

**STATE OF MICHIGAN  
 DEPARTMENT OF CORRECTIONS  
 PROCUREMENT**

206 E. Michigan, Ave.  
 Lansing, MI 48933

P.O. Box 30003  
 Lansing, MI 48908

**CHANGE NOTICE NO. 4  
 to  
 CONTRACT NO. 472B2200118  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Aberdeen Road Company DBA Herculite Products Inc. 105 E. Sinking Springs Lane, PO Box 435 Emigsville, PA 17318	Carol Deller	CDELLER@HERCULITE.COM
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(800) 772-0036	9384

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	Corrections	Kathleen Kimmel	(517) 780-5069	KimmelK@michigan.gov
CONTRACT ADMINISTRATOR	Corrections	Cathy Carr	(517) 241-2192	CarrC@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Mattress and Pillow Ticking Fabric, MDOC/MSI			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 20, 2012	September 19, 2015	Two-one year	September 19, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
1%, 15 Days, Net 45		30 Days ARO	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
See Section 1.4.2 for specific quantities			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 Year	<input type="checkbox"/>		September 19, 2017
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
align="center">\$514,240.00		\$120,000.00	align="center">\$634,240.00	
DESCRIPTION: The second option year contract is hereby exercised; therefore, the contract expiration date is hereby CHANGED to September 19, 2017. The Contract is increased by \$120,000.00. The new Contract value is \$634,240.00. All other specifications, terms and conditions of this Contract remain the same. In the event of any conflict between the specifications, terms and conditions indicated by the Michigan Department of Corrections (MDOC), Michigan State Industries (MSI) and those of indicated by the Contractor, those of MDOC/MSI take precedence.				

**FOR THE CONTRACTOR:**

Aberdeen Road Co. dba  
Hermitite Products

Company Name

Leslie Haddad, d.

Authorized Agent Signature

Leslie Haddad, d.

Authorized Agent (Print or Type)

2-2-16.

Date

**FOR THE STATE:**

J. Sherry

Signature

Jeri Ann Sherry, Deputy Director

Name & Title

Department of Corrections

Agency

2/8/16

Date

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
 PROCUREMENT  
 P.O. BOX 30028, LANSING, MI 48909  
 OR  
 525 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 3**  
 to  
**CONTRACT NO. 472B2200118**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Aberdeen Road Company DBA Herculite Products Inc. 105 E. Sinking Springs Lane, PO box 435 Emigsville, PA 17318	Carol Deller	CDELLER@HERCULITE.COM
	PHONE (800) 772-0038	VENDOR TAX ID # (LAST FOUR DIGITS ONLY) 9384

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	Corrections	Kathleen Kimmel	617-780-5068	KimmelK@michigan.gov
CONTRACT ADMINISTRATOR	Corrections	Cathy Carr	617-241-2192	CarrC@michigan.gov

CONTRACT SUMMARY			
<b>DESCRIPTION:</b> Mattress and Pillow Ticking Fabric, MDOC/MSI			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 20, 2012	September 19, 2015	Two - one year	September 19, 2015
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Net 1%, 15 Days, Net 45	Destination	Various Points	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
See Section 1.4.2 for specific quantities			

DESCRIPTION OF CHANGE NOTICE				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF EXTENSION/OPTION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	One year	September 19, 2016
CURRENT VALUE	VALUE/COST OF CHANGE NOTICE		ESTIMATED REVISED AGGREGATE CONTRACT VALUE	
\$384,240.00	\$150,000.00		\$514,240.00	

**DESCRIPTION:**  
 Effective Immediately, this Contract is hereby extended to September, 19, 2016. The Contract is increased \$150,000.00. The new contract value is \$514,240.00. The Program Manager is changed to Kathleen Kimmel. The Contract Administrator is changed to Cathy Carr. All other specifications, terms, and conditions of this Contract remain the same. In the event of any conflicts between the specifications, terms, and conditions indicated by the Department of Corrections (MDOC) and those indicated by the Contractor, those of the MDOC take precedence.

Change Notice Number: 3  
Contract Number: 472B2200118

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**For the Contractor:**

*Cassie Haddock*

**Contract Administrator**

*6-16-15*

**Date**

**For the State:**

*Jeri Ann Sherry*

**Jeri Ann Sherry,  
Deputy Director, Michigan Department of Corrections  
State of Michigan**

*4/21/15*

**Date**

STATE OF MICHIGAN  
 DEPARTMENT OF CORRECTIONS  
 PROCUREMENT  
 P.O. BOX 30003, LANSING, MI 48909

OR  
 206 E. MICHIGAN AVE., LANSING, MI 48933

**CHANGE NOTICE NO. 2**  
 to  
**CONTRACT NO. 472B2200118**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Aberdeen Road Company DBA Herculite Products Inc. 105 E. Sinking Springs Lane P.O. Box 435 Emigsville, PA 17318	Carol Deller	CDELLER@HERCULITE.com
	TELEPHONE	CONTRACTOR'S MAIL CODE
	(800) 772-0036	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	Corrections	Lanny Akers	(517) 780-5169	akersl@michigan.gov
BUYER	Corrections	Lisa Lehnert	(517) 335-4904	lehnertl@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: PROVIDE A BASIC BUT COMPREHENSIVE DESCRIPTION OF SERVICES Mattress and Pillow Ticking Fabric - MDOC/MSI			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE PERIOD OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 20, 2012	September 19, 2015	two - one year	September 19, 2015
PAYMENT TERMS	DELIVERY	SHIPPED TO	SHIPPED FROM
Net 1% 15 Days, Net 45	Destination	30 Days ARO	Various Points
ALTERNATE PAYMENT OPTIONS		AVAILABLE TO MIDEAL PARTICIPANTS	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS:			
See Section 1.4.2 for specific quantities			

DESCRIPTION OF CHANGE NOTICE				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE(S)
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		September 19, 2015
VALUE/COST OF CHANGE NOTICE		ESTIMATED REVISED AGGREGATE CONTRACT VALUE		
\$0.00		\$364,240.00		
The delivery address is hereby revised to the following:				
Michigan Department of Corrections MSI Distribution Center 1994 East Parnall Rd. Jackson, MI 49201		Michigan Department of Corrections Ionia Warehouse 717 Wall St. Ionia, MI 48846		



All other specifications, terms and conditions of this Contract remain the same. In the event of any conflicts between the specifications, terms and conditions indicated by Michigan Department of Corrections (MDOC), Michigan State Industries (MSI) and those indicated by the Contractor, those of MDOC/MSI take precedence.

Change Notice Number 2

Contract Number 472B2200118

**FOR THE CONTRACTOR:**

Aberdeen Road Company DBA Herculite Products  
Inc.

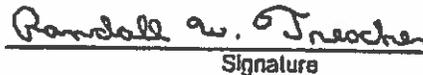
Firm Name

  
Authorized Agent Signature

Carroll J. Ladd  
Authorized Agent (Print or Type)

9-27-13  
Date

**FOR THE STATE:**

  
Signature

Randall W. Treacher, Chief Deputy Director  
Name/Title

Department of Corrections  
Enter Name of Agency

24 September 2013  
Date



STATE OF MICHIGAN  
 DEPARTMENT OF CORRECTIONS  
 PROCUREMENT  
 P.O. BOX 30003, LANSING, MI 48909  
 OR  
 206 E. MICHIGAN AVE., LANSING, MI 48933

**CHANGE NOTICE NO. 1**  
 to  
**CONTRACT NO. 472B2200118**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Aberdeen Road Company DBA Herculite Products Inc. 105 E. Sinking Springs Lane P.O. Box 435 Emigsville, PA 17318	Carol Deller	CDELLER@HERCULITE.com
	TELEPHONE	CONTRACTOR#, MAIL CODE
	(800) 772-0036	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	Corrections	Lanny Akers	(517) 780-5169	akersl@michigan.gov
BUYER	Corrections	Lisa Lehnert	(517) 335-4904	lehnertl@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: PROVIDE A BASIC BUT COMPREHENSIVE DESCRIPTION OF SERVICES Mattress and Pillow Ticking Fabric - MDOC/MSI			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 20, 2012	September 19, 2015	two - one year	September 19, 2015
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 1% 15 Days, Net 45	Destination	30 Days ARO	Various Points
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MIDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
See Section 1.4.2 for specific quantities			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		September 19, 2015
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$0.00		\$364,240.00		
Effective immediately, the product specifications for the width on line 008 (Sure-Check Shield 1633-210D) are hereby revised from 54" to 82". The new, revised pricing for line item 008 is \$10.38 per yard with a minimum order of 2,500 yards for this line item. All other terms, conditions, specifications and pricing remain the same. Per factory request and agreement from the vendor (e-mail from Carol Deller dated May 14, 2013).				



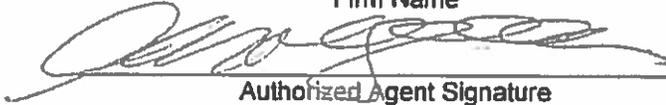
Change Notice Number 1

Contract Number 472B2200118

**FOR THE CONTRACTOR:**

Aberdeen Road Company DBA Herculite Products  
Inc.

Firm Name



Authorized Agent Signature

*Carrie Feder*

Authorized Agent (Print or Type)

6-6-13

Date

**FOR THE STATE:**



Signature

Jeri Ann Sherry, Deputy Director

Name/Title

Department of Corrections

Enter Name of Agency

5/29/13

Date



STATE OF MICHIGAN  
DEPARTMENT OF CORRECTIONS  
PROCUREMENT  
P.O. BOX 30003,  
LANSING, MI 48909

August 7, 2012

CONTRACT NO. 472B2200118  
between  
THE DEPARTMENT OF CORRECTIONS  
and

NAME & ADDRESS OF VENDOR		TELEPHONE: (800) 772-0036 Contact: Carol Deller FAX: (717) 764-5211
Aberdeen Road Company DBA Herculite Products Inc. 105 E. Sinking Springs Land P.O. Box 435 Emigsville, PA 17318		
Description:		AGENCY CONTACT: Lisa Lehnert (517) 335-4904
Mattress and Pillow Ticking Fabric-MDOC/MSI		
CONTRACT PERIOD:	From:	To:
	September 20, 2012	September 19, 2015
TERMS	SHIPMENT	
Net 1% 15 Days, Net 45	Thirty (30) Days ARO	
F.O.B.	SHIPPED FROM	
Destination	Various Points	
MINIMUM DELIVERY REQUIREMENTS		
See Section 1.4.2 for specific quantities		
MISCELLANEOUS INFORMATION:		
The terms and conditions of this Contract, including any applicable information from the vendor's proposal dated June 7, 2012, are attached. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the Contractor, those of the State take precedence.		
Current Authorized Spend Limit: \$364,240.00		

FOR THE VENDOR:

Aberdeen Road Co. DBA Herculite  
Firm Name  
Leslie Haddad  
Authorized Agent Signature  
LESLIE HADDAD  
Authorized Agent (Print or Type)  
October 1, 2012  
Date

FOR THE STATE:

Randall W. Treacher  
Signature  
Randall W. Treacher  
Name  
Deputy Director, Department of Corrections  
Title  
16 August 2012  
Date



472B2200118



**STATE OF MICHIGAN  
Department of Corrections  
Michigan State Industries**

**472B2200118  
Mattress and Pillow Ticking**

**Buyer Name: Lisa Lehnert  
Telephone Number: (517) 335-4904  
E-Mail Address: LehnertL@michigan.gov**

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Definitions

**This section provides definitions for terms used throughout this document.**

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

**Buyer** – the Michigan Department of Corrections (MDOC) employee identified on the cover page of this RFP.

**Chronic Failure** - as defined in applicable Service Level Agreements.

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

**Contractor** – the awarded bidder after the Effective Date.

**Days** - Business Days unless otherwise specified.

**Deleted, Not Applicable** - the section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

**Deliverable(s)** - physical goods or commodities as required or identified in a Statement of Work.

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

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

**Final Acceptance** - has the meaning provided in Section 2.8.7, Final Acceptance, unless otherwise stated in Article I.

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

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

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

**State** - the State of Michigan.

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

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

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

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

**Article 1 – Statement of Work**

**1.1 Project Identification**

This is a Contract for the Michigan Department of Corrections (MDOC), Michigan State Industries hereinafter known as MSI to purchase mattress and pillow ticking for the MSI Mattress Factory.

**1.1.1 Project Request**

This is a Statement of Work (SOW) for mattress and pillow ticking for the MSI Mattress Factory.

**1.1.2 Background – Deleted, Not Applicable**

**1.2 Scope of Work and Deliverable(s)**

**1.2.1 In Scope – [Deleted, Not Applicable]**

**1.2.2 Deliverable(s)**

The Contractor must provide the following Deliverable(s):

1. The Contractor shall supply ticking for mattresses and pillows per the product specifications noted on Attachment A.
2. The Contractor must include documented test results of all required specifications listed in Attachment A.
3. The Contractor agrees to pay up to 50% of the prototype burn tests for up to two constructions using the fire barrier backed materials.
4. The Contractor agrees to replacement or credit for all manufacture and shipping defects.
5. The Contractor must not supply run of the mill goods (seconds). These will not be allowed.
6. The Contractor shall inspect all rolls for any damage or flaws. The product must be clean and free of holes.
7. The Contractor shall package all rolls on cardboard tubes of at least 1-1/2" inside diameter that is sufficient to support product without crushing tube.
8. The Contractor shall supply the product on rolls of 100 yards (+/- 5 yards).
9. The Contractor must flag all seams/splices; not to exceed two per roll.
10. The Contractor must ensure that each individual roll is wrapped in brown Kraft paper to protect from damage and debris.
11. The Contractor shall ensure that each roll is labeled in English with the lot/roll number and product description.
12. The Contractor shall palletize, shrink wrap and clearly mark all orders for delivery with the appropriate MSI factory name and purchase order number. Each skid must be marked.

13. The Contractor must include an itemized packing slip with each delivery. The packing slip must include the purchase order number, date, deliverable, shipped quantity and name of the appropriate MSI factory.
14. The Contractor must be the sole contact for this contract, assuming full responsibility for carrying out all aspects of the contract.
15. The Contractor shall deliver the material within thirty (30) calendar days after receipt of order.
16. The Plant Manager has the right to reject any unsatisfactory rolls or deliveries.

Definite specifications - All Deliverable(s) must conform to the specifications.

### 1.2.3 Quantity

The MDOC/MSI is not obligated to purchase in any specific quantity.

with  
exception  
of SC4 N2W  
88" 4000 HIN

### 1.2.4 Ordering

The MDOC/MSI will issue a Purchase Order, which must be approved by a MDOC/MSI designee, to order any Deliverable(s). The Contractor is not authorized to begin performance until receipt of a Purchase Order.

### 1.2.5 Alternate Bids – Deleted, Not Applicable

## 1.3 Management and Staffing

### 1.3.1 Project Management

The Contractor will carry out this project under the direction and control of the MDOC/MSI.

### 1.3.2 Reports

The Contractor shall provide various reports when requested by MDOC/MSI. Examples include itemized reports of total items purchased by MDOC/MSI, accountability and receivable of shipments, lot reports, open invoice reports, delivery compliance reports, quality reports, etc.

### 1.3.3 Staff, Duties, and Responsibilities

The Contractor's key personnel are:

Carol Deller – Customer Service Specialist, Herculite Products  
Chris Possident – Independent Sales Representative  
Leslie Haddad – Business Manager for Healthcare Fabrics, Herculite Products

The Contractor's staff will be physically located during contract performance at:

Carol Deller – Emigsville, PA corporate office  
Chris Possident – Cockeysville, MD  
Leslie Haddad – Collierville, TN

### 1.3.4 Meetings

The MDOC/MSI may request a kick-off meeting with the bidder within thirty (30) days of the Effective Date. The MDOC/MSI may request other meetings as it deems appropriate.

### 1.3.5 Place of Performance

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

Full address of place of performance	Owner/operator of facility to be used	Percent (%) of Contract value to be performed at listed location
Herculite Products 105 E. Sinking Springs Lane Emigsville, PA 17318	Owned by Aberdeen Road Company	100%

**1.3.6 Reserved**

**1.3.7 Binding Commitments**

The Contractor's representatives with the authority to make binding commitments on the Contractor's behalf and state the extent of that authority are:

Pete McKernan, President and CEO  
Paul Flaharty, CFO  
Leslie Haddad, Business Manager for Healthcare Division

**1.3.8 Training - Reserved**

**1.3.9 Security**

The Contractor may be required to make frequent deliveries to State facilities. The Contractor's deliveries will be made via commercial carriers via a carrier agreeable to the MSI facility. The Contractor must explain how background checks are performed, what the background check consists of, the name of the company that performs the background checks, whether the Contractor uses uniforms and ID badges, etc. If background checks are performed, the Contractor must provide a document stating that its personnel have satisfactorily completed a background check and are suitable for State work.

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

**1.4 Delivery and Acceptance**

**1.4.1 Time Frames**

All Deliverable(s) must be delivered within 30 Days after receipt of order. The receipt of order date is governed in the same manner as notices sent under Section 2.3.6, Notices.

**1.4.2 Minimum Order**

The MDOC/MSI's requested minimum order is 500 yards in any combination of items, except line item 002 Sure-Chek 44, navy, 88", which is a minimum order of 4,000 yards. Orders may be a mixture of a combination of items, excluding line item 002.

**1.4.3 Packaging**

Product shall be packaged on cardboard tubes with a minimum 1-1/2" inside diameter that is sufficient to support the product without crushing the tube.

Each roll shall be individually wrapped in brown Kraft paper to protect the product from dirt and abrasion.

Each roll shall be labeled in English with the purchase order number, and lot/roll number.

Each roll must be 100 yards (+/- 5 yards).

Itemized packing slip to be included, as specified in Section 1.2.2, item 13.

Packaging and containers must meet the current requirements of state and federal law applicable to rail and motor carrier freight classifications, which will permit application of the lowest freight rate.

**1.4.4 Palletizing**

Shipments must be palletized and shrink wrapped whenever possible.

Each skid must be marked with the purchase order number and "MSI Mattress Factory."

The Contractor will utilize 2-way shipping pallets.

**1.4.5 Delivery Term**

F.O.B. Destination  
Michigan Department of Corrections  
MSI Distribution Center  
Attn: MSI Mattress Factory  
1780 E. Parnall Rd.  
Jackson, MI 49201

**Deliveries shall be Monday through Friday 7:00 a.m.-1:30 p.m. No deliveries will be accepted on State of Michigan holidays. Items delivered must meet factory superintendent's approval. Overages or shortages in excess of 5% will not be accepted. MSI reserves the right to require that delivery be made directly to the factory. Minors under the age of 17 will not be allowed to enter the facility.**

**Contractors should be aware that there is a possibility of a mobilization and/or delay at any of the Correctional Facilities which prohibits delivery carriers entering the facility at time of arrival. MDOC/MSI will not be responsible for any additional charges which may arise due to delivery delays.**

**Effective February 1, 2009, all tobacco products are prohibited at all MDOC Facilities. This includes vendors/drivers who will be prohibited from bringing in personal tobacco products to these locations.**

**All cellular devices are prohibited from all correctional facilities.**

**Facilities will provide a lock box for cellular devices and personal tobacco products in the Sallyport. Vendors that come into the Administration Building of a Facility will need to secure their cellular devices and personal tobacco products in their vehicle prior to entrance. If vendors arrive with such products, the vendors will not be allowed to place the products in the visitor lockers, but will be requested to return it to their vehicle. Delivery vehicles that carry tobacco products for other organizations will not be allowed to bring such products into the Facilities.**

**Weapons and explosives are prohibited from all correctional facilities.**

Unless specified otherwise below, delivery is governed by Section 2.8.2, Delivery Responsibilities.

The Contractor must quote prices "F.O.B. Destination, within Government Premises" with transportation charges prepaid on all orders that meet the minimum order requirement specified in Section 1.4.2, Minimum Order.

**Freight Charges** - If the State orders below the minimum order requirement specified in Section 1.4.2, Minimum Order, or if a Contractor quotes F.O.B. Shipping Point on one-time purchases, the Contractor must specify the carrier being used.

Where the weight of the shipment is less than 150 lbs. or where shipments could be separated into smaller parcels, the Contractor must use the State's current express delivery carrier, which is United Parcel Service. If the shipment weighs less than 150 lbs., but the Deliverable costs \$3000 or more, it must be sent by an appropriate carrier.

If the Contractor fails to follow these shipping instructions, the State will pay the carrier used and deduct the difference from the Contractor's invoice for the amount that was charged and the amount that would have been charged if the required carrier had been used.

#### **1.4.6 Acceptance Process**

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

Goods delivered shall meet the Factory Plant Manager's approval. The material must not have flaws or holes. The product shades must be acceptable according to the samples and specifications. Test results must meet specifications.

#### **1.4.7 Criteria**

The MDOC/MSI will use the following criteria to determine acceptance of Deliverable(s):

The Contractor shall provide quality mattress and pillow ticking in a timely manner per the specifications and delivery terms of the Contract. The shipments must also contain identification of material lots.

### **1.5 Proposal Pricing**

#### **1.5.1 Pricing**

The Contractor must specify the fixed prices for all Deliverable(s), and the associated payment milestones and payment amounts as required by Section 2.2.1, Fixed Prices for Deliverable(s).

#### **1.5.2 Quick Payment Terms**

The Contractor will offer a quick payment discount of 1% off an invoice if paid within 15 Days from the MDOC/MSI's receipt of the invoice or delivery of the Deliverable(s), whichever is later. The number of days must not include processing time for payment to be received by the Contractor's financial institution.

#### **1.5.3 Price Term**

Prices in Attachment A are firm with prospective renegotiation at an agreed upon time. The criteria for a re-determination of pricing are under Section 2.3.5, Price Changes.

#### **1.5.4 Tax Excluded from Price**

- (a) **Sales Tax:** The State is exempt from sales tax for direct purchases. The Contractor's prices must not include sales tax. MDOC/MSI will furnish exemption certificates for sales tax upon request.
- (b) **Federal Excise Tax:** The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, the Contractor's prices must not include the Federal Excise Tax.

#### **1.5.5 Invoices – Deleted, Not Applicable**

**1.6 Commodity Requirements****1.6.1 Customer Service**

The Contractor is able to receive orders by any of the following methods: electronically, phone, facsimile transmission, or by written order. The Contractor must have internal controls, approved by MDOC/MSI, to: (a) ensure that only authorized individuals place orders; and (b) verify any orders that appear to be abnormal. The Contractor will assign one specific Customer Service Specialist to review and input MSI orders. In her absence, orders will be reviewed by the Business Unit Manager for Healthcare fabrics. Herculite Products is ISO 9001

The Contractor's contact is Carol Deller, Customer Service Specialist, (800) 772-0036, ext. 2295, [cdeller@herculite.com](mailto:cdeller@herculite.com). This contact person is to respond to MDOC/MSI's inquiries promptly.

**1.6.2 Research and Development – Deleted, Not Applicable****1.6.3 Quality Assurance Program**

The Contractor is ISO 9001 certified.

**1.6.4 Warranty for Deliverable(s)**

The Contractor procedure for processing quality issues is to include prompt notification of the product issue in writing through the Herculite Customer Service contact. The notification must include the product item number, invoice number, lot and roll number, quantity involved and a sample of the product. The Contractor must reply to the notification and/or replace any necessary product within 30 days.

**1.6.5 Special Incentives – Deleted, Not Applicable****1.6.6 Energy Efficiency – Deleted, Not Applicable****1.6.7 Environmental Requirements**

The State prefers to purchase products that impact the environment less than competing products. Environmental components that may be considered include: recycled content, recyclability, and the presence of undesirable materials in the products, especially persistent, bioaccumulative, and toxic chemicals. The Contractor does not use chemicals in its manufacturing process that are cumulative or toxic.

**1.6.8 Recycled Content and Recyclability**

(a) Deliverable(s). Without compromising performance or quality, the State prefers Deliverable(s) containing higher percentages of recycled materials. The Contractor must indicate an estimate of the percentage of recycled materials, if any, contained in each Deliverable:

0% (total estimated percentage of recovered material)

0% (estimated percentage of post-consumer material)

0% (estimated percentage of post-industrial waste)

(b) Packaging. The State prefers packaging materials that:

- (i) are made from recycled content that meets or exceeds all federal and state recycled content guidelines (currently 35% post-consumer for all corrugated cardboard);
- (ii) minimize or eliminate the use of polystyrene and other difficult to recycle materials;
- (iii) minimize or eliminate the use of packaging and containers or, in the alternative, minimize or eliminate the use of non-recyclable packaging and containers;
- (iv) provide for a return program where packaging can be returned to a specific location

- for recycling; and  
 (v) contain materials that are easily recyclable in Michigan.

The Contractor's packaging materials include brown Kraft paper, corrugated tubes and wood shipping pallets. Each of these items contains some recycled material is recyclable.

**1.6.9 Materials Identification and Tracking**

(a) **Hazardous Chemical Identification.** The Contractor must list any hazardous chemical, 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. Material Safety Data Sheets must be submitted in accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001 *et seq.*, as amended. This list must be updated whenever any other chemical to be delivered is hazardous.

Chemical (if none, enter 'None')	Identification Number
None	

(b) **Mercury Content.** Under MCL 18.1261d, the Contractor must offer mercury-free products whenever possible. The Contractor's products do not contain mercury. All products containing mercury must be labeled as containing mercury.

(c) **Brominated Flame Retardants.** The MDOC/MSI prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible. The Contractor's products do not contain BFRs.

(d) **Environmental Permits and Requirements.** The Contractor is not in violation of any environmental laws. The Contractor must disclose whether any of its facilities are in violation of any environmental laws. The Contractor must immediately notify MDOC/MSI of the receipt of any EPA, State, or local agency communication indicating that any of the Contractor's facilities are in violation of applicable environmental laws.

**1.7 Extended Purchasing**

**1.7.1 MiDEAL - Reserved**

**1.7.2 State Employee Purchases - Reserved**

## Article 2 – Terms and Conditions

### 2.1 Contract Term

#### 2.1.1 Contract Term

The Contract term begins September 20, 2012, and expires September 19, 2015. All outstanding Purchase Orders will expire upon the termination of the Contract for any of the reasons listed in Section 2.16, Termination by the MDOC/MSI, unless otherwise agreed to in writing by MDOC/MSI. Absent an early termination, Purchase Orders issued, but not expired, by the end of the Contract's term will remain in effect until the next September 30.

#### 2.1.2 Options to Renew

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

### 2.2 Payments and Taxes

#### 2.2.1 Fixed Prices for Deliverable(s)

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

#### 2.2.2 Payment Deadlines

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

#### 2.2.3 Invoicing and Payment – In General [Deleted, Not Applicable]

#### 2.2.4 Pro-ration [Deleted, Not Applicable]

#### 2.2.5 Final Payment and Waivers

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

#### 2.2.6 Electronic Payment Requirement

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

#### 2.2.7 Employment Taxes

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

#### 2.2.8 Sales and Use Taxes

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

**2.3 Contract Administration**

**2.3.1 Issuing Office**

This Contract is issued by MDOC/MSI. **MDOC/MSI is the only entity authorized to modify the terms and conditions of this Contract, including the prices and specifications.** The Contract Administrator within MDOC/MSI for this Contract is:

Lisa Lehnert  
Michigan Department of Corrections  
Grandview Plaza, 5<sup>th</sup> Floor  
PO Box 30003  
Lansing, MI 48909  
[LehnertL@michigan.gov](mailto:LehnertL@michigan.gov)  
(517) 335-4904

**2.3.2 Contract Compliance Inspector**

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

Lanny Akers, Plant Manager  
Michigan Department of Corrections  
MSI-Mattress Factory  
1780 E. Parnall Rd.  
Jackson, MI 49201  
[akersl@michigan.gov](mailto:akersl@michigan.gov)  
Phone: (517) 780-5169

**2.3.3 Project Manager – Deleted, Not Applicable**

**2.3.4 Contract Changes**

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

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

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

**2.3.5 Price Changes**

If allowed by Section 1.5.3, Price Term, the MDOC/MSI and the Contractor may complete a pricing review (Review) every 365 days following the Effective Date, to allow for changes based on actual costs incurred. Requested changes may include increases or decreases in price and must be accompanied by

supporting information indicating market support of proposed modifications (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics).

(a) The MDOC/MSI may request a Review upon 30 days written notice that specifies what Deliverable is being reviewed. At the Review, each party may present supporting information including information created by, presented, or received from third parties.

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

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

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

(e) If the supporting information reveals a reduction in prices is necessary and the parties are unable to reach agreement, then the MDOC/MSI may eliminate all remaining Contract renewal options.

(f) Any changes based on the Review must be implemented through the issuance of a Contract Change Notice.

#### 2.3.6 Notices

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

If to MDOC/MSI:

State of Michigan  
Michigan Department of Corrections  
Attention: Lisa Lehnert, Buyer  
PO Box 30003  
Lansing, Michigan 48909

If to Contractor:

Aberdeen Road Company DBA Herculite Products Inc.  
P.O. Box 435  
Emigsville, PA 17318  
[cdeller@herculite.com](mailto:cdeller@herculite.com)  
(717) 764-5211

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

#### 2.3.7 Covenant of Good Faith

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

#### 2.3.8 Assignments

(a) Neither party may assign this Contract, or assign or delegate any of its duties or obligations under the Contract, to another party (whether by operation of law or otherwise), without the prior approval of the other party. The MDOC/MSI may, however, assign this Contract to any other State agency, department, or division without the prior approval of the Contractor.

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

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

### **2.3.9 Equipment**

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

### **2.3.10 Facilities [Deleted, Not Applicable]**

## **2.4 Contract Management**

### **2.4.1 Contractor Personnel Qualifications**

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

### **2.4.2 Contractor Key Personnel**

(a) The Contractor must provide the Contract Compliance Inspector with the names of Key Personnel.

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

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

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

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

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

The MDOC/MSI may require the Contractor to remove or reassign personnel if the MDOC/MSI has legitimate, good-faith reasons articulated in a notice to the Contractor. Replacement personnel must be fully qualified for the position. If the MDOC/MSI exercises this right, and the Contractor cannot

immediately replace the removed personnel, the MDOC/MSI agrees to an equitable adjustment in schedule or other terms that may be affected.

**2.4.4 Contractor Personnel Location – Deleted, Not Applicable**

**2.4.5 Contractor Identification**

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

**2.4.6 Cooperation with Third Parties**

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

**2.4.7 Relationship of the Parties**

The relationship between the MDOC/MSI and Contractor is that of client and independent contractor. No agent, employee, or servant of the Contractor, or any of its subcontractors, is an employee, agent or servant of the State. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, and subcontractors during the performance of the Contract.

**2.4.8 Contractor Return of State Equipment/Resources**

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

**2.4.9 Background Checks**

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

**2.4.10 Compliance With State Policies**

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

**2.5 Subcontracting by Contractor**

**2.5.1 Contractor Responsible**

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

**2.5.2 State Approval of Subcontractor**

(a) The Contractor may not delegate any duties under this Contract to a Subcontractor unless MDOC/MSI gives prior approval to the delegation. Attached as Exhibit A is a list of the Subcontractors, if any, approved by the State as of the Effective Date. The MDOC/MSI is entitled to receive copies of and review all subcontracts. The Contractor may delete or redact any proprietary information before providing it to the MDOC/MSI.

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

**2.5.3 Subcontract Requirements**

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

**2.5.4 Competitive Selection**

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

**2.6 Reserved**

**2.7 Performance**

**2.7.1 Time of Performance**

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

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

**2.7.2 Service Level Agreements [Deleted, Not Applicable]**

**2.7.3 Liquidated Damages – Deleted, Not Applicable**

**2.7.4 Excusable Failure**

Neither party will be liable for any default, damage or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, acts or omissions of common carriers, fire, riots, civil disorders, labor disputes, embargoes, injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused), or any other cause beyond the reasonable control of a party; provided the non-performing party and any Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot

reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

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

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

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

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

### **2.8.1 Quality Assurance**

By tendering any Deliverable to the MDOC/MSI, the Contractor certifies to the MDOC/MSI that (a) it has performed reasonable quality assurance activities; (b) it has performed any reasonable testing; and (c) it has corrected all material deficiencies discovered during the quality assurance activities and testing. To the extent that testing occurs at MDOC/MSI Locations, the MDOC/MSI is entitled to observe and otherwise participate in the testing.

### **2.8.2 Delivery Responsibilities**

Unless otherwise specified by the MDOC/MSI in Section 1.4.5, Delivery Term, the following are applicable to all deliveries:

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

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

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

### **2.8.3 Process for Acceptance of Deliverable(s)**

The MDOC/MSI's review period for acceptance of the Deliverable(s) is governed by the applicable Statement of Work, and if the Statement of Work does not specify the MDOC/MSI's review period, it is by default 30 Days for a Deliverable (MDOC/MSI Review Period). The MDOC/MSI will notify the Contractor by the end of the MDOC/MSI Review Period that either:

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

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

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

If the MDOC/MSI delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Days resubmit the Deliverable(s) with an explanation that demonstrates all corrections have been made to the original Deliverable(s). The Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from the Contractor, the MDOC/MSI will have a reasonable additional period of time, not to exceed 30 Days, to accept the corrected Deliverable.

#### 2.8.4 Acceptance of Deliverable(s)

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

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

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

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

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

#### 2.8.5 Process for Approval of Written Deliverable(s) [Deleted, Not Applicable]

#### 2.8.6 Process for Approval of Services [Deleted, Not Applicable]

#### 2.8.7 Final Acceptance

Unless otherwise stated in the Statement of Work, "Final Acceptance" of a Deliverable occurs when that Deliverable has been accepted by the MDOC/MSI following the applicable MDOC/MSI Review Period.

#### 2.9 Ownership [Deleted, Not Applicable]

#### 2.10 State Standards [Deleted, Not Applicable]

#### 2.11 Confidentiality

**2.11.1 Confidential Information**

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

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

**2.11.2 Protection and Destruction of Confidential Information**

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

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

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

**2.11.3 Exclusions**

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

**2.11.4 No Obligation to Disclose**

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

**2.11.5 Security Breach Notification**

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

## 2.12 Records and Inspections

### 2.12.1 Inspection of Work Performed

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

### 2.12.2 Retention of Records

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of seven years after the Contractor performs any work under this Contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

### 2.12.3 Examination of Records

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

### 2.12.4 Audit Resolution

If necessary, the Contractor and the MDOC/MSI will meet to review any audit report promptly after its issuance. The Contractor must respond to each report in writing within 30 days after receiving the report, unless the report specifies a shorter response time. The Contractor and the MDOC/MSI must develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

### 2.12.5 Errors

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

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

## 2.13 Warranties

### 2.13.1 Warranties and Representations

The Contractor represents and warrants:

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

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

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

(d) If the Contractor procures any equipment, software, or other Deliverable(s) for the MDOC/MSI (including equipment, software, and other Deliverable(s) manufactured, re-marketed or otherwise sold by the Contractor or under the Contractor's name), then the Contractor must assign or otherwise transfer to the MDOC/MSI or its designees, or afford the MDOC/MSI the benefits of, any manufacturer's warranty for the Deliverable(s).

(e) The Contract signatory has the authority to enter into this Contract on behalf of the Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, will have, or will acquire, any interest that would conflict in any manner with the Contractor's performance of its duties and responsibilities to the MDOC/MSI or otherwise create an appearance of impropriety with respect to the award or performance of this Contract. The Contractor must notify the MDOC/MSI about the nature of any conflict or appearance of impropriety within two days of learning about it.

(h) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will accept anything of value based on an understanding that the actions of the Contractor, its affiliates, or its employees on behalf of the MDOC/MSI would be influenced. The Contractor must not attempt to influence any MDOC/MSI employee by the direct or indirect offer of anything of value.

(i) Neither the Contractor nor any affiliates, nor any employee of either, has paid or agreed to pay any person, other than bona fide employees and consultants working solely for the Contractor or the affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The Contractor arrived at its proposed prices independently, without communication or agreement with any other bidder for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this Contract to any other bidder before the award of the Contract. The Contractor made no attempt to induce any other person or entity to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by the Contractor to the MDOC/MSI in connection with the award of this Contract fairly and accurately represent the Contractor's business, properties, financial condition, and results of operations as of the respective dates covered by the financial statements, reports, or other information. There has been no material adverse change in the Contractor's business, properties, financial condition, or results of operation.

(l) All written information furnished to the MDOC/MSI by or for the Contractor in connection with the award of this Contract is true, accurate, and complete, and contains no false statement of material fact nor omits any material fact that would make the submitted information misleading.

(m) It will immediately notify MDOC/MSI if any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract is awarded.

#### **2.13.2 Warranty of Merchantability**

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

#### **2.13.3 Warranty of Fitness for a Particular Purpose**

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

#### **2.13.4 Warranty of Title**

The Contractor must convey good title to any Deliverable(s) provided to the MDOC/MSI. All Deliverable(s) provided by the Contractor must be delivered free from any security interest, lien, or encumbrance of which the MDOC/MSI, at the time of contracting, has no knowledge. Deliverable(s)

provided by the Contractor must be delivered free of any rightful claim of infringement by any third person.

**2.13.5 Equipment Warranty – Deleted, Not Applicable**

**2.13.6 New Deliverable(s)**

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

**2.13.7 Prohibited Products**

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

**2.13.8 Consequences For Breach**

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

**2.14 Insurance**

**2.14.1 Liability Insurance**

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

(a) The following apply to all insurance requirements:

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

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

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

(iv) In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.

(b) The Contractor must:

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

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

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

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

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

(vi) pay all deductibles.

(vii) pay for and provide the type and amount of insurance checked  below:

(A) Commercial General Liability Insurance

Minimal Limits:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations;

\$2,000,000 Products/Completed Operations Aggregate Limit;

\$1,000,000 Personal & Advertising Injury Limit; and

\$1,000,000 Each Occurrence Limit.

Deductible maximum:

\$50,000 Each Occurrence

Additional Requirements:

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

(B) Umbrella or Excess Liability Insurance

Minimal Limits:

\$10,000,000 General Aggregate

Additional Requirements:

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

(C) Motor Vehicle Insurance

Minimal Limits:

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

(D) Hired and Non-Owned Motor Vehicle Coverage

Minimal Limits:

\$1,000,000 Per Accident

Additional Requirements:

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

**(E) Workers' Compensation Insurance**

Minimal Limits:

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

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

Additional Requirements:

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

**(F) Employers Liability Insurance**

Minimal Limits:

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

Additional Requirements:

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

**2.14.2 Subcontractor Insurance Coverage**

Except where the State has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 2.14.1, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

**2.14.3 Certificates of Insurance and Other Requirements**

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers, and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. The Contractor must provide MDOC/MSI with all applicable certificates of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in Section 2.14.1, Liability Insurance. Each certificate must be on the standard "accord" form or equivalent and **MUST CONTAIN THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER**. Each certificate must be prepared and submitted by the insurer and must contain a provision indicating that the coverage afforded will not be cancelled, materially changed, or not renewed without 30 days prior notice, except for 10 days for nonpayment of premium, to the MDOC/MSI. The notice to the MDOC/MSI must include the applicable Contract or Purchase Order number.

**2.15 Indemnification****2.15.1 General Indemnification**

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

**2.15.2 Code Indemnification [Deleted, Not Applicable]****2.15.3 Employee Indemnification**

In any claims against the State, its departments, agencies, commissions, officers, employees, and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts, or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

**2.15.4 Patent/Copyright Infringement Indemnification**

(a) The Contractor must indemnify and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest, and penalties) resulting from any action threatened or brought against the State to the extent that the action is based on a claim that any piece of equipment, software, commodity, or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

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

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

**2.15.5 Continuing Obligation**

The Contractor's duty to indemnify under Section 2.15, Indemnification, continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

**2.15.6 Indemnification Procedures**

These procedures apply to all indemnity obligations:

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

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

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

#### **2.15.7 Limitation of Liability**

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

The Contractor's liability for damages to the State is limited to two times the value of the Contract or \$500,000 which ever is higher. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor is limited to the value of the Contract.

## 2.16 Termination by the State

### 2.16.1 Notice and Right to Cure

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

### 2.16.2 Termination for Cause

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

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

(c) If the MDOC/MSI partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those Deliverable(s) that are terminated. The MDOC/MSI must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date. Any services or related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

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

### 2.16.3 Termination for Convenience

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

### 2.16.4 Termination for Non-Appropriation

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

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

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

#### **2.16.5 Termination for Criminal Conviction**

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

#### **2.16.6 Termination for Approvals Rescinded**

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

#### **2.16.7 Rights and Obligations upon Termination**

- (a) If the MDOC/MSI terminates this Contract for any reason, the Contractor must:
- (i) stop all work as specified in the notice of termination;
  - (ii) take any action that may be necessary, or that the MDOC/MSI may direct, to preserve and protect Deliverable(s) or other State property in the Contractor's possession;
  - (iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of the State;
  - (iv) transfer title in and deliver to the MDOC/MSI, unless otherwise directed, all Deliverable(s) intended to be transferred to the MDOC/MSI at the termination of the Contract (which will be provided to the MDOC/MSI on an "As-Is" basis except to the extent the MDOC/MSI compensated the Contractor for warranty services related to the materials);
  - (v) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies; and
  - (vi) take all appropriate action to secure and maintain MDOC/MSI information confidentially in accordance with Section 2.11, Confidentiality.

(b) If the MDOC/MSI terminates this Contract under Section 2.16.3, Termination for Convenience, the MDOC/MSI must pay the Contractor all charges due for Deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by the MDOC/MSI. All completed or partially completed Deliverable(s) prepared by the Contractor, at the option of the MDOC/MSI, become the MDOC/MSI's property, and the Contractor is entitled to receive equitable compensation for those Deliverable(s). Regardless of the basis for the termination, the MDOC/MSI is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to Deliverable(s) not actually completed.

(c) If the MDOC/MSI terminates this Contract for any reason, the MDOC/MSI may assume, at its option, any subcontracts and agreements for Deliverable(s), and may pursue completion of the Deliverable(s) by replacement contract or as the MDOC/MSI deems expedient.

**2.16.8 Reservation of Rights**

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

**2.16.9 Contractor Transition Responsibilities**

If this Contract terminates under Section 2.16, Termination by the MDOC/MSI, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to the MDOC/MSI or a third party designated by the MDOC/MSI within a reasonable period of time that does not exceed 30 days from the date of termination. The Contractor must provide any required reports and documentation.

**2.16.10 Transition Payments**

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

**2.17 Termination by the Contractor****2.17.1 Termination**

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

The Contractor may terminate this Contract if the MDOC/MSI: (a) materially breaches its obligation to pay the Contractor undisputed amounts due; (b) breaches its other obligations to an extent that makes it impossible or commercially impractical for the Contractor to complete the Deliverable(s); or (c) does not cure the breach within the time period specified in a notice of breach. The Contractor must discharge its obligations under Section 2.20, Dispute Resolution, before it terminates the Contract.

**2.18 Stop Work****2.18.1 Stop Work Order**

The MDOC/MSI may, by issuing a Stop Work Order, require that the Contractor fully or partially stop work for a period of up to 90 calendar days, and for any further period to which the parties agree. Upon receipt of the Stop Work Order, the Contractor must immediately take all reasonable steps to minimize incurring costs. Within the period of the Stop Work Order, the MDOC/MSI must either: (a) terminate the Stop Work Order; or (b) terminate the work covered by the Stop Work Order as provided in Section 2.16, Termination by the MDOC/MSI.

**2.18.2 Termination of Stop Work Order**

The Contractor must resume work if the MDOC/MSI terminates a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, if: (a) the Stop Work Order results in an increase in the time required for, or the Contractor's costs properly allocated to, the performance of the Contract; and (b) the Contractor asserts its right to an equitable adjustment within 20 days after the end of the Stop Work Order by submission of a request for adjustment to the MDOC/MSI; provided that, the MDOC/MSI may receive and act upon the Contractor's request submitted at any time before final payment. Any adjustment will conform to the requirements of Section 2.3.4, Contract Changes.

**2.18.3 Allowance of the Contractor's Costs**

If the MDOC/MSI fully or partially terminates the work covered by the Stop Work Order, for reasons other than material breach, the termination is a termination for convenience under Section 2.16, Termination by the MDOC/MSI, and the MDOC/MSI will pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. The MDOC/MSI is not liable to the Contractor for lost profits because of a Stop Work Order issued under Section 2.18, Stop Work.

**2.19 Reserved****2.20 Dispute Resolution****2.20.1 General**

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

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

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

**2.20.2 Informal Dispute Resolution**

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

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

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

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

(e) MDOC/MSI will not mediate disputes between the Contractor and any other entity concerning responsibility for performance of work.

**2.20.3 Injunctive Relief**

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

**2.20.4 Continued Performance**

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

**2.21 Disclosure Responsibilities****2.21.1 Disclosure of Litigation**

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

- (i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;
- (ii) A parole or probation Proceeding;
- (iii) A Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and
- (iv) A civil Proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.

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

(c) If any Proceeding that is disclosed to the MDOC/MSI or of which the MDOC/MSI otherwise becomes aware, during the term of this Contract, would cause a reasonable party to be concerned about: (i) the ability of the Contractor (or a Subcontractor) to continue to perform this Contract; or (ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of this Contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide the MDOC/MSI all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this Contract.

**2.21.2 Other Disclosures**

The Contractor must notify MDOC/MSI within 30 days of:

- (a) becoming aware that a change in the Contractor's ownership or officers has occurred or is certain to occur; or
- (b) any changes to company affiliations.

**2.21.3 Call Center Disclosure – Deleted, Not Applicable****2.22 Extended Purchasing****2.22.1 MiDEAL Requirements – Deleted, Not Applicable****2.22.2 State Administrative Fee – Deleted, Not Applicable****2.22.3 State Employee Purchase Requirements – Deleted, Not Applicable****2.23 Laws****2.23.1 Governing Law**

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

**2.23.2 Compliance with Laws**

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

### 2.23.3 Jurisdiction

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

### 2.23.4 Nondiscrimination

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

### 2.23.5 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, *et seq.*, the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any Contract if, after award of the Contract, the name of the Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of the Contractor appears in the register.

### 2.23.6 Environmental Provision

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

(a) The Contractor must use, handle, store, dispose of, process, transport, and transfer any Hazardous Material according to all federal, State, and local laws. The MDOC/MSI must immediately advise the Contractor of the presence of any known Hazardous Material at the work site. If the Contractor encounters material reasonably believed to be Hazardous Material that may present a substantial danger, the Contractor must: (i) immediately stop all affected work; (ii) notify the MDOC/MSI in accordance with Section 2.3.6, Notices; (iii) notify any entities required by law; and (iv) take appropriate health and safety precautions.

(b) The MDOC/MSI may issue a Stop Work Order if the material is a Hazardous Material that may present a substantial danger and the Hazardous Material was not brought to the site by the Contractor, or does not wholly or partially result from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials. The MDOC/MSI may remove the Hazardous Material, render it harmless, or terminate the affected work for the MDOC/MSI's convenience.

(c) If the Hazardous Material was brought to the site by the Contractor, or wholly or partially results from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to applicable laws.

**2.23.7 Freedom of Information**

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

**2.23.8 Workplace Safety and Discriminatory Harassment [Deleted, Not Applicable]****2.23.9 Prevailing Wage [Deleted, Not Applicable]****2.23.10 Abusive Labor Practices**

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

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

**2.24 General Provisions****2.24.1 Bankruptcy and Insolvency**

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

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

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

**2.24.2 Media Releases**

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

**2.24.3 Contract Distribution**

MDOC/MSI retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by MDOC/MSI.

**2.24.4 Permits**

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

**2.24.5 Website Incorporation**

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

**2.24.6 Future Bidding Preclusion [Deleted, Not Applicable]****2.24.7 Antitrust Assignment**

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

**2.24.8 Disaster Recovery**

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

**2.24.9 Legal Effect**

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

**2.24.10 Entire Agreement**

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

**2.24.11 Order of Precedence**

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

- (a) Mandatory sections (2.1.1, Contract Term, 2.24.9, Legal Effect, 2.2.2, Payment Deadlines, 2.14, Insurance, 2.15, Indemnification, 2.16, Termination, 2.23, Governing Law, 2.15.7, Limitation of Liability);
  - (b) The most recent Statement of Work related to this Contract;
  - (c) All sections from Article 2 - Terms and Conditions, not listed in subsection (a);
  - (d) Any attachment or exhibit to the Contract documents;
  - (e) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under the Contract;
- and
- (f) Bidder Responses contained in any of the RFP documents.

**2.24.12 Headings**

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

**2.24.13 Form, Function and Utility**

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

**2.24.14 Reformation and Severability**

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

**2.24.15 Approval**

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

**2.24.16 No Waiver of Default**

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

**2.24.17 Survival**

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

**2.24.18 PCI Data Security Standard**

(a) Contractors that process, transmit or store credit/debit cardholder data, must adhere to the Payment Card Industry (PCI) Data Security Standards. The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.

(b) The Contractor must notify the CCI (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the Visa, MasterCard, Discover and state Acquirer representative(s), and/or a PCI approved third party to conduct a thorough security review. The Contractor must make the forensic report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.

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

(d) The Contractor must provide the CCI with an annual Attestation of Compliance (AOC) or a Report on Compliance (ROC) showing the contractor is in compliance with the PCI Data Security Standards. The Contractor must notify the CCI of all failures to comply with the PCI Data Security Standard.

Attachment A, Price Proposal

LINE ITEM	UNIT OF MEASURE	DESCRIPTION	UNIT COST
001	Yard	<p>Mattress Ticking and Binding; Fabric shall be 3-ply vinyl-polyester laminate; Sure-Chek #44 or approved alternate meeting all general specification requirements and all additional specifications for heavy duty mattress ticking and binding.</p> <p>a) Fabric Must Meet Flame Resistant Standard of NFPA 701, large scale flame test; after flame 2.0 seconds max, char length 7.0" max). (ASTM D6413).</p> <p>b) Must meet (cigarette Test) 16 CFR Part 1632 as a class A (Barrier) material.</p> <p>c) Fabric must incorporate an antimicrobial system capable of reducing the growth of gram positive and gram negative organisms on the surface of the fabric (AATCC 147 ISO 22196).</p> <p>d) Fabric Weight: 12.5 oz/sq yard. (+/- 10%) (ASTM D3776).</p> <p>e) Tear Strength: 95 lbs (warp) and 100 lbs (fill). (ASTM D2261)</p> <p>f) Typical Breaking Strength: 220 lbs (warp) and 195 lbs (fill). (ASTM D5034).</p> <p>g) Must pass Hydrostatic test, waterproofing (PSI) ASTM D751/A) indicating no leakage @ 350 PSI.</p> <p>h) Must pass Antistatic test method (AATCC 76) as a permanent property. No surface treatments accepted.</p> <p>i) Color: Permanent, non-fading, non-bleeding - Medium Green # 106697.</p> <p>j) Manufacturer's logo to be imprinted on edge or embossed on fabric in order to verify authentication.</p> <p>k) Put-Ups: Roll - 100 yard lengths, 88" Width to be slit at desired length as stated on each order with minimum slit width to be 7/8".</p> <p>l) Fabric must be capable of being stitched, welded and/or cemented.</p>	\$5.35
002	Yard	<p>Mattress Ticking and Binding; Fabric shall be 3-ply vinyl-polyester laminate; Sure-Chek #44 or approved alternate meeting all general specification requirements and all additional specifications for heavy duty mattress ticking and binding.</p> <p>a) Fabric Must Meet Flame Resistant Standard of NFPA 701, large scale flame test; after flame 2.0 seconds max, char length 7.0" max). (ASTM D6413)</p> <p>b) Must meet (cigarette Test) 16 CFR Part 1632 as a class A (Barrier) material.</p> <p>c) Fabric must incorporate an antimicrobial system capable of reducing the growth of gram positive and gram negative</p>	\$5.35

		<p>organisms on the surface of the fabric (AATCC 147 ISO 22196).</p> <p>d) Fabric Weight: 12.5 oz/sq yard. (+/- 10%) (ASTM D3776)</p> <p>e) Tear Strength: 95 lbs (warp) and 100 lbs (fill). (ASTM D2261)</p> <p>f) Typical Breaking Strength: 220 lbs (warp) and 195 lbs (fill). (ASTM D5034)</p> <p>g) Must pass Hydrostatic test, waterproofing (PSI) ASTM D751/A) indicating no leakage @ 350 PSI</p> <p>h) Must pass Antistatic test method (AATCC 76) as a permanent property. No surface treatments accepted.</p> <p>i) Color: Permanent, non-fading, non-bleeding - Navy # 10895X.</p> <p>j) Manufacturer's logo to be imprinted on edge or embossed on fabric in order to verify authentication.</p> <p>k) Put-Ups: Roll - 100 yard lengths, 88" Width to be slit at desired length as stated on each order with minimum slit width to be 7/8".</p> <p>l) Fabric must be capable of being stitched, welded and/or cemented.</p>	
003	Yard	<p>Mattress Ticking and Binding; Fabric shall be; Sure-Chek Fusion III-HP or approved alternate meeting all general specification requirements and all additional specifications for pressure reduction mattress ticking and binding.</p> <p>a) Fabric shall be Phthalate Free and PVC Free with 4 way stretch capabilities.</p> <p>b) Fabric Must Be Flame Resistant (NFPA 702 Class 1) (ASTM 6413)</p> <p>c) Must meet (cigarette Test) 16 CFR Part 1632 as a class B (Barrier) material.</p> <p>d) Fabric must incorporate an antimicrobial system capable of reducing the growth of gram positive and gram negative organisms on the surface of the fabric (AATCC 147 ISO 22196) .</p> <p>e) Fabric Weight: 6 oz/sq yard. (+/- 10%) (ASTM D3776)</p> <p>f) Tear Strength: 150 lbs (warp) and 65 lbs (fill). (ASTM D2261)</p> <p>g) Typical Breaking Strength: 10 lbs (warp) and 10 lbs (fill). (ASTM D5034)</p> <p>h) Must pass Hydrostatic test, waterproofing (PSI) ASTM D751/A) indicating no leakage for 5 min. @ 5 PSI.</p> <p>i) Must pass Hypoallergenic (DIN EN ISO 109993-10 and DIN EN ISO 10993-5) indicating no skin irritation or Cytotoxisty</p> <p>j) Must pass Antistatic test method (AATCC 76) as a permanent property. No surface treatments accepted.</p>	\$12.96

		<p>k) Color: Permanent, non-fading, non-bleeding - Spruce #111428.</p> <p>l) Put-Ups: Roll - 100 yard lengths, 54" Width.</p> <p>m) Fabric must be capable of being stitched, welded and/or cemented.</p>	
004	Yard	<p>Mattress Ticking and Binding; Fabric shall be 3-ply vinyl-polyester laminate; Sure Chek #20 or approved alternate meeting all general specification requirements and all additional specifications for mattress ticking and binding.</p> <p>a) Fabric Must Meet Flame Resistant Standard of NFPA 701, large scale flame test; after flame 2.0 seconds max, char length 7.0" max). (ASTM D6413)</p> <p>b) Must meet (cigarette Test) 16 CFR Part 1632 as a class A (Barrier) material.</p> <p>c) Fabric must incorporate an antimicrobial system capable of reducing the growth of gram positive and gram negative organisms on the surface of the fabric (AATCC 147 ISO 22196).</p> <p>d) Fabric Weight: 10 oz/sq yard. (+/- 10%) (ASTM D3776)</p> <p>e) Tear Strength: 18 lbs (warp) and 30 lbs (fill). (ASTM D2261)</p> <p>f) Typical Breaking Strength: 115 lbs (warp) and 110 lbs (fill). (ASTM D5034)</p> <p>g) Must pass Hydrostatic test, waterproofing (PSI) ASTM D751/A) indicating no leakage @ 180 PSI.</p> <p>h) Must pass Antistatic test method (AATCC 76) as a permanent property. No surface treatment allowed.</p> <p>i) Color: Permanent, non-fading, non-bleeding - Black # 103602</p> <p>j) Manufacturer's logo to be imprinted on edge or embossed on fabric in order to verify authentication.</p> <p>k) Put-Ups: Roll - 100 yard lengths, 54" Width to be slit at desired length as stated on each order.</p> <p>l) Fabric must be capable of being stitched, welded and/or cemented.</p>	\$2.62
005	Yard	<p>Mattress Ticking and Binding; Fabric shall be of 210 Denier Nylon with waterproof backing that is Phthalate and Halogen Free meeting all general specification requirements and all additional specifications for mattress ticking and binding.</p> <p>a) Fabric Must Be Flame Resistant according to test method (ASTM D6413)</p> <p>b) Must meet (cigarette Test) 16 CFR Part 1632.</p> <p>c) Fabric must incorporate an antimicrobial system capable of reducing the growth of gram positive and gram negative</p>	\$5.25

		<p>organisms on the surface of the fabric (AATCC 147 ISO 22196).</p> <p>d) Fabric Weight: 4 oz/sq yard. (+/- 10%) (ASTM D3776)</p> <p>e) Tear Strength: 20 lbs (warp) and 20 lbs (fill). (ASTM D2261)</p> <p>f) Typical Breaking Strength: 220 lbs (warp) and 200 lbs (fill). (ASTM D5034)</p> <p>g) Must pass Hydrostatic test, waterproofing (ASTM D751/A) indicating no leakage @ 160 PSI</p> <p>h) Must pass Antistatic test method (AATCC 76) as a permanent property. No surface treatment allowed.</p> <p>i) Color: Permanent, non-fading, non-bleeding - Navy #110548</p> <p>j) Put-Ups: Roll - 100 yard lengths, 82" Width to be slit at desired length as stated on each order.</p> <p>k) Fabric must be capable of being stitched, welded and/or cemented.</p>	
006	Yard	<p>Mattress Ticking and Binding; Fabric shall be vinyl/fiberglass backing as fire barrier; Sure-Chek FFB or approved alternate meeting all general specification requirements and all additional specifications for heavy duty mattress ticking and binding.</p> <p>a) Fabric must be capable of passing as a flame barrier CA- TB- 129 and 16 CFR Part 1633 when tested on a standard innerspring mattress. (ASTM D6413)</p> <p>b) Must meet (cigarette Test) 16 CFR Part 1632 as a class A (Barrier) material.</p> <p>c) Fabric must incorporate an antimicrobial system capable of reducing the growth of gram positive and gram negative organisms on the surface of the fabric (AATCC 147 ISO 22196).</p> <p>d) Fabric Weight: 11 oz/sq yard. (+/- 10%) (ASTM D3776)</p> <p>e) Tear Strength: 12 lbs (warp) and 8 lbs (fill). (ASTM D2261)</p> <p>f) Typical Breaking Strength: 155 lbs (warp) and 115 lbs (fill). (ASTM D5034)</p> <p>g) Must pass Hydrostatic test, waterproofing (PSI) ASTM D751/A) indicating no leakage @ 180 PSI</p> <p>h) Fabric must be meet (ASTM 751/A) @ 6 lbs. min (Peel Adhesion)</p> <p>i) Must pass Antistatic test method (AATCC 76) as a permanent property. No surface treatments accepted.</p> <p>j) Colors: Permanent, non-fading, non-bleeding - NAVY.</p> <p>k) Manufacturer's logo to be imprinted on edge or embossed on fabric in order to verify authentication.</p>	\$11.28

		<p>l) Put-Ups: Roll - 100 yard lengths, 82" Width to be slit at desired length as stated on each order with minimum slit width to be 7/8".</p> <p>m) Fabric must be capable of being stitched, welded and/or cemented.</p>	
007	Yard	<p>Pillow Ticking; Fabric shall be a laminate material; Sure Chek #6 MV AF or approved alternate meeting all general specification requirements and all additional specifications for pillow ticking.</p> <p>a) Fabric Must Meet Flame Resistant Standard of NFPA 701, large scale flame test; after flame 2.0 seconds max, char length 7.0" max). (ASTM D6413)</p> <p>b) Must meet (cigarette Test) 16 CFR Part 1632 as a class A (Barrier) material.</p> <p>c) Fabric must incorporate an antimicrobial system capable of reducing the growth of gram positive and gram negative organisms on the surface of the fabric (AATCC 147 ISO 22196).</p> <p>d) Fabric Weight: 8 oz/sq yard. +/- 10 % (ASTM D3776)</p> <p>e) Tear Strength: 15 lbs (warp) and 15 lbs (fill). (ASTM D2261)</p> <p>f) Typical Breaking Strength: 125 lbs (warp) and 100 lbs (fill). (ASTM D5034)</p> <p>g) Must pass Hydrostatic test, waterproofing (ASTM D751) indicating no leakage @ 180 PSI.</p> <p>h) Fabric must be meet (ASTM 751/A) @ 5 lbs. min (Peel Adhesion)</p> <p>i) Must pass Antistatic test method (AATCC 76) as a permanent property. No surface treatment allowed.</p> <p>j) Colors: Permanent, non-fading, non-bleeding - White #106683</p> <p>k) Manufacturer's logo to be imprinted on edge or embossed on fabric in order to verify authentication.</p> <p>l) Put-Ups: Roll - 100 yard lengths, 54" Width.</p> <p>m) Fabric must be capable of being stitched, welded and/or cemented.</p>	\$2.23
008	Yard	<p>Mattress Ticking; Fabric shall be nylon/fiberglass backing as fire barrier; Sure-Chek Shield 1633-210D or approved alternate meeting all general specification requirements and all additional specifications for heavy duty mattress ticking and binding.</p> <p>a) Fabric must be capable of passing as a flame barrier CA- TB-129 and 16 CFR Part 1633 when tested on a standard innerspring mattress. (ASTM D6413)</p> <p>b) Must meet (cigarette Test) 16 CFR Part 1632 as a class A (Barrier) material.</p>	\$8.35

	<p>c) Fabric must incorporate an antimicrobial system capable of reducing the growth of gram positive and gram negative organisms on the surface of the fabric (AATCC 147 ISO 22196).</p> <p>d) Fabric Weight: 10.5 oz/sq yard. (+/- 10%) (ASTM D3776)</p> <p>e) Tear Strength: 30 lbs (warp) and 35 lbs (fill). (ASTM D2261)</p> <p>f) Typical Breaking Strength: 140 lbs (warp) and 130 lbs (fill). (ASTM D5034)</p> <p>g) Must pass Hydrostatic test, waterproofing (PSI) ASTM D751/A) indicating no leakage @ 190 PSI</p> <p>h) Fabric must be meet (ASTM 751/A) @ 6 lbs. min (Peel Adhesion)</p> <p>i) Must pass Antistatic test method (AATCC 76) as a permanent property. No surface treatments accepted.</p> <p>j) Colors: Permanent, non-fading, non-bleeding - NAVY.</p> <p>k) Manufacturer's logo to be imprinted on edge or embossed on fabric in order to verify authentication.</p> <p>l) Put-Ups: Roll - 100 yard lengths, 54"widths to be slit at desired length as stated on each order with minimum slit width to be 7/8".</p> <p>m) Fabric must be capable of being stitched.</p>	
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**Additional Specifications for all items in Attachment A:**

Bids must include documented test results of all required specifications above.

No Run of the mill goods (seconds) allowed.

Roll Length must be 100 yards (+/- 5 yards)

All rolls must be on cardboard tubes of at least 1 1/2" ID that is sufficient to support product without crushing tube.

All seams/splices must be flagged; not to exceed two per roll.

