



STATE OF MICHIGAN PROCUREMENT
DTMB Central Procurement Services
 525 W. Allegan, 1st Floor NE
 Lansing, MI 48933

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. 200000000885
 between
 THE STATE OF MICHIGAN
 and

CONTRACTOR	Bob Barker Company, Inc.
	7925 Purfoy Road
	Fuquay-Varina, NC 27526
	Nicole Myatt
	919-346-2154
	nicolemyatt@bobbarker.com
	CV0059783

STATE	Program Manager	Varies by Location: See Below	See Below
		See Below	
		See Below	
STATE	Contract Administrator	Valerie Hiltz	DTMB
		517-294-0459	
		hiltzv@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION:			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
May 6, 2020	May 5, 2023	2- two-year options	May 5, 2023
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		Per Schedule A, Section 2.1. Time Frames	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
THIS IS NOT AN ORDER: Orders will be place directly by the State agency via the authorized document established in Schedule A, Section 5.1. Authorizing Document, and per terms, conditions and specifications of this contract.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$524,100.00

Program Managers

AGENCY	LOCATION	NAME	PHONE	EMAIL
MDHHS	Caro Center	Tammy McPherson	989-672-9444	McPhersonT2@michigan.gov
MDHHS	Center for Forensic Psychiatry	Linda Taylor	734-295-4488	TaylorL21@michigan.gov
MDHHS	Kalamazoo Psychiatric	Gordon Norris	269-337-3048	NorrisG1@michigan.gov
MDHHS	Walter P. Ruther Hospital	Dywan King	734-367-8599	KingD3@michigan.gov

FOR THE CONTRACTOR:

Company Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Valerie Hiltz, Category Specialist, Commodities Division
Name & Title

DTMB Central Procurement Services
Agency

Date



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Bob Barker Company, Inc. (“**Contractor**”), a North Carolina Corporation. This Contract is effective on May 6, 2020 (“**Effective Date**”), and unless terminated, expires on May 5, 2023.

This Contract may be renewed for up to two, two-year option period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

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

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Schedule A.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

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

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

If to State:	If to Contractor:
Valerie Hiltz 525 W. Allegan Street, 1 st Floor NE Lansing, MI 48933 hiltzv@michigan.gov 517-249-0459	Nicole Myatt 7925 Purfoy Rd. Fuquay-Varina, NC 27526 nicolemyatt@bobbarke.com 919.346.2154

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

State:	Contractor:
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Valerie Hiltz 525 W. Allegan Street, 1 st Floor NE Lansing, MI 48933 hiltzv@michigan.gov 517-249-0459	Nicole Myatt 7925 Purfoy Rd. Fuquay-Varina, NC 27526 nicolemyatt@bobbarker.com 919.346.2154
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4. **Contract Manager, Contractor Representative, and Program Manager.** The Contract Manager and Contractor Representative will be the parties who have intimate knowledge of this contract and its parameters and will have the ability to answer questions about this contract, handle day-to-day issues, and work directly with each other and the Program Managers. These people will work with the Contract Administrator with regard to required contractual changes, annual contract reporting and the like. The Program Manager will monitor and coordinate the day-to-day activities of the Contract.

Contract Manager	Contractor Representative
State:	Contractor:
Nick Norcross 320 S. Walnut 5th Floor Lansing, MI 48913 NorcrossN@michigan.gov 517-241-3131	Nicole Myatt 7925 Purfoy Rd. Fuquay-Varina, NC 27526 nicolemyatt@bobbarker.com 919.346.2154

Program Manger	
State: CARO – Caro Center	Contractor:
Tammy McPherson 200 Chambers Road Caro, MI 48723 McPhersonT2@michigan.gov 989-672-9444	Tammy Caldwell 7925 Purfoy Rd. Fuquay-Varina, NC 27526 tammycaldwell@bobbarker.com 919-753-1644
State: CFP – Center for Forensic Psychiatry	
Tawana Brooks 8303 Platt Road, Saline, MI 48176 BrooksT@michigan.gov 734-429-2531	
State: KPH – Kalamazoo Psychiatric Hospital	
Gordon Norris 1312 Oakland Drive, Kalamazoo, MI 49008 NorrisG1@michigan.gov 269-337-3048	
State: WRPB- Walter P. Reuther Hospital	
Dywan King 30901 Palmer Road, Westland, MI 48186 KingD3@michigan.gov 734-367-8599	

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

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04. Coverage must not have exclusions or limitations related to sexual abuse and molestation liability.
Automobile Liability Insurance	
<u>Minimum Limits:</u> \$1,000,000 Per Accident	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimum Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimum Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	

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

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

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

7. **Administrative Fee and Reporting.** Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made by check payable to the State of Michigan and mailed to:

Department of Technology, Management and Budget
 Cashiering
 P.O. Box 30681
 Lansing, MI 48909

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to MiDeal@michigan.gov.

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter.

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

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

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

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

9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

11. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

12. **Background Checks.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

13. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

14. **Change of Control.** Contractor will notify within 30 days of any public announcement or otherwise once legally permitted to do so, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a

plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

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

15. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.
16. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Schedule A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

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

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

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

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

those claims previously filed in writing on a timely basis and still disputed.

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

21. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Schedule A.
22. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or delivery order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
23. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

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

24. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
25. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 180 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

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

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

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

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

- 27. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
- 28. Limitation of Liability and Disclaimer of Damages. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
- 29. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
- 30. State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
- 31. Reserved.**

32. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

- a. Meaning of Confidential Information. For the purposes of this Contract, the term “**Confidential Information**” means all information and documentation of a party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term “Confidential Information” does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, though, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor’s responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State’s Confidential Information in confidence. At the State’s request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party’s possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State’s legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor’s Confidential Information will be destroyed after the retention period expires.

33. Reserved.

34. Reserved.

35. Reserved.

- 36. Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension (“**Audit Period**”). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

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

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

- 37. Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.

- 38. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

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

40. Reserved.

- 41. Reserved.** All printing in Michigan must be performed by a business that meets *one* of the following: (a) have authorized use of the Allied Printing Trades Council union label in the locality in which the printing services will be performed; (b) have on file with the Michigan Secretary of State, a sworn statement indicating that employees producing the printing are receiving prevailing wages and are working under conditions prevalent in the locality in which the printing services will be performed; or (c) have a collective bargaining agreement in effect and the employees are represented by an operations that is not influenced or controlled by management.

- 42. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and [Executive Directive 2019-09](#). Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in

Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.

- 43. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 44. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
- 45. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 46. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
- 47. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

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

- 48. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
- 49. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
- 50. **Schedules.** All Schedules and Exhibits that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

Schedule A	Statement of Work
Schedule B	Pricing

- 51. **Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and schedules and exhibits which are hereby expressly incorporated, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP,

CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

52. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
53. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
54. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
55. **Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

Federal Provisions Addendum

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

1. Equal Employment Opportunity

If this Contract is a "**federally assisted construction contract**" as defined in [41 CFR Part 60-1.3](#), and except as otherwise may be provided under [41 CFR Part 60](#), then during performance of this Contract, the Contractor agrees as follows:

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

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

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

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

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

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

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

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

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

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

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. Davis-Bacon Act (Prevailing Wage)

If this Contract is a **prime construction contracts** in excess of \$2,000, the Contractor (and its Subcontractors) must comply with the Davis-Bacon Act ([40 USC 3141-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"), and during performance of this Contract the Contractor agrees as follows:

- (1) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- (2) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (3) Additionally, contractors are required to pay wages not less than once a week.

3. Copeland "Anti-Kickback" Act

If this Contract is a contract for construction or repair work in excess of \$2,000 where the Davis-Bacon Act applies, the Contractor must comply with the Copeland "Anti-Kickback" Act ([40 USC 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any

part of the compensation to which he or she is otherwise entitled, and during performance of this Contract the Contractor agrees as follows:

- (1) Contractor. The Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA or the applicable federal awarding agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and Subcontractor as provided in 29 C.F.R. § 5.12.

4. Contract Work Hours and Safety Standards Act

If the Contract is **in excess of \$100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with [40 USC 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)), as applicable, and during performance of this Contract the Contractor agrees as follows:

- (1) Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The State shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

5. Rights to Inventions Made Under a Contract or Agreement

If the Contract is funded by a federal "funding agreement" as defined under [37 CFR §401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that

“funding agreement,” the recipient or subrecipient must comply with [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6. Clean Air Act and the Federal Water Pollution Control Act

If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act ([42 USC 7401-7671g](#)) and the Federal Water Pollution Control Act ([33 USC 1251-1387](#)), and during performance of this Contract the Contractor agrees as follows:

Clean Air Act

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

Federal Water Pollution Control Act

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

7. Debarment and Suspension

A “contract award” (see [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management](#) (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement [Executive Orders 12549](#) ([51 FR 6370; February 21, 1986](#)) and [12689](#) ([54 FR 34131; August 18, 1989](#)), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).

- (1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the State. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180,

subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of **\$100,000 or more** shall file the required certification in Exhibit 1 – Byrd Anti-Lobbying Certification below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

9. Procurement of Recovered Materials

Under [2 CFR 200.322](#), Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - b. Meeting contract performance requirements; or
 - c. At a reasonable price.
- (2) Information about this requirement, along with the list of EPA- designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

10. Additional FEMA Contract Provisions.

The following provisions apply to purchases that will be paid for in whole or in part with funds obtained from the Federal Emergency Management Agency (FEMA):

- (1) Access to Records. The following access to records requirements apply to this contract:
 - a. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
 - b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
 - d. In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(2) Changes.

See the provisions regarding modifications or change notice in the Contract Terms.

(3) DHS Seal, Logo, And Flags

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

(4) Compliance with Federal Law, Regulations, and Executive Orders

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(5) No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract.”

(6) Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.

Exhibit 1 - Byrd Anti-Lobbying Certification

Contractor must complete this certification if the purchase will be paid for in whole or in part with funds obtained from the federal government and the purchase is greater than \$100,000.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Bob Barker company, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

K. Nicole Myatt, Contract Specialist

Name and Title of Contractor's Authorized Official

May 1, 2020

Date



SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

BACKGROUND

The State of Michigan, herein after referred to as the State, operates four adult hospitals under the auspices of the Michigan Department of Health and Human Services (MDHHS). These hospitals service the needs of more than 700 patients, on average, annually.

SCOPE

The purpose of this contract is to establish a means by which the State may procure patient clothing. The Contractor will be responsible for warehousing and distribution of patient clothing, data collection and reporting, and all supervision and labor necessary for the completion of the established contract per the requirements outlined in this contract.

REQUIREMENTS

1. General Requirements

- A. The Contractor shall provide all clothing items and contract activities as described in Schedule A, Statement of Work and Schedule B, Pricing.
- B. The State reserves the right to add, remove or replace items, and the agencies served, during the contract term in order to meet the State of Michigan's future needs.
- C. The Contractor will pay a Contract Administration fee to the State in the amount of 1% for sales made to State Agencies and MiDeal members as outlined in **Standard Terms and Conditions Section 7. Administrative Fee and Reporting** and must comply will reporting requirements, a template is being provided to the Contractor at the inception of this Contract.
- D. **No product substitutions are allowed at the time of order fulfillment.** See **Section 1.2. Product Substitution** for allowances and procedures.
- E. Modifications to the Contract are only permitted if provided for in a Change Notice executed by the Contract Administrator.

1.1. Product Specifications

The Contractor must provide clothing that meets or exceed the following specifications.

A. Underwear

- 1) Women's Underwear, Bob Barker, ELBLCTN-SIZE
 - a. Style: Panties, brief style, higher rise, full coverage; with double fabric crotch and super soft non-binding elastic waistband. Crotch



to be sewn on with 3 thread overlock stitch and shall extend from leg opening to leg opening, machine washable.

- b. Fabric: 60% Cotton/ 40% Polyester
- c. Color: White
- d. Sizes: 5 through 16

B. Undergarments

1) Women's Sports Bra, Bob Barker, EBASPLS-SIZE

- a. Style: Sports bra, 2-ply stretch construction, pullover style, full coverage, racerback style, adjustable straps for best fit and comfort, tag-free, machine washable, covered elastic.
- b. Fabric: Soft, 65% cotton/ 30% Polyester/ 5% spandex (Lycra)
- c. Color: White
- d. Sizes: 32,34,36,38 (fits cups A & B) 40,42,44,46,48,50,52,54 (fits cups B, C & D)

C. Pants

1) Unisex Jeans, Bob Barker, BDT-SIZE

- a. Style: Elastic waist, NO DRAWSTRINGS, relaxed fit
- b. Color: Blue denim
- c. Fabric: Denim
- d. Sizes: Small through 4XL, 6XL

Men's Waist Size: 28-30 S, 32-34 M, 36-38 L, 40-42 XL, 44-46 2XL, 48-50 4XL, 52-54 6XL

Women's Dress Size: 8-10 S, 12-14 M, 16-18 L, 20-22 XL, 24-26 2XL, 28-30 3XL, 32-34 6XL

2) Unisex Sweatpants, Bob Barker, SPGY-SIZE or SPNV-SIZE

- a. Style: 7.725 oz, elastic waist and cuff, no pocket, NO DRAWSTRINGS
- b. Fabric: 50/50 poly/cotton, preshrunk, mid-weight
- c. Colors/ Sizes: Gray, Small through 6XL, 8XL, 10XL
- d. Colors/Sizes: Navy, Small though 4XL

D. Socks

1) Unisex Crew Sock, Fruit of the Loom, M10135C6C

- a. Style: Crew, cushioned foot throughout sole, reinforced heel and toe
- b. Fabric: 80% Cotton/ 20% Polyester
- c. Color: White
- d. Sizes: One size fits most, typically 6 through 12



- 2) Unisex Ankle Sock, Fruit of the Loom, M10134Q6B
 - a. Style: Everyday ankle length sock, cushioned sole, stretch material for superior fit, reinforced heel and toe.
 - b. Fabric: 80% Cotton/ 20% Polyester
 - c. Color: White
 - d. Sizes: One size fits most, typically 6 through 12

E. Shower Shoes

- 1) Unisex Shower Shoe, Bob Barker, SEVA-BK-SIZE
 - a. Style: Unisex design; heavy duty grooved soles, slip resistant; water resistant
 - b. Material: EVA (Ethylene Vinyl Acetate)
 - c. Color: Black
 - d. Sizes:
Men's: Medium 5-7, Large 7-9, X-Large 10-12
Women's Medium: 6-8, Large 9-11

F. Pajamas

- 1) Unisex Pajama, Bob Barker, JZ707-SIZE (Top) & JZ709-SIZE (Bottom)
 - a. Style: Pull over top, no buttons or snaps; pull-on bottom with elastic waist, no drawstring.
 - b. Fabric: 50% Cotton/ 50% Polyester, jersey knit
 - c. Color: Navy with Grey sleeves and collar
 - d. Sizes: Medium thru 3 XL can be ordered each
Small, 4XL, 5XL and 6XL must be ordered in two dozen increments

G. Sweatshirt

- 1) Unisex Sweatshirt, Bob Barker, SSGY-SIZE or SSNV-SIZE
 - a. Style: Crew Neck, Heavyweight 7.75 oz, double needle cover stitching on ribbed crew neck, drop shoulder inset sleeves and fuller cut styling; ribbed band on sleeves and bottom of garment.
 - b. Fabric: 55% Cotton/ 45% Polyester, preshrunk
 - c. Color/ Sizes: Grey, Small through 10XL
 - d. Color/ Sizes: Navy, Small through 4XL

H. Winter Gloves

- 1) Unisex Gloves, Igloo, JZ-20-673-GLOVE-UNI
 - a. Style: Winter glove
 - b. Fabric: Acrylic
 - c. Color: Variegated multi-color
 - d. Sizes: One size fits all



I. Winter Hats

- 1) Unisex Hat, Bob Barker, 101K-COLOR
 - a. Style: Knit style winter hat with fold up band around head and ears as Care Apparel H200.
 - b. Fabric: 100% acrylic
 - c. Color: Black (BK), Navy (NV), Grey (GY)
 - d. Sizes: One size fits all (Adult size)

J. Velcro Shoes

- 1) Unisex Velcro Closure Shoes, Bob Barker, B72D-SIZE
 - a. Style: Athletic style, double Velcro closure, sturdy rubber sole, padded footbed, collar, and tongue for comfort, no metal in or on shoe.
 - b. Construction:

Upper: 55% (1.5 mm thick) action leather and reinforced with athletic mesh. Upper is bonded with stitched foxing at 2.5 stitches per inch. Collar and tongue are fully padded with 1 cm foam and covered with athletic mesh

Outsole: Clear rubber sole, non-making, non-slip, fully stitched to the leather upper.

Insole: Fully demented with 8-point stitching, reinforced 480 Texon board insoles with additional arch support covered with 2x3 canvas. Heal quarter made with wafer bonded tricot. Heal and toe are double stitched.
 - c. Color: Black
 - d. Sizes- when ordering for women, order 1 ½ size smaller than men's sizes listed below:

D width- 3, 3.5, 4, 4.5, 5, 5.5, 6, 6.5, 7, 7.5, 8, 8.5, 9, 9.5, 10, 10.5, 11, 11.5, 12, 13, 14, 15, 16, 17

E width- 5, 5.5, 6, 6.5, 7, 7.5, 8, 8.5, 9, 9.5, 10, 10.5, 11, 11.5, 12, 13, 14, 15, 16, 17

EE width- 8, 8.5, 9, 9.5, 10, 10.5, 11, 11.5, 12, 13, 14, 15, 16, 17

K. Athletic Shorts

- 1) Unisex Athletic Shorts, Bob Barker, 659BK-SIZE
 - a. Style: Knee length, jersey knit, elastic waist, NO DRAWSTRINGS, no pockets
 - b. Fabric: 50/50 poly/cotton, preshrunk
 - c. Color: Black
 - d. Sizes: S through 2X, 4X, 6X



L. Other Clothing Items

The Contractor agrees that pricing for items quoted in the solicitation used to establish this contract, although not listed in this section nor in Schedule B, will be held firm and fix for the initial contract period and may be added to this contract should the State deem it necessary.

1.2. Product Substitution, Additions and Deletions

A. Substitutions. While the State recognizes that product substitutions may need to be made, substitutions may not be made during order fulfillment and may not be made without prior written consent of the Contract Manager as follows:

1) Product substitution due to discontinued product.

In the event of a product discontinuation which makes the approved product unavailable the Contractor will:

- a. Alert the Contract Manager within 2 business days once the discontinuation is known.
- b. Provide to the Contract Manager for consideration suggested alternate products, within 7 business days, product information including, but not limited to: product data sheets, the cost per replacement item and the time in which the new product can be obtained.
- c. Provide to the Contract Manager samples as requested by the Contract Manager. See **Section 2.4. Samples.**
- d. Provide the replacement clothing item as agreed to and as replaced via Change Notice.

2) Product substitution due to product quality issues. Should products consistently arrive with quality issues:

- a. The State will send an e-mail notification to the Contractor identifying non-conforming product and request that the Contractor research and provided alternate product information for consideration.
- b. The Contractor, within 7 business days, provide for the State's consideration product information including, but not limited to: product data sheets, the cost per replacement item and the time in which the new product can be obtained.
- c. The Contractor will Provide to the Contract Manager samples as requested by the Contract Manager. See **Section 2.4. Samples.**
- d. The Contractor will return to the manufacturer all defective/deficient clothing items at no cost to the State.
- e. The Contractor will provide the replacement clothing item as agreed to and as replaced via Change Notice.



B. New Items. The State may choose to eliminate and/or may consider adding clothing items to Schedule B.

3) The Contractor will assist the Contract Manager in researching new product which may include, but is not limited to:

- a. Meet with the Contract Manager to showcase new products.
- b. Provide product data, pricing, availability information.
- c. Provide samples for evaluation. See **Section 2.4. Samples**.

4) Should new items be approved, the items will be added to Schedule B via Change Notice and the Contractor will be required to provide the new items per the terms of this Contract.

C. Deleted Items. Should the State no longer require an item and wish to delete it from Schedule B, for reasons other than quality issues, the State will:

- 1) Notify the Contractor that the item is being eliminated.
- 2) Ask the Contractor for an accounting of the number of those items remaining in their warehouse.
- 3) Purchase the warehouse inventory of that item up to the required stocking level.
- 4) Delete the item from Schedule B via Change Notice.

1.3. Product Availability/Warehousing

A. The State will require that the Contractor or their direct ship vendor will have available, and in stock, at a minimum a quantity of ten (10) of each item, in each size, for the fulfillment of orders. Having stock on hand limits the risk of obtaining product should there be a supply interruption from the manufacturer.

B. The State will accept liability for quantities of the Contractor warehoused products that are mandated to be available as established in the Contract.

- 1) At the end of the Contract, MDHHS will take delivery of and pay for any product, up to the mandated quantity that remains in the Contractor's warehouse.

1.4. Warranties

The Contractor will warranty their product to be from defect for thirty days after it has been issued from MDHHS inventory to the patient or as indicated in Schedule A, Section 1.6. Quality.

A. MDHHS will keep record of the date items are issued to patients and provide necessary records to the Contractor for verification.



- B. MDHHS will report any warranty issues by emailing the Contractor at customerservicenorth@bobbarer.com.
- C. Once the warranty email has been received, a contractor customer service representative will respond to assist with the warranty claim.
- D. Items identified as being covered under the warranty will either be replaced, or a credit will be given to the State off the amount due in the next invoice.

1.5. Recall Requirements and Procedures

Should any products be recalled by the manufacturer, the Contractor's Representative will contact the MDHHS Program Manager's via email with information relative to the recall requirements and procedures.

1.6. Quality

- A. Product Quality. The Contractor will provide first quality products. Items not meeting the following quality standards will be deemed unacceptable and returned as defective or under warranty. Clothing items:
 - 1) Will have no physical defects. Tears, stains, holes, miss-sewn seams or parts.
 - 2) Fabrics will be colorfast and resistant to fading or pilling for up to 3 months.
- B. Quality Assurance Program. The Contractor will ensure that the products provided under this Contract meets quality standards by utilizing the following measures:
 - 1) The Contractor will randomly inspect and audit a portion of products shipping into its warehouses from the suppliers and manufactures.
 - 2) The Contractor will conduct frequent inspections and audits of their own manufacturing facilities and operations, both domestically and abroad, to ensure the quality of raw materials, processes and the final products.

2. Service Levels

2.1. Time Frames

- A. Products being delivered from the Contractor's warehouse. All orders placed before 12 noon ET will be picked and shipped that day. Orders place after 12 noon will be picked and shipped the following day. Delivery is expected within 7-14 from receipt of order.
- B. Products being delivered from the Contractor's supplier/manufacturer warehouse. Winter gloves and Pajamas in small, 4XL, 5XL or 6XL will be delivered 14-21 days after receipt of order.
- C. The receipt of order date is pursuant to Section 2, Notices, of the Standard Contract Terms. See **Section 6. Delivery** for specific delivery details.



2.2. Reporting

- A. The Contractor must provide the State with standard and specialized reports upon request. All reports must be in Excel or similar modifiable format.
- B. Administrative Reporting. Quarterly, within 30 days of the last day of each calendar quarter, the Contractor must email to MiDeal@michigan.gov the following report (see **Exhibit 1**):
 - 1) An itemized purchasing activity report which will include at a minimum:
 - a. The name of the purchasing entity (whether State Agency or MiDeal Member)
 - b. Line Item accounting of items purchased
 - c. Price billed per item
 - d. Total dollar volume in sales.
- C. Quarterly Administrative and usage reports will also be e-mailed to the Contract Manager and the Program Managers, if requested, within 30 days of the last day of each calendar quarter.

2.3. Meetings

The Contractor must attend the following meetings:

- A. Contract Kick-off meeting within 30 calendar days of the contract Effective Date
- B. The State may request other meetings as it deems appropriate.

2.4. Samples

If required by the State, the Contractor will provide samples for the State's review and consideration free of charge if the following procedure is followed:

- A. The State will request samples, in writing, from the Contractor
- B. The Contractor will respond in writing with the timeline to obtain samples and the cost of the sample should the State not follow return procedure established below in **2.4.D**.
- C. The State must submit a Delivery Order (DO) for samples using the value established in a quote provided by the Contractor
- D. Samples must be returned to the Contractor within 60 days or in the timeline agreed to in writing submitted with the quotation.
- E. If samples are not returned within the default or established timeline, the State will be invoiced against the DO, and returns will not be allowed.

2.5. Transitions

- A. Transition In. At the beginning of the contract the Contractor will assist the State in transitioning to the use of this contract.
 - 1) Contract will work to set up all account information, procure all product, and perform any other functions as necessary to provide product at contract initial effective date.
- B. Transition Out. At the end of the contract, the Contractor must:



- 1) Continue to maintain consistent communication with the State throughout the transition period to ensure the uninterrupted supply of clothing for patients.
- 2) The Contractor must provide all requested user data and other records as requested by the Contract Administrator.
- 3) Contractor will submit to the State all final billing within 45 calendar-days of the contract expiration date and provide any requested back up documentation as may be necessary to make final payment within that same 45 calendar-day time. No additional invoicing after the 45 calendar-day period will be honored.

2.5. Service Level Agreements (SLA's)

- A. The Contractor will be held accountable to meet the requirements and the service level requirements established in this contract.
- B. The State reserves the right to reconsider or amend SLA amounts for split awards should they occur.
- C. Please Note: Should Contractors have any questions or require clarification with regard to the SLA's, they should submit them during the Question and Answer Period of this solicitation. Please see **Proposal Instructions** for the timeline.
- D. Service Levels Agreements for this contract will be as follows:

SLA Metric 1. Timely Deliveries	
Definition and Purpose:	All orders must be shipped, and product received within the timeframes established in Section 2.1. Time Frames.
Acceptable Standard:	<ol style="list-style-type: none"> 1. All deliveries must occur in accordance with the approved Delivery Schedule for each Facility and Facility Receiving Hours. See Section 6.3. 2. Extenuating circumstances must be communicated by the Contractor to the Program Manager prior to the delivery date and time. The acceptable standard is 100% compliance.
Credit due for Failing to Meet the Service Level Agreement.	<ol style="list-style-type: none"> 1. \$100.00 may be assessed for each of the first five occurrences of non-compliance in a given calendar year. 2. \$500.00 may be assessed beginning with the sixth occurrence of non-compliance and on each occurrence thereafter in a given calendar year. Extenuating circumstances will be reviewed by the Contract Manager before any Service Credits are assessed. At the discretion of the State, these credits may be applied toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the State will be completed within 10 days upon demand.



SLA Metric 2. Accurate Deliveries	
Definition and Purpose:	<p>The Contractor must ensure that items and quantities delivered are exactly the items, brands, and quantities on the Order Confirmation. No substitutions will be allowed without prior written permission by Contract Manager and a Change Notice executed by the Contract Administrator.</p> <p>The entire order will be received on the same day unless a partial delivery has been approved in advance by the Program Manager.</p>
Acceptable Standard:	<ol style="list-style-type: none"> 1. Items, brands, and quantities delivered will match the Order Confirmation exactly. 2. Signed and dated packing slips will be provided to MDHHS at the time of delivery. 3. The entire order must be delivered on the same day unless a partial delivery has been approved in advance by the Program Manager. 4. Orders not received in their entirety, as determined by a review of the Data Sources, will be considered inaccurate. <p>The acceptable standard is 100% compliance.</p>
Credit due for Failing to Meet the Service Level Agreement.	<ol style="list-style-type: none"> 1. \$100.00 may be assessed for each of the first five occurrences of non-compliance in a given calendar year. 2. \$500.00 may be assessed beginning with the sixth occurrence of non-compliance and on each occurrence thereafter in a given calendar year. <p>Extenuating circumstances will be reviewed by the Contract Manager before any Service Credits are assessed. At the discretion of the State, these credits may be applied toward any payable due to the Contractor or be payable directly to the State. Payments made directly to the State will be completed within 10 days upon demand.</p>

3. Staffing

3.1. Contractor Representative

The Contractor must appoint a Contractor Representative specifically dedicated to this contract, who will be required to be knowledgeable on the contractual requirements and directly responsible for the day to day operations of the Contract.

A. The Contractor Representative **must** be:

- 1) Available for State personnel and customer service calls during the hours of 8 a.m. to 5 p.m. ET Monday through Friday.
 - a. The Contractor Representative must respond to the State within 8 business hours to State inquiries Monday through Friday.
- 2) Available for calls in the event of an emergency.



- a. The Contractor Representative may be contacted during evening, weekends or holidays
 - b. The Contractor Representative will be expected to respond to the State within 4 hours during these times.
- B. The Contractor Representative must respond to the State within 8 business hours to State inquiries Monday through Friday.
- C. The Contractor must notify the Contract Administrator at least 14 calendar days before removing or assigning a new Contractor Representative.
- D. The Contractor may not remove or assign a new Contractor Representative without the prior consent of the State. Prior consent is not required for reassignment for reasons beyond the Contractor's control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause.
- E. The Contractor's Representative will be:
Nicole Myatt
Contract Specialist
7925 Purfoy Rd.
Fuquay-Varina, NC 27526
919-346-2154
nicolemyatt@bobbarker.com

3.2. Key Personnel

The Contractor will identify Key Personnel specifically assigned to State of Michigan accounts, who will be knowledgeable on the contractual requirements and directly responsible for the day-to-day operations of the Contract.

- A. The Contractor Personnel must be available for customer service calls and must be available during the hours of 8 a.m. to 5 p.m. ET Monday through Friday.
- B. The Contractor Representative must respond to the State within 8 business hours to State inquiries Monday through Friday.
- C. The Contractor must notify the Contract Administrator at least 14 calendar days before removing or assigning new Key Personnel.
- D. Identified Key Personnel are:

Tammy Caldwell, Account Manager
Duties: Sales, inquiries and troubleshooting
467 Dalton Dr.
Rochester Hills, MI
248-228-0953
tammycaldwell@bobbarker.com

Nicole Beaulieu



Customer Service Representative
Duties: Order processing and inquiries.
7925 Purfoy Rd.
Fuquay-Varina, NC 27526
800-334-9880
nicolebeaulieu@bobbarker.com

3.3. Customer Service Toll-Free Number

The Contractor has a toll-free number for the State to contact the Customer Service Representative who will be available for calls during the hours of 8 am to 5 pm EST.

The toll-free number is: 800-334-9880

3.5. Disclosure of Subcontractors

The Contractor does not intend to use subcontractor in the performance of this contract.

A subcontractor will be defined as any entity, in a business relationship with the Contractor, that will have their employees dispatched to, deliver directly to, or perform work at any State location. This includes vendor suppliers.

During the course of this contract should the Contractor elect to utilize subcontractors in the performance of this contract, the Contractor must disclose the name, address, phone number, and what portion of the contractor their subcontractor will be performing.

- A. Any subcontractors will be bound by the terms of this contract, although the State extends no contractual relationship to the Contractor's subcontractors. The State will not accept billing from nor make direct payments to any subcontractor.
- B. The Contractor will give the State 30 calendar days' notice if it intends to replace any subcontractor and provide the same information as required below.
- C. The State may request to remove a subcontractor at any time during the term of the contract, and the Contractor is responsible for replacing that subcontractor within 30 calendar days.
- D. The Contractor will designate one key personnel that will be solely responsible for communicating the needs and substitution requests of subcontractors. At the State's discretion, subcontractors will be permitted to communicate directly with the State on a case by case basis.

3.6. Security

Security at State facilities is a priority and the Contractor, and its personnel, must be responsive to and respectful of these needs.

- A. The State reserves the right to deny access to any facility to anyone who fails to comply with any applicable State, Federal, or local law, ordinance or regulation or whose presence may compromise the security of the facility, its patients, or staff.
- B. The Contractor will contract to have criminal background checks on all employees.



- C. The State may investigate Contractor and its subcontractors, and their respective employees, agents, and representatives before they have access to State facilities and systems.
 - 1. The scope of the investigation is at the discretion of the State; results will be used to determine eligibility for working within State facilities and systems. It may include:
 - a. Michigan State Police background checks (ICHAT),
 - b. Law Enforcement Information Network checks (LEIN), and
 - c. National Crime Information Center (NCIC) Fingerprints.
- D. The Contractor will remain C-TPAT certified to ensure shipping security.

4. Pricing

4.1. Price Term

Pricing is firm and fixed for the entire length of the Base Contract (First Pricing) Period. The first pricing period begins on the Effective Date. Adjustments may be requested in writing, by either party, and will take effect no earlier than the next Pricing Period. The next Pricing Period will coincide with the effective date of the option years.

4.2. Price Changes

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

5. Ordering

5.1. Authorizing Document

The appropriate authorizing document for the contract will be a Delivery Order (DO) written against the Master Agreement submitted to the Contractor via e-mail or fax. No verbal orders are allowed.



5.2 Order Verification

The Contractor must have internal controls, approved by MDHHS, to verify abnormal orders and to ensure that only authorized individuals place orders. Questions regarding abnormal orders or ordering must be submitted to the Program Manager for that location.

5.3. Minimum Orders

There are no minimum order requirements.

5.4. Order Fulfillment

The Contractor will accurately and completely fulfill each order and make delivery within the agreed upon time frame.

6. Delivery

6.1. Delivery Programs

The Contractor will utilize third party commercial delivery with Fed Ex and UPS being their preferred method. For larger quantities Ward Trucking, Old Dominion or ESTES trucking services will be utilized.

6.2. Packaging and Palletizing

Products must be packaged as follow:

A. Clothing Items.

The Contractor must package all items in clear wrap to protect from damage and debris. Metal wire ties, metal clips, paper-coated wire ties, or staples must not be used for the sealing of the plastic film bags.

B. Cartons.

1. The Contractor must ship all items in cardboard cartons. Cartons will weigh less than 50 lbs. and be clean and of adequate strength to provide protection and stacking strength.
2. The outside of each carton must be labeled in English with the following information:
 - a. The Delivery Order (DO) number
 - b. List of items included in the carton, including sizes
 - c. Quantity of each item and size included in the carton
 - d. Name of delivery location
3. The Contractor must include an itemized packing slip with each delivery which includes, but is not limited to, the following information:
 - a. The Delivery Order (DO) number
 - b. Date
 - c. List of items included in the delivery
 - d. Quantity of each item and size included in the carton



e. Name of delivery location

C. Pallets.

1. Whenever possible, manufacturer's standard 4-way shipping pallets must be used. Pallets must be in good condition with no broken boards or rails.
2. The Contractor will shrink wrap or band multiple cartons for a single location per pallet.
3. Palletized product dimensions must not exceed or overhang the pallet dimensions of 40" x 48" x 50".
4. The Contractor must clearly mark all orders for delivery with the appropriate facility name, address and DO number(s).

6.3. Delivery Locations and Hours

The Contractor will make delivery to the loading docks at following locations, within the hours as indicated (excluding State Holidays):

- A. Location: Caro Center (CARO)
Address: 2000 Chambers Road, Caro, MI 48723
Timeframe in which deliveries will be accepted: Monday – Friday 8:30 a.m. to 3:30 p.m.
- B. Location: Center for Forensic Psychiatry (CFP)
Address: 8303 Platt Road, Saline, MI 48176
Timeframe in which deliveries will be accepted: Monday – Friday 7 a.m. to 3 p.m.
- C. Location: Kalamazoo Psychiatric Hospital (KPH)
Address: 1312 Oakland Drive, Kalamazoo, MI 49008
Loading dock behind building #7/Pheasant Ridge Center
Timeframe in which deliveries will be accepted: Monday – Friday 7:30 a.m. to 3:30 p.m.
- D. Location: Walter P. Reuther Hospital (WPRH)
Address: 30901 Palmer Road, Westland, MI 48186
Timeframe in which deliveries will be accepted: Monday – Friday 7:00 a.m. to 3:00 p.m.

7. Acceptance

7.1. Acceptance, Inspection and Testing

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

A. Initial Inspection

- 1) The State will initially inspect each shipment to confirm that all components have been delivered as ordered, with the appropriate clothing or footwear items, in the requested quantities, and without visible signs of damage.
- 2) If initial inspection reveals incorrect clothing or footwear, incorrect quantities, or visible signs of damage, the State may reject the shipment without performing any further inspection or testing. The State may however, in its



discretion, conditionally approve the portion of a shipment that is not deficient or defective and may permit the Contractor to correct the deficiencies discovered during the initial inspection.

- 3) If the shipment passes the initial inspection, it will be conditionally accepted dependent on continued inspection. The Contractor may invoice for the items at this time.

B. Continued Inspection

- 1) After the shipment has been conditionally accepted and the clothing or footwear are placed into stock, as each item is opened for use it will be inspected to ensure that the item does not have a material deficiency or defect or in any way doesn't meet with product specifications. See **Section 1.6.A. Product Quality**.
- 2) If at any time from delivery until the products use it is determined that a deficiency has been discovered, the State will notify the Contractor within 24 hours in order to discuss the nature of the deficiency and work with the Contractor to either correct the deficiency by providing replacement items or credit the State.
- 3) If the State elects to work with the Contractor to correct the deficiency, the Contractor shall, at their expense, supply replacement items within 14 business days.
- 4) If the State elects to take the credit for the deficient items, the Contractor shall provide a credit memo to the State within 45 calendar days.
- 5) In the event that the deficiency is not corrected within the stated timeline, the State may elect to have the product replaced and have the Contractor provide a credit for the cost of the item. Contractor should include this clause in any agreement with the manufacturer.

C. Corrective Action

If, after three opportunities the Contractor is unable to correct all deficiencies, the State may:

- 1) Demand that the Contractor cure the failure and give the Contractor additional time to do so at the sole expense of the Contractor;
- 2) Keep the Contract in force and perform, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the Contract price plus an additional amount equal to 10% of the State's cost to cure the deficiency; or
- 3) Fully or partially terminate the Contract for default by giving notice to the Contractor.



8. Invoice and Payment

8.1. Invoice Requirements

All invoices submitted to the State when shipment is made and must include:

- A. date;
- B. delivery order number;
- C. quantity;
- D. description of the Contract Activities;
- E. unit price; and
- F. total price.

8.2. Payment Methods

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

8.3. Procedure

As a general policy, invoices must be forwarded to the MDHHS Bureau of Finance and Accounting at MDHHS-CPU@michigan.gov by the 30th day of the following month.

9. Liquidated Damages

- A. Late or improper completion of the Contract Activities will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$5,000 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work.
- B. Unauthorized Removal of Key Personnel will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, the State may assess liquidated damages against Contractor as specified below.
 - 1) The State is entitled to collect \$1,000 per individual per day for the removal of any Key Personnel without prior approval of the State.
 - 2) The State is entitled to collect \$1,000 per individual per day for an unapproved or untrained key personnel replacement.

10. Additional Requirements

10.1. Environmental and Energy Efficient Products

The Contractor must identify any energy efficient, bio-based, or otherwise environmentally friendly products used in the products. Contractor must include any relevant third-party certification, including the verification of a United States department of agriculture certified bio-based product label.



10.2. Hazardous Chemical Identification

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

10.3. Mercury Content

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

10.4. Brominated Flame Retardants

The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible. The Contractor must disclose if any products contain BFRs.



SCHEDULE B PRICING

Item #	Clothing Type	Year 1	Year 2	Year 3
		Cost per Each	Cost per Each	Cost per Each
A	Women's Panty	\$ 0.87	\$ 0.88	\$ 0.90
B	Women's Sports Bra	\$ 1.66	\$ 1.70	\$ 1.73
C-1	Jeans	\$ 6.78	\$ 6.92	\$ 7.02
C-2	Sweatpants	\$ 6.13	\$ 6.25	\$ 6.38
D-1	Crew Socks (12 pair package)	\$ 14.40	\$ 14.88	\$ 15.36
D-2	Ankle Socks (12 pair package)	\$ 12.24	\$ 12.60	\$ 12.96
E	Shower shoes	\$ 2.05	\$ 2.09	\$ 2.13
F-1	Pajama Top	\$ 7.80	\$ 7.95	\$ 8.11
F-2	Pajama Bottom	\$ 7.80	\$ 7.95	\$ 8.11
G	Sweatshirt	\$ 6.57	\$ 6.70	\$ 6.83
H	Winter gloves	\$ 2.46	\$ 2.51	\$ 2.56
I	Winter hats	\$ 1.25	\$ 1.28	\$ 1.30
J	Velcro shoes	\$ 18.94	\$ 19.32	\$ 19.70
K	Athletic short	\$ 4.78	\$ 4.88	\$ 4.97