P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **003**
to
Contract Number **071B2200211**

CONTRACTOR	
	KEPS TECHNOLOGIES
	1800 N Grand River
	Lansing, MI 48906
	Chris DeVine
	517-999-3242
	Devine.chris@acd.net
	*******4920

STATE		
Program Manager	Harvey, Mark	DNR
	517-284-6080	
	harveym@michigan.gov	
Contract Administrator	Mike Breen	DTMB
	(517) 284-7002	
	breenm@michigan.gov	

CONTRACT SUMMARY

DESCRIPTION: DNR Guest Wifi MHC

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
May 10, 2012	May 9, 2016	3 - 1 Year	September 30, 2016

PAYMENT TERMS	DELIVERY TIMEFRAME
N45	

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-card	☐ Direct Voucher (DV)	☐ Other	☐ Yes	☒ No

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☒		☐	16 months	September 30, 2017

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$ 49,560.00	$ 6360.00	$55920.00

DESCRIPTION: Agency exercising 16 months of available option time and add funding for one year of wireless access. All other terms and conditions remain the same. Given the present contract balance the value being requested will allow for additional subscription acquisition.

adna technologies

517-679-3300
http://www.AdnaTechnologies.com

Wednesday, December 9, 2015

Milly Williams C.P.M. and A.P.P.
Michigan Department of Natural Resources
525 W. Allegan St., Lansing, MI 48909
Phone: 517-284-6080 Fax: 517-373-1547
Email: williamsm44@michigan.gov

Re: Wireless Network Managed Support

Ms. Williams,

This letter is to inform you about the agreement in place with Adna Technologies to manage your guest wireless infrastructure.

The annual cost is $2160 and it is paid with monthly installments of $180. Included in this fee is ongoing remote maintenance of the firewall, switch and access points used to deliver the wireless guest network. Any parts or expenses are billed separately. Pricing is good thru September 30 2017

Please let me know if you have any additional questions.

Regards,
Nathan Robertson

Adna Technologies
nrobertson@teamadna.com
517-679-3300 x201

1800 N Grand River Ave
Lansing MI 48906-3905
tel: 517.999.9999
fax: 517.999.3993
web: www.acd.net

ACD Internet Service Agreement

Date: Updated: 4-11-16
Prepared by: Chris DeVine
Valid for 14 days from above.

Bill to: 79344
STATE OF MICHIGAN - MICHIGAN HISTORICAL ML
Mr. Mark Harvey - **P.O.# 071B2200211**
702 W KALAMAZOO ST
LANSING, MI 48915-1609
Tel: 517-373-1415 Ext:
Fax: - -
Email: souths1@michigan.gov

Installation: Internet Order: PO#071B2200211
DNR - Michigan Library and Historical Center
Mr. Mark Harvey
702 W KALAMAZOO ST
LANSING, MI 48915-1609
Tel: 517-373-1415 Ext:
Fax: - -
Email: harveym@michigan.gov

*Product: ACD 60Meg Internet Services to Support Guest Wireless Network**	Qty	Term Months	Installation Charges	Recurring	Monthly
ACD V-DSL Bonded Internet Service: Includes Bandwidth Speeds of up to 60Mbps. Includes Ethernet Hand-off connections to Wi-Fi Equipment, Free IP, and 24x7 Technical Support.	1	12			$325.00
ACD Provided IP Services: ACD will provide all needed IP blocks (/29 Block w/ 8 Ips, 5 usable) No fees apply for use of IP blocks for duration of ACD internet services.	1				
** Note: Internet Services for Fiscal Year: 5/09/2016 Through 9/30/2017.*					
** Note: Circuits already in place - No additional circuits need to be ordered at this time.*					
C1-968, C2-22257 ,C3-645 ,C4-0 ,C5-0, C6-0		**Total ACD.net Agreement**	**$0.00**	**$0.00**	**$325.00**

By Signing, Customer approves and accepts this order for service, subject to the Terms and Conditions contained on Pages 2-4 herein;

Authorized Signature: _____ **Date:** _____

Printed Name: _____ **Title:** _____

1. Rates: Prices for the Services do not include any customs duties, sales, use, value added, excise, federal, state, local, public utility or other similar taxes and/or fees. All such taxes and fees shall be paid by Customer and will be added to any amounts otherwise charged to Customer unless Customer provides ACD with an appropriate exemption certificate. If any amounts paid for the Services are refunded by ACD, applicable taxes may not be refundable.

2. Performance & Limitations: Please visit www.acd.net/sla.cfm for a copy of our Service Level Agreement (SLA) for uptime guarantee. For Interruptions resulting from Internet traffic, customer hardware or software, or individual websites or services outside the control of ACD.net are not counted in the availability percentage provided in SLA. ACD.net guarantees all stated performance criteria to the Primary Network Access Point (NAP), and other peering points ACD.net peers with.

3. Bandwidth, Excessive Use of, and Burstable Charges: Excessive bandwidth is Internet usage that exceeds a reasonable level for the service purchased, determined by ACD.net, at its sole discretion. ACD.net will notify a customer of the excessive usage and may, at its sole discretion, suspend service, rate limit customers bandwidth, require additional fees, or terminate customers service. Unless otherwise specified, services with burstable or metered bandwidth usage (burstable) is billed above the contracted commit on a Mbit scale normalized on the 95th percentile billing standard at ACD.net standard rates.

4. IP Addresses: ACD.net will provide a reasonable amount of IP addresses to the customer. Customer must adhere to the ARIN.NET swip templates and IP block assignment guidelines. IP address blocks that are not in use may be reclaimed or readjusted by ACD.net to conform to IP address assignment guidelines.

5. Installation, Setup & Support: Installation is to the DMARC at the address listed on the first page of this agreement. Any extension(s) from the DMARC is the Customer's responsibility, which, if needed, ACD.net may provide a quote for setup of workstation(s) and/or server(s) and/or premise inside wiring is not included in the installation of service, unless otherwise specified. ACD.net will provide basic support related to monitoring, IP addressing, DNS and other ACD.net related services. Missed appointment by customer where ACD.net requires access to internal wiring are subject to a $50.00 truck roll fee.

6. ACD.net Owned Equipment: Equipment installed but not sold to customer (including, but not limited to: routers, switches, wires, racks, modems, wires, panels, phones, etc.) is and shall remain the property of ACD.net, regardless of where it is installed within the customers location(s), and shall not be considered a fixture or an addition to the premise or land where it is installed. Customer will not make any alterations, disconnect, remove, attempt to repair, or otherwise tamper with, or expose the Equipment to any claim, lien, encumbrance, or legal process without ACD.net's without prior written consent. Customer is responsible for damage to, or loss of, ACD.net Equipment caused by its acts or omissions, and its noncompliance with this Section, or by fire, theft or other casualty at the Service Location(s), unless caused by the negligence or willful misconduct of ACD.net. Following termination of service, ACD.net retains ownership to the Equipment, and its right to remove Equipment from the customers premise.

7. Sole Use: The services on this agreement are for Customer's sole use and may not be used for Multi-Tenant applications, resold, or shared without ACD.net's written permission.

8. Common Carrier: ACD.net and Customer agree that ACD.net is solely acting as a common carrier in its capacity of providing services hereunder, is not a publisher of any material or information and does not block, filter or screen information passing through it's network or sites on the Internet as a whole or in part and has no obligation to monitor internet content.

9. Normal Operations: Customer understands and agrees that occasional temporary interruptions of any Internet Services may occur as normal events in the providing of Internet Services. ACD.net agrees to exercise reasonable care to prevent such occurrences; however, under no circumstances will ACD.net be held liable for any financial or other damages due to such interruptions. In no event shall ACD.net be liable to the Customer or any other person for any special, incidental, consequential or punitive damages of any kind, including, without limitation, refunds of fees, loss of profits, loss of income or cost of replacement services.

10. Copper Loop or DSL Orders: Due to digital subscriber line (DSL, EFM, and/or UltraSpeed) technology, the maximum Internet access speed deliverable to customer at the Premises cannot be finally determined until the time of installation. In the event the ordered service speed is over 30% less of the loop synchronization speed than the speed that was ordered within the contract, within 90-days of service start date, you may request a service plan DSL service speed at the applicable lower rate, upgrade service with additional loops where possible, or cancel service without penalty. Loop synchronization speed is measured on ACD.net's equipment and is the sum of the loop synchronization speed of the loop or loops that comprise of the connection.

11. Assignment: This Agreement shall not be assigned by the Customer without the prior written consent of ACD.net.

12. Term, Expiration and Automatic Renewal of Contract: Contract term begins upon acceptance of service. At the end of the initial contracted term, contracts are automatically renewed as a month to month contract at the price of the original term of the contract, unless either party is notified.

Customer Initials:_____

13. Acceptance, Installation & Porting: Upon notification that a Service is available, customer may test the Service to determine if the Service is operating in accordance to the agreement. If Customer provides ACD with written notice that a service is in material non-compliance with the applicable agreement/ specifications within three (3) business days after ACD notifies Customer that the Service is available, then ACD will promptly take such reasonable action as necessary to correct any such non-compliance in the Service and shall, upon correction, notify customer of a new start date of service. If customer does not deliver a non-compliance notice with the three (3) business day period, Customer shall be deemed to have accepted Service, and the billing will commence on the Start of Service Date. Porting of numbers must be scheduled by customer within seven (7) business days after service is installed and confirmed working. If port is not scheduled or customer delays porting for any reason, ACD will begin billing as of date of installation for all services.

14. Charges & Payment: Recurring charges will be invoiced monthly and delivered electronically via email and/or via https://myaccount.acd.net. A pro-rated portion of the first month's service will be included on the first invoice plus the next month's service in advance. Printed and mailed paper invoices will incur a fee of $2.00 per. Payment is due within 25 days of the invoice date. Balances that remain unpaid after the due date are subject to a late fee of one and one-half (1-1/2%) of the balance due per month, or the highest rate permitted by law. Returned payments are subject to a $25.00 fee. Accounts that remain unpaid after sixty (60) days after date of invoice(s) may (at ACD.net's sole discretion) have services interrupted, terminated, and/or any new projects and/or change orders delayed. Interruption, Termination or delay does not relieve Customer of the obligation to pay the monthly charges and/or early termination fees. All billing disputes must be made in writing no later than thirty (30) days after the date of invoice or a charge against your credit/debit card. Customer may withhold payment on the disputed amounts on an invoice provided that; 1.) the customer provides a written statement of the disputed charges to ACD in reasonable detail within thirty (30) days of invoice; 2.) pays the undisputed portion of the invoice; and 3) negotiates in good faith with ACD.net for resolving such dispute in a timely manner.

15. Credit Approval: Installation and Delivery of any and all services are subject to the continuing approval of Customer's creditworthiness.

16. Termination of Service: Services may be canceled or terminated by customer only by a 30 day advance written notice. If the Service(s) are cancelled or terminated prior to the to the end of the service term for any reason, including non-payment, then Customer shall pay all charges incurred plus an early Early Termination Fee Fee equal to: a) 75% of the base monthly service charges for each of the remaining months in the selected agreement term; b) any non-recurring fees ACD.net incurs from other suppliers in connection with cancellation of the Services; c) 100% of the remaining term payments for equipment that ACD.net provides under a lease-to-own arrangement; d) the retail price for any non-returned ACD.net equipment. A number transfer or "Port Order" does not constitute written notice. Any services affected by a "Port Order" will be terminated and ACD will select the most appropriate billing plan for any remaining numbers and/or services on your account, and you will continue to be responsible for all the charges and fees associated with the remaining services, including any charges incurred plus any early termination or cancellation fees applicable to the service(s) affected by the "Port Order."

17. Original Document: A scanned copy or a facsimile of this Agreement and the signatures thereon are deemed to be originals by both parties.

18. Termination prior to Installation: Should the Customer cancel or change the Services requested prior to the installation date, the Customer shall pay ACD.net all costs incurred by ACD.net to install the Services or in preparing to install the services that it otherwise would not have incurred.

19. Service Provisioning: The pricing stated herein is contingent on Service availability (as determined by ACD.net) and/or an Engineering Review. The Service is to be furnished via facilities either built by ACD.net or acquired from a serving Local Exchange Carrier are/or become unavailable for use, or cost prohibitive to construct or replace, ACD.net may provision service over alternative facilities, present for customers agreement a "One TimeFee", or discontinue Service without liability or any further obligation to Customer.

20. Acceptable Use: All services are governed by our Acceptable Use Policy available at http://www.acd.net/acceptableuse.cfm and are included herein by reference.

21. Telephone Services: All Telephone/VoIP services are governed by our terms and conditions located at http://www.acd.net/voip/termsandconditions.htm and are included herein by reference. ACD.net must be/remain your primary carrier for your telephone service for any bundled pricing to remain in effect.

22. Unlimited Calling Plan Restrictions (Local and Long Distance): Customer must subscribe to local access with ACD.net with Unlimited Local and/or Long Distance Calling on all lines at the customer's service location. Applies only to domestic direct-dialed calls. Toll-free calls, operator-assisted calls, and calling cards will incur additional charges. Calling plan covers live voice calls. Certain applications, which are at ACD.net's sole desertion, e.g., auto-dialing, broadcast FAX, modem to modem, long distance Internet or intranet access, call center and certain switching applications, or usage patterns that are inconsistent with normal business voice applications are not allowed. Customers not complying with the terms of the plan will be changed to a per-minute rated plan at ACD's sole discretion. Service not available in all areas.

23. E911 Services: ACD.net is subject to an FCC requirement to provide notification of any E911 limitations that may be associated with the service provided to you and/or your company, as is the case with E911 service provided by a traditional telephone service provider, you are advised that the E911 service provided by ACD.net: may not 1.) function with the loss of electrical power to the telephone equipment or other equipment

Customer Initials:_____

necessary to route E911 calls to the appropriate emergency call center; 2) may not function if the broadband connection is not operational; 3) will not function at a remote location or may transmit incorrect physical location information for the caller if users are allowed to use their IP-based phones remotely; 4) will not function if the telephone equipment ecessary to place calls is not correctly configured; 5) may not transmit the correct physical address for the E911 call due to incorrect information provided by you, use of a non-native telephone number or delays in loading/updating automatic number identification and location information to the E911 database; 6) may not be capable of being received and/or processed by an emergency call center do to the center's technical limitations; and 7) may be affected by other factors or force majeure events, such as quality of the broadband connection and network congestion. Your signature on this agreement will serve as your acknowledgement that ACD.net has advised you of these potential limitations. ACD.net will also provide labels, at your request, to alert users to the limitations discussed above. The FCC has suggested that these labels be placed on or near the telephone and/or equipment associated with your service. The physical location which you provided to us prior to the initiation of service and at which our services are first installed shall be the registered location that will be provided to the emergency call center when you place a E911 call and will remain the registered location until ACD.net is notified in writing of any change.

24. Regulatory Requirements: If the Federal Communications Commission, a state Public Utilities or Service Commission or a court of competent jurisdiction, issues a rule, regulation, law or order which has the effect of changing or superseding any material term or provision of this Agreement, including rates, surcharges or taxes, then this Agreement shall be deemed modified in such a way as is consistent with the form, intent or purpose of the ruling.

25. Limitation of Liability: NEITHER ACD.NET NOR ITS AFFILIATES, SUBSIDIARIES, EMPLOYEES OR SUPPLIERS SHALL BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, (INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, AND LOSS OF BUSINESS OPPORTUNITY) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, (INCLUDING WITHOUT LIMITATION, STRICT LIABILITY AND NEGLIGENCE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACD.net liability for all claims of any kind arising out of or related to this Agreement, whether based on contract, tort, including without limitation, strict liability and negligence, warranty or on any other legal or equitable principles shall be limited to strict money damages and shall not exceed in the aggregate, fees paid by Customer to ACD.net during the one (1) month period immediately preceding the event given rise to liability. ACD.net may disclose user information if required by a governmental agency, or by operation of law, or, if necessary, in any proceeding to establish rights or obligations under this Agreement.

26. Disclaimer of Warranties: Customer assumes total responsibility for use of the services and applicable equipment at its own risk. Customer recognized that ACD.net has no responsibility for the security of or loss of stored data, intrusion of unauthorized access, content accessible or action taken and ACD.net expressly disclaims any responsibility for such content or actions, except as specifically set forth herein. ACD.net MAKES NO WARRANTY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NONINFRINGMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS TO ANY SERVICE OR EQUIPMENT PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANITES BY ACD.NET ARE HEREBY EXCLUDED AND DISCLAIMED.

27. Force Majeure: ACD.net shall not be liable to Customer or any other person, firm or entity for any failure of performance under this Agreement if such failure is due to any cause or causes including, but not limited to, acts of God, fire, explosion, vandalism, cable cut, storm, or other similar occurrences; any law, order, regulation, direction, action or request of the United States government or of any other government (including state and local governmental agency, department, commission, court, bureau, corporation or other instrumentality of any one or more of said governments) or of any civil or military authority; national emergencies, insurrections, riots, wars; or strikes, lockouts, or work stoppages or other labor difficulties; ACD.net failures, shortages, breaches or delays.

28. Indemnity by Customer: Customer agrees to release, hold harmless, defend and indemnify ACD.net, its subsidiaries, officers, directors, employees and agents from any claims, demands, losses, causes of action, damages, costs and expenses, including attorney fees, and/or consequential damages, or any other liability arising out of or in any manner relating to: 1) Customer's breach of any of the terms of this Agreement; and 2) any claim for withholding or other taxes that might arise or be imposed due to this Agreement or the performance hereof.

29. Severability: The unenforceability of any portion of this Agreement shall not affect the enforceability of the remaining provisions of this Agreement.

30. Governing Law: This Agreement shall be governed by, and construed in accordance with, the laws of the State of Michigan, and that Ingham County shall be the proper venue, of any claim or controversy regarding this Agreement or its subject matter and the parties hereby consent to such jurisdiction and venue.

31. Representation and Warranty: These Terms and Conditions supersede all previous representations, understandings or agreements for the Services & Goods on this order and shall prevail notwithstanding any variance with terms and conditions of any order submitted. The individual, by signing, warrants and represents that he/she is an authorized representative of the above named individual or company, as such, may enter into contracts on behalf of the above named individual or company and that the company is duly organized, validly standing and in good standing order under applicable law.

Customer Initials:_____

Form No. DTMB-3521 (Rev. 7/2015)

AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
525 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 002

to

CONTRACT NO. 071B2200211

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Keps Technologies	Chris DeVine	Devine.chris@acd.net
1800 N grand River	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
Lansing MI	517-999-3242248-449-4902	****4920

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DNR	Mark Harvey	517-284-6080	harveym@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Terry Mead	(517) 284-7035	meadt@michigan.gov

CONTRACT SUMMARY

DESCRIPTION: DNR Guest WiFi

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 20, 2012	May 9, 2015	3 - 1 Year	May 9,2016

PAYMENT TERMS	DELIVERY TIMEFRAME
Net 45	NA

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
☒ P-card ☒ Direct Voucher (DV) ☐ Other	☐ Yes ☒ No

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
☐		☐		

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$43,200.00	$6,360.00	$ 49,560.00

DESCRIPTION: Amend contract to add funding to allow for continued wireless service at the Michigan Historical Center per the request of the Department of Natural Resources. All other terms and conditions remain the same.

adna technologies

517-679-3300
http://www.AdnaTechnologies.com

Wednesday, December 9, 2015

Milly Williams C.P.M. and A.P.P.
Michigan Department of Natural Resources
525 W. Allegan St., Lansing, MI 48909
Phone: 517-284-6080 Fax: 517-373-1547
Email: williamsm44@michigan.gov

Re: Wireless Network Managed Support

Ms. Williams,

This letter is to inform you about the agreement in place with Adna Technologies to manage your guest wireless infrastructure.

The annual cost is $2160 and it is paid with monthly installments of $180. Included in this fee is ongoing remote maintenance of the firewall, switch and access points used to deliver the wireless guest network. Any parts or expenses are billed separately.

Please let me know if you have any additional questions.

Regards,
Nathan Robertson

Adna Technologies
nrobertson@teamadna.com
517-679-3300 x201

1800 N Grand River Ave
Lansing MI 48906-3905
tel: 517.999.9999
fax: 517.999.3993
web: www.acd.net

ACD Internet Service Agreement

Date: Prepared: 12-4-15
Prepared by: Chris DeVine
Valid for 14 days from above.

Bill to: 79344
STATE OF MICHIGAN - MICHIGAN HISTORICAL MU
Mr. Mark Harvey - **P.O.# 751P6600367**
702 W KALAMAZOO ST
LANSING, MI 48915-1609
Tel: 517-373-1415 Ext:
Fax: - -
Email: souths1@michigan.gov

Installation: Internet Order: PO#751P6600367
STATE OF MICHIGAN - MICHIGAN HISTORICAL M
Mr. Mark Harvey
702 W KALAMAZOO ST
LANSING, MI 48915-1609
Tel: 517-373-1415 Ext:
Fax: - -
Email: harveym@michigan.gov

*Product: ACD 40Meg Internet Services to Support Public Wi-Fi Network**	Qty	Term Months	Installation Charges	Recurring	Monthly
ACD ADSL 2+ Bonded Internet Service: Includes Bandwidth Speeds of up to 40Mbps. Includes Ethernet Hand-off connections to Wi-Fi Equipment, Free IP, and 24x7 Technical Support.	1	12			$349.95
ACD Provided IP Services: ACD will provide all needed IP blocks (/29 Block w/ 8 Ips, 5 usable) No fees apply for use of IP blocks for duration of ACD Internet services.	1				
Note: Internet Services for Fiscal Year: 10/01/2015 Through 9/30/2016.					
** Note: ADSL Circuits already in place - No additional circuits need to be ordered at this time.*					
C1-1042, C2-23965 ,C3-695 ,C4-0 ,C5-0, C6-0		**Total ACD.net Agreement**	**$0.00**	**$0.00**	**$349.95**

By Signing, Customer approves and accepts this order for service, subject to the Terms and Conditions contained on Pages 2-4 herein;

Authorized Signature: _____ **Date:** _____

Printed Name: _____ **Title:** _____

Form No. DTMB-3521 (Rev. 4/2012)

AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 1
to
CONTRACT NO. 071B2200211
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
ACD.net (d.b.a. ACD Telecom/Keps Technologies) 1800 N. Grand River Ave. Lansing, 48906	Chris DeVine	Devine.chris@acd.net
	TELEPHONE	CONTRACTOR #, MAIL CODE
	517-999-3242	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DNR-MHC	Mark Harvey	517-373-1415	Harveym@michigan.gov
BUYER:	DTMB-Procurement	Mike Breen	517-284-7002	Breenm@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION: **Guest Wireless Srvcs for visiting citizens – DNR – MI Library & Historical Center**

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 years	May 10, 2012	May 9, 2015	3, one-year Options
PAYMENT TERMS	**F.O.B**	**SHIPPED**	**SHIPPED FROM**
N/A	Destination	N/A	N/A

ALTERNATE PAYMENT OPTIONS:	AVAILABLE TO MiDEAL PARTICIPANTS
☒ P-card ☒ Direct Voucher (DV) ☐ Other	☐ YES ☒ NO

MINIMUM DELIVERY REQUIREMENTS:

N/A

MISCELLANEOUS INFORMATION:

N/A

DESCRIPTION OF CHANGE NOTICE:

EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
☐ No ☒ Yes	☒	☐	1 Year	5/9/2016

COST OF CHANGE NOTICE:	ESTIMATED REVISED AGGREGATE CONTRACT VALUE:
$0.00	$43,200.00

Effective 12/30/2014, the first available option year is exercised with no increase in value for this Contract. This is allowable per the existing contract terms. All other terms, conditions, current pricing and specifications remain the same.

Form No. DTMB-3522 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48913

NOTICE OF CONTRACT NO. 071B2200211 Between THE STATE OF MICHIGAN And

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
ACD.net (d.b.a. ACD Telecom) **1800 N. Grand River Ave.** **Lansing, 48906**	**Chris DeVine**	**Devine.chris@acd.net**
	TELEPHONE	CONTRACTOR #, MAIL CODE
	517-999-3242	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DNR-MHC	Mark Harvey	517-373-1415	Harveym@michigan.gov
BUYER:	DTMB-Procurement	Christine Mitchell	517-335-0462	Mitchellc4@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION: **Guest Wireless Srvcs for visiting citizens – DNR – MI Library & Historical Center**

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 years	May 10, 2012	May 9, 2015	3, one-year Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	Destination	N/A	N/A

ALTERNATE PAYMENT OPTIONS:	AVAILABLE TO MiDEAL PARTICIPANTS
☒ P-card ☒ Direct Voucher (DV) ☐ Other	☐ YES ☐ NO

MINIMUM DELIVERY REQUIREMENTS:

N/A

MISCELLANEOUS INFORMATION:

The terms and conditions of this Contract are those of solicitation # RFP-CM-071I2200072, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:	**$43,200.00**

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48913

CONTRACT NO. 071B2200211
Between
THE STATE OF MICHIGAN
And

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
ACD.net (d.b.a. ACD Telecom) **1800 N. Grand River Ave.** **Lansing, 48906**	**Chris DeVine**	**Devine.chris@acd.net**
	TELEPHONE	CONTRACTOR #, MAIL CODE
	517-999-3242	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DNR-MHC	Mark Harvey	517-373-1415	Harveym@michigan.gov
BUYER:	DTMB-Procurement	Christine Mitchell	517-335-0462	Mitchellc4@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION: **Guest Wireless Srvcs for visiting citizens – DNR – MI Library & Historical Center**

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 years	May 10, 2012	May 9, 2015	3, one-year Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	Destination	N/A	N/A

ALTERNATE PAYMENT OPTIONS:	AVAILABLE TO MiDEAL PARTICIPANTS
☒ P-card ☒ Direct Voucher (DV) ☐ Other	☐ YES ☐ NO

MINIMUM DELIVERY REQUIREMENTS:

N/A

MISCELLANEOUS INFORMATION:

The terms and conditions of this Contract are those of solicitation # RFP-CM-071I2200072, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:	**$43,200.00**

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the Solicitation No. RFP-CM-071I2200072. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

All terms and conditions of the Solicitation are made a part hereof.

FOR THE CONTRACTOR:	FOR THE STATE:
Firm Name	Signature
Authorized Agent Signature	Name/Title Jeff Brownlee, Chief Procurement Officer
Authorized Agent (Print or Type)	DTMB/Procurement
Date	Date

STATE OF MICHIGAN
Department of Technology, Management and Budget
Purchasing Operations

Contract No. 071B2200211
Guest Wireless Internet Services
Buyer Name: Christine Mitchell
Telephone Number: 517-335-0462
E-Mail Address: mitchellc4@michigan.gov

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Definitions

This section provides definitions for terms used throughout this document.

Business Day - whether capitalized or not, means any day other than a Saturday, Sunday, State employee temporary layoff day, or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am through 5:00pm Eastern Time unless otherwise stated.

Buyer – the DTMB-Procurement employee identified on the cover page of this Contract.

Chronic Failure - as defined in applicable Service Level Agreements.

Contract – based on this RFP, an agreement that has been approved and executed by the awarded bidder, the DTMB-Procurement Director, and the State Administrative Board.

Contractor – the awarded bidder after the Effective Date.

Days - Calendar Days unless otherwise specified.

Reserved - the section is not applicable or included in this Contract. This is used as a placeholder to maintain consistent numbering.

Deliverable(s) - commodities or services as required or identified by a Statement of Work.

DTMB – Department of Technology, Management and Budget

Eastern Time – either Eastern Standard Time or Eastern Daylight Time, whichever is prevailing in Lansing, Michigan.

Effective Date - the date that a binding contract is executed by the final party.

Final Acceptance - has the meaning provided in Section 2.8.7, Final Acceptance and as stated in Article 1.

Key Personnel - any personnel designated as Key Personnel in Sections 1.3.3, Staff, Duties, and Responsibilities, and 2.4.2, Contractor Key Personnel, subject to the restrictions of Section 2.4.2.

Post-Industrial Waste - industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

Purchase Order - a written document issued by the State which requests full or partial performance of the Contract.

State - the State of Michigan.

State Location - any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

Stop Work Order - a notice requiring the Contractor to fully or partially stop work in accordance with the terms of the notice.

Subcontractor - a company or person that the Contractor delegates performance of a portion of the Deliverable(s) to, but does not include independent contractors engaged by the Contractor solely in a staff augmentation role.

Unauthorized Removal - the Contractor's removal of Key Personnel without the prior written consent of the State.

Article 1 – Statement of Work

1.1 Project Identification

1.1.1 Project Request

The State of Michigan (State or SOM), through the Department of Natural Resources (DNR) with assistance and support of the Michigan Department of Technology, Management, & Budget (DTMB), has issued this Contract for the provision of Guest Wireless Internet Services.

1.1.2 Background

As technology changes and expands, the need for Internet connectivity grows.

The Michigan Historical Center is implementing guest wireless Internet to take advantage of new and improved opportunities for learning via the Internet.

1.1.3 Technical Environment

Services are to be provided initially at the Michigan Historical Center MHC, located at 702 W. Kalamazoo, Lansing, MI.

The MHC currently has several wireless data connection points which are tied in to the State's Local and Wide Area Networks (LAN/WAN). Due to security provisions, the State-owned access point equipment at these connection points will be removed by the SOM and replaced with Contractor-provided equipment for guest wireless services.

Installation will be managed with DTMB Telecom oversight to facilitate most efficient use of available components and space while avoiding network interference or security issues.

The links below provide information on the SOM's Enterprise IT policies, standards and procedures which includes security policy and procedures, IT strategic plan, eMichigan web development and the State Unified Information Technology Environment (SUITE).

Contractors are advised that the SOM has methods, policies, standards and procedures that have been developed over the years. Contractors are expected to provide proposals that conform to SOM IT policies and standards. All services and products provided must comply with all applicable SOM IT policies and standards. The Contractor awarded the contract must request any exception to SOM IT policies and standards in accordance with DTMB processes. The SOM may deny the exception request or seek a policy or standards exception.

Contractor is required to review all applicable links provided below and state compliance in their response.

Enterprise IT Policies, Standards and Procedures:
http://www.michigan.gov/dmb/0,1607,7-150-56355---,00.html and http://www.michigan.gov/dmb/0,1607,7-150-56355-107739--,00.html

Enterprise IT Security Policy and Procedures:
http://www.michigan.gov/dmb/0,1607,7-150-9131_9347---,00.html#1300INFSTDSPLNNG and http://www.michigan.gov/cybersecurity

IT Strategic Plan:
http://www.michigan.gov/itstrategicplan

IT eMichigan Web Development Standard Tools:
http://www.michigan.gov/documents/Look_and_Feel_Standards_2006_v3_166408_7.pdf

IT Enterprise Standard Products:
Specific products are identified as Enterprise IT standards for the SOM. All product standards are reviewed, at a minimum, every two years. The currently standard products are found at:
http://www.michigan.gov/dmb/0,1607,7-150-56355---,00.html.

The State Unified Information Technology Environment (SUITE):
Includes standards for Project Management Methodology (PMM) that must be followed:
http://www.michigan.gov/suite/0,1607,7-245-46056---,00.html

1.2 Scope of Work and Deliverable(s)

1.2.1 Scope

Provide Guest Wireless Internet access at the SOM Historical center, under the State system standards and minimum technical requirements. Coverage area will encompass 1st, 2nd, 3rd and 5th floors of the Michigan Historical Center; specific access points have been identified, with initial installation including the following:

- New access boxes (11 boxes initially-replacing current access points);
- One new controller;
- Switches between floors;
- Re-use of cable; and
- Initially no redundancy.
- Unit rate for future growth provided.

Internet / Wi-Fi Connectivity:
ACD will provide a 40Mbps Internet throughput connection utilizing a service level to meet all requirements with 99.999% Uptime, 20ms maximum latency, ACD will also provide all IP blocks for The Michigan Historical Museum Wi-Fi Network as needed.

Contractor SLA attached.

1.2.2 Services and Deliverables

Provision of Guest Wireless Internet Services for visitors to the Michigan Historical Center (MHC), including all cabling, hardware, and installation required to support the solution.

A. Business & System Security Requirements

Contractor to provide Guest Wireless Internet Services to the patrons of the MHC, under the following SOM minimum guidelines:

- Limit access to the public Internet only (no access to SOM internal resources).
- Support multiple Service Set Identifiers (SSIDs) to enable adequate separation and segregation of traffic between instances.
- Apply content filtering:
    - At a minimum, content filtering to block sites categorized as malicious content or adult content (pornography).
    - Additional content filtering appropriate to support the existing policy requirements of the specific service offering.
- Apply port and protocol/service filtering to support appropriate policy requirements.
- Present a MHC splash page upon first connect to force a guest user to read and accept the MHC acceptable use policy. Bidder may propose a number of service level price points – Platinum, Gold, Silver, Bronze, etc.
- Bidder to propose Service Level agreement(s) – including the process for reporting issues and turnaround time for response as well as mean time to repair. As these connections will be utilized by the public visiting the MHC, downtime will directly impact customer experience which will in turn affect MHC revenues, thus inordinate amounts of downtime will result in the assessment of liquidated damages. (see Section 2.7.3)

- Bidder to identify process for communicating service interruptions, possibilities include:
    a. 800# at workstation for guest user to contact Contractor directly for assistance with connections,
    b. Contact for MHC staff to coordinate assistance, or
    c. Other option identified.

B. Installation Requirements

Contractor to provide all equipment, cabling, installation and services required for the Guest Wireless application.

- Current SOM GUEST AP Units will be removed by DTMB Telecom, to be replaced with Contractor-provided equipment by Contractor.
- Contractor will re-use all available wiring and provide switches, controller, access units and any other additional hardware required.
- Wiring work and access to the dmarc location will be at the direction of DTMB Telecom and will require a five (5) days' notice provided to the Contract Compliance Inspector for schedule coordination and access.
- Physical onsite work should also be approved by the location's building manager.

All applicable Federal, State and local Codes, Standards and industry best practices are to be adhered to in the implementation of this project. This includes but is not limited to the National Electric Code, BOCA, MIOSHA, TIA, EIA, ANSI, BICSI, etc.

- Information Transport System Description
    1. Materials: All materials shall be new and unused. Contractor to identify products proposed for the cable, patch panels, connectors, splice trays and closures with proposal.
    2. Splice Closures and Splice Trays
        - The Contractor shall supply and install all necessary splice closures and splice trays, and
        - All splices and associated splice closures shall be installed per the manufacturer's specifications.
    3. In the event exposed cable is necessary in exhibit areas; cable must be black coated, to match existing fixtures.
    4. Patch Panels
        - The Contractor shall supply and install all necessary termination blocks, shelves, and connectors required for termination of cable.
    5. Labeling
        - All cable and block connections must be properly labeled according to industry standards and must match As-Built Drawings provided.
    6. As Built Drawings
        - As Built Drawings must be provided upon completion of installation.

- Testing
    - The Contractor shall be responsible for end to end testing of all cable and equipment. The test results must be equal to or better than the manufacturer's specifications and shall be recorded on a hard copy printout from the testing unit. The results of these tests shall be provided to the DTMB Telecom project liaison.

C. Training

Reserved.

D. Documentation

Contractor to provide the State with at least two hard copies and an electronic copy of all required documentation, including equipment user guides, training materials, warranty and maintenance materials, trouble reporting, escalation and resolution process and contact information, and any other documentation required for successful provision and maintenance of the contracted products and services.

The Contractor will provide annual updates to all required documentation throughout the term of the Contract, if applicable, or within 14 days of any changes that affect end/guest-user operation.

The Contractor will immediately notify the State of any errors in the provided documentation and will correct such errors within a reasonable amount of time.

E. Operation Services

Contractor's proposed structure and ownership of system equipment and components required for ongoing operation and use:

- ACD owns and operates a Class 5 Carrier-Grade Phone switch in Lansing with full redundancy and QOS service over the entire voice/data network infrastructure, and is 911 certified. ACD is interconnected directly with various other telecommunication firms, including AT&T, Verizon, Sprint, Level 3, TDS and various cell companies.
- ACD provides multiple internet gateways and backbone peering arrangements from multiple locations across our state-wide network. With OC-12 Gateways from only Tier One Back-Bone Providers: AT&T, Level3, and Sprint.
- ACD owns and maintains a Fiber Optic network consisting of more than 450 miles in the Mid-Michigan area utilizing SONET based and Ethernet Ring topology. ACD also owns fiber throughout the state connecting most major cities in Michigan Dual Fiber Connectivity at the ACD Datacenter and facilities for full redundancy.
- Multiple battery backup systems on all network equipment, with generator power available at all ACD facilities throughout the state.
- Fail over procedures include automatic re-routing of all voice and data traffic over SONET backbone, multiple Internet back-haul connections, and switch redundancy, LOCAL tech support and help desk, with 24x7 network engineering and monitoring.
- ACD constructs, supports, operates, and owns a metro fiber optical network throughout Michigan. This ACD fiber Optic ring backbone network connects and services many of the following entities and organizations:
  - Many ILEC central offices in Michigan, Including; Grand Rapids, St. Joseph, Battle Creek, Kalamazoo, Ann Arbor, Lansing, East Lansing, Okemos, Holt, Eaton Rapids, Haslett, Charlotte, Mason, Saginaw, and Howell.
  - Multiple State of Michigan government Buildings throughout Ingham County and Michigan State University via the ACD metro fiber network.
  - Various regional Internet services providers throughout Michigan.
  - Long distance wholesale telecommunications providers.
  - Fiber optic and internet connectivity to educational entities throughout MI.

F. Maintenance and Support

The Contractor will provide solution updates and correct any material defects or other errors in the system throughout the term of the Contract for all current and immediately preceding versions of required software.

1.2.3 Quantity

The State is not obligated to purchase in any specific quantity.

1.2.4 Ordering

The State will issue Purchase Orders as required for contract services and deliverables. The Contractor is not authorized to begin performance until receipt of a Purchase Order unless initiated through an email or fax authorizing a Procurement Card or Direct Voucher transaction.

1.2.5 Alternate Solution

Presented and accepted.

1.2.6 Required Software and Hardware

The list of all software, hardware, and services proposed as necessary to make the Deliverable(s) operable in accordance with State standards is included in an attachment to this contract.

Rates for future expansion have also been provided.

1.3 Management and Staffing

1.3.1 Project Plan

The Contractor must provide a project plan, including necessary time frames and Deliverable(s) for the various stages of the project and the responsibilities of both the Contractor and the State:

(a) The project plan must include a Microsoft Project plan or equivalent that identifies:

(1) Deliverable(s);

(2) The project breakdown showing sub-projects, tasks, and resources required, target dates and critical paths for the Deliverable(s);

(3) Duties and responsibilities of both the Contractor and the State. The Contractor must identify duties and responsibilities of individuals staffing the project;

(4) The labor, hardware, materials and supplies required to be provided by the State in meeting the target dates established in the project plan;

(5) Internal milestones;

(6) Contractor payment milestones.

Within 14 Calendar Days of the Effective Date, the Contractor must submit the Contract project plan to the DNRContract Compliance Inspector for final approval.

1.3.2 Reports

The Contractor must provide status reports to the State Contract Compliance Inspector with information on the following areas:

- Status of work per project plan.
- Monthly statistics cataloging downtime, trouble reports & outcome, availability metrics.

Reporting formats must be submitted to the DNR Contract Compliance Inspector for approval within 20 days after the Effective Date. Upon agreement as to the format of the reports, they will become the standard.

1.3.3 Staff, Duties, and Responsibilities

A. Contractor Staff

The Contractor will identify a Single Point of Contact (SPOC). The duties of the SPOC shall include, but not be limited to:

B. supporting the management of the Contract,
C. facilitating dispute resolution, and
D. advising the State of performance under the terms and conditions of the Contract.

The State reserves the right to require a change in the current SPOC if the assigned SPOC is not, in the opinion of the State, adequately serving the needs of the State.

The Contractor will provide, and update when changed, an organizational chart indicating lines of authority for personnel involved in performance of this Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management and indicate who within the firm will have prime responsibility and final authority for the work.

All Key Personnel may be subject to the State's interview and approval process. Any key staff substitution must have the prior approval of the State. The State has identified the following as key personnel for this project:

Single Point of Contact (SPOC)

The Contractor will provide sufficient qualified staffing to satisfy the deliverables of this Statement of Work.

Contractor must provide a list of all subcontractors, including firm name, address, contact person, and a complete description of the work to be contracted. Include descriptive information concerning subcontractor's organization and abilities.

On Site Work Requirements

1. **Hours of Operation:**
   a. Normal State working hours are 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, with work performed as necessary after those hours to meet project deadlines. No overtime will be authorized or paid.
   b. The State is not obligated to provide State management of assigned work outside of normal State working hours. The State reserves the right to modify the work hours in the best interest of the project.
   c. Contractor shall observe the same standard holidays as State employees. The State does not compensate for holiday pay.

2. **Travel:**
   a. No travel or expenses will be reimbursed. This includes travel costs related to training provided to the State by Contractor.
   b. Travel time will not be reimbursed.

3. **Additional Security and Background Check Requirements:**
   Contractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT and drug tests for all staff identified for assignment to work on-site for this project.

   In addition, proposed Contractor personnel will be required to complete and submit an RI-8 Fingerprint Card for the National Crime Information Center (NCIC) Finger Prints, if required by project.

   Contractor will pay for all costs associated with ensuring their staff meets all requirements.

B. State Staff, Duties, and Responsibilities

State personnel are only authorized to perform work on Business Days, unless otherwise authorized by the State.

The State will provide a Contract Compliance Inspector (See Section 2.3.2) who will coordinate all of the activities of the State's personnel assigned to the project, including the following:

1. Coordinate the State's information technology systems with DTMB-Telecom;
2. Coordinate the State resources necessary for the project;
3. Facilitate access to building locations;
4. Facilitate coordination among external contractors;
5. Facilitate communication among State departments;
6. Provide acceptance of Deliverable(s);
7. Review and approve invoices;
8. Escalate project issues as necessary;

9. Utilize change control procedures;
10. Document important project decisions; and
11. Facilitate State personnel attendance at project meetings.

The State's SMEs include:

Name	Agency/Division	Title
Mark Harvey	MHC	State Archivist
Delaine Wright	DTMB	Infrastructure Specialist
Kyle Huhn	DNR	Departmental Analyst

1.3.4 Meetings

The Contractor must attend the following meetings:

Meeting Name	***Frequency***	***Description***
Ongoing Status/Progress Review	Weekly.	*The DNR Contract Compliance Inspector will meet with the Contractor's project manager to review progress and provide necessary guidance until installation and acceptance are complete.*
Compliance/Problem Resolution	As Required.	*The DNR Contract Compliance Inspector will meet with the Contractor's project manager to address and resolve performance and/or reliability issues.*

The State may request other meetings as it deems appropriate.

1.3.5 Place of Performance

The Contractor must list the location of all facilities that will be involved in performing the Contract:

Contractor/Sub Name	**Full address of place of performance**	**Contact for facility to be used**	**Percent (%) of Contract value to be performed at listed location**
ACD.net (d.b.a. ACD Telecom)	1800 N. Grand River Ave. Lansing, 48906	Mr. Chris DeVine	100% Internet Services
Adna Technologies	East Lansing, MI		100% Equipment and Installation Services.

Due to security and identity protection concerns, all services must be performed within the borders of the United States. All storage and processing of information must be performed within the borders of the United States. This provision also applies to work performed by subcontractors.

1.3.6 Project Management

See Section 1.3.1 above for requirements of Project Plan and Management.

1.3.7 Binding Commitments
See Article 2.

1.3.8 Training

1.3.9 Security

The Contractor may be required to access State facilities. The State may issue State ID badges to the Contractor's personnel or accept the ID badge issued to personnel by the Contractor. The State may decide to perform an additional background check under Section 2.4.9, Background Checks. If so, the Contractor must provide a list of all personnel, including name and date of birth, who will be assigned to State work.

The Contractor must explain how it intends to ensure the security and safety of State facilities, including performance of background checks on its personnel. The Contractor must explain how background checks are performed, what the background check consists of, the name of the company that performs the background checks, whether personnel use uniforms and ID badges, etc. If background checks are performed, the Contractor must provide a document stating that its personnel have satisfactorily completed a background check and are suitable for State work.

1.4 Delivery and Acceptance

1.4.1 Time Frames

All Deliverable(s) must be delivered within 45 Days after receipt of order. Alternate delivery schedules may be presented with alternate price proposals. The receipt of order date is governed in the same manner as notices sent under Section 2.3.6, Notices. The Contractor must explain in detail its various delivery programs (e.g., standard delivery and quick-ship), including any limitations such as quantity.

Milestones and deliverables should be laid in detail and associated with acceptance process and payment.

1.4.2 – 1.4.5 [Reserved]

1.4.6 Acceptance Process

The acceptance process is defined in Section 2.8.4, Acceptance of Deliverable(s), unless otherwise defined in this section.

1.4.7 Acceptance Criteria

The State will use the following criteria to determine acceptance of Deliverable(s):

Guest Wireless Internet connections are active and provide required speed and bandwith.

1.5 Proposal Pricing

1.5.1 Pricing

The Contractor must provide pricing details in **Attachment 1** per the requirements of the cost model.

Holdback. The State may hold back an amount equal to [_5__] percent [(__5__%)] of all amounts invoiced by the Contractor for Installed Deliverables. The amounts held back will be released after the State has granted Final Acceptance.

1.5.2 Quick Payment Terms

RESERVED.

1.5.3 Price Term

Any Contracts awarded from this solicitation will include pricing as follows:

Pricing Structure

x Firm-Fixed Price for installed component(s)
x Firm-Fixed Unit Rate for ongoing service(s)

Prices in **Attachment 1** are firm for 365 days from the date the Contract is posted for issuance of Purchase Orders.

1.5.4 Tax Excluded from Price

(a) Sales Tax: The State is exempt from sales tax for direct purchases. The Contractor's prices must not include sales tax. DTMB-Procurement will furnish exemption certificates for sales tax upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State'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 Contractor's prices must not include the Federal Excise Tax.

1.5.5 Invoices

The Contractor must provide invoices that, at a minimum, include:

(a) Date
(b) PO #
(c) Quantity
(d) Deliverable
(e) Unit Price
(f) Shipping Cost
(g) Person Performing
(h) Position Title
(i) Hourly Rate
(j) Number of Hours
(k) Work Performed
(l) Total Price

(b) Invoices must be sent to bill to address listed on PO.

1.5.6 Travel

The State will not reimburse any travel expenses, including transportation, meals, and lodging. Travel time will not be reimbursed.

1.6 Commodity Requirements [Reserved]

1.7 Licensing

1.7.1 State License.

Contractor grants to the State a non-exclusive, royalty-free, site-wide, irrevocable license and Right To Use (RTU) for the Deliverable(s) and related documentation for this Contract according to the terms and conditions of the Contract. For the purposes of this license, “site-wide” includes any State of Michigan office regardless of its physical location.

Article 2 – Terms and Conditions

2.1 Contract Term

2.1.1 Contract Term

The Contract term begins May 10, 2012 and expires May 9, 2015. All outstanding Purchase Orders will expire upon the termination of the Contract for any of the reasons listed in Section 2.16, Termination by the State, unless otherwise agreed to in writing by DTMB-Procurement. Absent an early termination, Purchase Orders issued, but not expired, by the end of the Contract's term will remain in effect until the next September 30.

E-rate, MiDEAL and/or other government agencies:
In cases where different units of government or Michigan Delivering Extended Agreements Locally (MiDEAL) partners are utilizing the Contract, such Purchase Orders shall remain in effect for the balance of the fiscal year of the organization by whom the order was placed.

2.1.2 Options to Renew

This Contract may be renewed for up to 3 additional 1 year period(s). Renewal must be by mutual written agreement of the parties, not less than 30 days before expiration of the Contract.

2.2 Payments and Taxes

2.2.1 Fixed Prices for Deliverable(s)

Prices are fixed for all Deliverable(s) and for all of the associated payment milestones and amounts.

2.2.2 Payment Deadlines

Undisputed invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 *et seq.*, within forty-five (45) days after receipt.

2.2.3 Invoicing and Payment – In General

Each invoice must detail charges by Deliverable and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Deliverables performed on a time and materials basis must show, for each individual, the number of hours performed during the billing period, the billable skill/labor category for each individual and the applicable hourly billing rate. Unless otherwise stated in Attachment 5, all invoices must reflect actual work done.

2.2.4 Pro-ration

To the extent there are any Deliverables that are to be paid on a monthly basis, the cost of such Deliverables must be pro-rated for any partial month.

2.2.5 Final Payment and Waivers

The Contractor's acceptance of final payment by the State constitutes a waiver of all claims by the Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed. For other claims, final payment by the State will not constitute a waiver by either party of any rights as to the other party's continuing obligations, nor will it constitute a waiver of any claims under this Contract, including claims for Deliverable(s) not reasonably known to be defective or substandard.

2.2.6 Electronic Payment Requirement

As required by MCL 18.1283a, the Contractor must electronically register with the State at http://www.michigan.gov/cpexpress to receive electronic fund transfer (EFT) payments.

2.2.7 Employment Taxes

The Contractor must collect and pay all applicable federal, state, and local employment taxes.

2.2.8 Sales and Use Taxes

The Contractor must register and remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. If the Contractor lacks sufficient presence in Michigan to be required to register and pay taxes, it must do so on a voluntary basis. The requirement to register and remit sales and use taxes extends to (a) all members of a "controlled group of corporations" as defined in § 1563(a) of the Internal Revenue Code, 26 USC 1563(a), and applicable regulations; and (b) all organizations under common control that make sales at retail for delivery into the State. Any United States Department of Treasury regulation that references "two or more trades or businesses under common control" includes organizations such as sole proprietorships, partnerships (as defined in § 7701(a)(2) of the Internal Revenue Code, 26 USC 7701(a)(2)), trusts, estates, corporations, or limited liability companies.

2.3 Contract Administration

2.3.1 Issuing Office

This Contract is issued by DTMB-Procurement on behalf of DNR (State). **DTMB-Procurement is the only entity authorized to modify the terms and conditions of this Contract, including the prices and specifications.** The Contract Administrator within DTMB-Procurement for this Contract is:

Christine Mitchell, CPPB
Buyer Specialist
Procurement
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
mitchellc4@michigan.gov
(517) 335-0462

2.3.2 Contract Compliance Inspector

The Contract Compliance Inspector, named below, will monitor and coordinate Contract activities on a day-to-day basis. However, monitoring of this Contract implies **no authority to modify the terms and conditions of this Contract, including the prices and specifications.**

Mark Harvey,
State Archivist
Michigan Library and Historical Center (MHC)
Department of Natural Resources
Allegan St.; Lansing, MI 48909
Harveym@michigan.gov
517-373-1415

2.3.3 Project Manager

Reserved

2.3.4 Contract Changes

(a) If the State 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 the State before performing the requested activities. If the Contractor fails to notify the State, 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 the State, retract any out-of-scope work that would adversely affect the Contract.

(b) The State or the Contractor may propose changes to the Contract. If the Contractor or the State requests a change to the Deliverable(s) or if the State 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, DTMB-Procurement 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 DTMB-Procurement issues a duly executed Contract Change Notice for the proposed change.

2.3.5 Price Changes [Reserved]

2.3.6 Notices

All notices and other communications required or permitted under this Contract must be in writing and will be considered given when delivered personally, by fax (if provided) or by e-mail (if provided), or by registered mail, return receipt requested, addressed as follows (or any other address that is specified in writing by either party):

If to State:

State of Michigan
DTMB-Procurement
Attention: Christine Mitchell
PO Box 30026
530 West Allegan
Lansing, MI 48909
mitchellc4@michigan.gov

If to Contractor:
Mr. Chris DeVine
1800 N. Grand River Ave.
Lansing, MI 48906
Phone: 517-999-3242
Fax: 999-4242
Mobile: 517-930-8096
e-mail Devine.chris@acd.net

Delivery by a nationally recognized overnight express courier will be treated as personal delivery.

2.3.7 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.

2.3.8 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. The State may, however, assign this Contract to any other State agency, department, or division 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 the State and provide adequate information about the assignee at least ninety (90) days before the proposed assignment or as otherwise provided by law or court order. The State may withhold approval from proposed assignments, subcontracts, or novations if the State determines, in its sole discretion, that the transfer of responsibility would decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(c) If the State 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.

2.3.9 Equipment

The State will not provide equipment and resources unless specifically identified in the Statement(s) of Work or other Contract exhibits.

2.3.10 Facilities

The Contractor must comply with all rules and regulations of State facilities (including hours of operation) used by the Contractor. The Contractor will only use State facilities for the purpose of providing Deliverables.

2.4 Contract Management

2.4.1 Contractor Personnel Qualifications

All persons assigned by the Contractor to perform work must be employees of the Contractor or its majority-owned subsidiaries, or a State-approved Subcontractor, and must be fully qualified to perform the work assigned to them. The Contractor must include this requirement in any subcontract.

2.4.2 Contractor Key Personnel

(a) The Contractor must provide the Contract Administrator, Contract Compliance Inspector and State Project Manager with the names of Key Personnel.

(b) The Contractor must dedicate Key Personnel to perform work for the duration of the Contract as provided in Section 1.3.3, Staff, Duties, and Responsibilities.

(c) Before assigning a new individual to any Key Personnel position, the Contractor must notify the State of the proposed assignment, introduce the individual to the Contract Administrator, Contract Compliance Inspector, State Project manager and other appropriate State personnel, and provide the State with a resume and any other reasonably requested information. The State must approve or disapprove the assignment, reassignment, or replacement of any Key Personnel. The State may interview the individual before making its decision. If the State disapproves an individual, the State will provide a written explanation outlining the reasons for the rejection.

(d) The Contractor may not remove any Key Personnel from their assigned roles without the prior consent of the State. The Contractor's removal of Key Personnel without the prior consent of the State constitutes Unauthorized Removal. Unauthorized Removal does not include replacing Key Personnel for reasons beyond the Contractor's reasonable control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause. Unauthorized Removal does not include replacing Key Personnel because of promotions or other job movements allowed by the Contractor's personnel policies or Collective Bargaining Agreement(s), as long as the Contractor assigns the proposed replacement to shadow the outgoing Key Personnel for 30 days. Any Unauthorized Removal will be considered a material breach of the Contract.

(e) The Contractor must notify the State Project Manager, Contract Compliance Inspector and Contract Administrator at least 10 Days before redeploying non-Key Personnel to other projects.

(f) Liquidated damages may be assessed by the State for Unauthorized Removal if provided in Section 2.7.3, Liquidated Damages.

2.4.3 Removal or Reassignment of Personnel at the State's Request

The State may require the Contractor to remove or reassign personnel if the State has legitimate, good-faith reasons articulated in a notice to the Contractor. Replacement personnel must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected.

2.4.4 Contractor Personnel Location

Subject to availability, the State may allow selected Contractor personnel to use State office space.

2.4.5 Contractor Identification

The Contractor's employees must be clearly identifiable while on State property by wearing a State-issued badge, and must clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.4.6 Cooperation with Third Parties

The Contractor and its Subcontractors must cooperate with the State and its agents and other contractors, including the State'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.

2.4.7 Relationship of the Parties

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of the Contractor, or any of its subcontractors, is an employee, agent or servant of the State. 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.

2.4.8 Contractor Return of State Equipment/Resources

The Contractor must return to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.4.9 Background Checks

The State may investigate the Contractor's personnel before granting access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine eligibility for working within State facilities and systems. The Contractor is responsible for the costs of conducting the State's background check. The investigations will include a Michigan State Police background check (ICHAT) and may include a Criminal Justice Information Services (CJIS) fingerprint check. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the CJIS fingerprint check.

2.4.10 Compliance With State Policies

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources, available at http://www.michigan.gov/pcpolicy. Contractor personnel must agree to the State's security and acceptable use policies before the State grants access to its IT equipment and resources. The Contractor must provide these policies to prospective personnel before requesting access from the State. Contractor personnel must comply with all physical security procedures in State facilities.

2.5 Subcontracting by Contractor

2.5.1 Contractor Responsible

The Contractor is responsible for the completion of all Deliverable(s). The State will consider the Contractor to be the sole point of contact with regard to all contractual matters, including payment of any charges for Deliverable(s). The Contractor must make all payments to its Subcontractors or suppliers. Except as otherwise agreed in writing, the State is not obligated to make payments for the Deliverable(s) to any party other than the Contractor.

2.5.2 State Approval of Subcontractor

(a) The Contractor may not delegate any duties under this Contract to a Subcontractor unless DTMB-Procurement gives prior approval to the delegation. Article 4, Section 4.1.8 includes a list of the Subcontractors, if any, approved by the State as of the Effective Date. The State is entitled to receive copies of and review all subcontracts. The Contractor may delete or redact any proprietary information before providing it to the State.

(b) The State may require the Contractor to terminate and replace any Subcontractor the State reasonably finds unacceptable. The required replacement of a Subcontractor must be written and contain reasonable detail outlining the State's reasons. If the State exercises this right, and the Contractor cannot immediately replace the Subcontractor, the State will agree to an equitable adjustment in the schedule or other terms that may be affected by the State's required replacement. If this requirement results in a delay, the delay will not be counted against any applicable Service Level Agreement (SLA).

2.5.3 Subcontract Requirements

Except where specifically approved by the State, Contractor must include the obligations in Sections 2.24.2, Media Releases, 2.4, Contract Management, 2.11, Confidentiality, 2.12, Records and Inspections, 2.13, Warranties, 2.14, Insurance, and 2.23, Laws, in all of its agreements with Subcontractors.

2.5.4 Competitive Selection

Contractor must select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Contract.

2.6 Reserved

2.7 Performance

2.7.1 Time of Performance

(a) The Contractor must immediately notify the State 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 State-approved delivery schedule and must inform the State of the projected actual delivery date.

(b) If the Contractor believes that a delay in performance by the State 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 the State 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 the State.

2.7.2 Service Level Agreements

(a) As used in this Section, "Incident" means any interruption in Deliverable(s). Calculations under a Service Level Agreement (SLA) will not include:

(i) individual Incidents caused by an event of Excusable Failure as defined in Section 2.7.4, Excusable Failure;

(ii) individual Incidents caused by a planned interruption where the State has received prior notification; or

(iii) individual Incidents that could have been prevented through execution of a written proposal by the Contractor that was not implemented at the request of the State.

(b) The duration of an Incident will be measured from the time the Contractor is notified through the time the State receives notification of resolution. The duration of an Incident will not include:

(i) time period(s) where the Contractor does not have access to a physical State location where access is necessary for problem identification and resolution; or

(ii) time period(s) where the Contractor is unable to obtain necessary information from the State.

(c) Chronic Failure for any Deliverable(s) is defined as three unscheduled Incidents on any individual Deliverable for the same reason or cause over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the Deliverable(s) and procure the Deliverable(s) from a different vendor. The Contractor must pay the difference in charges for up to three additional months. The termination of the Deliverable(s) must not affect any tiered pricing levels.

(d) All decimals must be rounded to two decimal places, with five and greater rounding up and four and less rounding down, unless otherwise specified.

There is a requirement (SLA) in this Contract for uptime, and a percentage is stated for availability 99%. The method of calculation is detailed according to the following table calculated and reported monthly, based on an 9am-9pm, Sun-Sat schedule, excluding state holidays.

Calculations for availability are included in the attached SLA.

See Contractor's Service Level Agreement Attachment 2.

2.7.3 Liquidated Damages

(RESERVED

2.7.4 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 the State reasonably determines that performance is not likely to be resumed within a period of time that is satisfactory to the State, the State 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. The State 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 the State 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.

2.8 Acceptance of Deliverable(s)

Reserved.

2.8.1 Quality Assurance

By tendering any Deliverable to the State, the Contractor certifies to the State that (a) it has performed reasonable quality assurance activities; (b) it has performed any reasonable testing; (c) it has corrected all material deficiencies discovered during the quality assurance activities and testing; and (d) it has applied any applicable critical security patches or updates to the Deliverable. To the extent that testing occurs at State Locations, the State is entitled to observe and otherwise participate in the testing.

2.8.2 Delivery Responsibilities

Unless otherwise specified by the State in Section 1.4.5, Delivery Term, 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) The State 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.

2.8.3 Process for Acceptance of Deliverable(s)

The State'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 the State's review period, it is by default 30 Days for a Deliverable (State Review Period). The State will notify the Contractor by the end of the State 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 the State 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, the State will have a reasonable additional period of time, not to exceed 30 Days, to accept the corrected Deliverable.

2.8.4 Acceptance of Deliverable(s)

(a) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of the Deliverable(s). The State Review Period will begin on the first Business Day following the State's receipt of the Deliverable(s).

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

(c) The State will only approve a Deliverable after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, in its discretion, conditionally approve a Deliverable that contains material deficiencies if the State 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 State approval.

(d) If, after three opportunities the Contractor is unable to correct all deficiencies, the State 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 the State'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, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(e) The State, 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.

2.8.5 Process for Approval of Written Deliverable(s)

2.8.6 Process for Approval of Services

2.8.7 Final Acceptance

"Final Acceptance" occurs when all Deliverables and Milestones have been met and accepted by the State following the applicable State Review Period.

2.9 Ownership

2.9.1 Ownership of Work Product by State

Unless otherwise specified in Section 1.8, Intellectual Property, the Contractor automatically assigns to the State ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in the Deliverable(s), whether or not the work is (1) registered by the Contractor or (2) considered work made for hire. At the State's request, the Contractor must confirm the assignment.

2.9.2 Ownership and Use of Data

(a) The State owns all data that it makes available to the Contractor or its agents, Subcontractors, or representatives. The Contractor may not possess or assert any lien or other right against the State's data.

(b) The Contractor may not use the State's data for any purpose other than providing the Deliverable(s). The State's data may not be disclosed, sold, assigned, leased, or otherwise disseminated to the general public or third parties. The Contractor must limit disclosure of the State's data to employees, agents, and Subcontractors who must have access to fulfill the purposes of this Contract.

2.9.3 Ownership of Materials

The State and the Contractor will continue to own their respective proprietary intellectual property developed before entering into the Contract. Any hardware bought through the Contractor by the State will be owned by the State. Any software licensed through the Contractor and sold to the State will be licensed directly to the State.

2.10 State Standards

2.10.1 Systems Changes

The Contractor is prohibited from making changes to any State information technology systems without written authorization from the Contract Compliance Inspector. Following authorization, any changes the Contractor makes to State systems must be done according to applicable State procedures, including integrity, security, access, and configuration management procedures.

2.11 Confidentiality

2.11.1 Confidential Information

As used in this Section, "Confidential Information" means all information of the parties, except information that is:

(a) disclosable under the Michigan Freedom Of Information Act (FOIA);
(b) now available or becomes available to the public without breach of this Contract;
(c) released in writing by the disclosing party;
(d) obtained from a third party or parties having no obligation of confidentiality with respect to such information;
(e) publicly disclosed pursuant to federal or state law; or
(f) independently developed by the receiving party without reference to Confidential Information of the furnishing party.

2.11.2 Protection and Destruction of Confidential Information

(a) Each party must use the same care to prevent unauthorized disclosure of Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of care. Neither the Contractor nor the State will: (i) make any use of the Confidential Information of the other except as contemplated by this Contract; (ii) acquire any interest or license in or assert any lien against the Confidential Information of the other; or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information.

(b) Each party will limit disclosure of the other party's Confidential Information to employees, agents, and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where: (i) use of a Subcontractor is authorized under this Contract; (ii) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility; and (iii) Contractor obligates the Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any

Subcontractor having access to the State's Confidential Information may be required to execute a separate agreement to be bound by the confidentiality requirements of this Section.

(c) Upon termination of the Contract, Contractor must promptly return the State's Confidential Information or certify to the State that Contractor has destroyed all of the State's Confidential Information.

2.11.3 Exclusions

The provisions of Section 2.11, Confidentiality, will not apply where the receiving party is required by law to disclose the other party's Confidential Information, provided that the receiving party: (i) promptly provides the furnishing party with notice of the legal request; and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.11.4 No Obligation to Disclose

Nothing contained in Section 2.11, Confidentiality, will be construed as obligating a party to disclose any particular Confidential Information to the other party.

2.11.5 Security Breach Notification

If Contractor breaches this Section, it must (i) promptly cure any deficiencies in Contractor's internal security controls; and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized access, use, or disclosure. Contractor must notify the State of any unauthorized use or disclosure of Confidential Information, whether suspected or actual, within 10 days of becoming aware of the use or disclosure or a shorter time period as is reasonable under the circumstances. The State may require Contractor to purchase credit monitoring services for any individuals affected by the breach.

2.11.6 PCI Data Security Standard

(a) If the Contractor has access to credit/debit cardholder data, it must adhere to the Payment Card Industry (PCI) Data Security Standard. The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.

(b) The Contractor must immediately notify the CCI of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the PCI representative, or a PCI approved third party, to conduct a thorough security review. The review must validate compliance with the PCI Data Security Standard for protecting cardholder data.

(c) The Contractor must properly dispose of cardholder data when it is no longer needed. The Contractor must continue to treat cardholder data as confidential upon contract termination.

(d) The Contractor must provide the CCI with documentation showing PCI Data Security Standard certification has been achieved. The Contractor must notify the CCI of all failures to comply with the PCI Data Security Standard.

2.12 Records and Inspections

2.12.1 Inspection of Work Performed

The State's authorized representatives, at reasonable times and with 10 days prior notice, have the right to enter the Contractor's premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed, to the extent the access will not reasonably interfere with or jeopardize the safety or operation of Contractor's systems or facilities. The Contractor must provide reasonable assistance for the State's representatives during inspections.

2.12.2 Retention of Records

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of seven (7) 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.

2.12.3 Examination of Records

The State, upon 10 day's notice to the Contractor, may examine and copy any of the Contractor's records that relate to this Contract. The State 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.

2.12.4 Audit Resolution

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

2.12.5 Errors

(a) If an audit reveals any financial errors in the records provided to the State, 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 (4) invoices or beyond the termination of the Contract. If a balance remains after four (4) 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 the State'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.

2.13 Warranties

2.13.1 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 the State by Contractor or developed by the Contractor for this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any Deliverable(s). None of the Deliverable(s) provided by Contractor to the State, nor their use by the State, 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 the State (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 the State or its designees, or afford the State 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 the State or otherwise create an appearance of impropriety with respect to the award or performance of this Contract. The Contractor must notify the State about the nature of any conflict or appearance of impropriety within two (2) 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 the State would be influenced. The Contractor must not attempt to influence any State 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 the State 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 the State 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 DTMB-Procurement if any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract is awarded.

2.13.2 Warranty of Merchantability [Reserved]

2.13.3 Warranty of Fitness for a Particular Purpose [Reserved]

2.13.4 Warranty of Title [Reserved]

2.13.5 Equipment Warranty

(a) The Contractor represents and warrants that the equipment/system(s) are in good operating condition and perform to the requirements contained in this Contract at the time of Final Acceptance, and for a period of one year, or such time as manufacturer provides for warranty following Final Acceptance.

(b) To the extent the Contractor is responsible for maintaining equipment/system(s), the Contractor represents and warrants that it will maintain the equipment/system(s) in good operating condition and will undertake all repairs and preventive maintenance according to the applicable manufacturer's recommendations for the period specified in this Contract.

(c) The Contractor must provide a toll-free telephone number for the State to report equipment failures and problems.

(d) Within one Business Day of notification, the Contractor must adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor must assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

(e) The Contractor agrees that all warranty service it provides must be performed by Original Equipment Manufacturer (OEM) trained, certified, and authorized technicians.

(f) The Contractor is the sole point of contact for warranty service.

(g) All warranty work must be performed at State locations.

2.13.6 New Deliverable(s)

The Contractor must provide new Deliverable(s) where the Contractor knows or has the ability to select between new or like-new Unless specified in Article 1, Statement of Work, equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable only where the Contractor does not have knowledge or the ability to select one or the other.

2.13.7 Prohibited Products

Shipping of salvage, distressed, outdated, or discontinued goods to any State agency will be considered a material default by the Contractor. The brand and product number offered for all items will remain consistent for the term of the Contract, unless DTMB-Procurement has approved a change order under Section 2.3.4, Contract Changes.

2.13.8 Performance Warranty

The Contractor represents and warrants that the Deliverable(s), after Final Acceptance, will perform in compliance with the requirements of this Contract for a period of ninety (90) days. The Contractor will promptly correct any breach of this warranty at no charge to the State.

EXCEPT AS OTHERWISE STATED, THE CONTRACTOR PROVIDES THE DELIVERABLE(S) 'AS IS' WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.13.9 No Surreptitious Code Warranty

(a) The Contractor represents and warrants that no copy of licensed software provided to the State contains or will contain any Self-Help Code or any Unauthorized Code:

(1) Self-Help Code means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software.

(2) Unauthorized Code means any virus, Trojan horse, spyware, malware, worm or other software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions.

(3) Self-Help Code and Unauthorized Code do not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access) for purposes of maintenance or technical support.

(b) The Contractor will use up-to-date commercial anti-virus software to detect and remove viruses from software before delivering it to the State.

2.13.10 Calendar Warranty

The Contractor represents and warrants that the design and performance of all software provided to the State will not cause the State to experience software abnormality or the generation of incorrect results, due to date or time oriented processing, such as processing related to Century year rollover, leap years, and daylight savings time.

2.13.11 Third-Party Software Warranty

The Contractor represents and warrants that it will disclose the use or incorporation of any third-party software into the Deliverable(s), including the name and any information regarding the Contractor's authorization to use such software. The notice must include a copy of any ownership agreement or license that authorizes the Contractor to use the third-party software.

2.13.12 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in Section 2.13, Warranties, the breach may be considered a material default.

2.14 Insurance

2.14.1 Liability Insurance

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

(a) The following apply to all insurance requirements:

(i) The State, 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, the State 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 the State's approval, the State may, after giving the Contractor at least 30 days notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.
(iv) In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.

(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 the State 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 the State 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 the State.
(iv) obtain insurance, unless the State 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 the State. All policies of insurance must be issued by companies that have been approved to do business in the State.
(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 (3) years following the termination of this Contract.
(vi) pay all deductibles.
(vii) pay for and provide the type and amount of insurance checked ☑ below:

☑ **(A) Commercial General Liability Insurance**

Minimal Limits:

$2,000,000 General Aggregate Limit other than Products/Completed Operations;
$2,000,000 Products/Completed Operations Aggregate Limit;
$1,000,000 Personal & Advertising Injury Limit; and
$1,000,000 Each Occurrence Limit.

Deductible maximum:

$50,000 Each Occurrence

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☐ **(B) Umbrella or Excess Liability Insurance**

Minimal Limits:

$10,000,000 General Aggregate

Additional Requirements:

Umbrella or Excess Liability limits must at least apply to the insurance required in (A), General Commercial Liability. The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ **(C) Motor Vehicle Insurance**

Minimal Limits:

If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.

☐ **(D) Hired and Non-Owned Motor Vehicle Coverage**

Minimal Limits:

$1,000,000 Per Accident

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the vehicle liability certificate. The Contractor must also provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ **(E) Workers' Compensation Insurance**

Minimal Limits:

The Contractor must provide Workers' Compensation coverage according to applicable laws governing work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, the Contractor must provide proof of an approved self-insured authority by the jurisdiction of domicile.

For employees working outside of the state of the Contractor's domicile, the Contractor must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Additional Requirements:

The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable. Contractor must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

☑ **(F) Employers Liability Insurance**

Minimal Limits:

$100,000 Each Accident;
$100,000 Each Employee by Disease
$500,000 Aggregate Disease

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

☐ **(G) Employee Fidelity Insurance**

Minimal Limits:

$1,000,000 Each Occurrence

Maximum Deductible

$50,000

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

☐ **(H) Umbrella or Excess Liability Insurance**

Minimal Limits:

$10,000,000 applicable to the Commercial General Liability policy required in subsection (A).

☐ **(I) Professional Liability (Errors and Omissions) Insurance**

Minimal Limits:

$3,000,000 Each Occurrence
$3,000,000 Annual Aggregate

☐ **(J) Fire and Personal Property Insurance**

Coverage Requirements:

Replacement value of any loss or damage to the office space, equipment, software, and other contents of the office space used by the Contractor to perform work under this Contract, where the office space and its contents are under the Contractor's care, custody, and control.

The policy must cover all risks of direct physical loss or damage, including flood and earthquake coverage and coverage for computer hardware and software.

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

2.14.2 Subcontractor Insurance Coverage

Except where the State has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 2.14.1, 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.

2.14.3 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 the State and its agents, officers, and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. The Contractor must provide DTMB-Procurement with all applicable certificates of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in Section 2.14.1, 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 the Director of DTMB-Procurement. The notice to the Director of DTMB-Procurement must include the applicable Contract or Purchase Order number.

2.15 Indemnification

2.15.1 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend, and hold the State 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.

2.15.2 Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from the Contractor's breach of the warranty in Section 2.13.9, No Surreptitious Code Warranty.

2.15.3 Employee Indemnification

In any claims against the State, 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, or other employee benefit acts. This indemnification clause is intended to be comprehensive. 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.

2.15.4 Patent/Copyright Infringement Indemnification

(a) To the extent permitted by law, the Contractor must indemnify and hold the State 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 the State 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 the State'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 the State'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 the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

(c) Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State 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 the State; (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 the State; 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.

2.15.5 Continuing Obligation

The Contractor's duty to indemnify under Section 2.15, Indemnification, 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.

2.15.6 Indemnification Procedures

These procedures apply to all indemnity obligations:

(a) After the State receives notice of an action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify the Contractor of the claim and take, or assist the Contractor in taking, any reasonable action to avoid a default judgment against the Contractor. Failure to notify the Contractor does not relieve the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the notification failure. Within 10 days following receipt of notice from the State relating to any claim, the Contractor must notify the State whether the Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying the Contractor of a claim and before the State receives the Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any

reasonable costs, including attorney fees, incurred by the State in defending against the claim during that period.

(b) If the Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in handling the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain prior approval of the State before entering into any settlement of the claim or ceasing to defend against the claim; and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim. The State may retain control of the defense and settlement of a claim by notifying the Contractor within 10 days after the State's receipt of the Contractor's information requested by the State under clause (ii) of this paragraph, if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If the Contractor does not deliver a Notice of Election relating to any claim of which it is notified, the State may defend the claim in a manner it deems appropriate, at the cost and expense of the Contractor. If it is determined that the claim was one against which the Contractor was required to indemnify the State, upon request of the State, the Contractor must promptly reimburse the State for all reasonable costs and expenses.

2.15.7 Limitation of Liability

Neither the Contractor nor the State 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 Contract.

2.16 Termination by the State

2.16.1 Notice and Right to Cure

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, the State will provide the Contractor notice of the breach and a period of at least 30 days to cure the breach. The State does not need to provide notice or an opportunity to cure for successive or repeated breaches or if the State 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.

2.16.2 Termination for Cause

(a) The State 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 the State.

(b) The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees and court costs, and any additional costs the State 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 the State partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those Deliverable(s) that are terminated. The State 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 the State 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.

2.16.3 Termination for Convenience

The State may fully or partially terminate this Contract for its convenience if the State determines that a termination is in the State's best interest. Reasons for the termination are within the sole discretion of the State and may include: (a) the State 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 the State; (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 the State. The State may terminate this Contract for its convenience by giving Contractor notice at least 30 days before the date of termination. If the State 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.

2.16.4 Termination for Non-Appropriation

(a) If this Contract extends for more than one fiscal year, continuation of this Contract is subject to the appropriation or availability of funds. If sufficient funds to enable the State to continue payment are not appropriated or otherwise made available, the State must fully or partially terminate this Contract at the end of the last period for which funds have been appropriated or otherwise made available The State must give the Contractor notice at least 30 days before the date of termination, unless the State receives notice of the non-appropriation or unavailability less than 30 days before the end of the last period for which funds have been appropriated or otherwise made available.

(b) If funding for this Contract is reduced by law, or funds to pay the Contractor for the Deliverable(s) are not appropriated or are otherwise unavailable, the State may, upon 30 days notice to the Contractor, change the Deliverable(s) in the manner and for the periods of time the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any Deliverable(s) not provided because of the reduction.

(c) If the State fully or partially terminates this Contract for non-appropriation, the State must pay the Contractor for all work-in-progress performed through the effective date of the termination to the extent funds are available.

2.16.5 Termination for Criminal Conviction

The State 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 State, public, or private Contract or subcontract.

2.16.6 Termination for Approvals Rescinded

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for all work-in-progress performed through the effective date of the termination. The Contract may be fully or partially terminated and will be effective as of the date stated in the notice.

2.16.7 Rights and Obligations upon Termination

(a) If the State 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 the State may direct, to preserve and protect Deliverable(s) or other State 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 the State;

(iv) transfer title in and deliver to the State, unless otherwise directed, all Deliverable(s) intended to be transferred to the State at the termination of the Contract (which will be provided

to the State on an "As-Is" basis except to the extent the State 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 State information confidentially in accordance with Section 2.11, Confidentiality.

(b) If the State terminates this Contract under Section 2.16.3, Termination for Convenience, the State 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 the State. All completed or partially completed Deliverable(s) prepared by the Contractor, at the option of the State, become the State's property, and the Contractor is entitled to receive equitable compensation for those Deliverable(s). Regardless of the basis for the termination, the State 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 the State terminates this Contract for any reason, the State 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 the State deems expedient.

2.16.8 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.

2.16.9 Contractor Transition Responsibilities

If this Contract terminates under Section 2.16, Termination by the State, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to the State or a third party designated by the State within a reasonable period of time that does not exceed 60 days from the date of termination. The Contractor must provide any required reports and documentation.

2.16.10 Transition Payments

If the transition responsibilities outlined in Section 2.16.9, Contractor Transition Responsibilities, arise based on a termination of this Contract, reimbursement will be governed by the provisions of Section 2.16, Termination by the State. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e., costs incurred after the expiration within the time period in Section 2.16.9 that result from transition operations) at the Contract rates. The Contractor must prepare an accurate accounting from which the State and the Contractor may reconcile all outstanding accounts.

2.16.11 Additional Transition Responsibilities

(a) The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to accomplish the transition.
(b) The Contractor will designate as many of its personnel as necessary to perform the Contract during the transition period.
(c) The Contractor must return any software licenses provided by the State upon expiration of the Contract.
(d) The State may require the Contractor to freeze all non-critical changes to the Deliverable(s).

2.17 Termination by the Contractor

2.17.1 Termination

If the State breaches the Contract and the Contractor, in its sole discretion, determines that the breach is curable, then the Contractor will provide the State 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 the State: (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 2.20, Dispute Resolution, before it terminates the Contract.

2.18 Stop Work

2.18.1 Stop Work Order

The State 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, the State must either: (a) terminate the Stop Work Order; or (b) terminate the work covered by the Stop Work Order as provided in Section 2.16, Termination by the State.

2.18.2 Termination of Stop Work Order

The Contractor must resume work if the State 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 the State; provided that, the State 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 2.3.4, Contract Changes.

2.18.3 Allowance of the Contractor's Costs

If the State 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 2.16, Termination by the State, and the State will pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. The State is not liable to the Contractor for lost profits because of a Stop Work Order issued under Section 2.18, Stop Work.

2.19 Source Code Escrow

Reserved

2.20 Dispute Resolution

2.20.1 General

(a) The Contractor must submit any claim related to this Contract to the State under Section 2.3.6, Notices, together with all supporting documentation for the claim.

(b) The representatives of the Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information related to the claim.

(c) During the course of negotiations, each party will honor all reasonable requests made by the other for non-privileged information reasonably related to the claim.

2.20.2 Informal Dispute Resolution

(a) If, after a reasonable time following submission of a claim under Section 2.20.1 General, the parties are unable to resolve the claim, the parties must meet with the Director of DTMB-Procurement, or his or her designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings.

(b) Within 60 calendar days of the meeting with the Director of DTMB-Procurement, or such other time as agreed to by the parties, the Director of DTMB-Procurement will issue a written recommendation regarding settlement of the claim. The Contractor must notify DTMB-Procurement within 21 days after the recommendation is issued whether the Contractor accepts or rejects the recommendation. Acceptance by the Contractor constitutes the final resolution of the claim addressed in the recommendation, and the Contractor may not assert that claim in any future litigation or other proceeding between the parties.

(c) The recommendation of the Director of DTMB-Procurement is not admissible in any future litigation or other proceeding between the parties. The conduct and statements made during the course of negotiations or dispute resolution under Section 2.20, Dispute Resolution, are subject to Michigan Rule of Evidence 408 and are not admissible in any future litigation or other proceeding between the parties.

(d) This section will not be construed to prohibit either party from instituting formal proceedings to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.20.3, Injunctive Relief.

(e) DTMB-Procurement will not mediate disputes between the Contractor and any other entity, except State agencies, concerning responsibility for performance of work.

2.20.3 Injunctive Relief

A claim between the State and the Contractor is not subject to the provisions of Section 2.20.2, Informal Dispute Resolution, where a party makes a good faith determination that a breach of the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other injunctive relief is the only adequate remedy.

2.20.4 Continued Performance

Each party will continue performing its obligations under the Contract while a claim is being resolved, except to the extent the claim precludes performance and without limiting either party's right to terminate the Contract as provided in Section 2.16, Termination by the State or Section 2.17, Termination by the Contractor. A claim involving payment does not preclude performance.

2.21 Disclosure Responsibilities

2.21.1 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 the State from the Contractor's publicly filed documents will satisfy the requirements of this Section.

(c) If any Proceeding that is disclosed to the State or of which the State 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 the State all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this Contract.

2.21.2 Other Disclosures

The Contractor must notify DTMB-Procurement 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.

2.21.3 Call Center Disclosure

The Contractor and all Subcontractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of this Contract.

2.22 Extended Purchasing

2.22.1 MiDEAL (Michigan Delivery Extended Agreements Locally)

A. MiDEAL Requirements
   1. The Contractor must ensure that all purchasers are MiDEAL Members before extending the Contract pricing. A current listing of approved MiDEAL Members is available at: www.michigan.gov/mideal.
   2. The Contractor must submit quarterly reports of MiDEAL purchasing activities to DTMB-Purchasing Operations.
   3. The Contractor must submit invoices to and receive payment from MiDEAL Members on a direct and individual basis.
   4. Estimated requirements for MiDEAL members are not included in the quantities shown in this CONTRACT, unless otherwise noted.
   5. The State of Michigan reserves the right to negotiate additional discounts based on any increased volumes by MiDEAL members.

2.22.2 State Administrative Fee

Reserved

2.22.3 State Employee Purchase Requirements

Reserved.

2.22.4 COOPERATIVE PURCHASING

(a) This Contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between the State of Michigan and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in this Contract if such State allows participation by such entities.
(b) All MiDEAL processes, invoicing relationships, reporting and MiDEAL Service Fees also apply to cooperative purchasing participants.
(c) The State of Michigan reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

2.23 Laws

2.23.1 Governing Law

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.

2.23.2 Compliance with Laws

The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the Deliverable(s).

2.23.3 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 Ingham 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.

2.23.4 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.

2.23.5 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, *et seq*., the State 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 the State, 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, the State 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.

2.23.6 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. The State 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 the State in accordance with Section 2.3.6, Notices; (iii) notify any entities required by law; and (iv) take appropriate health and safety precautions.

(b) The State 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. The State may remove the Hazardous Material, render it harmless, or terminate the affected work for the State'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.

2.23.7 Freedom of Information

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

2.23.8 Workplace Safety and Discriminatory Harassment

In performing this Contract, the Contractor must comply with Civil Service Rule 2-20, Workplace Safety, and Rule 1-8.3, Discriminatory Harassment. In addition, the Contractor must comply with any applicable agency rules provided to the Contractor. For Civil Service Rules, see http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html.

2.23.9 Prevailing Wage

If the Michigan Department of Energy, Labor and Economic Growth establishes rates of wages and fringe benefits to be paid to each class of individuals employed by the Contractor and all Subcontractors, the wages and fringe benefits must not be less than those established for the locality where the work is to be performed.

2.23.10 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.

2.24 General Provisions

2.24.1 Bankruptcy and Insolvency

The State 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 the State 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 the State. To the extent reasonably possible, work-in-progress must be stored separately from other stock and marked conspicuously with labels indicating State ownership.

2.24.2 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 the State, and only in accordance with the instructions from the State.

2.24.3 Contract Distribution

DTMB-Procurement retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by DTMB-Procurement.

2.24.4 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses, and approvals for the delivery, installation, and performance of the Contract.

2.24.5 Website Incorporation

The State is not bound by any content on the Contractor's website unless incorporated directly into this Contract.

2.24.6 Future Bidding Preclusion

The Contractor may not use its position on this Contract to gain an improper advantage for bidding on a future RFP. The State reserves the right to disqualify the Contractor from bidding on a future RFP on this basis.

2.24.7 Antitrust Assignment

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

2.24.8 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as mandated by federal disaster response requirements, Contractor personnel dedicated to providing Deliverable(s) under this Contract will provide the State with priority.

2.24.9 Legal Effect

The State 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.

2.24.10 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.

2.24.11 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 (2.1.1, Contract Term, 2.24.9, Legal Effect, 2.2.2, Payment Deadlines, 2.14, Insurance, 2.15, Indemnification, 2.16, Termination, 2.23, Governing Law, 2.15.7, Limitation of Liability);

(b) The most recent Statement of Work related to this Contract;

(c) All sections from Article 2 - 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.

The parties agree that these terms supersede the terms of any shrink-wrap or click-thru license agreement that may be included with the Deliverable(s).

2.24.12 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.

2.24.13 Form, Function and Utility

If this Contract is for statewide use, but the Deliverable(s) does not the meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the Deliverable(s) from another source.

2.24.14 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.

2.24.15 Approval

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

2.24.16 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.

2.24.17 Survival

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

SIGNATURE AUTHORITY

I/We certify that the undersigned is authorized to submit bids/quotations on behalf of the bidder and the information provided in response to the RFP is true and accurate.

ACD.net (d.b.a. ACD Telecom)
Name of Bidder

1800 N. Grand River Ave.
Lansing, MI 48906

Address of Bidder

517-999-3242, 517-999-4242
Telephone and Fax No. of Bidder

devine.chris@acd.net
E-mail Address of Bidder

Signature of Bidder's Authorized Representative

Business Sales Manager
Title of Bidder Representative

3/8/12
Date

Additional Signature
Bidder's Authorized Representative

Title of Bidder Representative

Date

Attachment 1, Price Proposal

Updated table below with new costs indicated. This assumes placement of access points where the existing wireless access points are located using the existing wiring. The only caveat noted is that the 'Total One Time Cost for Growth Unit' includes Access Point Hardware and labor but includes no wiring for new drops as that would be too variable to predict.

Option II as Modified is selected:

	One Time Equipment, Licensing, Implementation Cost	One Time Installation Costs	Total One Time Cost	Monthly Recurring
Option I – As proposed in bid response (31 access points) New cable & equipment, redundancy throughout	$100,737,869.00	$19,500.00	$100,757.69	$349.95
Option II – 80% strength, lower tier box (37 access points), new equipment throughout, no redundancy	$38,000.00	$19,500.00	$57,500.00	$349.95
Option III – Removal of the redundant controller, reduce hardware by 8%, new cable, etc.	$64,000.00	$19,500.00	$83,500.00	$349.95
Option II As Modified above, new access boxes (11 boxes initially-replacing current access points) one new controller, switches between floors, re-use cable, no redundancy	**$22,000**	**$2,500**	**$24,500**	**$220**
Growth Unit Rate			**$900**	**$20**

Nathan Robertson
Adna Technologies
http://www.AdnaTechnologies.com
517-679-3300 x201

Attachment 2

Service Level Agreement (SLA)

Service Level Agreement

ACD.nets' service level agreement guarantees Wide Area Network Transport, Fiber Optic services, internet and phone service availability at 99.999% 24x7x365. The ACD.net network is the combination of ACD.net operated equipment, servers, circuits, and other data transmission facilities comprising ACD.Net TCP/IP wide area network. ACD.net network will be measured on the number of minutes that the ACD.net network was not available as determined by ACD.net's Network Bandwidth Monitoring SNMPC statistics.

ACD.net's service level agreement is to have the ACD.net Network (as defined in the applicable service agreement) available 99.999% 24x7x365, and as set forth below, ACD.net will credit Customer's account if ACD.net fails to meet this availability guarantee during any given calendar month. In addition, if ACD fails to meet this service level for any two consecutive months, then at the customer's option the agreement may be canceled at any time.

At Customer's request, ACD.net will calculate Customer's "Network Unavailability" in a calendar month. "Network Unavailability" consists of the number of minutes that the ACD.net Network, or an ACD.net owned telephone company circuit, was not available to Customer, but will not include unavailability continuing for an hour or less which Customer fails to report to ACD.net within five days, or any unavailability resulting from: (a) ACD.net Network maintenance; (b) ACD.net ordered telephone company circuits; (c) Customer's applications, equipment, or facilities; (d) Customers equipment is not ACD.net approved; (e) acts or omissions of Customer, or any use or user of the service authorized by Customer; (f) Latency or unavailable facilities out of ACD.net's network; or, (g) reasons of Force Majeure (as defined in the applicable service term agreement).

For each cumulative hour of Network Unavailability or fraction thereof in any calendar month, Customer's account shall be credited for the pro-rated charges for one day of the ACD.net Monthly Fee for the service with respect to which this Agreement has not been met.

Customer is solely responsible for providing ACD.net accurate and current contact information for Customer's designated points of contact. ACD.net will be relieved of its obligations under this Customer Reporting Guarantee if ACD.net's contact information for Customer is out of date or inaccurate due to Customer's action or omissions or if ACD.net's failure is due to reasons of Force Majeure (as defined in the applicable service term agreement).

KEPS Technologies, Inc., d/b/a ACD.net	Business Name:
By: Mr. Steve Schoen	By:
_____	_____
Title: Vice President	Title:
Date _____/_____/2012	Date _____/_____/2012