes a real time traffic speed category on their map which assists DOT in visualizing how inclement weather is impacting the motoring public during storm events. They also provide location specific 72 hour tabular forecasts via e-mail to maintenance personnel across the state to assist in their planning of day to day operations.

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

Your approval to enter into an agreement is respectfully requested.

Sincerely,

A handwritten signature in cursive script that reads "Victoria F. Sheehan".

Victoria F. Sheehan  
Commissioner

Attachments

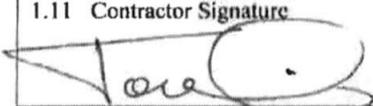
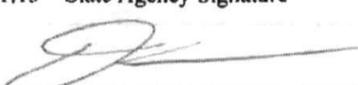
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

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

**GENERAL PROVISIONS**

**I. IDENTIFICATION.**

1.1 State Agency Name Department of Transportation		1.2 State Agency Address 110 Smokey Bear Blvd Concord, NH 3301	
1.3 Contractor Name DTN, LLC.		1.4 Contractor Address 11400 Rupp Drive Minneapolis, MN 55337	
1.5 Contractor Phone Number 800-485-4000	1.6 Account Number 04-96-96-960515-3052-500177	1.7 Completion Date 9/30/2023	1.8 Price Limitation \$56,351.00
1.9 Contracting Officer for State Agency David Rodrigue, P.E. Director of Operations		1.10 State Agency Telephone Number 603-271-6862	
1.11 Contractor Signature  Date: <u>Sept. 25, 2020</u>		1.12 Name and Title of Contractor Signatory Tom Dilworth, CFO	
1.13 State Agency Signature  Date: <u>10/1/20</u>		1.14 Name and Title of State Agency Signatory David Rodrigue Director of Operations	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <u>Emily C. Yang</u> On: <u>10/21/2020</u>			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: <u>2020-0000000000</u>  <b>DEPUTY SECRETARY OF STATE</b> NOV 18 2020			

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

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

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

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

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 The Contractor agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

## 8. EVENT OF DEFAULT/REMEDIES.

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

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

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

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

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

## 9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

## 10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

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

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

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

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

## 12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. **INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

#### 14. INSURANCE.

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

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

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

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

#### 15. WORKERS' COMPENSATION.

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

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

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

17. **AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

18. **CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. **CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

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

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

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

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

24. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

## EXHIBIT-A, Special Provision

The Parties agree to hereby update and amend the P-37 General Provisions as follows:

- 1) Section 10 - Data/Access/Confidentiality/Preservation of the Agreement is deleted in its entirety and replaced with the following:

10.1 As used in this Agreement, the word "State Data" shall mean all information State provided during the term of this Agreement, including, but not limited to, State provided all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished. For avoidance of doubt, nothing contained in this Agreement shall be construed as granting or conferring, whether by sale, license or otherwise, to either Party any right, title or interest in any of the other Party's data.

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

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

- 2) Section 13, Indemnification, is deleted in its entirety and replaced with the following:

13. INDEMNIFICATION. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages caused by Contractor while on the State's premise, patent or copyright infringement, asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this Section 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

15.1. Notwithstanding anything contained to this Section 13, Contractor shall not be required to indemnify, defend and hold harmless State for any claims by relating to the accuracy or timeliness of the Services provided under this Agreement.

- 3) Insert a new Section 25 as follows:

25. Exclusion of Consequential Damages. TO THE EXTENT PERMITTED BY LAW, THE PARTIES SHALL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES, FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST DATA OR LOST PROFITS, COST OF CAPITAL, COST OF COVER, OR SERVICE INTERRUPTIONS, FROM THE USE OF OR INABILITY TO USE THE SERVICES, REGARDLESS OF WHETHER THE DAMAGES WERE FORESEEABLE OR

WHETHER A PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THESE EXCLUSIONS SHALL APPLY EVEN IN THE EVENT OF A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

4) Insert a new Section 26 as follows:

26. Cap on Liability. Notwithstanding any other provision in this Agreement, each parties' total liability, whether arising in contract, tort (including negligence), under statute or otherwise, arising out of or in connection with this Agreement or howsoever (except in relation to death or personal injury caused by Contractor's gross negligence or to any other liability which cannot be excluded or limited by law) shall not exceed a sum equal to the remuneration actually received by Contractor under this Agreement. Notwithstanding the foregoing, this limitation of liability shall not apply to the Contractor's indemnification obligations set forth in Contract Part 1, General Provisions Section 13. In addition, this provision shall not apply to the IP infringement claims.

5) Insert a new Section 27 as follows:

27. OWNERSHIP OF DATA AND INTELLECTUAL PROPERTY. Nothing in this Agreement shall be construed as granting or conferring, whether by sale, license, or otherwise, to either Party any rights, title or interest in any of the other Party's data or intellectual property.

6) Insert a new Section 28 as follows:

28. LICENSE GRANT TO CONTRACTOR'S SERVICE. Contractor hereby grants State a non-exclusive, non-transferable, limited use license to use Contractor's Services for State's internal purposes only and only for the term of this Agreement.

Agreed and accepted by:

The State of New Hampshire

By: [Signature]

Name: David Rodrigue, PE

Title: Director of Operations

Date: October 14, 2020

DTN, LLC

By: [Signature]

Name: Tom Dilworth

Title: CFO

Date: Sept. 25, 2020

## Exhibit B – Scope of Services

- Ten (10) User Licenses
- Internet browser-based weather briefing service
- NEXRAD RADAR, high-res, near-real time animation loops, 5 min updates
- Local, Regional & Full US RADAR coverage
- Storm tracking with Storm Corridors & Precipitation Timing
- Satellite Cloud imagery
- Weather graphics, Current & Forecast
- Location specific forecasts:
  - Hourly out to 72 hours
  - Daily out to 15 days, highly detailed.
- Weather Alerts, customer-defined plus NWS Watches and Warnings
- Weather Information Notification Service
- Meteograms, customer-defined thresholds
- NWS weather reports, including Zone Forecasts, State Weather Roundup.
- My Favorites page, customer-defined
- 24/7 Online Consultations via a Public Weather Forum with a maximum 15 minute response window.
- Real time lightning strike information (10 users):
  - 100 mile coverage area
  - Future lightning prediction
  - Alerts with cautionary, advisory and warning levels
- SmartPhone app for 2 users.
- RWIS (3) sites software integration
- Display Real Time Traffic Speeds Categories on the map

Exhibit C – Payment Terms

<b>DESCRIPTION</b> <b>Weather Forecast Services for</b> <b>New Hampshire Department of Transportation</b> <b>Period of Performance: G&amp;C Approval – September 30, 2023</b>	<b>PRICE</b>
<u><i>Weather Forecasting Service as described in Exhibit B</i></u>	<b>\$56,351.00</b>
<b>Total Cost for Services</b>	<b>\$56,351.00</b>



David Howe  
Contract Manager  
DTN, LLC  
11400 Rupp Drive  
Burnsville, MN 55337  
Email: [david.howe@dtn.com](mailto:david.howe@dtn.com)

September 25, 2020

New Hampshire Department of Transportation  
PO Box 483  
110 Smokey Bear Blvd  
Concord, New Hampshire 03302-0483  
Attn: Janelle Marquez

SUBJECT: Certificate of Vote

To whom it may concern:

This letter is to assure New Hampshire Department of Transportation that on September 25, 2020, Tom Dilworth was an Authorized Officer with the power to sign in the name of the Company as set forth in the Second Amended and Restated LLC Agreement dated July 17, 2017.

Sincerely,

A handwritten signature in black ink, appearing to read "David Howe", with a long horizontal flourish extending to the right.

David Howe  
Contract Manager  
DTN, LLC  
[david.howe@dtn.com](mailto:david.howe@dtn.com)



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/21/2020

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

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

PRODUCER McGriff Insurance Services 1150 Julian Drive, Suite 200 Watkinsville, GA 30677	CONTACT NAME:	Elliott Johnson	
	PHONE (A/C, No, Ext):	678-726-0557	FAX (A/C, No):
	E-MAIL ADDRESS:	Elliott.Johnson@McGriff.com	
	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Berkley National Insurance Company		38911
	INSURER B : Tri-State Insurance Company of Minnesota		31003
	INSURER C :		
	INSURER D :		
	INSURER E :		
	INSURER F :		

INSURED  
DTN, LLC  
11400 Rupp Dr.  
Burnsville MN 55337

## COVERAGES

CERTIFICATE NUMBER: 57148018

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:	<input checked="" type="checkbox"/>		TCP7010593-13	5/31/2020	5/31/2021	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$15,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			TCP7010593-13	5/31/2020	5/31/2021	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N/A	TWC7010592-13	5/31/2020	5/31/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

State of New Hampshire Department of Transportation is listed as Additional Insured with respects to General Liability of the named insured.

## CERTIFICATE HOLDER

## CANCELLATION

State of New Hampshire  
Department of Transportation  
PO Box 483  
110 Smokey Bear Blvd  
Concord NH 03301

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Mike Breedlove

© 1988-2015 ACORD CORPORATION. All rights reserved.

ACORD 25 (2016/03)

The ACORD name and logo are registered marks of ACORD

# State of New Hampshire

## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that DTN, LLC is a Delaware Limited Liability Company registered to transact business in New Hampshire on November 02, 2009. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: **621616**

Certificate Number: **0004982051**



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 19th day of August A.D. 2020.

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

William M. Gardner  
Secretary of State