



**STATE OF MICHIGAN PROCUREMENT**  
**DTMB Central Procurement Services**  
 525 W. Allegan Street, 1<sup>st</sup> Floor, NE  
 Lansing, MI

**NOTICE OF CONTRACT**

NOTICE OF CONTRACT NO. **210000000384**  
 between  
 THE STATE OF MICHIGAN  
 and

<b>CONTRACTOR</b>	The FOG Group Inc., dba Powerlink Facilities Management Services
	24562 Romano
	Warren, MI 48091
	Scott Rice
	313-309-2029
	srice@powerlinkonline.com
	CV0002966

<b>STATE</b>	Program Manager	Jennifer Manning	DMVA
		586-719-6791	
		manningj5@michigan.gov	
<b>STATE</b>	Contract Administrator	Valerie Hiltz	DTMB
		517-249-0459	
		hiltzv@michigan.gov	

<b>CONTRACT SUMMARY</b>			
<b>DESCRIPTION: Southeast Michigan Home for Veterans (SMHV) - Nutrition Services</b>			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW</b>
February 1, 2021	February 1, 2024	3, 1-year options	February 1, 2024
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
Net 45		N/A	
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>MINIMUM DELIVERY REQUIREMENTS</b>			
N/A			
<b>MISCELLANEOUS INFORMATION</b>			
THIS IS NOT AN ORDER: Orders will be placed directly by the State Agency via the authorized document, established in Schedule A, Section 6.1. Authorizing Document, and per terms, conditions, and specifications established in this contract.			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION</b>			<b>\$ 4,926,400.00</b>

**FOR THE CONTRACTOR:**

\_\_\_\_\_  
**Company Name**

\_\_\_\_\_  
**Authorized Agent Signature**

\_\_\_\_\_  
**Authorized Agent** (Print or Type)

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

**FOR THE STATE:**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name & Title**

\_\_\_\_\_  
**Agency**

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



# STATE OF MICHIGAN

## STANDARD CONTRACT TERMS

**MA# 21000000384**

### **Southeast Michigan Home for Veterans (SMHV) – Nutrition Services**

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and The FOG Group Inc., dba Powerlink Facilities Management Services (“**Contractor**”), a Michigan corporation. This Contract is effective on January 20, 2021 (“**Effective Date**”), and unless terminated, expires on January 20, 2024.

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

The parties agree as follows:

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

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

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

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

- 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.

<b>If to State:</b> Valerie Hiltz 525 W. Allegan Street, 1 <sup>st</sup> Floor NE Lansing, MI 48933 hiltzv@michigan.gov 517-249-0459	<b>If to Contractor:</b> Scott Rice 24562 Romano Warren, MI 48091 srice@powerlinkonline.com 313-309-2029
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3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

<b>State:</b> Valerie Hiltz 525 W. Allegan Street, 1 <sup>st</sup> Floor NE Lansing, MI 48933 hiltzv@michigan.gov 517-249-0459	<b>Contractor:</b> Scott Rice 24562 Romano Warren, MI 48091 srice@powerlinkonline.com 313-309-2029
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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**”):

<b>State:</b> Jennifer Manning Southeast Michigan Home for Veterans ManningJ5@michigan.gov 586-719-6791	<b>Contractor:</b> Mike Dennis 2452 Romano Warren, MI 480911 mdennis@powerlinkonline.com 586-819-4358
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5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Schedule A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor’s or a subcontractor’s performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations  <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04.  Coverage must not have exclusions or limitations related to sexual abuse and molestation liability.

Required Limits	Additional Requirements
<b>Umbrella or Excess Liability Insurance</b>	
<u>Minimum Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy follow form.
<b>Automobile Liability Insurance</b>	
<u>Minimum Limits:</u> \$1,000,000 Per Accident	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
<b>Workers' Compensation Insurance</b>	
<u>Minimum Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<u>Minimum Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
<b>Privacy and Security Liability (Cyber Liability) Insurance</b>	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
<b>Crime (Fidelity) Insurance</b>	
<u>Minimum Limits:</u> \$1,000,000 Employee Theft Per Loss	Contractor must have their policy: (1) cover forgery and alteration, theft of money and securities, robbery and safe burglary, computer fraud, funds transfer fraud, money order and counterfeit currency, and (2) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as Loss Payees.

Required Limits	Additional Requirements
<b>Professional Liability (Errors and Omissions) Insurance</b>	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	
<u>Deductible Maximum:</u> \$50,000 Per Loss	

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

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

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

7. **Reserved.**
8. **Reserved.**
9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.
10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
11. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
12. **Background Checks.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, or as may be specified in Schedule A, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must

be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

13. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
14. **Change of Control.** Contractor will notify within 30 days of any public announcement or otherwise once legally permitted to do so, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

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

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

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

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

17. **Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Schedule A. All containers and packaging become the State's exclusive property upon acceptance.
18. **Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
19. **Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Schedule A. If the Contract Activities do not function as warranted during the

warranty period, the State may return such non-conforming Contract Activities to the Contractor for a full refund.

- 20. Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Schedule A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. All prices are exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

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

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

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

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

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

- 24. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition



Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

- 25. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 180 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 26. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

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

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

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

- 27. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
- 28. Limitation of Liability and Disclaimer of Damages. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR**

**OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

- 29. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
- 30. Reserve.**
- 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 five (5) business days 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 Schedule 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 Schedule 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 or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor 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) with approval and assistance from

the State, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (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) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) 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 incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) provide to the State a detailed plan within ten (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, not be tangentially used for any solicitation purposes, 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. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. The parties agree that any damages relating to a breach of this **Section 31** are to be considered direct damages and not consequential damages. This section survives termination or expiration of this Contract.

- f. State's Governance, Risk and Compliance (GRC) platform. Contractor is required to assist the State with its security accreditation process through the development, completion and ongoing updating of a system security plan using the State's automated GRC platform and implement any required safeguards or remediate any security vulnerabilities as identified by the results of the security accreditation process.

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

- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a

need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

### **33. 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. Payment Card Industry Data Security Standard.**

- a. Undertaking by Contractor. Contractors that process, transmit, store or affect the security of credit/debit cardholder data, must adhere to the Payment Card Industry Data Security Standard (PCI DSS). The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.
- b. Cooperation to Notify of Breach. The Contractor must notify the State's Contract Administrator, within 48 hours of discovery, of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the card associations (e.g. Visa, MasterCard, and Discover) and state acquirer representative(s), or a PCI approved third party, to conduct a thorough security review. The review must validate compliance with the PCI Data Security Standard for protecting cardholder data. The Contractor must provide, at the request of the State, the results of such third-party security review. At the State's sole discretion, the State may perform its own security review, either by itself or through a PCI approved third party.
- c. Responsibilities for Costs Incurred. The Contractor is responsible for all costs incurred as the result of the breach. Costs may include, but are not limited to, fines/fees for non-compliance, card reissuance, credit monitoring, and any costs associated with a card association, PCI approved third party, or State initiated security review. Without limiting Contractor's obligations of indemnification as further described in this Contract, Contractor must indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the breach.
- d. Disposing of Cardholder Data. The Contractor must dispose of cardholder data when it is no longer needed in compliance with PCI DSS policy. The Contractor must continue to treat cardholder data as confidential upon contract termination.
- e. Audit by Contractor. The Contractor must provide the State's Contract Administrator with an annual Attestation of Compliance or a Report on Compliance showing the contractor is in compliance with the PCI Data Security Standard. The Contractor must notify the State's Contract Administrator of all failures to comply with the PCI Data Security Standard.

**35. CEPAS Electronic Receipt Processing Standard.** All electronic commerce applications that allow for electronic receipt of credit or debit card and electronic check transactions must be processed via the State's Centralized Electronic Payment Authorization System (CEPAS). To minimize the risk to the State, full credit/debit card numbers, sensitive authentication data, and full bank account information must never be stored on state-owned IT resources.

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

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error

must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

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

- 37. Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.
- 38. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 39. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 40. Reserved.**
- 41. Reserved.**
- 42. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and [Executive Directive 2019-09](#). Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.
- 43. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 44. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

- 45. Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 46. Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
- 47. Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

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

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

<b>Schedule A</b>	<b>Statement of Work</b>
<b>Schedule A, Attachment 1</b>	<b>MIOSHA-STD-1209</b>
<b>Schedule B</b>	<b>Pricing</b>
<b>Schedule B, Attachment 1</b>	<b>Bistro T &amp; M Pricing Worksheet</b>
<b>Schedule C</b>	<b>Federal Provisions Addendum</b>
<b>Schedule C, Exhibit 1</b>	<b>Byrd Anti-Lobbying Certification</b>

- 51. Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and schedules and exhibits which are hereby expressly incorporated, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

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



**MA# 21000000384**  
**Southeast Michigan Home for Veterans (SMHV)– Nutrition Services**

**SCHEDULE A**  
**STATEMENT OF WORK**  
**CONTRACT ACTIVITIES**

**BACKGROUND**

The Michigan Department of Veterans and Military Affairs (DMVA) has constructed a new, one building, care facility to provide skilled nursing service to Michigan veterans while providing as homelike environment as possible for its members. The facility will be arranged thus:

- A. One central area that will include the main, full commercial kitchen and a Bistro
  - 1. The Bistro will be a point of sale food service locations where staff, visitors and volunteers will be able to purchase food and beverages while at the facility.
- B. Four “neighborhoods” within the facility will each have its own satellite, full commercial kitchen.
  - 1. Each “neighborhood” will consist of two “households”.
  - 2. Each “household” will house 16 members.
  - 3. Each “household” will have a dining room with kitchenette

This facility will operate under the rules and regulations set forth by: United States Veteran Administration, and Centers for Medicare & Medicaid Services (CMS).

- A. This facility will house 128 members when fully occupied.
- B. Expect approximately 128 member meals per service.
- C. Expect approximately 125 employee, volunteers, and visitors’ meals at the Bistro per day.
- D. Anticipate having the following diet types:

Regular diets (salt 3-5 gm. Na counted as regular)	39%
Regular consistency with diet modifications	29%
Consistency modified (ground, pureed, dental soft)	19%
Consistency modified with diet modifications	11%
Tube fed diets	2%
	100%

The State cannot guarantee these numbers or percentages and may vary in practice. They are provided as a basis for estimation and proposal response only.

**INTENT**

The purpose of contract is to provide for all the services required to feed members, employees, volunteers, and visitors.

It is expected that this contract will have a rolling “Go Live” with members moving into the first neighborhood beginning April 1, 2021 and with subsequent neighborhoods opening as necessary. It is anticipated that by the end of the first contract year all neighborhoods will be inhabited and fully operational.

The Bistro “Go Live” date will be determined per agreement between the Contractor and the SMHV staff and as allowed by the State, pending re-opening of on-premises retail dining due to Covid-19 restrictions.

**SCOPE**

The Contractor will provide all nutritional services in conformance with the specifications, terms and conditions outlined in these contract documents, as well as with all applicable state, federal and accrediting agency regulations. This contract will include, but is not limited to:

- A. All on-site food preparation and delivery.
- B. The Contractor will be responsible for:

1. Procure and provided all food and supplies necessary for food production
2. Procure and provide all disposable paper products necessary for the production and service of the food provided under this contract.
3. Procure and provide all products and equipment necessary for sanitization of the kitchen and other assigned locations.
4. Procure and provide all necessary uniforms, and PPE's necessary for employees' performance of their duties.
5. Hiring, supervision and training of on-site employees performing the duties of this contract.

## REQUIREMENTS

### 1. General Requirements

The Contractor must provide all food, products, and necessary staffing for the in-house production and service of food and the nutritional services stated within the contract.

#### 1.1. Product Specifications- Food and Beverage

- A. **Product Quality.** All food and beverage products provided under the Contract must meet FDA, USDA (<https://www.ams.usda.gov/grades-standards>), and USDC requirements and standards for furnishing food for human consumption and must be used prior to expiration dates.
  1. All meats, where applicable, must meet USDA specifications
  2. All produce must be fresh and in good condition upon receiving
  3. Refrigerated and frozen food products must be received and stored at temperatures that will meet food code requirements
  4. Frozen food products must be free of signs of thaw, crystallization, or freezer burn
  5. Food products must be free from mold, visible damage, evidence of pest infestation, strange smell, or abnormal color
  6. Minimum acceptable qualities are as follows:
    - a. Canned Fruits: Fancy and Choice grades. Carbohydrate controlled juice or water packed
    - b. Dairy: Grade A
    - c. Eggs: USDA Grade AA. Medium for poached or fried eggs. Frozen whole eggs may be used for scrambled eggs.
    - d. Frozen Foods:
      - 1) Entrees must contain a minimum 14 gm protein if used at the evening meal or 21 gm protein if used at the noon meal. Textured Vegetable Product (TVP) is not acceptable as part of any meat product. Please Note- No soy fillers for extenders will be added to meat or fish products.
      - 2) Frozen Fruits and Vegetables. The State prefers that these products be packaged without added sugar or salt.
    - e. Fresh Produce and Fruit: Grade U.S. No. 1 or better.
    - f. Fruit Juice: Must be 100% fruit juice. Punch, lemonade, juice cocktails are unacceptable as menu or nourishment items, except where specified.
    - g. Canned Vegetables: Choice and extra standard grades.
    - h. Meats: USDA Choice.
      - 1) Pureed meats commercially prepared with standardized nutrient content such as Gerber brand or equivalent. Pureed meats prepared on-site are acceptable provided the product consistency, nutrient analyses, and preparation method is approved by the SMHV Dietitian/Nutritionist and the Contractor utilized a method of ensuring the continued consistency of the product.

- 2) Poultry: Grade A
  - 3) Ground Beef: USDA utility or better with fat content between 18% and 20%.
7. The State reserves the right to specify brand named products if deemed necessary for standardization of product or particular quality as specified by the SMHV Program Manager and/or Dietitians.
- B. Recipes.** Food items must meet or exceed the specifications identified herein or meet the approval of the SMHV Program Manager and/or Dietitians.
1. The Contractor must provide recipes to the State for review.
    - a. Once recipes have been reviewed and adjusted to meet the requirements of the facility's member population, a copy of each recipe with its nutrient analysis must be supplied to the Southeast Michigan Home for Veterans PM and/or Dietitians for final approval.
  2. Nutrient analysis of any ready-prepared foods utilized must also be provided.
  3. Only approved recipes may be used in meal preparation.
  4. Hazard Analysis and Critical Control Points (HACCP) Guidelines must be included in all recipes.
- C. Meals.** The Contractor must design and provide meals that:
1. Meet the Food and Nutrition Boards Recommended Dietary Intake (RDI) for males 51+ in accordance with requirements of the Becky Dorner & Associates diet manual and the needs specified by SMHV Physician(s) and Dietitian(s).
  2. Provide a well-balanced diet created to provide 100% of the United States Reference Daily Intake (USRDI) as defined by the National Research Council. Guidelines are intended for use with older adults. To meet 100% of the USRDI for older adults as defined by the National Research Council, the provision of adequate nutrients to the majority of clients will be met by following these daily guidelines (based on the USDA Food Guide Pyramid):
    - a. >2 servings (2-3 ounces per serving) of meat or meat alternative (eggs, cheese, peanut butter, etc.)
    - b. 2-3 servings of milk and/or milk products (preferably fortified with Vitamins A and D)
    - c. > 2 servings of fruits
    - d. > 3 servings of vegetables
    - e. > 6 servings of breads/grains
    - f. Vitamin C source daily
    - g. Vitamin A source 3 – 4 times per week or every other day
    - h. Additional foods to round out the menu for a pleasing appearance and satisfying meal (sugars, fats, and miscellaneous foods will also add additional calories)
  3. Follow standardized recipes provided by the Contractor and pre-approved by the SMHV Program Manager and/ or Dietician.
  4. Are consistently prepare and properly cooked to ensure quality.
- D. Changes to Food Products, Recipes, Meals.** Either the Contractor or the SMHV Program Manager may request to test new products, recipes, or menu items. Both parties will be required to evaluate the item(s) for taste, appearance, and acceptability by utilizing a properly documented scoring process.
- E. Plate Waste.** In order to assist in the evaluation of Member acceptance of Foods, Recipe's and Meals, the Contractor will monitor per meal plate waste, those items that are served but not eaten, and monitor the amount of unused food which had been sent to the households for service but remain unserved. The Contractor and the SMHV Program Manager will design a format in which

this information can be collected, and a Plate Waste report will be sent to the SMHV Program Manager on a monthly basis for evaluation and review.

## **1.2 Menus and Menu Driven Food Service, Special Nourishment, Snacks and other Food Service Requirements.**

### **A. Menu.**

1. Menu is to include three meals per day: breakfast, lunch and dinner, seven days per week.
2. The Contractor must provide a minimum five (5) week cycle menu
3. Once established the five (5) week cycle may be changed by Contractor request (with approval of the Program Manager) or by the dietician, both requiring a 30-day notification.
4. The regular/basic house menu must provide 2100- 2400 calories daily and be extendable to mechanically and therapeutically modified menus.
5. The Contractor must ensure that menus meet the following specifications:
  - a. A variety of foods must be included in the menu. In a three (3) week period, no entrée prepared with the same recipe shall repeat. Recipes within the meat, vegetable, fruit and dessert groups must not be repeated for the same days of each week. (ex. Cannot have Tacos on every Tuesday).
  - b. The majority of the carbohydrate requirement shall be complex carbohydrate (example: breads, cereal, whole grains, oats, etc.) or starchy vegetable food groups. Desserts shall be pudding, custard, ice cream, cookie, or a baked dessert at least one time per day with the remainder being fruit.
  - c. Soup and sandwich meals may be served two times per week. Entirely cold meals may be served one time per week from May 1 to September 30.
  - d. Required menus include but are not limited to solid; ground; pureed textures of a regular (house) menu; as well as liberal diabetic; liberal sodium controlled; and liberal heart healthy diets.
  - e. A themed meal must be provided to all members once per month. These meals must be developed each January for the entire calendar year and presented to the SMHV Member Council (representatives of the residents of the Southeast Michigan Home for Veterans known as "members") and the SMHV Program Manager for their suggestions.
  - f. On member's birthdays, members must be given a choice of Ribeye Steak, Chicken Breast, or Fresh Fish, or the regularly served meal, with a Birthday Cake during their supper meal.
6. The Contractor must ensure menus be complied with unless food items are seasonally unavailable or unavailable in sufficient quantities. If a menu substitution is necessary, the SMHV Program Manager and/or Dietitian must be notified prior to implementation. Only items of comparable nutrient content from the same food group may be substituted, i.e., grapefruit for oranges, melon for strawberries, pudding for ice cream, roast beef for hamburger.

### **B. Menu Modifications and Food Substitutions**

SMHV staff will work with the Contractor and its vendor suppliers to revise, update, add to, and delete items as necessary to meet the nutritional, quality, and consistency requirements of the State. The SMHV Program Manager will approve all changes and/or substitutions in writing. Once approved by the Program Manager the Contractor is authorized to proceed as agreed upon.

1. **Menu Modification.** From time to time SMHV may wish to refresh its menu and will seek to work with its Contractor to offer the best possible menu, both in nutrition and taste, for the best price.

- a. The Contractor may be asked to conduct menu taste tests and product cuttings in the SMHV central kitchen at no charge to the State.
    - 1) The Contractor and the SMHV Program Manager will coordinate new and alternate product taste tests, and product cuttings to permit the appropriate SMHV staff or Member Council to participate.
    - 2) The SMHV will be reasonable regarding the number and frequency of these requests.
    - 3) All product cutting results for will be provided to the MDOC Program Manager.
  - b. Contractor may notify the SMHV Program Manager of any holiday items that are available or may become available, for consideration to be included, which are not or may not have previously been included specific to the SMHV holiday menu.
  - c. At the discretion of State, the Contractor will identify alternate products, manufacturers, and brands (including private label) to improve quality and lower or maintain costs.
    - 1) The Contractor must work with the State to review product selection for addition and or replacement.
    - 2) The Contractor will submit to the SMHV Program Manager the proposed product that meets State quality and consistency requirements within the time agreed upon with the SMHV Program Manager. This submission will include:
      - a) Nutritional information for SMHV review
      - b) A sample of the product, which may include a product cutting/taste test.
      - c) Cost implications, if any.
    - 4) If the menu is approved to be modified, the Contractor will be notified by the SMHV Program Manager of the approval in writing and the Contractor will provide the State with implementations plans to incorporate the new products.
    - 5) If products, once selected, are later identified as unacceptable by the State, the Contractor will research and find replacement items meeting the quality and consistency requirements of the State for review and approval by the State. Contractor must have the ability propose a replacement within 10 calendar days and be able to provide (if approved) by the next ordering cycle.
2. **Food Substitutions.** It is recognized that occasionally food substitutions may be necessary. If such circumstances occur the Contractor may only make these changes based upon the following:
- a. The SMHV Program Manager or Dietician must be notified prior to and food substitution with a reason provided.
  - b. Items appearing on the previous day's menu or the following day's menu must never be used for substitution.
  - c. Only items of comparable nutrient content from the same food group may be substituted, i.e., grapefruit for oranges, roast beef for ground beef.
  - d. The Contractor must maintain a record of substitutions which must be reported monthly as a Food Substitution Report to the facility Dietician and the SMHV Program Manager.

- e. Contractor must keep a copy of this substitution record with their monthly menu for reference.
  - f. Substitutions must not exceed 5% in frequency of all items on the menu over one cycle. A record of substitutions as required by LARA or USVA must be available to the SMHV Program Manager and/or Dietitian, and the Contractor must provide this information in a report to the SMHV Program Manager on a monthly basis.
  - g. A substitution rate of greater than 5% will be considered a breach of contract.
- C. **Menus for Modified Diets.** Mechanically modified menus must have nutrient contents that meet or exceed those of the regular, basic menu.
- D. **“Always Available” Requests and Menu.** In addition, members who eat in the household dining rooms may request to substitute “Always Available” menu items for a corresponding item in their meal.
- 1. Contractor must maintain an “Always Available” menu. Items may be removed from and/or added to this menu with prior approval of the Program Manager and /or Dietitians who may work in conjunction with the SMHV member council. A suggested “Always Available” menu follows:

SANDWICHES
Grilled Cheese
Fried Egg
Hot Dog on a Bun
Hamburger on a Bun
Egg Salad
SIDE ITEMS
Fruit Cup
Applesauce
Cottage Cheese
Yogurt Cup (Strawberry, Blueberry)
Mashed Potatoes with Gravy
Baked Potato
French Fries
Garden Salad
Potato Chips

- 2. Requests for substitution can be made to the Contractor’s neighborhood kitchen staff during the time of meal service, but if at all possible, will be requested prior to meal service.
- E. **Double Portions.** The Dietician or physician may require that a member receive a double portion of a menu item. This requirement will be entered into a members’ medical record as an order which will generate on the members meal ticket. A double portion will be defined as follows:
- 1. A double portion entrée must consist of a second serving of the entrée plus other menu items. An example would be a second serving of pork chop and mashed potatoes.
  - 2. A double portion non-entrée must consist of a second serving of other menu items excluding the entrée. An example would be a second serving of pie and milk.
- F. **Scheduled Nourishment.** The Contractor must provide specific food items which will be requested by the Dietitian to fulfill daily requirements for specific member and must be delivered at specific times.
- 1. Scheduled Nourishments include the following food items:

- a. 8 oz. fruit juice (not fruit flavored drinks).
- b. 1 piece of fresh fruit (apple, orange, banana) or ½ cup canned fruit
- c. 8 oz. milk (2%, whole, skim, or chocolate)
- d. Cottage cheese
- e. ½ cup yogurt, pudding, ice cream or sherbet
- f. Gelatin
- g. 4 – 6 crackers with 1 oz. cheese or 2 tablespoons peanut butter
- h. Graham crackers
- i. ¾ cup cold cereal
- j. Sandwich consisting of 2 bread, 1 oz. meat, and 1 tsp. margarine/mayonnaise, ½ sandwich of the day, or peanut butter and jelly
- k. hard cooked egg
- l. fruit or cereal bar
- m. Peanut Butter Sandwich
- n. Meat Sandwiches
- o. Chips
- p. Cookies
- q. Crackers
- r. Soda
- s. V8 Juice

2. The Dietitian or Program Manager may request that additional items to be added to or have items removed from the list. **See Schedule A, Section 1.2.B.1.** for process and procedure.

G. **Snack Service.** For those members not already on a Scheduled Nourishment regiment, the Contractor must provide always available snack service for all households and members. These snacks are to be stocked on a daily basis as required in the household kitchenette. Par levels will be determined by household staff in consultation with the dietician.

1. Items included on the snack list include, but are not limited to:
  - a. Peanut butter sandwich
  - b. 2% milk
  - c. Cold cereal
  - d. Hard cooked egg
  - e. Ice cream
  - f. Fruit cups
  - g. Yogurt
  - h. Fresh fruit
  - i. Snack bars
2. Hot coffee and tea, while not expected to be available in the kitchenettes, will be readily available for pick up in the neighborhood kitchen if needed.
3. The Dietitian or Program Manager may request additional items to be added or items removed from the list. **See Schedule A, Section 1.2.B.1.** for process and procedure.

H. **Special Meals.** The Dietician and the SMHV Program Manager and Dietician will work with the Contractor to establish special meals which the Contractor will provide as follows. These special meals may be revised in conjunction with SMHV member council:

1. Two Candlelight Dinners – Veteran’s Day and a date to be determined each spring.
2. Seven Holidays – Christmas, New Year’s Day, Easter, Memorial Day, Fourth of July, Labor Day, and Thanksgiving.

3. Monthly Specials – Member's Choice Birthday Meal (Choice of Ribeye Steak, Chicken Breast, Fresh Fish, or the regularly served meal with a Birthday Cake).
  4. Monthly Theme Day – A minimum of one special event such as ethnic meals, barbeque/picnics, or dessert specials.
- I. **Meals Served During Emergency Conditions.** The Contractor must provide meal service when facility is under emergency conditions (for example – power outage). Emergency meals must be provided to SMHV members whether they remain housed on or have been moved off site. The Contractor must be responsible for transportation of their staff and meals to location of members.
  - J. **Employee, Volunteer and Guest Meal Service.** The meals for employees, volunteers and guests will be at the cost of the person eating the meal. It is anticipated that these meals will be served out of the Bistro. See estimate usage in **Schedule A, Background.**
  - K. **Alternate Service Plan.** The Contractor must provide SMHV with a three-day menu and consistent service plan for alternate service in the event of employee strikes, water loss, heat loss, steam or electricity loss, inclement weather, or other events causing food service disruption.
  - L. **Meetings and Activities Catering.** At times, SMHV will request that lunches/beverages be supplied for meetings or activities which will occur at the SMHV facility.
    1. The Program Manager or representative will notify the Contractor at least 72 hours in advance of the menu and requirements for meals, or 24 hours for beverage service.
    2. The Contractor will provide to the Program Manager or representative a written, line item quotation, for all food, beverages, disposables, and service necessary to cater the event. This quotation will be provided at least 48 hours prior in advance of the event and have a quotation reference number.
    3. The Program Manager will approve the quotation, in writing, at least 24 hours in advance of the event.
    4. The Contractor will supply food/beverage items mutually agreed upon.
    5. The Contractor will invoice for the catered event as a separate total line item, referencing the approved quotation number.

### **1.3. Product Specifications- Kitchen Consumables, for Food Production and Service to Households**

The Contractor must procure and provide for their use all kitchen consumable products/supplies the Contractor feels they need or would reasonably need for food and beverage production including but not limited to:

- A. aprons, gloves, hairnets, face masks/shields (if required)
- B. foils, wraps, papers, bags, filters, paper towels, any disposable food storage products
- C. Tray service disposables including tray liners, bowl and cup lids, straws and napkins

### **1.4. Product Specifications- Cleaning and Sanitation Products**

The Contractor will provide all cleaning and sanitation products necessary for safe food production, to keep the kitchens and dining areas clean, for the washing of cookware and service ware, and for improving the ease of clean up as determined to be necessary by the Contractor, including but not limited to: cleaning solutions, paper towels, scrubbers, waste can liners.

### **1.5. Product Specifications- Service Consumables**

- A. The Contractor will provide all disposables and consumable items used for the service of food to the neighborhoods, for "To Go" food options from the Bistro, for Room Service and special nourishment. Including but not limited to cup lids, bowl lids and napkins.

### **1.6. Facility Equipment and Furnishings**

The Contractor is responsible for the following requirements and responsibilities as pertains to State owned facilities, equipment, and furnishings.



- A. Contractor must not make alterations, changes or improvements to areas granted to the Contractor without prior written permission from the SMHV Program Manager.
- B. The Contractor must ensure that no equipment of any type be removed from SMHV except to be repaired as directed by the SMHV Program Manager or designee.
- C. Contractor must surrender to the State all equipment and furnishings located in the food service facilities, as shown on the certified inventory list of all SMHV-owned property, upon termination of this agreement for whatever cause. Such property and equipment must be returned to the State in the same good order as when received except for reasonable wear and tear, and damage from casualty, fire, and hazards covered by insurance.
- D. The Contractor's food service manager and SMHV Program Manager or designee must conduct a joint inventory of all equipment and furnishings located in the food service area yearly in April. The condition of equipment shall be determined at that time. Discrepancies must be corrected at the Contractor's expense, replacement to be of comparable quality with items in the original inventory.
- E. Contractor must inform the SMHV Maintenance Department of necessary repairs by means of work order. The Contractor is responsible for payment to repair damaged equipment and building damage due to negligence by its employees. The SMHV Maintenance Supervisor's judgment must be used to determine the cause of damage, whether it is negligence or regular wear and tear. In cases of dissent, the SMHV's Administrator must make the determination. Items unsuitable for use must be brought to the attention of the SMHV Program Manager or designee to be handled through the SMHV's established procedure.
- F. The Contractor must not discard any equipment or supplies.
- G. Written approval must be obtained from the SMHV Program Manager before the installation of any equipment owned by the Contractor that require modification to existing plumbing, heating, electrical, or other services.

**1.7. Office Equipment.** The Contractor:

- A. Must allow only the specifically approved staff, approved by SMHV Program Manager, access to the computerized menu program. Programs and systems used as part of required service for SMHV and owned by the State are to be maintained by the State.
- B. Will install and maintain a time clock system to ensure punctuality and accurately record the hours worked by the Contractors employees.

**1.8. SMHV Responsibilities**

The State will be responsible for furnishing the following items for the productions and service of food at the Southeast Michigan Home for Veterans:

- A. **At the Facility**, the State will provide:
  - 1. The Contractor with an office space inclusive of:
    - a. a desk, a table, chairs, and a filing cabinet.
    - b. telephone service, computers, printers, facsimile, reproduction, and other office equipment and supplies it deems necessary for the full and complete performance of the contractual obligations.
    - c. The State will be responsible for the maintenance and replacement of office hardware and equipment.
  - 2. A conference room for initial Contractor on-site orientation and training, the timing to be pre-arranged with the SMHV Program Manager.
  - 3. The Contractor keys to lavatories, offices, and other areas necessary to enable the Contractor to fulfill its responsibilities.
  - 4. Parking space, as available, and lockers for the Contractor's employees.
  - 5. The Contractor's employees' access to an employee lounge as designated

6. All water, gas, electricity, heat, and light necessary for fulfillment of the terms of this contract.
7. The Contractor access to the kitchen equipment presently owned by SMHV for use by Contractor in the kitchen area in order to assist in fulfilling the terms of this contract.
8. The Contractor access to a storage area and refrigeration required for the fulfillment of the terms of this contract.
9. Extermination/pest control services for the food service areas.
10. Internal mail service.
11. Fire suppression and fire extinguishers for the food service areas which will be inspected monthly.
12. And maintain at each kitchen a box of first-aid supplies, a fire blanket, and an eye wash station.
13. Repair and maintenance on all permanent fixtures such as faucets, lights, sewers, HVAC and plumbing.

**B. In the Kitchens.**

1. Furnishings:
  - a. All capital and small equipment, and utensils required for food preparations and service to the households. The Contractor is responsible for requesting replacement of worn or obsolete items in writing to the SMHV Program Manager. SMHV reserves the right to make the final decision regarding replacement and procurement of food preparation and service equipment.
  - b. Hot and Cold Service Carts for holding and delivery to the households.
  - c. Delivery Tray systems including the trays, dishware and non-disposable covers, bowls, drinkware and flatware.
2. Disposables/ Consumables: None

**C. In the Household Kitchenettes/ Dining Rooms.**

1. Furnishings:
  - a. Service line/counter
  - b. Reusable plates, bowls, mugs, glasses, and flatware for meal service.
2. Disposables: None.

**D. In the Bistro.**

1. Furnishings: To Be Determined based upon Contractor's accepted Business Plan.
2. Disposables: None.

**2. Services Levels**

**2.1. Food Production/ Preparation**

The Contractor agrees to furnish all labor and supervision sufficient to prepare and produce high quality and nourishing foods following best industry practices with regard to food safety and prepared in such a way as to retain nutrient value.

**A. Food Preparation and Cooking Method.** Conventional scratch cooking methods in combination with convenience food items will be utilized to produce meals.

1. The Contractor will utilize the main kitchen for all food production then transport the food in bulk, either hot or cold, to the satellite neighborhood kitchens for final preparation, cooking, and service to the members.
2. Centralized batch processing procedures will be used to ensure that all the food provided is of the same freshness, quality, taste, and smell, with the same aesthetically pleasing texture, color and appearance, and is consistent from one neighborhood to the other.
3. Cooking location and method:

- a. The Contractor agrees that as much food as is reasonably possible will be cooked in the satellite kitchens so that the aroma of cooking food can be smelled in the neighborhoods.
  - b. Food will be thoroughly cooked but not overcooked or burned.
- B. **Daily Menu.** Each day food offering will be based upon the approved recipes and menus.
- C. **Temperatures.** Contractor must meet CMS, USVA and governing agency regulations for all temperature requirements.
  - 1. Hot entrée, vegetable, hot cereal, and pureed food must be maintained between 150-185 degrees Fahrenheit. in bulk.
  - 2. Hot beverages must be maintained between 140-160 degrees Fahrenheit.
  - 3. Cold items such as puddings, salads, dairy products, meat, or egg sandwiches must not be less than 33 degrees Fahrenheit. or greater than 45 degrees Fahrenheit.
  - 4. Upon request by the SMHV Program Manager or designee, the Contractor must be able to furnish a time/temperature study for one meal of each member once every menu cycle.
- D. **Appearance and Taste.** Appearance and taste of menu item must meet the approval of the SMHV Program Manager and/or (Dietitians). Meals shall be garnished and incorporate accepted industry standards and any agency regulations for appearance, including but not limited to textures, color, mouth feel, presentation, and food combinations.
- E. **Food Storage and Handling.** All foods must be stored and kept per industry standards & HACCP guidelines, including USVA, CMS, and LARA rules and regulations.

## 2.1. Food Service- Locations and Service Style

The Contractor agrees to furnish all labor and supervision sufficient to serve the food prepared following best industry practices with regard to food safety and safe food service.

- A. **Dining Room Service.** For members capable of congregating, meals will be served in each household's dining room.
  - 1. Food will be delivered to the household kitchenet from the neighborhood satellite kitchen in serving pans and trays utilizing the Hot/Cold carts provided by SMHV.
  - 2. The food will be removed from the Hot/Cold carts and the service pans will be placed in kitchenette servicing line by the Contractor's staff.
  - 3. The Contractor will have a staff member assigned to the kitchenet serving line to plate the food. A SMHV staff member will deliver the food to the members assembled in the dining room.
  - 4. After meal service the SMHV staff will collect the used service wear, the serving pans and trays and return them to the service carts.
  - 5. The Contractor's staff will return to the household dining rooms within ½ hour of completion of dining service to collect the service carts and take the items back to the kitchen/ dish room for cleaning.
  - 6. Coffee remaining after each meal will be dispensed to each kitchenette in each Household by the Contractor in insulated dispensers to maintain temperature.
- B. **Room Service.** For members unable to take their food in the household's dining room, food will be delivered to the appropriate household's dining room via cart with meals assembled on individual member trays as assembled in the neighborhood satellite kitchen.
  - 1. **Room Service Tray Accuracy.**
    - a. Trays must be set up according to the menu and must meet the specification on the individual member's diet cards.
    - b. Tray service accuracy will be determined based upon a random sample of at least 10% of the trays served as reviewed by the Dietitian(s).

- c. The Contractor must maintain 100% tray accuracy rate at each meal.
    - 1) If tray audit reveals more than 10% of trays that are not 100% accurate, performance failure is indicated, credits may be warranted as indicated in **Section 2.7.D. Service Level Agreements**
    - 2) Contractor may be required to submit in writing a corrective action plan to prevent inaccurate tray service in the future.
  - d. The Contractor is only responsible for transporting tray delivery carts to and from the designated area at each household.
  - e. The trays will be distributed to members by SMHV staff.
  - f. Empty trays are removed from the member's rooms, placed back onto the tray delivery carts and placed in a designated location by SMHV staff.
  - g. Contractor's employees will remove the used tray carts from the designated location in dining room at return them to the kitchen/dish room for washing.
- C. **Scheduled Nourishment.** The Contractor will provide individually prepared and labeled special nourishment items per member and will deliver these items daily to the designated area in each corresponding household kitchenette. The schedule nourishment will be to be distributed by SMHV staff as prescribed by the Dietician.
- D. **Snacks.** The Contractor will provide snacks based upon a predetermined snack list which will be delivered each morning by 9:00 am to maintain the pre-established par for each household kitchenette on a daily basis
- 1. The Contractor's staff member will present to the designated SMHV household staff member a list of products delivered for that day.
  - 2. The SMHV household staff member will sign for the daily delivery to verify the items provided, the count.
  - 3. The signed daily snack delivery tally sheet will be filed by the Contractor and a copy will be attached to the invoice to substantiate charges for the snacks used.
  - 4. The SMHV Household Manager will have the authorization to adjust snack items and pars as best suites its household member's needs.
- E. **The Bistro.** The State will establish a point of sale food service location, called "The Bistro" in the main common area of the SMHV. This facility will be the location where staff, visitors and volunteers can purchase refreshment, snacks, and food. The Contractor will staff the Bistro for morning and afternoon service only with the possibility of pre-prepared, vended food service for evenings and overnight. The Contractor will work with the State to:
- 1. Establish a Bistro "Go Live" date
  - 2. Establish and modify, as necessary, the hours of operation
  - 3. Determine space set up and proposed equipment requirements, to be provided by the State, such as:
    - a. Serving and point of sales
    - b. Café style tables and chairs
    - c. Adequate trash containers
    - d. Appropriate signage
    - e. Proposed merchandising and service "counter" equipment
    - f. Grab and go vending
  - 4. Develop a Bistro menu and pricing points
  - 5. Marketing and promotional sales ideas

## 2.2. Food Service Times.

- A. **Household Dining Room Meal Service Times.**
  - 1. Breakfast: 7:05 am – 8:30 am
  - 2. Lunch: 11:10 am – 12:30 pm
  - 3. Dinner: 4:55 pm – 6:15 pm
- B. **Room Service Trays** will be delivered to the appropriate household dining room as follows:
  - 1. Breakfast: 7:05 am – 8:30 am
  - 2. Lunch: 11:10 am – 12:30 pm
  - 3. Dinner: 4:55 pm – 6:15 pm
- C. **Scheduled Nourishments** must be stocked in the household kitchenette so as to be available to be served at 10:00 am, 2:00 pm and 7:30 pm or as advised per the care plan.
- D. **Snacks.** Available in the kitchenette anytime.
- E. **Bistro Hours.** The Bistro will be open and staffed to sell/service food and beverages from 6 am to 3 pm, seven days per week. This schedule is subject to change upon Contractor and the State's agreement.

**2.3. Cleaning and Janitorial Services.** The Contractor agrees to furnish all labor, chemical supplies, materials, equipment (not identified as being supplied by SMHV), and supervision sufficient to keep the assigned areas which include food storage and kitchen areas, the Bistro, and neighborhood kitchenettes and dining rooms in a clean, orderly, and sanitary condition at all times. These consumables and services will not be supplied by the State.

- A. Before beginning work, the Contractor must submit to the SMHV Program Manager a list of the manufacturer and brands of products and materials that the Contractor proposes to use in the performance of this work.
- B. Materials that SMHV determines would be unsuitable for the purpose, harmful to the surfaces to which it is to be applied, or harmful to people must not be used in connection with the work of this contract.
- C. Cleaning and janitorial services must be performed on a regular schedule in a way that meets the highest industry standards for sanitation and in accordance with HACCP guidelines including USVA and CMS rules and regulations.
- D. Contractor must maintain all assigned areas in a clean, sanitary condition including but not limited to:
  - 1. Cleaning walls, hoods, vents, and ceilings in accordance with CMS and USVA standards and regulations.
  - 2. Mopping dining area floors immediately after dining period ends and Members are out of dining area per CMS regulations.
  - 3. If any of the areas assigned to food service are not kept in a condition satisfactory to SMHV, the SMHV Program Manager may have the area cleaned by other means. The cost of such work will be charged to the Contractor.
  - 4. If unsanitary conditions are deemed a continuous problem, the State may elect to terminate the contract.
- E. Proper Dishwashing Techniques – Dishwashing must be done by the Contractor in accordance with industry standards & HACCP guidelines, including USVA, CMS and LARA rules and regulations.

**2.4. Work Hours.** The Contractor must schedule and arrange for sufficient staff to be available and on-site to prepare, serve and clean-up after food service as necessary for the performance of this contract. The Contractor will be required to provide to the SMHV Program Manager or designee a copy of the staffing schedule on a monthly basis one week prior to the beginning of the month.

**2.5. Transitions**

- A. **Transition-In.** Upon contract execution the Contractor will assist the State in transitioning to the use of this contract.
  - 1. The day of contract execution, or earlier if agreed upon, the Contract Administrators, Program Managers and appropriate staff will meet to kick-off the contract, review the Contractors Transition-In Plan, agree upon the transition in steps, assign roles and responsibilities, and agree upon the transition in timeline.
  - 2. The Contractor's Program Manager and necessary staff and the State's Program Manager will meet weekly, or in a timeframe deemed necessary by the State's Program Manager, to work on the transition-in until the first day members move into the facility.
  
- B. **Transition Out.** At the end of the contract, the Contractor must:
  - 1. Continue to maintain consistent communication with the State throughout the transition period to ensure the uninterrupted of food services at the SMHV.
  - 2. The Contractor must provide all requested user data and other records as requested by the Contract Administrator and/or SMHV Program Manager.
  - 3. The Contractor will return all keys and key cards to the SMHV Program Manager by the final date of service.
  - 4. Unreturned, lost, or stolen keys and key cards will remain the Contractors' responsibility. In the event that this results in the need to reprogram the building security, the price for reprogramming will be the Contractors' responsibility and the cost will be deducted from the final payment to the Contractor.
  - 5. Contractor will submit to the State all final billing within 45 calendar-days of the contract expiration date and provide any requested back up documentation as may be necessary to make final payment within that same 45 calendar-day time. No additional invoicing after the 45 calendar-day period will be honored.

**2.6. Transition-In/Implementation Plan.** This plan must identify in a time phased plan, all of the proposed key steps required to be taken, and their anticipated durations, in order to implement the services as outlined in this contract.

- A. The Contractor must ensure that the transition plan includes all requirements as stated in Schedule A and the Standard Contract Terms requirements and will include but is not limited to:
  - 1. Steps required by the Contractor such as
    - a. recipe and menu development,
    - b. nutritional review,
    - c. staffing, including hiring and training,
    - d. preparation for food delivery, including ordering and receipt
    - e. administrative account set up
    - f. security, keys, and codes
  - 2. Steps required to be taken, items or information to be provided, that are seen to be the responsibility of the State.
  - 3. The Implementation Plan must describe the individual(s) that will be responsible for implementing the Contract and their positions in your organizational structure, as well as their decision-making authority as it relates to this implementation of these services.
  
- B. Contractor must meet to review, modify, and finalize the Transition-In/Implementation Plan with the Program Manager within 5 days of the execution of this Contract.

**2.7. Service Level Agreements (SLA's).**

- A. The Contractor will be held accountable to meet the requirements and the service level requirements established in this contract.
- B. The State reserves the right to reconsider or amend SLA amounts.

C. Service Level Agreements for this contract will be as follows:

<b>SLA Metric 1. Room Service Tray Accuracy.</b>	
Definition and Purpose:	Room Service Tray Accuracy.
Acceptable Standard:	If tray audit reveals more than 10% of trays that are not 100% accurate as stipulated in Section 2.1.B., performance failure is indicated, credits may be warranted as indicated.  The acceptable standard is 100% compliance.
Credit due for Failing to Meet the Service Level Agreement.	1. \$50.00 may be assessed per audit for each of the first five occurrences of non-compliance in a given calendar year. 2. \$100.00 may be assessed beginning with the sixth audit occurrence of non-compliance and on each occurrence thereafter in a given calendar year.
<b>SLA Metric 2. Meal and Food Quality</b>	
Definition and Purpose:	The Contractor will provide first quality, nutritious and safe food that is prepared to be appealing to look, taste and smell.
Acceptable Standard:	1. Appearance and taste of menu item must meet the approval of the SMHV Program Manager and/or (Dietitians). Meals shall be garnished and incorporate accepted industry standards and any agency regulations for appearance, including but not limited to textures, color, mouth feel, presentation, and food combinations. 1. Hot entrée items must be maintained between 150-185 degrees Fahrenheit. 3. Hot beverages must be maintained between 140-160 degrees Fahrenheit. 4. Cold items must not be less than 33 degrees Fahrenheit. or greater than 45 degrees Fahrenheit. The acceptable standard is 100% compliance.
Credit due for Failing to Meet the Service Level Agreement.	1. \$50.00 may be assessed for each of the first five occurrences of non-compliance in a given calendar year. 2. \$100.00 may be assessed beginning with the sixth occurrence of non-compliance and on each occurrence thereafter in a given calendar year.
<b>SLA Metric 3. Substitutions</b>	
Definition and Purpose:	The Contractor must ensure that food items prepared are the menu items scheduled for that meal.  Substitutions must not exceed 5% in frequency of all items on the menu over one cycle.
Acceptable Standard:	1. Substitutions must not exceed 5% in frequency of all items on the menu over one cycle  2. The acceptable standard is 100% compliance.

Credit due for Failing to Meet the Service Level Agreement.	<ol style="list-style-type: none"> <li>1. \$50.00 may be assessed for each of the first five occurrences of non-compliance in a given calendar year.</li> <li>2. \$100.00 may be assessed beginning with the sixth occurrence of non-compliance and on each occurrence thereafter in a given calendar year.</li> </ol>
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**3. Staffing**

**3.1. Contractor Representative**

The Contractor must appoint a Contractor Representative specifically dedicated to this contract, who will be required to be knowledgeable on the contractual requirements who will respond to State inquiries regarding the Contract Activities, answer questions related to ordering and delivery, etc. (the “Contractor Representative”).

The Contractor Representative must be:

- A. Available for SMVH personnel and customer service calls during the hours of 8 a.m. to 5 p.m. ET Monday through Friday.
  - 1. Available for calls in the event of an emergency.
    - a. The Contractor Representative may be contacted during evening, weekends or holidays.
    - b. The Contractor will be required to provide an after-hours number to the Contractor Representative.
    - c. The Contractor Representative will be expected to respond to the State within 4 hours during these times.
- B. The Contractor Representative must respond to the State within 8 business hours to State inquiries Monday through Friday.
- C. The Contractor must notify the Contract Administrator at least 30 calendar days before removing or assigning a new Contractor Representative or Key Personnel.
- D. The Contractor may not remove or assign a new Contractor Representative without the prior consent of the State. Prior consent is not required for reassignment for reasons beyond the Contractor’s control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause.
- E. The State reserves the right to have the Contractor replace the Contractor Representative should that person fail to perform the expected duties or prove to be a poor fit with the State.
- F. The named Contractor Representative is:
  - Mike Dennis
  - 24562 Romano
  - Warren, MI 48901

**3.2. Key Personnel**

The Contractor must appoint individuals who will be directly responsible for the day-to-day operations of the Contract (“Key Personnel”). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements.

**A. Nutritional Service Manager.**

This individual will be responsible for the performance of the contract in total including but not limited to provisioning, production, and staffing.

It is understood that the Contractor’s Nutritional Service Manager at the SMHV is an acting member of the SMHV’s leadership team in its mission to provide excellent care and quality of life for its members. Inherently, this requires participation and problem-solving in a variety of areas relating to food services and quality assurance.



1. This role will be a full-time employee dedicated to this location and must be available on-site during the hours of 8 a.m. to 5 p.m. ET, Monday through Friday and be available via the phone during those same hours on Saturday and Sunday.
2. SMHV expects this individual to remain in place during the entire length of the contract but reserves the right to, within thirty (30) days, request replacement of the Food Service Director/Manager for operating difficulties determined to be a result of inferior on-site management.
3. This individual must have the following qualifications:
  - a. ServSafe Manager Certification.
  - b. Certified Dietary Manager or Registered Dietitian in accordance with State Consumer & Industry Services requirements, unless the Contractor has another individual on staff who can serve at the Dietician/Nutritionist assigned to this contract.
  - c. Have at least an Associate Degree in Food Service Management or management related program and/or a minimum of three years' experience in food service management at a health care facility, or any combination thereof.
4. While the State prefer that the Nutritional Service Manager not be removed, the Contractor must notify the Contract Administrator at least 45 calendar days before removing or assigning a new Nutritional Service Manager.
5. The Contractor may not remove or assign a new Nutritional Service Manager without the prior consent of the State. Prior consent is not required for reassignment for reasons beyond the Contractor's control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause.
6. The State reserves the right to have the Contractor replace the Contractor Representative should that person fail to perform the expected duties or prove to be a poor fit with the State.
7. The named Nutritional Service Manager is:
 

Amy Rohn  
SMHV  
47901 Sugarbush Road  
Chesterfield, MI 48051

**B. Supervisory Personnel.**

1. Direct first-line kitchen supervisors must be present on-site during all operating hours of the kitchen, dining rooms and The Bistro, depending on where they are assigned, to observe the food service preparation and service during each meal period.
  - a. All supervisory personnel shall have at least six (6) months previous experience in leading kitchen staff and overseeing food preparation.
  - b. The State requires that direct first-line supervisory personnel have ServSafe Handler Certification or are in the process of receiving certification.

**C. Other Personnel as identified by the Contractor.** Contractor's corporate staff who are responsible for activities related to the performance of this contract must be available to respond to State inquiries within two (2) hours between the hours of 8:00 am and 5:00 pm ET, Monday through Friday. These individuals are identified as follows:

Sherwood Merrill  
Quality, Compliance and Data Analysis  
2452 Romano  
Warren, MI 48091

Link Howard III  
Manager and Training Supervisor

### **3.3. Removal or Replacement of Contractor Representative or Key Personnel.**

Contractor will not remove the Contractor Representative or any Key Personnel from their assigned roles on this Contract without the prior written consent of the State.

- A. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment.
- B. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under the **Termination for Cause** section of the Standard Contract Terms.
- C. It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under Termination for Cause, Contractor will issue to the State the corresponding credits set forth below (each, an "Unauthorized Removal Credit"):
  1. For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$25,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30-calendar days before the Key Personnel's removal.
  2. If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30-calendar days, in addition to the \$25,000.00 credit specified above, Contractor will credit the State \$833.33 per calendar day for each day of the 30-calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30-calendar days of shadowing will not exceed \$50,000.00 per individual.
  3. Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed above:
    - a. is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and
    - b. may, at the State's option, be credited or set off against any fees or other charges payable to Contractor under this Contract.
- D. The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel.
  1. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the SMHV Project Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State.
  2. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.
  3. The State may require a 30-calendar day training period for replacement personnel.

### **3.4. Operating Staff.**

- A. The Contractor must provide trained competent personnel to prepare, assemble, and serve food products.
- B. The Contractor must provide quality, trained relief personnel to substitute for absent regular employees.
- C. The Contractor must be responsible for assuring that lost keys or identification badges and keys from terminated employees are returned to the SMHV Maintenance Department. If not returned, the Contractor shall be charged the current SMHV replacement cost for lost key and/or locking device replacement.
- D. The Contractor will ensure that staff complete ServSafe Food Handler certification within 30 days of hire.
- E. The Contractor must require employees to comply with instructions pertaining to conduct and building regulations that are in effect for the control of persons in the building or that may be issued for that purpose by SMHV representatives.
- F. The Contractor must require employees to protect the privacy of SMHV members "protected health information (PHI)" to the extent necessary under current federal and state law (HIIPPA). Contractor agrees that it shall not use or disclose any member's PHI for any purpose not expressly stated in this Contract. The Contractor further agrees that any subcontractors or other persons or entities not directly employed by the Contractor must abide by the terms of this clause. Contractor shall assure the State it has met the minimum safeguards necessary to protect unauthorized use or disclosure of PHI to any person or entity. Such safeguards must include physical access to PHI, technical access to PHI, and administrative policies and procedures addressing security of PHI.
- G. The Contractor must attempt to implement staff policies that, to the maximum extent possible, reduce the differences in policies as established for SMHV staff.
- H. The SMHV has a policy of zero tolerance for violent behavior. Anyone engaging in threatening or abusive conduct (either implied or actual) is subject to removal from the building pending appropriate corrective action.
- I. The SMHV reserves the right to demand immediate removal of Contractor personnel for violations of agency conduct requirements, member rights violations, or other poor performance that interferes with the mission of the SMHV.

### **3.5. Substitute Staffing.**

The Contractor will be responsible to fill any staffing positions, with staff meeting the requirements established in **Schedule A, Section 3.4. Operating Staff**, that become vacant due to illness, vacation, leave, inclement weather or other temporary absentee situations which would cause a normally scheduled staff member to be absent from their position. The Contractor will utilize, but is not limited to, the following means to achieve this requirement:

- A. **Calling in Personnel.** Contractor may call in staff members to work additional shifts or to come in on days they are not normally scheduled to work.
- B. **Overtime.** Contractor may authorize overtime to allow scheduled staff members to come in at earlier times or work longer shifts.
- C. **Management Step Down.** If necessary, the Nutritional Services Manager may fill open high skill positions as necessary or in an emergency fill whatever position is necessary to ensure contract performance.
- D. **Over Schedule and On Call.** Should the Contractor determine that certain shifts or days experience higher rates of absenteeism, they will overschedule shifts or place staff members "on call". This will be the general practice during days when inclement weather is predicted.

### **3.6. Staff Recruitment.**

- A. **Advertising for Recruitment.** When advertising for recruitment, the Contractor's name shall be specified, not the SMHV.

1. The Contractor will partner with electronic recruitment and management company ApplicantPro, or other such company at the Contractor's discretion, to post open positions at online job boards.
  2. The Contractor will post open positions on their corporate website career page.
- B. Contractor may utilize advertisement, career fairs, or work with local veteran's jobs services to recruit and hire veterans whenever possible.

**3.7. Pre-employment and On-Going Employment Requirements and Screenings.**

The Contractor will, conduct pre-employment background checks, pre-employment physicals, alcohol and drug screenings and Tuberculosis Baseline (TB) testing and infectious disease screening for all considered employee candidates. The Contractor may also be responsible for any future testing that becomes a part of pre-employment placement evaluation by policy for SMHV employees for the duration of this contract per requirements.

**A. Background Checks.**

1. The Contractor must complete the following background checks on staff assigned to this facility.
  - a. Offender Tracking Information System (OTIS),
  - b. Office of Inspector General- Exclusionary (OIG),
  - c. Offender Watch,
  - d. IChat
2. Employees' background checks must be made available upon the SMHV Program Manager request.
3. This Contract is contingent upon the Contractor's ability to supply workers capable of passing the required background checks. The Contractor must be able to demonstrate the worker(s) has no felony convictions or pending felony charges that are substantially related to the contracted activities or services.
4. The State reserves the right to request additional background checks at the discretion of state agencies or branches of state government as outlined in the Standard Contract Terms document.

**B. Drug Screening.** Drug Screening will be a requirement of pre employment and if requested by the SMHV Program Manager random drug and alcohol screening may be requested at the Contractor's expense.

1. The Contractor must perform drug screening on all new hires, compliant with Civil Service Rules 2.7 Drug and Alcohol Testing.
2. Upon request, the Contractor must provide drug testing records / documentation to the Program Manager or their designee. These will be maintained in the employee file in a secure area at SMHV. Drug testing results are to be retained for one year.
3. The Contractor must administer random drug and alcohol screening when there is reasonable suspicion that an employee is under the influence of a substance prohibited by this policy. Results will be provided to the SMHV Project Manager or designee and maintained in individual employee files maintained at SMHV. Any employee with a positive result from any drug or alcohol test will be prohibited from working at SMHV until they no longer have a positive test and have been approved by the SMHV Project Manager or designee to return to work.
4. Post-accident testing will be required if there is evidence that the employee may have caused or contributed to a serious work accident. Any follow up testing or counseling will be at the Contractors expense. The results of this testing will be provided to the SMHV Project Manager or designee and maintained in individual employee files maintained at SMHV.

**C. TB Testing/Infectious Diseases**

Enforcement Procedure for Evaluating Occupational Exposure to Tuberculosis Initial Baseline TB skin testing.

1. During the on-site orientation, The SMHV staff will explain the TB Mantoux skin tests to all employees who will be assigned to this facility prior to their first day of occupational exposure.
2. Any employee assigned to this the SMHV must submit to a TB test, conducted by SMHV, within 15 days of the assignment or provide to the Quality Assurance Director or Program Manager a doctor's affidavit exempting them from testing.
  - a. This two-step baseline testing shall be used for all new employees who exhibit initial negative PPD skin test results but have not had a previously documented negative TB skin test results during the preceding 12 months.
  - b. TB skin tests, follow-up and treatment evaluations shall be offered at no cost to the employees, at times and locations convenient to the employees.
  - c. The reading and interpretation of the TB skin test shall be performed by a qualified individual as described in the Center for Disease Control Guidelines which can be found at <http://www.cdc.gov/tb/topic/testing/>.
3. A worker with documented positive TB skin test results, or a worker who has received treatment for TB disease, or who has received preventive therapy for TB infection, is exempt from the TB skin test.
  - a. Such workers must complete a medical questionnaire annually for the purpose of identifying any pulmonary symptoms suggestive of TB disease.
  - b. Such workers must also be periodically informed about the symptoms for TB and the need for immediate medical evaluation by a physician or a trained health care provider to determine if the worker is experiencing TB symptoms.
4. Conversion to a positive Mantoux skin test shall be followed-up promptly by appropriate medical, laboratory and radiographic evaluations to determine whether the employee has infectious TB disease.
5. An employee who exhibits symptoms of active TB (e.g., weight loss, night sweats, bloody sputum, anorexia, or fever) shall be tested promptly for TB. The employee should not be allowed to return to work until a diagnosis of TB has been excluded or until the employee is on therapy and has been determined by a physician to be noninfectious.
6. The Contactor must be required to maintain an on-site copy of all records as they relate to staff TB skin testing at the SMHV.

**D. Blood Borne Infectious Diseases**

Prior to initial assignment and after the employee has received training required by the provisions of MIOSHA-STD-1209, **See Schedule A, Attachment 1**, the Contractor must make the following available to each category employee:

1. Hepatitis B vaccination. The Contractor must offer Hepatitis B vaccines to all employees with proof of consent or declination, following CDS guidelines. If an employee initially declines vaccination, but at a later date, while still covered under these rules, decides to accept the HBV vaccination, the employer must provide the vaccination at that time.
  - a. An employee's refusal of the Hepatitis B vaccine must be documented in writing. Records of informed consent to receive or refuse the vaccine must be submitted (using a Hepatitis B Vaccine Report) to SMHV's Infection Control Nurse.
2. HBV antibody testing. The Contractor must offer HBV antibody testing for employees who desire such testing before deciding whether or not to receive HBV vaccination. If an employee has previously received the complete vaccination series, is found to be immune to the HBV by virtue of adequate antibody titer, then the employer is not obligated to offer the HBV to that employee.

- a. The Contractor must ensure that an employee who declines to accept hepatitis B vaccination signs a waiver statement attesting to understanding of risk with all of the following provisions:
  - 1) Acknowledgment of opportunity of vaccination at no cost.
  - 2) Declining vaccination.
  - 3) Future availability of vaccination at no cost if desired, if still in at-risk status.
- b. The Contractor must be expected to maintain training records, Hepatitis B declination waiver forms, and Hepatitis vaccination records on site at the SMHV.
3. The SMHV must provide each exposed employee with an opportunity to have a confidential medical evaluation and follow-up subsequent to a reported occupational exposure incident to blood or other potentially infectious material.

**E. Airborne Infectious Diseases**

1. COVID-19
  - a. Prior to assignment all employees will be tested for COVID-19. During their assignment at SMHV any employees who exhibit symptoms of this illness will be re-tested, as necessary.
  - b. Employees will be required to follow the guidance of the facilities infection control policy.
  - c. Covid-19 vaccines, once developed, will be made available to the Contractor's employees at the Contractor's expense.
2. Influenza vaccines will be made available to Contractor's employees at the State's expense.

**F. Daily Health Screening.**

1. Contractors and Employees will be subject to daily health screening as stipulated facility's policy and procedure.
2. Contractor must provide to the SMHV Program Manager the background checks and TB test results of all employees prior to assignment to the SMHV and no later than one day prior to their first day on-site. These will be maintained in the employee file in a secure area at SMHV.

**3.8. Training**

The Contractor must properly train all employees to ensure service is provided correctly and efficiently. The Contractor must provide and assume the costs for training, training materials, employees time, travel, and/or administrative leave for all staff, and document all training provided,

- A. **New Employee General Training.** The Contractor must provide, at their expense, all employees with training specific to their job functions to include but not limited to safe food handling, personal hygiene, food service sanitation, menu reading, modified diets and nourishment procedures.
- B. **Employee Training for those Assigned to SMHV.**
  1. **Orientation.** The Contractor will provide each employee assigned to this facility with an orientation to familiarize them with the facility, job expectations, security requirements, SMHV policies and procedures and any other information that the staff member would need in order to successfully perform their duties.
  2. **USVA and CMS.** The Contractors employees must be trained with regard to the requirements and regulations that surround food service at veteran homes.
  3. **On-going Training and Recertifications.** The Contractor will provide, at their expense, on-going, in-service, special training, or re-education training to keep the employees up to date with all rules, regulations, and food service best practices. This could also include recertifications.

- C. **SMHV Training.** Contractor's food service staff, both permanently assigned and substitutes employees, will attend all required SMHV provided training.
1. **Mandatory New Hire/ New Assigned Training.** This training will be provided on site when practicable or via web-based training. Contractor staff assigned to the SMHV must complete this mandatory training before they can begin working at the SMHV.
    - a. Mandatory training will consist of two 8-hour days during the first shift.
      - 1) **First Training Session. Orientation.** SMHV will provide each employee assigned to this facility with an orientation to familiarize them with the facility, job expectations, security requirements, and any other information that the staff member would need in order to successfully perform their duties.
      - 2) **Second Training Session.** The second eight (8) hours training session will consist of SMHV Policies and Procedures relating to (at a minimum) the following SMHV Chapter Codes:
        - a) 02 – Safety and Disaster
        - b) 03 – Member Rights
        - c) 04 – Abuse
        - d) 05 – Protected Health Info, Confidentiality, and HIPPA
        - e) 14 – Infection Control (TB Testing and Blood Borne Infectious Disease)
    - b. The Contractor will be responsible for the costs associated with the employee's time spent in these training sessions
    - c. Dates and times will be scheduled between the awarded Contractor and the SMHV Program Manager.
  2. **Ongoing Training.** As needs become apparent, SMHV may require that additional, ongoing training will need to be provided. The contractor will be responsible for the costs associated with the employee's time spent in these training sessions.

D. **Documentation of Training.**

1. The Contractor will document any training that has been provided to all employees assigned to SMHV and will provide to the SMHV Program Manager a Training Log Report, on a quarterly basis, providing the following information:
  - a. Employee's Name
  - b. The date of training
  - c. A description of the training provided
  - d. Proof that the employee actually attended the training. Employee signatures on training sign-in sheets are acceptable.
2. SMHV will maintain a signature log of all assigned Contractor's staff who have attended the mandatory new hire training. This will be made available to the Contractor upon request.
3. All training records will be maintained in the employee file in a secure area at SMHV.

**3.9. Staffing Procedures and Uniforms**

- A. **Staff Uniforms.** The Contractor must provide uniforms to food service employees.
1. The SMHV Program Manager shall approve uniform style and design. Shoes and other items of clothing shall comply with SMHV policy.
  2. Uniforms shall be clean and easily identify food service staff.
  3. Sufficient supply of clean aprons shall be maintained if disposables are not provided.
  4. Hair must be covered completely for both male and female employees. Bearded employees must have their beards covered.

5. Wedding bands and watches are the only jewelry allow during food preparation and service.
- B. Hygienic Practices.** Contractor must examine all food handlers visually, daily, to ensure that hygienic practices are followed:
1. Clean outer uniforms
  2. Proper hand washing technique is utilized, and hands are washed at appropriate times
  3. Hair nets completely covering hair
  4. Ensure gloves are being worn during food preparation
  5. Ensure food dispensing gloves are worn by employees who are dispensing food on trays and at the serving line.
- C. Emergency Medical Services.** The Contractor must be responsible for emergency medical care for employee injury occurring on the SMHV premises.
- D. Drug Use.** Employees are prohibited from:
1. consuming alcohol while on duty,
  2. be on duty with a reportable level of alcohol or drugs present in the employee's body fluids,
  3. refusing to submit to a required drug or alcohol test
  4. interfere with any testing procedure or tamper with any test sample.
- E. Infection Control.**
1. The Contractor must adhere to the SMHVV's Body Fluid Cleanup Administrative Procedure concerning the cleanup of body fluid spills from members, staff, guests, or any other subcontracting personnel within the food service area. This procedure is to minimize the risk of spread of blood borne diseases such as Aids, and Hepatitis B on work assignments. **See Schedule A, Attachment 1.** These procedures are subject to change and new procedures and policies will be made available to the Contractor at that time.
  2. The Contractor must maintain Infection Control Records and prepare the following reports as required to the Infection Control Officer via email:
    - a. Daily:
      - 1) Employee Illness Report. Employees with upper respiratory infections, nausea, vomiting, hepatitis, and other infectious illness.
    - b. Monthly:
      - 1) Employee Exposure to Blood and Body Fluids Report
      - 2) SMHV's Unusual Incident Reports

### 3.10. Subcontractors and Vendors

- A. Subcontractors.** The Contractor will not subcontract out any portion of the work performed under this contract.
- B. Vendors.** Vendors are defined as any entity, in a business relationship with the Contractor, that will have their employees dispatched to and delivering directly to the SMHV for the delivery of products. These individuals will be expected to abide by all security protocols established in this contract. The Contractor's vendors are identified as and include but are not limited to:
1. US Foods
  2. Sysco Foods
  3. Gordon Foods
  4. S. Freidman & Sons (Spartan Chemical)



### 3.9. Organizational Chart

The Contractor will maintain and keep current an overall organizational chart for those staff members that are dedicated to or servicing this contract, which details staff members, by name and title, and their up chain. The Contractor will provide a copy of this chart to the Contract Administrator and the Program Manager at the inception of this contract and will

### 3.11. Security

The Contractor will be subject the following security procedures to ensure the security of the building and of the individuals who reside or work within:

- A. The Contractor associates including management must wear appropriate name badges and uniforms.
- B. The Contractor must lock appropriate areas and follow the protocol of SMHV when entering and exiting any area.
- C. The Contractor will supervise and be aware of the location of subcontractors and the deliveries made by subcontractors at all times.
- D. The Contractor and their subcontractors will comply with the security access requirements of SMHV.
- E. The Contractor's staff must remain vigilant and the Nutritional Service Manager must alert the SMHV Program Manager of any situation of concern to SMHV security.
- F. The Contractor must perform all background checks as indicated in **Statement of Work Section 3.7.B.**
- G. The Nutritional Service Manager will train and manage all on-site staff to ensure that facility security processes and procedures are followed.

## 4. Project Management

The Contractor will carry out this contract under the direction and control of the SMHV Program Manager.

### 4.1 Project Plan

- A. Within 5 calendar days of the Effective Date, the Contractor must submit a Project Plan (which will include a section for the Implementation Plan) to the SMHV Program Manager for final approval.
- B. The plan must include the but is not limited to the following:
  1. Steps the Contractor will take to maintain continuity of services at all times, without interruption, throughout the entire term of the contract.
  2. The Contractor must provide a finalized staffing chart by job title. This must agree with staffing of accepted proposal.
    - a. Provide name(s) of supervisors with contact telephone numbers. NOTE: These individuals must be available at all times of each proposed shift as stated in the Statement of Work.
    - b. Provide an initial organizational chart, see **Schedule A, Section 3.9. Organizational Chart.**
    - c. Provide initial staffing plans and anticipated work schedules.
  3. The project broken down showing sub-projects, tasks, and resources required and frequency of tasks that will be performed.

### 4.2. Contingency Plan

The Contractor must have contingency plans in place, approved by the Program Manager for the continuity of service of this contract regardless the circumstances. This plan will be maintained and updated as required by the Contractor and will be provided to the Program Manager as requested. These contingency plans will include but are not limited to:

- A. Powerlink's Disaster Planning Guidebook completed and specific for use at SMHV.

- B. Emergency Meals Planning. Menus and meals to be developed by the Contractor and approved in writing by the SMHV Program Manager.
  - 1. Emergency 3 Day Menu.
  - 2. Emergency 7 Day Menu.
- C. Emergency Meals Response.
  - 1. Implementation and Oversight. The Nutritional Services Manager will be responsible for implementation and oversight and will respond within one hour.
  - 2. Inventory Management for Emergency Stock will be the responsibility of the head chef.
- D. Disaster and Recovery.
  - 1. Implementation and Oversight. The Nutritional Services Manager will be responsible for implementation and oversight of disaster and recovery efforts as outlined in the Powerlink Disaster Planning Guidebook.

#### 4.3. Meetings

The Contractor will have the appropriate management or supervisory staff attend the following meetings. Location of the meetings will be determined by the SMHV Program Manager and may include conference calls.

- A. **Contract Kick-Off Meeting** on site with the Contractor Representative, the Nutritional Services Manager and any other corporate staff as SMHV deems necessary.
- B. **Meetings as required by the SMHV Program Manager** and the appropriate Contractor staff which may include, but are not limited to:
  - 1. Administrative Staff Meetings,
  - 2. Food Service Meetings with SMVH Program Manager,
  - 3. Quality Assurance and Performance Improvement (QAPI)
  - 4. Infection Control Meetings,
  - 5. Nutritional Committee Meetings,
  - 6. Health and Safety Meetings and Member Council Meetings.
  - 7. The State may request other meetings as deems appropriate.

The frequency of these meetings will be determined by the SMHV Program Manager. It is understood that the Contractor's Nutritional Service Manager at the SMHV is an acting member of the SMHV's leadership team in its mission to provide excellent care and quality of life for its members. Inherently, this requires participation and problem-solving in a variety of areas relating to food services and quality assurance.

- C. **Weekly meetings** may be scheduled with the Nutritional Service Manager and Supervisory Personnel.
- D. **Additional Meetings.** The SMHV Program Manager and/or the Contractor may request additional meetings as it deems appropriate in order to successfully manage the contract activities.

#### 4.4. Reporting

The Contractor will be required to submit the following written reports to the State.

- A. To the Infection Control Officer. Once these are reviewed the information will be retained in the employees' files in a secure location.
  - 1. **Daily or as per Occurrence:**
    - a. Employee Illness Report- **See Schedule A, Section 3.7.E.3.a**
    - b. Covid-19 Negative Test Report for Return to Schedule- **See Schedule A, Section 3.7.E.1.b.**
  - 2. **Monthly:**

- a. Employee Exposure to Blood and Body Fluids Report- **See Schedule A, Section 3.7.E.3.b.**
    - b. SMHV's Unusual Incident Reports- **See Schedule A, Section 3.7.E.3.b.**
- B. To the SMHV Program Manager
  - 1. **Monthly:**
    - a. Plate Waste Report- **See Schedule A, Section 1.1.E.**
    - b. Food Substitution Reports- **See Schedule A, Section 1.2.A.7.d.**
    - c. Training Log Report- **See Schedule A, Section 3.8.D.**
  - 3. **Per Occurrence:**
    - a. Random Drug Screening Results- **See Schedule A, Section 3.7.B.3**
    - b. Post-Accident Drug Test Results- **See Schedule A, Section 3.7.B.4**
  - 4. **Upon Request:**
    - a. Background Checks- **See Schedule A, Section 3.7.A.3.**
    - b. Drug Test Results- **See Schedule A, Section 3.3.B.2.**
    - c. Quality Assurance Reporting
      - a. Employee Progress/Evaluation/ Disciplinary Action Reports
      - b. Any other Reports the State deems necessary
- C. To the Dietician
  - 1. **Monthly:**
    - a. Food Substitution Report- Schedule A, **Section 1.1.B.2.d.**
  - 2. **Upon Request:**
    - b. Time/Temperature Study- Schedule A, **Section 2.1.D.4.**

#### **4.5. Quality Assurance Plan**

The Contractor will create an ongoing program to assure quality and foster ongoing performance improvement, in conjunction with the SMHV QAPI, that will meet all requirements listed in applicable rules and regulations of the USVA, Centers for Medicare and Medicaid and must adhere to the policies and procedures established therein.

- A. The Quality Assurance Program will monitor significant functions related to food service operations and this agreement.
  - 1. It shall include at least monitoring of sanitation, food handling, employee health and hygiene, member meal satisfaction, dining room services, diet accuracy, diet order procedures, clinical services, and effectiveness of staff training.
  - 2. The program shall include input at various stages from all levels of employees, i.e., food service workers, food service supervisors, food service managers, etc.
- B. The Contractor will utilize the information gathered to pursue opportunities to improve the food service, and to resolve identified problems objectively and systematically.
- C. Contractor will monitor its on-site performance and create reports which will be provided to the Contractor by the SMHV Program Manager and the SMHV Quality Assurance Committee as requested.
  - 1. Implement Contractor survey and evaluation tools to ensure consistency and compliance in quality management and performance improvement.
  - 2. Ensure all dietary personnel utilize the tools by which quality is measured and adhere to the standards set.
  - 3. Mandatory evaluations and surveys will be the following:
    - a. QA Evaluation: Elements/Performance Indicators
    - b. QA Standards: Assessment Program

- c. Tray line Temperature Record
  - d. Tray Delivery Control Record
  - e. Equipment Temperature Log
  - f. Sanitation Checklist
  - g. Member Satisfaction Surveys
  - h. Special Events Client Surveys
- D. The Contractor commits to using a Third-Party unannounced Food and Safety Audit. The Contractor must utilize a Sanitation Audit that must be customized with Program Monitor input and approval.
- E. A copy of the Contractor's Quality Assurance Program document will be provided to the Program Manager within 30 days of the execution of this contract.

#### **4.6. On-Site, Regional and Corporate Staff**

- A. The Contractor's Nutritional Service Manager will meet with SMHV staff regularly and upon request to communicate operational compliance with all standards outlined in the specifications, sanitation inspection report, and SMHV evaluation of food quality, staff training, and other matters that directly or indirectly pertain to the Contractor for food service.
- B. The Contractor's Nutritional Service Manager will be an integral part of the Quality Assurance Program developed by the Contractor and shall monitor compliance with that program no less than monthly.
- C. Regional and Corporate Staff not on-site but having responsibility for this account will provide support sufficient to assure the achievement of the goals and outcomes specified herein and to take immediate corrective action when necessary. This staff shall be an integral part of the performance improvement program developed by the Contractor and shall monitor compliance with that program no less than monthly. The Contractor's corporate staff shall meet with the Program Manager/Facility Dietitian upon request to communicate operational compliance with all standards outlined in the specifications, sanitation inspection results, and DJJHV evaluation of food quality, staff training, and other matters that directly or indirectly pertain to the food service operation.**

#### **5. Pricing**

Pricing will be as established in Schedule B- Pricing.

##### **5.1. Price Term**

Pricing is firm and fixed for the entire length of the Base Contract (First Pricing) Period.

The first pricing period begins on the Effective Date. Adjustments may be requested in writing by either party and will take effect no earlier than the next Pricing Period. The next Pricing Period will coincide with the effective date of the option years.

##### **5.2. Price Changes**

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

- C. The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

## **6. Ordering**

### **6.1. Authorizing Document**

- A. At the beginning of this contract, and then annually at the beginning of each fiscal year, DMVA will create a Delivery Order (DO) off of the MA in SIGMA and a copy will be sent to the Contractor for their records.

## **7. Acceptance**

- A. The State will use the criteria established in Schedule A, Section 1 General Requirements and Section 2 Service Levels to determine acceptance of the Contract Activities:
  - 1. If at any time it is determined that a deficiency has been discovered, the State will notify the Contractor within 24 hours in order to discuss the nature of the deficiency and work with the Contractor to either correct the deficiency by providing a corrective action plan or credit to the State.
  - 2. If the State elects to work with the Contractor to correct the deficiency, the Contractor shall, meet with the SMHV Program manager and provide a corrective action plan within 5 business days for acceptance, by which the Contractor is then bound.
  - 3. If the State elects to take the credit for the deficient items established in the SLA's, the Contractor shall provide a credit memo to the State within 45 calendar days.

### **B. Corrective Action**

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

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

## **8. Invoice and Payment**

### **8.1. Invoice Requirements**

All invoices submitted to the State must include:

- A. Date
- B. Delivery Order (DO) Number
- C. Quantity
- D. Description of the Contract Activities
- E. Unit price as agreed to in Schedule B or per approved quotation
- F. Total price.

### **8.2. Payment Methods**

The State will make payment for Contract Activities via EFT.

### **8.3. Procedure**

- A. Invoices must be forwarded to the SMHV Program Manager via email by the 10<sup>th</sup> day of the following month.
- B. The appropriate documentation must accompany the invoice and will consist of:
  - 1. A monthly flow sheet itemizing
    - a. the daily member meals served,
    - b. "always available" menu items

- c. double portions served,
- d. supplemental nourishments,
- e. snacks,
- f. catered

2. The Contractor's monthly invoice shall reconcile with the monthly flow sheet.

#### **9. Liquidated**

Late or improper completion of the Contract Activities will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$5,000 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

#### **10. Additional Requirements.**

##### **10.1. Hazardous Chemical Identification**

In accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001, et seq., as amended, the Contractor must provide a Material Safety Data Sheet listing any hazardous chemicals, as defined in 40 CFR §370.2, to be delivered. Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item Number. These Data Sheets will be provided to SMHV Maintenance Director at the initiation of this contract and immediately when new items are added to the cleaning sanitation list.



**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**  
**DIRECTOR'S OFFICE**  
**OCCUPATIONAL HEALTH STANDARDS**

Filed with the Secretary of State on June 30, 1993 (as amended November 14, 1996)  
(as amended June 28, 2001) **(as amended October 28, 2014)**

These rules become effective immediately upon filing with the Secretary of State  
unless adopted under section 33, 44, or 45a(6) of 1969 PA 306.

Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of licensing and regulatory affairs  
by sections 14 and 24 of 1974 PA 154, MCL 408.1014 and 408.1024,  
and Executive Reorganization Order Nos. 1996-1 and 1996-2, 2003-1, 2008-4,  
and 2011-4, MCL 330.3101, 445.2001, 445.2011, 445.2025 and 445.2030)

R 325.70002, R 325.70003, R 325.70004, R 325.70007, R 325.70008, R 325.70009, R 325.70011, R 325.70013,  
R 325.70014, R 325.70015, R 325.70016 and R 325.70017 of the Michigan Administrative code are amended,  
and R 325.70001a is added, and R 325.70017 and R 325.70018 of the Code are rescinded as follows:

**GENERAL INDUSTRY SAFETY AND HEALTH STANDARD**  
**PART 554. BLOODBORNE INFECTIOUS DISEASES**

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**R 325.70001 Scope.**

**Rule 1.** These rules apply to all employers that have employees with occupational exposure to blood and other potentially infectious material.

**R 325.70001a Referenced standards.**

**Rule 1a.** (1) The following Michigan occupational safety and health standards are referenced in these rules. Up to 5 copies of these standards may be obtained at no charge from the Michigan Department of Licensing and Regulatory Affairs, MIOSHA Regulatory Services Section, 7150 Harris Drive, P.O. Box 30643, Lansing, Michigan 48909-8143, or via the internet at website:

[www.michigan.gov/mioshastandards](http://www.michigan.gov/mioshastandards). For quantities greater than 5, the cost, at the time of adoption of these rules, is 4 cents per page.

(a) Occupational Health Standard Part 470 "Employee Medical Records and Trade Secrets," R 325.3451 to R 325.3476.

(b) MIOSHA Standard Part 11. "Recording and Reporting of Occupational Injuries and Illnesses," R 408.22101 to R 408.22162.

(2) The appendices to these rules are informational only and are not intended to create any additional obligations or requirements not otherwise imposed by these rules or to detract from any established obligations or requirements.

**R 325.70002 Definitions.**

**Rule 2.** As used in these rules:

(a) "Act" means Michigan occupational safety and health act (MIOSHA), 1974 PA 154, MCL 408.1001 to 408.1094.

(b) "Biologically hazardous conditions" means equipment, containers, rooms, materials, experimental animals, animals infected with HBV or HIV virus, or combinations thereof that contain, or are contaminated with, blood or other potentially infectious material.

(c) "Blood" means human blood, human blood components, and products made from human blood.

(d) "Bloodborne pathogens" means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

(e) "Clinical laboratory" means a workplace where diagnostic or other screening procedures are performed on blood or other potentially infectious material.

(f) "Contaminated" means the presence or the reasonably anticipated presence of blood or other potentially infectious material on an item or surface.

(g) "Contaminated laundry" means laundry that has been soiled with blood or other potentially infectious materials or that may contain sharps.

(h) "Contaminated sharps" means any contaminated object that can penetrate the skin, including any of the following:

- (i) Needles.
- (ii) Scalpels.
- (iii) Broken glass.
- (iv) Broken capillary tubes.
- (v) Exposed ends of dental wires.

(i) "Decontamination" means the use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item to the point where they are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

(j) "Department" means the department of licensing and regulatory affairs.

(k) "Director" means the director of the department or his or her designee.

(l) "Disinfect" means to inactivate virtually all recognized pathogenic microorganisms, but not necessarily all microbial forms, on inanimate objects.

(m) "Engineering controls" means controls, for example, sharps disposal containers, self-sheathing needles, or safer medical devices, such as sharps with engineered sharps injury protections and needleless systems, that isolate or remove the bloodborne pathogen hazard from the workplace.

(n) "Exposure" means reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties. "Exposure" does not include incidental exposures that may take place on the job, that are neither reasonably nor routinely expected, and that the worker is not required to incur in the normal course of employment.

(o) "Exposure incident" means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other potentially infectious material that results from the performance of an employee's duties.

(p) "Handwashing facilities" means facilities that provide an adequate supply of running, potable water, soap, and single-use towels or an air drying machine.

(q) "Licensed health care professional" means a person whose legally permitted scope of practice allows him or her to independently perform the activities required by R 325.70013 concerning hepatitis B vaccination and post-exposure evaluation and follow-up.

(r) "Needleless systems" means a device that does not use needles for any of the following:

- (i) The collection of bodily fluids or withdrawal of body fluids after initial venous or arterial access is established.
- (ii) The administration of medication or fluids.
- (iii) Any other procedure involving the potential for occupational exposure to bloodborne pathogens due to percutaneous injuries from contaminated sharps.

(s) "Other potentially infectious material" means any of the following:

- (i) Any of the following human body fluids:
  - (A) Semen.
  - (B) Vaginal secretions.
  - (C) Amniotic fluid.
  - (D) Cerebrospinal fluid.
  - (E) Peritoneal fluid.
  - (F) Pleural fluid.
  - (G) Pericardial fluid.
  - (H) Synovial fluid.
  - (I) Saliva in dental procedures.
  - (J) Any body fluid that is visibly contaminated with blood.

(K) All body fluids in situations where it is difficult or impossible to differentiate between body fluids.

(ii) Any unfixed tissue or organ, other than intact skin, from a living or dead human.

(iii) Cell or tissue cultures that contain HIV, organ cultures, and culture medium or other solutions that contain HIV or HBV; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.



(t) "Parenteral" means exposure occurring as a result of piercing mucous membrane or the skin barrier, such as exposure through subcutaneous, intramuscular, intravenous, or arterial routes resulting from needlesticks, human bites, cuts, and abrasions.

(u) "Personal protective equipment" or "PPE" means specialized clothing or equipment that is worn by an employee to protect him or her from a hazard. General work clothes, such as uniforms, pants, shirts, or blouses, that are not intended to function as protection against a hazard are not considered to be personal protective equipment.

(v) "Production facility" means a facility that is engaged in the industrial-scale, large-volume production of HIV or HBV or in the high-concentration production of HIV or HBV.

(w) "Regulated waste" means any of the following:

(i) Liquid or semiliquid blood or other potentially infectious material.

(ii) Contaminated items that would release blood or other potentially infectious material in a liquid or semiliquid state if compressed.

(iii) Items that are caked with dried blood or other potentially infectious material and that are capable of releasing these materials during handling.

(iv) Contaminated sharps.

(v) Pathological and microbiological waste that contains blood and other potentially infectious material.

(x) "Research laboratory" means a laboratory that produces or uses research laboratory-scale amounts of HIV or HBV. A research laboratory may produce high concentrations of HIV or HBV, but not in the volume found in a production facility.

(y) "Sharps with engineered sharps injury protections" means a nonneedle sharp or a needle device that is used for withdrawing body fluids, accessing a vein or artery, or administering medications or other fluids, and that has a build-in safety feature or mechanism that effectively reduces the risk of an exposure incident.

(z) "Source individual" means any living or dead individual whose blood or other potentially infectious material may be a source of occupational exposure to an employee. Examples of a source individual include all of the following:

(i) A patient of a hospital or clinic.

(ii) A client of an institution for the developmentally disabled.

(iii) A victim of trauma.

(iv) A client of a drug or alcohol treatment facility.

(v) A resident of a hospice or nursing home.

(vi) Human remains.

(vii) An individual who donates or sells his or her blood or blood components.

(aa) "Standard operating procedures (SOPs)" means any of the following that address the performance of work activities so as to reduce the risk of exposure to blood and other potentially infectious material:

(i) Written policies.

(ii) Written procedures.

(iii) Written directives.

(iv) Written standards of practice.

(v) Written protocols.

(vi) Written systems of practice.

(vii) Elements of an infection control program.

(bb) "Sterilize" means the use of a physical or chemical procedure to destroy all microbial life, including highly resistant bacterial endospores.

(cc) "Universal precautions" means a method of infection control that treats all human blood and other potentially infectious material as capable of transmitting HIV, HBV, and other bloodborne pathogens.

(dd) "Work practices" means controls that reduce the likelihood of exposure to bloodborne pathogens by altering the manner in which a task is performed.

### **R 325.70003 Exposure determination.**

**Rule 3.** (1) An employer shall evaluate routine and reasonably anticipated tasks and procedures to determine whether there is actual or reasonably anticipated employee exposure to blood or other potentially infectious material. Based on this evaluation, an employer shall categorize all employees into category A or B as follows:

(a) Category A consists of occupations that require procedures or other occupation-related tasks that involve exposure or reasonably anticipated exposure to blood or other potentially infectious material or that involve a likelihood for spills or splashes of blood or other potentially infectious material. This includes procedures or tasks conducted in nonroutine situations as a condition of employment.

(b) Category B consists of occupations that do not require tasks that involve exposure to blood or other potentially infectious material on a routine or nonroutine basis as a condition of employment. Employees in occupations in this category do not perform or assist in emergency medical care or first aid and are not reasonably anticipated to be exposed in any other way.

(2) An exposure determination shall be made without regard to the use of personal protective clothing and equipment.

(3) An employer shall maintain a list of all job classifications that are determined to be category A.

**R 325.70004 Exposure control plan.**

**Rule 4.** (a) If an employee is determined to be in category A, then an employer shall establish a written exposure control plan to minimize or eliminate employee exposure.

(b) An exposure control plan shall contain all of the following information:

(i) The exposure determination required by R 325.70003(1).

(ii) The schedule and method of implementation for each applicable rule.

(iii) The contents or a summary of the training program required by R 325.70016.

(iv) The procedures for the evaluation of circumstances surrounding exposure incidents as required by R 325.70013(5).

(v) Task-specific standard operating procedures (SOPs) that address all of the following areas:

(A) Employee recognition of reasonably anticipated exposure to blood and other potentially infectious material.

(B) Appropriate selection, use, maintenance, and disposal of personal protective equipment.

(C) Contingency plans for foreseeable circumstances that prevent following the recommended SOPs.

(c) General employer policies or task-specific SOPs shall address the management of inadvertent exposures such as needlesticks or mucus membrane exposures.

(d) The exposure control plan shall be reviewed at least annually and updated as necessary. A review shall consider changes in employees' tasks and procedures and the latest information from the centers for disease control or the department. See appendix A for addresses of these agencies. The review and update of the exposure control plans shall comply with both of the following provisions:

(i) Reflect changes in technology that eliminate or reduce exposure to bloodborne pathogens.

(ii) Document annually consideration and implementation of appropriate commercially available and effective safer medical devices designed to eliminate or minimize occupational exposure.

(e) An employer shall ensure that only a person who has knowledge of applicable control practices is authorized to write and to review an exposure control plan.

(f) An employer shall ensure that the exposure control plan is made available to the director or a representative of the director for examination and copying upon request.

(g) An employer shall ensure that a copy of the exposure control plan is accessible to category A employees in accordance with Occupational Health Standard Part 470 "Employee Medical Records and Trade Secrets," as referenced in R 325.70001a.

(h) An employer who is required to establish an exposure control plan shall solicit input from non-managerial employees responsible for direct patient care who are potentially exposed to injuries from contaminated sharps in the identification, evaluation, and selection of effective engineering and work practice controls and shall document the solicitation in the exposure control plan.

**R 325.70005 Universal precautions.**

**Rule 5.** Universal precautions shall be observed to prevent contact with blood and other potentially infectious materials. If differentiation between body fluid types is difficult or impossible, all body fluids shall be considered potentially infectious materials.

**R 325.70006 Engineering controls.**

**Rule 6.** (1) Engineering controls shall be used in combination with work practice controls to minimize or eliminate employee exposure to blood and other potentially infectious material. Where exposure remains after use of engineering and work practice controls, personal protective equipment shall also be used.

(2) Engineering controls shall be examined and maintained or replaced on a regular schedule to ensure their effectiveness.

(3) An employer shall provide hand-washing facilities which are readily accessible to employees. When provision of hand-washing facilities is not feasible, an employer shall provide an appropriate antiseptic hand cleanser with clean cloth or paper towels or antiseptic towelettes.

**R 325.70007 Work practices.**

**Rule 7.** At a minimum, work practices shall ensure all of the following:

(a) All personal protective equipment shall be removed before leaving the work area and shall be placed in an appropriately designated area or container for storage, washing, decontamination, or disposal.

(b) If a garment is penetrated by blood or other potentially infectious materials, the garment shall be removed immediately or as soon as feasible.

(c) Employers shall provide handwashing facilities that are readily accessible to employees. When provision of handwashing facilities is not feasible, the employer shall provide either an appropriate antiseptic hand cleanser in conjunction with clean cloth/paper towels or antiseptic towelettes. When antiseptic hand cleansers or towelettes are used, employees shall wash hands with soap and running water as soon as feasible.

(d) Employers shall ensure that employees wash their hands immediately or as soon as feasible after removal of gloves or other personal protective equipment.

(e) Employers shall ensure that employees wash hands and any other skin with soap and water, or flush mucous membranes with water immediately or as soon as feasible following contact of such body areas with blood or other potentially infectious materials.

(f) Used needles and other contaminated sharps shall not be sheared, bent, or broken and shall not be recapped or resheathed where other disposal methods are practical. Used needles and other sharps shall not be recapped, resheathed, or removed unless the employer can demonstrate that no alternative is feasible or that such action is required by a specific medical procedure. Needle recapping or removal shall be accomplished by use of a mechanical device or a 1-handed technique. The disposal of needles and sharps shall be accomplished in accordance with the provisions of R 325.70010.

(g) Eating, drinking, smoking, applying cosmetics or lip balm, or handling contact lenses is prohibited in laboratories and other work areas where there is a reasonable likelihood of exposure.

(h) Food and drink shall not be stored in refrigerators, freezers, shelves, cabinets, or on countertops or benchtops where blood or other potentially infectious material is present or in other areas of possible contamination.

(i) All procedures that involve blood or other potentially infectious material shall be performed in a manner that minimizes splashing, spraying, and aerosolization of blood or other potentially infectious material.

(j) Mouth pipetting or suctioning is prohibited.

### **R 325.70008 Protective work clothing and equipment.**

**Rule 8.** An employer shall provide protective work clothing and equipment used in the following:

(a) When there is occupational exposure, an employer shall provide, at no cost to the employee, and assure that an employee uses, appropriate personal protective clothing and equipment, such as any of the following:

- (i) Gloves.
- (ii) Gowns.
- (iii) Fluid-proof aprons.
- (iv) Laboratory coats.
- (v) Head and foot coverings.
- (vi) Faceshields or mask and eye protection.
- (vii) Mouthpieces.
- (viii) Resuscitation bags.
- (ix) Pocket masks.
- (x) Other ventilation devices.

Personal protective equipment is appropriate only if it does not permit blood or other potentially infectious material to pass through to or reach the employee's work clothes, street clothes, undergarments, skin, eyes, mouth, or other mucous membranes under normal conditions of use and for the duration of time that the protective equipment is used.

(b) An employer shall ensure that an employee uses appropriate personal protective equipment unless the employer shows that the employee temporarily and briefly declined to use PPE when, under rare and extraordinary circumstances, it was the employee's professional judgment that in the specific instance the use of PPE would have prevented the delivery of health care or public safety services or would have posed an increased hazard to the safety of the worker or coworker. When the employee makes this judgment, the circumstances shall be investigated and documented to determine if changes can be made to prevent future occurrences.

(c) An employer shall assure that appropriate protective equipment and clothing in the appropriate sizes are readily accessible at the worksite or issued to employees at no cost to the employees. Hypoallergenic gloves, glove liners, powderless gloves, or other similar alternatives shall be readily accessible to employees who are allergic to the gloves normally provided. See appendix A for more information.

(d) An employer shall provide for the cleaning, laundering, or disposing of protective clothing and equipment required by this rule.

(e) An employer shall repair or replace required protective clothing and equipment as needed to maintain their effectiveness.

(f) An employee shall wear gloves if there is a reasonable anticipation of direct skin contact with blood, other potentially infectious material, mucous membranes, or nonintact skin of patients; when performing vascular access procedures, except as specified in subdivision (g) of this subrule; and when handling items or surfaces that are soiled with blood or other potentially infectious material.

Disposable (single-use) gloves, such as surgical or examination gloves, shall be replaced as soon as practical if contaminated or as soon as feasible if torn, punctured, or ineffective as barriers. Disposable gloves shall not be washed or decontaminated for reuse. Utility gloves shall be discarded if any are cracked, peeling, discolored, torn, or punctured or exhibit other signs of deterioration, but may be decontaminated for reuse if the integrity of the glove is maintained.

(g) If an employer of a volunteer blood donation center judges that routine gloving for all phlebotomies is not necessary, the employer shall do all of the following:

- (i) Periodically reevaluate this policy.
- (ii) Make appropriate gloves available to all employees who wish to use them for phlebotomy.
- (iii) Not discourage the use of gloves for phlebotomy.
- (iv) Require that gloves be used for phlebotomy in the following circumstances:
  - (A) When the employee has cuts, scratches, or other breaks in the skin on his or her hands or wrists.
  - (B) When the employee judges that hand contamination with blood may occur, for example, when performing phlebotomy on an uncooperative patient.
  - (C) When the employee is receiving training in phlebotomy.

(h) Employees shall wear masks and eye protection or chin-length face shields as appropriate if splashes, sprays, spatters, droplets, or aerosols of blood or other potentially infectious material may be generated and if there is a likelihood for eye, nose, or mouth contamination.

(i) Employees shall wear gowns, lab coats, aprons, clinic jackets, or similar outer garments where appropriate if there is a reasonably anticipated exposure. Such clothing shall protect all areas of exposed skin that have a significant likelihood for contamination. The type of characteristics will depend upon the task and degree of exposure anticipated.

(j) Employees shall wear surgical caps or hoods and shoe covers or boots where appropriate if there is a reasonable anticipation of gross contamination, for example, in autopsies and orthopedic surgery.

### **R 325.70009 Housekeeping.**

**Rule 9.** (1) An employer shall assure that the worksite is maintained in a clean and sanitary condition. An employer shall determine and implement an appropriate written schedule for cleaning and for the method of decontamination based on all of the following:

- (a) The location within a facility.
- (b) The type of surface to be cleaned.
- (c) The type of soil present.
- (d) The tasks or procedures being performed.

(2) All equipment and environmental and working surfaces shall be maintained in a sanitary condition as follows:

(a) Work surfaces shall be cleaned and appropriately decontaminated with an appropriate disinfectant in all of the following instances:

- (i) After completion of procedures.
- (ii) When surfaces are overtly contaminated.
- (iii) Immediately when blood or other potentially infectious material is spilled.
- (iv) At the end of the work shift if the surface may have become contaminated since the last cleaning. See appendix A for supplemental information.

(b) Protective coverings such as plastic wrap, aluminum foil, or plastic-backed, absorbent paper may be used to cover equipment and environmental surfaces. These coverings shall be removed and replaced at the end of the work shift if contaminated or as soon as feasible when they become overly contaminated.

(c) Equipment that may become contaminated with blood or other potentially infectious material shall be examined before servicing or shipping and shall be decontaminated as necessary unless the employer can demonstrate that decontamination is not feasible. If decontamination is not feasible, the employer shall ensure that a readily observable label which states the portions of the equipment that remain contaminated and that is in compliance with R 325.70014(2)(h) is attached to the equipment. The employer shall ensure that all affected employees, the servicing representative, or the manufacturer, as appropriate, is notified that equipment decontamination is not feasible and is notified of the portions of the equipment that remain contaminated before handling, servicing, or shipping so that appropriate precautions will be taken.

(d) All bins, pails, cans, and similar receptacles that are intended for reuse and that have a reasonable likelihood for becoming contaminated with blood and other potentially infectious material shall be inspected and decontaminated on a regularly scheduled basis and shall be cleaned and decontaminated immediately, or as soon as possible, upon visible contamination.

(e) Broken glassware that may be contaminated shall not be picked up directly with the hands. It shall be cleaned up using mechanical means, such as a brush and dust pan, tongs, cotton swabs, or forceps.

(f) Specimens of blood or other potentially infectious material shall be placed in a closable leakproof container during collection, handling, processing, storing, transporting, or shipping. If contamination of the outside of a primary container is likely, a second leakproof container shall be placed over the outside of the first and closed to prevent leakage during handling, processing, storing, transporting, or shipping. If puncture of the primary container is likely, then the primary container shall be placed within a leakproof, puncture-resistant secondary container. All containers shall be labeled or color-coded in accordance of R 325.70014.

(g) Reusable sharps that are contaminated with blood or other potentially infectious materials shall not be stored or processed in a manner that requires employees to reach by hand into the containers where these sharps have been placed.

### **R 325.70010 Regulated waste disposal.**

**Rule 10.** (1) All regulated waste that is being disposed of shall be placed in closable, leakproof containers or bags that are color-coded or labeled as required by the provisions of R 325.70014. If outside contamination of the container or bag is likely to occur, then a second leakproof container or bag that is closable and labeled or color-coded shall be placed over the outside of the first and closed to prevent leakage during handling, storage, and transport.

(2) Immediately after use, contaminated sharps shall be disposed of in closable, leakproof, puncture-resistant, disposable containers that are labeled or color-coded according to the provisions of R 325.70014. These containers shall be easily accessible to personnel; shall be located in the immediate area of use or where sharps are likely to be found, unless needles are mechanically recapped and transported through nonpublic corridors to the container; and shall be replaced routinely and not allowed to overfill.

(3) The disposal of all medical waste shall be in compliance with the provisions of sections 13801 to 13831 of Act No. 368 of the Public Acts of 1978, as amended, being §§333.13801 to 333.13831 of the Michigan Compiled Laws, and known as the medical waste regulatory act.

### **R 325.70011 Laundry.**

**Rule 11.** (1) Laundry that is or may be soiled with blood or other potentially infectious material or that may contain contaminated sharps shall be treated as if it were contaminated and shall be handled as little as possible with a minimum of agitation.

(2) Contaminated laundry shall be bagged at the location where it was used and shall not be sorted or rinsed in areas where patients are cared for.

(3) Contaminated laundry shall be placed and transported in bags or containers labeled or color-coded in accordance with R 325.70014. If laundry is wet and presents the likelihood for soaking through or leaking from the bag, it shall be placed and transported in leakproof bags.

(4) An employer shall ensure that laundry workers wear protective gloves and other appropriate personal protective work clothing while handling contaminated laundry.

(5) When an employer follows universal precautions in the handling of all soiled laundry, alternative labeling or color coding is sufficient if it permits all employees to recognize the containers that are required to be in compliance with universal precautions.

(6) When an employer ships contaminated laundry off-site to a facility that does not use universal precautions in the handling of all laundry, the shipping employer shall use bags or containers that are labeled or color-coded in accordance with R 325.70014.

### **R 325.70012 HIV and HBV research laboratories and production facilities.**

**Rule 12.** (1) This rule applies to research laboratories and production facilities that are engaged in the culture, production, concentration, experimentation, and manipulation of HIV and HBV. This rule applies to such laboratories and facilities in addition to the other requirements of these rules. This rule does not apply to clinical or diagnostic laboratories that are engaged solely in the analysis of blood, tissues, or organs.

(2) Research laboratories and production facilities shall be in compliance with all of the following requirements:

(a) All infectious liquid or solid waste shall be incinerated or decontaminated by a method known to effectively destroy bloodborne pathogens before being disposed of.

(b) Laboratory doors shall be kept closed when work involving HIV or HBV is in progress.

(c) Contaminated materials that are to be decontaminated at a site away from the work area shall be placed in a durable, leakproof, labeled or color-coded container that is closed before being removed from the work area.

(d) Access to the work area shall be limited to authorized persons only. Written policies and procedures shall be established whereby only persons who have been advised of the biohazard, who meet any specific entry requirements, and who comply with all entry and exit procedures shall be allowed to enter the work areas and animal rooms.

(e) When other potentially infectious material or infected animals are present in the work area or containment module, a hazard warning sign that incorporates the universal biohazard symbol shall be posted on all access doors. The hazard warning sign shall be in compliance with the provisions of R 325.70014(1).

(f) All activities that involve other potentially infectious material shall be conducted in biological safety cabinets or other physical containment devices within the containment module. Work with such material shall not be conducted on the open bench.

(g) Laboratory coats, gowns, smocks, uniforms, or other appropriate protective clothing shall be used in the work area and animal rooms. Protective clothing shall not be worn outside of the work area and shall be decontaminated before being laundered.

(h) Special care shall be taken to avoid skin contamination with other potentially infectious materials. Gloves shall be worn when handling infected animals and when making contact with other potentially infectious materials is unavoidable.

(i) All waste from work areas, including animal rooms, shall be incinerated or decontaminated by a method known to effectively destroy bloodborne pathogens before disposal.

(j) Vacuum lines shall be protected with high-efficiency particulate air (HEPA) filters, or equivalent filters, and liquid disinfectant traps. Filters and traps shall be checked routinely and maintained or replaced as necessary.

(k) Hypodermic needles, syringes, and other sharp instruments shall be used only when a safer alternate technique is not feasible. Only needle-locking syringes or disposable syringe with needle units that have a needle as an integral part of the syringe shall be used for the injection or aspiration of other potentially infectious material. Extreme caution shall be used when handling needles and syringes to avoid autoinoculation and the generation of aerosols during use and disposal. A needle shall not be bent, sheared, replaced in the sheath or guard, or removed from the syringe after being used. The needle and syringe shall be promptly placed in a puncture-resistant container and decontaminated, preferably by autoclaving, before being discarded or reused.

(l) A spill or accident that results in an exposure incident shall be immediately reported to the laboratory director or another responsible person. Spills shall immediately be contained and cleaned up by appropriate professional staff who are trained and equipped to work with potentially concentrated infectious material.

(m) A biosafety manual shall be prepared or adopted and reviewed and updated at least annually. Personnel shall be advised of potential hazards and shall be required to read and follow instructions on practices and procedures.

(n) Both of the following containment equipment requirements shall be complied with:

(i) Class I, II, or III certified biological safety cabinets or other appropriate combinations of personal protection or physical containment devices, such as any of the following, shall be used for all activities with other potentially infectious material that poses a threat of exposure to droplets, splashes, spills, or aerosols:

- (A) Special protective clothing.
- (B) Respirators.
- (C) Centrifuge safety cups.
- (D) Sealed centrifuge rotors.
- (E) Containment caging for animals.

(ii) Biological safety cabinets shall be certified when installed, at least annually, and when they are relocated.

(3) HIV and HBV research laboratories shall be in compliance with both of the following requirements:

(a) Each laboratory shall contain a sink for washing hands and an eye wash station that are readily available in the work area.

(b) An autoclave for the decontamination of regulated wastes shall be available.

(4) HIV and HBV production facilities shall be in compliance with all of the following requirements:

(a) The work areas shall be separated from areas that are open to an unrestricted traffic flow within the building. Passage through 2 sets of doors shall be the basic requirement for entry into the work area from access corridors or other contiguous areas. Physical separation of the high-containment work area from access corridors or other areas or activities may also be provided by a double-doored room for changing clothes, an airlock, or other access facility that requires passing through 2 sets of doors before entering the work area. Showers may be included as part of the changing room.

(b) The interior surfaces of walls, floors, and ceilings shall be water-resistant so that they can be easily cleaned. Penetrations in these surfaces shall be sealed or capable of being sealed to facilitate decontamination of the work area.

(c) Each work area shall contain a sink for washing hands. The sink shall be foot-operated, elbow operated, or automatically operated and shall be located near the exit door of the work area.

(d) Access doors to the work area or containment module shall be self-closing.

(e) An autoclave for the decontamination of infectious wastes shall be available within, or as near as possible to, the work area.

(f) A ducted exhaust air ventilation system shall be provided. This system shall create directional airflow that draws air into the work area through the entry area. The exhaust air shall not be recirculated to any other area of the building, shall be discharged to the outside, and shall be dispersed away from occupied areas and air intakes. The proper direction of the airflow into the work area shall be verified.

(5) Additional training requirements for employees in HIV and HBV research laboratories and HIV and HBV production facilities are specified in R 325.70016(6).

### **R 325.70013 Vaccinations and postexposure follow-up.**

**Rule 13.** (1) An employer shall assure that all medical evaluations are procedures that are performed by or under the supervision of a licensed physician or other licensed health care professional and that all laboratory tests are conducted by an accredited laboratory.

(2) An employer shall assure that all evaluations, procedures, vaccinations, and postexposure prophylaxes are provided without cost to the employee, at a reasonable time and place, and according to current recommendations of the United States public health service, unless in conflict with this rule.

(3) An employer shall assure that all employees will receive appropriate counseling with regard to medical risks and benefits before undergoing any evaluations, procedures, vaccinations, or postexposure prophylaxes.

(4) Within 10 working days of the time of initial assignment and after the employee has received training required by R 325.70016(5)(i), an employer shall make all of the following available to each category A employee:

(a) A hepatitis B vaccination. If an employee initially declines vaccination, but at a later date, while still covered under these rules, decides to accept the HBV vaccine, the employer shall provide the vaccine at that time. If a booster dose or doses are recommended by the United States public health service at a future date, the booster dose or doses shall be made available.

(b) If an employee has previously received the complete HBV vaccination series, is found to be immune to HBV by virtue of adequate antibody titer, or the vaccine is contraindicated for medical reasons, then the employer is not required to offer the HBV vaccine to that employee.

(c) An employer shall not make participation in a prescreening program a prerequisite for receiving hepatitis B vaccination.

(d) An employer shall assure that an employee who declines to accept hepatitis B vaccination signs a waiver statement with all of the following provisions:

(i) Understanding of risk.

(ii) Acknowledgment of opportunity of vaccination at no cost.

(iii) Declining vaccination.

(iv) Future availability of vaccination at no cost if desired, if still in at-risk status. See appendix B for a sample of an acceptable waiver statement.

(5) An employer shall provide each exposed employee with an opportunity to have a confidential medical evaluation and follow-up subsequent to a reported occupational exposure incident to blood or other potentially infectious material. The evaluation and follow-up shall include, at a minimum, all of the following elements:

(a) Documentation of the route or routes of exposure and the circumstances under which the exposure incident occurred.

(b) Identification and documentation of the source individual, unless the employer can establish that identification is infeasible or prohibited by state or local law, shall include all of the following:

(i) The source individual's blood shall be tested as soon as feasible and after consent is obtained to determine HBV and HIV infectivity. If consent is not obtained, the employer shall establish that legally required consent cannot be obtained. If the source individual's consent is not required by law, his or her blood, if available, shall be tested and the results documented.

(ii) If the source individual is already known to be infected with HBV or HIV, testing need not be repeated.

(iii) Results of the source individual's testing shall be made available to the exposed employee, and the employee shall be informed of applicable laws and regulations concerning disclosure of the identity and infectious status of the source individual.

(c) Collection and testing of blood or HBV and HIV serological status shall include both of the following:

(i) The exposed employee's blood shall be collected as soon as feasible and tested after consent is obtained.

(ii) If the exposed employee consents to baseline blood collection, but not to HIV testing at that time, the sample shall be preserved for not less than 90 days. If within the 90 days the employee elects to have the baseline sample tested, such testing shall be done as soon as feasible.

(d) Postexposure prophylaxis, when medically indicated, as recommended by the United States public health service.

(e) Counseling on risk reduction and the risks and benefits of HIV testing in accordance with state law.

(f) Evaluation of reported illnesses.

(6) An employer shall ensure that the health care professional who is responsible for the hepatitis B Vaccination is provided with a copy of these rules and appendices. An employer shall ensure that the health care professional who evaluates an employee after an exposure incident is provided with all of the following information:

(a) A description of the affected employee's duties as they relate to the employee's exposure incident.

(b) Documentation of the route or routes of exposure and the circumstances under which exposure occurred.

(c) Results of the source individual's blood testing, if available.

(d) All medical records that are relevant to the appropriate treatment of the employee, including vaccination status, and that are the employer's responsibility to maintain.

(7) For each evaluation pursuant to the provisions of this rule, an employer shall obtain, and provide an employee with a copy of, the evaluating health care professional's written opinion within 15 working days of the completion of the evaluation. The written opinion shall be limited to the following information:

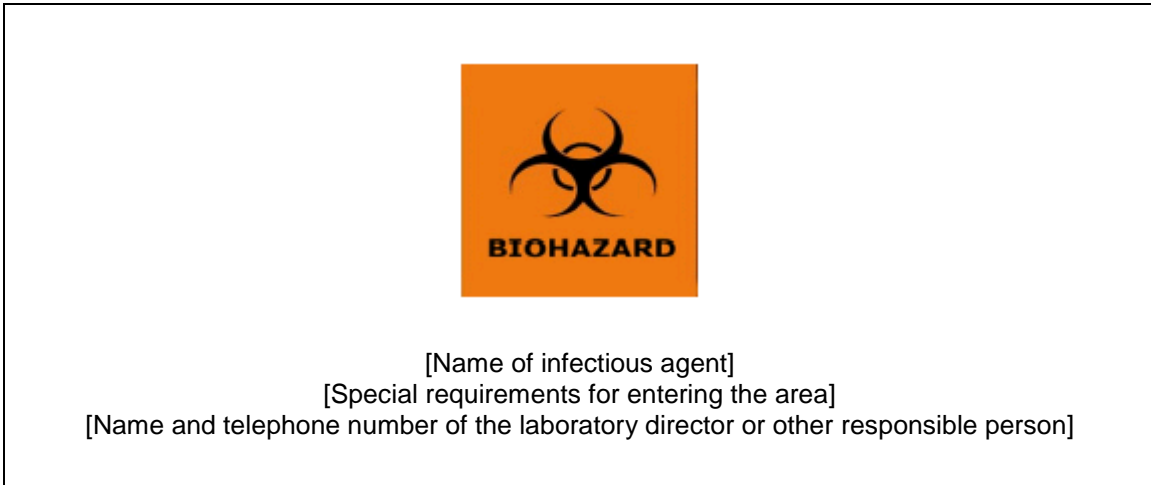
(a) Whether hepatitis B vaccination is indicated for an employee and if the employee has received such vaccination.

(b) A statement that the employee has been informed of the results of the medical evaluation and that the employee has been told about any medical conditions that have resulted from exposure to blood or other potentially infectious material and that require further evaluation or treatment. The written opinion obtained by the employer shall not reveal specific findings or diagnoses that are unrelated to the employee's ability to wear protective clothing and equipment or receive vaccinations. Such findings and diagnoses shall remain confidential.

(8) Medical records that are required by these rules shall be maintained in accordance with R 325.70015.

**R 325.70014 Communication of hazards to employees.**

**Rule 14.** (1) An employer shall post signs at the entrance to work areas specified in R 325.70012. The signs shall bear the following legend:



These signs shall be fluorescent orange-red with lettering and symbols in a contrasting color.

(2) Labels shall be in compliance with all of the following requirements:

(a) Warning labels shall be affixed to containers of regulated waste, refrigerators and freezers that contain blood or other potentially infectious material, and other containers that are used to store or transport blood or other potentially infectious material, except as provided in subdivision (e) or (f) of this subrule.

(b) Labels that are required pursuant to this rule shall include the follow legend:





(c) Labels shall be fluorescent orange or orange-red or predominately orange or orange-red, with lettering or symbols in a contrasting color.

(d) Labels shall either be an integral part of the container or shall be affixed as close as safely possible to the container by string, wire, or adhesive or by another method that prevents the loss of labels or the unintentional removal of labels.

(e) Red bags or red containers may be substituted for labels.

(f) Containers of blood, blood components, or blood products that are labeled as to their contents and that have been released for transfusion or other clinical use are exempted from the labeling requirements of this rule.

(g) Individual containers of blood or other potentially infectious materials that are placed in a labeled container during storage, transport, shipment, or disposal are exempted from labeling requirements.

(h) Labels required for contaminated equipment shall be in accordance this subrule and shall also describe which portions of the equipment remain contaminated.

(i) Regulated waste that has been decontaminated need not be labeled or color-coded.

#### **R 325.70015 Recordkeeping.**

**Rule 15. (1)** An employer shall establish and maintain medical records for each category A employee in accordance with Occupational Health Standard Part 470 "Employee Medical Records and Trade Secrets," as referenced in R 325.70001a.

(2) An employer shall ensure that medical records contain, at a minimum, all of the following information:

(a) The name and social security number of the employee.

(b) A copy of the employee's hepatitis B vaccination status, including the dates administered and medical records relating to the employee's ability to receive a vaccination as required by R 325.70013.

(c) A copy of all results of examinations, medical testing, and follow-up procedures as required by R 325.70013.

(d) The employer's copy of the physician's written opinion.

(e) A copy of the information provided to the physician as required by R 325.70013(6).

(3) An employer shall assure that employee medical records that are required by this rule are kept confidential and are not disclosed or reported without the employee's express written consent to any person within or outside the workplace, except as required by this rule or as may be required or permitted by law.

(4) An employer shall maintain employee medical records for not less than the duration of employment plus 30 years in accordance with Occupational Health Standard Part 470 "Employee Medical Records and Trade Secrets," as referenced in R 325.70001a.

(5) An employer shall develop and maintain training records for each category A employee. Training records shall be maintained for 3 years beyond the date that the training occurred.

(6) Training records shall include all of the following information:

(a) The dates of the training sessions.

(b) The contents or a summary of the training sessions.

(c) The names and qualifications of persons who conduct the training.

(d) The names and job titles of all persons who attend the training sessions.

(7) An employer shall assure that all records that are required to be maintained by these rules shall be made available, upon request, to representatives of the department or the director for examination and copying.

(8) An employer shall ensure that employee training records are provided, upon request, for examination and copying to employees, employee representatives, and the director in accordance with Occupational Health Standard Part 470 "Employee Medical Records and Trade Secrets," as referenced in R 325.70001a.

(9) An employer shall ensure that employee medical records are provided, upon request, for examination and copying to the subject employee, to anyone who has the written consent of the subject employee, and to the director in accordance with Occupational Health Standard Part 470 "Employee Medical Records and Trade Secrets," as referenced in R 325.70001a.

(10) An employer shall comply with the requirements that involve the transfer of records in Occupational Health Standard Part 470 "Employee Medical Records and Trade Secrets," as referenced in R 325.70001a.

(11) All of the following provisions apply to a sharps injury log:

(a) An employer shall establish and maintain a sharps injury log for the recording of percutaneous injuries from contaminated sharps. The information in the sharps injury log shall be recorded and maintained in a manner that protects the confidentiality of the injured employee. At a minimum, a sharps injury log shall contain all of the following information:

(i) The type and brand of device involved in the incident.

(ii) The work unit or work area where the exposure incident occurred.

(iii) An explanation of how the incident occurred.

(b) The requirement to establish and maintain a sharps injury log applies to any employer who is required to maintain a log of occupational injuries and illnesses as prescribed in MIOSHA Standard Part 11. "Recording and Reporting of Occupational Injuries and Illnesses," as referenced in R 325.70001a.

(c) A sharps injury log shall be maintained for the period required as prescribed in MIOSHA Standard Part 11. "Recording and Reporting of Occupational Injuries and Illnesses," as referenced in R 325.70001a.

**R 325.70016 Information and training.**

**Rule 16.** (1) An employer shall ensure that all category A employees participate in a training program provided at no cost to the employees and during working hours.

(2) Training shall be provided at the time of initial assignment to category A work or within 90 days after the effective date of these rules, whichever is later, and at least annually thereafter. If an employee has received training on bloodborne pathogens in the year preceding the effective date of these rules, only training with respect to requirements of this rule that were not included in the previous training need to be provided.

(3) An employer shall provide additional training when changes, such as the modification of tasks or procedures or the institution of new tasks or procedures, affect an employee's occupational exposure. The additional training may be limited to addressing the new exposures created.

(4) Material appropriate in content and vocabulary to the educational level, literacy, and language background of employees shall be used.

(5) The training program shall contain all of the following elements:

(a) Accessibility of the copy of these rules and an explanation of the contents of these rules, including appendices.

(b) A general explanation of the epidemiology and symptoms of bloodborne diseases.

(c) An explanation of the modes of transmission of bloodborne pathogens.

(d) An explanation of the employer's exposure control plan, including the standard operating procedures, and how an employee can access the written plan.

(e) An explanation of the appropriate methods for recognizing tasks and other activities that may involve exposure to blood and other potentially infectious material.

(f) An explanation of the use and limitations of practices that will prevent or reduce exposure, including appropriate engineering controls, work practices, and personal protective equipment.

(g) Information on all of the following with respect to personal protective clothing and equipment:

- (i) Types.
- (ii) Proper use.
- (iii) Limitations.
- (iv) Location.
- (v) Removal.
- (vi) Handling.
- (vii) Decontamination.
- (viii) Disposal.

(h) An explanation of the basis for selecting protective clothing and equipment.

(i) Information on the hepatitis B vaccine and postexposure prophylaxis, including all of the following information:

- (i) Availability.
- (ii) Efficacy.
- (iii) Safety.
- (iv) The benefits of being vaccinated.
- (v) Method of administration.
- (vi) That vaccination is free of charge.

(j) Information on the appropriate actions to take and persons to contact in an emergency involving blood or other potentially infectious material.

(k) An explanation of the procedure to follow if an exposure incident occurs, including the method of reporting the incident, and the medical follow-up and counseling that will be made available.

(l) An explanation of the signs and labels or color coding required by R 325.70014.

(6) Employees in HIV or HBV research laboratories and HIV/HBV production facilities shall receive the following initial training in addition to the training requirements specified in subrule (5) of this rule:

(a) Employees shall be trained in, and demonstrate proficiency in, standard microbiological practices and techniques and in the practices and operations specific to the facility before being allowed to work with HIV and HBV.

(b) Employees shall be experienced in the handling of human pathogens or tissue cultures before working with HIV and HBV.

(c) A training program shall be provided to employees who have not had experience in handling human pathogens. Initial work activities shall not include the handling of infectious agents. A progression of work activities shall be assigned as techniques are learned and proficiency is developed. An employee shall participate in work activities that involve infectious agents only after proficiency has been demonstrated.

(7) Training shall be conducted in the following manner:

(a) At the time of initial assignment to tasks where occupational exposure may take place and at least annually thereafter.

(b) Training sessions shall afford employees ample opportunity for discussion and the answering of questions by a knowledgeable trainer.

(c) The person conducting the training shall be knowledgeable in the subject matter covered by the elements contained in the training program as it relates to the workplace that the training will address.

R 325.70017 Rescinded.

R 325.70018 Rescinded.

**APPENDIX A  
INFORMATION SHEET**

**Occupations with Potential for Exposure**

The hazard of exposure to infectious materials affects employees in many types of employment and is not restricted to the healthcare industry. In the list below are a number of job classifications that may be associated with tasks that have occupational exposure to blood and other potentially infectious materials. The scope of the standard is not limited to employees in these jobs. At the same time, employees in the following jobs are not automatically covered unless they have reasonably anticipated occupational exposure:

Barbers	Law enforcement employees assigned to provide emergency first aid
Beauticians	Maintenance workers
Chiropractors	Medical assistants
Correctional officers	Medical health residential workers
Day care center workers	Morticians
Dental care workers	Nursing personnel (professional and nonprofessional)
Dentists	Optometrists
Dialysis personnel	Paramedics
Emergency medical technicians	Phlebotomists
Fire fighters	Physician assistants
Foster home workers	Physicians
Health care facility support staff	Plumbers
Housekeepers	Podiatrists
Institutional home workers	Police officers
Janitors	Tattooists
Laboratory workers	
Laundry workers	

## **Addresses**

### **Centers for Disease Control CDC and Michigan Department of Licensing and Regulatory Affairs**

For current guidelines, contact:

National Prevention Information Network  
P.O. Box 6003  
Rockville, Maryland 20850  
Phone: 1-800-458-5231  
Internet Address: <https://npin.cdc.gov>  
E-mail Address: [NPIN-Info@cdc.gov](mailto:NPIN-Info@cdc.gov)

and

Michigan Department of Licensing and Regulatory Affairs  
General Industry Safety & Health Division  
P.O. Box 30644  
Lansing, Michigan 48909-8144  
Phone: (517) 284-7750  
Internet Address: [www.michigan.gov/miosha](http://www.michigan.gov/miosha)

## **Engineering Controls**

Engineering controls including ventilation systems and enclosures such as glove boxes, ventilation cabinets, laboratory hoods and tight fitting lids SHOULD be used to effectively isolate and contain spatters, splashes, mists and aerosols of blood, and other potentially infectious material generated from tissue homogenizers, sonicators, vortex mixers, centrifuges and other items capable of generating splashes, spatters, mists and aerosols. Engineering controls such as self-retracting needles, self-sealing capillary tubes and break resistant tubes should be used to prevent contact with blood or other potentially infectious material.

## **Disinfectants**

Appropriate disinfectants for hospital cleaning including sodium hypochlorite diluted between 1:10 and 1:100 with water or other equally effective disinfectant. Antiseptics available and safe for hands include alcoholic foam cleansers, disposable alcoholic tissue wipes, or even washcloths soaked with 70-90% alcohol. It should be noted that waterless antiseptics are most effective in the absence of gross soil.

## **Occupations Requiring Tear and Puncture Resistant Gloves**

Some occupations which may require tear and puncture resistant gloves are morticians, pathologists, mortuary workers, emergency medical technicians, corrections officers, fire fighters, police officers and other law enforcement occupations.

## **Gloves**

Hypoallergenic gloves may include latex but should not be limited to latex and the new improved glove types (such as vinyl) may be available on the market in the future.

Inappropriate “baggy” gloves, for example, as used by bakers, etc., are not meant for contact with blood of the potentially infectious material.

**APPENDIX B**  
**SAMPLE WAIVER STATEMENT WHEN AN EMPLOYEE DECLINES THE HEPATITIS B VACCINATION**

I understand that due to my occupational exposure to blood or other potentially infectious materials I may be at risk of acquiring hepatitis B virus (HBV) infection. I have been given the opportunity to be vaccinated with hepatitis B vaccine, at no charge to myself. However, I decline hepatitis B vaccination at this time. I understand that by declining this vaccine, I continue to be at risk of acquiring hepatitis B, a serious disease. If in the future I continue to have occupational exposure to blood or other potentially infectious materials and I want to be vaccinated with hepatitis B vaccine, I can receive the vaccination series at no charge to me.

Employee Name (print): \_\_\_\_\_

Employee Signature: \_\_\_\_\_

Date: \_\_\_\_\_



Michigan Occupational Safety and Health Administration  
PO Box 30643  
Lansing, Michigan 48909-8143  
Ph: 517-284-7740

The Department of Licensing and Regulatory Affairs will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

**MA No. 210000000384**  
**Southeast Michigan Home for Veterans (SMHV) – Nutrition Services**

**SCHEDULE B**  
**PRICING**

**1. Schedule B Pricing**

- A. Pricing includes all costs, included but not limited to any one time or set-up charges, material and labor costs, supervision, overhead, fees or any other costs that may be charged to the State.
- B. The State is tax exempt.

<b>Contract Pricing for Member Nourishment- Base Years</b>	
<b>Time Period</b>	<b>Price per Meal</b>
	Charging 3 meals per day per Member based on census, inclusive of any double portion entrée, double portion non-entrée, always available sandwich or side items, special nourishment, and snacks
First Year- With One Neighborhood Operational	\$16.10
First Year- With Two Neighborhoods Operational	\$14.04
First Year- With Three Neighborhoods Operational	\$13.01
First Year- With Four Neighborhoods Operational	\$12.00
Second Year	\$12.16
Third Year	\$12.30

<b>Contract Pricing for Bistro</b>
<p>Pricing for all materials and labor related to performance of work at the Bistro will be charged on a Time and Material Basis, with no added overhead or profit, until such time as firm fixed pricing is negotiated.</p> <p>Contractor will when submitting monthly billing, provide a monthly worksheet (see <b>Schedule B, Attachment 1</b> for format) detailing:</p> <ol style="list-style-type: none"> <li>1. By line-item, the quantity of all materials used with attached invoicing documentation from their suppliers to support the pricing.</li> <li>2. Staffing by employee, with attached timesheets and wage details to support the hours and wages for which the State is being charged.</li> </ol>

**MA No. 20000000384  
Southeast Michigan Home for Veterans (SMHV) – Nutrition Services**

**SCHEDULE B, Attachment 1  
Bistro T&M Worksheet**

<b>Food Costs</b>				
Food Item Description	Quantity	Unit of Measure	Cost per Unit	Total for Month

<b>Non-Food Costs</b>				
Item Description	Quantity	Unit of Measure	Cost per Unit	Total for Month

<b>Labor Costs</b>			
Name	Hourly Wage	Hours Worked	Total for Month
	<b>\$19.25</b>		
	<b>\$19.25</b>		
	<b>\$19.25</b>		



**SCHEDULE C-  
FEDERAL PROVISIONS ADDENDUM**

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

**1. Equal Employment Opportunity**

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

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:  
Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- d. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The Contractor will comply with all provisions of [Executive Order 11246](#) of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The Contractor will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in [Executive Order 11246](#) of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in [Executive Order](#)

[11246](#) of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

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

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

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

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

#### **Davis-Bacon Act (Prevailing Wage)**

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

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

#### **Copeland "Anti-Kickback" Act**

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

- (1) **Contractor.** The Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29

C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

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

#### **Contract Work Hours and Safety Standards Act**

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

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

#### **Rights to Inventions Made Under a Contract or Agreement**

If the Contract is funded by a federal "funding agreement" as defined under [37 CFR §401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with [37 CFR Part 401](#), "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

#### **Clean Air Act and the Federal Water Pollution Control Act**

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

##### **Clean Air Act**

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the

Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

2. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA or the applicable federal awarding agency.

#### **Federal Water Pollution Control Act**

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

#### **Debarment and Suspension**

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

- a. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by the State. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- d. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **Byrd Anti-Lobbying Amendment**

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

#### **Procurement of Recovered Materials**

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

- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered

materials that are EPA-designated items unless the product cannot be acquired:

- a. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - b. Meeting contract performance requirements; or
  - c. At a reasonable price.
- (2) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**Additional FEMA Contract Provisions.**

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

- a. **Access to Records.** The following access to records requirements apply to this contract:
- a. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
  - b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
  - c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

In compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

- b. **Changes.**  
See the provisions regarding modifications or change notice in the Contract Terms.
- c. **DHS Seal Logo and Flags.**  
The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- d. **Compliance with Federal Law, Regulations, and Executive Orders.**  
This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- e. **No Obligation by Federal Government.**  
The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract."
- f. **Program Fraud and False or Fraudulent Statements or Related Acts**  
The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

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**SCHEDULE C- EXHIBIT 1**  
**BYRD ANTI-LOBBYING CERTIFICATION**

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

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

The Contractor, The FOG Group, dba Powerlink Facilities Management Services, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date