

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
 PROCUREMENT

525 W. ALLEGAN STREET
 LANSING, MI 48933

P.O. BOX 30026
 LANSING, MI 48909

NOTICE OF CONTRACT NO. 071B6600049

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
U.S. Corrections 15720 Brixham Hill Ave, Ste. 300 Charlotte, NC 28277	Dustin Baldwin	Dustin.Baldwin@uscorrections.org
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	704-705-1425 ex. 155	6432

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	MDOC	Michael Whitford	517-241-7661	whitfordm@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	William Camp	517-284-7022	campw@michigan.gov

CONTRACT SUMMARY

DESCRIPTION:

Transport Services for Prisoners and Detainees – for Multiple State Departments

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Years	3/1/2016	3/1/2019	2 1-year
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Net 45	N/A	N/A	

ALTERNATE PAYMENT OPTIONS

P-card Direct Voucher (DV) Other

EXTENDED PURCHASING

Yes No

MINIMUM DELIVERY REQUIREMENTS

N/A

MISCELLANEOUS INFORMATION

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #007115B0005909. Orders for delivery will be issued directly by Departments through the issuance of a Purchase Order Form, fax, phone, or e-mail.

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION

696,000.00

For the Contractor:

_____,
Contract Administrator

Date

For the State:

Tom Falik,
Director, Services Division
DTMB Procurement
State of Michigan

Date

**STATE OF MICHIGAN**

Contract # 071B6600049

Transport Services for Prisoners/Offenders and Detainees

**EXHIBIT A
STATEMENT OF WORK
CONTRACT ACTIVITIES**

This Contract is for transport of male and female prisoners, escapees, parole violators, parole absconders, and detainees from out-of-state locations back to Michigan, and if requested in-state transports in Michigan, by law enforcement-trained, professional, custodial personnel, serving multiple state departments, described in Exhibit A (the "Contract Activities"). Transport Services are required to all of Michigan's 83 counties, as well as locations across the contiguous United States, as well as Alaska, Hawaii, Guam and Puerto Rico. This will be a 3-year contract with two optional one-year renewals.

Background

- A. The Michigan Attorney General's Office (AG), Child Support Division (CSD) transports male and female adult prisoners, escapees, parole violators and parole absconders, as well as individuals charged with violating Michigan law who have not yet been convicted. The CSD requires the Contractor to transport male and female prisoners from the contiguous United States, as well as Alaska, Hawaii, Guam and Puerto Rico, back to Michigan to the local county jail in the county where they have been charged as a defendant. Thus, transportation back to Michigan may be to any of Michigan's 83 counties. CSD does not currently require transport from county to county when a prisoner or detainee is moved within Michigan.
- B. The Michigan Department of Corrections (MDOC) requires services for the transportation of male and female prison escapees, parole violators and parole absconders from out-of-state locations back to Michigan by law enforcement-trained, professional, custodial personnel. Transport Services are required to all of Michigan's 83 counties, as well as locations across the contiguous United States, including Alaska, Hawaii, Guam and Puerto Rico. The MDOC requires the Contractor to train its employees involved in transportation prior to any transport. This training must be documented by the Contractor and records of the trainings made available to the MDOC upon request. The primary responsibility of the MDOC is to protect and serve the public. To that end, it monitors and oversees those individuals who are sentenced to its custody/care. Security must never be compromised. Public safety and security must remain constant and become a primary duty of the Contractor providing services required by the Contract. It is essential to realize that every confined offender may consider escape at one time or another and the greatest opportunity may occur during the transportation process. To lessen the probability of escape, the transportation of offenders must be viewed as a serious undertaking, demanding the highest level of professionalism, competence, and diligence.

Currently, the Michigan Attorney General's Office and the Michigan Department of Corrections use these transportation services. However, the State reserves the right to request the Contractor to provide these services to additional state agencies and/or departments, as needed. Further the State reserves the right to make alternative transport arrangements to this Contract or use another Contractor or more than one Contractor.

1.0 Requirements**1.1 Work and Deliverables****A. General Requirements:**

The following is a description of the requirements for this Contract.



1. The Contractor must provide transport services for the transportation of male and female prisoners, escapees, parole violators, parole absconders, and detainees from out-of-state locations back to Michigan, and in-state transports in Michigan, as requested by the State of Michigan.
2. The Contractor must utilize the most economical mode of transportation for returning escapees, parole violators and absconders to Michigan, while not compromising safety and security of the public, the rights of the offender being returned, nor enhancing the risk of escape of the offender while in transit/Contractor's custody. Ground transport of offenders is the primary method of transport. The Contractor must use air transport only in extreme circumstances, as defined in 1.1.K.9.a and b of this RFP.
3. Prisoner transportation must be performed in compliance with the policies, procedures, rules, regulations and guidelines set forth in the MDOC Transportation Manual. The MDOC Transportation Manual is to be the minimum standard used for guidelines for the Contract, and will be issued to the Contractor upon award. The MDOC Program Manager will ensure the Contractor has the department's current version of the Transportation Manual.
4. The Contractor must provide pick up of an offender within ten days from receipt of a transportation request. However, the requesting department shall notify the Contractor within ten days of desired departure or pick-up time, unless emergency or special circumstances i.e. court orders, accommodating holding facilities, require transport arrangements sooner.
5. If a transportation request for a release date cannot be accomplished on a specific date, the Contractor is responsible for making other arrangements with the holding facility. The Contractor is responsible for making requests and receiving approval for extensions to time frames, and making any related holding/custody arrangements, directly with the department requesting the transport. The Contractor must provide confirmation of receipt of transportation requests to the respective department's Program Manager.
6. The Contractor must provide 24 hour advance notice to the holding facility prior to pick up of the offender.
7. The Contractor must provide means for the State to submit transportation requests to the Contractor, such as email address, fax number, online and toll-free telephone number per Standard Contract Terms section 33. When submitting requests online, the Contractor's online system must require a user name and password login to submit transportation requests for security purposes. This online system must comply with the State's Data Security policies as referenced in sections 1, 31, 33 of the Standard Contract Terms.
8. The Contractor must provide an update on the status of transportation requests, and confirmations via email, as requested by the respective department's Program Manager.
9. When transporting female prisoners/offenders, female Contractor personnel must accompany the offender and be present throughout the transport. The Contractor must retain trained female personnel to cover the entire transport of female escapees, parole violators and absconders as referenced in section 3.E.

B. Medical Information:

1. Offender medical information must be obtained by the Contractor prior to transport.
2. The Contractor must require the holding facility to supply medical information on a standardized form.



- As part of its bid response, Contractor must provide its plan to ensure the confidentiality of offender medical records/information, and to comply with the Health Insurance Portability and Accountability Act (HIPAA).
4. The requesting department's Program Manager must be notified and provide approval prior to transport of an offender with any type of illness or special accommodation(s) that would increase transportation costs.
 5. The Contractor must ensure all department Program Managers using the Contractor's services have the Contractor's current documented process in place to obtain the medical information of offenders for transport.
 6. Once a transportation request is placed the Contractor must contact the holding facility to verify offender's health status.
 7. The medical form in Section 1.1.B.2 must be faxed to the medical staff to complete and return.
 8. Any medical costs, including pharmaceuticals, incurred during transport due to a physical examination or hospital stay, are not included in this Contract as follows:
 - A. The Contractor will be reimbursed for pharmaceuticals purchased during transport, as long as the Contractor provides a copy of the prescription and purchase receipt as proof that the prisoner required and received the pharmaceutical. When a generic drug is available, the State requires the generic drug to be used instead of the brand name drug.
 - B. The Contractor must send to the respective department's Program Manager, the invoices for medical costs from the hospital or provider that rendered the service to the offender.
 9. The Contractor must store pharmaceuticals according to the directions on the pharmaceutical label.
 10. Contractor must receive approval from the respective department's Program Manager for routine medical care required during transport.

C. Security Level and Restraints Used

1. It is the responsibility of the Contractor to provide the appropriate restraint equipment as noted in the MDOC Transportation Manual, and to ensure it is applied in the required and appropriate manner as defined.
2. Restraint equipment must not to be applied as punishment or in a manner that causes physical pain, reduces blood circulation or restricts breathing.
3. Restraints **must not** be removed during the transport except in an emergency.
4. If Contractor staff is available, at least two of Contractor's staff must be present when the task of restraint application/removal is performed.
5. The Contractor must employ the following methods using highest security deemed appropriate according to the MDOC Transportation Manual, while maintaining humane treatment and refraining from unnecessary force.
 - a. Handcuffs:
 - 1) The Contractor must install the cuffs between the hand and the wrist bone, ensuring that the cuff will barely slide over the wrist bone.
 - 2) If further restriction of motion is required, the backs of the hands may be cuffed together.
 - 3) When applying cuffs, the Contractor must never allow the free end to leave Contractor's hand.
 - 4) Cuffs must be applied with the double bar "up" and the keyhole "in" to prevent picking of the lock. Cuffs must always be double locked.



- 5) If the prisoner's hands are small enough that they may slip through the cuffs, the Contractor must firmly compress the hands and adjust the cuffs to a point at which they cannot slide over the hand.
- 6) The Contractor must never let the prisoner know the location of the handcuff key.

b. Handcuff Cover:

The handcuff cover (black box) covers the keyhole and is used to prevent picking or tampering with the lock. The closed plastic cover has space for a metal clip that the security link passes through. This allows the Contractor to use the security link chain to restrict movement of the prisoner's hands. A small padlock close to the snap, placed through the chain links, completes the assembly procedure. Handcuff covers may be placed in the position desired depending on the degree of risk and security presented by the prisoner/offender. The Contractor must use a Handcuff Cover to complete the Handcuff assembly procedure as noted in the MDOC Transportation Manual.

c. Belly Chains

- 1) The Contractor must apply belly chains by having the prisoner face away from the Contractor. Belly chains are welded link chains.
- 2) The Contractor must make certain the chain is secure on the prisoner's hip bond prior to placing the padlock through the ends of the chain to finish securing the chain.
- 3) After applying handcuffs to wrist, the Contractor must make a double check to ensure there is not extra slack in the belly chain.

d. Leg Irons:

- 1) After the belly chain or handcuff cover and linked chain have been applied and while standing at one side of the prisoner, the Contractor must apply one cuff to the nearest leg. Leg irons are large cuffs at the end of an 18-inch welded link chain.
- 2) **Leg irons must not be applied from the front while facing the prisoner.**
- 3) The Contractor must take precautions to not to lose control of the opposite end of the chain while placing the first cuff.
- 4) The Contractor must remove the leg irons in reverse order that they were applied.

e. Chemical Agents:

- 1) The Contractor may use chemical agents during the transport of offenders, at the discretion of the Contractor's supervising employee.
- 2) These chemicals must be approved by MDOC prior to use.
- 3) Chemical agents may be used in the following situations, to:
 - i) Control disruptive prisoners
 - ii) Protect staff from serious injury
 - iii) Prevent the taking of hostages
 - iv) Prevent escapes
 - v) Prevent destruction to transportation vehicle
- 4) Before using chemical agents, and if time and circumstances permit, the prisoner/offender must be heard and informed of alternatives/consequences which will occur if s/he does not comply.
- 5) Use of a chemical agent in a moving vehicle is not permitted even to control offenders per 1.1.C.5.e.3.

D. Reserved:

**E. Transport Destinations:**

1. MDOC Male prisoners must be returned to the Reception and Guidance Center in Jackson, Michigan during Reception Center's normal hours of operation, as indicated below:
 - a. Men's Reception Center
Charles E. Egeler Correctional Facility
3855 Cooper Street
Jackson, Michigan 49201
Facility Business days and hours: Monday – Friday 8am – 2pm
Phone: 517-780-5818
Contractor must contact the above number before delivering a prisoner so the facility may be prepared to receive them.
Email: [Contact above telephone number for appropriate email address.](#)

After business hours, call the Control Center/count office at 517-780-5848

2. MDOC Female prisoners must be returned to the Women's Huron Valley Correctional Facility in Ypsilanti, Michigan during the Reception Center's normal hours of operation, as noted below.
 - a. Women's Reception Center
Women's Huron Valley Correctional Facility (WHV)
3201 Bemis Road
Ypsilanti, Michigan 48197
Facility Business days and hours: Monday –Friday 8am – 4 pm
Phone: 734-434-8184
Contractor must contact the above number before delivering a prisoner so the facility may be prepared to receive them.
Email: [Contact the above telephone number for the appropriate email address.](#)

After business hours, call the Control Center at 734-572-9892

3. For MDOC, if the Contractor is unable to deliver a prisoner during the normal hours, 24 hour notice (prior to delivery) must be provided to the facility contacts listed in 1.1.E.1-2, both by phone and email. The facility must give approval of after-hours delivery. See Standard Contract Terms section 45.
4. AG-CSD male and female offenders must be transported back to Michigan to the local county jail in the county where they have been charged as a defendant. Thus, transportation back to Michigan may be to any of Michigan's 83 counties.

F. Prior Notification of Arrival

1. The Contractor must notify the requesting department's transport destination contact person at least 24 hours in advance of the time they will be delivering the prisoner to the destination location.

G. Internal Quality Control

1. The Contractor must maintain an internal quality control program that assures standards for offender transport services as outlined in the Contract. This includes, but is not limited to:
 - a. Notification
 - b. Arrangements of pickups
 - c. Uncontrolled circumstances such as inclement weather or breakdown of vehicles and misconduct on the part of offenders.



- d. Food during transport
- e. Lodging during transport
- f. Security (vehicle requirements, use of force, restraints, etc.)
- g. Humane treatment
- h. Medical transport of prisoners

H. Proper Surrender of Custody

1. The Contractor must not surrender custody of prisoner/offenders(s) without first verifying the official identification of the person(s) to whom custody of the prisoner(s) is to be transferred as being an employee of, or duly authorized agent of, the MDOC; or, in the case of a CSD transport, the local county sheriff's department. Duly authorized agents are defined as those whom the MDOC has given authority to act on its behalf.
2. The official article of identification for MDOC employee(s) is the State of Michigan employee identification badge
3. If the MDOC employee or its duly authorized agent, in the opinion of the Contractor, fails to provide official articles of identification upon request by the Contractor, the Contractor must make appropriate inquiry with the MDOC Program Manager to verify the identity of the appropriate agent prior to surrendering custody of the offender.

I. Delays in Departure or Arrival

1. Delay in Departure:
 - a. The Contractor must notify the law enforcement agency currently having custody of the prisoner/offender of such delay in departure/pick-up and the cause of the delay.
 - b. Such notice must be given within at least 24 hours of the delay.
2. Delay in Arrival:
 - a. The Contractor must notify the MDOC's transport destination contact; or in the case of CSD transports, the local sheriff's department, of such delay in arrival at the destination location.
 - b. Such notice must be given within at least 24 hours of arrival so as to give the MDOC a reasonable time to reschedule departmental personnel so as to avoid delay in receiving transfer of custody to the MDOC at the destination location; or, in the case of CSD transports, the local sheriff's department.
3. Inclement Weather and Mechanical Failure Delays
In the event of delays such as inclement weather conditions, mechanical failure of the Contractor's motor vehicle(s) or other eventualities, the Contractor must bear all costs related to such delay/layover. Such costs include food and lodging costs of the Contractor's personnel and prisoners/offenders in the Contractor's custody.
4. Delays of One or More Nights
 - a. In the event of delays necessitating lodging of offenders for one or more nights, the Contractor must arrange for lodging in accordance with the standards set forth in the MDOC Transportation Manual as referenced in Exhibit A section 1.1 A. 4, in an appropriate local detention facility, if available, in that area. The Contractor must notify the requesting department's transport destination contact individual immediately of the new holding location and the length of time the offender(s) will be held there



- b. Only under circumstances in which lodging in a local detention facility is unavailable, shall the Contractor lodge offenders in a private/public motel or hotel. The interim detention facility must provide safe and healthful lodging in accordance with standards set forth in the MDOC Transportation Manual. In such cases, no more than two offenders of the same sex may be lodged in a room together, and a Contractor employee must at all times be present in each room and alert. Opposite sex prisoners may never be lodged in a room together
- c. Security arrangements for lodging must comply with the standards set forth in the MDOC Transportation Manual.

J. Transportation Vehicles

The Contractor's transportation vehicles must meet standards, included but not limited to the following:

1. For emergency purposes, each vehicle used to transport offenders must carry a first-aid kit and approved fire extinguisher.
 2. A log book must be maintained to record all emergency contacts with law enforcement agencies and/or any unusual occurrences.
 3. After each stop, an offender count must be made and recorded.
 4. The number of occupants must not exceed the vehicle's designated seating and weight capacity.
 5. Each person occupying a vehicle must wear a safety belt, if provided, while the vehicle is in motion.
 6. A prisoner must not be handcuffed, chained or secured, other than by a seatbelt to a stationary object inside a moving vehicle, unless in an emergency. Deviation from this provision requires that the agent-in-command submit a written statement to the requesting department's Program Manager within 24 hours of the completion of the transfer.
 7. When a transportation trip is scheduled and the expected distance traveled during one day will be greater than 200 miles, a relief driver must be available.
8. Passenger Sedan and Van
- a. The standard passenger sedan, station wagon, or van, with a screened cage separating the front and rear passenger area, must be used for the transportation of prisoners whose custody level is Security Level I or higher.
 - b. Any additional Contractor employees (other than the driver) must ride in the front seat or appropriate caged area facing at an angle that allows visual contact with the prisoner(s). Contractor staff must not ride in the offender compartment
 - c. The rear passenger door and window controls must be removed, thus leaving the responsibility of exiting the offender(s) to the Contractor's personnel.
 - d. The standard passenger sedan, station wagon or van, must have a barrier to separate male and female offenders, if transporting at the same time.
 - e. All drivers of vans must have a valid operator or chauffeur license, copies of which must be provided to the Department's Program Manager as referenced below.
 - f. Under no circumstances must a weapon or chemical agent be placed in the same compartment as the offender.
 - g. When a prisoner's personal property is carried in the vehicle, transportation staff must be diligent to ensure that property has been thoroughly searched and is not within the offender's reach.
9. Transportation Bus
- a. When transporting 21 or more Security Level IV and V custody prisoners, specially constructed buses meeting the requirements below must be used.



- b. The driver's compartment must be protected by a screen partition providing protection to compartment occupants.
- c. Another screened cage must be located at the rear of the bus to protect other transportation staff.
- d. The driver's compartment and screened cage must not be left unattended when prisoners are on board.
- e. Contractor's female staff must accompany female prisoners throughout the transport. (See section 1.1.A.10.)
- f. Any time the Contractor's staff enter the area of the prisoners, the staff must be unarmed and without keys.
- g. The security gates to the area where offenders are riding must be locked.
- h. When changing the Contractor's armed staff in the cage, the armed staff must step out of the rear door. The Contractor's relief personnel must step in the rear door, both staff keeping possession of their own weapons.
- i. The transportation bus must have a barrier to separate male and female offenders, if transporting at the same time.
- j. The front cage Contractor staff must observe the prisoners during this changing of staff.
- k. Keys to the caged area must always remain with the Contractor's staff in the cage that must remain locked.
- l. When the Contractor's front staff are exchanged, the back cage staff must observe the offender compartment.
- m. At the completion of the exchange, an accurate offender count must be made.
- n. Lighting must be provided inside the bus at night to allow constant observation of the offenders.
- o. Contractor staff operating the transportation bus must possess a valid Commercial Driver's License with appropriate endorsement in accordance with the MDOC Policy Directive 01.03.120, Vehicle Use.
- p. Proof of license of current drivers must be provided as referenced in Section 6 of the proposal instructions. Proof of license of new drivers must be forwarded to the Program Manager, upon request.
- q. Transportation buses must be operated in accordance with all federal, state and local motor vehicle laws governing bus operations
- r. A bus transporting offenders must stop before proceeding at each railroad crossing and must clearly display a cautionary sign on the back of the bus which reads, "This vehicle will stop at all railroad crossings."

10. Air Transportation

- a. Air transport must only be used in extreme circumstances to be determined and approved by the requesting department's program manager in advance due to high costs.
- b. Air transportation must only be used when one or more of the following criteria are met:
 - 1) When the movement of an offender by air is requested by a State department
 - 2) When an offender is medically unfit to travel on the ground as determined by the department
 - 3) When short notice is given with a deadline and ground travel is impractical
 - 4) If the Contractor determines that air transportation is required, and it does not meet one of the four criteria shown above, then the Contractor must provide supporting documentation to the requesting State department substantiating why it believes that the offender should be transported by air rather than regular ground transport. The final decision whether air transportation will be used is at the sole discretion of the requesting State department.



- c. Air Transportation: In the case where air transport is the most viable means of returning a prisoner/offender, the Contractor must use the lowest airfare available at time of transport and bill accordingly, submitting appropriate documentation to support the ticket cost. All air transports must be pre-approved in writing by the State Agency requesting transport.

K. Preparing for the Transportation Assignment

1. Equipment Checklist – The following equipment must be obtained and ready for use/duty by Contractor's staff:
 - a. Driver's License
 - b. ID Card
 - c. Duty Belt with Keepers
 - d. Seatbelt Cutter
 - e. Chemical Agent with Case
 - f. Handcuffs with Case
 - g. Approved Chemical Agent Mask (if applicable)
 - h. CCW Permit
 - i. CPR Mask and Gloves
2. Vehicle Checklist – The following is a checklist of things to do and items needed:
 - a. Make sure fuel, oil and other fluid levels are full.
 - b. Make sure all emergency breakdown reflectors are operative and in good working condition.
 - c. A list of emergency contacts and their respective contact information.
 - d. A minimum of two radios which must be in proper working order
 - e. First aid kit which is in fully-stocked condition
 - f. Up-to-date road maps for the trip/areas to be traveled
 - g. Extra restraints available and in good working condition
 - h. A box of latex gloves for spills, especially body fluids
 - i. Blood spill kit
 - j. Trip sheet
 - k. Vehicle log
 - l. Fire extinguisher
 - m. Check tires, tread and tire pressure
 - n. Two flashlights

L. Meals, Lodging and Miscellaneous Costs

1. The Contractor is responsible for all costs that may occur for its employees and offenders, excluding medical costs for the offenders, during the term of the Contract.
2. The Contractor must provide three meals per 24 hours for the offenders and prisoners during transport. Each meal must satisfy the nutritional and caloric recommendations set forth in the dietary reference intakes approved by the National Research Council. The current edition of "The Dietary Guidelines for Americans" by the United States Department of Health and Human Services and Department of Agriculture shall be followed for menu planning. The MDOC caloric requirements are 2,600 calories for males and 2,200 calories for females. Each balanced meal should comprise approximately 1/3 of the caloric intake.
 - a. Meals from fast food-type restaurants are acceptable.
 - b. These meals shall be included in the cost of the transport.



3. All medical costs, including pharmaceuticals, for offenders, including cost of transportation to or from any medical facility, must be paid by the requesting State department. See section 1.1.B.7
4. The Contractor must be authorized to obtain emergency and routine medical treatment for offenders and prisoners. See section 1.1.B.9

M. Medical Transports – transporting offenders with special medical needs and transporting offenders for medical reasons

1. For MDOC transports, the Correctional Facilities Administration (CFA) Deputy Director or designee, determines medical and custody coverage for special circumstances during transport.
 - a. For any special circumstance, use of local jails for drop-offs must be subject to the approval of the CFA Deputy Director or designee, who will also determine the chain-of-custody.
 - b. The Contractor's agents must notify the MDOC, CFA Deputy Director or designee when an offender is out of its custody.
 - i. This must be person-to-person contact, and not a message left by voice mail, email, or other electronic means.
2. For CSD transports, the Child Support Division Chief or designee determines the medical and custody coverage for special circumstances of CDS prisoners or detainees during transport.
 - a. For CSD transports, the Contractor's agents must contact the Child Support Division Chief when a prisoner or detainee is out of its custody.
 - i. This must be a person-to-person contact, and not a message left by voice mail, email, or other electronic means.
3. In the case of a medical emergency, the requesting department's Program Manager must be notified for appropriate arrangements including chain-of-custody, transfer of custody, and responsibility for custody at the hospital or medical facility.
4. The requesting department will be financially responsible for medical or emergency health care treatment, and the treating facility should be informed to invoice the requesting department directly for the care.
5. The Contractor must provide quotes of charges in advance of treatment, unless emergency prohibits advance pricing.
6. In the case of a medical transport known at the onset, any special pricing, as referenced in Item 7 of Exhibit C Pricing, must be quoted by the Contractor and approved by the requesting department's Program Manager prior to transport.

1.2 Reserved

1.3 Reserved

2. Acceptance

2.1 Acceptance, Inspection and Testing

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

1. Invoices submitted to the Department will be verified against each transportation request. If approved it will be submitted for payment. If not approved the Department Program Manager or designee will contact the Contractor. Payment will be withheld without penalties until the problem with the invoice is corrected.

3. Staffing

- A. Contractor staff's training (See Section 3.C–D must be documented by the Contractor and must be submitted to the state within 5 business days of hire or completion of training, whichever is later.



- B. Contractor must submit valid driver's licenses for all new employees hired during this contract who may engage in transporting prisoners/offenders to the Contract Administrator. (See Section 6 of the Proposal Instructions)
- C. The Contractor must ensure that all personnel employed by the Contractor engaged in transporting prisoners/offenders:
 - 1) Are at least 21 years of age;
 - 2) Successfully pass a background check of driving record, criminal history, former and present employers and personal references (Per 3.8.B);
 - 3) Are CPR certified;
 - 4) Successfully pass weapons qualifications as required by the Contractor;
 - 5) Successfully pass transportation training that, at a minimum, covers the requirements listed in the MDOC Transportation Manual;
 - 6) Successfully pass a drug screen test.
 - 7) Sign an initial conflict of interest form regarding knowing or being related to any Michigan offender, and immediately update if there is a status change. The Contractor must email the conflict of interest forms (initial and any updates) to the Department Program Manager within five business days of completion.
- E. The Contractor must retain trained female personnel to cover the entire transport of female escapees, parole violators and absconders as referenced in 1.1.A.10.

3.1 Contractor Representative

- A. The Contractor must appoint an individual, specifically assigned to State of Michigan contracted accounts, that will respond to State inquiries regarding the Contract Activities, answer questions related to scheduling, transit concerns, etc. (the "Contractor Representative"), within 24 hours.
 - 1. The Contractor Representative is Ash Jacques, Director of Operations. He is available at 704-705-1425 ext. 152/252 or ash.jacques@uscorrections.org. Also available is Dave Warden III, Director of Business Development, 704-704-1425 ext. 161, dave.warden@uscorrections.org.
 - 2. The Contractor Representative must be available to meet with using State Agencies in person as the state deems appropriate.
- B. The Contractor must notify the Contract Administrator and Program Manager upon removing or assigning a new Contractor Representative.

3.2 Customer Service Toll-Free Number

- A. The Contractor must specify its toll-free number for the State to make contact with the Contractor Representative. The Contractor Representative must be available for calls during the hours of 7 am to 6 pm EST Monday – Friday excepting State of Michigan holidays.

The toll-free number is 866-USCORRE (866-872-6773)

3.3 Work Hours

The Contractor must provide Contract Activities during the State's normal working hours Monday – Friday 7:00 a.m. to 6:00 p.m. EST, and possible night and weekend hours depending on the requirements of the transport.

3.5 Reserved

3.6 Reserved



3.7 Disclosure of Subcontractors

- A. Subcontractors may not be used.

3.8 Security

The Contractor will be subject the following security procedures:

- A. All Contractor staff entering a MDOC correctional facility must be LEIN cleared by MDOC at least 24 hours prior to facility entry.
- B. If any of the Contractor's employees have a felony or misdemeanor conviction (excluding minor driving offenses), the Contractor's employees may not enter any MDOC facility.
- C. The Contractor must anticipate delays when visiting any facility due to lockdown, high traffic volume in the intake area, or other issues within that facility.
- D. All vehicles entering a MDOC correctional facility must be inspected before entry of the secure perimeter.
- E. The Contractor's staff may be required to make deliveries to or enter State facilities.
- F. The State may require the Contractor's personnel to wear State issued identification badges.
- G. The State reserves the right to deny access to any institution and/or facility to any Contractor(s) staff member 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.

4. Project Management

4.1 Project Plan (Reserved)

4.2 Meetings

- A. The Contractor must attend any meetings requested by the State, as the State deems appropriate. Teleconferencing is generally acceptable.

4.3 Reporting

- A. The Contractor must submit upon the department's request, to the Program Manager or Contract Administrator, the following written reports:

- 1. Summary reports of transport services, including but not limited to
 - a. Usage by department
 - b. Usage by type of transport
 - c. Usage by geographical area
 - d. Any type of accidents, such as vehicular, prisoner related, etc.
 - e. Number of extension requests by Contractor.
 - f. Number of incidents requiring a surcharge.

- B. The Contractor must supply requested reports within five business days from the request.
- C. The Contractor may submit reports in a non-pdf electronic format, such as Word or Excel, via e-mail.
- D. Reports must be provided at no cost to the State.



5. Ordering

5.1 Authorizing Document

- A. The State will issue a signed Contract and purchase order(s), which must be approved by the Program Manager, or designee.
- B. The Contractor is not authorized to begin performance until receipt of a purchase order.

6. Invoice and Payment

6.1 Invoice Requirements

- A. For the AG:
 - 1. Invoices shall be reviewed, reconciled, approved by signature and date by authorized staff of requesting AG Division, then forwarded by the approving division to the AG Office of Fiscal Management promptly.
 - 2. Payment will be withheld, without penalty from the Contractor, on individual invoices where a billing conflict exists and the customer/department has initiated a request for clarification from the contractor. Individual invoice conflicts will not hold up any other approved payment to vendor. Resolved conflicts and requests for clarification shall be paid promptly upon mutual agreement of resolution, and according to the applicable terms of the Contract.
- B. For MDOC:
 - 1. Invoices submitted to the MDOC will be verified against each transportation request. If approved it will be submitted for payment. If not approved the MDOC Program Manager or the MDOC Finance will contact the Contractor. Payment will be withheld without penalties until the problem with the invoice is corrected.
- C. At least 15 days prior to contract start, the Contractor must work with the State to finalize invoicing details, which may vary by State Agency or department.
- D. Invoice Details
 - 1. Invoices must include itemization of all charges.
 - 2. Invoices must not co-mingle charges for more than one department on one invoice.
 - 3. Individual invoices must be sent to each using agency's Program Manager, or designated representative as agreed between the using agency and Contractor.
 - 4. The Contractor must submit a monthly invoice of all transports completed in that time frame.
 - 5. The Contractor and Using State Agency may finalize invoice details, beyond what is noted.. Invoices may be mailed, faxed or emailed to the using State Agency.
 - 6. All invoices submitted to the State must include:
 - a. Individual and unique invoice number
 - b. Invoice date
 - c. Invoice total
 - d. Purchase Order number
 - e. Requesting department
 - f. Name of the department's requestor
 - g. Transport reference number
 - h. Prisoner or detainee name
 - i. Prisoner's Michigan prison number, if applicable
 - j. Male or Female
 - k. Departure point, including address, date of departure and date of transport request



- l. Drop off destination, including address, and drop off date;
- m. Total miles for transport, and rate per mile
- n. Air fare (if applicable)

6.2 Payment Methods

The State will make payment for Contract Activities via PO issuance and Electronic Funds Transfer as required by statute.

6.3 Procedure

1. Actual travel costs incurred by contractor may be billed to the MDOC for any passenger cancellation by the MDOC not reported to the Contractor prior to four hours before scheduled departure time for intrastate transportation and eight hours before scheduled departure time for interstate transportation.

7. Liquidated Damages

Late or improper completion of the Contract Activities will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$500 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work per 1.1.1.

8. Additional Requirements

A. Prison Rape Elimination Act (PREA) of 2003

Public Law 108-79, Sept. 4, 2003

1. The Contractor must comply with the Federal Register and the MDOC Prison Rape Elimination Act, 28 CFR Part 115, Prevention Plan. Overfamiliarity with offenders is strictly prohibited.
2. The Contractor must immediately refer any allegations or forms of sexual abuse or sexual harassment (staff-on-prisoner and prisoner-on-prisoner) made to it, to the MDOC Contract Compliance Inspector and Agency Program Manager in writing.
3. 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 Appendix A). If the Contractor does not abide by these standards, it will be considered a breach of Contract.



STATE OF MICHIGAN

Contract # 071B6600049
Transport Services for Prisoners/Offenders and Detainees

**EXHIBIT B
GENERAL PROPOSAL REQUIREMENTS**

RESERVED



STATE OF MICHIGAN

Contract # 071B6600049
 Transport Services for Prisoners/Offenders and Detainees

**EXHIBIT C
 PRICING**

1. Pricing includes all costs, including but not limited to, fuel, mileage, staffing, etc.
2. This will be a fixed unit price contract, and will be based on the cost per mile of a prisoner transport.

Line Item #	Transport	Unit of Measure	Estimated Usage Per Year	Unit Cost	Estimated Cost Total
1	Ground Transport Contiguous United States; no fuel surcharge (Estimated 600 transport requests per year)	Per mile	250,000	\$0.80	\$200,000.00
2	Ground Transport (non-contiguous United States); no fuel surcharge (Estimated 3 transport requests per year)	Per trip	Alaska & Hawaii Air Only – N/A	Case by Case	
3	Air Transport (Airfare at cost, hourly staff rate, meals)	*Current airfare, hourly rate, & meals for 2 officers	3 (non-contiguous United States)	Case By Case	
5	Discount for transporting an additional prisoner from the same pick-up location or to the same drop off location.	Each Occurrence	10	% Discount	
6	Picking up prisoners from restricted hours facilities	Per Hour (wait time) *	200	\$0.00 (no charge)	\$0.00
7	Special Needs Cases: <ul style="list-style-type: none"> • Juveniles • Medical 	*Per Mile	(25 transports estimated)	Case by Case	
8	Short Deadlines (Transportation requests given with less than a 10 day notice for pick up.)	**Maximum amount upcharge	100	\$250.00 Each Occurrence	\$25,000.00



9	Specific Date Pick Up	**Maximum amount upcharge	20	\$350.00 Each Occurrence	\$7,000.00
10	Meals	Each (3 meals required each 24 hours during transport)		\$0.00 (no charge)	\$0.00
	Total Estimated Contract Price for one year.				\$232,000.00

Total Estimated Price for 3-Year Contract: ___\$696,000.00_____

**Any surcharges must be approved by the program manager before the transport begins/continues.



HIPAA BUSINESS ASSOCIATE ADDENDUM

[Rev. 9-20-13]

The parties to this Business Associate Addendum (Addendum) are the State of Michigan, acting by and through the Department of Technology, Management and Budget, on behalf of the Department of Corrections and the Attorney General (State) and U.S. Corrections (Contractor). This Addendum supplements and is made a part of the existing contracts between the parties including the following Contract: Prisoner Transport Contract 071B6600049 (Contract).

For purposes of this Addendum, the State is (check one):

- Covered Entity (CE)
- Business Associate (Associate)

and the Contractor is (check one):

- Covered Entity (CE)
- Business Associate (Associate)

RECITALS

- A. Under the terms of the Contract, CE wishes to disclose certain information to Associate, some of which may constitute Protected Health Information or Personally Identifiable Information (collectively, Protected Information). In consideration of the receipt of such information, Associate agrees to protect the privacy and security of the information as set forth in this Addendum.
- B. CE and Associate intend to protect the privacy and provide for the security of Protected Information disclosed to Associate under the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act (HITECH Act), Public Law 111-5, regulations promulgated by the U.S. Department of Health and Human Services (DHHS) (HIPAA Rules) and other applicable laws, as amended.
- C. As part of the HIPAA Rules, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with Associate prior to the disclosure of Protected Health Information, as set forth in, but not limited to, 45 CFR Parts 160 and 164 and the HITECH Act, and as otherwise contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:



1. Definitions.

- a. Except as otherwise defined herein, capitalized terms in this Addendum have the same meaning as those terms under HIPAA, the HITECH Act, and the HIPAA Rules.
- b. “Agent” has the same meaning given to the term under the federal common law of agency.
- c. “Agreement” means the Contract and this Addendum, as read together.
- d. “Breach” means the acquisition, access, Use or Disclosure of Protected Health Information or Personal Identifying Information in a manner not permitted under the Privacy Rule or the Michigan Identify Theft Protection Act, as applicable, which compromises the security or privacy of such information.
- e. “Contract” means the underlying written agreement or purchase order between the parties for the goods or services to which this Addendum is added. Contract also includes all amendments and addendums to the original contract, both effective before and effective after the date of this Addendum.
- f. “Designated Record Set” has the same meaning as the term under 45 CFR §164.501.
- g. “Disclosure” means, the release, transfer, provision of access to, or divulging of Protected Information in any manner outside the entity holding the information.
- h. “Electronic Health Record” has the same meaning as the term under Section 13400 of the HITECH Act.
- i. “Electronic Protected Health Information” or “Electronic PHI” has the same meaning as the term under 45 CFR §160.103, limited to the information created, received, maintained or transmitted by Associate on behalf of CE.
- j. “HIPAA Rules” means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- k. “HITECH Act” means The Health Information Technology for Economic and Clinical Health Act, part of the American Recovery and Reinvestment Act of 2009, specifically Division A: Title XIII Subtitle D—Privacy, and its corresponding regulations as enacted under the authority of the Act.
- l. “Identity Theft Protection Act” means Public Act 452 of 2004, MCL 445.61, *et seq.*
- m. “Individual” has the same meaning as the term under 45 CFR §160.103 and includes a person who qualifies as a personal representative in accordance with 45 CFR §165.502(g).



- n. “Personal Identifying Information” or “PII” has the same meaning as the term Section 3(q) of the Identity Theft Protection Act.
- o. “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- p. “Protected Health Information” or “PHI” has the meaning given to the term under the Privacy Rule, 45 CFR §160.103, limited to the information created, received, maintained or transmitted by Associate on behalf of CE.
- q. “Protected Information” means PHI and PII created, received, maintained or transmitted by Associate on behalf of CE.
- r. “Security Incident” means the attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of Protected Information or interference with system operations in an information system.
- s. “Security Rule” means the Standards for Security of Electronic Protected Health Information at 45 CFR Part 160 and Subparts A and C of Part 164.
- t. “Subcontractor” means a person or entity that creates, receives, maintains, or transmits Protected Information on behalf of Associate and who is now considered a Business Associate, as the latter term is defined in 45 CFR §160.103.
- u. “Unsecured Protected Health Information” or “Unsecured PHI” means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of technology or methodology specified by DHHS as defined in the Breach Rule, 45 CFR §164.402.
- v. “Use” means, with respect to Protected Information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

2. Obligations and Activities of Associate.

- a. Permitted Uses and Disclosures. Associate may Use and Disclose Protected Information only as necessary to perform services owed CE under the Contract and meet its obligations under this Addendum, provided that such Use or Disclosure would not violate the Privacy Rule, the privacy provisions of the HITECH Act or the Identity Theft Protection Act, if done by CE. All other Uses or Disclosures by Associate not authorized by this Addendum, or by specific written instruction of CE, are prohibited. Except as otherwise limited by this Addendum, Associate may Use and Disclose Protected Information as follows:
- i. Associate may Use Protected Information for the proper management and administration of the Associate or to carry out the legal responsibilities of the Associate.



- ii. Associate may Disclose Protected Information for the proper management and administration of the Associate, provided that Disclosures are Required by Law; or Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and Used, or further Disclosed, only as Required by Law, or for the purpose for which it was Disclosed to the person, and the person notifies the Associate of any instances of which it is aware that the confidentiality of the information has been breached.
- iii. Associate may Use Protected Health Information to provide Data Aggregation services to CE for the Health Care Operations of CE, as permitted by 45 CFR §164.504(e)(2)(i)(B). Associate agrees that said services shall not be provided in a manner that would result in Disclosure of Protected Health Information to another CE who was not the originator or lawful possessor of said information. Further, Associate agrees that any such wrongful Disclosure of Protected Health Information constitutes a Breach and shall be reported to CE in accordance with this Addendum.
- iv. Associate may Use Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 45 CFR §164.502(j)(1).

b. Appropriate Safeguards. Associate must implement appropriate safeguards to protect against the Use or Disclosure of Protected Information other than as permitted by this Addendum so as to comply with the HIPAA Rules, the HITECH Act, and applicable state laws and maintain written policies concerning the same. Associate must implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Protected Information, including specifically Electronic PHI, as provided for in the Security Rule and as mandated by Section 13401 of the HITECH Act. These safeguards shall include, at minimum:

- i. Achieving and maintaining compliance with the HIPAA Security Rule, as necessary in conducting operations on behalf of CE under this Addendum.
- ii. Providing a level and scope of security that is at least comparable to the level and scope of security established by the National Institute of Standards and Technology (NIST) in NIST 800-53, Recommended Security Controls for Federal Information Systems, Annex 2: Consolidated Security Controls-Moderate Baseline. The oldest acceptable version is the most recently approved version of NIST that has been approved for 6 months or more; however, Associate is encouraged to adopt newly approved versions of NIST as soon as practicable. If Associate chooses to use the Control Objectives for Information and Related Technology (COBIT), Information Systems Audit and Control Association (ISACA), or International Organization for



Standardization (ISO) standards, Associate must demonstrate and document how each aspect of the chosen standard comports with the applicable version of NIST and make such documentation available to CE upon request. If Associate uses a standard other than those described in this subsection, Associate must demonstrate and document how each aspect of the chosen standard comports with the appropriate version of NIST and present to CE for review and approval. Additionally, whichever standard is chosen must comport with HIPAA Rules, including specifically the Security Rule and Privacy Rule.

iii. Achieving and maintaining compliance with the Michigan Information Technology Security Policies set forth by the Office of Michigan Cyber Security and Infrastructure Protection.

iv. In case of a conflict between any of the security standards contained in any of these enumerated sources, the most stringent shall apply. The most stringent means those safeguards that provide the highest level of protection to Protected Information from unauthorized Disclosure. Further, Associate must comply with changes to these standards that occur after the effective date of this Addendum.

v. Upon request, Associate must provide CE with all information security and privacy policies, disaster recovery and business continuity policies, network connectivity diagrams, and all other security measures implemented by Associate.

c. Security Incidents. Associate must notify and report to CE in the manner described herein any Security Incident, whether actual or suspected, and any Use or Disclosure of Protected Information in violation of this Addendum, and take the following actions:

i. Notice to CE. Associate must notify CE, via e-mail and telephone, within five (5) business days of the discovery of any Security Incident or any Use or Disclosure of Protected Information in violation of this Addendum. Associate must follow its notification to CE with a report that meets the requirements outlined immediately below.

ii. Investigation; Report to CE. Associate must promptly investigate any Security Incident. Within ten (10) business days of the discovery, Associate must submit a preliminary report to CE identifying, to the extent known at the time, any information relevant to ascertaining the nature and scope of the Security Incident. Within fifteen (15) business days of the discovery of the Security Incident and unless otherwise directed by CE in writing, Associate must provide a complete report of the investigation to CE. Such report shall identify, to the extent possible: (a) each individual whose Protected Information has been, or is reasonably believed by Associate to have been accessed, acquired, Used or Disclosed; (b) the type of Protected



Information accessed, Used or Disclosed (e.g., name, social security number, date of birth) and whether such information was Unsecured; (c) who made the access, Use, or Disclosure; and (d) an assessment of all known factors relevant to a determination of whether a Breach occurred under applicable provisions of HIPAA, the HIPAA Rules, the HITECH Act, or a Breach of Security under the Identity Theft Protection Act, and any other applicable federal or state regulations. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and contain any improper Use or Disclosure. If CE requests information in addition to that listed in the report, Associate shall make reasonable efforts to provide CE with such information. Associate agrees that CE reserves the right to review and recommend changes to any corrective action plan and make a final determination as to whether a Breach of PHI or PII occurred and whether any notifications may be required under applicable state or federal regulations, including Section 13402 of the HITECH Act. In the event of a Breach of Unsecured PHI, as determined by CE, Associate agrees, consistent with 45 CFR §164.404(c), Section 13402 of the HITECH Act and Section 12 of the Identity Theft Protection Act, as applicable, to provide CE with information and documentation in its control necessary to meet the requirements of said sections, and in a manner and format to be reasonably specified by CE.

- iii. Mitigation. Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a Security Incident or a Use or Disclosure of Protected Information in violation of the requirements of this Addendum. Associate must take: (a) prompt corrective action to cure any such violation and (b) any other action pertaining to such unauthorized Use or Disclosure required by applicable federal and state laws and regulations.

d. Responsibility for Notifications. If the cause of a Breach of Protected Information is attributable to Associate or its Agents or Subcontractors, Associate is responsible for all required reporting and notifications of the Breach as specified in and in accordance with Section 13402 of the HITECH Act and the Identity Theft Protection Act, as applicable, unless CE notifies Associate in writing that CE intends to be responsible for said reporting and notifications. In all cases, CE's authorized representative shall approve the time, manner, and content of any such notification and its approval must be obtained before the notification is made. In the event of such Breach, and without limiting Associate's obligations of indemnification as further described in this Addendum, Associate must indemnify, defend, and hold harmless CE for any and all claims or losses, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from CE in connection with the occurrence.

e. Associate's Agents and Subcontractors. If Associate uses one or more Subcontractors or Agents to provide services under the Agreement, and such Agents or Subcontractors receive or have access to Protected Information, each Subcontractor or Agent must sign an agreement with Associate containing substantially the same provisions as this Addendum and in conformance with 45 CFR §164.504(e)(2), and to assume toward Associate all



of the obligations and responsibilities that the Associate, by this Addendum, assumes toward CE. Associate agrees to provide said Agents or Subcontractors PHI in accordance with the HIPAA Rules, the HITECH Act, and PII in accordance with applicable federal and state law and must: (i) implement and maintain sanctions against Subcontractors and Agents that violate such restrictions and conditions; and (ii) mitigate, to the extent practicable, the effects of any such violation.

f. Access to Protected Health Information. Associate agrees to make PHI regarding an Individual maintained by Associate or its Agents or Subcontractors in a Designated Record Set available to such Individual for inspection and copying in order to meet CE's obligations under 45 CFR §164.524. An Individual's request for access must be submitted on standard request forms available from Associate. If CE receives a request for access, CE, in addition to addressing the request on its behalf, will forward the request in writing to Associate in a timely manner. If Associate or its Agents or Subcontractors maintain Electronic Health Records for CE, then Associate must provide, where applicable, electronic access to the Electronic Health Records to CE.

g. Amendment of Protected Health Information. Associate agrees to make any amendment(s) to PHI in a Designated Record Set to meet CE's obligations under 45 CFR §164.526. An Individual's amendment request must be submitted on standard forms available from Associate. If CE receives a request for an amendment, CE, in addition to addressing the request on its behalf, will forward the request in writing to Associate in a timely manner.

h. Accounting Rights. Associate agrees to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528. Associate must maintain necessary and sufficient documentation of Disclosures of PHI and information related to such Disclosures as would be required for CE to respond to a request by an Individual for an accounting of Disclosures under 45 CFR §164.528. An Individual's request for a report of accounting must be submitted on standard request forms available from Associate. If CE receives a request for an accounting, CE, in addition to addressing the request on its own behalf, will forward the request in writing to Associate in a timely manner. Associate must also comply with the requirements of Section 13405(c) of the HITECH Act, as applicable.

i. Access to Records and Internal Practices. Unless otherwise protected or prohibited from discovery or Disclosure by law, Associate must make its internal practices, books, and records, including policies and procedures (collectively, Compliance Information), relating to the Use or Disclosure of PHI and PII and the protection of same, available to CE or to the Secretary of DHHS (Secretary) for purposes of the Secretary determining CE's compliance with the HIPAA Rules and the HITECH Act. Associate shall have a reasonable time within which to comply with requests for such access, consistent with this Addendum. In no case shall access be required in less than five (5) business days after Associate's receipt of such request, unless otherwise designated by the Secretary.

j. Minimum Necessary. Associate (and its Agents or Subcontractors) shall only request, Use and Disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, Use or Disclosure, in accordance with the Minimum



Necessary requirements of the Privacy Rule, including, but not limited to 45 CFR §§ 164.502(b) and 164.514(d) and the HITECH Act.

k. Compliance.

- i. To the extent that Associate carries out one or more of CE's obligations under the HIPAA Rules, Associate must comply with all requirements that would be applicable to CE.
- ii. Associate must honor all restrictions consistent with 45 CFR §164.522 that CE or the Individual makes Associate aware of, including the Individual's right to restrict certain Disclosures of PHI to a health plan where the Individual pays out of pocket or in full for the healthcare item or service, in accordance with Section 13405(a) of the HITECH Act.

l. Data Ownership. Unless otherwise specified in this Addendum, Associate agrees that Associate has no ownership rights with respect to the Protected Information and that CE retains all rights with respect to ownership of such information. Associate further agrees not to receive remuneration, directly or indirectly, in exchange for Protected Information, except with the prior written consent of CE.

m. Retention of Protected Information. Notwithstanding Section 5(d) of this Addendum, Associate and its Subcontractors or Agents shall retain all Protected Information throughout the term of the Contract and shall continue to maintain the information required under Section 2(h) of this Addendum for a period of six (6) years from the date of creation or the date when it last was in effect, whichever is later, or as Required by Law. This obligation shall survive the termination of the Contract.

n. Destruction of Protected Information. Associate must implement policies and procedures for the final disposition of Protected Information, including electronic PHI, and the hardware and equipment on which it is stored, including but not limited to, removal before re-Use, in accordance with the Security Rule, the HITECH Act, and other applicable laws relating to the final disposition of Protected Information.

o. Audits, Inspection, and Enforcement. Within ten (10) days of a written request by CE, Associate and its Agents or Subcontractors must allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the Use or Disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that: (i) Associate and CE shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) CE shall protect the confidentiality of all confidential and proprietary information of Associate to which CE has access during the course of such inspection; and (iii) CE or Associate shall execute a nondisclosure agreement, if requested by Associate or CE. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices,



constitute acceptance of such practice or a waiver of CE's enforcement rights under this Addendum. If Associate is the subject of an audit, compliance review, or complaint investigation by DHHS that is related to the performance of its obligations pursuant to this Addendum, Associate must notify CE and provide CE with a copy of any PHI that Associate provides to DHHS concurrently with providing such information to DHHS. If, as a result of an audit or other investigation of Associate, DHHS assesses any civil penalties, Associate shall pay such penalties.

p. Audit Findings. Associate must implement any appropriate Safeguards, as identified by CE in an audit conducted under paragraph 2(o).

q. Reserved.

r. Safeguards During Transmission. Associate must utilize safeguards that reasonably and appropriately maintain and ensure the confidentiality, integrity, and availability of Protected Information transmitted to CE under this Addendum, in accordance with the standards and requirements of the HIPAA Rules and other applicable federal or state regulations, until such Protected Information is received by CE, and in accordance with any specifications set forth in Attachment A.

s. Due Diligence. Associate must exercise due diligence and take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions of HIPAA, the HIPAA Rules, the HITECH Act and other applicable laws or regulations pertaining to Protected Information, and that its Agents, Subcontractors and vendors are in compliance with their obligations as required by this Addendum.

t. Sanctions and Penalties. Associate understands that a failure to comply with the provisions of HIPAA, the HITECH Act, the HIPAA Rules or any other state or federal regulation that is applicable to Associate may result in the imposition of sanctions or penalties on Associate under HIPAA, the HIPAA Rules, the HITECH Act, or any other applicable laws or regulations pertaining to PHI and PII.

u. Indemnification. Associate shall indemnify, hold harmless and defend CE from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of Associate or its Agents or Subcontractors in connection with the representations, duties, and obligations of Associate under this Addendum, including but not limited to any unauthorized Use or Disclosure of Protected Information. This includes credit-monitoring services, third party audits of Associate's handling and remediation of the Breach, and reimbursement for State employee time spent handling the Security Incident, as reasonably deemed appropriate by CE. The parties' respective rights and obligations under this subsection shall survive termination of the Agreement.

3. Obligations of CE.

a. Safeguards During Transmission. CE must utilize safeguards that reasonably and appropriately maintain and ensure the confidentiality, integrity, and availability of Protected Information transmitted to Associate under this Addendum, in accordance with the standards



and requirements of the HIPAA Rules and other applicable federal or state regulations, until such Protected Information is received by Associate, and in accordance with any specifications set forth in Attachment A.

b. Notice of Limitations and Changes. CE must notify Associate of any limitations in its notice of privacy practices in accordance with 45 CFR §164.520, or any restriction to the Use or Disclosure of PHI that CE has agreed to in accordance with 45 CFR §164.528, to the extent that such limitation may affect Associate's Use or Disclosure of PHI. CE must also notify Associate of any changes in, or revocation of, permission by Individual to Use or Disclose PHI of which it becomes aware, to the extent that such changes may affect Associate's Use or Disclosure of PHI.

4. Term. This Addendum shall continue in effect as to each Contract to which it applies until such Contract is terminated or is replaced with a new contract between the parties containing provisions meeting the requirements of the HIPAA Rules and the HITECH Act, whichever first occurs. However, certain obligations will continue as specified in this Addendum.

5. Termination.

a. Material Breach. Except as otherwise provided in the Contract, a breach by Associate of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Agreement and provide grounds for CE to terminate the Agreement for cause, subject to section 5(b):

i. Default. If Associate refuses or fails to timely perform any of the provisions of this Addendum, CE may notify Associate in writing of the non-performance, and if not corrected within thirty (30) days, CE may immediately terminate the Agreement. Associate agrees to continue performance of the Agreement to the extent it is not terminated.

ii. Duties. Notwithstanding termination of the Agreement, and subject to any reasonable directions from the CE, Associate agrees to take timely, reasonable and necessary action to protect and preserve property in the possession of the Associate in which CE has an interest.

iii. Erroneous Termination for Default. If after such termination it is determined, for any reason, that Associate was not in default, or that Associate's action or inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the Contract had been terminated for convenience, as described in this Addendum or in the Contract.

b. Reasonable Steps to Cure Breach. If CE knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate the Agreement under Section 5(a), then CE shall take reasonable steps to cure such breach or end such violation, as applicable. If CE's efforts to cure such breach or end such violation are unsuccessful, CE shall either (i) terminate the Agreement, if feasible or (ii) if termination of the Agreement is not feasible, CE shall report Associate's breach or violation to the Secretary.



c. Reserved.

d. Effect of Termination.

(i) At the direction of CE, and except as provided in section 5(d)(ii), upon termination of the Agreement for any reason, Associate must return or destroy all Protected Information that Associate or its Agents or Subcontractors still maintain in any form, and shall retain no copies of such information. If CE directs Associate to destroy the Protected Information, Associate must certify in writing to CE that such information has been destroyed. If CE directs associate to return such information, Associate must do so promptly in any format reasonably specified by CE.

(ii) If Associate believes that returning or destroying the Protected Information is not feasible, including but not limited to, a finding that record retention requirements provided by law make return or destruction infeasible, Associate must promptly provide CE written notice of the conditions making return or destruction infeasible. Upon mutual agreement of CE and Associate that return or destruction of Protected Information is infeasible, Associate must continue to extend the protections of this Addendum to such information, and must limit further Use of such Protected Information to those purposes that make the return or destruction of such Protected Information infeasible.

6. Reserved.

7. No Waiver of Immunity. No term or condition of this Addendum shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of applicable laws, including the Michigan Governmental Immunity Act, MCL 691.1401, *et seq.*, the Court of Claims Act, MCL 600.6401, *et seq.*, the Federal Tort Claims Act, 28 U.S.C. 2671, *et seq.*, or the common law, as applicable, as now in effect or hereafter amended.

8. Reserved.

9. Disclaimer. CE makes no warranty or representation that compliance by Associate with this Addendum, HIPAA, the HIPAA Rules, the HITECH Act or other applicable laws pertaining to Protected Information will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of Protected Information.

10. Reserved.

11. Amendment.

a. Amendment to Comply with Law. The parties agree to take such action as is necessary to amend this Addendum from time to time as may be necessary for CE and Associate to comply with and implement the standards and requirements of HIPAA, the Privacy Rule, the Security Rule, the Breach Rule, the HITECH Act, the Identity Theft Protection Act, and other applicable laws relating to the security or privacy of PHI and PII. Upon the request of either



party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule, the Security Rule, the Breach Rule, the HITECH Act, the Identity Theft Protection Act, or other applicable laws. Either party may terminate the Agreement upon thirty (30) days written notice if (i) the other does not promptly enter into negotiations to amend this Agreement when requested by the requesting party under this Section or (ii) the non-requesting party does not enter into an amendment to this Agreement when requested providing assurances regarding the safeguarding of PHI and PII that the requesting party, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA, the HIPAA Rules, the HITECH Act, the Identity Theft Protection Act, and other applicable laws.

b. Amendment of Attachment A. Attachment A may be modified or amended by mutual agreement of the parties in writing from time to time without formal amendment of this Addendum.

12. Assistance in Litigation or Administrative Proceedings. Associate must make itself, and any Subcontractors, employees or Agents assisting it in the performance of its obligations under this Addendum available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against a party, its directors, officers or employees, departments, agencies, or divisions based upon a claimed violation of HIPAA, the HITECH Act, the HIPAA Rules, the Identity Theft Protection Act, or other laws relating to security and privacy of Protected Information, except where the other party or its Subcontractor, employee or Agent is a named adverse party.

13. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

14. Effect on Contract. Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract shall remain in force and effect. This Addendum is incorporated into the Contract as if set forth in full therein. The parties expressly acknowledge and agree that sufficient mutual consideration exists to make this Addendum legally binding in accordance with its terms. Associate and CE expressly waive any claim or defense that this Addendum is not part of the Agreement between the parties under the Contract.

15. Interpretation and Order of Precedence. This Addendum is incorporated into and becomes part of each Contract identified herein. Together, this Addendum and each separate Contract constitute the Agreement of the parties with respect to their Business Associate relationship under HIPAA, the HIPAA Rules, and the HITECH Act. The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA Rules, and applicable state laws. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, and the HIPAA Rules. This Addendum supersedes and replaces any previous separately executed



HIPAA addendum between the parties. In the event of any conflict between the mandatory provisions of the HIPAA Rules and the HITECH Act and the provisions of this Addendum, the HIPAA Rules and the HITECH Act shall control. Where the provisions of this Addendum differ from those mandated by the HIPAA Rules or the HITECH Act, but are nonetheless permitted by the HIPAA Rules and the HITECH Act, the provisions of this Addendum shall control.

16. Effective Date. This Addendum is effective upon receipt of the last approval necessary and the affixing of the last signature required.

17. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, Associate’s obligations under Section 2(d) (Responsibility for Notifications), Section 2(u) (Indemnification), Section 5(d) (Effect of Termination), Section 12 (Assistance in Litigation or Administrative Proceedings), Section 13 (No Third Party Beneficiaries), and applicable record retention laws shall survive termination of this Agreement and shall be enforceable by CE as provided herein in the event of such failure to perform or comply by the Associate.

18. Representatives and Notice.

a. Representatives. For the purpose of this Addendum, the individuals identified in the Contract shall be the representatives of the respective parties. If no representatives are identified in the Contract, the individuals listed below are hereby designated as the parties’ respective representatives for purposes of this Addendum. Either party may from time to time designate in writing new or substitute representatives.

b. Notices. Except as otherwise provided in this Addendum, all required notices shall be in writing and shall be hand delivered or given by certified or registered mail to the representatives at the addresses set forth below.

Covered Entity Representative:

Name: _____
 Title: _____
 Department: _____
 Division: _____
 Address: _____

Business Associate Representative:

Name: _____
 Title: _____
 Department: _____
 Division: _____
 Address: _____

Any notice given to a party under this Addendum shall be deemed effective, if addressed to such



party, upon: (i) delivery, if hand delivered; or (ii) the third (3rd) business day after being sent by certified or registered mail.

IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum as of the Addendum Effective Date.

Associate

Covered Entity

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____



ATTACHMENT A

This Attachment sets forth additional terms to the HIPAA Business Associate Addendum dated _____, between The State of Michigan and U.S. Corrections (Addendum) and is effective as of _____ (the Attachment Effective Date). This Attachment applies to the specific contracts listed below covered by the Addendum. This Attachment may be amended from time to time as provided in Section 11(b) of the Addendum.

1. Specific Contract Covered. This Attachment applies to the following specific contract covered by the Addendum: 071B6600049

2. Additional Permitted Uses. In addition to those purposes set forth in Section 2(a) of the Addendum, Associate may Use Protected Information as follows:

3. Additional Permitted Disclosures. In addition to those purposes set forth in Section 2(b) of the Addendum, Associate may Disclose Protected Information as follows:

4. Subcontractor(s). The parties acknowledge that the following subcontractors or agents of Associate shall receive Protected Information in the course of assisting Associate in the performance of its obligations under the Contract and the Addendum:

5. Receipt. Associate’s receipt of Protected Information pursuant to the Contract and Addendum shall be deemed to occur as follows, and Associate’s obligations under the Addendum shall commence with respect to such Protected Information upon such receipt:

6. Additional Restrictions on Use of Data. CE is a Business Associate of certain other Covered Entities and, pursuant to such obligations of CE, Associate shall comply with the following restrictions on the Use and Disclosure of Protected Information:

7. Additional Terms.

Associate

Covered Entity



By: _____ By: _____

Print Name: _____ Print Name: _____

Title: _____ Title: _____

Date: _____ Date: _____



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and U.S. Corrections LLC (“**Contractor**”), a North Carolina Limited Liability Company. This Contract is effective on March 1, 2016 (“**Effective Date**”), and unless terminated, expires on March 1, 2019. 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:

1. **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.

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

<p>If to State: <i>William Camp</i> 525 W. Allegan St. P.O. Box 30026 Lansing, MI 48909 campw@michigan.gov 517-284-7022</p>	<p>If to Contractor: <i>Dave Warden III</i> 15720 Brixham Hill Ave, Suite 300 Charlotte, NC 28277 dave.warden@uscorrections.org 704-405-1425 ext, 152/252</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**”):



If to State: <i>William Camp</i> 525 W. Allegan St. P.O. Box 30026 Lansing, MI 48909 campw@michigan.gov 517-284-7022	If to Contractor: <i>Ash Jacques</i> 15720 Brixham Hill Ave, Suite 300 Charlotte, NC 28277 ash.jacques@uscorrections.org 704-704-1425 ext 161
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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**”):

If to DOC: <i>Michael Whitford</i> MDOC Central Office 206 E. Michigan Ave. – 5 th Floor Grandview Plaza Lansing, MI 48933 517-241-7661	If to Contractor: <i>Ash Jacques</i> 15720 Brixham Hill Ave, Suite 300 Charlotte, NC 28277 ash.jacques@uscorrections.org 704-704-1425 ext 161
If to AG <i>Patrick O’Brien</i> 525 W. Ottawa St. Lansing, MI 48909 517-373-1111	

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

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<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 3 years of tail coverage.
Umbrella or Excess Liability Insurance	



<p><u>Minimal Limits:</u> \$5,000,000 General Aggregate</p>	<p>Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds, and (2) include a waiver of subrogation.</p>
<p>Motor Vehicle Insurance</p>	
<p><u>Minimal Limits:</u> \$1,000,000 Per Occurrence</p>	
<p>Workers' Compensation Insurance</p>	
<p><u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.</p>	<p>Waiver of subrogation, except where waiver is prohibited by law.</p>
<p>Employers Liability Insurance</p>	
<p><u>Minimal Limits:</u> \$100,000 Each Accident \$100,000 Each Employee by Disease \$500,000 Aggregate Disease.</p>	



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 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

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

Department of Technology, Management and Budget
Financial Services – Cashier Unit
Lewis Cass Building
320 South Walnut St.
P.O. Box 30681
Lansing, MI 48909

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to STATE-MDOC-Procurement.

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

8. **Extended Purchasing Program.** The Contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal. Upon written agreement between the State and Contractor, this Contract may also be extended to: (a) State of Michigan employees and (b) other states (including governmental subdivisions and authorized entities).

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

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

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



10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
11. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
12. **Background Checks.** 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. Liquidated Damages. Liquidated damages, if applicable, will be assessed as described in Exhibit A.

22. Stop Work Order. The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or 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 (1) 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 (2) 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 twenty-four (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 5 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 twenty-four (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 7 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**").