



STATE OF MICHIGAN PROCUREMENT

Department of Natural Resources

525 West Allegan, Constitution Hall, Third Floor / North Tower
Lansing, MI 48933

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **23000000052**

between

THE STATE OF MICHIGAN

and

CONTRACTOR	MediaMation, Inc.
	2520 West 237 th Street
	Torrance, CA 90505
	Claudia Tholen, Contracts Manager
	310-320-0696
	claudia@mediamation.com
	CV0066886

STATE	Program Manager	Linda Walter	DNR
		313-396-6876	
STATE	Contract Administrator	WalterL4@michigan.gov	
		Lisa Crozier-Green	DNR
		517-388-6626	
		CrozierGreenL@michigan.gov	

CONTRACT SUMMARY

DESCRIPTION: Annual maintenance, repair, reprogramming, system enhancement and troubleshooting of the motion simulator bases at the DNR Outdoor Activity Center (OAC) in Detroit, Michigan, through a combination of on-site visits and remotely through a stand-alone network connection.

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
October 1, 2022	September 30, 2027	FIVE 1-Year Options to Renew	September 30, 2027

PAYMENT TERMS	DELIVERY TIMEFRAME
Net 45	N/A

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS
N/A

MISCELLANEOUS INFORMATION

THIS IS NOT AN ORDER: Orders will be placed directly by the DNR via the authorized document established in Schedule A, Section 5.1. Authorizing Documents and per the terms, conditions, specifications, and pricing of this Contract.

The terms and conditions of this Contract are those of ITN 2200000071, this Contract Agreement and the vendor's quote dated October 1, 2022. In the event of any conflicts between the specifications and / or 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

FOR THE CONTRACTOR:

MediaMation, Inc.

Company Name

E-SIGNED by Daniel Jemele
on 2022-10-18 17:35:51 EDT

Authorized Agent Signature

Daniel R. Jamele, CEO

Authorized Agent (Print or Type)

2022-10-18 17:35:51 UTC

Date

FOR THE STATE:

E-SIGNED by Laura Gyorkos
on 2022-10-19 10:44:54 EDT

Signature

Laura L. Gyorkos, Procurement Services Manager

Name & Title

Department of Natural Resources

Agency

2022-10-19 10:44:54 UTC

Date

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and MediaMation, Inc. (“**Contractor**”), a California Corporation. This Contract is effective on October 1, 2022 (“**Effective Date**”), and unless terminated, will expire on September 30, 2027 (the “**Term**”).

This Contract may be renewed for up to FIVE 1-Year Options to Renew. Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

- 1. Duties of Contractor.** Contractor must perform the services and provide the deliverables (the “**Contract Activities**”) described in a Statement of Work; the initial Statement of Work is attached as Schedule A – Statement of Work. An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities unless otherwise specified in a Statement of Work.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) assign to the State any claims 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; (i) comply with all State physical and IT security policies and standards which will be made available upon request; and (j) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

- 2. Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Lisa Crozier-Green Department of Natural Resources 525 West Allegan, Constitution Hall, 3 rd Floor Lansing, MI 48933 CrozierGreenL@michigan.gov 517-388-6626	Claudia Tholen, Contracts Manager MediaMation, Inc. 2520 West 237 th Street Torrance, CA 90505 claudia@mediamation.com 310-320-0696 (p) 310-320-0699 (f)

3. **Contract Administrator.** The Contract Administrator, or the individual duly authorized for each party, is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

State:	Contractor:
Lisa Crozier-Green Department of Natural Resources 525 West Allegan, Constitution Hall, 3 rd Floor Lansing, MI 48933 CrozierGreenL@michigan.gov 517-388-6626	Claudia Tholen, Contracts Manager MediaMation, Inc. 2520 West 237 th Street Torrance, CA 90505 claudia@mediamation.com 310-320-0696 (p) 310-320-0699 (f)

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

State:	Contractor:
Linda Walter, Director Outdoor Adventure Center 1801 Atwater Street Detroit, MI 48207-4020 WalterL4@michigan.gov 313-396-6876 (p) 313-567-0160 (f)	Thomas Durden, Service Manager MediaMation, Inc. 2520 West 237 th Street Torrance, CA 90505 techsupport@mediamation.com 310-320-0696 (p) 310-320-0699 (f)

5. **Performance Guarantee.** Contractor must always have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in a Statement of Work) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or otherwise result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

TABLE 6.1

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: \$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 Products/Completed Operations \$2,000,000 General Aggregate	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19.
Umbrella or Excess Liability Insurance	
Minimum Limits: \$5,000,000 General Aggregate	Contractor must have their policy follow form.
Automobile Liability Insurance	
Minimum Limits: \$1,000,000 Per Accident	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
Minimum Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease	
Professional Liability (Errors and Omissions) Insurance	
Minimum Limits: \$3,000,000 Each Occurrence \$3,000,000 Annual Aggregate	

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the Effective Date of the Contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least 3 years after completion of the Contract Activities; and (c) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract Effective Date, Contractor must purchase extended reporting coverage for a minimum of 3 years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or delivery order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurance contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not to be construed in any manner as waiving, restricting, or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

- 7. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor. Neither party has authority to contract for nor bind the other party in any manner whatsoever.
- 8. Intellectual Property Rights.** If a Statement of Work requires Contractor to create any intellectual property, Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.
- 9. Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
- 10. Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel providing services by providing a notice to Contractor.
- 11. Background Checks.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, or as may be specified in a Statement of Work, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is

responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

- 12. Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
- 13. Change of Control.** Contractor will notify the State, within 30 days of any public announcement or otherwise once legally permitted to do so, of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all its obligations under this Contract.

- 14. Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in a Statement of Work.
- 15. Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in a Statement of Work. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 24, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities, and recover the

difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

- 16. Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in a Statement of Work. All containers and packaging become the State's exclusive property upon acceptance.
- 17. Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
- 18. Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in a Statement of Work. If the Contract Activities do not function as warranted during the warranty period, the State may return such non-conforming Contract Activities to the Contractor for a full refund.
- 19. Invoices and Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities provided as specified in a Statement of Work. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all fees are exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

Excluding federal government charges and terms, Contractor warrants and agrees that each of the fees, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent fees, economic or product term or warranty being offered to any commercial or government customer (including any public educational institution within the State of Michigan) of Contractor. If Contractor enters into any arrangements with another customer of Contractor to provide the products or services, available under this Contract, under more favorable prices, as the prices may be indicated on Contractor's current U.S. and International price list or comparable document, then this Contract will be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Contractor will immediately notify the State of such fee and formally memorialize the new pricing in a change notice.

- 20. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in a Statement of Work. The parties understand and agree that any liquidated damages (which includes but is not limited to applicable credits) set forth in this Contract are reasonable estimates of the State's damages in accordance with applicable law. The parties acknowledge and agree that Contractor could incur liquidated damages for more than 1 event. The assessment of liquidated damages will not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract for cause under Section 24 and the State will be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract. However, the State will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages. Amounts due the State as liquidated damages may be set off against any fees payable to Contractor under this Contract, or the State may bill Contractor as a separate item and Contractor will promptly make payments on such bills.
- 21. Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or delivery order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
- 22. Termination for Cause.** (a) The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (i) endangers the value, integrity, or security of any facility, data, or personnel; (ii) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (iii) engages in any conduct that may expose the State to liability; (iv) breaches any of its material duties or obligations under this Contract; or (v) fails to cure a breach within the time stated by the State in a notice of breach, if in its sole discretion the State has chosen to provide a time to cure. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.
- (b) If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (i) cease performance immediately. Contractor

must submit all invoices for Contract Activities accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due to Contractor for Contract Activities accepted by the State under this Contract or (ii) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 25, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. Contractor must promptly reimburse to the State any fees prepaid by the State prorated to the date of such termination, including any prepaid fees. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

- 23. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason or no reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately. Contractor must submit all invoices for Contract Activities accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due Contractor for Contract Activities accepted by the State under this Contract, or (b) continue to perform the Contract Activities in accordance with Section 26, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities to the extent the funds are available.
- 24. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period specified by the State (not to exceed **90** calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (d) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 25. Return of State Property.** Upon termination or expiration of this Contract for any reason, Contractor must take all necessary and appropriate steps, or such other action as the State

may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to the Contractor by any entity, agent, vendor, or employee of the State.

- 26. Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own cost and expense, if the State deems necessary. Contractor will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding.

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. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

The State is constitutionally prohibited from indemnifying Contractor or any third parties.

- 27. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against 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.

- 28. Limitation of Liability and Disclaimer of Damages. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS**

OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT. The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

- 29. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (3) any complaint filed in a legal or administrative proceeding alleging the Contractor or its subcontractors discriminated against its employees, subcontractors, vendors, or suppliers during the term of this Contract; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
- 30. State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing or commercial purposes.
- 31. Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties.
- a. **Meaning of Confidential Information.** For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; or, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was or is: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

- b. **Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) 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 or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. **Cooperation to Prevent Disclosure of Confidential Information.** Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. **Remedies for Breach of Obligation of Confidentiality.** Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. **Surrender of Confidential Information upon Termination.** Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

32. Records Maintenance, Inspection, Examination, and Audit. Pursuant to MCL 18.1470, the State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon

request, all records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension (“**Audit Period**”). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

- 33. Representations and Warranties.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 24, Termination for Cause.
- 34. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

- 35. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 36. Prevailing Wage.** Contractor must comply with prevailing wage requirements, to the extent applicable to this Contract.
- 37. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and [Executive Directive 2019-09](#). Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.
- 38. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 39. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in the Michigan Court of Claims. Complaints against the State must be initiated in Ingham County, Michigan. Contractor waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint an agent in Michigan to receive service of process.
- 40. Non-Exclusivity.** Nothing contained in this Contract is intended nor is to be construed as creating any requirements contract with Contractor, nor does it provide Contractor with a right of first refusal for any future work. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 41. Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
- 42. Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

- 43. Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without the prior written approval of the State, and then only in accordance with the explicit written instructions of the State.
- 44. Schedules.** All Schedules and Exhibits that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

Document Title	Document Description
Schedule A	Statement of Work
Schedule B	Vendor Price Quote

- 45. Entire Agreement and Order of Precedence.** This Contract, which includes Statement of Work, and schedules and exhibits, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Statement of Work; (b) second, Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES, OR DOCUMENTATION HEREUNDER, EVEN IF ATTACHED TO THE STATE'S DELIVERY OR PURCHASE ORDER, WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.
- 46. Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
- 47. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 48. Survival.** Any right, obligation or condition that, by its express terms or nature and context is intended to survive, will survive the termination or expiration of this Contract; such rights,

obligations, or conditions include, but are not limited to, those related to transition responsibilities; indemnification; disclaimer of damages and limitations of liability; State Data; non-disclosure of Confidential Information; representations and warranties; insurance and bankruptcy.

- 49. Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

Department of Natural Resources OAC Annual Service Agreement / Motion Simulator Bases Contract No. 230000000052

SCOPE

This is a Five-year Contract for annual maintenance, repair, reprogramming, system enhancement and troubleshooting of the motion similar bases installed at the DNR Outdoor Activity Center (OAC) in Detroit, Michigan.

Contract Activities will be provided through a combination on on-site visits and remotely through a stand-alone network connection which does not require access to the State of Michigan network. This Contract does not include maintenance or part replacement for the snowmobiles or ATVs mounted to the motion simulator bases.

REQUIREMENTS

1. General Requirements

1.1. Software

- A. The Contractor agrees to keep all application software up to date with the current version.

1.2 Availability and Pricing (Refer to Schedule B for Pricing)

- A. Contractor agrees to provide a block of 200 hours per year for programmer and technician time, at a fixed daily rate to perform:

- 1. Bi-Annual On-Site Visits
 - 2. Remote Programming
- B. Fixed rates for programmers, technicians, and expenses:
 - 1. Senior Programmer
 - 2. Programmer
 - 3. Technician
 - 4. Technician travel time allocation
 - 5. Per Diem
 - 6. In-Shop Repair – price / hour
 - 7. Ground Transportation
 - 8. Hotel Accommodations

- C. Travel expenses prior to, or beyond, the bi-annual maintenance visits will be billed separately.

- D. Hours beyond the 200-hour block will be billed separately at a negotiated hourly rate.

1.3 Bi-Annual On-Site Visits

- A. Contractor agrees to perform two on-site routine or emergency maintenance visits per year. On-site visits for motion simulators includes but is not limited to:
 - 1. Three (3) days of one (1) technician on-site

2. Two (2) days of travel
3. Replacement parts for the motion simulator bases
4. Online remote login, email, and phone support
5. Testing and verification of proper operation of motion bases
6. Software updates
7. Maintenance and Repair
8. Scheduling of site visits shall be done at least three weeks in advance

1.4 Technical Support

- A. Contractor agrees to provide technical support as outlined in Schedule B, Annual Price for Extended Warranty and Maintenance Package.
- B. Technical support is available 24 hours a day, 7 days a week, 365 days a year, however, technical support outside the service agreement will be billed at the rates stated in Schedule C, Section 2.0 Service Rates for Additional onsite visits, service, or repairs.
- C. The Contractor toll-free telephone number for technical support is: (310) 320-0696
- D. When providing technical support, the Contractor agrees to respond to the caller's issue within one hour.
- E. If the caller's issue cannot be resolved by remote access, the Contractor agrees to schedule on-site service. The Contractor agrees on-site service will be performed within 48 hours of the time the issue was scheduled for service.

2. Warranties, Quality Assurance, and Incentive Programs

2.1 Warranties

- A. Contractor agrees to provide all technical support as outlined in Schedule B Annual Price for Extended Warranty and Maintenance Package.
 1. Two (2) onsite routine or emergency maintenance visits per year. Each visit includes three (3) days of one (1) technician onsite and two (2) days of travel time.
 2. Replacement parts on all MediaMation hardware found on the motion simulator bases.
 3. Free software upgrades as they become available.
 4. Online remote login, email, and phone support:
 - a. Sixteen (16) hours support during business hours.
 - b. Eight (8) hours support after business hours.
 - c. Eight (8) hours support weekends, Holidays, and before business hours.
- B. The State reserves the right to require additional warranties.

2.2 Damage to State-owned or Leased or Citizen-owned Property

- A. In all instances where State-owned or leased, or Citizen-owned property or equipment is damaged, the Contractor agrees to notify the Program Manager or designee of the facts and extent of the damage:
 1. Verbally – within one hour of the damage or discovery of damage, and
 2. In writing within 24 hours of the damage or discovery of damage.
- B. The Contractor agrees to remain responsible for repair, replacement or cleanup as necessary to any State-owned or leased or Citizen-owned property due to carelessness, misuse or neglect of the Contractor, or any of the Contractor's personnel or subcontractors.
- C. In the event of Contractor liability for damages, the Contractor agrees:

1. The State will repair, replace or cleanup the damage.
2. The State will provide Contractor with documentary evidence (i.e., invoices, etc.) of the costs associated with the repair, replacement or cleanup, and
3. The Contractor will reimburse the State for the full amount of the repair, replacement or cleanup by either:
 - a. Forwarding payment in full within 45 days of receipt of the documentary evidence, or
 - b. By agreeing, in writing, to allow the State to hold back contractual payments until the cost for the repair, replacement or cleanup has been fully reimbursed to the State.

3. Service Requirements

3.1 Timeframes

- A. The Contractor agrees:
 1. Non-Emergency On-Site Visits shall be performed within twenty-one (21) calendar days from receipt of order.
 2. Emergency On-Site Visits shall be performed within 48 hours from receipt of order.
 3. Remote Programming shall be performed within ten (10) business days from receipt of order.
 4. The receipt of order date is pursuant to Standard Contract Terms.

4. Project Control and Reporting

4.1 Project Control

- A. Contractor Work Hours and Conditions
 1. Work hours are not to exceed eight (8) hours per day, forty (40) hours a week.
 2. Normal working hours of 8:00 a.m. to 5:00 p.m. are to be maintained, unless otherwise agreed to in writing.
 3. No overtime will be permitted.

4.2 Progress Report

- A. The Contractor agrees to submit a Progress Report to the Project Manager following each scheduled maintenance date.
- B. The Progress Report may be submitted with the billing invoice.
- C. Each Progress Report must contain:
 1. Hours:
 - a. Number of hours worked during the previous billing period
 - b. Number of cumulative total of hours worked to date for the project
 - c. Indicate whether the remaining hours are sufficient to complete the project
 - d. Detail the work performed during the reporting period
 - e. Indicate the amount of funds expended during the current reporting period
 - f. Indicate the cumulative total of funds expended to date for the project.

5. Staffing

5.1. Contractor Representative

- A. The Contractor agrees to appoint one individual specifically assigned to State of Michigan accounts who will respond to State inquiries regarding the Contract Activities, answer questions related to ordering and delivery, etc. (the “Contractor Representative”).
- B. The Contractor Representative will be available Monday – Friday, 8:00 a.m. – 5:00 p.m. P.S.T.

Thomas Durden, Service Manager
MediaMation, Inc.
2520 W. 237th Street
Torrance, CA 90505
techsupport@mediamation.com
(310) 320-0696 (p)
(310) 320-0699 (f)

5.2. Disclosure of Subcontractors

- A. The Contractor does not intend to utilize subcontractors.
- B. In the event the Contractor requires the use of a subcontractor, the Contractor agrees to disclose the following:
 - 1. The legal business name; address; telephone number; a description of subcontractor’s organization and the services it will provide; and information concerning subcontractor’s ability to provide the Contract Activities.
 - 2. The relationship of the subcontractor to the Contractor. Of the total bid, the price of the subcontractor’s work. Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.
 - 3. A complete description of the Contract Activities that will be performed or provided by

5.3. Security

- A. The Contractor agrees all staff performing Contract Activities in State facilities and on State property will be readily identifiable as Contractor employees by wearing uniforms and displaying ID badges.
- B. The Contractor agrees to ensure the security of State facilities by performing background checks and drug screening on employees.

6. Pricing

6.1. Price Term

- A. Pricing is firm for the entire length of the Contract.
- B. Service charges (annual service fees) are inclusive and include any travel expenses including hotel, mileage, meals, parking, etc. as specified in the Contractor’s pricing.
- C. Changes requested by the State, or additional costs outside the Contractor’s scope or beyond the Contractor’s control will be submitted to the State for approval via a formal Change Notice request.

6.2. Price Changes

- A. Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider

- sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.
- B. Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.
 - C. The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

7. Ordering

7.1. Authorizing Document

- A. The appropriate authorizing document for the Contract will be a properly executed Delivery Order.

8. Acceptance

8.1. Acceptance, Inspection and Testing

- A. The Contractor agrees that Contract Activities will not be considered complete until the Agency Project Manager has formally accepted them.
- B. Contract Activities for this project include:
 - 1. Two maintenance appointments per year, scheduled or emergency
 - 2. On demand programming changes
 - 3. Ordering replacement equipment

9. Invoice and Payment

9.1. Invoice Requirements

- A. The Contractor agrees all invoices submitted to the State shall include:
 - 1. Delivery Order number (Doc ID)
 - 2. Date
 - 3. Quantity
 - 4. Description of Contract Activities
 - 5. Unit price
 - 6. Shipping cost or travel expenses
 - 7. Total Price

9.2. Payment Methods

The State will make payment for Contract Activities by Electronic Funds Transfer (EFT) only.

10. Licensing Agreement

The Contractor agrees to provide a copy of any applicable licensing agreement.

11. Liquidated Damages

Late or improper completion of the Contract Activities will cause loss and damage to the State, and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$500 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

12. Additional Requirements

12.1. Environmental and Energy Efficiency Product Standards

The Contractor agrees to identify any energy efficient, bio-based, or otherwise environmentally friendly products used in the products. Contractor must include any relevant third-party certification, including the verification of a United States Department of Agriculture certified bio-based product label. Contractor must describe how products that meet these requirements are identified or otherwise labelled.

12.2. Hazardous Chemical Identification

In accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001, *et seq.*, as amended, the Contractor must provide a Material Safety Data Sheet listing any hazardous chemicals as defined in 40 CFR §370.2, to be delivered. Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item Number.

The Contractor agrees to identify any hazardous chemicals that will be provided under any resulting contract.

12.3. Mercury Content

Pursuant to MCL 18.1261d, mercury-free products must be procured when possible. The Contractor must explain if it intends to provide products containing mercury, the amount or concentration of mercury, and whether cost competitive alternatives exist. If a cost competitive alternative does exist, the Contractor must provide justification as to why the particular product is essential. All products containing mercury must be labeled as containing mercury.

12.4. Brominated Flame Retardants

The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible. The Contractor must disclose whether the products contain BFRs. Contractor must describe how products that meet these requirements are identified or otherwise labelled.

12.5 Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)

The Contractor agrees to disclose whether a product or its components contain intentionally added PFAS. If the product or its components contain intentionally added PFAS the Contractor must:

- a. provide an explanation with respect to the intentionally added PFAS contents, including the purpose for which PFAS are used in the product or its components, the types of PFAS used in the product or its components, and the amount of each PFAS used in the product or its components.

- b. indicate whether the product will be labeled or packaged with information about the intentionally added PFAS contents.
- c. identify any alternative products that do not contain intentionally added PFAS.
- d. provide any additional information that would further the Department's implementation of [ED 2021-08](#).

SCHEDULE B - PRICING

**Department of Natural Resources
OAC Annual Service Agreement / Motion Simulator Bases
Contract No. 23000000052**

1. The price proposed includes all costs currently anticipated which Contractor may charge the State.
2. The Contractor is not offering quick payment terms.
3. By submitting its proposal, the Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.
 - A. Estimated annual price based on 3% annual increase:
Year 1 - \$18,654.00 (Starting October 1st, 2022)
Year 2 - \$19,213.62
Year 3 - \$19,790.03
Year 4 - \$20,383.73
Year 5 - \$20,995.24
TOTAL for Five (5) years – \$99,036.52
 - B. Each subsequent year there may be an inflation price increase of 3%, or according to the Consumer Price Index report for the previous 12 months, whichever is greater.

The annual price for this plan includes the following:

1. Up to two (2) onsite routine or emergency maintenance visits per year. Each visit includes up to two (2) days of one (1) technician onsite and two (2) days of travel.
2. Replacement of defective parts, (purchased by the customer separately), on all MediaMation equipment. (Excludes original ATV and Snow mobile components not provided by MediaMation, Inc.)
3. Free Software upgrades as they become available
4. Annual online remote login, email, and phone support:
5. Sixteen (16) hours support during business hours
6. Eight (8) hours support after business hours
7. Eight (8) hours support during weekends, Holidays and before business hours

Exclusions:

1. Replacement parts for parts and equipment failure due to normal wear-and-tear, end user error, negligence, misuse, or operation of the system outside of its specifications or intended use, or any other problem resulting from components or circumstances outside the control or realm of the Contractor.
2. Internal or facility network issues
3. Third party manufactured parts and equipment not in the motion base(s), including: all audio and visual components (projector(s), speakers, etc.), rack mounted amplifiers /

- power supply, compressor, 3D glasses etc. Note: all third-party components maintain their standard manufacturer's warranty.
4. Other changes, modifications, new features, and any requested assistance above and beyond the regular maintenance and yearly trips outlined herein, i.e., non warranty visits, DCP resets, etc.
 5. Facility network issues and damage to theater because of third-party equipment failure will be billed separately.

Service Rates for additional onsite visits, service, or repairs:

1. Email / Phone / Login rates. First ten (10 minutes are free). Additional time billed in 15-minute increments.
 - Monday – Friday 8:00 a.m. – 6:00 p.m. E.S.T. \$125.00 / hour
 - Monday – Friday 6:00 p.m. – 12:00 a.m. E.S.T. \$250.00 / hour
 - Weekends and Holidays 12:00 a.m. – 8:00 a.m. E.S.T. \$350.00 / hour
2. Technicians, Overtime, In-Shop Repairs, Ground Transportation and Hotel
 - a. Senior Programmer \$1,200.00 / Day
 - b. Programmer \$1,000.00 / Day
 - c. Technician \$800.00 / Day
 - d. Technician Travel Time Allocation \$200.00 / Day
 - e. Overtime Time and a Half after 10 hours with maximum workday of 12 hours
 - f. In-Shop Repairs \$85.00 / hour
 - g. Per Diem Or \$50.00 / day
 - h. Ground Transportation Cost + 5%
 - i. Hotel Accommodations (three stars or better) Cost + 5%