



STATE OF MICHIGAN
CENTRAL PROCUREMENT SERVICES
 Department of Technology, Management, and Budget
 320 S. WALNUT ST., LANSING, MICHIGAN 48933
 P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **2**
 to
 Contract Number **230000000215**

CONTRACTOR	ATC Healthcare Services, Inc
	1983 Marcus Ave , Ste E122
	Lake Success, NY 11042
	Wendy Taylor
	989-839-2311
	wtaylor@atchealthcare.com
	VS0023197

STATE	Program Manager	Various	SW
	Contract Administrator	Melissa Beck (517) 897-1502 beckm3@michigan.gov	DTMB

CONTRACT SUMMARY

TEMPORARY STAFFING SERVICES – STATEWIDE

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
November 1, 2022	October 31, 2025	3 - 1 Year	October 31, 2025
PAYMENT TERMS		DELIVERY TIMEFRAME	
		NA	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card	<input type="checkbox"/> PRC	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS

NA

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		October 31, 2025
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$10,000,000.00	\$0.00	\$10,000,000.00		

DESCRIPTION

Effective February 14, 2023, the following changes are hereby incorporated into this Contract:

MDOC is adding a Department Technician-Advanced position at the following rate:

Pay rate: \$20.00 - \$24.00.
 Billable rate: \$28.60 - \$34.32.
 Markup: 43%

All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement, and DTMB Central Procurement Services approval.



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 Department of Technology, Management, and Budget
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 P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **1**
 to
 Contract Number **230000000215**

CONTRACTOR	ATC Healthcare Services, Inc
	1983 Marcus Ave , Ste E122
	Lake Success, NY 11042
	Wendy Taylor
	989-839-2311
	wtaylor@atchealthcare.com
	VS0023197

STATE	Program Manager	various	SW
	Contract Administrator	Melissa Beck (517) 897-1502 beckm3@michigan.gov	DTMB

CONTRACT SUMMARY

TEMPORARY STAFFING SERVICES – STATEWIDE

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
November 1, 2022	October 31, 2025	3 - 1 Year	October 31, 2025
PAYMENT TERMS		DELIVERY TIMEFRAME	
		NA	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card	<input type="checkbox"/> PRC	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS

NA

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		October 31, 2025
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$10,000,000.00	\$0.00	\$10,000,000.00		

DESCRIPTION

Effective February 7, 2023 the following amendments are hereby up incorporated into this Contract:

- The State Contract Administrator has been changed to Melissa Beck, beckm3@michigan.gov, 517-897-1502.
- The below federal provisions are added to this Contract for MDE:
 Contractors who encounter Social Security Administration (SSA) data agree to abide by all relevant Federal laws, restrictions on access, use, disclosure, and the security requirements contained within the state agency's agreement with SSA. Contactors also agree to complete necessary security-privacy training and certifications.

SECURITY PROCEDURES: The State Agency will comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. § 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. § 3551, et seq.), and related National Institute of Standards and Technology guidelines. In addition, the State Agency will comply with SSA's "Electronic Information Exchange Security Requirements and Procedures for State and Local Agencies Exchanging Electronic

Information with the Social Security Administration,” attached as Attachment 4, as well as the Security Certification Requirements for use of the SSA Data Set transmitted via CMS’ Hub, attached as Attachment 5. The SSA security controls identified under Attachment 4 of this IEA prevail for all SSA data received by the State Agency, as identified in Table 1 of this IEA. For any tax return data, the State Agency will also comply with the “Tax Information Security Guidelines for Federal, State and Local Agencies,” Publication 1075, published by the Secretary of the Treasury and available at the following Internal Revenue Service (IRS) website: <http://www.irs.gov/pub/irs-pdf/p1075.pdf>. This IRS Publication 1075 is incorporated by reference into this IEA.

CONTROLLED UNCLASSIFIED INFORMATION (CUI) REQUIREMENTS: Pursuant to 32 C.F.R. § 2002.16(a)(6), the State Agency must handle any CUI in accordance with Executive Order 13556, 32 C.F.R. Part 2002, and the CUI Registry. The State Agency acknowledges that misuse of CUI is subject to penalties established in applicable law, regulations, or Government-wide policies. The State Agency will report any non-compliance with handling requirements to SSA using methods approved by SSA.

All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement, and DTMB Central Procurement Services approval.



STATE OF MICHIGAN PROCUREMENT
 Department of Technology, Management and Budget
 320 S Walnut Street, Lansing, MI 48893
 P.O. BOX 30026 Lansing, MI 48913

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **23000000215**
 between
 THE STATE OF MICHIGAN
 and

CONTRACTOR	ATC Healthcare Services, LLC
	1983 Marcus Ave. Ste E122
	Lake Success, NY 11042
	Primary: Wendy Taylor Primary: Marina Marchese Alternate: David Marchese Alternate: Cheryl Stein
	Wendy: 989-839-2311 Marina: 248-955-4155 David: 248-955-4155 Cheryl: 516 750 1618
	Wendy: wtaylor@atchealthcare.com Marina: mmarchese@atchealthcare.com David: dmarchese@atchealthcare.com Cheryl: cstein@atchealthcare.com
	VS0023197

STATE	Program Manager	Various	SW
	Contract Administrator	Joy Nakfoor	DTMB
		517-249-0481	
		nakfoorj@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: Temporary Staffing Services – Statewide			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
November 1, 2022	October 31, 2025	3, 1-year	N/A
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
THIS IS NOT AN ORDER. This Contract Agreement is awarded on the basis of our inquiring RFP NO. 220000001256 and supersedes MA 220000001218. Orders for delivery will be issued directly by Departments through the issuance of a Delivery Order Form.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$10,000,000.00

FOR THE CONTRACTOR:

ATC Healthcare Services, LLC

Company Name

Authorized Agent Signature

David Savitsky

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Joy Nakfoor, Services Manager

Name & Title

DTMB Central Procurement Services

Agency

Date

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and ATC Healthcare Service, LLC (“**Contractor**”), a New York Limited Liability Company. This Contract is effective on November 1, 2022 (“**Effective Date**”), and unless terminated, expires on October 31, 2025.

This Contract may be renewed for up to 3, additional 1-year, option year periods. 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 option via Contract Change Notice.

The parties agree as follows:

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

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

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

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

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

If to State:	If to Contractor:
Joy Nakfoor 320 S Walnut St. Lansing, MI 48933 nakfoorj@michigan.gov 517-249-0481	David Savitsky 1983 Marcus Ave. Ste. E122 Lake Success, NY 11042 dsavitsky@atchealthcare.com 516-750-1681 CC: Cheryl Stein 1983 Marcus Ave. Ste. E122 Lake Success, NY 11042 cstein@atchealthcare.com 516-750-1618

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

State:	Contractor:
Joy Nakfoor 320 S Walnut St. Lansing, MI 48933 nakfoorj@michigan.gov 517-249-0481	David Savitsky 1983 Marcus Ave. Ste. E122 Lake Success, NY 11042 dsavitsky@atchealthcare.com 516-750-1681 Initialed by: Cheryl Stein 1983 Marcus Ave. Ste. E122 Lake Success, NY 11042 cstein@atchealthcare.com 516-750-1618

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**”):

State:	Contractor:
Various	Wendy R. Taylor 203 Dartmouth Drive Midland, MI 48640 wtaylor@atchealthcare.com Phone: 989.839.2310 Fax: 1.800.336.0596

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 – Statement of Work) if, in the opinion of the State, it will ensure performance of the Contract.

6. Insurance Requirements. Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or otherwise result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and

(c) be provided by a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: \$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 Products/Completed Operations \$2,000,000 General Aggregate	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 20 10 12 19 and CG 20 37 12 19. Coverage must not have exclusions or limitations related to sexual abuse and molestation liability.
Automobile Liability Insurance	
Minimum Limits: \$1,000,000 Per Accident	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
Minimum Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease	
Crime (Fidelity) Insurance	
Minimum Limits: \$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.

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 twenty (20) calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurance contained in this Section; (c) notify the Contract Administrator within five (5) business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

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

- 7. Administrative Fee and Reporting.** Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made online by check or credit card at: <https://www.thepayplace.com/mi/dtmb/adminfee>

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

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

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

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

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

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

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

Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.

- 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. Reserved.**

18. Reserved.

19. Reserved.

20. Terms of Payment. Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in 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 **90** calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

26. General Indemnification. Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees

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

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

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

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

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

28. Limitation of Liability 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. Reserved.

31. State Data.

- a. **Ownership.** The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.
- b. **Contractor Use of State Data.** Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.
- c. **Extraction of State Data.** Contractor must, within 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. Reserved.

35. Reserved.

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

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

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

- 37. Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.
- 38. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 39. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 40. Prevailing Wage.** Contractor must comply with prevailing wage requirements to the extent applicable to this Contract.
- 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:

Schedule A	Statement of Work
Schedule B	Pricing
Schedule C	Positions, Extended List
Schedule C, Exhibit 1	Job Duties & Responsibilities
Schedule D	1075 Safeguard Contract Language
Schedule E	MDOC – Extended Security Requirements

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

52. Severability. If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.

53. Waiver. Failure to enforce any provision of this Contract will not constitute a waiver.

54. Survival. The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

55. Contract Modification. This Contract may not be amended except by signed agreement between the parties (a “**Contract Change Notice**”). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

FEDERAL PROVISIONS ADDENDUM

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

1. Equal Employment Opportunity.

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

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

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

- 2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- 4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of

the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 5) The Contractor will comply with all provisions of [Executive Order 11246](#) of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6) The Contractor will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in [Executive Order 11246](#) of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in [Executive Order 11246](#) of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of [Executive Order 11246](#) of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

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

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

agency in the discharge of the agency's primary responsibility for securing compliance.

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

2. **Davis-Bacon Act (Prevailing Wage).**

If this Contract is a **prime construction 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:

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

3. **Copeland "Anti-Kickback" Act.**

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

- 1) **Contractor.** The Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

- 2) **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA or the applicable federal awarding agency may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
 - 3) **Breach.** A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and Subcontractor as provided in 29 C.F.R. § 5.12.
4. **Contract Work Hours and Safety Standards Act.**
If the Contract is **in excess of \$100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with [40 USC 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)), as applicable, and during performance of this Contract the Contractor agrees as follows:
- 1) **Overtime requirements.** No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - 2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
 - 3) **Withholding for unpaid wages and liquidated damages.** The State shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
 - 4) **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause

requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

5. Rights to Inventions Made Under a Contract or Agreement.

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

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

If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act ([42 USC 7401-7671q](#)) 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.

7. Debarment and Suspension .A “contract award” (see [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management](#) (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that

implement [Executive Orders 12549 \(51 FR 6370; February 21, 1986\)](#) and 12689 ([54 FR 34131; August 18, 1989](#)), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).

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

8. Byrd Anti-Lobbying Amendment.

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

9. Procurement of Recovered Materials.

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

- 1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - b. Meeting contract performance requirements; or

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

10. Additional FEMA Contract Provisions.

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

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

See the provisions regarding modifications or change notice in the Contract Terms.
- 3) **DHS Seal Logo and Flags.**

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- 4) **Compliance with Federal Law, Regulations, and Executive Orders.**

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- 5) **No Obligation by Federal Government.**

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the State, Contractor, or any other party pertaining to any matter resulting from the Contract."
- 6) **Program Fraud and False or Fraudulent Statements or Related Acts**

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

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

Contract No. 23000000215
Statewide Temporary Employment Staffing Services

BACKGROUND

The State of Michigan, Department of Technology, Management, and Budget (DTMB) is seeking Statewide Temporary Employment Services for all State Agencies, and Locations/Regions. The State reserves the right to:

- Add additional positions under the “Other/Miscellaneous” Position listing
- The State is under no obligation to utilize all positions listed

Please Note:

- The maximum number of hours a Temporary Employee may accrue in 1-year for any given positions must not exceed 832-hours unless:
 - Exception for hours is provided by the requesting Agency and the proper CS-138 approval is obtained.
 - Exception notice will be communicated to the Contractor at the time of request.
 - The Contractor must not charge their employees a fee for employment placement.
- The duration of each assignment will depend upon the type of program, as well, as the vacancy of positions with the Agency.
 - All employees assigned to the State are on a “No Work, No Pay” basis.
- This Contract will also be available to other State Departments, MiDEAL members (Authorized Local Unites of Government) and Extended Purchasing Program.

SCOPE

Temporary Employment Services will include, but are not limited to positions that fall under the following Categories:

- | | |
|-----------------------------------|--|
| • Clerical | • Janitorial Services |
| • Financial & Accounting Services | • Substitute Teachers |
| • Data Analysis | • General Maintenance & Labor Services |
| • Food Services | • Other/Miscellaneous Services |

Contract Services are not restricted to those outlined in [Schedule A – Statement of Work](#) and, [Schedule C – Positions, Extended List](#). Please refer to [Schedule C](#), for a list of anticipated positions and [Schedule C, Exhibit 1 – Job Duties & Responsibilities](#), for position descriptions.

1. General Requirements

The Contractor must provide staffing services/Temporary Employees, on an as needed basis. Need will be determined by the requesting State Agency and will be communicated to the Contractor.

- Staffing Services must cover a broad range of skill sets and experience levels, for all State Locations/Regions.
- The positions currently defined in [Schedule C](#), have been defined to accommodate State Agency needs.

The Contractor must be able to provide staffing for all State Agencies, listed in this Contract and currently undefined in this Contract. Staffing positions will be filled upon State request.

The Contractor must inform all Temporary Staff placed with the State of the following:

- Advise that the State is not their employer.
 - However, Temporary Staff are subject to the rules, regulations and policies of the State, and State Agency of Temporary Employment.
- Advise that some work may be performed within the secure perimeter of an MDOC Prison, and some Temporary Staff may have direct contact with inmates.
 - The Contractor must be able to provide Temporary Staff within secure MDOC locations. If the Contractor cannot provide staff, please indicate this in your response below.
- The Agency Program Manager or designee is responsible for communicating overtime approval processes to the Contractor, as well as the approval process for Travel Expenses and Holiday Pay.
 - NO OVERTIME, TRAVEL and/or HOLIDAY Pay will occur without prior authorization from the State's applicable Program Manager.
- The Contract must advise that work hours will vary and can include nights, weekends, and potential official State Holidays, in addition to dayshift hours.
- The State reserves the right to remove Temporary Staff at any time for any reason.
- The State also reserves the right to hire Temporary Staff as a State of Michigan Employee(s) without penalty to the State or the Temporary Employee at any time during the term of the Contract and after.

1.1. Procedure

When requesting Temporary Employment services, the State will contact the Contractor to initiate a request. The Contractor must respond to the State within 3-business days after the receipt of request.

- If the Contractor fails to respond to State inquiries within 3-business days or fails to provide service, the State reserves the right to request services from an alternate source.
- The Contractor may not contact the State directly to solicit/inquire about future needs/services.
- If the Contractor would like to inform the State of new services offered, this information can be communicated in the quarterly report as identified in the Reporting Section of this Contract.

A. When requesting temporary employment services, the State will provide the following information:

- Job Classification/Title
- Responsibilities & Duties
- Worksite Location & Hours
- Estimated length of assignment, if known
- Skills needed – and any other information pertaining to the selection of staff, i.e., specialized skill sets specific to assignment, software knowledge requirements, etc.

Please Note the Following:

- When Temporary Staff are assigned to the State, the State will be responsible for providing all the necessary supplies and equipment necessary for the staffs' service to the State.
 - Please Note: ADA equipment needed for Temporary staff provided, is to be provided by the Contractor.
- Parking may not be available for free at all State locations – The State will not reimburse for parking.
- If travel is required for a position, temporary staff will be reimbursed at the current State Travel rates and will be accounted for as defined in the Invoice Requirements section of this Contract.
 - Current Travel Rates can be viewed at: [Travel Rates - DTMB](#)

B. After request is received from the State, the Contractor must work with the State to:

- Review proposed Temporary Staffing.
- Schedule interviews between the State and proposed staff.
- Perform reference checks.
- Perform any additional drug tests or background screenings necessary for position fulfillment.

Please Note: The State reserves the right to interview all potential candidates, prior to selection and placement.

- C. Once a Temporary Staff employee is placed with the State, the Contractor may be required to place an “arrival phone call” to the Agency Supervisor on the 1st-day for the employee’s placement with the State.

The Contractor must also place follow-up calls to the State Agency Supervisor, on a mutually agreed upon frequency, to monitor employee performance.

- D. The Contractor must provide qualified Temporary Employees to the State. If deemed necessary by the State, the Contractor must work with the State to replace all staff whose performance is deemed unsatisfactory within 2-business days after notice.

Please Note:

- All State Agencies require removal of staff within 12-hours of notice, unless otherwise mutually agreed upon. MDOC, and all other State Agencies may place an immediate stop order for some temp staff without the mutual consent of the Contractor.
- A record must be kept by the Contractor for each Temporary Staff who is relieved from service due to unsatisfactory performance. The Contractor may not place a Temporary Staff with the State who has had two valid unsatisfactory performance complaints filed against them. Record(s) for unsatisfactory service must be provided to the State, if applicable, upon request, and as defined in the Unsatisfactory Performance Report Section. The Contractor must not submit resumes for Temporary Staff, who have had 2 or more valid complaints filed against them.

1.2. Training

The Contractor must provide the training as outlined below, in addition to any other Agency specific training required by the State. Additional training requirements will be communicated at the time of Agency request for services.

- A. **MDOC Specific Training Requirements** – The Contractor must inform all Temporary Staff who will be placed within an MDOC Facility, of the following training and orientation requirements prior to working in a correctional facility:

- The Contractor’s Temporary Staff will be required to complete MDOC training and orientation **prior to working in a correctional facility**. The Contractor will be compensated upon the completion of their required MDOC training plan. Training Plans and correlated compensation are assigned based on position and offender contact.
- The Contractor must ensure that staff attains necessary curricula, program and protocol training per calendar year – if required. Training must be completed prior to the staff being allowed to perform their duties within a prison, according to the MDOC Annual Training Plan. The Contractor will be advised of training requirements by MDOC. Additional training will be required for those staff working with female offenders at WHV.
- The Contractor’s staff may be required to complete additional MDOC training, including facility training throughout the term of the Contract based on the facility population.

Please Note: Continuing education requirements for licensure (if applicable to a position) is the responsibility of the Contractor or Contractor's staff and will not be provided at the expense of the State or obtained during "on duty hours" unless mutually agreed upon in writing by the Contractor and MDOC Program Manager or designee.

B. MDHHS Specific Training Requirements – for Psychiatric Hospitals – The Contractor's staff must participate in all on-site in-service trainings and orientations as required by the hospital prior to service delivery.

- As appropriate and relevant to the provision of services, the Contractors staff must abide by all hospital regulatory standards, policies, and procedures.
- Any work that requires licensure or certification must only be performed by qualified individuals and proof must be provided at the time of the interview.
- Continuing education requirements for licensure are the responsibility of the Contractor or Contractor's staff and will not be provided at the State's expense or obtained during "on duty hours" unless mutually agreed upon in writing by the Contractor and the State.

2. Staffing

2.1. Contractor Representative

The Contractor has appointed three Contractor Representatives who are specifically assigned to State of Michigan accounts, please see Key Personnel table in Section 2.4, of the Contracts most recent Change Notice for further information.

The Contractor Representative(s) will respond to State inquiries regarding the Contract Activities, answer questions related to ordering and delivery, etc. (the "Contractor Representative").

The Contractor must notify the Contract Administrator at least 14-calendar days before removing or assigning a new Contractor Representative.

2.2. Customer Service Number

The Contractor has specified the phone number below for the State to contact the Contractor Representative. The Contractor Representative must be available for calls during the hours of 7:00 a.m. to 6:00 p.m. EST.

- **Customer Service and Afterhours Number: 1-800-240-4707**
- **Customer Service, Midland Office: 989-839-2311**
- **Customer Service, Oakland: 248-955-4354**

Please Note: The Contractor must have an afterhours phone number available to the State to contact in case of an emergency. The Contractor must respond to calls received within one-hour.

2.3. Work Hours

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

Please Note the following:

- Some state facilities required 24-hour availability, on-call, or call-back shifts.
 - On-call means a Temporary Employee is available to provide assigned duties outside of regular-shift/on-duty hours.
 - Call-back means a Temporary Employee, who is not on-call, is called in to provided assigned duties.
- On-call & call-back compensation will be paid only for time accrued outside of regular-shift hours, and compensations will be paid separately.
- The Contractor will receive both rates at the same time. Each State agency will define shift hours and potential need for on-call/call-back work at the time of work assignment. Please refer to [Schedule B – Pricing](#) for further details.
- The State does not guarantee any minimum number of hours for on-call or call-back shifts.

2.4. Key Personnel

The Contractor must appoint at least 7 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, and respond to State inquiries within 48-hours.

Key Personnel Roles include:

- 2 Contractor Representatives
- 1 Alternate Contractor Representative
- 4 Account Managers - Minimum

The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State’s Project Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. The State may require a 30-calendar day training period for replacement personnel.

Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor’s removal of Key Personnel without the prior written consent of the State is an unauthorized removal (“Unauthorized Removal”). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel’s employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under the **Termination for**

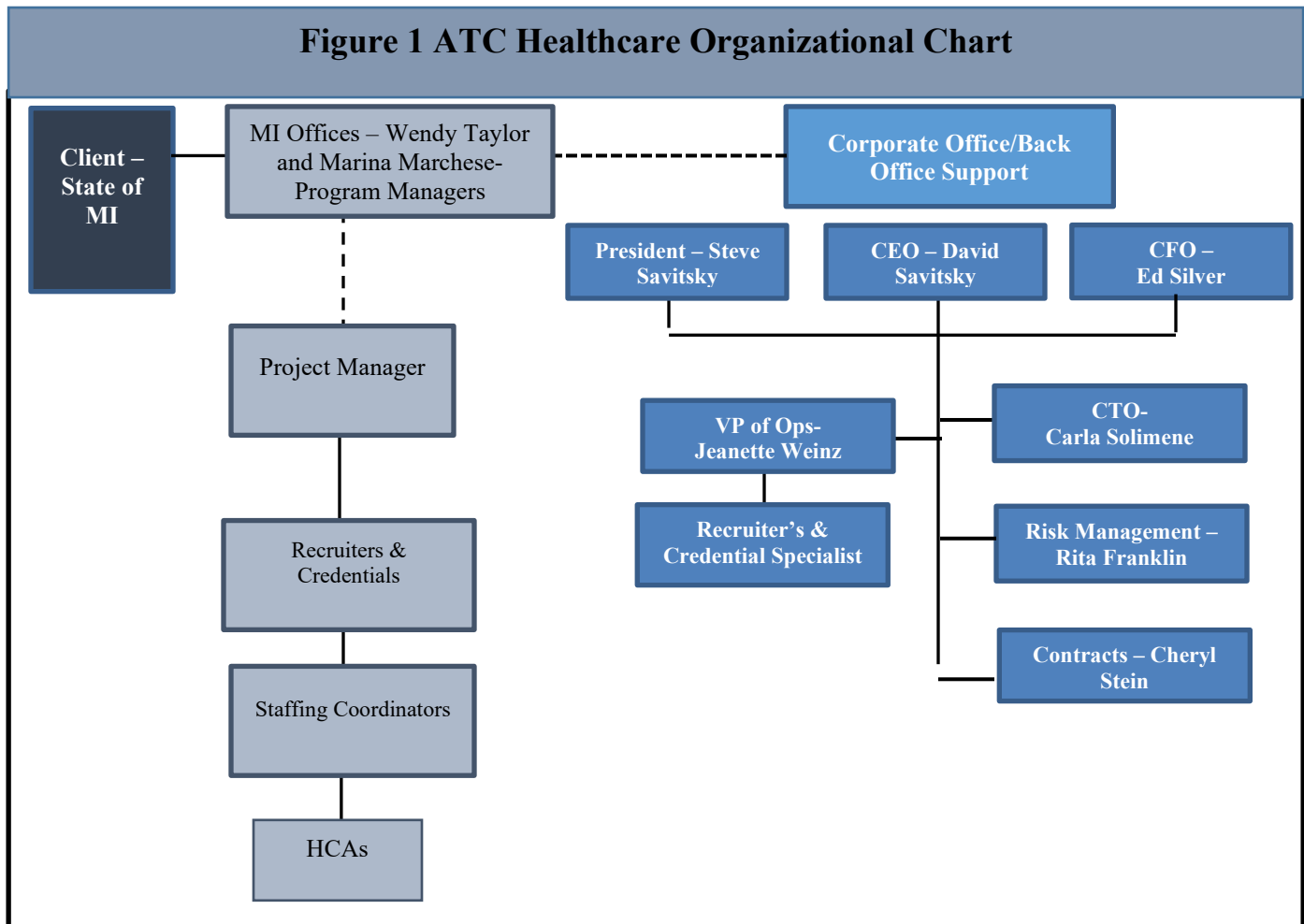
Cause section of the Standard Contract Terms. It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained 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”):

Please refer to Service Level Agreement (SLA), Unauthorized Removal Section for Credit assessment information.

Position	Name	Contact Information
1. Contractor Representative	Wendy Taylor	Phone: 989-839-2311 Email: wtaylor@athealthcare.com
2. Contractor Representative	Marina Marchese	Phone: 248-955-4155 Email: mmarchese@athealthcare.com
3. Alternate Contractor Representative	David Marchese	Phone: 248-955-4155 Email: dmarchese@athealthcare.com
3. Alternate Contractor Representative	Cheryl Stein	Phone: 516-750-1618 Email: cstein@athealthcare.com
4. Account Manager	Kristine Dexter	Provided at time-of-Service Initiation
5. Account Manager	Stacie Litty	
6. Account Manager	Ryan Todd	
7. Account Manager	Diana Sharmazanov	
8. Account Manager	Amanda Gowing	

2.5. Organizational Chart

The Contractor has provided the below organizational chart that details staff members, by name and title, and subcontractors.



2.6. Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors in the future, the Contractor must disclose the following for State approval:

- The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.
- The relationship of the subcontractor to the Contractor.
- Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.
- A complete description of the Contract Activities that will be performed or provided by the subcontractor.
- **Geographically Disadvantaged Business Enterprise Sub-Contractors:**
 If contractors plan to utilize subcontractors to perform more than 20% of the deliverables under this contract, at least 20% of that subcontracted work must be

awarded to Michigan-based Geographically Disadvantaged Business Enterprises (GDBE). Contractor will submit a plan detailing all subcontractors to be used, including the percentage of the work to be done by each. Contractor must inform the State to the name and address of the GDBE, the percentage of the work they will complete, the total amount estimated to be paid to the GDBE, and provide evidence for their qualifications as a GDBE. If contractor cannot find GDBE subcontractors to meet this requirement they must provide reasoning and justification to receive an exemption from this requirement from the State. (Existing business relationships will not be an approved reason for this.)

Please Note: The State reserve the right to approve and/or remove/replace subcontractors and/or staff.

2.7. Security

The Contractor will be subject the following security procedures:

The Contractor must explain any additional security measures in place to ensure the security of State facilities. The State may require the Contractor's personnel to wear State issued identification badges.

The Contractor's staff may be required to make deliveries to or enter State facilities. The

Contractor must:

- (a) explain how it intends to ensure the security of State facilities,
- (b) whether it uses uniforms and ID badges, etc.,
- (c) identify the company that will perform background checks, and
- (d) the scope of the background checks. (Must include criminal history)
- (e) Attached Schedule E - MDOC – Extended Security Requirements

Please Note:

- The State may require the Contractor's personnel to wear State issued identification badges and comply with facility specific dress code requirements. The Contractor must also advise Contracted staff they will be subject to additional facility security measures.
- The Contractor must ensure the Contractor's personnel return the State of Michigan badge to the State's applicable Program Manager or designee within seven calendar days.

2.8. Other Special Requirements

The State will require the following be met as a part of sourcing and placing staff with the State:

- The Contractor must perform Reference Checks, on Staff provided.
- Inform employees that "All Tobacco Products are Prohibited at all Michigan Department of Corrections (MDOC) Facilities." All Tobacco Products must be securely stored outside of MDOC Facilities.
- Ensure that Temporary Employees working in an MDOC Correctional Facility complete a pre-employment physical and drug screen, receive a TB Test (results

must be negative), in addition to the Security requirements outlined in [Section 2.7, Security](#).

- **Use of Alcohol or Controlled Substance.** Contractors are prohibited from consuming alcohol or any controlled substance while on duty or on breaks. Contractors who report for duty with alcohol on his/her breath or when suspected of being under the influence of alcohol or a controlled substance, may be immediately removed from providing services. Contractors are subject to random, reasonable suspicion, pre-appointment, post-accident, and follow-up drug and alcohol testing protocol.
- The Contractor must inform Temporary Employees working in an MDOC Correctional Facility that they may need to provide contract services to transgender and non-gender conforming offenders.
- Inform employees if they will have direct contact with inmates of MDOC and/or patients of the Michigan Department of Health and Human Services (MDHHS), mental health patients.
- The Contractor must comply with IRS Publication 1075 – including Exhibit 7, Safeguarding Contract Language and the Michigan Department of Treasury Safeguard Requirements of Confidential Tax Data, please refer to [Schedule D – 1075 Safeguarding Contract Language](#).
- Temporary Employees working remotely must be in compliance with all State of Michigan hiring agency’s remote work policies that are applicable to the Contractor’s Temporary Employees as determined by the hiring agency and set forth in a signed remote work agreement for Contractors. It is the responsibility of the hiring Agency (the Contractor) to monitor compliance.

Upon Contractor’s completion of work, termination, or departure, per Section 1 of the Standard Contract Terms, the Contractor is to return State issued resources. The State reserves the right to seek reimbursement from the Contractor for all resources not returned or not returned in the same condition as when the State issued them. A reasonable reimbursement amount will be determined by the hiring Agency (the State).

2.9. MDOC Vendor Handbook

The Contractor will require all its employees working inside an MDOC correctional facility to read and sign the MDOC Vendor Handbook (Schedule F) upon award of Contract. The purpose of the MDOC Vendor Handbook is to provide the Contractor with general information regarding basic requirements of working within the MDOC, provide notice of work rules, and consequences of rule violations. The Contractor’s Temporary Employees will read and sign the MDOC Vendor Handbook during their MDOC initial training.

2.10. MDOC – Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. § 15601

- A. The Contractor and the Contractor Personnel must comply with the Final Rule implementing PREA, all applicable PREA standards (Schedule G) and the agency’s policies. The Contractor and Contractor Personnel must make itself familiar with and at all times must observe and comply with all PREA regulations

that in any manner affect the performance under this Contract. Failure to comply with the PREA standards and related policies of the MDOC will be considered a breach of contract and may result in termination of the contract.

- B.** Contract Personnel who may have contact with prisoners must complete PREA training prior to entrance in any MDOC Facility and any other training as determined by the MDOC. Upon completion, Contractor Personnel must submit a signed memorandum to the Contract Administrator documenting completion of the training and date of completion.
- C.** As is deemed necessary, the State's Contract Monitor or Program Manager will provide the Contractor with current copies of all PREA documents via email. Any revisions to the documents will be emailed to the Contractor throughout the Contract period, and the Contractor must comply with all documentation provided.

2.11. MDOC - Overfamiliarity/Unauthorized Contact

Overfamiliarity is strictly prohibited. Overfamiliarity is defined as, establishing a friendship, mutual attraction or intimate relationship with an offender.

Examples of overfamiliarity may include, but are not limited to:

- 1) Conduct which has resulted in or is likely to result in intimacy; a close personal or non-work-related association,
- 2) Being at the residence of an offender,
- 3) Being at the residence of an offender's family,
- 4) Giving or receiving non-work-related letters, messages, money, personal mementos, pictures, telephone numbers, to or from an offender or a family member of a listed visitor of an offender,
- 5) Exchanging hugs with an offender,
- 6) Dating or having sexual relations with an offender, etc.

Contact with offenders beyond program requirements, accepting items, offers of assistance or services are prohibited. Contract staff and volunteers must have no physical contact or close proximity beyond socially acceptable personal space unless same sex residential security staff is conducting pat downs. Any exceptions must have prior written approval of the MDOC Program Manager and the MDOC Contract Manager.

MDOC has the authority to remove Contract staff who are overfamiliar with MDOC offenders, parolees, and probationers from providing services under the Contract.

2.12. MDOC – American Disabilities Act

- A.** The Contractor must comply with the Americans with Disabilities Act (ADA) and must notify the designated MDOC Program Manager within 24 hours of any request for reasonable accommodation for an offender.
- B.** The Contractor must comply with ADA and must notify the designated MDOC Contract Manager within 24 hours of any request for reasonable accommodation made by an employee of the Contractor.

3. Project Management

3.1. Project Plan

The Contractor will carry out this project under the direction and control of the Program Manager. Within 30 calendar days of the Effective Date, the Contractor must submit a final project plan to the Program Manager for approval. The plan must include:

- (a) the Contractor's organizational chart with names and title of personnel assigned to the project, which must align with the staffing stated in accepted proposals; and
- (b) the project breakdown showing sub-projects, tasks, timeline, and resources required.
- (c) a description of how the proposed project plan will be implemented, and resources that would be required for implementation of service to the State.

Please Note: The State reserves the right to request Project Plans be specialized for each Agency – if deemed necessary. The Contractor must work with the State to implement the approved Project Plan, after Contract Award.

3.2. Meetings

The Contractor must attend the following meetings:

- Kick-off meeting within 30-calendar days of the Contract Award Date or Contract Effective Date depending on the Agency request
 - Meetings will be scheduled by the State Agency at a mutually agreed upon date and time
- Weekly/Bi-weekly/Monthly implementation meetings – if applicable
- Weekly review/status meetings as requested by the State
 - This meeting will be held between the Contractor's Program Manager(s) and the applicable State Agency Program Manager(s) to review process and performance of Contract activities, or Contract transition/implementation.
 - Other Requested Reason(s).
- Quarterly Review meetings – if applicable
- Any other meetings as deemed necessary

3.3. Reporting

The Contractor must maintain and submit, to the Program Manager and applicable designees, reports outlined in this Section and Subsections, which meet the following specifications:

- All reports must be submitted in one of the following formats: Word, Excel, or PDF. Unless otherwise specified and approved by the State.
- The State reserves the right to request additional Reports and Content, and/or Change Reports and Report Content.
 - The Contractor may be required to submit additional Reports, and/or, Change Reports and Report Content.
 - The State may provide reporting templates to the Contractor for mandatory use.
- When deemed necessary, The Contractor must work with the State to develop Reporting Templates. All templates must first be approved by the State's applicable Program Manager prior to implementation and use.

A. Unsatisfactory Performance Report

The Contractor must maintain a record of all Unsatisfactory Performance complaints received, including any investigations filed against a Temporary Staff by the State. Reports must include, but not limited to, the following information:

- Temporary Staff Name
- Work Location and Agency
- Job Classification and Summary of Duties
- Duration of Employment
 - Start Date
 - Initial End Date
 - Date of Termination
- Summary of Unsatisfactory Performance
 - Sighting specific instances i.e., violation or protocol, procedures, rules/regulations, etc.
- Summary of Correction Action taken by the Agency Supervisor

Report information will be provided to the Contractor by the State's applicable Program Manager(s), and Site Supervisor(s). The Contractor must provide a standardized template to the State to document Unsatisfactory Performance, upon request.

Please Note: The Contractor may not place a Temporary Staff with the State who has had 2 valid Unsatisfactory performance complaints filed against them by the State.

A final report must be provided to the State no later than 15-calendar days after the closure of an incident, closure is considered when a resolution to complaint has been determined. Additionally, completed report copies must be provided to the State upon request, and be provided to the State within 5-business days after receipt of request.

B. Monthly Reporting

Due: 15th day of the following month of Service.

Content: Reports must include, but limited to:

- Number and type of Temporary Staff placed at each facility – broken down by requesting Agency, including:
 - Temporary Staff Start date and projected end date
 - Supervisor/Program Manager Name
- Number of hours worked to date by each Temporary Staff employee.
 - Hours must be broken down by pay period and totaled for the month.
 - Indicate how many available hours each Temporary Staff employee has left for their assignment with the State.

Please Note: The Contractor must inform the applicable State Program Manager of Temporary Staff who is reaching the end of their specified approved hours 40-hours prior to the conclusion of their work assignment. Notice must be given prior to the Monthly Reporting Due Date when applicable.

C. Quarterly Usage Report

Due: 15th day of the following quarter

Content: Reports must include, but not be limited to:

- Compiled data from the quarter’s usage months, as specified in the Monthly Reporting Section above.
- Type of position(s), and number of Staff requested by State Agency.
- Number of Staff referred to the State and number placed with the State by position
- Reason why a position could not be filled – if applicable
 - Pay too low, location, work times, etc.
- Revenue received from the State broken down by Agency

Please Note: As defined in Section 3.3D - Quarterly Unpaid Invoice Report, the following documentation must be submitted for all outstanding invoice amounts due to the Contractor, by the 15th of the next quarter. The Contractor must not submit unpaid invoice information on Standard Monthly Invoices, as defined in the Monthly Invoice Section.

D. Quarterly Unpaid Invoice Report – Title outstanding Invoice Summary

At the end of each quarter the Contractor should submit an Outstanding Invoice Summary to the Agency Program Manager – The Invoice Summary should include:

- Outstanding Delivery Order DO #
 - Outstanding Invoice Number’s
- Temporary Staff – Employee Name
- Agency/Department & Work Location
- Employee Status – Current or Previous
 - Employee Start Date and End Date
- Supervisor/Program Manager Name
- Total Outstanding Invoice Amount(s)
 - Including Supporting Documents i.e. Unpaid Invoices

E. Yearly Closeout Report

Due: 15th day of the following year

Content: Reports must include, but not limited to:

- Summary of Quarterly Usage Reports
- Summary of Unsatisfactory Performance Records
- Outstanding Invoice Summary – Summary should be presented in the same manner as indicated in the Quarterly Usage Report Section.

4. Pricing

4.1. Price Term

Pricing is firm for the entire length of the Contract. Please refer to Schedule B Pricing for further information.

4.2. Price Changes

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.

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.

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.

4.3 Additional Pricing Notes

The Contractor must not charge their employees who are placed with the State a fee for employment placement, and advise all employees placed with the State that their assignment of employment is on a “No Work, No Pay” basis.

A. Temporary Employment Price Breakdown

The Contractor must provide upon request what factors are included in the “mark-up” that equates to the Billable Rate, that will be charged to the State.

- Please specify what type of employee benefits are provided (i.e., Health Insurance, paid holidays, sick leave, vacation time, 401(k), etc.)
- The Mark-up must cover, but not limited to the following expenses:
 - Employee benefits
 - Unemployment and Liability Insurance

B. Overtime

Some extenuating circumstances may require contracted staff to work overtime. In such an event, the Contractor will receive a written notice* of approval from the Agency’s Program Manager or designee.

When overtime is approved, the Contractor must compensate the Temporary Staff Employee at a rate of 1½ times the Contracted rate, when the Temporary Staff Employee completed more than 40-hours in one-week.

Please Note: The State will not pay overtime that has not been previously approved/authorized by the requesting Agency’s Program Manager or designee. It is the responsibility of the State’s Program Manager or designee who will be approving the Temporary Staff employee timesheets to communicate overtime need requests and approvals to the Program Manager who will communicate a written notice* to the Contractor.

***Written notice** – will be presented to the Contractor via email, detailing the Temporary Staffing employee(s) who are permitted to work beyond the 40-hours per a given week. This communication will also specify the number of hours beyond the 40-hours that will be completed by the Temporary Staff Employee; along with the approving Program and Site Manager(s) name(s).

C. Holiday Pay

The Contractor must provide temporary employment services (employees) on an as-needed-basis. This need may include weekends, second or third shift, and/or official State Holidays. Holiday pay will be paid at the same rate (1½ times) the Contracted rate.

All holiday pay, and work schedules must be pre-approved by the Agency’s Program Manager or designee.

5. Ordering

5.1. Authorizing Document

The appropriate authorizing document for the Contract will be a Delivery Order (DO).

6. Invoice and Payment

6.1. Invoice Requirements

- Invoices will be paid in accordance with Section 20, of the Standard Contract Terms.
- All invoices should be submitted monthly, unless otherwise specified by the State Agency, for work performed during the current billing period and cannot contain pervious unpaid invoice information.
- The Contractor must submit a separate Quarterly Unpaid Invoice Summary as defined in Section 3.3D, for all previously unpaid invoices, with accompanying supporting documentation.
 - State Agencies reserve the right to request Quarterly Unpaid Invoice Summary information at any time.
- When requested by the Agency, invoices should be generated per Temporary Staff Employee.
- MDOC ONLY – INVOICES must be submitted electronically to:
MDOCAP@michigan.gov
- MDHHS ONLY – INVOICES must be submitted electronically to: MDHHS-CPC@michigan.gov
- Treasury ONLY – INVOICES must be submitted electronically to:
Treas_FADinvoices@michigan.gov
- DNR ONLY – INVOICES: TBD
- Other, Agency email addresses will be provided upon service agreement between the Contractor and the State.

All invoices submitted to the State must include:

- (a) Unique Vendor Generated Invoice Number
- (b) State of Michigan Delivery Order (DO) #
- (c) Invoice Date
- (d) Project Reference information:
 - Temporary Employee Name,
 - Position,
 - Work Location
 - Service Dates
 - Scheduled Shift Hours
- (e) Unit Price per Temporary Employee
 - Hourly Rate of Pay
 - Billable Rate of Pay

- Holiday Pay – if applicable
- (f) Description of the Contract Activities (service and/or product provided)
- (g) Service Level Credits – if applicable
- (h) Total Price

The State may require alterations to invoice detail at any point throughout the term of the Contract. If applicable, overtime, holiday pay, and travel miles must be included on invoices as separate lines for each:

- (i) Overtime hours (including rate of pay and billable rate, hours worked, date and time)
- (j) Holiday hours (including rate of pay and billable rate, hours worked, date and time)
- (k) Travel mileage (including the number of miles traveled daily, with corresponding total for the pay period) travel will be paid for at the State’s current rate. Any travel must be pre-approved by the State’s applicable Program Manager or Designee.
- (l) Training Reimbursement hours (including rate of pay identified by the applicable agency, hours worked date(s) and times(s). For MDOC, initial training will be compensated based on the applicable MDOC Training Plan, not per hour.

Please Note:

- Overtime and holiday pay will not be paid unless pre-approved by the applicable Program Manager.
- Unauthorized overtime and holiday hours will be paid at the Contracted list price by the State.
- Travel expenses (mileage) will not be paid for by the State unless required by the State for position fulfillment.

7. Service-Level Agreements (SLAs)

All Contract Activities must be delivered within the timeframes specified below. The report of order data is pursuant to Section 2, Notices, of the Standard Contract Terms.

Service Level Agreements for this Contract will be as follows:

A. The Contractor must respond to State inquires for service(s) within 3-business days of the State’s request. If response for inquires is not received within 3-business days, the State reserves the right to request services from an alternate source.

A \$500.00 credit will be applied per occurrence, that the Contractor fails to respond within 3-business days, credits will be applied to the requesting State agencies next invoice balance.

B. Unsatisfactory Performance Removal and Replacement – The State requires that staff/employee identified as being unsatisfactory be removed from their assignment within 12-hours of notice, unless otherwise specified, from their service with the State.

Please Note: State Agencies may place an immediate stop order for some temp staff without the mutual consent of the Contractor. In such an occurrence, this SLA would not be applicable.

A \$500.00 credit will be applied per occurrence, that the Contractor fails to remove employee(s) within 12-hours of performance removal notice. A \$500.00 credit will be applied for each 12-hour window thereafter.

- C.** The Contractor must monitor hours worked by each Temporary Employee and inform the State's applicable Program Manager of all employees who is reaching the end of their specified approved hours, 40-hours prior to the conclusion of their work assignment.

If necessary, notice must be given prior to the Monthly Report due date if/when applicable.

A \$500.00 credit will be applied per occurrence, that the vendor fails to provide notice to the State 40-hours prior to the conclusion of a Temporary Employees' service – credits will be applied to the State's next invoice balance.

D. Key Personnel Removal Credits

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.

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.

Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed above: (i) 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 (ii) may, at the State's option, be credited or set off against any fees or other charges payable to Contractor under this Contract.

E. Reports

- Unsatisfactory Report – Final report must be provided to the State no later than the 15-calendar days after the closure of an incident.
 - Copies of completed reports must be provided to the State within 5-business days after the request.
- Monthly Report – Due the 15th day of the following service month.

- Quarterly Report – Due the 15th day of the following quarter.
 - Should include complied data from monthly reporting
 - Revenue earned broken down by Agency
 - Unpaid invoices with totals and supporting documentation
- Yearly Closeout Report – Due the 15th day of the following year

A \$500.00 credit will be applied per occurrence the Contractor fail to provide reports within the specified timeframes. A credit(s) can be avoided by giving prior notice to the State for any anticipated “later” report submissions.

8. Liquidated Damages

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

SCHEDULE B - PRICING

Contract Number 23000000215

Statewide Temporary Employment Staffing Services

1. Pricing must include all costs, including but not limited to any one-time or set-up charges, fees and potential costs that Contractor may charge the State (e.g. shipping and handling, per piece pricing and palletizing).
2. All staffing sourced under this Contract will be on a “no work, no pay basis” meaning staff will only be compensated for actual service hours completed.
3. Temporary Staffing placed with the Michigan Department of Corrections (MDOC) will be reimbursed for training and orientation hours completed at the standard hourly billing rate noted on Schedule B.
4. Temporary Staffing placed with the Michigan Department of Health and Human Services (MDHHS) will be reimbursed for training and orientation hours completed at the standard hourly rate determined between the State and the Contractor.
5. No quick payment terms apply.
6. Additional positions may be provided during the term of the Contract, as needed.
7. Mark-up% provided in Schedule B – Pricing will be used to determine Position’s Billable Rate, based off Positions Pay Rate.

Pricing for Contract Base Years 1 - 3

	Hourly Rate of Pay (Range)		Billable Rate (Range)		Mark-up%	
	Low	High	Low	High	Low	High
1. Accounting Technician	\$ 19.75	\$ 22.00	\$ 28.24	\$ 31.46	43.0%	43.0%
2. Analyst	\$ 21.50	\$ 23.00	\$ 30.75	\$ 32.89	43.0%	43.0%
3. Administrative Assistant	\$ 18.00	\$ 20.00	\$ 25.74	\$ 28.60	43.0%	43.0%
4. Bookkeeper	\$ 18.75	\$ 20.00	\$ 26.81	\$ 28.60	43.0%	43.0%
5. Buyer	\$ 21.00	\$ 23.00	\$ 30.03	\$ 32.89	43.0%	43.0%
6. Calculations Assistant	\$ 19.50	\$ 21.00	\$ 27.89	\$ 30.03	43.0%	43.0%
7. Commercial Driver, Licensed (CDL)	\$ 22.00	\$ 24.00	\$ 31.46	\$ 34.32	43.0%	43.0%
8. Communications Assistant	\$ 14.00	\$ 15.30	\$ 20.02	\$ 21.88	43.0%	43.0%
9. Contact Tracer	\$ 22.00	\$ 24.00	\$ 31.46	\$ 34.32	43.0%	43.0%
10. Food Services (Cook, kitchen staff, & waiting & bussing, etc.)						
a. Cook	\$ 15.95	\$ 17.00	\$ 22.81	\$ 24.31	43.0%	43.0%
b. Kitchen Staff	\$ 13.75	\$ 15.00	\$ 19.66	\$ 21.45	43.0%	43.0%
c. Waiting & Bussing Staff	\$ 13.75	\$ 15.00	\$ 19.66	\$ 21.45	43.0%	43.0%
d. Other	TBD		TBD		43.0%	43.0%
11. Data Coding Operator – Basic, Intermediate & Advanced						
a. Basic	\$ 18.00	\$ 20.00	\$ 25.74	\$ 28.60	43.0%	43.0%
b. Intermediate	\$ 23.00	\$ 25.00	\$ 32.89	\$ 35.75	43.0%	43.0%
c. Advanced	\$ 27.00	\$ 29.00	\$ 38.61	\$ 41.47	43.0%	43.0%
12. Departmental Technician	\$ 17.95	\$ 19.00	\$ 25.67	\$ 27.17	43.0%	43.0%
13. Dietary Aid	\$ 13.00	\$ 14.25	\$ 18.59	\$ 20.38	43.0%	43.0%
14. Dietary Cook	\$ 14.00	\$ 16.25	\$ 20.02	\$ 23.24	43.0%	43.0%
15. Education Research Consultant	\$ 28.00	\$ 30.00	\$ 40.04	\$ 42.90	43.0%	43.0%
16. Environmental Services	\$ 15.75	\$ 17.00	\$ 22.52	\$ 24.31	43.0%	43.0%
17. Executive Secretary – Advanced	\$ 18.00	\$ 20.00	\$ 25.74	\$ 28.60	43.0%	43.0%
18. General Office Assistant – Basic, Intermediate & Advanced						
a. Basic	\$ 14.00	\$ 14.82	\$ 20.02	\$ 21.19	43.0%	43.0%

b. Intermediate	\$ 16.75	\$ 17.82	\$ 23.95	\$ 25.48	43.0%	43.0%
c. Advanced	\$ 18.00	\$ 20.00	\$ 25.74	\$ 28.60	43.0%	43.0%
19. General Laborer	\$ 17.00	\$ 19.75	\$ 24.31	\$ 28.24	43.0%	43.0%
20. Grant Specialist	\$ 16.85	\$ 18.85	\$ 24.10	\$ 26.96	43.0%	43.0%
21. Human Research Manager	\$ 28.20	\$ 29.36	\$ 40.33	\$ 41.98	43.0%	43.0%
22. Janitorial (Janitor) Services	\$ 14.20	\$ 15.20	\$ 20.31	\$ 21.74	43.0%	43.0%
23. Legal Personnel – Non-Attorney	\$ 18.00	\$ 20.00	\$ 25.74	\$ 28.60	43.0%	43.0%
24. Licensed Engineer – Specialist	\$ 43.75	\$ 45.30	\$ 62.56	\$ 64.78	43.0%	43.0%
25. Program Consultant	\$ 24.72	\$ 26.62	\$ 35.35	\$ 38.07	43.0%	43.0%
26. Receptionist	\$ 13.82	\$ 14.82	\$ 19.76	\$ 21.19	43.0%	43.0%
27. Secretary – Basic, Intermediate & Advanced						
a. Basic	\$ 14.00	\$ 14.82	\$ 20.02	\$ 21.19	43.0%	43.0%
b. Intermediate	\$ 16.75	\$ 17.82	\$ 23.95	\$ 25.48	43.0%	43.0%
c. Advanced	\$ 18.00	\$ 20.00	\$ 25.74	\$ 28.60	43.0%	43.0%
28. Skilled Worker	\$ 18.00	\$ 19.75	\$ 25.74	\$ 28.24	43.0%	43.0%
29. Maintenance Mechanic	\$ 21.00	\$ 23.00	\$ 30.03	\$ 32.89	43.0%	43.0%
30. Specialist – Miscellaneous, to be defined and priced upon request.	TBD		TBD		43.0%	43.0%
31. Storekeeper	\$ 21.00	\$ 23.00	\$ 30.03	\$ 32.89	43.0%	43.0%
32. Substitute Teacher						
a. Automotive	\$ 15.00	\$ 17.00	\$ 21.45	\$ 24.31	43.0%	43.0%
b. Cabinetmaking	\$ 15.00	\$ 17.00	\$ 21.45	\$ 24.31	43.0%	43.0%
c. Certified Nurse Assistant	\$ 15.00	\$ 17.00	\$ 21.45	\$ 24.31	43.0%	43.0%
d. Culinary Arts	\$ 15.00	\$ 17.00	\$ 21.45	\$ 24.31	43.0%	43.0%
e. Custodial	\$ 15.00	\$ 17.00	\$ 21.45	\$ 24.31	43.0%	43.0%
f. Customer Service	\$ 15.00	\$ 17.00	\$ 21.45	\$ 24.31	43.0%	43.0%
g. Electronics	\$ 15.00	\$ 17.00	\$ 21.45	\$ 24.31	43.0%	43.0%
h. Graphic Communications	\$ 15.00	\$ 17.00	\$ 21.45	\$ 24.31	43.0%	43.0%
i. Grounds Maintenance	\$ 15.00	\$ 17.00	\$ 21.45	\$ 24.31	43.0%	43.0%
j. Machine Technology	\$ 15.00	\$ 17.00	\$ 21.45	\$ 24.31	43.0%	43.0%

k. Office Automation	\$ 15.00	\$ 17.00	\$ 21.45	\$ 24.31	43.0%	43.0%
l. Pharmacy Technician	\$ 15.00	\$ 17.00	\$ 21.45	\$ 24.31	43.0%	43.0%
m. Retail Marketing	\$ 15.00	\$ 17.00	\$ 21.45	\$ 24.31	43.0%	43.0%
n. Weatherization	\$ 15.00	\$ 17.00	\$ 21.45	\$ 24.31	43.0%	43.0%
o. Other	TBD		TBD		43.0%	43.0%
33. Word Processor Operator	\$ 15.00	\$ 17.00	\$ 21.45	\$ 24.31	43.0%	43.0%
34. Miscellaneous – Positions Not Defined	TBD		TBD		43.0%	43.0%

Pricing for Contract Option Years 1 - 3

	Hourly Rate of Pay (Range)		Billable Rate (Range)		Mark-up%	
	Low	High	Low	High	Low	High
1. Accounting Technician	\$ 20.55	\$ 22.89	\$ 29.38	\$ 32.73	43.0%	43.0%
2. Analyst	\$ 22.37	\$ 23.93	\$ 31.99	\$ 34.22	43.0%	43.0%
3. Administrative Assistant	\$ 18.73	\$ 20.81	\$ 26.78	\$ 29.67	43.0%	42.6%
4. Bookkeeper	\$ 19.51	\$ 20.81	\$ 27.90	\$ 29.76	43.0%	43.0%
5. Buyer	\$ 21.85	\$ 23.93	\$ 31.24	\$ 34.22	43.0%	43.0%
6. Calculations Assistant	\$ 20.29	\$ 21.85	\$ 29.01	\$ 31.24	43.0%	43.0%
7. Commercial Driver, Licensed (CDL)	\$ 22.89	\$ 24.97	\$ 32.73	\$ 35.71	43.0%	43.0%
8. Communications Assistant	\$ 14.57	\$ 15.92	\$ 20.83	\$ 22.76	43.0%	43.0%
9. Contact Tracer	\$ 22.89	\$ 24.97	\$ 32.73	\$ 35.71	43.0%	43.0%
10. Food Services (Cook, kitchen staff, & waiting & bussing, etc.)						
a. Cook	\$ 16.59	\$ 17.69	\$ 23.73	\$ 25.29	43.0%	43.0%
b. Kitchen Staff	\$ 14.31	\$ 15.61	\$ 20.46	\$ 22.32	43.0%	43.0%
c. Waiting & Bussing Staff	\$ 14.31	\$ 15.61	\$ 20.46	\$ 22.32	43.0%	43.0%
d. Other	TBD		TBD		43.0%	43.0%
11. Data Coding Operator – Basic, Intermediate & Advanced						
a. Basic	\$ 18.73	\$ 20.81	\$ 26.78	\$ 29.76	43.0%	43.0%
b. Intermediate	\$ 23.93	\$ 26.01	\$ 34.22	\$ 37.19	43.0%	43.0%
c. Advanced	\$ 28.09	\$ 30.17	\$ 40.17	\$ 43.15	43.0%	43.0%
12. Departmental Technician	\$ 18.68	\$ 19.77	\$ 26.71	\$ 28.27	43.0%	43.0%
13. Dietary Aid	\$ 13.53	\$ 14.83	\$ 19.34	\$ 21.20	43.0%	43.0%
14. Dietary Cook	\$ 14.57	\$ 16.91	\$ 20.83	\$ 24.18	43.0%	43.0%
15. Education Research Consultant	\$ 29.13	\$ 31.21	\$ 41.66	\$ 44.63	43.0%	43.0%

16. Environmental Services	\$ 16.39	\$ 17.69	\$ 23.43	\$ 25.29	43.0%	43.0%
17. Executive Secretary – Advanced	\$ 18.73	\$ 20.81	\$ 26.78	\$ 29.76	43.0%	43.0%
18. General Office Assistant – Basic, Intermediate & Advanced						
a. Basic	\$ 14.57	\$ 15.42	\$ 20.83	\$ 22.05	43.0%	43.0%
b. Intermediate	\$ 17.43	\$ 18.54	\$ 24.92	\$ 26.51	43.0%	43.0%
c. Advanced	\$ 18.73	\$ 20.81	\$ 26.78	\$ 29.76	43.0%	43.0%
19. General Laborer	\$ 17.69	\$ 20.55	\$ 25.29	\$ 29.38	43.0%	43.0%
20. Grant Specialist	\$ 17.53	\$ 19.61	\$ 25.07	\$ 28.04	43.0%	43.0%
21. Human Research Manager	\$ 29.34	\$ 30.55	\$ 41.96	\$ 43.68	43.0%	43.0%
22. Janitorial (Janitor) Services	\$ 14.77	\$ 15.81	\$ 21.13	\$ 22.61	43.1%	43.0%
23. Legal Personnel – Non-Attorney	\$ 18.73	\$ 20.81	\$ 26.78	\$ 29.76	43.0%	43.0%
24. Licensed Engineer – Specialist	\$ 45.52	\$ 47.13	\$ 65.09	\$ 67.40	43.0%	43.0%
25. Program Consultant	\$ 25.72	\$ 27.70	\$ 36.78	\$ 39.60	43.0%	43.0%
26. Receptionist	\$ 14.38	\$ 15.42	\$ 20.51	\$ 22.05	42.6%	43.0%
27. Secretary – Basic, Intermediate & Advanced						
a. Basic	\$ 14.57	\$ 15.42	\$ 20.83	\$ 22.05	43.0%	43.0%
b. Intermediate	\$ 17.43	\$ 18.54	\$ 24.92	\$ 26.51	43.0%	43.0%
c. Advanced	\$ 18.73	\$ 20.55	\$ 26.78	\$ 29.76	43.0%	44.8%
28. Skilled Worker	\$ 18.73	\$ 20.55	\$ 26.78	\$ 29.38	43.0%	43.0%
29. Maintenance Mechanic	\$ 21.85	\$ 23.93	\$ 31.24	\$ 34.22	43.0%	43.0%
30. Specialist – Miscellaneous, to be defined and priced upon request.	TDB		TDB		43.0%	43.0%
31. Storekeeper	\$ 21.85	\$ 23.93	\$ 31.25	\$ 34.22	43.0%	43.0%
32. Substitute Teacher eacher						
b. Automotive	\$ 15.61	\$ 17.69	\$ 22.32	\$ 25.29	43.0%	43.0%
c. Cabinetmaking	\$ 15.61	\$ 17.69	\$ 22.32	\$ 25.29	43.0%	43.0%
d. Certified Nurse Assistant	\$ 15.61	\$ 17.69	\$ 22.32	\$ 25.29	43.0%	43.0%
e. Culinary Arts	\$ 15.61	\$ 17.69	\$ 22.32	\$ 25.29	43.0%	43.0%
f. Custodial	\$ 15.61	\$ 17.69	\$ 22.32	\$ 25.29	43.0%	43.0%
g. Customer Service	\$ 15.61	\$ 17.69	\$ 22.32	\$ 25.29	43.0%	43.0%

h. Electronics	\$ 15.61	\$ 17.69	\$ 22.32	\$ 25.29	43.0%	43.0%
i. Graphic Communications	\$ 15.61	\$ 17.69	\$ 22.32	\$ 25.29	43.0%	43.0%
j. Grounds Maintenance	\$ 15.61	\$ 17.69	\$ 22.32	\$ 25.29	43.0%	43.0%
k. Machine Technology	\$ 15.61	\$ 17.69	\$ 22.32	\$ 25.29	43.0%	43.0%
l. Office Automation	\$ 15.61	\$ 17.69	\$ 22.32	\$ 25.29	43.0%	43.0%
m. Pharmacy Technician	\$ 15.61	\$ 17.69	\$ 22.32	\$ 25.29	43.0%	43.0%
n. Retail Marketing	\$ 15.61	\$ 17.69	\$ 22.32	\$ 25.29	43.0%	43.0%
o. Weatherization	\$ 15.61	\$ 17.69	\$ 22.32	\$ 25.29	43.0%	43.0%
p. Other	TBD		TBD		43.0%	43.0%
32. Word Processor Operator	\$ 15.61	\$ 17.69	\$ 22.32	\$ 25.29	43.0%	43.0%
33. Miscellaneous – Positions Not Defined	TBD		TBD		43.0%	43.0%

SCHEUDLE C – POSITIONS, EXTENDED LIST

1. Accounting Technician
2. Analyst
3. Administrative Assistant
4. Bookkeeper
5. Buyer
6. Calculations Assistant
7. Commercial Driver, Licensed (CDL)
8. Communications Assistant
9. Contact Tracer
10. Food Services (Cook, kitchen staff, & waiting & bussing, etc.)
11. Data Coding Operator – Basic, Intermediate & Advanced
12. Departmental Technician
13. Dietary Aid
14. Dietary Cook
15. Education Research Consultant
16. Environmental Services
17. Executive Secretary – Advanced
18. General Office Assistant – Basic, Intermediate & Advanced
19. General Laborer
20. Grant Specialist
21. Human Research Manager
22. Janitorial (Janitor) Services
23. Legal Personnel – Non-Attorney
24. Licensed Engineer – Specialist
25. Program Consultant
26. Receptionist
27. Secretary – Basic, Intermediate & Advanced
28. Skilled Worker
29. Maintenance Mechanic
30. Specialist – Miscellaneous
31. Storekeeper
32. Substitute Teacher
 - a. Automotive
 - b. Cabinetmaking
 - c. Certified Nurse Assistant
 - d. Culinary Arts
 - e. Custodial
 - f. Customer Service
 - g. Electronics
 - h. Graphic Communications
 - i. Grounds Maintenance
 - j. Machine Technology
 - k. Office Automation
 - l. Pharmacy Technician
 - m. Retail Marketing
 - n. Weatherization
 - o. Other
13. Word Processor Operator
14. Miscellaneous – Positions Not Defined

SCHEUDLE C, EXHIBIT 1 – JOB DUTIES & RESPONSIBILITIES

1. ACCOUNTING TECHNICIAN

- i. Provide general assistance and support to senior licensed accounting staff.
- ii. Review completeness and ensure proper controls in accordance with generally accepted accounting practices.
- iii. Provide information on financial aspects of state programs to local government agencies, including monitoring revenues, expenditures, budgeting, and reporting requirements.
- iv. Review and analyze journal vouchers and formal accounting records in accordance with accounting practices and procedures.
- v. Reconcile control records of such financial transactions as revenues, expenditures, allotments, receipts, assets, encumbrances, and bank transactions.

VI. PROCESS APPLICATIONS FOR GRANTS AND REIMBURSEMENT OF FUNDS BY REVIEWING AND VERIFYING SUPPORTING DOCUMENTS.

2. ANALYST

- i. The Analyst will be responsible to complete or oversee a variety of professional research and analysis assignments for the purpose of evaluation, assessment, planning, development and implementation of various departmental programs or services
- ii. The analyst class will consist of perform professional services in the following classification areas: Accountant, Auditor, Departmental Analyst, and Financial Analyst.
- iii. Researches, collects, consolidates, and analyzes and maintains program data necessary to meet program reporting and evaluation requirements, and the goals of the agency program or service.
- iv. Establishes, administers and evaluates programs, recommends program policies and procedures. Designs forms and evaluates documents and applications for possible inclusion in programs
- v. Designs and conducts surveys or special studies to assist in planning, implementing, and evaluating programs and services.
- vi. Conducts research and analysis, prepares reports and conducts correspondence related to the work activities of the departmental program area.
- vii. Interprets existing and proposed laws, policies, and procedures as they relate to a program or service area. Proposes and develops new policy materials and supporting instructions in a program area.
- viii. Designs, implements and documents personal computer based data collection, processing and reporting systems.
- ix. Uses and maintains computer databases to record and analyze data on program and service activities. Evaluates contracts documents for compliance with departmental policies and procedures.
- x. Recommends criteria, standards, and guidelines to assess agencies

programs and determines their compatibility with the objectives and priorities of the state program area.

3. ADMINISTRATIVE ASSISTANT

- i. Selects and assigns staff, ensuring equal employment opportunity in hiring and promotion.
- ii. Coordinates activities by scheduling work assignments, setting priorities, and directing the work of subordinate employees.
- iii. Evaluates and verifies employee performance through the review of completed work assignments and work techniques.
- iv. Identifies staff development and training needs and ensures that training is obtained.
- v. Ensures proper labor relations and conditions of employment are maintained.
- vi. Maintains records, prepares reports, and composes correspondence relative to the work.
- vii. Executes plans, policies, and programs in business and financial affairs, property and equipment, supplies, housekeeping, clothing, food service, laundry, stores, forms, buildings and grounds maintenance, engineering and safety programs, and prison industries.
- viii. Develops budget recommendations for operating expenditures and/or capital outlay, personal services, equipment and materials, and maintains revenue as high as possible.
- ix. Consults with operating officials on program plans in relation to fiscal capacity.
- x. Supervises such management planning activities as job analysis, organization studies, workflow, and simplification of systems and procedures for food service, physical plant, warehouse, accounting and finance, and prison industries.
- xi. Supervises the revision of rules, regulations, and procedures to meet changes in law and policy.
- xii. Formulate current and long-range programs, plans, and policies for departmental programs.
- xiii. May occasionally perform any task assigned to subordinate staff, consistent with any licensing or certification requirements.
- xiv. Performs related work as assigned.

4. BOOKKEEPER

- i. Work is performed by applying knowledge of accounting terminology and through the use of spreadsheets, database software and/or complex computer systems such as the Michigan Administrative Information Network (MAIN), Financial Administration and Control System (FACS).
- ii. Receive, sort, correct, and reconcile a variety of accounting documents.
- iii. Review and code financial information.
- iv. Disburse funds, make deposits and prepare financial reports.
- v. Process information, and maintain records.

5. BUYER

- i. Complete or oversee a variety of professional research and analysis

assignments for the purpose of evaluation, assessment, planning, development and implementation.

- ii. Conduct research and analysis, prepare reports and conduct correspondence related to the work activities of the departmental program area.
- iii. Make general recommendations in areas of expertise.
- iv. Propose and develop new policy materials and supporting instructions in area of expertise. Use and maintain computer databases to record and analyze data.
- v. Evaluate contracts and documents for compliance with departmental policies and procedures.

6. CALCULATIONS ASSISTANT

- i. Perform computational activities which provide such support services as: examining, counting, coding, proofreading and correcting a variety of documents requiring arithmetical computations.
- ii. Perform arithmetical calculations; compile numerical data; compose summary reports, tables, graphs and correspondence.

7. COMMERCIAL DRIVER, LICENSED (CDL)

- i. Required to operate large, heavy, or placarded hazardous materials vehicles.
- ii. Vehicles may include Cube Vans for delivering mail.
- iii. Vehicles may include Semi's for delivering pallets of goods.

8. COMMUNICATIONS ASSISTANT

- i. Disseminate information and materials over the counter or by telephone to the public, regarding state government and/or departmental services.
- ii. Receive visitors and answer telephone; screen and/or direct visitors, callers, or messages appropriately; input, retrieve, update, or delete information from computer files.
- iii. May perform typing duties incidental to the work such as typing cards, labels, folders, envelopes, forms, and short memoranda and reports.

9. CONTACT TRACER

- i. Quickly locate and talk with patients.
- ii. Assist in arranging for patients to isolate themselves.
- iii. Work with patients to identify people whom the patient have been in close contact so the tracer can locate them.

10. FOOD SERVICES (COOK, KITCHEN STAFF, & WAITING & BUSING, ETC.)

- i. Prepares and cooks meats, vegetables, and casserole dishes for general and/or modified diet menus using hand and power kitchen utensils and equipment.
- ii. Assembles food for transportation, as required, by measuring out food, placing in proper containers, and loading hot and/or cold food carts; receives and unloads returned carts; disposes of unused food; and removes soiled ware for washing.
- iii. Participates in, and may guide others, in the washing, sanitizing, and cleaning of the premises, cooking utensils, and kitchen equipment such as pots and pans, steam kettles, automatic slicers, choppers, blenders,

- refrigerators, ovens, freezers, microwaves, tables, and carts to maintain sanitary conditions.
- iv. Inspects food and food products prior to use and consumption for quality and freedom from contamination and spoilage; rotates stored food stock to ensure proper and timely usage.
 - v. Receives and puts away stock such as canned goods, paper products, fish, meats, cereal, flour, sugar, and eggs; maintains inventory and orders food items as necessary.

11. DATA CODING OPERATOR – BASIC, INTERMEDIATE & ADVANCED

- i. Basic
 - a. Operate a computer terminal on-line to transmit data to or receive data from computer.
 - b. Operate a computer to convert data from source documents for computer entry.
 - c. Enter alpha-numeric and symbolic data from various source documents into terminals and/or computers using multiple data entry systems and applications.
 - d. Key data onto magnetic cards, tape, or disk.
 - e. Retrieve, delete, update and correct data on computer files.
- ii. Intermediate (include duties listed for Basic plus the below)
 - a. Checks data for errors; makes corrections.
 - b. Responds to inquiries by providing information retrieved from electronic files.
 - c. Sorts, batches, routes and/or codes mail and other documents.
- iii. Advanced (include duties listed for Intermediate plus the below)
 - a. Identifies diagnostic messages and takes necessary action to correct conditions.
 - b. Produces reports upon request by retrieving and printing data from computer files.
 - c. Ability to determine the appropriate codes and most efficient formats for specific requests.

12. DEPARTMENTAL TECHNICIAN

- i. Conduct special studies and surveys in such areas as feasibility of offering new services, improvement of efficiency, economy and centralization or decentralization of services.
- ii. Write and revise procedures to accommodate changes and to ensure consistency in form and format.
- iii. Review and evaluate documents, such as incorporation papers, insurance policies, teachers' certificates, contracts, bonds, deeds, leases and permits to determine if prescribed requirements or qualifications are met; certifies as to the eligibility of persons or the acceptance of documents.
- iv. Conduct interviews by telephone to follow up on complaints, and determine need for further review. Compile, review, and monitor financial, statistical and other programmatic data.
- v. Prepare and/or edit reports and publications, with latitude as to the material to be included; conduct related correspondence.

- vi. Use computer databases to record and analyze data on program and service activities.

13. DIETARY AID

- i. Prepares foods for persons on specialized diets (i.e., diabetic, salt restricted, religious) and/or modified texture diets (i.e., pureed, ground).
- ii. Will work directly with or for a dietitian to create and administer specific diet plans.
- iii. May need to Meet the Food and Nutrition Boards Recommended Dietary Intake (RDI) for certain patients or clients.

14. DIETARY COOK

- i. Prepare and cook meats, vegetables, and casserole dishes for general and/or modified diet menus using hand and power kitchen utensils and equipment.
- ii. Prepare salads, desserts and beverages.
- iii. Prepare food for special occasions such as meetings, birthdays and holidays.
- iv. Assemble food for transportation by measuring out food, placing in proper containers and loading hot and/or cold food carts; receive and unload returned carts; disposes of unused food; and removes soiled ware for washing.
- v. Participate in the washing, sanitizing, and cleaning of the premises, cooking utensils, and kitchen equipment.
- vi. Receive and put away stock such as canned goods, paper products, fish, meats, cereal, flour, sugar and eggs.

15. EDUCATION RESEARCH CONSULTANT

Employees in this job function as professional Education Research Consultants and Psychometricians, completing or overseeing a variety of assignments to assist local school districts in conducting their research and assessment projects, or in conducting research, evaluation, and assessment activities for local school districts and department staff.

- i. Determine business rules and data collection systems
- ii. Research and utilize statistical analyses to develop and validate thresholds
- iii. Use research to inform the development of scoring systems
- iv. Determine options for score implementation and reporting timelines
- v. Determine and develop communications to the field regarding data needs and collection processes
- vi. Analyze preliminary survey data to determine validity, accuracy, reliability
- vii. Examine proposed thresholds
- viii. Revise the corrective action system to align with the Performance Score proposal

16. ENVIRONMENTAL SERVICES

- i. Handles various duties in an organization to ensure work spaces in diverse settings are clean and sanitary for workers and visitors.
- ii. Performs typical cleaning duties.
- iii. Properly handles and disposes of biological waste.

17. EXECUTIVE SECRETARY - ADVANCED (INCLUDE DUTIES LISTED FOR SECRETARY ADVANCED PLUS THE BELOW)

- i. Interacts with top state administrators, high-level executives, staff, and the general public in order to represent members of policy-making boards and commissions, department directors, their deputies and their senior policy staff, and program assistants.
- ii. The employee performs advanced secretarial assignments, functioning as a management assistant. Performs a full range of administrative and executive support duties.
- iii. Executive Secretarial assignments for professional or management staff in support of the on-going operations of the office.
- iv. Prepare agenda and collect materials for meetings, speeches, and conferences for the executive level; take minutes and keep records of proceedings as required.
- v. Make domestic and foreign travel arrangements; prepare itineraries; prepare and compile travel vouchers, maintain all travel records. Establish and maintain various filing and records management systems. Review, proofread, and edit documents prepared for the administrator's or executive's signature.
- vi. Receive and screen incoming calls and visitors and make referrals to appropriate executive staff.
- vii. Maintain executive's entire schedule, act as the final point of contact before executive meetings, monitor company budgets, and perform upper-level business diplomacy tasks.

18. GENERAL OFFICE ASSISTANT – BASIC, INTERMEDIATE & ADVANCED

- i. Perform general office support assignments where the processing of documents, recording, retrieving, and distribution of data or information are an essential and/or substantial part of the work.
- ii. Sort, batch, route and/or code mail and other documents.
- iii. Retrieve and print data from computer files.
- iv. Preparing and maintaining office records, reports, and correspondence as directed.
- v. Route and distribute reports to various departments.

19. GENERAL LABORER

- i. Unload materials from trucks by hand or with hand operated or motorized equipment.
- ii. Unpack incoming goods and wrap and pack outgoing goods.
- iii. Operate hand equipment such as hand trucks and dollies to transport stock.
- iv. May operate a forklift, or other material handling equipment to facilitate the movement of materials.
- v. Operate tractors or power mowers.
- vi. May perform ground maintenance including the removal of snow from sidewalks, walkways, roadways, and parking lots by hand or using snow blowers, and mowing of small areas of grass, trimming shrubs, etc. at an office site.
- vii. Load, unload, and move supplies, materials, equipment, or heavy furniture

- to and from work site using dollies, handcarts or power equipment.
- viii. Assist in cleaning, repairing or replacing, and painting of buildings, park benches, tables, and playground equipment.
- ix. Cleaning and disinfecting of telephones.

20. GRANT SPECIALIST

A grant specialist may serve as someone procuring grants, or as someone overseeing a grant funding program.

A. Grants Procurement

- i. Grant administration for procurement purposes provides assistance to agencies seeking grant funds. Reviews federal, state, and local laws and regulations related to grant programs. Assists in editing sections of grant proposals. Prepares grant budgets in a variety of formats. Gathers supporting material for grant proposals. Maintains necessary records, files, reports, databases, and resource materials pertinent to grants activities. Assists in researching new funding sources. Drafts letters of commitment for grant purposes.

B. Grant Program Oversight

- i. Grant Administration provides oversight of grant program development, implementation, and monitoring. Manages administration of the grant cycle from application to final payment; ensures that grant requirements are met and that awards are appropriate. Leads the administration of and ensures adherence to grantmaking workflow processes and procedures. Ensures that all administrative and financial aspects of the program are properly addressed and in alignment with policies and procedures. Prepares project approval documents for approvals by program directors and senior managers. Reviews financial reports and requests for reimbursement to determine the appropriate payment amounts. Monitors program schedules and progress of grantee projects, identifies potential concerns, and recommends solutions to ensure on-going project compliance and risk management. Human Research Manager

21. JANITORIAL (JANITOR) SERVICES

- i. Clean and service restrooms; sweep, vacuum and mop floors and stairways.
- ii. Clean grounds, walks, parking lots and such facilities as garages, storerooms, park and rest area facilities.
- iii. Gather and dispose of rubbish and waste materials by hand or with the use of powered equipment.
- iv. Lock and unlock buildings.
- v. Observe appearances and conditions of premises and equipment; report needed repairs, safety hazards, or conditions requiring outside vendor services.
- vi. Dust such items as blinds, furniture, file cabinets, and windowsills using treated dust mittens, cloths, or hand-cleaning items. Scrub, strip, sanitize, wax, and buff floors using powered machines equipped with rotating brushes.

- vii. Polish furniture, metal work, and chrome using appropriate cleaning and polishing compounds.
- viii. Wash walls, ceilings, woodwork, windows, mirrors and fixtures using both step and extension ladders. Clean grounds and parking lots of litter, glass or other debris.
- ix. Replace light bulbs and fuses.
- x. Assist in the performance of minor building maintenance jobs using manual and power tools.

22. LEGAL PERSONNEL – NON-ATTORNEYS

- i. Interpret statutes and legislative proposals and their ramifications to inform, update or advise departmental and outside personnel.
- ii. Must have knowledge of personal computers, hardware, software, and related applications and systems.
- iii. Knowledge of legal terminology and syntax, and of the content, organization, and format of legal documents and correspondence.
- iv. Interpret existing and proposed laws, policies and procedures.
- v. Operate keyboard equipment such as typewriters, word processors, and personal computers to process information, docket cases, record notices of hearings or postponements, correspondence, reports, and other data.
- vi. Produce legal documents such as pleadings, briefs, opinions, complaints, administrative decisions, orders, and subpoenas from verbal or written instructions, dictation, shorthand notes, rough drafts, or other materials.
- vii. Perform office activities for attorneys or administrative law examiners, performing a variety of legal secretarial duties such as scheduling hearings, preparing legal documents and correspondence, docketing cases and maintaining court dockets and diaries.

23. LICENSED ENGINEER – SPECIALIST

- i. Provides professional administration of lump sum, line item and miscellaneous operating projects involving technical interpretation of Environmental Assessments and Consultant Designs for implementation of customized remediation of leaking underground storage tanks (LUST) and other brownfield or environmentally contaminated sites by administering contracts and fee changes for engineering services and construction implementation, i.e.: direct the preparation of planning, investigation, remediation design bidding and construction documents which include plans, specifications, budgets, cost estimates, schedules, bidding/award and construction contracts to implement the work.
- ii. Administers other priorities for Legislative Committee consideration regarding state capital outlay projects.
- iii. Provides technical review and consultation in recommending approval of plans, specifications, shop drawings and construction activities to ensure compliance with law, budget, program, established standards, codes and regulations.
- iv. Experience and background related to traditional building construction/ renovation and site development design and construction would be considered beneficial and provide opportunities for other diverse project assignments.

24. PROGRAM CONSULTANT

- i. Formulates organizational and operational plans, grants, contracts or procedures for achieving program goals; prepares procedural manuals and related instructional materials; arranges for resources, facilities and equipment necessary to administer on-going programs and to implement new programs.

25. RECEPTIONIST

- i. Answer the telephone and take messages.
- ii. Respond to and receive emails.
- iii. Keep reception area clean and well maintained.
- iv. Manage the Conference Schedule.
- v. Receiving and distributing mail.
- vi. Greet Visitors

26. SECRETARY – BASIC, INTERMEDIATE & ADVANCED

- i. Basic
 - a. Secretarial assignments support the on-going operations of an office. These assignments may include such duties as scheduling meetings; preparing and maintaining office records, reports, and correspondence as directed.
 - b. Skilled typing and the ability to use word processors and related software applications to produce letters, memoranda, brochures, charts, graphs, forms, and other material.
 - c. Must have knowledge of software programs such as Microsoft Word, WordPerfect, Excel, and PowerPoint, or knowledge of current computer environments (i.e. Windows, etc.).
 - d. Proofread for errors, making corrections as necessary.
 - e. Sort, batch, route and/or code mail and other documents.
 - f. Update manuals and other references.
 - g. Respond to inquiries by providing information retrieved from computer files.
- ii. Intermediate (include duties listed for Basic plus the below)
 - a. Secretarial assignments support the on-going operations of an office. These assignments may include such duties as scheduling meetings; preparing and maintaining office records, reports, and correspondence as directed.
 - b. Skilled typing and the ability to use word processors and related software applications to produce letters, memoranda, brochures, charts, graphs, forms, and other material.
 - c. Composes, formats, prepares, and edits correspondence and reports with some latitude as to content. Proofread for errors, making corrections as necessary.
 - d. Locates and reviews pertinent information from files, documents, newspapers other sources; and prepares a summary of content for professional(s) and/or management staff.
 - e. Gathers data for surveys or performs research on special subjects or projects. Sort, batch, route and/or code mail and other documents.

- f. Update manuals and other references.
- g. Respond to inquiries by providing information retrieved from computer files.
- h. Sort, open and distribute incoming mail to staff.
- iii. Advanced (include duties listed for Intermediate plus the below)
 - a. Skillfully operate word processing equipment and personal computers to produce a variety of documents, charts, and graphs in final form.
 - b. Schedule meetings; prepare and maintain office records, reports, and correspondence as directed. Compose, format letters, and edit correspondence related to issues of the work area.
 - c. Compose letters and memoranda in response to incoming mail or telephone calls.
 - d. Type letters, memoranda, reports, minutes of meetings, scientific or technical material, numerical data, charts and forms from verbal or written instructions, dictating records, shorthand notes or other materials.
 - e. Schedule and arrange meetings and conferences and notify interested parties.
 - f. Prepare agenda and collect materials for meetings, speeches, and conferences; take minutes and keep records of proceedings as required.
 - g. Prepare minutes of meetings from notes and/or recordings.
 - h. Receive and screen incoming calls and visitors, making referrals to appropriate staff.
 - i. Establish and maintain records, statistical information, and reports as well as various filing and records management systems.

27. SKILLED WORKER

- i. Work that requires a certain amount of training or skills.
- ii. Have specialized skills needed for the workforce.

28. MAINTENANCE MECHANIC

- i. Installs, maintains, and repairs equipment such as steam valves, steam traps, steam or water coils, radiators, water softeners, unit heaters, water heaters, condensate and circulating pumps, and plumbing facilities using hand and power tools of the plumbing trade such as pipe wrenches, hacksaws, pipe cutters, and torches.
- ii. Installs, services, and repairs electric motors, heaters, coolers, refrigerators, and other related equipment using various hand and power tools of the maintenance trades.
- iii. Installs, maintains, and repairs air compressors and other air conditioning equipment using various machine tools.
- iv. Services and repairs appliances such as fans, toasters, washing machines, and gasoline pumps using machine and hand tools; may also maintain, operate, and repair motor vehicles (tune-ups, brakes, hydraulics).
- v. Maintains central steam and chemical water treatment systems, as well as other systems, using gauges and other test instruments to diagnose

- malfunctions and mechanic hand and power tools to disassemble, repair, and reassemble system components.
- vi. Moves and replaces machinery and auxiliary apparatus using hand and electric trucks, fork lifts, and dollies.
- vii. Fabricates, assembles, and tests parts as needed, such as various pumps, valves, laboratory equipment, heaters, compressors, experimental fire equipment, and other mechanical system parts using metal fabricating tools, common hand tools, power tools, and welding torches.
- viii. Replaces fuses, light bulbs, circuit breakers, electric switches, and other electrical equipment following electrical specifications.
- ix. Prepares paint, finish surfaces, and equipment using paintbrushes, sanders, scrapers, and other painting tools.
- x. Repairs broken furniture or building fixtures using carpenter's hand tools and power equipment.
- xi. Performs building and/or masonry repair such as preparing cement, installing reinforcing steel rods, patching and finishing cement work, and replacing damaged masonry.
- xii. Performs grounds maintenance such as mowing and trimming grass, grading roads, pesticide application, and removing snow.
- xiii. May assist in training lower-level Maintenance Mechanics and others.
- xiv. Drives a truck for general hauling of supplies, equipment, and material.
- xv. May requisition equipment, materials, and supplies.
- xvi. Performs related work as assigned

29. SPECIALIST –MISCELLANEOUS

- i. The specialist class will consist of perform professional services in the following classification areas: Accounting Specialist, Departmental Specialist, and Financial Specialist.
- ii. Designs and conducts surveys or special studies to determine needs and to assist in planning, implementing and evaluating programs, consolidates data and prepares reports.
- iii. Conducts special projects and studies.
- iv. Establishes, oversees, administers and evaluates programs, recommends program policies and procedures and designs forms.
- v. Collects and maintains program data necessary to meet program reporting and evaluates requirements, and the goals of the agency.
- vi. Analyzes ongoing program operations and recommends modifications of policies and procedures to meet commitments more effectively.
- vii. Recommends criteria, standards and guidelines to assess agencies programs.
- viii. Structures and determines their compatibility with the objectives and priorities of the state.
- ix. Interprets existing and proposed laws, policies and procedures.
- x. Designs and implements methods for program review, evaluation and cost analysis.
- xi. Formulates procedures, policies and guidelines for assigned departmental programs.
- xii. Makes recommendations in areas of expertise.

- xiii. Develops program goals and plans for implementation.
- xiv. Prepares budgets for an office, section or division.

30. STOREKEEPER

- i. Open, timestamp, separate and distribute incoming mail in a mail/storeroom.
- ii. Count, weigh, and measure goods received or issued.
- iii. Unpack incoming goods and wrap and pack outgoing goods.
- iv. Stock materials according to a prescribed inventory system.
- v. Operate hand equipment such as hand trucks and dollies to transport stock.
- vi. Dispense items and posts amounts of items to inventory control cards or automated systems.

31. SUBSTITUTE TEACHER

- i. Teach technical and related subjects in the Department that will assist students in developing competitive skills necessary for employment.
- ii. Counsel students on academic and personal problems that may be barriers to employability.
- iii. Develop lesson plans and curricula that are current with technology.
- iv. Develop instructional methodologies that will benefit adult learners with academic limitations as well as other disabilities.
- v. Develop accommodations as needed to assist the learning process.
- vi. Participate an interdisciplinary team designed to monitor and advise students as to their progress in training as well as develop strategies that would assist learning.
- vii. Participate in Business Advisory Committees designed for technical program reviews.
 - a. Automotive
 - b. Cabinetmaking
 - c. Certified Nurse Assistant
 - d. Culinary Arts
 - e. Custodial
 - f. Customer Service
 - g. Electronics
 - h. Graphic Communications
 - i. Grounds Maintenance
 - j. Machine Technology
 - k. Office Automation
 - l. Pharmacy Technician
 - m. Retail Marketing
 - n. Weatherization
 - o. Other

32. WORD PROCESSOR OPERATOR

- i. Employees shall be proficient in working with a variety of word processing software such as Word and WordPerfect, and possess at least intermediate level typing skills.
- ii. Produce reports upon request by retrieving and printing data from computer files.
- iii. The ability to use word processors and related software applications to produce letters, memoranda, brochures, charts, graphs, forms, and other material.

33. MISCELLANEOUS – POSITIONS NOT DEFINED

- i. Additional disciplines may be provided during the term of the Contract, as

needed. Delta/mark-up percentage in Schedule B – Pricing will be used based on position pay.

SCHEDULE D – 1075 SAFEGUARD CONTRACT LANGUAGE

CONTRACT LANGUAGE FOR GENERAL SERVICES

I. PERFORMANCE

In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by officers or employees with the following requirements:

(1) All work will be performed under the supervision of the contractor.

(2) The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.

(3) FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.

(4) FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.

(5) The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.

(6) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.

(7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be

available and activated to protect against unauthorized use of and access to FTI.

(8) No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.

(9) Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.

(10) To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.

(11) In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.

(12) For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.

(13) The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

II. CRIMINAL/CIVIL SANCTIONS

(1) Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.

(2) Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.

(3) Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(4) Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see [Exhibit 4, Sanctions for Unauthorized Disclosure](#), and [Exhibit 5, Civil Damages for Unauthorized Disclosure](#)). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access,

store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

SAFEGUARD REQUIREMENTS OF CONFIDENTIAL TAX DATA

This section sets forth the safeguard requirements for handling, storage, and processing of confidential tax information for a Contractor and their subcontractor(s) and is incorporated as an integral part of the Contract. It will facilitate administration and enforcement of the laws of the State of Michigan in a manner consistent with the applicable statutes, regulations, published rules and procedures or written communication.

1. I. Authority

Authority for the Michigan Department of Treasury to require that this section be included in the Contract is contained in 1941 PA 122, as amended, MCL 205.28(1)(f), which subjects current or former contractors to the same restrictions and penalties imposed upon department employees regarding the treatment of confidential information. A private contractor or its employees are strictly prohibited from disclosing taxpayer information to a third party. The prohibition against disclosure does not bar an employee of a private contractor with whom the State of Michigan (State) contracts that processes tax returns or payments pursuant to the Contract from having access to confidential information that is reasonably required for the processing or collection of amounts due this State. Private contractors and any subcontractors will follow Treasury guidelines for Authorized representatives.

2. II. Confidentiality

It is agreed that all information exchanged under this section will be kept confidential in accordance with the confidentiality provisions contained in the Revenue Act, MCL 205.28(1)(f)-which states in part;

“Except as otherwise provided in this subdivision, an employee, authorized representative, or former employee or authorized representative of the department or anyone connected with the department will not divulge any facts or information obtained in connection with the administration of a tax or information or parameters that would enable a person to ascertain the audit selection or processing criteria of the department for a tax administered by the department.”

Confidential information obtained under this contract will not be disclosed except as required by state law, or in the proper administration of applicable laws, promulgated rules and procedures. In the event, confidentiality statutes are amended, Treasury will notify Contractor of any changes. No employee, agent, authorized representative or legal representative of Contractor will disclose any information obtained by virtue of this section to any other division within their company or any other governmental agency, department or unit within such governmental agency whether local, state, federal or foreign, department or unit within such governmental agency, or any unauthorized third party. No tax returns or tax return information accessed by Contractor will be duplicated or disseminated within or outside the company without

the written approval of the Contract Compliance Inspector. Tax returns and tax return information remain the property of Treasury.

Contractor may use a taxpayer's name, address and Social Security number or employer identification number to the extent necessary in connection with the processing and mailing of forms for any report or return required in the administration of any tax in the performance of the Contract. The use of the Social Security number must be in accordance with the state Social Security Number Privacy Act 454 of 2004, as amended.

Confidential information obtained under this agreement will not be disclosed in part of a report or document that is subject to FOIA.

The penalties for violating the confidentiality provisions of the Revenue Act are contained in, MCL 205.28(2) and MCL 205.27(4). MCL 205.28(2) states:

“A person who violates subsection (1)(e), (1)(f), (4) or (5) is guilty of a felony, punishable by a fine of not more than \$5,000.00, or imprisonment for not more than 5 years, or both, together with the costs of prosecution. In addition, if the offense is committed by an employee of this state, the person will be dismissed from office or discharged from employment upon conviction.”

MCL 205.27(4) states:

A person who is not in violation pursuant to subsection (2), but who knowingly violates any other provision of this act, or of any statute administered under this act, is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 1 year, or both.

Information received by Treasury from the U.S. Internal Revenue Service, pursuant to section 6103(d) of the Internal Revenue Code or any other federal agency will not be subject to the exchange.

III. Procedure for Security

Contractor will safeguard any tax return information obtained under the Contract as follows:

- A.** Access to the tax returns and tax return information will be allowed only to those authorized employees and officials of Contractor who need the information to perform their official duties in connection with the uses of the information authorized in this Contract.
- B.** Any records created from tax returns and tax return information will be stored in an area that is physically safe from access by unauthorized persons during duty hours and locked in a secure area during non-duty hours, or when not in use.
- C.** Any records matched and any records created by the match will be processed under the immediate supervision and control of authorized personnel in a manner in which will protect the confidentiality of the records, and in such a way that unauthorized persons cannot retrieve any such records by means of a computer, remote terminal or other means.

- D. All personnel who will have access to the tax returns and tax return information and to any records created by the tax return information will be advised annually of the confidential nature of the information, the safeguards required to protect the information and the civil and criminal sanctions for noncompliance contained in MCL 205.28 (2) and MCL 205.27(4) and will sign confidentiality certifications.
- E. All confidential information, electronic and paper, will be secured from unauthorized access and with access limited to designated personnel only. State tax return information will not be commingled with other information. All Michigan tax returns and return information will be marked as follows: **CONFIDENTIAL - DO NOT DISCLOSE - MICHIGAN TREASURY TAX RETURN INFORMATION**
- F. Treasury, Office of Privacy and Security or Contract Compliance Inspector may make onsite inspections or make other provisions to ensure that adequate safeguards are being maintained by the Contractor.
- G. The Treasury Office of Privacy and Security may monitor compliance of systems security requirements during the lifetime of the Contract or any extension.
- H. Contractor will also adopt policies and procedures to ensure that information contained in their respective records and obtained from Treasury and taxpayers will be used solely as stipulated in the Contract.

IV. Computer System Security of Tax Data

The identification of confidential tax records and defining security controls are intended to protect Treasury tax return information from unlawful disclosure, modification, destruction of information and unauthorized secondary uses.

Computer system security and physical security of tax data stored and processed by Contractor must be in compliance with the following security guidelines and standards established by Treasury. These guidelines apply to any computer system developed by Contractor, either through its own systems staff, or through a contractor, subcontractor or vendor):

A. Controlled Access Protection

All computer systems processing, storing and transmitting Michigan tax information must have computer access protection controls. These security standards are delineated in the National Institute of Standards and Technology (NIST) Special Publications number 800-53 "Recommended Security Controls for the Federal Information Systems" at <http://csrc.nist.gov/publications/PubsSPs.html>. To meet these standards, the operating security features of the system must have the following minimum requirements: a security policy, accountability, assurance, and documentation.

- 1) **Security Policy** – A security policy is a written document describing the system in terms of categories of data processed, users allowed access and access rules between the users and the data. Additionally, it describes procedures to prevent unauthorized access by clearing all protected information on objects

before they are allocated or reallocated out of or into the system. Further protection must be provided where the computer system contains information for more than one program/project, office, or Agency and that personnel do not have authorization to see all information on the system.

- 2) Accountability** – Computer systems processing Michigan tax information must be secured from unauthorized access. All security features must be available (audit trails, identification and authentication) and activated to prevent unauthorized users from indiscriminately accessing Michigan tax information. Everyone who accesses computer systems containing Michigan tax information is accountable. Access controls must be maintained to ensure that unauthorized access does not go undetected. Computer programmers and contractors who have a need to access databases, and are authorized under the law, must be held accountable for the work performed on the system. The use of passwords and access control measures must be in place to identify who accessed protected information and limit that access to persons with a need to know.

a) On-line Access –Users will be limited to any Treasury on-line functions, by limiting access through functional processing controls and organization restrictions.

Any employee granted access privileges through the Contractor's Security Administrator will be approved for access and viewing rights to Treasury on-line systems by the Department of Treasury, Office of Privacy and Security.

b) Operating Features of System Security

Contractor must meet the following levels of protection with respect to tax return information. Individual user accountability must be ensured through user identification number and password.

- i. Access rights to confidential tax information must be secured through appropriate levels of authorization.***
- ii. An audit trail must be maintained of accesses made to confidential information.
- iii. All confidential and protected information must be cleared from a system before it is used for other purposes not related to the enforcement, collection or exchange of data not covered by this section or by an addendum to this Contract.
- iv. Hard copies made of confidential tax return information must be labeled as confidential information.
- v. Confidential Treasury tax information will be blocked or coded as confidential on system.

- vi. Any computer system in which Michigan tax return information resides must systematically notify all users upon log-in of the following disclosure penalties for improperly accessing or making an authorized disclosure of Michigan tax return information:

NOTICE TO EMPLOYEES AND AUTHORIZED REPRESENTATIVES

This system contains Michigan Department of Treasury tax return information. **DO NOT DISCLOSE OR DISCUSS MICHIGAN RELATED TAX RETURN INFORMATION** with unauthorized individuals. The Revenue Act at MCL 205.28(1)(f) prohibits such disclosure.

MICHIGAN PENALTIES

A person making a willful unauthorized disclosure or inspection (browsing) of tax return information may be charged with the following Michigan penalties:

- Criminal penalties up to \$5,000 and/or imprisonment for 5 years, plus costs and dismissal from employment if it is found that a current or former employee or authorized representative has made an unauthorized disclosure of a tax return or tax return information or divulged audit selection or processing parameters. [MCL 205.28(2)]
- A misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 1 year, or both if the person is not in violation pursuant to MCL 205.27(2), but who knowingly violates any other provision of this act, or of any statute administered under this act.

This statement is subject to modification. A confidentiality statement, subject to modification, will be sent as needed by the Security Administrator to all employees, contractors, and legal representatives of Contractor.

- 3) **Assurance** – Contractor must ensure that all access controls and other security features are implemented and are working when installed on their computer system. Significant enhancements or other changes to a security system must follow the process of review, independent testing, and installation assurance. The security system must be tested at least annually to assure it is functioning correctly. All anomalies must be corrected immediately.
 - a) The Contractor must initiate corrective action for all non-conformities as soon as detected and immediately advise the Contract Compliance Inspector. Notice of the corrective action must be provided to the Contract Compliance Inspector. All non-conformities must be reported to the Contract Compliance Inspector with the following:
 - a. Duration of non-conformity/interruption
 - b. Reason for non-conformity/interruption
 - c. Resolution.
 - b) All non-conformities to the specifications/tasks of the Contract must be corrected within four (4) hours. The State recognizes there will be instances when adherence to this time frame will not be possible. However, the State will only tolerate this on an exception basis. To request an exception to this time frame, the Contractor must submit a detailed project plan to address

the non-conformity within four (4) hours to the Contract Compliance Inspector for approval.

- 4) Documentation** – Design and test documentation must be readily available to the state. The developer or manufacturer should initially explain the security mechanisms, how they are implemented and their adequacy (limitations). This information should be passed on to the security officer or supervisor. Test documentation should describe how and what mechanisms were tested and the results. If recognized organizations/tests/standards are used, then a document to that effect will suffice. For example, a system that has been tested and certified as meeting certain criteria may have a document stating this fact, without detailed tests/results of information. Contractor, however, must ensure the documentation covers the exact system and that it includes the specific computer system used by Contractor.

Additionally, documentation must include a security administrator's guide. The security administrator's guide is addressed to the System's Administrator and Security Officer and will describe the protection mechanisms provided by the security system, guidelines on their use and how they interact. This document will present cautions about security functions and describe privileges that should be controlled when running a secure system. The document will be secured and locked at all times with access rights only by the Systems Administrator and Security Officer.

Note: When a security system is designed or purchased for a specific computer or computer system, the security mechanisms must be reviewed by the State to ensure that needed security parameters are met. An independent test should be implemented on the specific computer or computer system to ensure that the security system meets the security parameters within this contract and developed with the computer system. The test may be arranged by the developer but must be done by an independent organization. Contractor must assign responsible individuals (Security Officers) with knowledge of information technology and applications to oversee the testing process. These individuals must be familiar with technical controls used to protect the system from unauthorized entry.

Finally, contingency and backup plans must be in place to ensure protection of Michigan tax information.

V. Electronic Transmission of Michigan Tax Information

The two acceptable methods of transmitting Michigan tax information over telecommunications devices are encryption and using guided media. Encryption involves altering data objects in a way that the objects become unreadable until deciphered with the appropriate software at the intended destination. Guided media involves transmission of data over twisted pair cable, coaxial cable or end to end fiber optics which are typically used in secure computer networks like the state's Local Area Network (LAN), telephone systems, and television distribution.

Cryptography standards have been adopted by the IRS and can be used to provide guidance for encryption, message authentication codes or digital signatures and digital signatures with or without an associated certification infrastructure. For further information, see IRS Publication 1075 at the IRS web site.

Unencrypted cable circuits of fiber optics are an acceptable alternative for transmitting Michigan tax information. Adequate measures must be taken to ensure that circuits are maintained on cable and not converted to unencrypted radio or microwave transmission. Additional precautions should be taken to protect the cable, i.e., burying the cable underground or in walls or floors and providing access controls to cable vaults, rooms and switching centers.

A. Remote Access

Accessing databases containing Michigan tax information from a remote location – that is, a location not directly connected to the Local Area Network (LAN) will require adequate safeguards to prevent unauthorized entry.

For remote access, the contractor is required to use an identification security card that requires both PIN and card in possession. The State identified and approved methods for remote vendor access are as follows:

- SecureID through VPN – State provided SecureID taken and VPN software in order to access State of Michigan resources. Appropriate Acceptable Use policies and signoffs are required
- Follow-the Sun SecureID – Vendor is provided with VPN software and a SOM technical resource coordinates with the DTMB Client Service Center to provide secure ID code access to specific State of Michigan resources. Appropriate Acceptable Use Policies and signoffs are required.

B. Portable Computer Devices

Any entrusted confidential information collected or accessed during this Contract must be encrypted when stored on all storage devices and media. This includes, but not limited to, disk drives for servers and workstations, and portable memory media (PDAs, RAM drives, memory sticks, etc.).

VI. Record Keeping Requirements for Information Received

Each Contractor, requesting and receiving information will keep an accurate accounting of the information received. The audit trail will be required which will include the following information:

- a. Taxpayer's name
- b. Identification number
- c. Information requested
- d. Purpose of disclosure request
- e. Date information received
- f. Name of Division and employee making request
- g. Name of other employees who may have had access
- h. Date destroyed
- i. Method of destruction

The Contractor will adopt and implement formal procedures to:

- Ensure proper handling of tax returns and tax return information;
- Secure and safeguard information from unauthorized use; and
- Ensure appropriate destruction of information and materials retrieved from Treasury.

A. Electronic Media

Contractor will keep an inventory of magnetic and electronic media received under the Contract.

Contractor must ensure that the removal of tapes and disks and paper documents containing Michigan tax return information from any storage area is properly recorded on charge-out records. Contractor is accountable for missing tapes, disks, and paper documents.

B. Recordkeeping Requirements of Disclosure Made to State Auditors

When disclosures are made by Contractor to State Auditors, these requirements pertain only in instances where the Auditor General's staff extracts Michigan tax returns or tax information for further review and inclusion in their work papers. Contractor must identify the hard copies of tax records or if the tax information is provided by magnetic tape format or through other electronic means, the identification will contain the approximate number of taxpayer's records, the date of inspection, the best possible description of the records and the name of the Auditor(s) making the inspection.

The Disclosure Officer must be notified, in writing, of any audits done by auditors, internal or otherwise, of Contractor that would involve review of Treasury processing parameters.

VII. Contract Services

To the extent the Contractor employs an independent agency, consultant, or agent to process confidential information which includes Michigan tax return information; the Contractor will notify the Treasury Disclosure Officer before the execution of any such agreement. Each agreement will include in the agreement the following recommended safeguard provisions:

A. The identification of confidential tax records and defining security controls are intended to protect Treasury tax return information from unlawful disclosure, modification, destruction of information and unauthorized secondary uses.

B. DEFINITION OF TREASURY TAX RETURN INFORMATION AS DEFINED IN REVENUE ADMINISTRATIVE BULLETIN (RAB) 1989-39:

Taxpayer's identity, address, the source or amount of his/her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments, or tax payments whether the taxpayer's return was, is being or will be examined or subject to their investigation or processing, or any other data, received by, recorded by, prepared by, furnished to or collected by the agency with respect to a return or with respect to the determination of the existence, or liability (or the amount thereof) of any person under the tax laws administered by the Department, or related statutes of the state for any tax, penalty,

interest, fine, forfeiture, or other imposition or offense. The term “tax return information” also includes any and all account numbers assigned for identification purposes.

- C. An acknowledgment that a taxpayer has filed a return is known as a “fact of filing” and may not be disclosed. All tax return data made available in any format will be used only for the purpose of carrying out the provisions of the Contract between Contractor and the sub-contractor. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract between Contractor and the subcontractor. In addition, all related output will be given the same level of protection as required for the source material.
- D. ***The subcontractor will certify that the data processed during the performance of the Contract between Contractor and the subcontractor will be completely purged from all data storage components of the subcontractor’s computer facility, and no output will be retained by the subcontractor at the time the work is completed.***
- E. Destruction of tax data, including any spoilage or any intermediate hard copy printout which may result during the processing of Michigan tax return information, will be documented with a statement containing the date of destruction, description of material destroyed, and the method used. Destruction parameters must meet the standards of Section IX, Disposal of Tax Information, of this agreement.
- F. Computer system security and physical security of tax data stored and processed by the subcontractor must be in compliance with security guidelines and standards established by this contract. See section VI (Record Keeping Requirements for Information Received in Paper Format) for more details.
- G. The Contractor will be responsible for maintaining a list of employees authorized to access Michigan tax return information and will provide a copy of such list to Treasury.
- H. No work involving information furnished under the contract will be subcontracted without the specific approval of Treasury. Contractor and approved subcontractors handling Michigan tax return information will be required to sign the *Vendor, Contractor or Subcontractor Confidentiality Agreement* provided by Treasury, (Form 3337, see Attachment A). The original agreements will be returned to the Disclosure Officer for the Department of Treasury and a copy sent to the Contract Compliance Inspector.

VIII. Transport of Tax Information

In the event, it is necessary to transport confidential tax return information the Contractor is responsible for holding the carrier responsible for safeguarding the records. The Contractor must obtain a signed *Vendor, Contractor or Subcontractor Confidentiality Agreement* (Form 3337, see Attachment A) for each carrier employee who has access to Michigan tax return information. The original agreements will be returned to the

Department of Treasury, Disclosure Officer and a copy sent to the Contract Compliance Inspector.

If it is necessary to transfer records and responsibility for transport to a third carrier due to a mishap during transportation, the Contractor is responsible for ensuring safeguard standards remain enforce. This type of incident will be documented in accordance with the incident reporting guidelines in procedure PT-03253, "Incident Reporting and Handling".

Any such incidents must be reported to the Contract Administrator immediately.

IX. Disposal of Tax Information

Materials furnished to Contractor, such as tax returns, remittance vouchers, W-2 reports, correspondence, computer printouts, carbon paper, notes, memorandums and work papers will be destroyed by burning, mulching, pulverizing or shredding. If shredded, destroy paper using cross cut shredders which produce particles that are 1 mm x 5mm (0.04in x 0.2 in.) in size (or smaller).

Data tracks should be overwritten or reformatted a minimum of three times or running a magnetic strip over entire area of disk at least three (3) times to remove or destroy data on the disk media—Electronic data residing on any computer systems must be purged based on Treasury's retention schedule.

Contractor and its subcontractor(s) will retain all confidential tax information received by Treasury only for the period of time required for any processing relating to the official duties and then will destroy the records. Any confidential tax information that must be kept to meet evidentiary requirements must be kept in a secured, locked area and properly labeled as confidential return information. See Procedure for Security (Section III of this agreement) for more details.

X. Security Responsibility

Contractor will designate a security person who will ensure that each individual having access to confidential tax information or to any system which processes Michigan tax return information is appropriately screened, trained and executes a *Vendor, Contractor or Subcontractor Confidentiality Agreement* (Form 3337, see Attachment A) before gaining access or transaction rights to any process and computer system containing Treasury tax return information.

Each Contractor or their subcontractor(s) employees' access and transaction rights will be reviewed periodically to ensure that there is a need to know Treasury tax return information displayed in any media.

Michigan tax return information will be made available only to individuals authorized by the Contract. Contractor will maintain a list of persons authorized to request and receive information and will update the list as necessary. A copy of the list must be furnished to the Michigan Department of Treasury Disclosure Officer and Contract Compliance Inspector.

XI. Security Breach Notification

The Contractor is required to report to Treasury, on Form 4000, Incident Reporting (Attachment B) any use or disclosure of confidential information, whether suspected or actual, **immediately** after becoming aware of the misuse or disclosure. The Contractor may substitute its internal form for Form 4000 if all pertinent information is included.

The Contractor agrees to immediately contain the breach if it is determined ongoing.

Treasury has the right to terminate the Contract when a breach has occurred and the Contractor cannot demonstrate proper safeguards were in place to avert a breach. Treasury must approve Contractor's resolution to the breach.

XIII. Certification of Compliance

The Contractor will fully protect State Tax Information (STI) entrusted to them. Each Contractor or subcontractor who will have access to STI must read and sign a confidentiality agreement. This contract requires that all information obtained from the Michigan Department of Treasury under the Revenue Act, PA 122 of 1941, MCL 205.28 (1)(f) be kept confidential. In the event of a security breach involving STI in the possession of the Contractor, the Contractor agrees to provide full cooperation to conduct a thorough security review. The review will validate compliancy with the Contract, and state laws and regulations.

If, as a result of the Contractor's failure to perform as agreed, the State is challenged by a governmental authority or third party as to its conformity to or compliance with State, Federal and local statutes, regulations, ordinances or instructions; the Contractor will be liable for the cost associated with loss of conformity or compliance.

The Contractor understands the cost reflects violation fines identified by the Michigan Social Security Number Privacy Act, 454 of 2004 and the Michigan Identity Theft Protection Act, Act 452 of 2004 as amended.

XI. Effective Date

These Safeguard requirements will be reviewed whenever the Contract modifications include specifications or processes that affect tax data.

Attachment A

Michigan Department of Treasury
3337 (Rev. 01-12)

Vendor, Contractor or Subcontractor Confidentiality Agreement

The Revenue Act, Public Act 122 of 1941, MCL 205.28(1)(f), makes all information acquired in administering taxes confidential. The Act holds a vendor, contractor or subcontractor and their employees who sell a product or provide a service to the Michigan Department of Treasury, or who access Treasury data, to the strict confidentiality provisions of the Act. Confidential tax information includes, but is not limited to, information obtained in connection with the administration of a tax or information or parameters that would enable a person to ascertain the audit selection or processing criteria of the Michigan Department of Treasury for a tax administered by the department.

INSTRUCTIONS. Read this entire form before you sign it. If you do not complete this agreement, you will be denied access to Michigan Department of Treasury and federal tax information. After you and your witness sign and date this form, keep a copy for your records. Send the original to the address listed below.

Company Name and Address (Street or RR#, City, State, ZIP Code)		Last Name	First Name
		Driver License Number/Passport Number	Telephone Number
State of Michigan Department	Division	Subcontractor Name if Product/Service Furnished to Contractor	
Describe here or in a separate attachment the product or service being provided to the State of Michigan Agency (Required).			

Confidentiality Provisions. It is illegal to reveal or browse, except as authorized:

- All tax return information obtained in connection with the administration of a tax. This includes information from a tax return or audit and any information about the selection of a return for audit, assessment or collection, or parameters or tolerances for processing returns.
- All Michigan Department of Treasury or federal tax returns or tax return information made available, including information marked "Official Use Only". Tax returns or tax return information shall not be divulged or made known in any manner except as may be needed to perform official duties. Access to Treasury or federal tax information, in paper or electronic form, is allowed on a need-to-know basis only. Before you disclose returns or return information to other employees in your organization, they must be authorized by Michigan Department of Treasury to receive the information to perform their official duties.
- Confidential information shall not be disclosed by a department employee to confirm information made public by another party or source which is part of any public record. 1999 AC, R 2005.1004(1).

Violating confidentiality laws is a felony, with penalties as described:

Michigan Penalties

MCL 205.28(1)(f) provides that you may not willfully browse any Michigan tax return or information contained in a return. Browsing is defined as examining a return or return information acquired without authorization and without a need to know the information to perform official duties. Violators are guilty of a felony and subject to fines of \$5,000 or imprisonment for five years, or both. State employees will be discharged from state service upon conviction.

Any person who violates any other provision of the Revenue Act, MCL 205.1, et seq., or any statute administered under the Revenue Act, will be guilty of a misdemeanor and fined \$1,000 or imprisonment for one year, or both, MCL 205.27(4).

Federal Penalties

If you willfully disclose federal tax returns or tax return information to a third party, you are guilty of a felony with a fine of \$5,000 or imprisonment for five years, or both, plus prosecution costs according to the Internal Revenue Code (IRC) §7213, 26 USC 7213.

In addition, inspecting, browsing or looking at a federal tax return or tax return information without authorization is a felony violation of IRC §7213A subjecting the violator to a \$1,000 fine or imprisonment for one year, or both, plus prosecution costs. Taxpayers affected by violations of §7213A must be notified by the government and may bring a civil action against the federal government and the violator within two years of the violation. Civil damages are the greater of \$1,000 or actual damages incurred by the taxpayer, plus the costs associated with bringing the action, 26 USC 7431.

Failure to comply with this confidentiality agreement may jeopardize your employer's contract with the Michigan Department of Treasury.

Certification		
By signing this Agreement, I certify that I have read the above confidentiality provisions and understand that failure to comply is a felony.		
Print name of employee signing this agreement	Signature of person named above	Date signed
Print Witness Name (Required)	Signature of Witness (Required)	Date signed

Submit your form to the following address:

Office of Privacy and Security/ Disclosure Unit
Michigan Department of Treasury
430 W. Allegan Street
Lansing, MI 48922

Questions, contact the Office of Privacy and Security by telephone, (517) 636-4239; fax, (517) 636-5340; or email: Treas_Disclosure@michigan.gov

Attachment B

Incident Report

INSTRUCTIONS: Complete Parts 1 and 2 and immediately submit Initial Report to the Privacy and Security Division. After incident resolution, submit Final Report (Parts 1, 2 and 3) to the Privacy and Security Division. Refer to Procedure PT-03253, Incident Reporting and Handling.

PART 1: A. CONTACT INFORMATION (Reporting Entity)																								
Full Name (Last, First, Middle Initial)		Division/Office																						
Telephone Number	Fax Number	E-Mail Address																						
B. CONTACT INFORMATION (Affected Entity)																								
Full Name (Last, First, Middle Initial)		Division/Office																						
Telephone Number	Fax Number	E-Mail Address																						
PART 2: INCIDENT INFORMATION																								
Whose information was involved in the incident?																								
<input type="checkbox"/> Treasury <input type="checkbox"/> Federal Tax Information <input type="checkbox"/> Other State Agency, specify _____ <input type="checkbox"/> Other																								
Incident Category (select all that apply)																								
<table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Passwords Shared/Stolen</td> <td><input type="checkbox"/> Computer Virus/Spam</td> <td><input type="checkbox"/> Paper Archives Compromised</td> </tr> <tr> <td><input type="checkbox"/> Misrouted Communications</td> <td><input type="checkbox"/> Data Destruction/Deletion</td> <td><input type="checkbox"/> Safe/Lockbox/other Compromise</td> </tr> <tr> <td><input type="checkbox"/> Unauthorized Access</td> <td><input type="checkbox"/> Backups Missing or Stolen</td> <td><input type="checkbox"/> Delivery of Documents Lost</td> </tr> <tr> <td><input type="checkbox"/> Fraudulent Actions</td> <td><input type="checkbox"/> Hacking of Networks/Systems</td> <td><input type="checkbox"/> Inappropriate Destruction</td> </tr> <tr> <td><input type="checkbox"/> Paper Lost/Stolen Information/Data</td> <td><input type="checkbox"/> Improperly Secured Sys/Web</td> <td><input type="checkbox"/> Inappropriate Destruction</td> </tr> <tr> <td><input type="checkbox"/> Media Lost/Stolen Cash/Checks</td> <td><input type="checkbox"/> Circumvention of Security Protocols</td> <td><input type="checkbox"/> Lost/Stolen Equipment</td> </tr> <tr> <td><input type="checkbox"/> Inappropriate Building Access</td> <td></td> <td></td> </tr> </table>				<input type="checkbox"/> Passwords Shared/Stolen	<input type="checkbox"/> Computer Virus/Spam	<input type="checkbox"/> Paper Archives Compromised	<input type="checkbox"/> Misrouted Communications	<input type="checkbox"/> Data Destruction/Deletion	<input type="checkbox"/> Safe/Lockbox/other Compromise	<input type="checkbox"/> Unauthorized Access	<input type="checkbox"/> Backups Missing or Stolen	<input type="checkbox"/> Delivery of Documents Lost	<input type="checkbox"/> Fraudulent Actions	<input type="checkbox"/> Hacking of Networks/Systems	<input type="checkbox"/> Inappropriate Destruction	<input type="checkbox"/> Paper Lost/Stolen Information/Data	<input type="checkbox"/> Improperly Secured Sys/Web	<input type="checkbox"/> Inappropriate Destruction	<input type="checkbox"/> Media Lost/Stolen Cash/Checks	<input type="checkbox"/> Circumvention of Security Protocols	<input type="checkbox"/> Lost/Stolen Equipment	<input type="checkbox"/> Inappropriate Building Access		
<input type="checkbox"/> Passwords Shared/Stolen	<input type="checkbox"/> Computer Virus/Spam	<input type="checkbox"/> Paper Archives Compromised																						
<input type="checkbox"/> Misrouted Communications	<input type="checkbox"/> Data Destruction/Deletion	<input type="checkbox"/> Safe/Lockbox/other Compromise																						
<input type="checkbox"/> Unauthorized Access	<input type="checkbox"/> Backups Missing or Stolen	<input type="checkbox"/> Delivery of Documents Lost																						
<input type="checkbox"/> Fraudulent Actions	<input type="checkbox"/> Hacking of Networks/Systems	<input type="checkbox"/> Inappropriate Destruction																						
<input type="checkbox"/> Paper Lost/Stolen Information/Data	<input type="checkbox"/> Improperly Secured Sys/Web	<input type="checkbox"/> Inappropriate Destruction																						
<input type="checkbox"/> Media Lost/Stolen Cash/Checks	<input type="checkbox"/> Circumvention of Security Protocols	<input type="checkbox"/> Lost/Stolen Equipment																						
<input type="checkbox"/> Inappropriate Building Access																								
Incident Affects																								
<table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Financial Information/Resources</td> <td><input type="checkbox"/> Personal Information (SSN, Dirver License No. Financial information)</td> <td><input type="checkbox"/> Unauthorized/Unlawful Activity</td> </tr> <tr> <td><input type="checkbox"/> Confidential/Sensitive Information</td> <td><input type="checkbox"/> Human Resources (threat)</td> <td><input type="checkbox"/> Other</td> </tr> </table>				<input type="checkbox"/> Financial Information/Resources	<input type="checkbox"/> Personal Information (SSN, Dirver License No. Financial information)	<input type="checkbox"/> Unauthorized/Unlawful Activity	<input type="checkbox"/> Confidential/Sensitive Information	<input type="checkbox"/> Human Resources (threat)	<input type="checkbox"/> Other															
<input type="checkbox"/> Financial Information/Resources	<input type="checkbox"/> Personal Information (SSN, Dirver License No. Financial information)	<input type="checkbox"/> Unauthorized/Unlawful Activity																						
<input type="checkbox"/> Confidential/Sensitive Information	<input type="checkbox"/> Human Resources (threat)	<input type="checkbox"/> Other																						
Date Incident Occurred	Time Incident Occurred	Date Incident Discovered	Time Incident Discovered																					
Incident Location		Number of Individuals Affected																						
Involved Parties/Entities		Does this involve personal information (last and first name along with a SSN, Driver License No., or Credit/Debit Card Account No.)? Yes No																						
Date of Initial Report																								
Description of Incident																								

Form 4000, Page 2

PART 3: INCIDENT RESOLUTION

Notification issued to affected individuals? <input type="checkbox"/> Yes <input type="checkbox"/> No	How many notifications were sent?	Breach Notification Method? <input type="checkbox"/> E-mail <input type="checkbox"/> Telephone <input type="checkbox"/> US Mail <input type="checkbox"/> Web
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Who was notified?	Date notification was issued
-------------------	------------------------------

Incident Cost.

Check if incident costs are less than \$250. If \$250 or more, complete the detailed summary of costs below.

Manhours: _____ Other: _____

Action Taken

Incident Impact

Post Incident Recommendations

PART 4: REPORT PREPARER INFORMATION

Final Report Prepared By:	Date Prepared	Preparer Title	Preparer's Telephone Number
Preparer Signature		Date	

PRIVACY AND SECURITY DIVISION USE ONLY

Privacy and Security Division Signature	Date
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SCHEDULE E- MDOC EXTENDED SECURITY REQUIREMENTS

The Contractor/subcontractor and any staff assigned to this contract will be subject to the following security procedures:

- A. No active warrants or pending charges on any staff assigned to this contract.
- B. MDOC reserves the right to approve, decline, or remove Contractor and subcontractor staff from providing services on this Contract.
- C. Not under investigation or under disciplinary action of the Michigan Department of Licensing and Regulatory Affairs.
- D. Has not engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility or other institution as defined in 42 U.S.C. 1997.
- E. Has not been convicted of engaging in, attempting to engage in or conspiracy to engage in sexual activity facilitated by force, overt or implied threats of force or coercion, or if the victim did not consent or was unable to consent or refuse.
- F. Has not been civilly or administratively adjudicated to have engaged in the activity described in Number E. above.
- G. The MDOC may investigate the Contractor/subcontractor's personnel before they may have access to MDOC facilities and systems. The scope of the background check is at the discretion of the MDOC and the results will be used to determine Contractor/Subcontractor's personnel eligibility for working within MDOC facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and the Law Enforcement Information Network (LEIN) and may include the National Crime Information Center (NCIC). Proposed Contractor/subcontractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Fingerprint Check. Any request for background checks will be initiated by the MDOC and will be reasonably related to the type of work requested.
- H. The Contractor/subcontractor's personnel must be LEIN cleared and received written approval from the MDOC's Program Manager and Contract Manager initially and annually by MDOC prior to any work with MDOC offenders. Any Contractor/subcontractor staff with an identified felony conviction must receive approval through the MDOC Deputy Director or designee.
- I. A completed LEIN Information Form for each staff assigned to the contract must be sent to the appropriate hiring manager or designee and approved

by MDOC prior to Contractor/subcontractor's personnel working with MDOC offenders and annually following approval. There is no cost associated with the LEIN. The LEIN form will be provided to the Contract awardee(s).

- J. The Contractor/subcontractor must document if a Contractor/subcontractor's personnel assigned to the Contract is related to or acquainted with an offender incarcerated and under the jurisdiction of the MDOC. For Contractor/subcontractor's personnel who are related to or acquainted with an offender, the Contractor/subcontractor's staff member must complete the Offender Contact Disclosure for Contractors form and submit it to the MDOC Program Manager or designee. The Contractor must ensure its personnel and subcontractor's personnel complete the form and notify the MDOC Program Manager of any changes throughout the contract term.
- K. The Contractor/subcontractor's personnel will be required to enter State facilities. The State may require the Contractor/subcontractor's personnel to wear State-issued identification badges.
- L. The Contractor/subcontractor's personnel must anticipate delays when visiting any correctional facility due to issues within the facility.
- M. The Contractor/subcontractor's personnel must comply with the State's security and acceptable use policies for State IT equipment and resources. See http://www.michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html. Contractor/subcontractor personnel must also agree to the State's security and acceptable use policies before the Contractor/subcontractor personnel will be accepted as a resource to perform work for the State. The Contractor must present these documents to prospective Contractor/subcontractor personnel before the Contractor/subcontractor presents the individual to the State as a proposed resource. Contractor/subcontractor personnel must comply with all physical security procedures in place within the facilities where they are working.
- N. The MDOC reserves the right to deny access to any correctional facility to anyone who fails to comply with any applicable State, Federal, or local law, ordinance or regulation or whose presence may compromise the security of the facility, its offenders, or staff. Weapons, alcoholic beverages, poison, and prescription drugs and controlled substances without written certification of needs from a licensed physician (does not include medical supplies for the facility), cellular devices, cameras, and audio or visual recording devices are prohibited from being brought into all MDOC correctional facilities. Tobacco products and smoking also are prohibited both inside a correctional facility and on facility grounds except as specifically authorized by MDOC policy. Wardens may prohibit other items from being brought into their respective correctional facilities.

- O. Security is the facility's first priority and the Contractor/subcontractor and its personnel must be responsive and respectful of these needs.
- P. The Contractor/subcontractor and its personnel must comply with and cooperate with all correctional facility rules, procedures and processes as well as State and federal laws. Contractor/subcontractor personnel must ensure that they are complying with all facility rules and regulations including, but not limited to, dress code and items allowed to be possessed.
- Q. The Contractor/subcontractor personnel must follow the facility entry, exit, manifest process, including the following:
 - 1. The Contractor/subcontractor personnel will receive an orientation and training by the MDOC on security, procedures, etc., inside the correctional facility. The Contractor must maintain a copy of the Contractor/subcontractor personnel's training certificates in the appropriate file for auditing purposes.
 - 2. The Contractor/subcontractor personnel must follow all MDOC rules, procedures and security processes at all times.
 - 3. The Contractor must ensure that all Contractor/subcontractor personnel working in a correctional facility are familiar and in compliance with the necessary routines and increased awareness of working inside a facility. Working inside the facility requires that the Contractor/subcontractor personnel develop positive and cooperative relationships with MDOC facility staff.
 - 4. The Contractor/subcontractor personnel must report any concerns, issues, or rule violations to the MDOC facility staff immediately.
 - 5. The Contractor/subcontractor personnel must use the MDOC facility staff as a resource for questions and guidance working with prisoners and inside a correctional facility.
 - 6. The Contractor/subcontractor personnel must defer to MDOC correctional facility staff for directions. The Contractor/subcontractor personnel must remember they are a guest in the facility and that security is the first priority of the facility.

SCHEDULE F – MDOC VENDOR HANDBOOK

MDOC VENDOR HANDBOOK FOR VENDOR EMPLOYEES ENTERING A SECURE FACILITY (Rev. 9-28-2016)

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

Definitions

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

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

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

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

Employee: A person employed by the Vendor.

Facility: Any property owned, leased, or occupied by the Michigan Department of Corrections that is used to maintain custody over a prisoner or parolee, e.g. prison, reentry center, health care area, etc.

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

Overfamiliarity: Overfamiliarity, establishing a friendship, mutual attraction or intimate relationship with an offender, is strictly prohibited. Examples are:

- Conduct which has resulted in or is likely to result in intimacy; a close personal or non-work related association,
- Being at the residence of an offender,
- Being at the residence of an offender's family,
- Giving or receiving non-work related letters, messages, money, personal mementos, pictures, telephone numbers, to or from an offender or a family member of a listed visitor of an offender,
- Exchanging hugs with an offender,
- Dating or having sexual relations with an offender, etc.

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

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

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

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

General Requirements

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

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

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

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

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

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

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

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

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

Specific Vendor Employee Rules

- 1. Humane Treatment of Individuals.** Employees are expected to treat all individuals in a humane manner while on duty in a facility. Examples of actions of an Employee in violation of this rule include but are not limited to, displaying a weapon, using speech, an action or gesture or movement that causes physical or mental intimidation or humiliation, failing to secure necessary culinary tools, using abusive or profane language which degrades or belittles another person or group, etc.
- 2. Use of Personal Position for Personal Gain.** Employees shall not engage in actions that could constitute the use of their position for personal gain. Example, employees are forbidden from exchanging with, giving to, or accepting gifts or services from an offender or an offender's family.
- 3. Discriminatory Harassment.** Employees shall not engage in discriminatory harassment which includes but is not limited to, unwelcomed advances, requests for favors, other verbal or non-verbal communication or conduct based on race color, national origin, disability, sex, sexual orientation, age, height, weight, marital status, religion, genetic information, etc.

4. **Misuse of State or Vendor Property/Equipment.** Employees shall not misuse State or Vendor property. Examples: using property for a personal purpose beyond that of your job duties, removing items from the premises without authorization, etc. This includes but is not limited to sexual images and pornography.
5. **Conduct Unbecoming.** Employees shall not behave in an inappropriate manner or in a manner which may harm or adversely affect the reputation or mission of the MDOC. If an employee is arrested or charged with a criminal offense, this matter shall be reported to the Employee's supervisor. Any conduct by an Employee involving theft is not tolerated.
6. **Physical Contact.** Inappropriate physical contact with offenders and MDOC staff is prohibited. Examples include inappropriately placing of hands on another person, horseplay, etc.
7. **Confidential Records/Information.** Employees shall respect the confidentiality of other employees, MDOC staff and prisoners. Employees shall not share confidential information.
8. **Use of Health Care Services.** Employees shall only use the facility health care services in case of emergency, medical stabilization and for serious on-the-job injuries. When the clinic facilities are used for an emergency or on-the-job injury, the Employee is to be transferred as soon as practicable to a physician or hospital.
9. **Insubordination.** Based on the safety and security of the facility, there may be times where Employees are provided guidance from MDOC staff. Willful acts of Employees contrary to MDOC instructions that compromise the MDOC's ability to carry out its responsibilities, are prohibited.
10. **Reserved.**
11. **Searches.** Employees are subject to search while on facility property and prior to entry into a facility. Employees who refuse to submit to an authorized search will not be permitted into the facility.
12. **Emergency.** Employees must immediately respond during an emergency, e.g. call for assistance, respond to an emergent situation, etc. This may include participating in emergency preparedness drills conducted by the MDOC, e.g. fire drills.
13. **MDOC Rules, Regulations, Policies, Procedures, Post Orders, Work Statements.** Employees must be familiar with and act in accordance with MDOC rules, regulations, policies, etc. Employees are prohibited from interfering with and undermining the MDOC's efforts to enforce rules, regulations, etc.

14. **Maintaining Order.** Any action or inaction that may detract from maintaining order within the facility is prohibited, e.g. antagonizing offenders, inciting to riot, etc.
15. **Chain of Command.** Employees shall follow their chain of command. Complaints and concerns are to be submitted to the immediate supervisor unless the situation is an emergency.
16. **Criminal Acts.** Employees shall not engage in conduct that results in a felony or misdemeanor conviction. Employees must provide a verbal report to their immediate supervisor within 24 hours of a felony or misdemeanor citation or arrest, the issuance of any warrant, any arraignment, pre-trial conference, pleas of any kind, trial, conviction, sentencing, federal, diversion or dismissal.
17. **Contraband and Controlled Substances.** There is a zero tolerance policy regarding any Employee possessing, using or introducing controlled substances into a facility where offenders are housed. The possession and presence of contraband presents a safety and security risk and is prohibited. Possession, introduction, or attempting to introduce any substance including controlled substances or intoxicants into any facility is prohibited. Yeast is also prohibited which can be used to manufacture a prohibited or illegal substance.
18. **Use of Alcohol or Controlled Substance.** Employees are prohibited from consuming alcohol or any controlled substance while on duty or on breaks. Employees who report for duty with alcohol on his/her breath or when suspected of being under the influence of alcohol or a controlled substance, may be prohibited from entering into the facility or be immediately removed from their assignment.
19. **Reserved.**
20. **Introduction or Possession of Contraband.** Employees shall not introduce or possess unauthorized items such as escape paraphernalia, weapons, facsimiles of weapons, ammunition, wireless communication devices, cell phones, tobacco, electronic cigarettes, lighters, matches, firearm, alcohol, cell phones, cell/electronic watches, iphones, ipads, computers, laptops, Tasers®, mace, pepper spray, Google glasses, recording devices, handcuff keys, walkie-talkies, yeast, fireworks, etc. Any prisoner who approaches an Employee and requests that contraband be brought into the facility must immediately report the request through his/her chain of command.
21. **Motor Vehicles on the Premises of Prison Grounds.** All motor vehicles must be properly locked and secured. It is the employee's responsibility to ensure that unauthorized items or contraband are not in the motor vehicle. Motor vehicles on facility grounds may be searched at any time for any reason. Any prisoner who approaches an Employee and requests that contraband be brought onto facility grounds must immediately report the request through his/her chain of command.

- 22. Reserved.**
- 23. Possession and/or Use of Medication.** Employees shall immediately notify their supervisor if taking prescribed medication which may interfere with the Employee's work responsibilities or the safety and security of the facility. Such medication includes but is not limited to: narcotic pain medication, psychotropic medication, mood altering medication and antihistamines. The Michigan Medical Marihuana Act (the Act), Initiated Law 1 of 2008, MCL 333.26421 – 333.26430, allows for the use of medical marihuana for individuals who have been diagnosed with a "debilitating medical condition." It is the position of the MDOC that Employees may not possess or use medical marihuana as it is both a federal and state offense.
- 24. Reserved.**
- 25. Reserved.**
- 26. Entry into a Facility/Visiting Offenders.** Employees are not permitted in non-public areas of the facility for non-work related purposes, especially where offenders are housed.
- Generally, Employees may visit an offender only if that offender is an immediate family member and is housed at another facility other than where the employee works, unless the Warden has granted special approval. Employees, who have family members incarcerated in the MDOC, must let their supervisor know immediately who will subsequently report this information to the MDOC. An employee may visit an offender only if that offender is an immediate family member and is housed at a facility other than where the Employee is assigned to work. Immediate family member is defined as a parent, grandparent, step-parent, grandchild, sibling, spouse, mother-in-law, father-in-law, child, step-child, stepbrother/sister. Visiting an immediate family member who is an offender housed in a facility requires prior permission of both the Vendor and they MDOC.
- 27. Dereliction of Duty.** Employees shall fully perform their job duties. Failure to do so is considered dereliction of duty and will be reported to the Vendor.
- 28. Use of Force.** Employees shall use the least amount of force necessary to perform their duties. Excessive use of force will not be tolerated. Employees may act to reasonably defend themselves against violence.
- 29. Exchange of Duties.** Employees shall not exchange duties or responsibilities with any MDOC staff.
- 30. Duty Relief.** Employees shall not leave an assignment without prior relief or authorization from their immediate supervisor.
- 31. Security Precautions.** Any action or inaction by an Employee which jeopardizes the safety or security of the facility, MDOC staff, the public or offenders is prohibited. Examples include but are not limited to, loss of

equipment (knives, tools), propping open security doors or doors that should remain locked, allowing an unknown or unidentified individual into a building, unauthorized distribution of MDOC exempt policy directives/operating procedures, etc.

- 32. **Attention to Duty.** Employees shall remain alert while on duty. Sleeping or failure to properly observe an assigned area or offenders are examples of inattention to duty and are prohibited. Items that detract from the alertness of an Employee are prohibited. These items include but are not limited to computer games, books, reading pamphlets, newspapers, or other reading materials while on duty. (MDOC cookbooks, menus, non-exempt policies and procedures and postings, etc. are not considered prohibited items.)
- 33. **Reporting Violations.** Employees, who are approached by offenders to introduce contraband or violate the safety and security of the institution, shall concurrently report each time they are approached to the Employee's immediate supervisor and MDOC staff. Employees must report conduct involving drugs, escape, sexual misconduct, sexual harassment, workplace safety or excessive use of force. A complete written report of the approach must be made no later than the end of the Employee's work day.
- 34. **Reserved.**
- 35. **Reserved.**
- 36. **Reserved.**
- 37. **Reserved.**
- 38. **Reserved.**
- 39. **Reserved.**
- 40. **Reserved.**
- 41. **Reserved.**
- 42. **Employee Uniform Requirements.** Employees must wear their required uniforms as approved by the Vendor and the MDOC. Employees will not be permitted to enter the facilities without the proper Vendor approved uniform/work attire.
- 43. **Reserved.**
- 44. **Reserved.**
- 45. **Reserved.**
- 46. **Reserved.**

- 47. **Falsifying, Altering, Destroying, Removing Documents or Filing False Report.** Employees shall not falsify, alter, or destroy documents or remove documents from the facility. Fraudulent reporting of an Employee's time is expressly prohibited.

- 48. **Giving or Receiving Gifts or Services.** Employees are prohibited from exchanging with, giving to, or accepting any gifts or services from offenders or an offender's family. This includes but is not limited to food and beverage items, shoe shines, clothing, paper products, stamps, delivering letters/correspondence, etc.

- 49. **Reserved.**

- 50. **Overfamiliarity or Unauthorized Contact.** Employees are prohibited from engaging in overfamiliarity with an offender, or an offender's family member or a listed visitor or friend of an offender. Relationships with an offender, other than an Employee with his or her approved family member, is prohibited regardless of when the relationship began. Any exceptions must have Vendor and MDOC prior approval.

- 51. **Sexual Conduct.** Employees are prohibited from engaging in sexual conduct with anyone while on duty.

- 52. **Sexual Harassment.** Employees are prohibited from sexual harassing anyone. Employees are prohibited from assisting, advising or encouraging any person to sexually harass another.

- 53. **Workplace Safety.** Threats made by Employees such as bomb threats, death threats, threats of assault, threats of violence are prohibited. Employees are prohibited from engaging with prisoners in contests like running or sprint challenges, weight lifting contests, etc. Employees shall not physically fight or assault any person on facility grounds. Employees may act to reasonably defend themselves against violence. If an Employee becomes aware of a threat of violence or an act of violence, the Employee shall immediately report this information to their supervisor/chain of command.

Employees will ensure proper storage and handling of tools, keys, equipment, and other items (e.g. metal cans, metallic items).

ACKNOWLEDGMENT

I acknowledge that I have received a copy of, have read, understand and agree to abide by the above additional conditions, including Attachment A. If I have any questions, I will ask my supervisor/manager.

 Print Employee Name

 Employee Signature

 Date

ATTACHMENT A

ALLOWABLE ITEMS WITHOUT GATE MANIFEST

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

1. Driver license/personal identification.
2. Pens (clear) and pencils (no more than two (2) of each).
3. Small notebook.
4. Eyeglasses and sunglasses.
5. Cash, not to exceed \$25.00.
6. Personal keys.
7. One (1) comb, one (1) brush or one (1) pick; non-metal only.
8. One (1) wallet or one purse/bag; no larger than 6" x 8".
9. Umbrella, no pointed tips, no more than 20 inches total length.
10. Feminine hygiene products; one (1) day's supply.
11. One (1) tube lip balm (e.g., Chapstick), one (1) lipstick.
12. Hand cream/lotion (1.6 oz. or less) tube.
13. Non-alcoholic based anti-bacterial hand cleaning sanitizer (four (4) oz. or less).
14. Sunscreen (four (4) oz. or less).
15. Over-the-counter medication; one (1) day's supply limited to pain medication (e.g. aspirin, Tylenol, Ibuprofen) and antacids (e.g. Tums, Mylanta). Over-the-counter medication containing stimulants/relaxants (e.g., NoDoz, Sleepeze, NyQuil, Dextrim) are prohibited. The medication must be factory sealed when brought in and be identifiable.

Note: An Administrative Manifest from the MDOC is required for prescription medication.
16. One individual box/packet (unopened) paper tissues or one handkerchief.
17. Breath mints (one (1) oz. or less), hard candy/cough drops/throat lozenges (one (1) roll or package (six (6) oz. or less) of no more than ten (10) individually

wrapped items); Commit nicotine lozenges (or similar brand) (ten (10) or less lozenges).

18. Coffee/tea/creamer/sugar/hot chocolate/coffee filters, soup/hot cereal/powdered drink mix, as described below:
 - Coffee – One (1) factory sealed, unopened non-metallic container containing no more than two (2) pounds to be transferred to clear plastic zip bag in presence of gate officer.
 - Tea/creamer/sugar – Single serving, sealed packets or in original packaging and transferred to clear plastic zip bag in presence of gate officer.
 - Hot Chocolate – Maximum of two (2) sealed packets in original packaging and transferred to clear plastic zip bag in presence of gate officer.
 - Coffee Filters – Maximum of one (1) unopened sealed bag in original packaging.
 - Soup/Hot Cereal/Powdered Drink Mix - Sealed packets or envelopes (no more than two (2)).
19. Pocket calendar (non-electronic).
20. One (1) clear, sealed, unopened plastic container of water not to exceed one (1) gallon.
21. Contact lens case; wetting solution and/or eye drops (non-prescription) – not to exceed ½ oz.
22. Factory sealed energy/protein/granola/candy bars – two (2).
23. Flashlight (mini) and case.
24. Street shoes during inclement weather to replace snowshoes/boots – one (1) pair.

SCHEDULE G – PREA STANDARDS

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§ 115.5 General definitions.

For purposes of this part, the term—

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

Agency head means the principal official of an agency.

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

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

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

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

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

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

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

Facility head means the principal official of a facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Staff means employees.

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

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

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

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

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

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

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

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

§ 115.6 Definitions related to sexual abuse.

For purposes of this part, the term—

Sexual abuse includes—

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

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

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

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

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

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

Sexual harassment includes—

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

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

(a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.

(b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities.

(c) Where an agency operates more than one facility, each facility shall designate a PREA compliance manager with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards.

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

(a) A public agency that contracts for the confinement of its inmates with private agencies or other entities, including other government agencies, shall include in any new contract or contract renewal the entity's obligation to adopt and comply with the PREA standards.

(b) Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.

Prevention Planning
§ 115.13 Supervision and monitoring.

(a) The agency shall ensure that each facility it operates shall develop, document, and make its best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration:

- (1) Generally accepted detention and correctional practices;
- (2) Any judicial findings of inadequacy;
- (3) Any findings of inadequacy from Federal investigative agencies;
- (4) Any findings of inadequacy from internal or external oversight bodies;
- (5) All components of the facility's physical plant (including "blind-spots" or areas where staff or inmates may be isolated);
- (6) The composition of the inmate population;
- (7) The number and placement of supervisory staff;
- (8) Institution programs occurring on a particular shift;
- (9) Any applicable State or local laws, regulations, or standards;
- (10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
- (11) Any other relevant factors.

(b) In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the plan.

(c) Whenever necessary, but no less frequently than once each year, for each facility the agency operates, in consultation with the PREA coordinator required by § 115.11, the agency shall assess, determine, and document whether adjustments are needed to:

- (1) The staffing plan established pursuant to paragraph (a) of this section;

(2) The facility's deployment of video monitoring systems and other monitoring technologies; and

(3) The resources the facility has available to commit to ensure adherence to the staffing plan.

(d) Each agency operating a facility shall implement a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts. Each agency shall have a policy to prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

Prevention Planning
§ 115.14 Youthful inmates.

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

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

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

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

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

Prevention Planning
§ 115.15 Limits to cross-gender viewing and searches.

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

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

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

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

and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.

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

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

Prevention Planning

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

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

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

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

Prevention Planning

§ 115.17 Hiring and promotion decisions.

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

(1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);

<p>(2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or</p> <p>(3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.</p>
<p>(b) The agency shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates.</p>
<p>(c) Before hiring new employees who may have contact with inmates, the agency shall:</p> <p>(1) Perform a criminal background records check; and</p> <p>(2) Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.</p>
<p>(d) The agency shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates.</p>
<p>(e) The agency shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees.</p>
<p>(f) The agency shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.</p>
<p>(g) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.</p>
<p>(h) Unless prohibited by law, the agency shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.</p>
<p><i>Prevention Planning</i></p> <p><i>§ 115.18 Upgrades to facilities and technologies.</i></p>
<p>(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect inmates from sexual abuse.</p>
<p>(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect inmates from sexual abuse.</p>
<p><i>Responsive Planning</i></p> <p><i>§ 115.21 Evidence protocol and forensic medical examinations.</i></p>
<p>(a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the</p>

potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.
(b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011.
(c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.
(d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.
(e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.
(f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of this section.
(g) The requirements of paragraphs (a) through (f) of this section shall also apply to: (1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in prisons or jails; and (2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in prisons or jails.
(h) For the purposes of this section, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.
<i>Responsive Planning</i> <i>§ 115.22 Policies to ensure referrals of allegations for investigations.</i>

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

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

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

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

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

Training and Education
§ 115.31 Employee training.

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

- (1) Its zero-tolerance policy for sexual abuse and sexual harassment;
- (2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
- (3) Inmates' right to be free from sexual abuse and sexual harassment;
- (4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
- (5) The dynamics of sexual abuse and sexual harassment in confinement;
- (6) The common reactions of sexual abuse and sexual harassment victims;
- (7) How to detect and respond to signs of threatened and actual sexual abuse;
- (8) How to avoid inappropriate relationships with inmates;
- (9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and
- (10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

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

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

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

<i>Training and Education</i> <i>§ 115.32 Volunteer and contractor training.</i>
(a) The agency shall ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures.
(b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.
(c) The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received.
<i>Training and Education</i> <i>§ 115.33 Inmate education.</i>
(a) During the intake process, inmates shall receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.
(b) Within 30 days of intake, the agency shall provide comprehensive education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.
(c) Current inmates who have not received such education shall be educated within one year of the effective date of the PREA standards, and shall receive education upon transfer to a different facility to the extent that the policies and procedures of the inmate's new facility differ from those of the previous facility.
(d) The agency shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills.
(e) The agency shall maintain documentation of inmate participation in these education sessions.
(f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.
<i>Training and Education</i> <i>§ 115.34 Specialized training: Investigations.</i>
(a) In addition to the general training provided to all employees pursuant to § 115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.
(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.
(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.

(d) Any State entity or Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.
<i>Training and Education</i> § 115.35 Specialized training: Medical and mental health care.
(a) The agency shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in: (1) How to detect and assess signs of sexual abuse and sexual harassment; (2) How to preserve physical evidence of sexual abuse; (3) How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and (4) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.
(b) If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.
(c) The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere.
(d) Medical and mental health care practitioners shall also receive the training mandated for employees under § 115.31 or for contractors and volunteers under § 115.32, depending upon the practitioner's status at the agency.
<i>Screening for Risk of Sexual Victimization and Abusiveness</i> § 115.41 Screening for risk of victimization and abusiveness.
(a) All inmates shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates.
(b) Intake screening shall ordinarily take place within 72 hours of arrival at the facility.
(c) Such assessments shall be conducted using an objective screening instrument.
(d) The intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (1) Whether the inmate has a mental, physical, or developmental disability; (2) The age of the inmate; (3) The physical build of the inmate; (4) Whether the inmate has previously been incarcerated; (5) Whether the inmate's criminal history is exclusively nonviolent; (6) Whether the inmate has prior convictions for sex offenses against an adult or child; (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming; (8) Whether the inmate has previously experienced sexual victimization; (9) The inmate's own perception of vulnerability; and (10) Whether the inmate is detained solely for civil immigration purposes.
(e) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in assessing inmates for risk of being sexually abusive.
(f) Within a set time period, not to exceed 30 days from the inmate's arrival at the facility, the facility will reassess the inmate's risk of victimization or abusiveness

based upon any additional, relevant information received by the facility since the intake screening.
(g) An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness.
(h) Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(1), (d)(7), (d)(8), or (d)(9) of this section.
(i) The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates.
<i>Screening for Risk of Sexual Victimization and Abusiveness</i> <i>§ 115.42 Use of screening information.</i>
(a) The agency shall use information from the risk screening required by § 115.41 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.
(b) The agency shall make individualized determinations about how to ensure the safety of each inmate.
(c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.
(d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.
(e) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.
(f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.
(g) The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.
<i>Screening for Risk of Sexual Victimization and Abusiveness</i> <i>§ 115.43 Protective custody.</i>
(a) Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment.
(b) Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the

<p>facility restricts access to programs, privileges, education, or work opportunities, the facility shall document:</p> <ol style="list-style-type: none"> (1) The opportunities that have been limited; (2) The duration of the limitation; and (3) The reasons for such limitations.
<p>(c) The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.</p>
<p>(d) If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document:</p> <ol style="list-style-type: none"> (1) The basis for the facility's concern for the inmate's safety; and (2) The reason why no alternative means of separation can be arranged.
<p>(e) Every 30 days, the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.</p>
<p><i>Reporting</i> § 115.51 <i>Inmate reporting.</i></p>
<p>(a) The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.</p>
<p>(b) The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request. Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.</p>
<p>(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.</p>
<p>(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.</p>
<p><i>Reporting</i> § 115.52 <i>Exhaustion of administrative remedies.</i></p>
<p>(a) An agency shall be exempt from this standard if it does not have administrative procedures to address inmate grievances regarding sexual abuse.</p>
<p>(b)(1) The agency shall not impose a time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse.</p> <p>(2) The agency may apply otherwise-applicable time limits to any portion of a grievance that does not allege an incident of sexual abuse.</p> <p>(3) The agency shall not require an inmate to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.</p> <p>(4) Nothing in this section shall restrict the agency's ability to defend against an inmate lawsuit on the ground that the applicable statute of limitations has expired.</p>
<p>(c) The agency shall ensure that—</p> <ol style="list-style-type: none"> (1) An inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and

(2) Such grievance is not referred to a staff member who is the subject of the complaint.

(d)(1) The agency shall issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.

(2) Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal.

(3) The agency may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The agency shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.

(4) At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level.

(e)(1) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates.

(2) If a third party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

(3) If the inmate declines to have the request processed on his or her behalf, the agency shall document the inmate's decision.

(f)(1) The agency shall establish procedures for the filing of an emergency grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse.

(2) After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, the agency shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken, shall provide an initial response within 48 hours, and shall issue a final agency decision within 5 calendar days. The initial response and final agency decision shall document the agency's determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

(g) The agency may discipline an inmate for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the inmate filed the grievance in bad faith.

Reporting

§ 115.53 Inmate access to outside confidential support services.

(a) The facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible.

(b) The facility shall inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.
(c) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.
<i>Reporting</i> § 115.54 Third-party reporting.
The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate.
<i>Official Response Following an Inmate Report</i> § 115.61 Staff and agency reporting duties.
(a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
(b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions.
(c) Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to paragraph (a) of this section and to inform inmates of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services.
(d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.
(e) The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators.
<i>Official Response Following an Inmate Report</i> § 115.62 Agency protection duties.
When an agency learns that an inmate is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the inmate.
<i>Official Response Following an Inmate Report</i> § 115.63 Reporting to other confinement facilities.
(a) Upon receiving an allegation that an inmate was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred.
(b) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.

(c) The agency shall document that it has provided such notification.
(d) The facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.
<i>Official Response Following an Inmate Report § 115.64 Staff first responder duties.</i>
(a) Upon learning of an allegation that an inmate was sexually abused, the first security staff member to respond to the report shall be required to: (1) Separate the alleged victim and abuser; (2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence; (3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and (4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.
(b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.
<i>Official Response Following an Inmate Report § 115.65 Coordinated response.</i>
The facility shall develop a written institutional plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.
<i>Official Response Following an Inmate Report § 115.66 Preservation of ability to protect inmates from contact with abusers.</i>
(a) Neither the agency nor any other governmental entity responsible for collective bargaining on the agency's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with any inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.
(b) Nothing in this standard shall restrict the entering into or renewal of agreements that govern: (1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §§ 115.72 and 115.76; or (2) Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.
<i>Official Response Following an Inmate Report § 115.67 Agency protection against retaliation.</i>
(a) The agency shall establish a policy to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff, and shall

designate which staff members or departments are charged with monitoring retaliation.
(b) The agency shall employ multiple protection measures, such as housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.
(c) For at least 90 days following a report of sexual abuse, the agency shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse and of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any inmate disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.
(d) In the case of inmates, such monitoring shall also include periodic status checks.
(e) If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation.
(f) An agency's obligation to monitor shall terminate if the agency determines that the allegation is unfounded.
<i>Official Response Following an Inmate Report § 115.68 Post-allegation protective custody.</i>
Any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43.
<i>Investigations § 115.71 Criminal and administrative agency investigations.</i>
(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.
(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.34.
(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.
(d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
(e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.
(f) Administrative investigations:

<p>(1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and</p> <p>(2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.</p>
<p>(g) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.</p>
<p>(h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.</p>
<p>(i) The agency shall retain all written reports referenced in paragraphs (f) and (g) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.</p>
<p>(j) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.</p>
<p>(k) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.</p>
<p>(l) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.</p>
<p><i>Investigations</i></p> <p>§ 115.72 Evidentiary standard for administrative investigations.</p>
<p>The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.</p>
<p><i>Investigations</i></p> <p>§ 115.73 Reporting to inmates.</p>
<p>(a) Following an investigation into an inmate's allegation that he or she suffered sexual abuse in an agency facility, the agency shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.</p>
<p>(b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate.</p>
<p>(c) Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, the agency shall subsequently inform the inmate (unless the agency has determined that the allegation is unfounded) whenever:</p> <ol style="list-style-type: none"> (1) The staff member is no longer posted within the inmate's unit; (2) The staff member is no longer employed at the facility; (3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or (4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
<p>(d) Following an inmate's allegation that he or she has been sexually abused by another inmate, the agency shall subsequently inform the alleged victim whenever:</p> <ol style="list-style-type: none"> (1) The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or

(2) The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

(e) All such notifications or attempted notifications shall be documented.

(f) An agency's obligation to report under this standard shall terminate if the inmate is released from the agency's custody.

Discipline
§ 115.76 Disciplinary sanctions for staff.

(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.

(c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

Discipline
§ 115.77 Corrective action for contractors and volunteers.

(a) Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.

(b) The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.

Discipline
§ 115.78 Disciplinary sanctions for inmates.

(a) Inmates shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse.

(b) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories.

(c) The disciplinary process shall consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

(d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the offending inmate to participate in such interventions as a condition of access to programming or other benefits.

(e) The agency may discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact.
(f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.
(g) An agency may, in its discretion, prohibit all sexual activity between inmates and may discipline inmates for such activity. An agency may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.
<i>Medical and Mental Care</i> <i>§ 115.81 Medical and mental health screenings; history of sexual abuse.</i>
(a) If the screening pursuant to § 115.41 indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.
(b) If the screening pursuant to § 115.41 indicates that a prison inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.
(c) If the screening pursuant to § 115.41 indicates that a jail inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.
(d) Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law.
(e) Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.
<i>Medical and Mental Care</i> <i>§ 115.82 Access to emergency medical and mental health services.</i>
(a) Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.
(b) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim pursuant to § 115.62 and shall immediately notify the appropriate medical and mental health practitioners.
(c) Inmate victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.

(d) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.
<i>Medical and Mental Care</i> § 115.83 Ongoing medical and mental health care for sexual abuse victims and abusers.
(a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.
(b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.
(c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.
(d) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.
(e) If pregnancy results from the conduct described in paragraph (d) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.
(f) Inmate victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.
(g) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.
(h) All prisons shall attempt to conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.
<i>Data Collection and Review</i> § 115.86 Sexual abuse incident reviews.
(a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.
(b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.
(c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.
(d) The review team shall: <ol style="list-style-type: none"> (1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse; (2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility; (3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse; (4) Assess the adequacy of staffing levels in that area during different shifts;

<p>(5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and</p> <p>(6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1)-(d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.</p>
<p>(e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.</p>
<p><i>Data Collection and Review</i> <i>§ 115.87 Data collection.</i></p>
<p>(a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.</p>
<p>(b) The agency shall aggregate the incident-based sexual abuse data at least annually.</p>
<p>(c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.</p>
<p>(d) The agency shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.</p>
<p>(e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.</p>
<p>(f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.</p>
<p><i>Data Collection and Review</i> <i>§ 115.88 Data review for corrective action.</i></p>
<p>(a) The agency shall review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:</p> <ol style="list-style-type: none"> (1) Identifying problem areas; (2) Taking corrective action on an ongoing basis; and (3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.
<p>(b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.</p>
<p>(c) The agency's report shall be approved by the agency head and made readily available to the public through its website or, if it does not have one, through other means.</p>
<p>(d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.</p>
<p><i>Data Collection and Review</i> <i>§ 115.89 Data storage, publication, and destruction.</i></p>
<p>(a) The agency shall ensure that data collected pursuant to § 115.87 are securely retained.</p>

(b) The agency shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website or, if it does not have one, through other means.
(c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.
(d) The agency shall maintain sexual abuse data collected pursuant to § 115.87 for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.
<i>Audits</i> <i>§ 115.93 Audits of standards.</i>
The agency shall conduct audits pursuant to §§ 115.401–.405.
<i>Auditing and Corrective Action</i> <i>§ 115.401 Frequency and scope of audits.</i>
(a) During the three-year period starting on [INSERT DATE ONE YEAR PLUS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and during each three-year period thereafter, the agency shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited at least once.
(b) During each one-year period starting on [INSERT DATE ONE YEAR PLUS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the agency shall ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, is audited.
(c) The Department of Justice may send a recommendation to an agency for an expedited audit if the Department has reason to believe that a particular facility may be experiencing problems relating to sexual abuse. The recommendation may also include referrals to resources that may assist the agency with PREA-related issues.
(d) The Department of Justice shall develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit.
(e) The agency shall bear the burden of demonstrating compliance with the standards.
(f) The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type.
(g) The audits shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period.
(h) The auditor shall have access to, and shall observe, all areas of the audited facilities.
(i) The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information).
(j) The auditor shall retain and preserve all documentation (including, e.g., video tapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the Department of Justice upon request.
(k) The auditor shall interview a representative sample of inmates, residents, and detainees, and of staff, supervisors, and administrators.
(l) The auditor shall review a sampling of any available videotapes and other electronically available data (e.g., Watchtour) that may be relevant to the provisions being audited.

(m) The auditor shall be permitted to conduct private interviews with inmates, residents, and detainees.
(n) Inmates, residents, and detainees shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.
(o) Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.
<i>Auditing and Corrective Action</i> <i>§ 115.402 Auditor qualifications.</i>
(a) An audit shall be conducted by: (1) A member of a correctional monitoring body that is not part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant State or local government); (2) A member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or (3) Other outside individuals with relevant experience.
(b) All auditors shall be certified by the Department of Justice. The Department of Justice shall develop and issue procedures regarding the certification process, which shall include training requirements.
(c) No audit may be conducted by an auditor who has received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within the three years prior to the agency's retention of the auditor.
(d) The agency shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent PREA audits.
<i>Auditing and Corrective Action</i> <i>§ 115.403 Audit contents and findings.</i>
(a) Each audit shall include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the agency under review.
(b) Audit reports shall state whether agency-wide policies and procedures comply with relevant PREA standards.
(c) For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action). The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level.
(d) Audit reports shall describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited facility, and shall include recommendations for any required corrective action.
(e) Auditors shall redact any personally identifiable inmate or staff information from their reports, but shall provide such information to the agency upon request, and may provide such information to the Department of Justice.
(f) The agency shall ensure that the auditor's final report is published on the agency's website if it has one, or is otherwise made readily available to the public.
<i>Auditing and Corrective Action</i>

<i>§ 115.404 Audit corrective action plan.</i>
(a) A finding of “Does Not Meet Standard” with one or more standards shall trigger a 180-day corrective action period.
(b) The auditor and the agency shall jointly develop a corrective action plan to achieve compliance.
(c) The auditor shall take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a facility.
(d) After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action.
(e) If the agency does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.
<i>Auditing and Corrective Action § 115.405 Audit appeals.</i>
(a) An agency may lodge an appeal with the Department of Justice regarding any specific audit finding that it believes to be incorrect. Such appeal must be lodged within 90 days of the auditor’s final determination.
(b) If the Department determines that the agency has stated good cause for a re-evaluation, the agency may commission a re-audit by an auditor mutually agreed upon by the Department and the agency. The agency shall bear the costs of this re-audit.
(c) The findings of the re-audit shall be considered final.
<i>State Compliance § 115.501 State determination and certification of full compliance.</i>
(a) In determining pursuant to 42 U.S.C. 15607(c)(2) whether the State is in full compliance with the PREA standards, the Governor shall consider the results of the most recent agency audits.
(b) The Governor’s certification shall apply to all facilities in the State under the operational control of the State’s executive branch, including facilities operated by private entities on behalf of the State’s executive branch.