

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

**NOTICE OF CONTRACT NO. 071B6600005**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Peterson Paletta, PLC 5510 Cascade Road SE, Suite 220 Grand Rapids, MI 49546	Terese Paletta	tap@petersonpaletta.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	(616) 957-3540	4560

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	MDOC	David Leach	(517) 373-8884	leachd@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Lance Kingsbury	(517) 284-7017	kingsburyl@michigan.gov

CONTRACT SUMMARY			
<b>DESCRIPTION: Legal Writer Services for Prisoners</b>			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Years	October 1, 2015	September 30, 2018	2, one-year
PAYMENT TERMS	F.O.B.	SHIPPED TO	
N/A	N/A	N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$831,600.000	

**For the Contractor:**

\_\_\_\_\_  
\_\_\_\_\_,  
**Contract Administrator**  
\_\_\_\_\_

\_\_\_\_\_  
**Date**

**For the State:**

\_\_\_\_\_  
\_\_\_\_\_,  
\_\_\_\_\_  
**State of Michigan**

\_\_\_\_\_  
**Date**



**STATE OF MICHIGAN**  
 Contract No. 071B6600005  
 Legal Writer Services for Prisoners

**EXHIBIT A**  
**STATEMENT OF WORK**  
**CONTRACT ACTIVITIES**

This is a Contract for Legal Writer Services for Prisoners sentenced to a term of incarceration with the Michigan Department of Corrections (MDOC). This exhibit identifies the requirements of the Contract activities.

**1.0 Background**

The State of Michigan provides prisoners with meaningful access to the courts through law libraries and assistance from persons trained in the law.

The Legal Writer Program provides eligible prisoners in MDOC correctional facilities with legal assistance limited to matters relating to their criminal conviction or conditions of confinement, pursuant to a 1996 court order. Only prisoners not represented by counsel who meet the eligibility requirements listed below are eligible to receive assistance. The legal assistance is provided by prisoners within MDOC correctional facilities who have successfully completed the Legal Writer Training and are assigned to the Legal Writer Program as Legal Writers.

The MDOC offers the Legal Writer Program to all eligible prisoners housed in any MDOC correctional facility listed in Attachment A. The Legal Writer Program provides assistance in obtaining access to the courts and is not equivalent to legal representation. The Contractor is merely assisting the prisoners with the legal documents, not representing them in the case(s). Eligibility for assistance is determined by the MDOC and includes all prisoners not represented by counsel who meet any of the following criteria:

1. Does not have a verified GED or high school diploma.
2. Does not speak, read, or write English.
3. Has a documented physical or mental impairment, or a learning disability, which may affect his/her ability to use the law library to prepare and file a legible and coherent pleading.
4. Is undergoing reception center processing.
5. Is housed in any form of segregation other than temporary segregation.
6. Is housed in an MDOC-operated inpatient medical unit.
7. Housed in non-traditional general population housing that does not allow for direct access to legal research materials as approved by the Deputy Director or Designee.

Based on the operational needs of the correctional system, the MDOC reserves the right to require the Contractor to add or remove facilities in which Legal Writer Program services are offered. The MDOC may adjust the number of prisoners who receive legal writer services at any time. The MDOC may increase or decrease the number of facilities housing prisoners. Neither a specific number of facilities housing prisoners are guaranteed, nor is the number of prisoners eligible to receive Legal Writer Program services guaranteed. Therefore, the Contractor must be prepared to make any necessary changes as required. Verbal notification will be provided by the MDOC Program Manager, or designee, with follow-up written notification. Written notification will be provided at least 14 days in advance of adding or removing facilities.

Average types of requests in a 60 day period are:

General questions: 202  
 Federal Habeas Corpus: 65  
 File requests (transfers/former services): 78  
 Docket and document requests: 198



Letters to courts and attorneys: 311  
 Motions filed under Michigan Court Rule 6.500: 177  
 Other trial court matters: 315  
 1983 conditions of confinement: 299  
 Judicial reviews: 54  
 Court of Appeals filings: 109  
 Michigan Supreme Court filings: 65

Also, in any 60 day period, it is not uncommon to receive these priority types and amounts of issues/questions:

Emergency 21  
 High 398  
 Medium 702  
 Low 621

**1.1 Requirements**

Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

1. The Contractor must retrieve and distribute the individual legal documents to the Contractor’s attorneys for review. The Contractor’s attorney(s) and any law student may edit the legal documents, such as: strike out/add language, ask questions, insert comments, and make suggestions or all things deemed necessary to improve the quality of the product. However, the ultimate responsibility for the finished product is the responsibility of the supervising attorney in his or her professional opinion. When the Contractor’s attorney is done with the work, it is emailed back to the designated MDOC staff person, who will print copies and deliver the file to the legal writers. The legal writers then use the file to complete their individual assignments of work. If the legal document(s) has been approved for delivery to the prisoner, then the legal writer does so. However, the legal writer may need to respond to input from the Contractor. If this is the case, then the steps above are repeated.

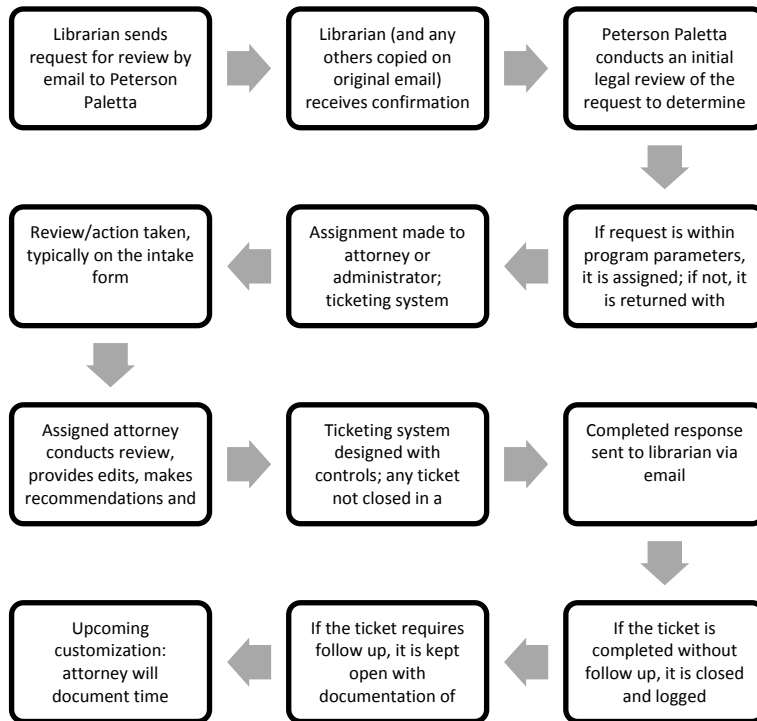
To be successful, the Contractor must have a solution for:

- 1) Receipt, dispatch and delegation of legal requests from legal writers; email and tracking system to document follow up issues
  - 2) Recruit and retain qualified attorneys who will be responsive in reviewing legal documents
  - 3) Understand and have experience in legal issues affecting the prison population at MDOC
  - 4) Reporting system to document program status transparently to MDOC
  - 5) Effectively train MDOC personnel and legal writers on the technology, process and forms
  - 6) Offer flexibility to MDOC regarding program changes and enhancements
- a) Receipt, dispatch and delegation of legal requests from legal writers; email and tracking system to document follow up issues.

This solution begins with a workflow, which allows the Contractor to integrate multiple pieces together, effectively organizing the receipt, confirmation, dispatch, delegation, communication and response for every request received. This system also allows for seamless reporting back to the MDOC, with the ability to customize the fields to accommodate program changes.



In the visual below, the components of the Contractor’s customized ticketing system.



The Contractor designed the system with flexibility in mind, because programmatic changes occur; the scope of work and reporting requirements for this program have changed and the Contractor's system will accommodate the few extra fields required to meet all new requirements.

- b) Recruit and retain qualified attorneys who will be responsive in reviewing legal documents. The Contractor will staff the program only with attorneys uniquely familiar with correctional legal issues.
- c) Understand and have experience in legal issues affecting the prison population at MDOC. Contractor staff has LEIN clearance and have no trepidation about working with inmates.

The Contractor’s lawyers assigned to this program must continually review appellate decisions, changes in the law and changes in the court rules. The Contractor will continue to issue updates to legal writers so that their training remains current, and the Contractor will make modifications to training curriculum as needed to match legal updates.

- d) Reporting system to document program status transparently to MDOC. The Contractor will customize ticketing system to add three fields. These three additions will allow the Contractor to modify existing reports and begin submitting them on a monthly basis as required. There is no transition time required, because the Contractor designed the ticketing system with flexibility to accommodate these types of additions.



- e) Effectively train MDOC personnel and legal writers on the technology, process and forms; train legal writers to on the program.

The Contractor has an established curriculum in preparing legal writers for their role in this program. The Contractor will conduct continual reviews and make necessary updates based on appellate decisions and other court rulings that may affect issues facing the MDOC prison population.

In addition to the training provided for legal writers, the Contractor has participated in in-service training for correctional facility librarians. These sessions are intended to keep them current on the program and to ensure the process was working smoothly.

- f) Offer flexibility to MDOC regarding program changes and enhancements.  
The Contractor can offer assistance in the revision of the Legal Writer Manual and the development of a Refresher Training course for Legal Writers.
2. Software: The MDOC must approve the recommended software and will be responsible for the purchase and installation of the software. (Note: software must be Windows® compatible).

The Contractor recommends MDOC continue with MS Word, Copernic and Adobe for legal writers to use on this program.

- MS Word will be used for the creation and editing of legal briefs.
- Adobe Reader is used to read and access documents provided by SADO. (These are briefs, opinions, forms, etc.)
- Copernic is used to scan and index the brief bank reports provided under this program.

3. The Contractor must provide written notification and communicate again with reminders as the event date comes closer.to the MDOC Program Manager of any system upgrades, software upgrades and/or maintenance that may impact the State's system or services, at a minimum 60 days prior to implementation, unless it is emergent in nature and mutually agreed upon by the parties.

The Contractor does not anticipate any upgrades or maintenance required that would impact the State's system or services. Contractor's ticketing system is independent of the State networks and systems, communicating via email with MDOC librarians.

The The Contractor will ensure any additional communications are handled in the seamless, prompt manner that has become associated with this team.

4. The Contractor must provide templates and formats to be used by the legal writers to ensure essential information is obtained from prisoners, including factual background of a case, and that proper legal documents are drafted.

The Contractor must respond to questions from legal writers regarding specific cases and legal issues, within two State business days.

Contractor must provide brief banks, legal opinions, criminal defense newsletters and the SADO references to support the program, along with the templates and formats for legal writers. Contractor must provide a ListServ to communicate with librarians more effectively for items provided en masse to all facilities, such as the brief banks.

It is important to note that not all forms are available through the Lexis-Nexis electronic law library contract. Because of the Contractor's subcontracting role on that contract, the Contractor is familiar with these gaps and the Contractor ensures these forms are made available to the legal writers.



Regarding response time, Contractor has built controls into the ticketing system (see Exhibit A, Section 1). The Contractor's workflow and ticketing system are designed for this program, and the Contractor customized it to ensure that:

- 1) Priority is given to matters with urgent filing deadlines to ensure MDOC is not impeding an inmate's access to the courts.
- 2) Internal controls are built in to the system to send alerts to the Contractor's Program Manager and assigned Attorney or Administrator for any ticket not closed within a specified period of time.

In each report to the State, the Contractor has built in a section to show the average response time for the reporting period.

5. The Contractor's primary form of communication with the legal writers will be via email per Section 1.1.1.a.

The Contractor will communicate with legal writers through emails to the correctional facility librarians, knowing legal writers don't have direct access to email. The Contractor must ensure ample time is allowed for this extra step.

6. Site Visits: The Contractor must visit all institutions where a Legal Writer Program is located (Attachment A) to update legal writers or to address any number of other issues on an annual basis, at a minimum. All Contractor staff must be cleared through the Law Enforcement Information Network (LEIN) on at least an annual basis before entering an MDOC correctional facility.

The Contractor's legal writer team is already LEIN cleared and accustomed to performing site visits. The Contractor will visit all 11 institutions where a legal writer is located to provide updates, address issues and answer questions.

Terese Paletta and Kevin Peterson conduct the majority of the Contractor's site visits. They are supported by Ana Rapa and Jon Tellier currently, and Dan Balice is joining the team. The Contractor will have Terese and Kevin continue to play point on the site visits, with Terese serving as our Program Manager and Contractor Representative.

These visits are scheduled in advance through the librarians and confirmed close to the date of the visit. Each participant in site visits understands the need for flexibility after the visits are scheduled, as correctional facility security parameters sometimes require a delay or last-minute reschedule need.

Following the site visits, the Contractor will note issues in the ticketing system. Any issues requiring immediate attention will be sent to librarians or MDOC point of contact. All issues will be reported upon in the next reporting cycle.

7. Travel Expense: The Contractor must be aware that this is a statewide project and legal writers are assigned or can be trained in any of the MDOC Correctional Facilities across the State. This expense must be included in the Pricing (Exhibit C). The MDOC will not pay any additional fees or travel expenses.

The Contractor's pricing for site visits and training is inclusive of travel expenses.

8. Vendor Handbook: MDOC will require all Contractor employees working inside an MDOC correctional facility, to read and sign the MDOC Vendor Handbook (Attachment B) and sign the Employee Acknowledgement. The purpose of the MDOC Vendor Handbook is to provide contractors with general information regarding basic requirements of working within the MDOC and notice of work rules and consequences of rule violations. The Contractor must provide copies of each signed Employee Acknowledgment to the Program Manager (PM) at the completion of the employee's orientation to the Legal Writer Program.



9. Prison Rape Elimination Act (PREA) of 2003: Public Law 108-79, Sept. 4, 2003  
The Contractor must comply with the Federal Register and the MDOC Prison Rape Elimination Act, 28 CFR Part 115, Prevention Plan. OVERFAMILIARITY WITH PRISONERS IS STRICTLY PROHIBITED. The Contractor must immediately refer any allegations made to it by prisoners or forms of sexual abuse or sexual harassment (staff-on-prisoner and prisoner-on-prisoner) to the MDOC PM, in writing. The Contractor must ensure compliance with the National Standards to Prevent, Detect and Respond to Prison Rape, effective August 20, 2012 at <http://www.gpo.gov/fdsys/pkg/FR-2012-06-20/pdf/2012-12427.pdf>. See attached PREA standards (Attachment C). If the Contractor does not abide by these standards, it will be considered a breach of Contract.
10. The Contractor and its attorneys may not accept representation of parties who want to file litigation against the MDOC or its employees during the term of the Contract. The Contractor and its attorneys also may not accept as a client an offender (prisoner, parolee, or probationer) under the MDOC's jurisdiction after the Contract is awarded. If, at the time the Contract is awarded, the Contractor or its attorneys are representing an offender under the MDOC's jurisdiction, that information must be disclosed to the MDOC within 14 days of award.

## 1.2 Transition

### A. Transition Plan

1. A high level Transition Plan is in Section 1.2.A.2 for the Transition Period. Within 10 calendar days of the Contract Effective Date, the Contractor must submit a revised, expanded Transition Plan to the MDOC Program Manager. The Contractor must continue to revise the Transition Plan and submit to the MDOC Program Manager on, no less than, a monthly basis until all items have been successfully implemented, per the MDOC Program Manager's input on progression of, or acceptance of each item.

**Transition Period** is that initial period of time commencing on the Contract start date while the Contractor is training its employees and ending on the date the Contractor assumes control over the services at the proposed facilities. During the Transition Period, there will be no billing submitted by the Contractor nor any payments made by the MDOC to the Contractor. Upon Contract execution, the Contractor will begin, at a maximum, a 90 day Transition Period to the actual services start date. The Contractor's Project Manager must be onsite in Michigan throughout the Transition Period to ensure all issues are addressed and resolved unless otherwise determined by the MDOC. Upon early completion of the Transition Plan activities (see Section 1.2.A.2), the parties (MDOC and Contractor) must mutually agree, in writing, to the termination date of the Transition Period.

2. The Contractor's Transition Plan must ensure they work in partnership with the MDOC to deliver uninterrupted services, including infrastructure of systems and staffing. The Contractor must be responsible for a customized plan of action to ensure a seamless transition in all aspects of contracted services. To accomplish this, the Contractor activities must include, but are not limited to, the following:
  - a. Conduct regular, scheduled communication with key MDOC and subcontractor personnel and specialty service providers
  - b. Deployment of Contract and transition management teams
  - c. Delivery of Training Plan for MDOC staff and prisoners, as outlined in Section 1.3
  - d. Delivery of Required documentation of Contract activities
  - e. Review Staffing plan
  - f. Creation of an Emergency contingency plan for delivery of services

The Contractor will not need 90 days to provide a transition. The Contractor will maintain provision of services throughout the transition. The Contractor will develop the transition plan and ensure all program changes are included in it. The Contractor will provide a revised and expanded transition plan within 10 days of the Contract Effective Date to elaborate on each of these high level concepts.





Terese Paletta will play point for the Contractor to work in partnership with MDOC to ensure additional program requirements and changes are included. Below are each of the high level components that will be addressed in any effective transition from one contract to another.

- 1) Communication: Terese Paletta will serve as the primary point of contact for all issues with the MDOC in moving from one contract to the next.
- 2) Management Team Deployment: The Contractor will retain the same management team from the prior contract on this Contract.
- 3) Training Plan Development: The Contractor updated their training curriculum throughout the prior contract for MDOC legal writer services. Terese Paletta will communicate with the State to ensure they approve continuation of the existing training curriculum.
- 4) Documentation Plan Development: The Contractor will document the work they perform and will ensure their documentation plan meets the State's approval.
- 5) Staffing Plan Approval: Terese will work with MDOC to obtain approval of the final staffing plan and the core team who has been serving the State under the existing program will remain, with the addition of a highly experienced attorney based in Ionia, Dan Balice.
- 6) Emergency / Contingency Plan Development and Approval: Terese Paletta will work with the State to reflect the emergency / contingency plan. This will include 24/7 availability to Contractor's Program Manager and access to legal review, with an on-call schedule for our team.

**B. Contract Closeout Plan** – The Contractor must provide a closeout plan for the closure of the Contract due to Contract expiration or termination. The plan must include, but is not limited to, the return of any MDOC prisoner data that may be in the possession of the Contractor and a list of pending matters regarding the business wind-up.

- End of Contract Data Conversion Responsibility: At the expiration or termination of this Contract, the Contractor must work with State to ensure the transitional and operational continuity of the services under this Contract. The Contractor agrees to assist the State for a reasonable period of time that in no event will exceed 90 days after the expiration or termination date of this Contract and to assign key personnel as needed to assist in the transition. Key system staff will be available to ensure data integrity and system continuity (also see Standard Contract Terms, Section 25).

The Contractor will coordinate with the State to offer transition assistance to allow the next contractor to be successful. The Contractor will work with the State to ensure the operational continuity of the program. Terese Paletta will serve as the primary closeout point of contact, which allows for the most effective knowledge transfer because of her role as Program Manager. Terese Paletta will communicate with the State and will coordinate any continued services.

### 1.3 Training

The Contractor must provide the training to the prisoner(s) selected to attend legal writer training and MDOC staff assigned to supervise the Legal Writer Program, as specified in the following requirements (see Sections 1.3.1 to 7). Training must be conducted onsite in selected MDOC correctional facilities.

1. Individual prisoners must apply to their local MDOC Programming Staff if they want to apply to become a legal writer and be considered for Legal Writer Training. The Contractor must provide training sessions to the prisoners selected by the MDOC to be legal writers. The classes, approximately 80 hours of classroom instruction, must be provided in a correctional facility to be determined by the MDOC. The legal writer training materials must be reviewed and approved by an attorney, in good standing, currently licensed by the State Bar of Michigan. The Contractor must provide training in 10, eight hour classes, five days a week for two weeks, with required prisoner participation throughout. Average class size will be approximately 20-25 participants/prisoners.



2. Location and Number of Classes: The Contractor must conduct training sessions as determined by the MDOC, but will not exceed two per calendar year (unless otherwise determined by the MDOC). Additional training sessions may be scheduled if needed by the MDOC. The location of the training will be determined by the MDOC.
3. Updates: The Contractor must continually review and be up-to-date with court opinions, changes in the law, and changes in the court rules during the period this Contract is in place. The updates may be provided to the legal writers as additional written references, along with possible refresher classes on specific topics, as needed. Distribution of information will be determined by the MDOC.
4. Testing: The Contractor must issue a uniform test to each class participant/prisoner upon completion of the classes. The MDOC is responsible for determining which prisoners are placed in a legal writer assignment.
5. Curriculum: The Contractor must select books and draft its own training materials for use in the classes. The Contractor must draft lesson plans, outlines, handouts, flow charts, and other material.
6. The Contractor must purchase and provide books, supplies, and other materials necessary to complete the classes. These items must be provided to each prisoner in the class and the appropriate MDOC staff member.
7. The Contractor must provide software training to the legal writers and MDOC staff assigned to supervise the prisoners in the Legal Writer Program. The software training does not need to be provided by an attorney.

The Contractor must train prisoner legal writers to complete legal documents on the MDOC stand-alone computer, which the legal writer will then copy onto a portable media device (e.g. flash drive). The portable media device is then given to the site designated MDOC staff person who will email the legal documents to the Contractor.

Contractor must provide a Refresher Training course for Legal Writers to improve program effectiveness.

In addition to the training provided for legal writers, Contractor must participate in in-service training for correctional facility librarians. These sessions are intended to keep them current on the program and to ensure the process was working smoothly.

The Contractor has developed a training curriculum and will work with MDOC to gain their input and insight on the structure and content for any changes to the existing curriculum and tests.

The Contractor will work as a partner to the local prison staff, will defer as needed and will offer feedback if requested. Contractor's training price includes everything required for training. The Contractor will conduct classes at the discretion of MDOC and will work with the MDOC PM and corrections staff to schedule and coordinate these classes, and will offer flexibility regarding the regions where the classes are held.

## **2.0 Acceptance**

### **2.1 Acceptance, Inspection and Testing**

The MDOC must review and approve the Training Plan, the final Transition Plan and all training materials (e.g. manuals, books, tests, etc.).

### **3.0 Staffing**



### 3.1 Contractor Representative

The Contractor must appoint a Contractor Representative, specifically assigned to the State of Michigan account, who will respond to State inquiries within 48 hours, except weekends and State holidays, regarding the Contract Activities, answering questions related to Contract activities.

The Contractor must notify the Contract Administrator immediately when assigning a new Contractor Representative.

Terese Paletta  
5510 Cascade Road SE, Suite 220  
Grand Rapids, MI 49546  
[tap@petersonpaletta.com](mailto:tap@petersonpaletta.com)  
(616) 957-3540

### 3.2 Work Hours

The Contractor must provide Contract Activities during the State's normal working hours Monday – Friday 8:00 am to 5:00 pm EST. There may be a unique occurrence where possible night and weekend hours are necessary depending on the requirements of the project. However, no overtime hours may be billed for off hours.

### 3.3 Key Personnel

A. Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquiries within 48 hours, except weekends and State holidays.

B. The Contractor must appoint the following Key Personnel:

1. Program Manager – This position is the point of contact for the duration of the Contract. This individual will be responsible for attending all required meetings and visiting the correctional facilities in Michigan when needed.

Terese Paletta will serve as Program Manager and Contractor Representative. She will also be an Attorney conducted legal reviews and a Trainer.

2. Contractor Representative – This position is the primary point of contact for MDOC related issue resolution.

Kevin Peterson will serve as backup for Terese regarding Program Management and Contractor Representation. If Terese is unavailable for any reason, Kevin will fill in. Kevin will also serve as an Attorney and Trainer.

3. Attorney(s) – This position is responsible for reviewing legal documents that the Legal Writers submit to the Contractor and must be in good standing, currently licensed by the State Bar of Michigan, and have experience in criminal law.

Anna Rapa will serve as an Attorney and Trainer under this program.

Dan Balice will serve as an Attorney and Trainer.

4. Trainer(s) – This position is responsible for providing training to selected MDOC staff and prisoners selected for the Legal Writer Program.

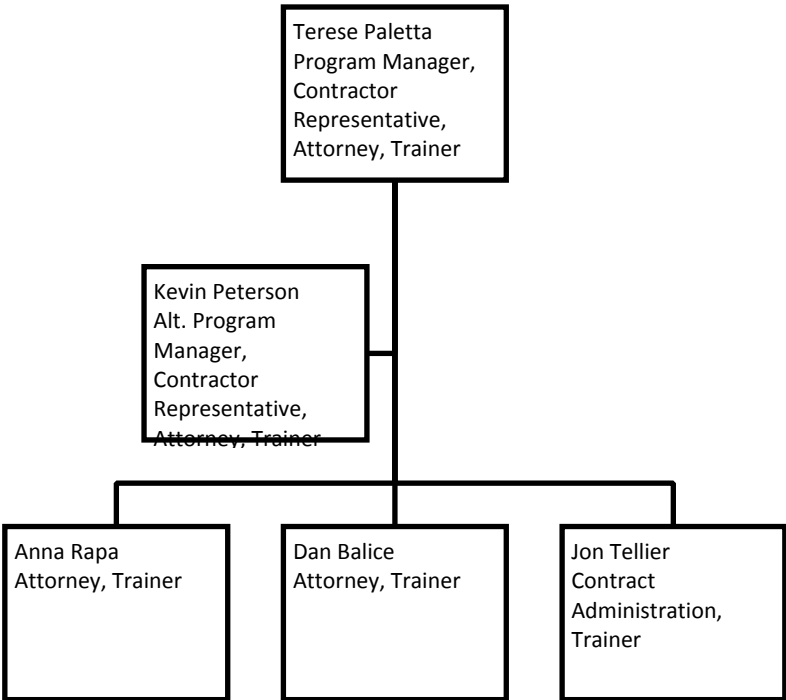
See Trainers in Section 3.3.B.3.



5. Contract Administration and Ticketing System Support: Jon Tellier will support the program in Contract Administration and ticketing system support. Jon will serve as a Trainer for the process and tickets system components.
- C. The Contractor is headquartered in Grand Rapids, Michigan and all Key Personnel are based out of this office; they may also work virtually to achieve the prompt turnaround time required by the State of Michigan under this Contract.
- D. The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Project Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. The State may require a 30-calendar day training period for replacement personnel.
- E. Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under Termination for Cause in the Standard Terms.
- F. It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under Termination for Cause, Contractor will issue to the State the corresponding credits set forth below (each, an "Unauthorized Removal Credit"):
- (i) For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$25,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30 calendar days before the Key Personnel's removal.
- (ii) If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 calendar days, in addition to the \$25,000.00 credit specified above, Contractor will credit the State \$833.33 per calendar day for each day of the 30 calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30 calendar days of shadowing will not exceed \$50,000.00 per individual.
- G. The Contractor must notify the MDOC Program Manager immediately if any of the Key Personnel positions become vacant.



**3.4 Organizational Chart**



**3.5 Disclosure of Subcontractors**

A. If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

The legal business name; address; telephone number; a description of subcontractor’s organization and the services it will provide; and information concerning subcontractor’s ability to provide the Contract Activities.

The relationship of the subcontractor to the Contractor.

Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.

A complete description of the Contract Activities that will be performed or provided by the subcontractor.

Of the total bid, the price of the subcontractor’s work.

B. Subcontractors: Anna Rapa and Jon Tellier are subcontractors under this Contract; each of their roles are described in Key Personnel, Section 3.3.B.3 to 5.

**3.6 Security**

The Contractor will be subject the following security procedures:



All Contractor staff working on the Contract must undergo a security and background check, to include at a minimum ICHAT <http://apps.michigan.gov/ichat/home.aspx>, to be performed by the Contractor.

The Contractor's and subcontractor's staff that are entering an MDOC facility must be LEIN cleared by MDOC prior to facility entry. The Contractor must submit the LEIN information to the MDOC Program Manager at least two business days prior to the facility visit. If an employee of the Contractor's or subcontractor's has a felony or misdemeanor conviction (excluding minor driving offenses), that employee may not be permitted to enter any MDOC facility.

The Contractor must anticipate delays when visiting any facility due to issues within that facility.

The MDOC reserves the right to deny access to any facility to any Contractor(s)/subcontractor(s) staff members who fails to comply with any applicable State, federal or local law, ordinance or regulation or whose presence may compromise the security of the facility, its members or staff.

All drug, alcohol and tobacco products are prohibited at all correctional facilities.

Weapons, fireworks and explosives are prohibited from all State facilities.

All cellular devices are prohibited from all correctional facilities.

Contractor(s) that come into the Administration Building of a correctional facility will need to secure their cellular devices and personal tobacco products in their locked vehicle prior to entrance. If the Contractor arrives with such products, the Contractor will be requested to return them to their vehicle.

The Contractor's staff will be required to enter State facilities. The State may require the Contractor's personnel to wear State issued identification badges.

## **4.0 Project Management**

### **4.1 Project Plan**

The Contractor will carry out this project under the direction and control of the MDOC. Within 30 calendar days of the Effective Date, the Contractor must submit a final project plan to the MDOC Program Manager for final approval. The plan must include: (a) the Contractor's organizational chart with names and title of personnel assigned to the project, which must align with the staffing stated in the proposal; and (b) the project breakdown showing sub-projects, tasks, and resources required.

### **4.2 Meetings**

The Contractor must meet with the MDOC Program Manager quarterly to discuss any contractual issues, concerns or updates. The date, time and location will be determined by the MDOC.

The State may request additional meetings, as it deems appropriate.

### **4.3 Reporting**

A. The Contractor must submit, to the MDOC Program Manager, a written monthly Contract Activities Report that includes, at a minimum, the following:

- The number of contacts made to the Contractor from MDOC staff and the actual hours to complete a contact
- A listing (by prisoner number and last name) of the prisoners provided service for that month
- Any training provided to prisoner legal writers or facility staff
- Any facility site visits and the activities performed
- A listing of forms and template updates provided
- Any overtime/weekend hours worked
- Any other notable event that occurred in that month



These metrics must be organized by facility and by month. The MDOC further reserves the right to add additional metrics as needed.

B. The Contract must also submit to the MDOC Program Manager a written quarterly report that summarizes what is contained in the previous three monthly reports. It must also provide the average time it takes complete a contact made to the Contractor from MDOC staff for the current quarter.

C. The Contractor will customize their ticketing system to add three fields. These three additions will allow the Contractor to modify their existing reports and begin submitting them on a monthly basis as required. There is no transition time required, because the Contractor designed the ticketing system with flexibility to accommodate these types of additions.

Jon Tellier, who provides contract administration and ticketing system support, will oversee the modifications required for the ticketing system to capture the new fields required for accurate and thorough reporting. Kevin Peterson, who oversees the billing and invoicing under this Contract, will ensure the monthly invoice matches the monthly report the Contractor submits. Terese Paletta, the Program Manager for this Contract, will serve as the point of contact for any issues or questions related to reporting. She will ensure MDOC receives any follow up documentation.

## **5.0 Ordering**

### **5.1 Authorizing Document**

The appropriate authorizing document for the Contract will be a signed Blanket Purchase Order as well as an Agency issued Purchase Order.

## **6.0 Invoice and Payment**

### **6.1 Invoice Requirements**

All invoices submitted to the State must include: (a) date; (b) quantity of actual hours worked; (c) description of the Contract Activities; (d) unit price; (e) total invoice amount; and (f) a copy of the monthly Contract Activities Report. Overtime and holiday pay will not be paid.

The MDOC reserves the right to request documentation substantiating the invoiced amounts, such as the training sign in sheets/roster. The documentation must be provided within five business days of the request.

### **6.2 Payment Methods**

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

### **6.3 Price Term**

Prices quoted are firm and are fixed for the Contract term.



**STATE OF MICHIGAN**  
Contract No. 071B6600005  
Legal Writer Services for Prisoners

**EXHIBIT B - Reserved**





**STATE OF MICHIGAN**  
 Contract No. 071B6600005  
 Legal Writer Services for Prisoners

**EXHIBIT C  
 PRICING**

<b>Staffing</b>	<b>*Estimated Number of Hours per Week</b>	<b>**Rate per Hour</b>	<b>Total Weekly Price</b>	<b>Number of Weeks per Year</b>	<b>Yearly Total</b>
Clerical	10	\$15.00	\$150.00	52	\$7,800.00
Attorney	90	\$55.00	\$4,950.00	52	\$257,400.00

\*The actual number of hours could vary and is dependent on the number of requests/contacts received

from the prisons.

\*\*The Rate per Hour is inclusive of all costs (administration, supplies, additional staff, travel, etc.)

Training for legal writers typically occurs on an annual basis, but will be asked for as needed depending on the "pool" of trained legal writers available to be assigned.

	<b>Number of Hours per Session</b>	<b>Rate per Session</b>	<b>Maximum Number of Sessions per Year</b>	<b>Yearly Total</b>
Training*	80	\$6,000.00	2	\$12,000.00

\*Training includes materials, books, travel, etc.

<b>Total Three Year Price:</b>	\$831,600.00
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# STATE OF MICHIGAN

## STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Peterson Paletta, PLC (“**Contractor**”). This Contract is effective on October 1, 2015 (“**Effective Date**”), and unless terminated, expires on September 30, 2018.

This Contract may be renewed for up to two additional one year period(s). Renewal must be by written agreement of the parties.

The parties agree as follows:

- Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Exhibit 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 Exhibit 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.

- 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.

<p>If to State:                  Lance Kingsbury – DTMB                  525 West Allegan                  Lansing, MI 48933  <a href="mailto:KingsburyL@michigan.gov">KingsburyL@michigan.gov</a>                  517-284-7017</p>	<p>If to Contractor:                  Terese Paletta                  5510 Cascade Road SE, Suite 220                  Grand Rapids, MI 49546  <a href="mailto:tap@petersonpaletta.com">tap@petersonpaletta.com</a>                  (616) 957-3540</p>
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3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a “**Contract Administrator**”):

<b>If to State:</b>	<b>If to Contractor:</b>
Lance Kingsbury – DTMB 525 West Allegan Lansing, MI 48933 <a href="mailto:KingsburyL@michigan.gov">KingsburyL@michigan.gov</a> 517-284-7017	Terese Paletta 5510 Cascade Road SE, Suite 220 Grand Rapids, MI 49546 <a href="mailto:tap@petersonpaletta.com">tap@petersonpaletta.com</a> (616) 957-3540

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

<b>If to State:</b>	<b>If to Contractor:</b>
David Leach – MDOC 206 E. Michigan Avenue Lansing, MI 48933 <a href="mailto:LeachD@michigan.gov">LeachD@michigan.gov</a> (517) 373-8884	Terese Paletta 5510 Cascade Road SE, Suite 220 Grand Rapids, MI 49546 <a href="mailto:tap@petersonpaletta.com">tap@petersonpaletta.com</a> (616) 957-3540

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 Exhibit 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 an company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<u>Minimal 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: (1) 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; (2) include a waiver of subrogation; and (3) for a claims-made policy, provide three years of tail coverage.
<b>Motor Vehicle Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	
<b>Workers' Compensation Insurance</b>	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.



**Employers Liability Insurance**

Minimal Limits:

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

**Privacy and Security Liability (Cyber Liability) Insurance**

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) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.

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) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.

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

Minimal Limits:

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

Deductible Maximum:

\$50,000 Per Loss

If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase 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 five 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.

- 7. **Reserved.**
- 8. **Reserved.**
- 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.** 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, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.
14. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, 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 Exhibit 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 Exhibit 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. **Reserved.**

18. **Reserved.**

19. **Reserved.**

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 Exhibit 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 Contract Activities purchased under the Contract are for the State's exclusive use. Prices are exclusive of all taxes, and Contractor is solely responsible for payment of any applicable taxes.

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/cpexpress> 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. **Reserved.**

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 purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

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

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



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

- 24. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
- 25. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 26. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

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

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



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

27. **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
28. **Limitation of Liability.** 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. **Reserved.**
31. **State Data**
- a. **Ownership.** The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.
- b. **Contractor Use of State Data.** Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.





- c. Extraction of State Data. Contractor must, within one business day of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
- d. Backup and Recovery of State Data. Unless otherwise specified in Exhibit A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Exhibit A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two hours at any point in time.
- e. Loss of Data. In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than 24 hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than 24 months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (g) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and, (h) provide to the State a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. This Section survives the termination of this Contract.
32. **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.
- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or



thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

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

### 33. **Data Privacy and Information Security**

- a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.
- b. Audit by Contractor. No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.
- c. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract



Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.

- d. Audit Findings. Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.
- e. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

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 seven 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; and (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. 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. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, 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, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
- 42. 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.
- 43. 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.
- 44. 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.
- 45. 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.
- 46. 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.



47. **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.
48. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
49. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.
50. **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.
51. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
52. **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.
53. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").



**Attachment A  
Legal Writer Services for Prisoners  
Correctional Facility Listing**

<b>NORTHERN AND UPPER LOWER PENINSULA</b>	
<p>Alger Correctional Facility N 6141 Industrial Park Drive Munising, MI 49862</p> <p>Number of Legal Writers: 3 Number of computers: 3</p>	<p>Baraga Correctional Facility 13924 Wadaga Rd. Baraga, MI 49908-9204</p> <p>Number of Legal Writers: 2 Number of computers: 2</p>
<p>Brooks/West Shoreline Correctional Facilities@ LRF 2500 S. Sheridan Rd. Muskegon Heights, MI 49444</p> <p>Number of Legal Writers: 2 Number of computers: 2</p>	<p>Central Michigan Correctional Facility (STF) 320 N. Hubbard St. Louis, MI 48880</p> <p>Number of Legal Writers: 2 Number of computers: 2</p>
<p>Chippewa Correctional Facility 4269 W. M-80 Kincheloe, MI 49784</p> <p>Number of Legal Writers: 4 Number of computers: 4</p>	<p>Kinross Correctional Facility 16770 S. Watertower Drive Kincheloe, MI 49788</p> <p>Number of Legal Writers: 1 Number of computers: 1</p>
<p>Marquette Branch Prison 1960 US 41 Marquette, MI 49855</p> <p>Number of Legal Writers: 1 Number of computers: 3</p>	<p>Muskegon Correctional Facility 2400 South Sheridan Dr. Muskegon, MI 49442</p> <p>Number of Legal Writers: 1 Number of computers: 2</p>
<p>Newberry Correctional Facility 3001 Newberry Ave. Newberry, MI 49868</p> <p>Number of Legal Writers: 2 Number of computers: 2</p>	<p>Oaks Correctional Facility 1500 Caberfae Highway Manistee, MI 49660-9200</p> <p>Number of Legal Writers: 2 Number of computers: 2</p>
<p>Ojibway Correctional Facility N 5705 Ojibway Rd. Marenisco, MI 49947-9771</p> <p>Number of Legal Writers: 1 Number of computers: 1</p>	<p>Pugsley Correctional Facility 7401 E. Walton Rd. Kingsley, MI 49649</p> <p>Number of Legal Writers: 1 Number of computers: 1</p>
<p>Saginaw Correctional Facility 9625 Pierce Rd. Freeland, MI 48623</p> <p>Number of Legal Writers: 2 Number of computers: 2</p>	<p>St. Louis Correctional Facility 8201 N. Croswell Rd. St. Louis, MI 48880</p> <p>Number of Legal Writers: 2 Number of computers: 2</p>
<p>Lake County Residential Reentry Program 5565 S. M-37 Baldwin, MI 49304-0819</p> <p>Number of Legal Writers: 0 Number of computers: 0</p>	



**Attachment A  
Legal Writer Services for Prisoners  
Correctional Facility Listing**

<b>SOUTHERN LOWER PENINSULA</b>	
Bellamy Creek Correctional Facility 1727 W Bluewater Hwy Ionia, MI 48846  Number of Legal Writers: 4 Number of computers: 5	Carson City Correctional Facility 10522 Boyer Rd. Carson City, MI 48811  Number of Legal Writers: 1 Number of computers: 2
Cooper Street Correctional Facility 3100 Cooper St. Jackson, MI 49201  Number of Legal Writers: 0 Number of computers: 0	Cotton Correctional Facility 3500 N. Elm Rd. Jackson, MI 49201  Number of Legal Writers: 2 Number of computers: 2
Egeler Reception & Guidance Center 3855 Cooper St. Jackson, MI 49201  Number of Legal Writers: 2 Number of computers: 2	Handlon Correctional Facility 1728 Bluewater Highway Ionia, MI 48846  Number of Legal Writers: 1 Number of computers: 1
Gus Harrison Correctional Facilities 2727 E. Beecher St. Adrian, MI 49221  Number of Legal Writers: 4 Number of computers: 4	Ionia Correctional Facility 1576 W. Bluewater Highway Ionia, MI 48846  Number of Legal Writers: 3 Number of computers: 2
Lakeland Correctional Facility 38 Fourth St. Coldwater, MI 49036  Number of Legal Writers: 2 Number of computers: 2	Macomb Correctional Facility 34625 26 Mile Rd. New Haven, MI 48048  Number of Legal Writers: 2 Number of computers: 2
Michigan Reformatory 1342 W. Main St. Ionia, MI 48846  Number of Legal Writers: 4 Number of computers: 4	Detroit Reentry Center 17601 Mound Rd. Detroit, MI 48212  Number of Legal Writers: 1 Number of computers: 2
Parnall Correctional Facility 1780 E. Parnall Jackson, MI 49201-7138  Number of Legal Writers: 2 Number of computers: 2	Thumb Correctional Facility 3225 John Conley Dr. Lapeer, MI 48446  Number of Legal Writers: 2 Number of computers: 2
Woodland Center Correctional Facility 9036 E. M-36 Whitmore Lake, MI 48189  Number of Legal Writers: 1 Number of computers: 1	Women's Huron Valley Correctional Facility 3201 Bemis Rd. Ypsilanti, MI 48197  Number of Legal Writers: 4 Number of computers: 4
Special Alternative Incarceration Facility 18901 Waterloo Road Chelsea, MI 48118  Number of Legal Writers: 0 Number of computers: 0	



**Attachment B**  
**Legal Writer Services for Prisoners**  
**VENDOR EMPLOYEE HANDBOOK (Rev. 1-29-2014)**

**When a Vendor's employees are working under a Contract between the Vendor and the State of Michigan/Michigan Department of Corrections (MDOC), due to safety and security concerns, the following rules apply to all of the Vendor's employees (Employees) working within a MDOC prison/facility. Any violation of the Vendor Employee Handbook may result in a Stop Order being issued against the Employee, the Employee's removal from his/her assignment under the Contract and may result in additional sanctions from the Vendor and/or law enforcement.**

**Definitions**

**Contraband:** Any article not specifically authorized for admittance into a correctional facility or on facility grounds, e.g. this list includes but is not limited to weapons, any firearm, alcohol, cell phones, cell/electronic watches, iphones, ipads, computers, laptops, tobacco, cigarettes and e-cigarettes, matches, lighters, Tasers®, mace, pepper spray, Google glasses, recording devices, ammunition, handcuff keys, walkie-talkies, yeast, fireworks, etc. (See **Attachment B1** for permissible items allowed into a facility without a gate manifest.)

Cell phones, iphones, ipads, computes, laptops, tobacco and tobacco products may be stored in the employee's secured vehicle only while on facility grounds.

**Employee Permitted Items.** Employees are permitted to take the following items into the facility on their person: a photo ID, up to and no more than \$25.00 currency. See also **Attachment B1**.

**Discriminatory Harassment:** Unwelcome advances, requests for favors, and other verbal or non-verbal communication or conduct, for example comments, innuendo, threats, jokes, pictures, gestures, etc., based on race, color, national origin, disability, sex, sexual orientation, age, height, weight, marital status, religion, genetic information or partisan considerations.

**Employee:** A person employed by the Vendor.

**Facility:** Any property owned, leased, or occupied by the Michigan Department of Corrections, e.g office, prison, health care area, etc.

**Offender:** A prisoner or parolee under the jurisdiction of the MDOC or housed in a MDOC facility.

**Overfamiliarity:** Conduct which has resulted in or is likely to result in intimacy; a close personal or non-work related association. Overfamiliarity is strictly prohibited. Examples are being at the residence of an offender, being at the residence of an offender's family, giving or receiving non-work related letters, messages, money, personal mementos, pictures, telephone numbers, to or from an offender or a family member of a listed visitor of an offender, exchanging hugs with an offender, dating or having sexual relations with an offender, etc.

**Over-the-Counter Medication:** Medication which can be purchased without a prescription in the United States.

**Prescription Medication:** Medication which cannot be purchased without authorization from a properly licensed health care authority.

**Sexual Harassment of Offenders:** Sexual harassment includes verbal statements or comments of a sexual nature to an offender, demeaning references to gender or derogatory comments about body or clothing, or profane or obscene language or gestures of a sexual nature. Sexual harassment is strictly prohibited.





**Sexual Conduct with Offenders:** The intentional touching, either directly or through clothing, of a prisoner's genitals, anus, groin, breast, inner thigh, or buttock with the intent to abuse, arouse or gratify the sexual desire of any person. Permitting an offender to touch you either directly or through clothing with the intent to abuse, arouse or gratify the sexual desire of any person. Invasion of privacy for sexual gratification, indecent exposure, or voyeurism. An attempted, threatened, or requested sexual act or helping, advising, or encouraging another person to engage in a sexual act with an offender. Sexual conduct with offenders is strictly prohibited.

### **General Requirements**

**Discrimination.** Employee shall not discriminate against a person on the basis of race, religion, sex, sexual orientation, race, color, national origin, age, weight, height, disability, marital status, genetic information or partisan considerations.

**Political Activities.** Employees cannot proselytize for any political group or religion in a facility and on MDOC grounds as this may cause safety and security issues within the facility.

**Conflict of Interest.** If any Employee has a family member or friend who is incarcerated, he/she must immediately notify their supervisor and the MDOC for proper facility assignment.

**Public Information.** Employees are not authorized to make public statements on behalf of the MDOC.

**Role Model.** Employees serve as role models to offenders. Therefore, Employees are to act in a professional manner at all times. Any arrest, citation, issuance of a warrant for a felony or misdemeanor offense or issuance of a personal protection order against the Employee must be immediately reported to his/her supervisor. Any action or inaction by an Employee which jeopardizes the safety or security of the facility, MDOC employees, the public or offenders is prohibited.

**Fitness for Duty.** Employees are required to be physically and mentally fit to perform their job duties. If you do not believe you are mentally or physically fit, please report this issue to your immediate supervisor. Employees shall immediately notify their supervisor if they are taking medication which may interfere with their work responsibilities.

**Use of Leave/Notice of Absence.** Employees are required to obtain preapproval of leave from their immediate supervisor. In the event of an unauthorized Employee absence, the Vendor must provide back-up staff.

**Punctuality.** Employees are required to be punctual and adhere to the work schedule approved by their supervisor and to be at their assignment at the start of their shift. This means that Employees must plan for proper travel time, inclement weather, and to go through the facility check-in process in order to at their assigned location at the start of their shift.

**Jail Time or Other Restricted Supervision.** No Employee shall be allowed to work in a facility while under electronic monitoring of any type, house arrest, or sentenced to jail time for any reason, including weekends, even if granted a work release pass.

### **Specific Vendor Employee Rules**

- 1. Humane Treatment of Individuals.** Employees are expected to treat all individuals in a humane manner while on duty in a facility. Examples of actions of an Employee in violation of this rule include but are not limited to, displaying a weapon, using speech, an action or gesture or movement that causes physical or mental intimidation or humiliation, failing to secure necessary culinary tools, using abusive or profane language which degrades or belittles another person or group, etc.



2. **Use of Personal Position for Personal Gain.** Employees shall not engage in actions that could constitute the use of their position for personal gain. Example, employees are forbidden from exchanging with, giving to, or accepting gifts or services from an offender or an offender's family.
3. **Discriminatory Harassment.** Employees shall not engage in discriminatory harassment which includes but is not limited to, unwelcomed advances, requests for favors, other verbal or non-verbal communication or conduct based on race color, national origin, disability, sex, sexual orientation, age, height, weight, marital status, religion, genetic information, etc.
4. **Misuse of State or Vendor Property/Equipment.** Employees shall not misuse State or Vendor property. Examples: using property for a personal purpose beyond that of your job duties, removing items from the premises without authorization, etc.
5. **Conduct Unbecoming.** Employees shall not behave in an inappropriate manner or in a manner which may harm or adversely affect the reputation or mission of the MDOC. If an employee is arrested or charged with a criminal offense, this matter shall be reported to the Employee's supervisor. Any conduct by an Employee involving theft is not tolerated.
6. **Physical Contact.** Inappropriate physical contact with offenders and MDOC staff is prohibited. Examples include inappropriately placing of hands on another person, horseplay, etc.
7. **Confidential Records/Information.** Employees shall respect the confidentiality of other employees, MDOC staff and prisoners. Employees shall not share confidential information.
8. **Use of Health Care Services.** Employees shall only use the facility health care services in case of emergency, medical stabilization and for serious on-the-job injuries. When the clinic facilities are used for an emergency or on-the-job injury, the Employee is to be transferred as soon as practicable to a physician or hospital.
9. **Insubordination.** Based on the safety and security of the facility, there may be times where Employees are provided guidance from MDOC staff. Willful acts of Employees contrary to MDOC instructions that compromise the MDOC's ability to carry out its responsibilities, are prohibited.
10. **Reserved.**
11. **Searches.** Employees are subject to search while on facility property and prior to entry into a facility. Employees who refuse to submit to an authorized search will not be permitted into the facility.
12. **Emergency.** Employees must immediately respond during an emergency, e.g. call for assistance, respond to an emergent situation, etc. This may include participating in emergency preparedness drills conducted by the MDOC, e.g. fire drills.
13. **MDOC Rules, Regulations, Policies, Procedures, Post Orders, Work Statements.** Employees must be familiar with and act in accordance with MDOC rules, regulations, policies, etc. Employees are prohibited from interfering with and undermining the MDOC's efforts to enforce rules, regulations, etc.
14. **Maintaining Order.** Any action or inaction that may detract from maintaining order within the facility is prohibited, e.g. antagonizing offenders, inciting to riot, etc.
15. **Chain of Command.** Employees shall follow their chain of command. Complaints and concerns are to be submitted to the immediate supervisor unless the situation is an emergency.



16. **Criminal Acts.** Employees shall not engage in conduct that results in a felony or misdemeanor conviction. Employees must provide a verbal report to their immediate supervisor within 24 hours of a felony or misdemeanor citation or arrest, the issuance of any warrant, any arraignment, pre-trial conference, pleas of any kind, trial, conviction, sentencing, federal, diversion or dismissal.
17. **Contraband and Controlled Substances.** There is a zero tolerance policy regarding any Employee possessing, using or introducing controlled substances into a facility where offenders are housed. The possession and presence of contraband presents a safety and security risk and is prohibited. Possession, introduction, or attempting to introduce any substance including controlled substances or intoxicants into any facility is prohibited. Yeast is also prohibited which can be used to manufacture a prohibited or illegal substance.
18. **Use of Alcohol or Controlled Substance.** Employees are prohibited from consuming alcohol or any controlled substance while on duty or on breaks. Employees who report for duty with alcohol on his/her breath or when suspected of being under the influence of alcohol or a controlled substance, may be prohibited from entering into the facility or be immediately removed from their assignment.
19. **Reserved.**
20. **Introduction or Possession of Contraband.** Employees shall not introduce or possess unauthorized items such as escape paraphernalia, weapons, facsimiles of weapons, ammunition, wireless communication devices, cell phones, tobacco, electronic cigarettes, lighters, matches, firearm, alcohol, cell phones, cell/electronic watches, iphones, ipads, computers, laptops, Tasers®, mace, pepper spray, Google glasses, recording devices, handcuff keys, walkie-talkies, yeast, fireworks, etc.
21. **Motor Vehicles on the Premises of Prison Grounds.** All motor vehicles must be properly locked and secured. It is the employee's responsibility to ensure that unauthorized items or contraband are not in the motor vehicle. Motor vehicles on facility grounds may be searched at any time for any reason.
22. **Reserved.**
23. **Possession and/or Use of Medication.** Employees shall immediately notify their supervisor if taking prescribed medication which may interfere with the Employee's work responsibilities or the safety and security of the facility. Such medication includes but is not limited to: narcotic pain medication, psychotropic medication, mood altering medication and antihistamines. The Michigan Medical Marihuana Act (the Act), Initiated Law 1 of 2008, MCL 333.26421 – 333.26430, allows for the use of medical marihuana for individuals who have been diagnosed with a "debilitating medical condition." It is the position of the MDOC that Employees may not possess or use medical marihuana as it is both a federal and state offense.
24. **Reserved.**
25. **Reserved.**
26. **Entry into a Facility/Visiting Offenders.** Employees are not permitted in non-public areas of the facility for non-work related purposes, especially where offenders are housed.

Generally, Employees may visit an offender only if that offender is an immediate family member and is housed at another facility other than where the employee works, unless the Warden has granted special approval. Employees, who have family members incarcerated in the MDOC, must let their supervisor know immediately who will subsequently report this information to the MDOC. An employee may visit an offender only if that offender is an immediate family member and is housed at a facility other than where the Employee is assigned to work. Immediate family member is defined as a parent, grandparent, step-parent, grandchild, sibling, spouse, mother-in-law, father-in-law, child, step-child, stepbrother/sister. Visiting an immediate family member who is an offender housed in a facility requires prior permission of both the Vendor and they MDOC.



- 27. **Dereliction of Duty.** Employees shall fully perform their job duties. Failure to do so is considered dereliction of duty and will be reported to the Vendor.
- 28. **Use of Force.** Employees shall use the least amount of force necessary to perform their duties. Excessive use of force will not be tolerated. Employees may act to reasonably defend themselves against violence.
- 29. **Exchange of Duties.** Employees shall not exchange duties or responsibilities with any MDOC staff.
- 30. **Duty Relief.** Employees shall not leave an assignment without prior relief or authorization from their immediate supervisor.
- 31. **Security Precautions.** Any action or inaction by an Employee which jeopardizes the safety or security of the facility, MDOC staff, the public or offenders is prohibited. Examples include but are not limited to, loss of equipment (knives, tools), propping open security doors or doors that should remain locked, allowing an unknown or unidentified individual into a building, unauthorized distribution of MDOC exempt policy directives/operating procedures, etc.
- 32. **Attention to Duty.** Employees shall remain alert while on duty. Sleeping or failure to properly observe an assigned area or offenders are examples of inattention to duty and are prohibited. Items that detract from the alertness of an Employee are prohibited. These items include but are not limited to computer games, books, reading pamphlets, newspapers, or other reading materials while on duty. (MDOC cookbooks, menus, non-exempt policies and procedures and postings, etc. are not considered prohibited items.)
- 33. **Reporting Violations.** Employees, who are approached by offenders to introduce contraband or violate the safety and security of the institution, shall concurrently report each time they are approached to the Employee's immediate supervisor and MDOC staff. Employees must report conduct involving drugs, escape, sexual misconduct, sexual harassment, workplace safety or excessive use of force. A complete written report of the approach must be made no later than the end of the Employee's work day.
- 34. **Reserved.**
- 35. **Reserved.**
- 36. **Reserved.**
- 37. **Reserved.**
- 38. **Reserved.**
- 39. **Reserved.**
- 40. **Reserved.**
- 41. **Reserved.**
- 42. **Employee Uniform Requirements.** Employees must wear their required uniforms as approved by the Vendor and the MDOC. Employees will not be permitted to enter the facilities without the proper Vendor approved uniform/work attire.
- 43. **Reserved.**





**Attachment B1**  
**ALLOWABLE ITEMS WITHOUT GATE MANIFEST**

Employees are allowed to bring the following items into a facility while on duty:

1. Driver license/personal identification.
2. Pens (clear) and pencils (no more than two of each).
3. Small notebook.
4. Eyeglasses and sunglasses.
5. Cash, not to exceed \$25.00.
6. Personal keys.
7. One comb, one brush or one pick; non-metal only.
8. One wallet or one purse/bag; no larger than 6" x 8".
9. Umbrella, no pointed tips, no more than 20 inches total length.
10. Feminine hygiene products; one day's supply.
11. One tube lip balm (e.g., Chapstick), one lipstick.
12. Hand cream/lotion (1.6 oz. or less) tube.
13. Non-alcoholic based anti-bacterial hand cleaning sanitizer (four oz. or less).
14. Sunscreen (4 oz. or less).
15. Over-the-counter medication; one day's supply limited to pain medication (e.g. aspirin, Tylenol, Ibuprofen) and antacids (e.g. Tums, Mylanta). Over-the-counter medication containing stimulants/relaxants (e.g., NoDoz, Sleepzeze, NyQuil, Dextrim) are prohibited. The medication must be factory sealed when brought in and be identifiable.  
**Note:** An Administrative Manifest from the MDOC is required for prescription medication.
16. One individual box/packet (unopened) paper tissues or one handkerchief.
17. Breath mints (1 oz. or less), hard candy/cough drops/throat lozenges (one roll or package 6 oz. or less) of no more than 10 individually wrapped items); Commit nicotine lozenges (or similar brand) (10 or less lozenges).
18. Coffee/tea/creamer/sugar/hot chocolate/coffee filters, soup/hot cereal/powdered drink mix, as described below:
  - Coffee – One factory sealed, unopened non-metallic container containing no more than two pounds to be transferred to clear plastic zip bag in presence of gate officer.
  - Tea/creamer/sugar – Single serving, sealed packets or in original packaging and transferred to clear plastic zip bag in presence of gate officer.
  - Hot Chocolate – Maximum of two sealed packets in original packaging and transferred to clear plastic zip bag in presence of gate officer.
  - Coffee Filters – Maximum of one unopened sealed bag in original packaging.
  - Soup/Hot Cereal/Powdered Drink Mix - Sealed packets or envelopes (no more than two).



19. Pocket calendar (non-electronic).
20. One clear, sealed, unopened plastic container of water not to exceed one gallon.
21. Contact lens case; wetting solution and/or eye drops (non-prescription) – not to exceed ½ oz.
22. Factory sealed energy/protein/granola/candy bars – two.
23. Flashlight (mini) and case.
24. Street shoes during inclement weather to replace snowshoes/boots – one pair.



**Attachment C  
Legal Writer Services for Prisoners  
PREA STANDARDS**

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## § 115.5 General definitions.

For purposes of this part, the term—

*Agency* means the unit of a State, local, corporate, or nonprofit authority, or of the Department of Justice, with direct responsibility for the operation of any facility that confines inmates, detainees, or residents, including the implementation of policy as set by the governing, corporate, or nonprofit authority.

*Agency head* means the principal official of an agency.

*Community confinement facility* means a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers), other than a juvenile facility, in which individuals reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during nonresidential hours.

*Contractor* means a person who provides services on a recurring basis pursuant to a contractual agreement with the agency.

*Detainee* means any person detained in a lockup, regardless of adjudication status.

*Direct staff supervision* means that security staff are in the same room with, and within reasonable hearing distance of, the resident or inmate.

*Employee* means a person who works directly for the agency or facility.

*Exigent circumstances* means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.

*Facility* means a place, institution, building (or part thereof), set of buildings, structure, or area (whether or not enclosing a building or set of buildings) that is used by an agency for the confinement of individuals.

*Facility head* means the principal official of a facility.

*Full compliance* means compliance with all material requirements of each standard except for *de minimis* violations, or discrete and temporary violations during otherwise sustained periods of compliance.

*Gender nonconforming* means a person whose appearance or manner does not conform to traditional societal gender expectations.

*Inmate* means any person incarcerated or detained in a prison or jail.

*Intersex* means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

*Jail* means a confinement facility of a Federal, State, or local law enforcement agency whose primary use is to hold persons pending adjudication of criminal charges, persons committed to confinement after adjudication of criminal charges for sentences of one year or less, or persons adjudicated guilty who are awaiting transfer to a correctional facility.

*Juvenile* means any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail.

*Juvenile facility* means a facility primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system.



*Law enforcement staff* means employees responsible for the supervision and control of detainees in lockups.

*Lockup* means a facility that contains holding cells, cell blocks, or other secure enclosures that are:

- (1) Under the control of a law enforcement, court, or custodial officer; and
- (2) Primarily used for the temporary confinement of individuals who have recently been arrested, detained, or are being transferred to or from a court, jail, prison, or other agency.

*Medical practitioner* means a health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified medical practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

*Mental health practitioner* means a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified mental health practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

*Pat-down search* means a running of the hands over the clothed body of an inmate, detainee, or resident by an employee to determine whether the individual possesses contraband.

*Prison* means an institution under Federal or State jurisdiction whose primary use is for the confinement of individuals convicted of a serious crime, usually in excess of one year in length, or a felony.

*Resident* means any person confined or detained in a juvenile facility or in a community confinement facility.

*Secure juvenile facility* means a juvenile facility in which the movements and activities of individual residents may be restricted or subject to control through the use of physical barriers or intensive staff supervision. A facility that allows residents access to the community to achieve treatment or correctional objectives, such as through educational or employment programs, typically will not be considered to be a secure juvenile facility.

*Security staff* means employees primarily responsible for the supervision and control of inmates, detainees, or residents in housing units, recreational areas, dining areas, and other program areas of the facility.

*Staff* means employees.

*Strip search* means a search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person’s breasts, buttocks, or genitalia.

*Transgender* means a person whose gender identity (*i.e.*, internal sense of feeling male or female) is different from the person’s assigned sex at birth.

*Substantiated allegation* means an allegation that was investigated and determined to have occurred.

*Unfounded allegation* means an allegation that was investigated and determined not to have occurred.

*Unsubstantiated allegation* means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

*Volunteer* means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.

*Youthful inmate* means any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail.

*Youthful detainee* means any person under the age of 18 who is under adult court supervision and detained in a lockup.



## § 115.6 Definitions related to sexual abuse.

For purposes of this part, the term—

*Sexual abuse* includes—

- (1) Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and
- (2) Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.

*Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident* includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

*Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer* includes any of the following acts, with or without consent of the inmate, detainee, or resident:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (6) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;
- (7) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and
- (8) Voyeurism by a staff member, contractor, or volunteer.

*Voyeurism by a staff member, contractor, or volunteer* means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

*Sexual harassment* includes—

- (1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and
- (2) Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.



*Prevention Planning*

*§ 115.11 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.*

- (a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency’s approach to preventing, detecting, and responding to such conduct.
- (b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities.
- (c) Where an agency operates more than one facility, each facility shall designate a PREA compliance manager with sufficient time and authority to coordinate the facility’s efforts to comply with the PREA standards.

*Prevention Planning*

*§ 115.12 Contracting with other entities for the confinement of inmates.*

- (a) A public agency that contracts for the confinement of its inmates with private agencies or other entities, including other government agencies, shall include in any new contract or contract renewal the entity’s obligation to adopt and comply with the PREA standards.
- (b) Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.

*Prevention Planning*

*§ 115.13 Supervision and monitoring.*

- (a) The agency shall ensure that each facility it operates shall develop, document, and make its best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration:
  - (1) Generally accepted detention and correctional practices;
  - (2) Any judicial findings of inadequacy;
  - (3) Any findings of inadequacy from Federal investigative agencies;
  - (4) Any findings of inadequacy from internal or external oversight bodies;
  - (5) All components of the facility’s physical plant (including “blind-spots” or areas where staff or inmates may be isolated);
  - (6) The composition of the inmate population;
  - (7) The number and placement of supervisory staff;
  - (8) Institution programs occurring on a particular shift;
  - (9) Any applicable State or local laws, regulations, or standards;
  - (10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
  - (11) Any other relevant factors.
- (b) In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the plan.
- (c) Whenever necessary, but no less frequently than once each year, for each facility the agency operates, in consultation with the PREA coordinator required by § 115.11, the agency shall assess, determine, and document whether adjustments are needed to:
  - (1) The staffing plan established pursuant to paragraph (a) of this section;
  - (2) The facility’s deployment of video monitoring systems and other monitoring technologies; and
  - (3) The resources the facility has available to commit to ensure adherence to the staffing plan.
- (d) Each agency operating a facility shall implement a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts. Each agency shall have a policy to prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.



*Prevention Planning*

*§ 115.14 Youthful inmates.*

(a) A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.

(b) In areas outside of housing units, agencies shall either:

(1) maintain sight and sound separation between youthful inmates and adult inmates, or

(2) provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact.

(c) Agencies shall make best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.

*Prevention Planning*

*§ 115.15 Limits to cross-gender viewing and searches.*

(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.

(b) As of [INSERT DATE 3 YEARS PLUS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], or [INSERT DATE 5 YEARS PLUS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. Facilities shall not restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.

(c) The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates.

(d) The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.

(e) The facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

(f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

*Prevention Planning*

*§ 115.16 Inmates with disabilities and inmates who are limited English proficient.*

(a) The agency shall take appropriate steps to ensure that inmates with disabilities (including, for example, inmates who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps shall include, when necessary to ensure effective communication with inmates who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. In addition, the agency shall ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities, including inmates who have intellectual disabilities, limited reading skills, or who are blind or have low vision. An agency is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans With Disabilities Act, 28 CFR 35.164.

(b) The agency shall take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to inmates who are limited English proficient, including steps to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(c) The agency shall not rely on inmate interpreters, inmate readers, or other types of inmate assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties under § 115.64, or the investigation of the inmate's allegations.

*Prevention Planning*

*§ 115.17 Hiring and promotion decisions.*

(a) The agency shall not hire or promote anyone who may have contact with inmates, and shall not enlist the services of



any contractor who may have contact with inmates, who—

- (1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);
  - (2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
  - (3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.
- (b) The agency shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates.
- (c) Before hiring new employees who may have contact with inmates, the agency shall:
- (1) Perform a criminal background records check; and
  - (2) Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.
- (d) The agency shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates.
- (e) The agency shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees.
- (f) The agency shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.
- (g) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.
- (h) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

*Prevention Planning*

*§ 115.18 Upgrades to facilities and technologies.*

- (a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect inmates from sexual abuse.
- (b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect inmates from sexual abuse.

*Responsive Planning*

*§ 115.21 Evidence protocol and forensic medical examinations.*

- (a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.
- (b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011.
- (c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.
- (d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.
- (e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based



organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.

(f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of this section.

(g) The requirements of paragraphs (a) through (f) of this section shall also apply to:

(1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in prisons or jails; and

(2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in prisons or jails.

(h) For the purposes of this section, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.

*Responsive Planning*

*§ 115.22 Policies to ensure referrals of allegations for investigations.*

(a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.

(b) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The agency shall publish such policy on its website or, if it does not have one, make the policy available through other means. The agency shall document all such referrals.

(c) If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the agency and the investigating entity.

(d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.

(e) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.

*Training and Education*

*§ 115.31 Employee training.*

(a) The agency shall train all employees who may have contact with inmates on:

(1) Its zero-tolerance policy for sexual abuse and sexual harassment;

(2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;

(3) Inmates' right to be free from sexual abuse and sexual harassment;

(4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;

(5) The dynamics of sexual abuse and sexual harassment in confinement;

(6) The common reactions of sexual abuse and sexual harassment victims;

(7) How to detect and respond to signs of threatened and actual sexual abuse;

(8) How to avoid inappropriate relationships with inmates;

(9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and

(10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

(b) Such training shall be tailored to the gender of the inmates at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa.

(c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.

(d) The agency shall document, through employee signature or electronic verification, that employees understand the training they have received.

*Training and Education*

*§ 115.32 Volunteer and contractor training.*

(a) The agency shall ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures.

(b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified





of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

(c) The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received.

*Training and Education*  
**§ 115.33 Inmate education.**

(a) During the intake process, inmates shall receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

(b) Within 30 days of intake, the agency shall provide comprehensive education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.

(c) Current inmates who have not received such education shall be educated within one year of the effective date of the PREA standards, and shall receive education upon transfer to a different facility to the extent that the policies and procedures of the inmate's new facility differ from those of the previous facility.

(d) The agency shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills.

(e) The agency shall maintain documentation of inmate participation in these education sessions.

(f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.

*Training and Education*  
**§ 115.34 Specialized training: Investigations.**

(a) In addition to the general training provided to all employees pursuant to § 115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.

(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.

(d) Any State entity or Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.

*Training and Education*  
**§ 115.35 Specialized training: Medical and mental health care.**

(a) The agency shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in:

- (1) How to detect and assess signs of sexual abuse and sexual harassment;
- (2) How to preserve physical evidence of sexual abuse;
- (3) How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
- (4) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

(b) If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.

(c) The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere.

(d) Medical and mental health care practitioners shall also receive the training mandated for employees under § 115.31 or for contractors and volunteers under § 115.32, depending upon the practitioner's status at the agency.

*Screening for Risk of Sexual Victimization and Abusiveness*  
**§ 115.41 Screening for risk of victimization and abusiveness.**

(a) All inmates shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates.

(b) Intake screening shall ordinarily take place within 72 hours of arrival at the facility.

(c) Such assessments shall be conducted using an objective screening instrument.

(d) The intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization:

- (1) Whether the inmate has a mental, physical, or developmental disability;
- (2) The age of the inmate;
- (3) The physical build of the inmate;
- (4) Whether the inmate has previously been incarcerated;



- (5) Whether the inmate's criminal history is exclusively nonviolent;
- (6) Whether the inmate has prior convictions for sex offenses against an adult or child;
- (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
- (8) Whether the inmate has previously experienced sexual victimization;
- (9) The inmate's own perception of vulnerability; and
- (10) Whether the inmate is detained solely for civil immigration purposes.

(e) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in assessing inmates for risk of being sexually abusive.

(f) Within a set time period, not to exceed 30 days from the inmate's arrival at the facility, the facility will reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.

(g) An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness.

(h) Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(1), (d)(7), (d)(8), or (d)(9) of this section.

(i) The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates.

*Screening for Risk of Sexual Victimization and Abusiveness*  
 § 115.42 Use of screening information.

(a) The agency shall use information from the risk screening required by § 115.41 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.

(b) The agency shall make individualized determinations about how to ensure the safety of each inmate.

(c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.

(d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.

(e) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.

(f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

(g) The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.

*Screening for Risk of Sexual Victimization and Abusiveness*  
 § 115.43 Protective custody.

(a) Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment.

(b) Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document:

- (1) The opportunities that have been limited;
- (2) The duration of the limitation; and
- (3) The reasons for such limitations.

(c) The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.

(d) If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document:

- (1) The basis for the facility's concern for the inmate's safety; and
- (2) The reason why no alternative means of separation can be arranged.

(e) Every 30 days, the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.



<p><i>Reporting</i>                  § 115.51 Inmate reporting.</p>
<p>(a) The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.</p>
<p>(b) The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request. Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.</p>
<p>(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.</p>
<p>(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.</p>
<p><i>Reporting</i>                  § 115.52 Exhaustion of administrative remedies.</p>
<p>(a) An agency shall be exempt from this standard if it does not have administrative procedures to address inmate grievances regarding sexual abuse.</p>
<p>(b)(1) The agency shall not impose a time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse.                  (2) The agency may apply otherwise-applicable time limits to any portion of a grievance that does not allege an incident of sexual abuse.                  (3) The agency shall not require an inmate to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.                  (4) Nothing in this section shall restrict the agency's ability to defend against an inmate lawsuit on the ground that the applicable statute of limitations has expired.</p>
<p>(c) The agency shall ensure that—                  (1) An inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and                  (2) Such grievance is not referred to a staff member who is the subject of the complaint.</p>
<p>(d)(1) The agency shall issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.                  (2) Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal.                  (3) The agency may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The agency shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.                  (4) At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level.</p>
<p>(e)(1) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates.                  (2) If a third party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.                  (3) If the inmate declines to have the request processed on his or her behalf, the agency shall document the inmate's decision.</p>
<p>(f)(1) The agency shall establish procedures for the filing of an emergency grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse.                  (2) After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, the agency shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken, shall provide an initial response within 48 hours, and shall issue a final agency decision within 5 calendar days. The initial response and final agency decision shall document the agency's determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.</p>
<p>(g) The agency may discipline an inmate for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the inmate filed the grievance in bad faith.</p>



*Reporting*

*§ 115.53 Inmate access to outside confidential support services.*

- (a) The facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible.
- (b) The facility shall inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.
- (c) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.

*Reporting*

*§ 115.54 Third-party reporting.*

The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate.

*Official Response Following an Inmate Report*

*§ 115.61 Staff and agency reporting duties.*

- (a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
- (b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions.
- (c) Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to paragraph (a) of this section and to inform inmates of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services.

(d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

(e) The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators.

*Official Response Following an Inmate Report*

*§ 115.62 Agency protection duties.*

When an agency learns that an inmate is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the inmate.

*Official Response Following an Inmate Report*

*§ 115.63 Reporting to other confinement facilities.*

- (a) Upon receiving an allegation that an inmate was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred.
- (b) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.
- (c) The agency shall document that it has provided such notification.
- (d) The facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

*Official Response Following an Inmate Report*

*§ 115.64 Staff first responder duties.*

(a) Upon learning of an allegation that an inmate was sexually abused, the first security staff member to respond to the report shall be required to:

- (1) Separate the alleged victim and abuser;
- (2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;
- (3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and
- (4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the



alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

(b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.

*Official Response Following an Inmate Report  
§ 115.65 Coordinated response.*

The facility shall develop a written institutional plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

*Official Response Following an Inmate Report  
§ 115.66 Preservation of ability to protect inmates from contact with abusers.*

(a) Neither the agency nor any other governmental entity responsible for collective bargaining on the agency's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with any inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.

(b) Nothing in this standard shall restrict the entering into or renewal of agreements that govern:  
(1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §§ 115.72 and 115.76; or  
(2) Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.

*Official Response Following an Inmate Report  
§ 115.67 Agency protection against retaliation.*

(a) The agency shall establish a policy to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff, and shall designate which staff members or departments are charged with monitoring retaliation.

(b) The agency shall employ multiple protection measures, such as housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

(c) For at least 90 days following a report of sexual abuse, the agency shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse and of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any inmate disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

(d) In the case of inmates, such monitoring shall also include periodic status checks.

(e) If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation.

(f) An agency's obligation to monitor shall terminate if the agency determines that the allegation is unfounded.

*Official Response Following an Inmate Report  
§ 115.68 Post-allegation protective custody.*

Any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43.

*Investigations  
§ 115.71 Criminal and administrative agency investigations.*

(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.

(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.34.

(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

(e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such



an allegation.
(f) Administrative investigations: (1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and (2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
(g) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.
(h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.
(i) The agency shall retain all written reports referenced in paragraphs (f) and (g) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.
(j) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.
(k) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.
(l) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.
<i>Investigations</i> § 115.72 Evidentiary standard for administrative investigations.
The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.
<i>Investigations</i> § 115.73 Reporting to inmates.
(a) Following an investigation into an inmate's allegation that he or she suffered sexual abuse in an agency facility, the agency shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
(b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate.
(c) Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, the agency shall subsequently inform the inmate (unless the agency has determined that the allegation is unfounded) whenever: (1) The staff member is no longer posted within the inmate's unit; (2) The staff member is no longer employed at the facility; (3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or (4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
(d) Following an inmate's allegation that he or she has been sexually abused by another inmate, the agency shall subsequently inform the alleged victim whenever: (1) The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or (2) The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
(e) All such notifications or attempted notifications shall be documented.
(f) An agency's obligation to report under this standard shall terminate if the inmate is released from the agency's custody.
<i>Discipline</i> § 115.76 Disciplinary sanctions for staff.
(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.
(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.
(c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.
(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.
<i>Discipline</i> § 115.77 Corrective action for contractors and volunteers.
(a) Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.
(b) The facility shall take appropriate remedial measures, and shall consider whether to



prohibit further contact with inmates, in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.

*Discipline*

*§ 115.78 Disciplinary sanctions for inmates.*

- (a) Inmates shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse.
- (b) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories.
- (c) The disciplinary process shall consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.
- (d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the offending inmate to participate in such interventions as a condition of access to programming or other benefits.
- (e) The agency may discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact.
- (f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.
- (g) An agency may, in its discretion, prohibit all sexual activity between inmates and may discipline inmates for such activity. An agency may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

*Medical and Mental Care*

*§ 115.81 Medical and mental health screenings; history of sexual abuse.*

- (a) If the screening pursuant to § 115.41 indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.
- (b) If the screening pursuant to § 115.41 indicates that a prison inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.
- (c) If the screening pursuant to § 115.41 indicates that a jail inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.
- (d) Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law.
- (e) Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.

*Medical and Mental Care*

*§ 115.82 Access to emergency medical and mental health services.*

- (a) Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.
- (b) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim pursuant to § 115.62 and shall immediately notify the appropriate medical and mental health practitioners.
- (c) Inmate victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.
- (d) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

*Medical and Mental Care*

*§ 115.83 Ongoing medical and mental health care for sexual abuse victims and abusers.*

- (a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.
- (b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and,



when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

(c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.

(d) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.

(e) If pregnancy results from the conduct described in paragraph (d) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.

(f) Inmate victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.

(g) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

(h) All prisons shall attempt to conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

*Data Collection and Review*  
 § 115.86 Sexual abuse incident reviews.

(a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.

(b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.

(c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.

(d) The review team shall:

(1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;

(2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;

(3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;

(4) Assess the adequacy of staffing levels in that area during different shifts;

(5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and

(6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1)-(d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.

(e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

*Data Collection and Review*  
 § 115.87 Data collection.

(a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.

(b) The agency shall aggregate the incident-based sexual abuse data at least annually.

(c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.

(d) The agency shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.

(e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.

(f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

*Data Collection and Review*  
 § 115.88 Data review for corrective action.

(a) The agency shall review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:

(1) Identifying problem areas;

(2) Taking corrective action on an ongoing basis; and

(3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.

(b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.

(c) The agency's report shall be approved by the agency head and made readily available to the public through its website





or, if it does not have one, through other means.

(d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

*Data Collection and Review*

*§ 115.89 Data storage, publication, and destruction.*

(a) The agency shall ensure that data collected pursuant to § 115.87 are securely retained.

(b) The agency shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website or, if it does not have one, through other means.

(c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.

(d) The agency shall maintain sexual abuse data collected pursuant to § 115.87 for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

*Audits*

*§ 115.93 Audits of standards.*

The agency shall conduct audits pursuant to §§ 115.401–.405.

*Auditing and Corrective Action*

*§ 115.401 Frequency and scope of audits.*

(a) During the three-year period starting on [INSERT DATE ONE YEAR PLUS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and during each three-year period thereafter, the agency shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited at least once.

(b) During each one-year period starting on [INSERT DATE ONE YEAR PLUS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the agency shall ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, is audited.

(c) The Department of Justice may send a recommendation to an agency for an expedited audit if the Department has reason to believe that a particular facility may be experiencing problems relating to sexual abuse. The recommendation may also include referrals to resources that may assist the agency with PREA-related issues.

(d) The Department of Justice shall develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit.

(e) The agency shall bear the burden of demonstrating compliance with the standards.

(f) The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type.

(g) The audits shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period.

(h) The auditor shall have access to, and shall observe, all areas of the audited facilities.

(i) The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information).

(j) The auditor shall retain and preserve all documentation (including, e.g., video tapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the Department of Justice upon request.

(k) The auditor shall interview a representative sample of inmates, residents, and detainees, and of staff, supervisors, and administrators.

(l) The auditor shall review a sampling of any available videotapes and other electronically available data (e.g., Watchtour) that may be relevant to the provisions being audited.

(m) The auditor shall be permitted to conduct private interviews with inmates, residents, and detainees.

(n) Inmates, residents, and detainees shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.

(o) Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.



*Auditing and Corrective Action*  
 § 115.402 Auditor qualifications.

- (a) An audit shall be conducted by:
  - (1) A member of a correctional monitoring body that is not part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant State or local government);
  - (2) A member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or
  - (3) Other outside individuals with relevant experience.
- (b) All auditors shall be certified by the Department of Justice. The Department of Justice shall develop and issue procedures regarding the certification process, which shall include training requirements.
- (c) No audit may be conducted by an auditor who has received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within the three years prior to the agency's retention of the auditor.
- (d) The agency shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent PREA audits.

*Auditing and Corrective Action*  
 § 115.403 Audit contents and findings.

- (a) Each audit shall include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the agency under review.
- (b) Audit reports shall state whether agency-wide policies and procedures comply with relevant PREA standards.
- (c) For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action). The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level.
- (d) Audit reports shall describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited facility, and shall include recommendations for any required corrective action.
- (e) Auditors shall redact any personally identifiable inmate or staff information from their reports, but shall provide such information to the agency upon request, and may provide such information to the Department of Justice.
- (f) The agency shall ensure that the auditor's final report is published on the agency's website if it has one, or is otherwise made readily available to the public.

*Auditing and Corrective Action*  
 § 115.404 Audit corrective action plan.

- (a) A finding of "Does Not Meet Standard" with one or more standards shall trigger a 180-day corrective action period.
- (b) The auditor and the agency shall jointly develop a corrective action plan to achieve compliance.
- (c) The auditor shall take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a facility.
- (d) After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action.
- (e) If the agency does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.

*Auditing and Corrective Action*  
 § 115.405 Audit appeals.

- (a) An agency may lodge an appeal with the Department of Justice regarding any specific audit finding that it believes to be incorrect. Such appeal must be lodged within 90 days of the auditor's final determination.
- (b) If the Department determines that the agency has stated good cause for a re-evaluation, the agency may commission a re-audit by an auditor mutually agreed upon by the Department and the agency. The agency shall bear the costs of this re-audit.
- (c) The findings of the re-audit shall be considered final.

*State Compliance*  
 § 115.501 State determination and certification of full compliance.

- (a) In determining pursuant to 42 U.S.C. 15607(c)(2) whether the State is in full compliance with the PREA standards, the Governor shall consider the results of the most recent agency audits.
- (b) The Governor's certification shall apply to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch.