



STATE OF MICHIGAN PROCUREMENT

Department of Corrections

206 E. Michigan Ave. Lansing MI 48933

PO Box 30003, Lansing MI 48909

CONTRACT CHANGE NOTICE

Change Notice Number 1
to
Contract Number 190000000863

CONTRACTOR	Brainchild Unlimited Inc.
	3050 Horseshoe Dr. Unit 218
	Naples FL 34104
	Debbie Haskett
	239-384-6184
	Debbie.hasket@brainchild.com
	VS0056900

STATE	Program Manager	Tony Costello	MDOC
		517-230-6754	
	CostelloT@@michigan.gov		
	Contract Administrator	Cathy Carr	MDOC
		517-241-2192	
	CarrC@michigan.gov		

CONTRACT SUMMARY				
DESCRIPTION: Hand-Held Stand Alone Educational Devices For Correctional Special Education Program				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
June 5, 2019	June 4, 2022	Seven – one year	June 4, 2022	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		5 Business Days ARO		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
None				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$105,000.00		\$144,000.00	\$249,000.00	
DESCRIPTION: Effective 9/1/19 this Contract is increased by \$144,000.00 for MDOC use.				

FOR THE CONTRACTOR:

Brainchild
Company Name

Debbie Haskett
Authorized Agent Signature

Debbie Haskett
Authorized Agent (Print or Type)

8/23/19
Date

FOR THE STATE:

Lia Gulick
Signature

Lia Gulick, Deputy Director
Name & Title

Michigan Department of Corrections
Agency

8-26-19
Date



STATE OF MICHIGAN PROCUREMENT

Department of Corrections
 206 E. Michigan Ave. Lansing MI 48933
 PO Box 30003, Lansing, MI 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. 19000000863

between
 THE STATE OF MICHIGAN
 and

517-	Brainchild Unlimited Inc.
	3050 Horseshoe Dr. Unit 218
	Naples FL 34104
	Debbie Haskett
	239-384-6184
	Debbie.haskett@brainchild.com
	VS0056900

STATE	Tony Costello	MDOC
	517-230-6754	
	CostelloT@michigan.gov	
	Cathy Carr	MDOC
	517-241-2192	
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<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
None			
MISCELLANEOUS INFORMATION			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			105,000.00

FOR THE CONTRACTOR:

Brainchild
Company Name

Debbie Haskett
Authorized Agent Signature

Debbie Haskett
Authorized Agent (Print or Type)

5/31/19
Date

FOR THE STATE:

Lia Gulick
Signature

Lia Gulick, Acting Deputy Director
Name & Title

Michigan Department of Corrections
Agency

6-10-19
Date



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“Contract”) is agreed to between the State of Michigan (the “State”) and Brainchild Unlimited Inc. (“Contractor”), a Florida Corporation. This Contract is effective on June 5, 2019 (“Effective Date”), and unless terminated, expires on June 4, 2022.

This Contract may be renewed for up to seven additional one year period(s). 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 described in **Schedule A – Statement of Work** (the “Contract Activities”). 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, and meet operational standards, unless otherwise specified in Schedule A.

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) not make any media releases without prior written authorization from the State; (i) 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; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) 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 actually 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:
Purchasing Michigan Department of Corrections Grandview Plaza, 5 th Floor PO Box 30003 Lansing, MI 48909	Debbie Haskett 3050 Horseshoe Drive, Suite 218 Naples, FL. 34105 Debbie.Haskett@brainchild.com (239) 384-6184 Direct (800) 811-2724, ext. 212

3. **Contract Administrator.** The Contract Administrator 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:
Cathy Carr, Buyer Michigan Department of Corrections Grandview Plaza, 5 th Floor PO Box 30003 Lansing, MI 48909 carrc@michigan.gov (517) 241-2192	Debbie Haskett 3050 Horseshoe Drive, Suite 218 Naples, FL. 34105 Debbie.Haskett@brainchild.com (239) 384-6184 Direct (800) 811-2724, ext. 212

Contract Manager. The Contract Manager for each party is the sole point of contact for each party on all contract related issues. The Contract Manager will work with the Contract Administrator/Buyer if there are reasons to modify any terms of this Contract:

State:	Contractor:
Destinie Shipman Michigan Department of Corrections Grandview Plaza, 5 th Floor PO Box 30003 Lansing, MI 48909 ShipmanD@michigan.gov (517) 335-2080	Debbie Haskett 3050 Horseshoe Drive, Suite 218 Naples, FL. 34105 Debbie.Haskett@brainchild.com (239) 384-6184 Direct (800) 811-2724, ext. 212

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:
Tony Costello Michigan Department of Corrections Grandview Plaza, 5 th Floor PO Box 30003 Lansing, MI 48909 CostelloT@michigan.gov (517) 230-6754	Debbie Haskett 3050 Horseshoe Drive, Suite 218 Naples, FL. 34105 Debbie.Haskett@brainchild.com (239) 384-6184 Direct (800) 811-2724, ext. 212

5. **Performance Guarantee.** Contractor must at all times 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 Schedule A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or 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.

Required Limits	Additional Requirements
Commercial General Liability Insurance	

<u>Minimum Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	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 2010 07 04 and CG 2037 07 04.
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Automobile Liability Insurance	
<u>Minimum Limits:</u> \$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	
<u>Minimum Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimum Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	

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 three (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 three (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 insurances 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. Reserved.

- 8. Extended Purchasing Program.** This contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal.

Upon written agreement between the State and Contractor, this contract may also be extended to: (a) other states (including governmental subdivisions and authorized entities) and (b) State of Michigan employees.

If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. The State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions.

Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

- 9. Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. 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.
- 10. 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.
- 11. Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
- 12. 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, 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.
- 13. 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.
- 14. Change of Control.** Contractor will notify within 30 days of any public announcement or otherwise once legally permitted to do so, the State 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 of its obligations under this Contract.

15. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.
16. **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 Schedule A. 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 23, 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.

17. **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 Schedule A. All containers and packaging become the State's exclusive property upon acceptance.
18. **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.
19. **Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Schedule A. 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.
20. **Terms of 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 performed as specified in Schedule A. 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. All prices 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.

21. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Schedule A.
22. **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.
23. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) 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 24, 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. 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.

24. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any 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, or (b) continue to perform the Contract Activities in accordance with Section 25, 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.
25. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time 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) taking 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 Contractor by any entity, agent, vendor, or employee of the State; (d) 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 (e) 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.

- 26. General 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 if the State deems necessary. Contractor will not, without the State's 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. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

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.

- 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 (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 purposes.
- 31. Reserved.**

32. 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. The provisions of this Section survive the termination of this Contract.

- 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; and, (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: (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.

33. Reserved.

34. Reserved.

35. Reserved.

- 36. Records Maintenance, Inspection, Examination, and Audit.** 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 financial and accounting 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 any 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.

- 37. Warranties and Representations.** 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 23, Termination for Cause.

- 38. 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.

- 39. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.

40. Reserved.

41. Reserved.

- 42. 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.

- 43. **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.
- 44. **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 Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
- 45. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 46. **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.
- 47. **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.

- 48. **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 prior written State approval, and then only in accordance with the explicit written instructions of the State.
- 49. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
- 50. **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:

Schedule A	Statement of Work
Schedule B	Pricing

- 51. **Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and schedules and exhibits which are hereby expressly incorporated, 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 Schedule A – Statement of Work; (b) second, Schedule A – 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 WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS

BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

52. **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.
53. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
54. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
55. **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.

Federal Provisions Addendum

The provisions in this addendum may apply if the purchase will be paid for in whole or in part with funds obtained from the federal government. If any provision below is not required by federal law for this Contract, then it does not apply and must be disregarded. If any provision below is required to be included in this Contract by federal law, then the applicable provision applies and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

- 1. Federally Assisted Construction Contracts.** If this contract is a “**federally assisted construction contract**” as defined in [41 CRF Part 60-1.3](#), and except as otherwise may be provided under [41 CRF Part 60](#), then during performance of this Contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of [Executive Order 11246](#) of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in [Executive Order 11246](#) of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in [Executive Order 11246](#) of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of [Executive Order 11246](#) of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. Davis-Bacon Act (Prevailing Wage)

- a. If applicable, the Contractor (and its Subcontractors) for **prime construction contracts** in excess of \$2,000 must comply with the Davis-Bacon Act ([40 USC 3141-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
- b. The Contractor (and its Subcontractors) shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and the laborers and mechanics;
- c. The Contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work;
- d. There may be withheld from the Contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the Contractor or any Subcontractor on the work the difference between the rates of wages required by the Contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the Contractor or Subcontractors or their agents.

3. **Copeland “Anti-Kickback” Act.** If applicable, the Contractor must comply with the [Copeland “Anti-Kickback” Act \(40 USC 3145\)](#), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
4. **Contract Work Hours and Safety Standards Act.** If the Contract is **in excess of \$100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with [40 USC 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)), as applicable.
5. **Rights to Inventions Made Under a Contract or Agreement.** If the Contract is funded by a federal “funding agreement” as defined under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
6. **Clean Air Act.** If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act (33 USC 1251-1387). Violations must be reported to the federal awarding agency and the regional office of the Environmental Protection Agency.
7. **Debarment and Suspension.** A “contract award” (see [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management \(SAM\)](#), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
8. **Byrd Anti-Lobbying Amendment.** If this Contract **exceeds \$100,000**, bidders and the Contractor must file the certification required under [31 USC 1352](#).
9. **Procurement of Recovered Materials.** Under [2 CFR 200.322](#), a non-Federal entity that is a state agency or agency of a political subdivision of a state **and its contractors** must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Byrd Anti-Lobbying Certification

The following certification and disclosure regarding payments to influence certain federal transactions are made under FAR 52.203-11 and 52.203-12 and [31 USC 1352](#), the "Byrd Anti-Lobbying Amendment." Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. [FAR 52.203-12](#), "Limitation on Payments to Influence Certain Federal Transactions" is hereby incorporated by reference into this certification.
2. The bidder, by submitting its proposal, hereby certifies to the best of his or her knowledge and belief that:
 - a. No federal **appropriated** funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress on his or her behalf in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, or cooperative agreement;
 - b. If any funds **other than federal appropriated funds** (including profit or fee received under a covered federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress on his or her behalf **in connection with this solicitation**, the bidder must complete and submit, with its proposal, [OMB standard form LLL, Disclosure of Lobbying Activities](#), to the Solicitation Manager; and
 - c. He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$150,000 must certify and disclose accordingly.
3. This certification is a material representation of fact upon which reliance is placed at the time of Contract award. Submission of this certification and disclosure is a prerequisite for making or entering into this Contract under [31 USC 1352](#). Any person making an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision is subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

Signed by:

Signature

Name and Title

Brainchild Unlimited Inc.

Date: _____

STATE OF MICHIGAN

Contract 19000000863 Hand-Held Stand-Alone Educational Device for Correctional Special Education Program

SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

SCOPE

This project consists of the following scope:

The Contractor must provide prisoners with access to educational programming, using a handheld device, in a closed system environment. The Contractor must provide the devices to the MDOC for use by offenders and will provide ABE/GED content in the list provided as Attachment A. The Contractor will provide training, if needed, to the MDOC staff and prisoners.

The State reserves the right to enter into other educational or handheld device pilots as it determines necessary.

The State reserves the right to add or delete products or programs to best meet the needs of the ordering entity.

REQUIREMENTS

1. General Requirements

1.1. Product Specifications

A. Study Buddy

- a. The device must have a security hardened backing, with fastenings into an integrated device for improved safety and security purposes within the secure correctional facility environment.
- b. Devices must be new, not used or refurbished
- c. Devices must be tamper-proof (i.e. enclosed in protective materials in such a way that prevents access to the inner workings of the device). The Contractor disclosed that the Study Buddy is assembled with one tamper proof security screw on the back which requires a special tool to remove. The Study Buddy is tamper-proof and enclosed in protective materials that prevent access to the inner workings of the device.
- d. Prisoners must not have the capability of leaving notes. The Contractor disclosed that the Study Buddies do not have a method for prisoners to leave notes, nor to save information in any way.
- e. Contractor must provide the most upgraded version of the product. Notification of upgrades must be sent in writing to the State Program Manager or designee and will require a written Change Notice to the contract.
- f. The following items that are included at no charge with the Study Buddy: charger, battery, stylus, carry case, and two content cartridges per device. The State may chose any two cartridges from the Contractor's content list. Additional cost may be charged for replacement of the charger or battery.
- g. The battery life must be a minimum of 5 years.
- h. The State is required to comply with the Americans with Disabilities Act of 1990 (ADA), and has adopted a formal policy regarding accessibility requirements for websites and software applications. The State is requiring that Contractor, where relevant, to level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0. Bidder may consider, where relevant, the W3C's Guidance on Applying WCAG 2.0 to Non-Web Information and Communications Technologies (WCAG2ICT) for non-web software and content. The State may require that Bidder complete a Voluntary Product Accessibility Template for WCAG 2.0 (WCAG 2.0 VPAT) or other comparable document for the proposed Solution. http://www.michigan.gov/documents/dmb/1650.00_209567_7.pdf?20151026134621. The Contractor disclosed that the device is ADA compliant.
- i. The device must have a clear case. The Contractor disclosed that the case is clear.

- j. The device must not allow connection to Wi-Fi or Internet. The Contractor disclosed that the circuitry of the device has no capability to connect to Wi-Fi or the Internet.

B. Education Cartridges Available.

- a. The Contractor must not advertise products or services to prisoners on devices, including advertisements in educational content.
- b. Educational suite must include a library of titles focusing on education, treatment, and vocational courses.
- c. The primary language must be English. The Contractor shall provide cartridges in Spanish if available.
- d. The Contractor must make additional material revisions or additions to the content available to the State when they are released.

C. Accessories

Contractor must provide replacement charging cords and replacement batteries.

1.2. Warranties

The Contractor provides a two year warranty against any and all manufacturer's defects.

If there are deficiencies in the deliverables, the State will notify the Contractor by email of the deficiencies. The Contractor will have 30 calendar days to correct and resubmit the deliverables at no cost to the State. Deficiencies in the deliverables are determined solely at the discretion of the State. The Contractor is solely responsible to coordinate the refund/return/replacement of damaged and/or flawed products.

1.3. Recall Requirements and Procedures

In the event of a recall, the Contractor must immediately notify MDOC Contract Administrator, Contract Manager or designee, and Program Manager by email. The Contractor must provide instructions detailing the process to return the products to the Contractor at the expense of the Contractor. The Contractor is solely responsible for notifying MDOC and coordinating the return of the products.

1.4. Quality Assurance Program

The Contractor follows MILQ manufacturing standards with inspections performed at multiple stages of the manufacturing process. Each Study Buddy unit is individually tested at the factory before release. The test process includes power on, audio/volume check, screen check, and software cartridge interface confirmation. Software cartridges are made to order at Brainchild offices and checked before shipping.

Devices and educational cartridges received must demonstrate functionality upon delivery and inspection. The State may issue a credit as outlined in the Service Level Agreement if a minimum of 99.5 percent of the devices and/or cartridges do not demonstrate functionality at the point of delivery.

1.5. Incentives

The Contractor provides tier pricing as outlined in the Schedule B, Pricing.

1.6. Minimum Order

There is no minimum order quantity.

There is no specific guarantee of the number of orders that will be placed or total quantity ordered during the contract period.

1.7. Incorrectly Filled Orders

The Contractor will replace incorrectly filled orders. All returns for incorrectly filled orders must be at no cost to the State.

The Contractor is solely responsible to coordinate the refund/return/replacement of incorrectly filled orders.

1.8. Return Policy and Procedure

In the event that the State wants to return the items for reasons other than warranty, defects, or incorrectly filled orders, the Contractor will, within 30 calendar days for shipping software cartridges, allow the State to exchange the cartridges for other software cartridges. There is no restocking fee for returns of cartridges. The Contractor does not accept returns of units that have been intentionally damaged.

2. Service Levels

The Contractor certifies they accept the attached Service Level Agreement (SLA)

2.1. Time Frames

Contract Activities must be delivered within 5 business days from receipt of order. The receipt of order date is pursuant to Section 2, Notices, of the Standard Contract Terms.

The State intends to place an initial order of 400 units with 800 cartridges. The initial order must be delivered within 5 business days from receipt of order.

2.2. Delivery

Deliveries will be accepted 8:00 a.m. through 5:00 p.m., EST/EDT Monday through Friday, excluding State of Michigan holidays. The State of Michigan holidays are: New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, General Election Day on even numbered years, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas eve, Christmas Day, and New Year's eve.

Delivery address will be stated on the Delivery Order.

The State reserves the right to add, delete, or change the delivery addresses.

2.3. Reserved

2.4. Reserved

2.5. Reserved

2.6. Reserved

2.7. Reporting

The Contractor must provide various reports to the MDOC Contract Administrator, Contract Manager or designee, Program Manager, or designees, upon request. Examples may include itemized reports of total items purchased by MDOC, open invoice reports, delivery compliance reports, quality reports, and proof of delivery documentation.

The Contractor must proactively update the Contract Administrator, Contract Manager or designee and Program Manager of industry shifts and trends; as well as new products offered when such information becomes available.

2.8. Meetings

The Contractor must attend the following meetings:

The Contractor is required to participate in a kick-off meeting scheduled by the MDOC. The kick-off meeting is expected to be scheduled within 30 calendar days of the Effective Date of the Contract. The kick-off meeting may be conducted by phone.

The State may request other meetings as it deems appropriate.

3. Staffing

3.1. Contractor Representative

The Contractor must notify the Contract Administrator immediately upon removing or assigning a new Contractor Representative.

The Contractor Representative specifically assigned to the MDOC account is:

Debbie Hassett, Senior Educational Representative

3050 Horseshoe Dr. Unit 218

Naples, FL 34104

Phone: 239-384-6484

Debbie.haskett@brainchild.com

The Contractor Representative shall be located within the continental United States.

The Contractor must provide the name, title, telephone number, fax number, email address and physical location of the Customer Service Representative to the Contract Administrator in the event of assigning a new Contractor Representative.

3.2. Reserved

3.3. Reserved

3.4. Reserved

3.5. Customer Service Toll-Free Number

The Contractor must have a toll-free number for the State to make contact with the Contractor Representative. The toll free number is 800-811-2724. The Contractor Representative must be available for calls during the hours of 8 am to 5 pm EST/EDT.

3.6. Reserved

3.7. Disclosure of Subcontractors

The Contractor has disclosed that it does not use subcontractors for this Contract. Changes to the subcontractor must be approved by the State through the issuance of a Contract Change Notice. If the Contractor changes subcontractor/manufacturers, the State reserves the right to require new samples for testing and approval.

If the Contractor proposes to change subcontractors, the Contractor shall disclose to the MDOC Contract Administrator the following:

- The legal business name; address; telephone number;
- A description of subcontractor's organization and the services it will provide;
- Information concerning subcontractor's ability to provide the contract activities;
- The relationship of the subcontractor to the Contractor;
- Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship;
- A complete description of the Contract Activities that will be performed or provided by the subcontractor;
- Of the total cost, the price of the subcontractor's work.

3.8. Security

The Contractor's staff may be required to make deliveries to or enter MDOC facilities.

The Contractor will be subject to the following security procedures:

1. All Contractor and subcontractor staff working on the Contract must undergo a security and background check, to include at a minimum ICHAT <http://apps.michigan.gov/ichat/home.aspx>, to be performed by the Contractor at its expense.
2. The Contractor's and subcontractor's staff who are entering an MDOC facility must be Law Enforcement Information Network (LEIN) cleared by the MDOC prior to facility entry. The Contractor must submit the LEIN information to the MDOC Program Manager at least 72 hours prior to the facility visit. If an employee of the Contractor or subcontractor has a felony or misdemeanor conviction (excluding minor driving offenses), that employee may not be permitted to enter any MDOC facility. The LEIN check is no cost to the Contractor.
3. The Contractor's and subcontractor's staff may be required to complete and submit an RI-8 Fingerprint Card for Finger Print Checks to the MDOC.
4. The Contractor must anticipate delays when visiting any facility due to issues within that facility.
5. All vehicles entering an MDOC facility must be inspected before entry of the secure perimeter.
6. The MDOC reserves the right to deny access to any facility to any Contractor(s)/ subcontractor(s) staff members who fails to comply with any applicable State, Federal or local law, ordinance or regulation or whose presence may compromise the security of the facility, its members or staff.

7. Weapons, alcoholic beverages, poison, and prescription drugs and controlled substances without written certification of needs from a license physician (does not include medical supplies for the facility), cellular devices, cameras, and audio or visual recording devices are prohibited from being brought into all MDOC correctional facilities. Tobacco products and smoking also are prohibited both inside a correctional facility and on facility grounds except as specifically authorized by MDOC policy. Wardens may prohibit other items from being brought into their respective correctional facilities. Smoking is prohibited.
8. The MDOC may require the Contractor's and subcontractor's personnel to wear State-MDOC issued identification badges.

4. Pricing

4.1. Price Term

Pricing is firm for the initial base term of the Contract. Adjustments may be requested, in writing, by either party during an option year and will be firm for 365 calendar days after the effective date of the price change. The State prefers a 60 calendar day notice prior to exercising an option year.

If the product is subject to a government issued tariff surcharge, the surcharge must be listed as a separate line item in the pricing schedule. The Contractor must adjust or remove the tariff surcharge immediately if it is rescinded or decreased by the government.

The Contractor must quote prices "F.O.B. Destination, within Government Premises" with transportation charges included in the unit price on all orders that meet the minimum order requirement if specified in Section 1.5, Minimum Order. The State will not pay any freight.

4.2. Price Changes

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.

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.

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.

4.3 Reserved

5. Ordering

5.1. Authorizing Document

The appropriate authorizing document for the Contract will be a Purchase Order release from the Contract referred to in the State's new SIGMA software as a Delivery Order (DO). The Contractor is not authorized to begin performance until receipt of a Purchase Order.

5.2 Order Verification

The Contractor must have internal controls, approved, to verify abnormal orders and to ensure that only authorized individuals place orders.

6. Delivery

6.1. Delivery Programs

The Contractor's delivery program is standard delivery with no limitations.

The Contractor intends to use UPS as its transportation method.

6.2. Packaging and Palletizing

Packaging must be optimized to permit the lowest freight rate. Shipments must be palletized whenever possible using manufacturer's standard 4-way shipping pallets.

The Contractor must include a packing slip with each delivery. The packing slip must be enclosed in an envelope and attached to the outer side of palletized material for easy access. The packing slip must include the Contractor's name, contract number, purchase order number called a Master Agreement (MA) in the state's software, date, deliverable, shipped quantity, quantity on backorder, and name of the MDOC facility. The packing slip must be written in English.

7. Acceptance

7.1. Acceptance, Inspection and Testing

The State will use the following criteria to determine acceptance of the Contract Activities:

Signing for the delivery does not constitute acceptance. Acceptance occurs when the State has verified: the requested quantities are delivered in the requested time frame, product is verified to conform to the specifications of the contract, and the quantities are verified with the purchase order and shipper. There is no time limit for MDOC to verify the products conform to specifications of the contract or the quantities are accurate.

7.2. Reserved.

8. Invoice and Payment

8.1. Invoice Requirements

All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price.

Invoices should be received by MDOC within 30 calendar days of delivery of goods. Receipt of invoice is the date MDOC receives a complete and correct invoice.

Invoices may be emailed to MDOCAP@michigan.gov. Questions and concerns regarding payment may also be emailed to MDOCAP@michigan.gov.

Payment terms are stated in the Notice of Contract.

8.2. Payment Methods

The State will make payment for Contract Activities via Electronic Funds Transfer (EFT). The Contractor is required to register to receive payments by EFT <http://www.michigan.gov/SIGMAVSS>.

10. Reserved.

11. Support and Operations

Contractor accepts the State's Service Level Agreement (SLA) attached as Schedule C with no exceptions.

12. Additional Requirements

12.1. Environmental and Energy Efficient Products

The Contractor disclosed that it does not use environmental and energy efficient products at this time. If the Contractor provides energy efficient products in the future, the Contractor must provide certifications to the State if requested.

If there are changes in the environmental and energy efficient products, the Contractor must notify the Contract Administrator, Contract Manager, and Program Manager by email and identify any energy efficient, bio-based, or otherwise environmentally friendly products used in the products. Contractor must include any relevant third-party certification, if requested.

12.2. Hazardous Chemical Identification

The Contractor disclosed that there are no hazardous chemicals in the product.

If there are any changes that affect the hazardous chemical identification, the Contractor must notify the Contract Administrator, Contract Manager, and Program Manager by email and identify any hazardous chemicals that will be provided or applied to the commodity furnished under the contract prior to shipping the product.

12.3. Mercury Content

Pursuant to MCL 18.1261d, mercury-free products must be procured when possible.

The Contractor disclosed that the products are mercury free.

If there are any changes that affect the mercury content, the Contractor must notify the Contract Administrator, Contract Manager, and Program Manager by email and must explain the amount or concentration of mercury, and whether cost competitive alternatives exist. If cost competitive alternatives do not exist, the Contractor must provide justification as to why the particular product is essential.

12.4. Brominated Flame Retardants

The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible.

The Contractor disclosed that the products do not contain Brominated Flame Retardants.

If there are any changes that affect BFR content, the Contractor must notify the Contract Administrator, Contract Manager, and Program Manager by email and must disclose the BFRs contents.

STATE OF MICHIGAN

**Contract 19000000863
Hand-held Stand-alone Educational Device for Correctional Special Education Program
SCHEDULE B
PRICING**

Item #	Description	UOM	Unit Price
SB-01	Study Buddy device – Quantities of 400 and more.	EA	\$250.00
SB-01	Study Buddy device – Quantities of 101 - 399	EA	\$275.00
SB-01	Study Buddy device – Quantities of 100 and less	EA	\$301.99
SB-Batt	Replacement battery	EA	\$20.00
	Replacement USB charger	EA	\$20.00
	Additional/Future cartridges	EA	\$40.00

Contract 19000000863
Hand-held Stand-alone Educational Device for Correctional Special Education Program
Attachment A
Cartridges

Michigan Cartridges – State Standards

Grade Level 1 Math
Grade Level 2 Math
Grade Level 3 Math
Grade Level 4 Math
Grade Level 5 Math
Grade Level 6 Math
Grade Level 7 Math
Grade Level 8 Math
Grade Level 1 Language Arts
Grade Level 2 Language Arts
Grade Level 3 Language Arts
Grade Level 4 Language Arts
Grade Level 5 Language Arts
Grade Level 6 Language Arts
Grade Level 7 Language Arts
Grade Level 8 Language Arts

Basic Series Cartridges

Science – Elementary School
Science – Middle School
Social Studies (Civics, US History, Economics)
Algebra 1 (EOC)
Science – Elementary School – **Spanish**
Science – Middle School – **Spanish**

Mechanics Cartridges – Basic Skills

Math – Level 1 (Grades 1-3)
Math – Level 2 (Grades 3-5)
Math – Level 3 (Grades 5 – 8)
Reading, Vocabulary & Writing – Level 1
Reading, Vocabulary & Writing – Level 2
Reading, Vocabulary & Writing – Level 3
Math – Level 1 – **Spanish**
Math – Level 2 - **Spanish**
Math – Level 3 – **Spanish**
Reading, Vocabulary & Writing – Level 1- **Spanish**
Reading, Vocabulary & Writing – Level 2 - **Spanish**
Reading, Vocabulary & Writing – Level 3- **Spanish**

GED Cartridges – General Equivalency Diploma/Degree

GED Language Arts
GED Math – Algebraic Problem Solving
GED Math – Quantitative Problem Solving
GED Language Arts – **Spanish**
GED Math – Algebraic Problem Solving – **Spanish**
GED Math – Quantitative Problem Solving – **Spanish**

HiSET Cartridges – General Equivalency Diploma/Degree

HiSET Language Arts

HiSet Math
HiSet Science

Additional Cartridges may become available during the term of the contract.



MICHIGAN DEPARTMENT OF CORRECTIONS

PROCUREMENT, MONITORING, AND COMPLIANCE DIVISION

Agency/Vendor: Brainchild Unlimited Inc. (Hand-held Stand-alone Educational Device for Correctional Special Education Program)

Contract #: 190000000863

Effective Date: 06/5/2019

Metric 1: Timely Delivery

Definition and Purpose

The Contractor will fulfill orders of Hand-held Stand-alone Educational Devices, educational module chips and associated accessories and any ordered replacements within the specified time frame of the initiation of the order in accordance with Request for Proposals (RFP) Schedule A: Scope of Work; Requirements; Section 2.1: Services Levels; Time Frames

Data Source:

Delivery Order date (Initiation date)
Delivery Fulfillment date (From Order Tracking)

Methodology:

The Michigan Department of Corrections (MDOC) will review the supplies receipt date against the original order date

Acceptable Standard:

The Shipping Label/Invoice must indicate the order was delivered within the specified time frame of the initial order date. Each business day past the specified time frame is an occurrence.

Service Level Credit

A 5% credit of the original invoiced amount will be assessed for each occurrence that fails to meet the Acceptable Standard. Any credit that is assessed will be deducted from the invoice at time of payment.