



**STATE OF MICHIGAN  
ENTERPRISE PROCUREMENT**

Department of Technology, Management, and Budget  
320 S. Walnut Street 2nd Floor Lansing, MI 48933  
P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number **4**  
to  
Contract Number **MA220000001318**

<b>CURRENT CONTRACTOR</b>	THE RAPID GROUP LLC	<b>NEW CONTRACTOR</b>	VRC Companies, LLC dba VitalChart
	2972 Sangra SW		Dept 5853
	Grandville MI 49418		PO Box 11407
	Scott Dennis		Birmingham AL 35246
	616.735.2900		Jason Skrmetti
	sdennis@rapidshred.com		228-326-6391
CV0044048	jskrmetti@vrcnetwork.com		VS0144758

STATE CONTACTS				
<b>Program Manager</b>	Caryn Wojcik	DTMB	<b>Contract Administrator</b>	
	517-335-8222			Nichole Harrell
	wojcik@michigan.gov			DTMB
			517-449-9245	
			harrelln@michigan.gov	

CONTRACT SUMMARY			
Statewide Confidential Document Destruction Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
October 1, 2022	September 30, 2027	5 - 12 Months	September 30, 2027
PAYMENT TERMS		DELIVERY TIMEFRAME	
1.5 / Net 10 & Net 45		N/A	
ALTERNATE PAYMENT OPTIONS		EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (PRC) <input type="checkbox"/> Other		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS			
No Minimum Delivery Requirements.			
DESCRIPTION OF CHANGE NOTICE			
OPTION	LENGTH OF OPTION	EXTENSION	REVISD EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>	
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$1,936,130.00	\$0.00	\$1,936,130.00	

## DESCRIPTION

Effective January 1, 2025, please note Contractor company change in ownership from The Rapid Group, LLC to VRC Companies, LLC dba VitalChart. The parties agree to the following:

1. Schedule A - Statement of Work : Contractor Contact roles in the designated sections are updated as follows:

Standard Contract Terms, Section 2. Notices: Jason Skrmetti

Standard Contract Terms, Section 3. Contract Administrator: Jason Skrmetti

Standard Contract Terms, Section 4. Program Manager: Jeff Svihra

Statement of Work, Section 3.1. Contractor Representative: Jason Skrmetti, (228)326-6391, jskrmetti@vrcnetwork.com

Statement of Work, Section 3.2. Customer Service Contact Information: (616)735-2900, Service-grr@vrcofmi.com

Statement of Work, Section 3.4. Key Personnel:

Program Manager - Jeff Svihra

Operations Manager - Chris Annis

Customer Care Manager - Brenda Zuverink, (616)735-2900

Customer Care Lead - Nancy Darling

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



**STATE OF MICHIGAN  
ENTERPRISE PROCUREMENT**

Department of Technology, Management, and Budget

525 W. ALLEGAN ST., LANSING, MICHIGAN 48913  
P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number **3**

to

Contract Number **MA220000001318**

<b>CONTRACTOR</b>	THE RAPID GROUP LLC
	2972 Sangra SW
	Grandville MI 49418
	Scott Dennis
	616.735.2900
	sdennis@rapidshred.com
	CV0044048

<b>STATE</b>	<b>Program Manager</b>	Caryn Wojcik	DTMB
		517-335-8222	
		wojckc@michigan.gov	
<b>Contract Administrator</b>	<b>Contract Administrator</b>	Nichole Harrell	DTMB
		517-449-9245	
		harrelln@michigan.gov	

**CONTRACT SUMMARY**

Statewide Confidential Document Destruction Services

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
October 1, 2022	September 30, 2027	5 - 12 Months	September 30, 2027
PAYMENT TERMS		DELIVERY TIMEFRAME	
1.5 / Net 10 & Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (PRC) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

No Minimum Delivery Requirements.

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$1,936,130.00	\$0.00	\$1,936,130.00		

#### DESCRIPTION

Effective June 21, 2024, the parties agree to remove the following language from Schedule B - Pricing:

*"Pricing for facilities not located within Eaton, Ingham, and Wayne counties (All Zones except 7). Agencies outside the three counties listed above, are not under Contractual obligation to use this Contract. State of Michigan facilities not located within Eaton, Ingham, and Wayne counties, who choose to use this Contract and are within the Contractor's standard service areas and can be picked up in conjunction with regularly scheduled service, may be accommodated."*

The attached pricing agreement supersedes and replaces all previously executed versions of Schedule B - Pricing.

All other terms, conditions, specifications, and pricing remain the same. Per Vendor, agency, and DTMB Central Procurement approval.

# SCHEDULE B-PRICING

## Contract No. 22000001318 – Statewide Confidential Document Destruction Services

\*Schedule B – Pricing amended via Contract Change Notice No. 3 effective 6/21/2024.

1. Price proposals 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. The Contractor is encouraged to offer quick payment terms. The number of days must not include processing time for payment to be received by the Contractor's financial institution.

Quick payment terms: 1.5% discount off invoice if paid within 10 days after receipt of invoice.

3. Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.
4. Definitions:
  - a) Destruction – refers to the confidential destruction of items in compliance with the terms established by this contract.
  - b) On-site shredding – refers to the service described in Section 1 item #9.
  - c) Pick-up – refers to the transfer of custody of the materials (unit) to be confidentially destroyed on a particular date to the Contractor.
  - d) Stop – refers to each billing code at a particular location that is visited on a particular date. A separate work ticket is created for each stop.
  - e) Unit – refers to the actual materials to be confidentially destroyed.
  - f) Zone – refers to State of Michigan Prosperity Regions, as identified on the map in Schedule E.

### 5. Pricing Schedule

For Zones 7 and 10						
Item	Description	Estimated Number of Stops	Stop Charge (if applicable)	Unit Price per Pound	Estimated Pounds per Year	One Year Total Price
1	Pick-up and destruction of Confidential Records in lots exceeding 1 ton (2,000 lbs) in weight (est. 14% by volume).	150	\$33	\$0.01	473,000	\$9,680
2	Pick-up and destruction of Confidential Records in lots weighing between 500 lbs and 1 ton (2,000 lbs) (est. 46% by volume).	950	\$33	\$0.00	1,450,000	\$31,350
3	Pick-up and destruction of Confidential Records in lots weighing less than 500 lbs. (est. 40% by volume) Minimum Charge	1600	\$25	\$0.00	1,260,000	\$40,000
4	Pick-up and destruction of other non-paper media such as magnetic tape, video tapes, driver licenses, uniforms, microfiche, computer disks, etc.	As Needed	\$25	\$0.20	31,000	\$6,200
5	Container delivery with no associated pick up at the location. (Note: This delivery charge for all other Zones will be the Stop Charge listed on the off-site pricing table)	As Needed	\$25	N/A	N/A	N/A

Total One Year Price (Zone 7 and 10):	\$87,230
<b>Total Five-Year Price (Zone 7 and 10) FOR PICK-UP AND DESTRUCTION:</b>	\$436,150

**Footnote: Stop Charge for non-paper media will only apply if only non-paper media is picked up. If paper is also picked up at the same time, then this non-paper stop charge will not apply, only the unit price per pound.**

Zone	Item	Estimated Number of Stops	Stop Charge (if applicable)	Unit Price per pound	Estimated Pounds per Year	One Year Total Price
1	Minimum Stop Charge (per each if applicable) & price per pound	As Needed	\$100	\$0.12	As Needed	As Needed
2	Minimum Stop Charge (per each if applicable) & price per pound	As Needed	\$50	\$0.07	As Needed	As Needed
3	Minimum Stop Charge (per each if applicable) & price per pound	As Needed	\$75	\$0.07	As Needed	As Needed
4	Minimum Stop Charge (per each if applicable) & price per pound	As Needed	\$33	\$0.07	As Needed	As Needed
5	Minimum Stop Charge (per each if applicable) & price per pound	As Needed	\$33	\$0.07	As Needed	As Needed
6	Minimum Stop Charge (per each if applicable) & price per pound	As Needed	\$33	\$0.07	As Needed	As Needed
8	Minimum Stop Charge (per each if applicable) & price per pound	As Needed	\$33	\$0.07	As Needed	As Needed
9	Minimum Stop Charge (per each if applicable) & price per pound	As Needed	\$33	\$0.07	As Needed	As Needed
Total One Year Price (All Zones Except 7 and 10):					As Needed	
<b>Total Five-Year Price (All Zones Except 7 and 10) FOR STOP CHARGE:</b>					<b>As Needed</b>	

**\$50 per person-hour labor charge – This will apply for confidential shred services that require labor in excess of 30 minutes at a specific location to carry material from storage to truck. The charge must be per-approved by that location.**

<b>Pricing for on-site shredding</b>			
Zone	Route Stop Charge	Non-Route Stop Charge	Unit Price per Pound
1	\$100	\$200	\$0.30
2	\$50	\$100	\$0.15
3	\$75	\$150	\$0.15
4	\$50	\$75	\$0.15
5	\$50	\$100	\$0.15
6	\$50	\$100	\$0.15
7	\$50	\$75	\$0.15
8	\$50	\$100	\$0.15

9	\$50	\$100	\$0.15
10	\$50	\$100	\$0.15

The stop charge will vary based on zone. If the service location is able to be serviced on an established route of the Contractor, the Contractor will charge the stop charge and the unit price per pound charge. If the agency cannot be scheduled on an established route, the Contractor will charge the non-route stop fee and unit price per pound. The Contractor will inform the agency of these choices in writing and will work with the agency on schedule. A copy of the customer notification will be included with the monthly invoice. The service time constraint will be suspended for on-site destruction to allow the Contractor to build a route to eliminate the premium charge.

Lost Container Fee	
Container Description	Fee
Wooden shredding console	\$ 85.00
64-gallon shred cart	\$ 90.00
96-gallon shred cart	\$ 95.00
Standard padlock	\$ 8.00
	\$
	\$

Total Five-Year Price (Zone 7 and 10):	\$436,130
Total Five-Year Price (All Zones Except 7 and 10):	AS NEEDED
<b>TOTAL FIVE_YEAR PRICE FOR ON-SITE SHREDDING:</b>	<b>As needed</b>
<b>TOTAL FIVE_YEAR ESTIMATED CONTRACT VALUE FOR CONFIDENTIAL DOCUMENT DESTRUCTION</b>	<b>\$436,130</b>



**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 **220000001318**

<b>CONTRACTOR</b>	THE RAPID GROUP LLC
	2972 Sangra SW
	Grandville, MI 49418
	Scott Dennis
	616.735.2900
	sdennis@rapidshred.com
	CV0044048

<b>STATE</b>	<b>Program Manager</b>	Caryn Wojcik	DTMB
		517-335-8222	
		Wojcicc@Michigan.gov	
	<b>Contract Administrator</b>	Nichole Harrell	DTMB
		517-449-9245	
		harrelln@michigan.gov	

**CONTRACT SUMMARY**

**STATEWIDE CONFIDENTIAL DOCUMENT DESTRUCTION SERVICES**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
October 1, 2022	September 30, 2027	5 - 1 Year	September 30, 2027
PAYMENT TERMS		DELIVERY TIMEFRAME	
1.5/NET 10 & NET 45		N/A	
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**

No Minimum Delivery Requirements.

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		N/A
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$436,130.00	\$1,500,000.00	\$1,936,130.00		

**DESCRIPTION**

Effective November 14, 2023, this Contract is increased by \$1,500,000.00 for Statewide use. All other terms, conditions, specifications, and pricing remain the same. Per Contractor and Agency agreement, DTMB Procurement approval, and State Administrative Board approval on November 14, 2023.





**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 1  
 to  
 Contract Number 220000001318

<b>CONTRACTOR</b>	THE RAPID GROUP LLC
	2972 Sangra SW
	Grandville, MI 49418
	Scott Dennis
	616.735.2900
	sdennis@rapidshred.com
	CV0044048

<b>STATE</b>	<b>Program Manager</b>	Caryn Wojcik	DTMB
		517-335-8222	
		Wojcikc@Michigan.gov	
	<b>Contract Administrator</b>	Nichole Harrell	DTMB
		517-636-0313	
		harrelln@michigan.gov	

**CONTRACT SUMMARY**

STATEWIDE CONFIDENTIAL DOCUMENT DESTRUCTION SERVICES

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE
October 1, 2022	September 30, 2027	5 - 1 Year	September 30, 2027
PAYMENT TERMS		DELIVERY TIMEFRAME	
1.5/Net 10 & Net 45		N/A	
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

N/A

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		N/A
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$436,130.00	\$0.00	\$436,130.00		

**DESCRIPTION**

Effective December 19, 2022, this Contract is amended to include a visual map of the State of Michigan Prosperity Regions as required for billing purposes under this agreement. All other terms, conditions, specifications, and pricing remain the same. Per Vendor and Agency agreement and DTMB Central Procurement approval.

# State of Michigan Prosperity Regions



## REGIONS

- 1** Upper Peninsula region
- 2** Northwest region
- 3** Northeast region
- 4** West Michigan region
- 5** East Central Michigan region
- 6** East Michigan region
- 7** South Central region
- 8** Southwest region
- 9** Southeast Michigan region
- 10** Detroit Metro region

2569-130107



PURE MICHIGAN®



**STATE OF MICHIGAN PROCUREMENT**  
 Department of Technology, Management and Budget  
 525 W. Allegan St., Lansing, Michigan 48913  
 P.O. Box 30026 Lansing, Michigan 48909

**NOTICE OF CONTRACT**

NOTICE OF CONTRACT NO. **220000001318**  
 between  
 THE STATE OF MICHIGAN  
 and

<b>CONTRACTOR</b>	The Rapid Group, LLC
	2972 Sangra SW
	Grandville, MI 49418
	Scott Dennis
	616-735-2900
	sdennis@rapidshred.com
	CV0044048

<b>STATE</b>	Program Manager	Caryn Wojcik	DTMB
		517-335-8222	
	Wojcick@michigan.gov		
	Contract Administrator	Nichole Harrell	DTMB
517-449-9245			
Harrelln@michigan.gov			

<b>CONTRACT SUMMARY</b>			
<b>DESCRIPTION: Statewide Confidential Document Destruction Services</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
October 1, 2022	September 30, 2027	5, one-year	
PAYMENT TERMS		DELIVERY TIMEFRAME	
1.5/Net 10 & 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 inquiry bearing the solicitation # 220000002457. Orders for delivery will be issued directly by the Department in accordance to Schedule A, Section 6.1. Authorizing Document.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			<b>\$436,130.00</b>

STATEWIDE CONFIDENTIAL DOCUMENT DESTRUCTION SERVICES- MA NO.  
 220000001318

# STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and The Rapid Group, LLC (“**Contractor**”), a Michigan limited liability company. This Contract is effective on October 1, 2022 (“**Effective Date**”), and unless terminated, expires on September 30, 2027.

This Contract may be renewed for up to five (5) additional one-year period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

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

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities 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) 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; (i) comply with all State physical and IT security policies and standards which will be made available upon request; and (j) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

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

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

If to State:	If to Contractor:
See Contract Administrator information shown below.	Scott Dennis 2972 Sangra SW Grandville, MI 49418 <a href="mailto:sdennis@rapidshred.com">sdennis@rapidshred.com</a> 616-735-2900

- Contract Administrator.** The Contract Administrator, or the individual duly authorized 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:
Nichole Harrell 320 S Walnut St Lansing, MI 48933 Harrelln@michigan.gov 517-449-9245	Scott Dennis 2972 Sangra SW Grandville, MI 49418 <a href="mailto:sdennis@rapidshred.com">sdennis@rapidshred.com</a> 616-735-2900

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 (Document Destruction):	Contractor:
Caryn Wojcik 3400 N Grand River Ave Lansing, MI 48906 Wojcic@michigan.gov 517-335-8222	Scott Dennis 2972 Sangra SW Grandville, MI 49418 <a href="mailto:sdennis@rapidshred.com">sdennis@rapidshred.com</a> 616-735-2900

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.** See Schedule C.

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](mailto: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](http://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. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. 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. Neither party has authority to contract for nor bind the other party in any manner whatsoever.

- 10. Intellectual Property Rights.** If Schedule A, Statement of Work, requires Contractor to create any intellectual property, 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.
- 11. 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.
- 12. Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
- 13. 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.
- 14. 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.
- 15. Change of Control.** Contractor will notify the State, within 30 days of any public announcement or otherwise once legally permitted to do so, 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.

- 16. Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.
- 17. 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 24, 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.

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

Excluding federal government charges and terms, Contractor warrants and agrees that each of the fees, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent fees, economic or product term or warranty being offered to any commercial or government customer (including any public educational institution within the State of Michigan) of Contractor. If Contractor enters into any arrangements with another customer of Contractor to provide the products or services, available under this Contract, under more favorable prices, as the prices may be indicated on Contractor's current U.S. and International price list or comparable document, then this Contract will be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Contractor will immediately notify the State of such fee and formally memorialize the new pricing in a change notice.

- 22. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Schedule A. The parties understand and agree that any liquidated damages (which includes but is not limited to applicable credits) set forth in this Contract are reasonable estimates of the State's damages in accordance with applicable law. The parties acknowledge and agree that Contractor could incur liquidated damages for more than 1 event. The assessment of liquidated damages will not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract for cause under Section 24 and the State will be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract. However, the State will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages. Amounts due the State as liquidated damages may be set off against any fees payable to Contractor under this Contract, or the State may bill Contractor as a separate item and Contractor will promptly make payments on such bills.
- 23. 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.
- 24. 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 25, 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.

- 25. 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 26, 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.
- 26. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 180 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 27. 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, at its own cost and expense, if the State deems necessary. Contractor will not, without the State's prior 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.

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.

The State is constitutionally prohibited from indemnifying Contractor or any third parties.

- 28. 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.
- 29. 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.
- 30. 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 (3) any complaint filed in a legal or administrative proceeding alleging the Contractor or its subcontractors discriminated against its employees, subcontractors, vendors, or suppliers during the term of this Contract; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
- 31. Reserved.**
- 32. 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, user data, and any other 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) protected 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.
- 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; (c) keep and maintain State Data in the continental United States and (d) not use, sell, rent, transfer, distribute, commercially exploit, 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. Contractor's misuse of State Data may violate state or federal laws, including but not limited to MCL 752.795.

- c. **Extraction of State Data.** Contractor must, within 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 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 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 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 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 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 32** are to be considered direct damages and not consequential damages.

- 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.
- 33. 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.
- 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; or, (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 or is: (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.

#### 34. 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.

35. Reserved.

36. Reserved.

37. **Records Maintenance, Inspection, Examination, and Audit.** Pursuant to MCL 18.1470, 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 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 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.

- 38. Representations and Warranties.** 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 24, Termination for Cause.
- 39. 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.
- 40. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 41. Reserved.**
- 42. Reserved.**
- 43. 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.

- 44. 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.
- 45. 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 the Michigan Court of Claims. Complaints against the State must be initiated in Ingham County, Michigan. Contractor waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint an agent in Michigan to receive service of process.
- 46. Non-Exclusivity.** Nothing contained in this Contract is intended nor is to be construed as creating any requirements contract with Contractor, nor does it provide Contractor with a right of first refusal for any future work. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 47. 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.
- 48. 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.
- 49. 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 the prior written approval of the State, and then only in accordance with the explicit written instructions of the State.
- 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	Description
Schedule A	Statement of Work
Schedule B	Pricing
Schedule C	Insurance Requirements
Schedule D	Authorizing Document for Confidential Document Destruction Services
Schedule E	Data Security Requirements

Schedule F	Federal Provisions Addendum
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- 51. Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and schedules and exhibits, 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, OR DOCUMENTATION HEREUNDER, EVEN IF ATTACHED TO THE STATE’S DELIVERY OR PURCHASE ORDER, WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, 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.** Any right, obligation or condition that, by its express terms or nature and context is intended to survive, will survive the termination or expiration of this Contract; such rights, obligations, or conditions include, but are not limited to, those related to transition responsibilities; indemnification; disclaimer of damages and limitations of liability; State Data; non-disclosure of Confidential Information; representations and warranties; insurance and bankruptcy.
- 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

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

## 1. Equal Employment Opportunity

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

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

## 3. Copeland "Anti-Kickback" Act

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

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

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

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

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

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

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

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

If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act ([42 USC 7401-7671q](#)) 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 Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## 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.

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# SCHEDULE A - STATEMENT OF WORK CONTRACT ACTIVITIES

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Contract No. 220000001318

## Confidential Document Destruction Services

### BACKGROUND

State agencies require that records in their possession, which contain confidential or sensitive information, be destroyed in a manner that prevents their reconstruction and the inappropriate release of information. Destruction methods must meet or exceed the requirements of applicable state and federal laws and regulations. These laws and regulations include, but are not limited to, the Identify Theft Protection Act (MCL 445.61-.79d), and the current version of IRS Publication 1075 “Safeguards for Protecting Federal Tax Returns and Return Information” ([www.irs.gov/pub/irs-pdf/p1075.pdf](http://www.irs.gov/pub/irs-pdf/p1075.pdf)). Acceptability of the destroyed materials will be the sole decision of the State.”

### SCOPE

The Contractor will be required to destroy confidential records, non-paper items such as clothing (uniforms), and other media, such as microfilm, tape cartridges, driver’s licenses, computer disks, etc., generated by State agencies and to report the volume as described in the Contract.

#### 1. Requirements

The Contractor must provide services/deliverables, all personnel, vehicles, bins, compactors, and other items and/or services necessary to perform the Contract Activities as set forth below:

1. The Contractor will be required to destroy confidential records generated by State of Michigan agencies and to report the volume as described in this Contract.
2. Destruction of records is to be conducted by burning, cross-cut shredding, grinding, or pulverization. “Pulping” is not an acceptable means of destruction for the purpose of this Contract.
3. Destruction of all State of Michigan records must be in compliance with the current version of IRS Publication 1075 Safeguards for Protecting Federal Tax Returns and Return Information (<http://www.irs.gov/pub/irs-pdf/p1075.pdf>), Section 8.0.
4. The destruction method for non-paper items such as clothing (uniforms) must be by incineration (fire) or shredding.
5. Other media, such as microfilm, tape cartridges, driver’s licenses, computer disks, etc., must be physically destroyed by grinding the items to dust.
6. Destruction must be completed within 24 hours of receipt of material. In Zones 2-10, except in circumstances where a State agency makes prior arrangements to witness the destruction process, or a written authorization is executed to destroy an unusually large volume of materials. Pick-ups from locations in Zone 1 must be destroyed within 24 hours of return to the Contractor’s facility.

7. The Contractor will be required to operate a facility in which the security and confidentiality of all materials received for destruction is assured at all times.
8. The Contractor will have the ability for State agency personnel to deliver and/or witness the destruction of confidential records, with prior arrangements. There will be no additional charge for this service.
9. The Contractor shall provide the means to destroy material on-site and to allow SOM personnel to witness the destruction of the material. The Contractor will document the weight, operator, and quantity of all the material being destroyed on-site at the time of destruction. If the Contractor's on-site destruction equipment cannot destroy the material to the particle size required by federal IRS guidelines (destroy paper using cross cut shredders which produce particles that are 1 mm x 5 mm (0.04 in. x 0.2 in.) in size (or smaller), or pulverize/disintegrate paper materials using disintegrator devices equipped with a 3/32 in. (2.4 mm) security screen), it must be securely transported back to the Contractor's facility and destroyed a second time using the appropriate destruction equipment to assure compliance with the particle size requirements of this contract. The Contractor will again document the operator and the time the material was destroyed. Until that time, this two-step destruction process is required for agencies utilizing the on-site destruction service.
10. The Contractor must furnish all containers, needed for this Contract. The containers must be clearly marked that they are property of the Contractor. The Contractor will not accept material in containers which are not the property of the Contractor. Any non-Contractor containers holding documents and property, submitted by the State of Michigan to the Contractor, will not be returned. All containers that will be located in open or public areas will be locked. The Contractor will maintain a master key to all of the bins. The Contractor will not issue a key to any state agency without express written permission from Program Manager. The Program Manager may require separate master keys for select customers, depending upon the unique security requirements of those customers, as defined by the customer's Authorizing Document. The Contractor will maintain current documentation identifying all persons to whom keys were issued.
11. The Contractor must use state certified scales throughout the term of this Contract. Proof of certification of scales must be provided prior to Contract start date and annually. Certification must be maintained throughout the contract term.
12. Charges for destruction service must be based on the weight of the material destroyed. The weight of pallets and containers must be deducted from the chargeable weight as reported on invoices and required reports.
13. No fuel surcharges are allowed under this Contract.
14. Contractor's vehicle's (truck) must be locked at all times and must be locked upon any exit of the vehicle.
15. Each driver must possess a valid driver's license. Contractor's employees may be required to wear State-issued identification badges while at State of Michigan buildings and facilities.
16. All drugs, alcohol, weapons, fireworks and explosives are prohibited at all State of Michigan buildings and facilities.



### 1.1. Pick-up Requirements

1. Contractor will make arrangements with the state agency to pick-up materials on acceptable dates and times. See section 3.3 for normal business hours. State agencies can contact the Contractor to request services using the contact information found in section 3.1.
2. The Contractor must furnish all necessary equipment. In the event that equipment is needed to accomplish a pickup (wheeled hand trucks, mobile carts, pallet lifts, etc.), this equipment must not cause damage to the floors, carpeting, walls, doorways, or office equipment at that location. Contractor must immediately notify the Program Manager of any damage that occurred; Contractor will be responsible for the cost to repair any damage or blemish caused by their work.
3. Offices within the Counties of Eaton, Ingham, and Wayne will receive pick-up service within two (2) business days of notification, or according to established delivery schedules.
4. Contractor will document the activities at each stop with a Work Ticket. At a minimum, the work ticket will identify the date of service, state agency and location, name of state agency contact person, time of service, driver name or initials, state agency signature releasing custody, ticket number, type of service, number of containers, weight of materials, date and time of return to Contractor's facility, and the date and time of destruction.

### 1.3 Michigan Department of Corrections (MDOC) Specific Requirements

#### A. Correctional Facility

1. The States correctional locations may have wait times to enter each facility. However, the State will make every reasonable effort to limit wait times for service trucks. If other vehicles are waiting to enter the sallyport gates, which causes the delay, the Contractor may return later the same day for pick up at no additional charge to the State.
2. Contractor and MDOC Program Manager or designee representative will coordinate to meet on site at designated correctional location(s) or remotely prior to Contract start to arrange schedules and receive necessary orientation and security clearances.
3. Contractor shall pick up materials between the hours of 7:00 a.m. – 4:00 p.m. Eastern, Monday through Friday. Contractor's vehicles will not be allowed to enter facilities during lunch count (10:45am-12:15pm). If a correctional facility is on lock down all service vehicles will be turned away at the sallyport gate.
4. Contractor staff that come into the Administration Building of a correctional facility will need to secure their cellular devices and personal tobacco products in their locked vehicle prior to entrance.

#### B. Security

The Contractor, its staff, and any subcontractor staff will be subject to the following security procedures:

1. No active warrants or pending charges on any staff assigned to this contract.

2. MDOC reserves the right to approve, decline, or remove Contractor and subcontractor staff from providing services on this Contract.
3. May not be under Federal, State or local jurisdiction as a prisoner. Must be off of Federal, State or local jurisdiction for five years from the date of discharge. Felony ex-prisoners will not be considered as contracted staff until they have been discharged from all sentences, including parole and probation, and are approved by the Deputy Director of the Correctional Facilities Administration (CFA). MDOC reserves the right to approve or decline applicants who have been involved in the criminal justice system depending on the circumstances.
4. Not under investigation or under disciplinary action of the Michigan Department of Licensing and Regulatory Affairs.
5. 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.
6. 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.
7. Has not been civilly or administratively adjudicated to have engaged in the activity described in Number 6 above.
8. All drivers, Contractor's and technicians that are entering an MDOC facility must be LEIN cleared by MDOC at least 72 hours prior to facility entry. The Contractor's personnel must be LEIN cleared and received written approval from the MDOC's Contract Manager initially and annually by MDOC prior to any work with MDOC prisoners. The Contractor should attempt to get any and all staff/inspectors that potentially could go into a secure facility during the life of the contract pre-cleared through LEIN before a need is recognized. Should an emergency arise, MDOC may be able to LEIN clear individuals less than 72 hours if approved by the Contract Manager.
9. The Contractor's personnel must request LEIN clearance in writing. The completed LEIN Information Form must be sent to and approved by MDOC prior to Contractor's personnel working with MDOC prisoners and annually following approval. There is no cost associated with the LEIN clearance. The LEIN form and email address will be provided to the Contract awardee(s).
10. The Contractor must document if a Contractor's personnel assigned to the Contract is related to or acquainted with a prisoner incarcerated and under the jurisdiction of the MDOC. For Contractor's personnel who are related to or acquainted with a prisoner, the Contractor's staff member must complete the Prisoner Contact Exception Request (CAJ-202) and submit it to the MDOC Program Manager or designee. The Contractor must ensure its personnel complete the form and notify the MDOC Program Manager of any changes throughout the contract term. The Contractor's and subcontractor's personnel will be required to enter State facilities. The State may require the Contractor's and subcontractor's personnel to wear State issued identification badges.
11. The Contractor's personnel will be required to enter State facilities. The State may require the Contractor's personnel to wear State-issued identification badges.

12. All vehicles entering a correctional facility must be inspected before entry of the secure perimeter.
13. 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 members 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. Smoking is prohibited.
14. Security is the facility's first priority, and the Contractor and Contractor Personnel must be responsive and respectful of these needs.
15. The Contractor and Contractor's personnel must comply with and cooperate with all correctional facility rules, procedures and processes as well as State and federal laws. Contractor 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.
16. The Contractor's and Contractor's personnel must follow the facility entry, exit, manifest process, to include the following:
  - a) The Contractor and Contractor's personnel may 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 personnel's training certificates in the appropriate file for auditing purposes.
  - b) The Contractor's personnel must follow all MDOC rules, procedures and security processes at all times.
  - c) The Contractor must ensure that all Contractor 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 personnel develop positive and cooperative relationships with MDOC facility staff.
  - d) The Contractor's personnel must report any concerns, issues, or rule violations to the MDOC facility staff immediately.
  - e) The Contractor's personnel must use the MDOC facility staff as a resource for questions and guidance working with prisoners and inside a correctional facility.
  - f) The Contractor's personnel must defer to MDOC correctional facility staff for directions. The Contractor personnel must remember they are a guest in the facility and that security is the first priority of the facility.

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

1. The Contractor and the Contractor Personnel shall comply with the Final Rule implementing PREA, all applicable PREA standards (Attachment 3-A) and the agency's policies. The Contractor and Contractor Personnel shall make itself familiar with and at all times shall 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 polices of the MDOC will be considered a breach of contract and may result in termination of the contract.
2. Contract Personnel who may have contact with prisoners must complete PREA training Program A - Correctional Facilities Administration (CFA) Security Regulations (Attachment 3-B) prior to entrance in any MDOC Facility. Upon completion, Contractor Personnel shall submit a signed memorandum to the Contract Administrator documenting completion of the training and date of completion.
3. As is deemed necessary, the MDOC 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.

#### D. Vendor Handbook

The Contractor will require all its employees working inside an MDOC correctional facility to read and sign the MDOC Vendor Handbook (Attachment 4) 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 awarded Contractor must provide copies of each signed Employee Acknowledgement to the MDOC Program Manager at the completion of the employee's orientation.

#### E. Training

In accordance with MDOC instruction, Contractor staff providing services under the MDOC contract may be required to complete applicable MDOC provided training prior to providing services under this Contract and annually thereafter. The training assigned will be specific to Contractor worksite, level of offender contact, and the services provided under the Contract. For Contractors who have no offender contact and no access to MDOC properties or data, training may not be a requirement. Contractor staff will be reimbursed for required MDOC training upon successful completion of their assigned MDOC Training Plan. New Contractor training is required to be completed prior to providing services under the contract and may be completed at a non-MDOC location (Home Office, Agency Office, etc..). Contact the MDOC Contract Representative with any questions concerning MDOC training.

#### 1.4 Additional Requirements

1. If the Contractor picks up recyclables at the same location, they must not co-mingle the recyclables with the confidential destruction documents/materials. These must be completely segregated on different trucks and/or pickups.
2. At the discretion of the Program Manager, agencies using this contract must agree to and sign an Authorizing Document (AD) prior to commencing pickup services. Separate ADs will be developed for each billing code, regardless of the number of containers that are associated with that billing code. The AD will

contain all information necessary to obtain the desired services and bill the appropriate agency for the services that are received. The AD must include, but may not be limited to, the following: state agency information (including billing/budget codes), contact information, pickup schedule, unique security requirements, and any other information deemed relevant. The ADs will be filed with the Program Manager. Any changes to the AD after pickup services begin must be agreed upon in writing and filed with the AD.

3. The Contractor must be certified by NAID and provide a copy of their annual NAID re-certification documents within 30 days of re-certification on an annual basis. The Contractor will also provide the documentation of any unscheduled or unannounced audit results within 30 days of receipt. The NAID certification does not replace the particle size requirements specified in the contract.
4. Prior to any Contractor personnel performing any services, the Contractor will ensure all Contractor personnel have passed a Michigan State Police administered name-based and fingerprint-based background check, and that all Contractor Personnel submit a signed CJIS Security Addendum (see Appendix H), as required by the Federal Bureau of Investigation Criminal Justice Information Services Security Policy, and complete modules one through four of the Criminal Justice Information Services Security Awareness Training upon assignment, and every two years thereafter. The contractor will be responsible for all costs associated with meeting these requirements. The Contractor will supply documentary evidence of the checks and training to the Program Manager. Additional requirements may include personal background screenings, credit checks, and additional training or screenings required by agencies using this contract and authorized by the Program Manager.

## **2. Acceptance**

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

The following criteria will be used by the State to determine Acceptance of the Services or Deliverables provided under this SOW:

- Timely pick up and destruction of records and other materials.
- Monthly Statistical Report

## **3. Staffing**

### **3.1. Contractor Representative**

The Contractor must appoint a Project Manager, specifically assigned to State of Michigan accounts, that 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 30 calendar days before removing or assigning a new Contractor Representative.

The Contractor's employees may be required to periodically take confidentiality and security awareness training. Successful completion of the training must be documented and provided to the Project Manager. The Project Manager is responsible for notifying the Contractor which training is required and when it must be completed.

For the service of this Contract the Contractor's Key Personnel will be:

**Contractor Representative:**

Scott Dennis  
2972 Sangra SW  
Grandville, MI 49418  
Email: [sdennis@rapidshred.com](mailto:sdennis@rapidshred.com)  
Phone: (616) 735-2900

**3.2. Customer Service Contact Information**

The Contractor must specify its toll-free number for the State to make contact with Key Personnel. Key Personnel must be available for calls during the hours of 8:00 am to 5:00 pm EST. The Contractor must specify an email address for customer service requests.

Contractor Toll-Free Number – (877) 202-8942

Requests can be sent via email at [service@rapidshred.com](mailto:service@rapidshred.com)

**3.3. Work Hours**

The Contractor must provide Contract Activities during the State’s normal working hours Monday – Friday, 7:30 a.m. to 3:00 p.m. EST, except state holidays.

**3.4. Key Personnel**

The Contractor must appoint a Project Manager, 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 24 hours.

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.

The Contractor’s identified Key Personnel are as follows:

**Program Manager:** Scott Dennis, Project and Contract Manager

**Scheduling:** Nancy Mercado, Scheduling / Logistics Manager

**Senior Customer Service Representatives:**

Craig Werkema  
Rick Omiljian  
Ken Parker  
Bruce Dykstra

### **3.5. Contractor Personnel**

Contractor proposed personnel must pass a MSP administered name-based and fingerprint based background check and State of Michigan drug test prior to assignment to this project. Additionally, each vendor staff member will submit a signed Security Addendum as required by the Federal Bureau of Investigation Criminal Justice Information Services Security Policy and complete modules one through four of the Michigan State Police Criminal Justice Information Services Security Awareness Training upon assignment and every two years thereafter. Contractor will pay for all costs associated with ensuring that their staff meets these requirements.

### **3.6. Organizational Chart**

The Contractor must provide an overall organizational chart that details staff members, by name and title.

### **3.7. Disclosure of Subcontractors**

The use of subcontractors will not be allowed.

### **3.8. Security and Background Checks**

The Contractor will be subject the following security procedures:

1. The Contractor will have a seven-year social security trace performed by Merit Profiles on all staff upon hiring and/or prior to the start date of this Contract. The Contractor must have on file, affidavits of confidentiality for all individuals that are assigned to the performance of this Contract. At a minimum, affidavits of confidentiality for all staff must be updated annually. Any changes in staffing assigned to performance of this Contract by the Contractor must be reflected in new confidentiality statements on file.
2. Additional affidavits of confidentiality may be required by specific Agencies. Unauthorized disclosure by the Contractor, of any information contained during the Contract Activities may be cause for immediate cancellation of the Contract and may result in prosecution for any violation of applicable laws.
3. The Contractor will ensure all personnel wear their designated company uniform and a photo identification badge. Contractor's personnel that are assigned to the performance of this Contract will wear State-issued identification badge when servicing SOM locations.
4. On a case-by-case basis, the State reserves the right to investigate the Contractor's personnel. The scope of the background check is at the discretion of the State and the results may be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations may include Michigan State Police (MSP) background checks and National Crime Information Center (NCIC) Fingerprints. Proposed Contractor 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 State and will be reasonably related to the type of work requested. Anyone who fails an MSP background check cannot work on this contract.

## **4. Service Management**

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



The State reserves the right to perform unannounced visits to the Contractor's processing facility for the purposes of conducting performance audits.

#### **4.1. Project Plan**

Project plan should identify items such as the required contact personnel; the date the project plan must be submitted to the State; project management process; project breakdown identifying sub-projects, tasks, and resources required; expected frequency and mechanisms for updates/progress reviews; process for addressing issues/changes; and individuals responsible for receiving/reacting to the requested information.

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

#### **4.2. Meetings**

Although there will be continuous liaison with the Contractor, the Program Manager will meet annually, at a minimum, with the Contractor's Project Manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise.

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

#### **4.3. Reporting**

The Contractor will be required to provide the following reports:

- a) Monthly: *Monthly statistical report* - The volume of confidential records destroyed, the volume of paper or by-product recycled, and include year-to-date figures. The reporting period must coincide with the State's fiscal year period (October 1 through September 30). Each report must be submitted to the Program Manager no later than the 10th working day of the month following the end of each month of service. To be submitted with the invoice.
- b) Monthly: *Statement Certifying Confidential Destruction* - The statement with certifying that the confidential destruction was performed according to all contract requirements. Monthly: *Monthly Staffing Report* - Must be in Microsoft Word or Excel format and include the name, title, and hire date for all of the Contractor's employees with access to MDOC criminal justice information. Each report must be submitted to the Program Manager and the MDOC Contract Manager, via email, no later than the 15<sup>th</sup> working day of the month following the end of each month of service.
- c) Annually: *NAID Certification* - provide a copy of NAID recertification documents within 30 days of recertification on an annual basis.

### **5. Pricing**

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

Pricing is firm for the entire length of the Contract.

#### **5.2. 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.

## **6. Ordering**

### **6.1. Authorizing Document**

The appropriate authorizing document for the Contract will be Blanket Purchase Order (BPO) with Purchase Order (PO) release.

## **7. Invoice and Payment**

### **7.1. Invoice Requirements**

The Contractor will be responsible for submitting a detailed monthly invoice and applicable reports for service rendered. Each invoice and applicable reports must be submitted to the Program Manager no later than the 10th working day of the month, following the end of each month of service. Invoices must include the following:

1. Date
2. BPO/Contract Number
3. Purchase Order Number
4. Invoice Number
5. Description of Services Provided
6. Total Cost
7. Statement certifying confidential destruction was performed according to all contract requirements.

Overtime, holiday pay, and travel expenses will not be paid. Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with the State of Michigan Standard Contract Terms and Conditions.

Program Manager is responsible for billing the agency. The Contractor must direct all billing questions from an agency to Program Manager.

### **7.2. Payment Methods**

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

## **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.

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# SCHEDULE B -PRICING

**Contract No. 220000001318**  
 Statewide Confidential Document Destruction Services

1. Schedule B - 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. The Contractor is encouraged to offer quick payment terms. The number of days must not include processing time for payment to be received by the Contractor's financial institution.

Quick payment terms: 1.5% discount off invoice if paid within 10 days after receipt of invoice.

3. Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.
4. Definitions:
  - a) Destruction – refers to the confidential destruction of items in compliance with the terms established by this contract.
  - b) On-site shredding – refers to the service described in Section 1 item #9.
  - c) Pick-up – refers to the transfer of custody of the materials (unit) to be confidentially destroyed on a particular date to the Contractor.
  - d) Stop – refers to each billing code at a particular location that is visited on a particular date. A separate work ticket is created for each stop.
  - e) Unit – refers to the actual materials to be confidentially destroyed.
  - f) Zone – refers to State of Michigan Prosperity Regions, as identified on the map in Schedule E.

5. Pricing Schedule

For Zones 7 and 10						
Item	Description	Estimated Number of Stops	Stop Charge (if applicable)	Unit Price per Pound	Estimated Pounds per Year	One Year Total Price
1	Pick-up and destruction of Confidential Records in lots exceeding 1 ton (2,000 lbs) in weight (est. 14% by volume).	150	\$33	\$0.01	473,000	\$9,680
2	Pick-up and destruction of Confidential Records in lots weighing between 500 lbs and 1 ton (2,000 lbs) (est. 46% by volume).	950	\$33	\$0.00	1,450,000	\$31,350
3	Pick-up and destruction of Confidential Records in lots weighing less than 500 lbs. (est. 40% by volume) Minimum Charge	1600	\$25	\$0.00	1,260,000	\$40,000
4	Pick-up and destruction of other non-paper media such as magnetic tape, video tapes, driver licenses, uniforms, microfiche, computer disks, etc.	As Needed	\$25	\$0.20	31,000	\$6,200
5	Container delivery with no associated pick up at the location. (Note: This delivery charge for all other Zones will be the Stop Charge listed on the off-site pricing table)	As Needed	\$25	N/A	N/A	N/A
Total One Year Price (Zone 7 and 10):					\$87,230	
<b>Total Five-Year Price (Zone 7 and 10) FOR PICK-UP AND DESTRUCTION:</b>					\$436,150	

**Footnote: Stop Charge for non-paper media will only apply if only non-paper media is picked up. If paper is also picked up at the same time, then this non-paper stop charge will not apply, only the unit price per pound.**

\* Pricing for facilities not located within Eaton, Ingham, and Wayne counties (All zones except 7). Agencies outside the three counties listed above, are not under Contractual obligation to use this Contract. State of Michigan facilities not located within Eaton, Ingham, and Wayne counties, who choose to use this Contract and are within the Contractor's standard service areas and can be picked up in conjunction with regularly scheduled service, may be accommodated.

Zone	Item	Estimated Number of Stops	Stop Charge (if applicable)	Unit Price per pound	Estimated Pounds per Year	One Year Total Price
1	Minimum Stop Charge (per each if applicable) & price per pound	As Needed	\$100	\$0.12	As Needed	As Needed
2	Minimum Stop Charge (per each if applicable) & price per pound	As Needed	\$50	\$0.07	As Needed	As Needed
3	Minimum Stop Charge (per each if applicable) & price per pound	As Needed	\$75	\$0.07	As Needed	As Needed
4	Minimum Stop Charge (per each if applicable) & price per pound	As Needed	\$33	\$0.07	As Needed	As Needed
5	Minimum Stop Charge (per each if applicable) & price per pound	As Needed	\$33	\$0.07	As Needed	As Needed
6	Minimum Stop Charge (per each if applicable) & price per pound	As Needed	\$33	\$0.07	As Needed	As Needed
8	Minimum Stop Charge (per each if applicable) & price per pound	As Needed	\$33	\$0.07	As Needed	As Needed
9	Minimum Stop Charge (per each if applicable) & price per pound	As Needed	\$33	\$0.07	As Needed	As Needed
<b>Total One Year Price (All Zones Except 7 and 10):</b>					<b>As Needed</b>	
<b>Total Five-Year Price (All Zones Except 7 and 10) FOR STOP CHARGE:</b>					<b>As Needed</b>	

\$50 per person-hour labor charge – This will apply for confidential shred services that require labor in excess of 30 minutes at a specific location to carry material from storage to truck. The charge must be per-approved by that location.

<b>Pricing for on-site shredding</b>			
Zone	Route Stop Charge	Non-Route Stop Charge	Unit Price per Pound
1	\$100	\$200	\$0.30
2	\$50	\$100	\$0.15
3	\$75	\$150	\$0.15
4	\$50	\$75	\$0.15
5	\$50	\$100	\$0.15
6	\$50	\$100	\$0.15
7	\$50	\$75	\$0.15

8	\$50	\$100	\$0.15
9	\$50	\$100	\$0.15
10	\$50	\$100	\$0.15

The stop charge will vary based on zone. If the service location is able to be serviced on an established route of the Contractor, the Contractor will charge the stop charge and the unit price per pound charge. If the agency cannot be scheduled on an established route, the Contractor will charge the non-route stop fee and unit price per pound. The Contractor will inform the agency of these choices in writing and will work with the agency on schedule. A copy of the customer notification will be included with the monthly invoice. The service time constraint will be suspended for on-site destruction to allow the Contractor to build a route to eliminate the premium charge.

Lost Container Fee	
Container Description	Fee
Wooden shredding console	\$ 85.00
64-gallon shred cart	\$ 90.00
96-gallon shred cart	\$ 95.00
Standard padlock	\$ 8.00
	\$
	\$

Total Five-Year Price (Zone 7 and 10):	\$436,130
Total Five-Year Price (All Zones Except 7 and 10):	AS NEEDED
<b>TOTAL FIVE_YEAR PRICE FOR ON-SITE SHREDDING:</b>	<b>As needed</b>
<b>TOTAL FIVE_YEAR ESTIMATED CONTRACT VALUE FOR CONFIDENTIAL DOCUMENT DESTRUCTION</b>	<b>\$436,130</b>

## SCHEDULE C - INSURANCE REQUIREMENTS

**Contract No.** 220000001318  
 Statewide Confidential Document Destruction Services

1. **General Requirements.** Contractor, at its sole expense, must maintain the insurance coverage as specified herein for the duration of the Term. Minimum limits may be satisfied by any combination of primary liability, umbrella or excess liability, and self-insurance coverage. To the extent damages are covered by any required insurance, Contractor waives all rights against the State for such damages. Failure to maintain required insurance does not limit this waiver.
2. **Qualification of Insurers.** Except for self-insured coverage, all policies must be written by an insurer with an A.M. Best rating of A- VII or higher unless otherwise approved by DTMB Enterprise Risk Management.
3. **Primary and Non-Contributory Coverage.** All policies for which the State of Michigan is required to be named as an additional insured must be on a primary and non-contributory basis.
4. **Claims-Made Coverage.** If any required policies provide claims-made coverage, Contractor must:
  - a. Maintain coverage and provide evidence of coverage for at least 3 years after the later of the expiration or termination of the Contract or the completion of all its duties under the Contract;
  - b. Purchase extended reporting coverage for a minimum of 3 years after completion of work if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Contract.
5. **Proof of Insurance.**
  - a. Insurance certificates showing evidence of coverage as required herein must be submitted to [DTMB-RiskManagement@michigan.gov](mailto:DTMB-RiskManagement@michigan.gov) within 10 days of the contract execution date.
  - b. Renewal insurance certificates must be provided on annual basis or as otherwise commensurate with the effective dates of coverage for any insurance required herein.
  - c. Insurance certificates must be in the form of a standard ACORD Insurance Certificate unless otherwise approved by DTMB Enterprise Risk Management.
  - d. All insurance certificates must clearly identify the Contract Number (e.g., notated under the Description of Operations on an ACORD form).
  - e. The State may require additional proofs of insurance or solvency, including but not limited to policy declarations, policy endorsements, policy schedules, self-insured certification/authorization, and balance sheets.
  - f. In the event any required coverage is cancelled or not renewed, Contractor must provide written notice to DTMB Enterprise Risk Management no later than 5 business days following such cancellation or nonrenewal.
6. **Subcontractors.** Contractor is responsible for ensuring its subcontractors carry and maintain insurance coverage.
7. **Limits of Coverage & Specific Endorsements.**

Required Limits	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<b>Minimum Limits:</b>	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions,

Required Limits	Additional Requirements
\$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 Products/Completed Operations \$2,000,000 General Aggregate	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.
<b>Automobile Liability Insurance</b>	
<b>Minimum Limits:</b> \$1,000,000 Per Accident	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
<b>Workers' Compensation Insurance</b>	
<b>Minimum Limits:</b> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<b>Minimum Limits:</b> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease	

**8. Non-Waiver.** This Schedule C 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.



# SCHEDULE D – AUTHORIZING DOCUMENT

## Authorizing Document

for

### Confidential Destruction of Records Services

Section 6.1 of Schedule A - Statement of Work is hereby amended, and this document is now the Authorizing Document which shall be used to request Confidential Destruction Services, provided pursuant to contract no.220000001318.

<b>DEPARTMENT</b>		please supply	
<b>AGENCY/DIVISION</b>		please supply	
<b>LOCATION</b> ( <i>building name, street address, floor/pillar/suite, city, zip code</i> )		please supply	
<b>NUMBER OF BINS</b>	please supply	<b>KEY ISSUED</b> ( <i>yes/no</i> )	please supply
<b>PICK-UP FREQUENCY</b> ( <i>weekly, monthly, or as needed</i> )		please supply	
<b>BILLING ID</b> ( <i>supplied by DTMB Finance</i> )			


**BILLING:** Provide all applicable billing codes for the location that will be using this service. Separate Authorizing Documents need to be prepared for each unique set of billing codes, regardless of how many bins are used.

DEPT	ACTG TEMPLATE		UNIT	LOC	OBJ	DOBJ	PROG	PHASE	PROGP
	please supply								
APPN	FUND	SFUND	ACTIVITY	FUNC		TASK	TASKO	BSA	BFY

**ROLES:** See Section III on page 4 of this Authorizing Document for a description of each of the roles listed below.

**LOCATION CONTACTS:**

<b>Agency Business Owner Name</b>	please supply
<b>Agency Business Owner Title</b>	please supply
<b>Agency Business Owner Email</b>	please supply
<b>Financial Contact Name</b>	please supply
<b>Financial Contact Phone Number</b>	please supply
<b>On-site Contact Name</b>	please supply
<b>On-site Contact Email</b>	please supply
<b>On-site Contact Phone Number</b>	please supply

Approvals	Signature/Date
AGENCY BUSINESS OWNER:	<div style="border: 2px solid red; padding: 10px; margin: 0 auto; width: 80%;">             Please do not sign the document at this time. This document will be signed electronically when all of the information on page 1 is collected. Thank you.         </div>
VENDOR:	
CONTRACT COMPLIANCE:  Caryn Wojcik, DTMB – Records Management Services 3400 N Grand River Ave, Lansing, MI 48906 <a href="mailto:wojcikc@michigan.gov">wojcikc@michigan.gov</a>	

If the AGENCY receives new billing codes, assigns these duties to someone else, adds or returns bins, or if the location of the bin(s) changes, the AGENCY must provide this information in writing to VENDOR at [service@rapidshred.com](mailto:service@rapidshred.com) and a new signature page will be executed.

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## SAMPLE AUTHORIZING DOCUMENT

### I. General

#### A. Purpose

The purpose of this Authorizing Document is to establish the parameters of the work to be performed and the responsibilities of the parties involved in this service. The parties involved in this service are the agency named on the signature page (AGENCY), Records Management Services (RMS) as the project manager, and The Rapid Group, LLC (VENDOR) as the service provider. Should the AGENCY elect to proceed with this work, this Authorizing Document will be used to direct the efforts of the AGENCY and of the VENDOR. Commitment to service is established by the signing of this Authorizing Document.

#### B. Objective

This Authorizing Document is not to be interpreted as a commitment to perform any set or fixed amount of work. The volume of work to be performed is contingent upon the amount of materials that are provided to the VENDOR for destruction.

#### C. Scope

The VENDOR will provide locked collection containers to the AGENCY for storing confidential or sensitive records that are ready to be destroyed in compliance with approved records Retention and Disposal Schedules. A key may be issued by the VENDOR to the AGENCY On-Site Contact (see first page) to facilitate the retrieval of items that were accidentally placed in the container. RMS will periodically audit that this key is still in the possession of the On-Site Contact.

In accordance with the pickup schedule established in compliance with section 1.D, the VENDOR will periodically pick up the containers. All VENDOR employees receive security training and background checks prior to handling confidential or sensitive records. All VENDOR vehicles and facilities will be secured at all times to ensure that the confidential or sensitive records are protected from unauthorized access. Unless otherwise specified Appendix I, the VENDOR will destroy all records within 24 hours of pickup at their facility in a manner that prevents their reconstruction. The VENDOR will submit a monthly bill to RMS for this service. RMS will inter-account bill the AGENCY for this service based upon the billing codes in this Authorizing Document.

#### D. Pickup Schedule

1. Following AGENCY approval and acceptance of this Authorizing Document, confidential destruction of records will begin when the AGENCY contacts the VENDOR for pickup of material or delivery of collection containers.
2. Unless otherwise specified in Appendix I, the AGENCY will put confidential records into locked collection containers provided by the VENDOR and will contact the VENDOR when the containers are ready for pick-up or will establish a routine pick-up schedule with the VENDOR.
3. Each pickup will be assigned a work order number.

## II. Pricing Schedule

- A. Service costs will be invoiced monthly to the RMS, in accordance with the Rate Committee approved service rates.
- B. RMS will withdraw the calculated cost in accordance with the current published rate via interagency transfer through the State of Michigan's internal billing system using the billing codes provided by the AGENCY in this Authorizing Document.

## III. Roles

- A. **VENDOR:** The Rapid Group, LLC provides the confidential records destruction services in compliance with the terms of the contract with the State of Michigan.
- B. **CONTRACT COMPLIANCE:** DTMB Records Management Services is the State of Michigan agency that monitors compliance with the contract.
- C. **AGENCY BUSINESS OWNER:** The person in the office that is using the service who can authorize the expenditure of funds for these services. This person is often the office director.
- D. **FINANCIAL CONTACT:** The person who will be contacted to address billing issues or questions for the location using this service. This person will receive billing statements.
- E. **ON-SITE CONTACT:** The person who will be contacted by the VENDOR'S driver, if there are any issues accessing the bin when it is ready to be picked up.

## IV. Problem Resolution

- A. The VENDOR selected Scott Dennis as Project Manager and point of contact. He can be reached at (616) 735-2900 or [sdennis@rapidshred.com](mailto:sdennis@rapidshred.com).
- B. RMS is the contract Project Manager and Caryn Wojcik is the point of contact for this project. She can be reached at [wojcik@michigan.gov](mailto:wojcik@michigan.gov).

## V. Amendments

Either party can initiate a review of this Authorizing Document and can request revisions to it. The AGENCY, RMS and the VENDOR must agree to any changes in writing. Examples of changes that require an amendment may include, but may not be limited to, office location changes, billing code changes, changes in the number of containers, or changes in the contact names or information.

## Appendix I

### Special Requirements

Does the AGENCY require any special procedures of the VENDOR prior to receiving services?

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**MA# 220000001318 – ATTACHMENT 3-A  
 PREA STANDARDS – FINAL  
 ADULT PRISONS AND JAILS**

**TABLE OF CONTENTS**

**General Definitions**

§ 115.5 – General Definitions..... 3

**Definitions Related to Sexual Abuse**

§ 115.6 –Definitions Related to Sexual Abuse ..... 5

**Prevention Planning**

§ 115.11 – Zero tolerance of sexual abuse and sexual harassment; PREA coordinator. .... 7  
 § 115.12 – Contracting with other entities for the confinement of inmates..... 7  
 § 115.13 – Supervision and monitoring..... 7  
 § 115.14 – Youthful inmates..... 8  
 § 115.15 – Limits to cross-gender viewing and searches. .... 8  
 § 115.16 – Inmates with disabilities and inmates who are limited English proficient..... 8  
 § 115.17 – Hiring and promotion decisions..... 9  
 § 115.18 – Upgrades to facilities and technologies. .... 9

**Responsive Planning**

§ 115.21 – Evidence protocol and forensic medical examinations..... 9  
 § 115.22 – Policies to ensure referrals of allegations for investigations..... 10

**Training and Education**

§ 115.31 – Employee training..... 10  
 § 115.32 – Volunteer and contractor training. .... 11  
 § 115.33 – Inmate education..... 11  
 § 115.34 – Specialized training: Investigations. .... 12  
 § 115.35 – Specialized training: Medical and mental health care. .... 12

**Screening for Risk of Sexual Victimization and Abusiveness**

§ 115.41 – Screening for risk of victimization and abusiveness..... 12  
 § 115.42 – Use of screening information..... 13  
 § 115.43 – Protective custody..... 13



**MA# 22000001318 – ATTACHMENT 3-A  
 PREA STANDARDS – FINAL  
 ADULT PRISONS AND JAILS**

**Reporting**

§ 115.51 – Inmate reporting..... 14  
 § 115.52 – Exhaustion of administrative remedies..... 14  
 § 115.53 – Inmate access to outside confidential support services..... 15  
 § 115.54 – Third-party reporting..... 15

**Official Response Following an Inmate Report**

§ 115.61 – Staff and agency reporting duties..... 15  
 § 115.62 – Agency protection duties..... 15  
 § 115.63 – Reporting to other confinement facilities..... 15  
 § 115.64 – Staff first responder duties..... 16  
 § 115.65 – Coordinated response..... 16  
 § 115.66 – Preservation of ability to protect inmates from contact with abusers..... 16  
 § 115.67 – Agency protection against retaliation..... 16  
 § 115.68 – Post-allegation protective custody..... 17

**Investigations**

§ 115.71 – Criminal and administrative agency investigations..... 17  
 § 115.72 – Evidentiary standard for administrative investigations..... 17  
 § 115.73 – Reporting to inmates..... 17

**Discipline**

§ 115.76 – Disciplinary sanctions for staff..... 18  
 § 115.77 – Corrective action for contractors and volunteers..... 18  
 § 115.78 – Disciplinary sanctions for inmates..... 18

**Medical and Mental Care**

§ 115.81 – Medical and mental health screenings; history of sexual abuse..... 19  
 § 115.82 – Access to emergency medical and mental health services..... 19  
 § 115.83 – Ongoing medical and mental health care for sexual abuse victims and abusers..... 19

**Data Collection and Review**

§ 115.86 – Sexual abuse incident reviews..... 20  
 § 115.87 – Data collection..... 20  
 § 115.88 – Data review for corrective action..... 20  
 § 115.89 – Data storage, publication, and destruction..... 21

**MA# 220000001318 – ATTACHMENT 3-A  
 PREA STANDARDS – FINAL  
 ADULT PRISONS AND JAILS**

**Audits**

§ 115.93 – Audits of standards. ....21

**Auditing and Corrective Action**

§ 115.401 – Frequency and scope of audits .....21  
 § 115.402 – Auditor qualifications. ....22  
 § 115.403 – Audit contents and findings. ....22  
 § 115.404 – Audit corrective action plan.....22  
 § 115.405 – Audit appeals. ....22

**State Compliance**

§ 115.501 – State determination and certification of full compliance. ....23

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**MA# 220000001318 – ATTACHMENT 3-A  
PREA STANDARDS – FINAL  
ADULT PRISONS AND JAILS**

**§ 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.

**MA# 22000001318 – ATTACHMENT 3-A  
PREA STANDARDS – FINAL  
ADULT PRISONS AND JAILS**

*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.

**MA# 220000001318 – ATTACHMENT 3-A  
PREA STANDARDS – FINAL  
ADULT PRISONS AND JAILS**

*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.

**MA# 22000001318 – ATTACHMENT 3-A  
 PREA STANDARDS – FINAL  
 ADULT PRISONS AND JAILS**

<p><i>Prevention Planning</i>          § 115.11 <i>Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.</i></p>
<p>(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.</p>
<p>(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.</p>
<p>(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.</p>
<p><i>Prevention Planning</i>          § 115.12 <i>Contracting with other entities for the confinement of inmates.</i></p>
<p>(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.</p>
<p>(b) Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.</p>
<p><i>Prevention Planning</i>          § 115.13 <i>Supervision and monitoring.</i></p>
<p>(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:</p> <ol style="list-style-type: none"> <li>(1) Generally accepted detention and correctional practices;</li> <li>(2) Any judicial findings of inadequacy;</li> <li>(3) Any findings of inadequacy from Federal investigative agencies;</li> <li>(4) Any findings of inadequacy from internal or external oversight bodies;</li> <li>(5) All components of the facility’s physical plant (including “blind-spots” or areas where staff or inmates may be isolated);</li> <li>(6) The composition of the inmate population;</li> <li>(7) The number and placement of supervisory staff;</li> <li>(8) Institution programs occurring on a particular shift;</li> <li>(9) Any applicable State or local laws, regulations, or standards;</li> <li>(10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and</li> <li>(11) Any other relevant factors.</li> </ol>
<p>(b) In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the plan.</p>
<p>(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:</p> <ol style="list-style-type: none"> <li>(1) The staffing plan established pursuant to paragraph (a) of this section;</li> <li>(2) The facility’s deployment of video monitoring systems and other monitoring technologies; and</li> <li>(3) The resources the facility has available to commit to ensure adherence to the staffing plan.</li> </ol>



<p>(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.</p>
<p><i>Prevention Planning</i>  <i>§ 115.14 Youthful inmates.</i></p>
<p>(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.</p>
<p>(b) In areas outside of housing units, agencies shall either:</p> <ol style="list-style-type: none"> <li>(1) maintain sight and sound separation between youthful inmates and adult inmates, or</li> <li>(2) provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact.</li> </ol>
<p>(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.</p>
<p><i>Prevention Planning</i>  <i>§ 115.15 Limits to cross-gender viewing and searches.</i></p>
<p>(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.</p>
<p>(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.</p>
<p>(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.</p>
<p>(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.</p>
<p>(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.</p>
<p>(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.</p>
<p><i>Prevention Planning</i>  <i>§ 115.16 Inmates with disabilities and inmates who are limited English proficient.</i></p>
<p>(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</p>

<p>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.</p>
<p>(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.</p>
<p>(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.</p>
<p><i>Prevention Planning</i>  <i>§ 115.17 Hiring and promotion decisions.</i></p>
<p>(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—</p> <ol style="list-style-type: none"> <li>(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);</li> <li>(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</li> <li>(3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.</li> </ol>
<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> <ol style="list-style-type: none"> <li>(1) Perform a criminal background records check; and</li> <li>(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.</li> </ol>
<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>

(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.
<i>Prevention Planning</i> § 115.18 Upgrades to facilities and technologies.
(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency’s ability to protect inmates from sexual abuse.
(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency’s ability to protect inmates from sexual abuse.
<i>Responsive Planning</i> § 115.21 Evidence protocol and forensic medical examinations.
(a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.
(b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice’s Office on Violence Against Women publication, “A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,” or similarly comprehensive and authoritative protocols developed after 2011.
(c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.
(d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.
(e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.
(f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of this section.
(g) The requirements of paragraphs (a) through (f) of this section shall also apply to: (1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in prisons or jails; and (2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in prisons or jails.
(h) For the purposes of this section, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.

<p><i>Responsive Planning</i>          § 115.22 Policies to ensure referrals of allegations for investigations.</p>
<p>(a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.</p>
<p>(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.</p>
<p>(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.</p>
<p>(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.</p>
<p>(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.</p>
<p><i>Training and Education</i>          § 115.31 Employee training.</p>
<p>(a) The agency shall train all employees who may have contact with inmates on:</p> <ol style="list-style-type: none"> <li>(1) Its zero-tolerance policy for sexual abuse and sexual harassment;</li> <li>(2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;</li> <li>(3) Inmates' right to be free from sexual abuse and sexual harassment;</li> <li>(4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;</li> <li>(5) The dynamics of sexual abuse and sexual harassment in confinement;</li> <li>(6) The common reactions of sexual abuse and sexual harassment victims;</li> <li>(7) How to detect and respond to signs of threatened and actual sexual abuse;</li> <li>(8) How to avoid inappropriate relationships with inmates;</li> <li>(9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and</li> <li>(10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.</li> </ol>
<p>(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.</p>
<p>(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.</p>
<p>(d) The agency shall document, through employee signature or electronic verification, that employees understand the training they have received.</p>
<p><i>Training and Education</i>          § 115.32 Volunteer and contractor training.</p>
<p>(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.</p>

(b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

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

*Training and Education*  
 § 115.33 Inmate education.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



(d) Medical and mental health care practitioners shall also receive the training mandated for employees under § 115.31 or for contractors and volunteers under § 115.32, depending upon the practitioner’s status at the agency.
<i>Screening for Risk of Sexual Victimization and Abusiveness</i> § 115.41 <i>Screening for risk of victimization and abusiveness.</i>
(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> § 115.42 <i>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 facility restricts access to programs, privileges, education, or work opportunities, the facility shall document: <ol style="list-style-type: none"> <li>(1) The opportunities that have been limited;</li> <li>(2) The duration of the limitation; and</li> <li>(3) The reasons for such limitations.</li> </ol>
(c) The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.
(d) If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document: <ol style="list-style-type: none"> <li>(1) The basis for the facility’s concern for the inmate’s safety; and</li> <li>(2) The reason why no alternative means of separation can be arranged.</li> </ol>
(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.
<i>Reporting</i> <i>§ 115.51 Inmate reporting.</i>
(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.
(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.
(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.
(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.
<i>Reporting</i> <i>§ 115.52 Exhaustion of administrative remedies.</i>
(a) An agency shall be exempt from this standard if it does not have administrative procedures to address inmate grievances regarding sexual abuse.
(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>(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> <p>(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</p> <p>(2) Such grievance is not referred to a staff member who is the subject of the complaint.</p>
<p>(d)(1) The agency shall issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.</p> <p>(2) Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal.</p> <p>(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.</p> <p>(4) At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level.</p>
<p>(e)(1) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates.</p> <p>(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.</p> <p>(3) If the inmate declines to have the request processed on his or her behalf, the agency shall document the inmate’s decision.</p>
<p>(f)(1) The agency shall establish procedures for the filing of an emergency grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse.</p> <p>(2) After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, the agency shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken, shall provide an initial response within 48 hours, and shall issue a final agency decision within 5 calendar days. The initial response and final agency decision shall document the agency’s determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.</p>
<p>(g) The agency may discipline an inmate for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the inmate filed the grievance in bad faith.</p>
<p><i>Reporting</i></p> <p><i>§ 115.53 Inmate access to outside confidential support services.</i></p>
<p>(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.</p>

(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> <i>§ 115.54 Third-party reporting.</i>
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> <i>§ 115.61 Staff and agency reporting duties.</i>
(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> <i>§ 115.62 Agency protection duties.</i>
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> <i>§ 115.63 Reporting to other confinement facilities.</i>
(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</i> <i>§ 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;

<p>(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</p> <p>(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.</p>
<p>(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.</p>
<p><i>Official Response Following an Inmate Report</i>  <i>§ 115.65 Coordinated response.</i></p>
<p>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.</p>
<p><i>Official Response Following an Inmate Report</i>  <i>§ 115.66 Preservation of ability to protect inmates from contact with abusers.</i></p>
<p>(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.</p>
<p>(b) Nothing in this standard shall restrict the entering into or renewal of agreements that govern:</p> <p>(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</p> <p>(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.</p>
<p><i>Official Response Following an Inmate Report</i>  <i>§ 115.67 Agency protection against retaliation.</i></p>
<p>(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.</p>
<p>(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.</p>
<p>(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.</p>
<p>(d) In the case of inmates, such monitoring shall also include periodic status checks.</p>
<p>(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.</p>
<p>(f) An agency's obligation to monitor shall terminate if the agency determines that the allegation is unfounded.</p>
<p><i>Official Response Following an Inmate Report</i>  <i>§ 115.68 Post-allegation protective custody.</i></p>
<p>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.</p>

<p><i>Investigations</i>          § 115.71 Criminal and administrative agency investigations.</p>
<p>(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.</p>
<p>(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.34.</p>
<p>(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.</p>
<p>(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.</p>
<p>(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.</p>
<p>(f) Administrative investigations:          (1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and          (2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.</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>          § 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>          § 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:          (1) The staff member is no longer posted within the inmate's unit;</p>

<p>(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>
<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:          (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.</p>
<p>(e) All such notifications or attempted notifications shall be documented.</p>
<p>(f) An agency’s obligation to report under this standard shall terminate if the inmate is released from the agency’s custody.</p>
<p><i>Discipline</i>  <i>§ 115.76 Disciplinary sanctions for staff.</i></p>
<p>(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.</p>
<p>(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.</p>
<p>(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.</p>
<p>(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.</p>
<p><i>Discipline</i>  <i>§ 115.77 Corrective action for contractors and volunteers.</i></p>
<p>(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.</p>
<p>(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.</p>
<p><i>Discipline</i>  <i>§ 115.78 Disciplinary sanctions for inmates.</i></p>
<p>(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.</p>
<p>(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.</p>
<p>(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.</p>
<p>(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.</p>
<p>(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.</p>



(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>
<i>§ 115.83 Ongoing medical and mental health care for sexual abuse victims and abusers.</i>
(a) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.
(b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.
(c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.
(d) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.

- (e) If pregnancy results from the conduct described in paragraph (d) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.
- (f) Inmate victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.
- (g) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.
- (h) All prisons shall attempt to conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

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

- (a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.
- (b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.
- (c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.
- (d) The review team shall:
  - (1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
  - (2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
  - (3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
  - (4) Assess the adequacy of staffing levels in that area during different shifts;
  - (5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
  - (6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1)-(d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.
- (e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

*Data Collection and Review*  
 § 115.87 Data collection.

- (a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.
- (b) The agency shall aggregate the incident-based sexual abuse data at least annually.
- (c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.
- (d) The agency shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.
- (e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.
- (f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

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

<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"> <li>(1) Identifying problem areas;</li> <li>(2) Taking corrective action on an ongoing basis; and</li> <li>(3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.</li> </ol>
<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>
<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.</p>
<p>(c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.</p>
<p>(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.</p>
<p><i>Audits</i>  <i>§ 115.93 Audits of standards.</i></p>
<p>The agency shall conduct audits pursuant to §§ 115.401–.405.</p>
<p><i>Auditing and Corrective Action</i>  <i>§ 115.401 Frequency and scope of audits.</i></p>
<p>(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.</p>
<p>(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.</p>
<p>(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.</p>
<p>(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.</p>
<p>(e) The agency shall bear the burden of demonstrating compliance with the standards.</p>
<p>(f) The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type.</p>
<p>(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.</p>
<p>(h) The auditor shall have access to, and shall observe, all areas of the audited facilities.</p>
<p>(i) The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information).</p>



- (j) The auditor shall retain and preserve all documentation (including, e.g., video tapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the Department of Justice upon request.
- (k) The auditor shall interview a representative sample of inmates, residents, and detainees, and of staff, supervisors, and administrators.
- (l) The auditor shall review a sampling of any available videotapes and other electronically available data (e.g., Watchtour) that may be relevant to the provisions being audited.
- (m) The auditor shall be permitted to conduct private interviews with inmates, residents, and detainees.
- (n) Inmates, residents, and detainees shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.
- (o) Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.

*Auditing and Corrective Action*  
 § 115.402 Auditor qualifications.

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

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

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

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

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

# ATTACHMENT 3-B – PROGRAM A

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**PROGRAM A**  
**CORRECTIONAL FACILITIES ADMINISTRATION(CFA)**  
**SECURITY REGULATIONS**  
August 2014

## Table of Contents

Module Description.....	Page 3
Overview Of The Michigan Department Of Corrections .....	Page 4
Approval Prior To Entering A Correctional Facility .....	Page 8
Vehicles on CFA Facility Property .....	Page 15
Tools and Equipment .....	Page 18
Entrance Into And Exit Out Of The CFA Facility .....	Page 22
Personal Protection Devices (PPD) .....	Page 25
When Authorized Items Become Contraband .....	Page 28
Prisoner Contact- Sexual Abuse, Sexual Harassment, Overfamiliarity and Unauthorized Contact .....	Page 30
Emergencies .....	Page 39
Worksite Protocols .....	Page 41
Conclusion .....	Page 46

**Module Description:** This module provides standardized training and orientation training required for all contractors, vendors, skilled trades, construction workers, student interns and volunteers providing services at Correctional Facility Administration work sites. Topics included in this training program are searches, vehicles, tool control, contraband, prisoner contact, discriminatory harassment and emergencies.

**Original Module Developers:** *Contractual Workers Committee* Bonita Hoffner, Deputy Warden, LCF – Chairperson; Bryan Watson, Deputy Warden, ATF; Janette Price, Deputy Warden, MTU; Aaron Wemple, Assistant Deputy Warden, JCS; Steve Parks, Central Office Physical Plant; Joe Lemke, Central Office Training

**Date Originally Developed** - December 1998

**Revisions Completed By:** The Office of New Employee Training & Professional Development, Curriculum Unit with the assistance of Bonita Hoffner, Kevin Lindsey, Joe Lemke and Tom Mullaly.

**Revised:** August 2007; September 2010, April 2014

**Target Audience:** All contractors, vendors, skilled trades, construction workers, student interns and volunteers providing services at Correctional Facilities Administration work sites. Vendors who are under direct continuous supervision and/or escort are not required to attend this program.

**Time Frame:** Training time is 1 hour.

**Materials Needed and Provided by The Facility:** Computer with On-Line Training Access, Applicable Policies, Procedures and DOM's; Facility Operating Procedures.

**Program Objective:** At the completion of this training participants will have an understanding of security regulations necessary and that shall be followed when working in Michigan Department of Corrections work sites.

## I. OVERVIEW OF THE MICHIGAN DEPARTMENT OF CORRECTIONS

### THE MICHIGAN DEPARTMENT OF CORRECTIONS RESPONSIBILITY

The goal of the Michigan Department of Corrections is to provide the greatest amount of public protection while making the most efficient use of the State's resources. It meets its goal by ensuring that the state's judges and other criminal justice administrators have the broadest possible array of viable sentencing and sanctioning options, and by ensuring that appropriate supervision is maintained so that Michigan's neighborhoods, families and citizens can be protected.

Our vision is to protect the public and build trust within Michigan communities.

Our mission is to create a safer Michigan through effective offender management and supervision in our facilities and communities while holding offenders accountable and promoting their rehabilitation.

### THE STRUCTURE

The Department gets its authority and the sources of influence on Department operations through the U.S. Constitution, Michigan Constitution and Michigan Compiled Law.

The Departments structure and direction for operations is provided through:

- i. Administrative Rules, which interpret the laws for State Agencies.
- ii. Policy Directives (PD), which provide the Departments direction and focus.
- iii. Director's Office Memorandum (DOM), which are implemented as temporary policies when an immediate response is necessary in providing direction.
- iv. Operating Procedures (OP), which are written statements on how the policies are to be implemented.

The Director is the chief administrative officer of the Department and thus is responsible for the overall operation of the Department. The Director is appointed by the Governor.

The Department of Corrections is divided into Administrations. All correctional institutions operated by the Department are under the Correctional Facilities Administration (CFA), which is headed by a Deputy Director, who reports to the Chief Deputy Director and is responsible for the operation of all correctional institutions.

Each institution within the Correctional Facilities Administration (CFA) is administered by a Warden. The Warden is responsible for the overall operation of their institution.

In the absence of the Warden a designee will maintain responsibility over the operation of the institution.

For the purposes of this training, we will refer to the Warden and their designee as the Facility Head.

Throughout this training we will frequently refer to the facility head, and policies. You know now that we are referring to the Warden or designee and the documents that give us our direction.

## **II. APPROVAL PRIOR TO ENTERING A CORRECTIONAL FACILITY**

Regardless of the purpose for entering a correctional facility, entry is only allowed when explicit approval has been given by the facility head.

Paperwork should be filled out prior to coming on site.

Training must be completed in accordance with PD 02.05.100 New Employee Training Program and the current New Employee Training Plan.

The business that is being conducted, along with the type of contact that you will have with the offenders at a CFA facility will determine the necessary training that is required.

This program (Program A) is orientation training, which is required for all contractors, vendors, skilled trades, construction workers, student interns and volunteers providing intermittent services.

Law Enforcement Information Network (LEIN) application and personal information is necessary in order to complete the approval process.

When applicable, an ID card is generated after being LEIN cleared by using the information from the form.

Regardless of the purpose for entering a correctional facility, only allowable items will be carried into and out of the facility. See OP 04.04.100 Gate Manifests and Attachment A, Allowable Items Without Gate Manifest.

According to PD 04.04.110, Contraband is property (items) which is not allowed on facility grounds by State law, Administrative Rule or Department policy or procedure.

Proper dress and equipment for duty while inside of a correctional facility is just as important as what is brought onto facility grounds and when left unattended can become contraband. Be sure not to leave items unattended and take everything out with you that you brought in.

Drugs and Alcohol are not to be brought onto state property, whether it is intended to be left in a vehicle or not.

Individuals who staff have a reasonable suspicion of their being under the influence of drugs

and/or alcohol will not be allowed to enter into the facility.

Being “under the influence” is any behavior, actions, words, odor, or other evidence which is indicative of an individual who is or has been using drugs and/or alcoholic beverages.

Reasonable suspicion is suspicion based on a specific fact or facts and rational inferences drawn from those facts, based upon the knowledge and experience of corrections staff.

Prescription and/or over the counter medications may be authorized to bring onto facility grounds as follows:

The allowable items list (Attachment A, OP 04.04.100) will describe what and how much over the counter medications are authorized.

Prescription medications may be allowable on facility grounds, but only with authorization as given by the facility head and an Administrative Manifest is required (See OP 04.04.100 – Gate Manifests).

Prescribed **medical marijuana is not** an allowable item even though it is prescribed.

All individuals entering onto correctional facility property are subject to search (See PD 04.04.110 Search and Arrests in Correctional Facilities). Anyone refusing to be searched will not be allowed entrance into the facility and will be asked to leave the property.

The Department's responsibility to manage and control the State's correctional facilities includes the duty to prevent contraband from entering those facilities.

Pursuant to MCL 800.281 et seq., it is a felony to bring any of the following items into a correctional facility or onto facility property where prisoners may have access to them without prior written permission of the Warden:

1. Any weapon, including a pocketknife, or other implement which may be used to injure another person, or which may be used in aiding a prisoner to escape;
2. Any alcoholic beverage or poison, except that not more than two ounces of wine may be brought into a facility for use by a clergy member during religious ceremonies;
3. Any prescription drug or controlled substance without written certification of need from a licensed physician, except that prescription drugs and controlled substances may be brought into a correctional facility as medical supplies for that facility. The physician's written certification must include the name of the person prescribed the drug or controlled substance, the prescribed dosage and frequency, and the reason it was prescribed.
4. Controlled Substance is defined as a drug, substance, or immediate precursor as set forth in MCL 333.7201 to 333.7231, including heroin, cocaine, LSD, and marijuana.

In addition to those items prohibited by State law, Department policy prohibits other items from being brought into a correctional facility or on facility grounds.

1. Personal cellular telephones and pagers are prohibited.
2. Personal cellular telephones (PD 04.04.100 paragraph L.) are not permitted on facility grounds or regional offices except in a locked motor vehicle in designated parking areas and in secured areas designated by the Warden or the highest-ranking supervisor of the regional office for this purpose (e.g., locked locker).
3. In the State of Michigan, it is a felony to provide a cell phone to a prisoner under MCL 800.283a.
4. Audio or visual recording devices, including cameras, are prohibited unless approved by the Warden.
5. Tobacco products also are prohibited both inside a correctional facility and on facility grounds.

Visitors also are prohibited from bringing money into a correctional facility, except where allowed for use of vending machines.

Wardens may prohibit other items from being brought into their respective facilities; however, items may not be prohibited that are otherwise specifically allowed pursuant to Department policy.

Members of the public entering a correctional facility are subject to search in order to prevent the introduction of contraband. If a member of the public refuses to be searched, s/he will not be forced to submit, unless a search warrant has been obtained, but entry into the secured area of the facility on that occasion shall be denied and s/he may be required to leave the premises. A person subject to a clothed body search who is wearing clothing which prevents a thorough clothed body search also shall be denied entry and may be required to leave the premises.

Members of the Public are defined as visitors, volunteers, attorneys, contractors, elected state officials, and anyone else who is not an employee.

A pat-down search is defined as a brief manual and visual inspection of body surfaces, clothing, briefcases, and similar items. The only clothing items that may be required to be removed are outerwear (e.g., coats, jackets, hats) and shoes. All items shall be removed from pockets.

A clothed body search is defined as a thorough manual and visual inspection of all body surfaces, hair, clothing, wigs, briefcases, prostheses, and similar items and visual inspection of the mouth, ears, and nasal cavity. The only clothing items that may be required to be removed are outerwear (e.g., coats, jackets, hats), shoes, and socks; however, all items shall be removed from pockets.

All members of the public shall be required to walk through a screening device or submit to the use of a hand-held screening device prior to entering a CFA institution; however, this requirement may be waived by the Warden for anyone personally escorted by the Warden or his/her designee. Any personal property which is taken inside the security perimeter of a CFA institution shall be searched.



### **III. VEHICLES ON CFA FACILITY PROPERTY**

All vehicles that enter the property of a CFA facility must be properly licensed and registered.

All vehicles that enter the property and that are operated while at a CFA facility must be operated only by properly licensed and certified individuals.

All vehicles that are brought onto CFA facility grounds must be parked in authorized areas only.

If a vehicle is discovered in an area of the facility grounds which has been posted against trespassing, the vehicle and its occupants may be detained while the appropriate law enforcement agency is summoned.

All vehicles must be properly secured.

No keys left inside or outside of the vehicle. Lockable doors and compartments.

Securable windows.

Vehicles entering in the security perimeter must have the steering wheel secured with a "Club" security device or similar device in accordance with the CFA facility operating procedure.

No unauthorized items are to be stored in the vehicle.

The appropriate law enforcement agency shall be called whenever a person is found to be in possession of a non-authorized alcoholic beverage, poisonous substance, controlled substance, prescription drug, or weapon(s).

Absolutely no weapons are to be carried onto facility grounds or left in a vehicle regardless of whether a valid CCW allows the weapon to be carried.

Vehicles are subject to search as follows:

If it is suspected that there is contraband in a vehicle on facility grounds that does not belong to an employee, the matter shall be referred to the appropriate law enforcement agency. Employees shall not search the vehicle.

### **IV. TOOLS AND EQUIPMENT**

Each Correctional Facilities Administration (CFA) institution is required to control items transported through all pedestrian and vehicle entrances in order to reduce the risk of contraband being brought into the institution, to prevent theft of state property, and to provide a record system for all packages, supplies, and materials brought into or out of the institution.

Employees, vendors, contractors, and individuals engaged in official business carrying items not listed on the list of allowable items must obtain a Gate Manifest (CSJ-404) in order to bring those items through the gates of an institution. This gate manifest is intended for a one time through use.

In the event an item is authorized to be brought through the gates on a daily basis, an Administrative Manifest (CSJ-127) shall be used for this purpose.

A Warden/Deputy Warden may issue an Administrative Manifest to employees carrying authorized items through the gates of his/her facility.

No manifest will be issued for an item specifically prohibited by Department policy or procedure (e.g. cellular telephones, personal pagers, pocket knives).

All items being brought through the gates into the facility will be searched. This includes items carried in, and those being removed, from the secure perimeter.

The person to whom the manifest is issued must present it along with the transported items when entering or departing the secure perimeter.

The Department has a specific policy for tool control which categorizes tools into two categories, critical and dangerous tools. Tools must be used, accounted for, secured, and stored in accordance with PD 4.4.120 Tool Control.

Tools, toolboxes, and equipment of contract workers performing services inside an institution shall be inventoried and inspected prior to entry into and exit from the institution. Staff designated to escort workers within the facility shall ensure tools are controlled with proper security and safety procedures and work activities are confined to authorized areas.

Critical tools are as follows:

Metal cutting tools, including hacksaws, metal cutting blades, chisels, files, bolt cutters, and pipe cutters.

Powered hand tools, drills and drill bits.

Portable jacks and hoists.

Wrenches 14" in length or longer.

Acetylene torches, cutting tips, gauges, torch parts, arc welders, plasma cutting equipment.

Grinders, emery wheels and abrasive discs.

Tubing, pipe and conduit benders.

Utility and carpet knives.

Explosively driven tools (e.g., ramset guns) and Ammunition.

Ladders nine feet in height or higher.

Wire cutters and other hand tools primarily designed to cut wire.

Dangerous tools are as follows:

Hand tools readily usable or adaptable as weapons, escape equipment or to defeat locking or security systems. Examples include screwdrivers and pliers. Wrenches less than 14" in length.

Ladders less than 9' in length.

Emery cloth and sandpaper.

Electric grinders not in use shall be locked in place with power positively locked out.

Safe handling of tools and equipment by authorized, licensed and certified users is necessary to ensure everyone's safety.

OSHA/MIOSHA standards must be maintained.

Tools must be properly removed from a CFA facilities secured perimeter if storage is not available inside of the facility.

It is the responsibility of a company contracted to perform work at CFA facilities to provide MSDS for all chemicals that will be utilized while working at a facility.

## **V. ENTRANCE INTO AND EXIT OUT OF THE CFA FACILITY**

The facility head will ensure all individuals who are authorized entry into a correctional facility are advised of rules that they must follow while in the facility. The facility head may order any individual who disregards facility rules or the conditions under which entry was approved to immediately leave the facility.

Access is allowable only during approved days and hours of operation for contractors and their employees.

Access that is necessary outside of the approved days and times established for conducting business or completing the work requires special authorization from the facility head.

Use only authorized entrance and exit points into and out of the facility. Individuals who enter into and out of a CFA facility should use the main gate entrance.

Vehicle traffic that enters into and out of a CFA facility will use a sally port entrance. It is at these entrances that you will be registered and/or identified for entry. You and the items you take in or are bringing out will be searched at these points as well.

Staff escorts will be assigned, when necessary, at the point of entrance. You are to remain with the escort until you exit the facilities secured perimeter.

All areas of a CFA facility are restricted access areas except those which are specifically designated and authorized to complete the work you are there to do.

Utilizing authorized entrances/exits when entering or leaving buildings and work locations will aid in keeping workers out of restricted areas.

Consequences for non-compliance include being escorted off of the facility property and possibly having authorization for future access revoked by the facility head.

Persons found in restricted areas, on CFA facility property, without authorization may be arrested for trespassing under the trespassing laws relevant to corrections.

All workers who are expected on site should be present when they are expected. In the case of a no call/no show of expected workers, access may be denied.

Contact information will be provided when it is necessary for announcing delay's or absence of workers or work crews.

Overtime that is accrued by the facility to provide escorts for expected work within the facility may be charged to the contracted company when the schedule is not adhered to.

## **VI. PERSONAL PROTECTION DEVICES (PPD)**

The purpose of a PPD is to offer access to an alarm system that alerts staff in the Control Center of the CFA facility that there is a problem and also provides a general location of where the PPD has been activated.

There are some facilities within CFA that do not require a PPD.

When a CFA facility provides a PPD, you will receive information on how to properly operate the PPD.

Generally, a PPD has push button alert activation, a pull-pin alert activation or both.

Depending on the facilities operating procedure a PPD may or may not be issued.

CFA facilities require that the PPD be properly worn so that it does not become lost and so that it is accessible by the user.

A PPD is not to be left lying around anywhere inside or outside of the facility.

The PPD is issued at a designated point within a facility and is returned usually at the same point where it was issued.

PPD's are considered sensitive items and are accounted for on each shift; therefore, a PPD should not be removed from facility grounds for any reason.

Proper use of a PPD requires that it is only activated when staff assistance is necessary.

An emergency type situation can occur at any time while inside of a CFA facility. The following is a list of examples which constitutes an emergency:

Injury or illness

Assault by a prisoner

Becoming disoriented inside of the facility

Areas covered with the PPD's ability to activate an alarm are determined by each facilities physical plant. Not all areas may be covered by PPD access. Information of this nature will be shared with each person that is required to wear a PPD.

## VII. WHEN AUTHORIZED ITEMS BECOME CONTRABAND

Any item that you bring into a CFA facility, which is either on the allowable items list or has been properly authorized using a Gate Manifest/Administrative Manifest, is considered contraband when accessed by an offender.

There are specific items which are brought into the facility for offenders only by using proper channels. Consequences of improper security and control of tools and equipment can include serious physical injury and in the most extreme case even death.

Tools and equipment can be utilized by offenders to commit assaults, attempt escapes or for use in conducting unauthorized activities.

Careful cleanup and accountability of ALL items, including residual parts and pieces that occur as a result of performing proper work procedures, is essential for everyone's safety.

Pick up all nails, screws, wires. Clean up any broken glass. Remove and discard binding straps.

Remove every item or properly discard all items in approved disposal containers that are brought inside of a secured perimeter.

## VIII. Prison Contact - Sexual Abuse, Sexual Harassment, Overfamiliarity and Unauthorized Contact

The Michigan Department of Corrections is committed to ensuring the safe and humane treatment of prisoners and a safe environment for all prisoners. An important part of a safe and humane environment includes being free from sexual abuse and sexual harassment.

The Department enforces a zero-tolerance standard for staff, contractual employees, and volunteers to engage in sexual abuse, sexual harassment and overfamiliarity with prisoners.

Sexual abuse is a term used to describe certain kinds of prohibited behavior. Sexual abuse includes non-consensual sexual acts and sexual harassment. Based upon an imbalance of power, sexual relationships between staff, contractual employees, and volunteers with a prisoner are NEVER consensual.

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

### ***Sexual Conduct with Offender or Overly Familiar or Unauthorized Conduct/Sexual Relationship***

- (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) through (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 a prisoner, detainee, or resident, and (8) Voyeurism by a staff member, contractor, or volunteer which means an invasion of privacy of a prisoner for reasons unrelated to official duties, such as peering at a prisoner who is using a toilet in his or her cell to perform bodily functions; requiring a prisoner to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a prisoner=s naked body or of a prisoner performing bodily functions.

### **Sexual Harassment**

Verbal comments or gestures of a sexual nature to a prisoner 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.

### **Reporting Requirements**

Anyone who observes sexual abuse/sexual harassment or receives an allegation of sexual abuse/sexual harassment, must report it to the appropriate supervisor immediately.

In addition to the Department=s policy requirement that all allegations of sexual abuse, including sexual harassment, must be reported the Department is also required by federal and state law to report sexual abuse to outside authorities.

Sexual activity against a prisoner which may constitute a felony shall be reported to appropriate law enforcement authorities. For example, Michigan law MCL 750.520c provides that employees, contractual employees, or volunteers who engage in sexual contact with prisoners can be charged with a felony, Criminal Sexual Conduct in the second degree.

All reported allegations of sexual abuse/sexual harassment, shall be referred to the Internal Affairs section for investigation. All allegations shall also be referred to the Michigan State Police or other appropriate law enforcement agency for investigation in accordance with policy and law.

In addition to reporting incidents of sexual abuse to the Michigan State Police, the Department must report all allegations of sexual abuse to the county department of social services of the county in which the abuse is suspected of having or believed to have occurred.

A contractual employee or volunteer who engages in sexual abuse/sexual harassment will be prohibited from providing services within any Department correctional facility.

Remember:

Treat any suggestion or allegation of sexual assault, abuse, or contact as serious.

A report of sexual abuse by a prisoner is to be kept confidential and shared only according to policy and law.

### **Overfamiliarity or Unauthorized Contact**

The Department also enforces a zero-tolerance standard for staff, contractual employees, and volunteers to engage in overfamiliarity with prisoners.

**Overfamiliarity** involves staff, contractual employees, and volunteers engaging in, or attempting to engage in conduct likely to result in intimacy or a close personal relationship with a prisoner. The following behavior between staff, contractual employees, and volunteers and prisoners is prohibited:

- a. Exchanging personal letters or gifts.
- b. Requesting or granting special favors.
- c. Discussing personal matters, unless specifically related to a prisoner's case.
- d. Engaging in horseplay.
- e. Flirting.
- f. Addressing each other by first name or a nickname.

**Overfamiliarity or Unauthorized Contact** with an offender includes the following types of relationships and behaviors:

Engaging in overfamiliarity with an offender, or a family member or listed visitor of an offender.

Having a personal relationship with an offender, the offender's family, or visitors at the facility you are working. Where such cases arise that there is already a personal relationship established prior to working at the facility, this information must be disclosed to include the name, number and location of the offender.

Making contact with any offender, family member of an offender or a listed visitor of an offender outside the regular performance of the job.

Giving or receiving letters, money, personal mementos, telephone numbers, legal or other services to or from an offender or a family member or a listed visitor of an offender.

Conversation of a sexual or romantic nature. Sexual abuse or sexual harassment of an offender's family members or listed visitors.

Financial involvement with offenders, family members of offenders, or listed visitors.

Giving or receiving messages, pictures or goods.

If unavoidable contact is made with an offender, a family member of an offender or a listed visitor of an offender, such contact must be reported in writing to the facility head through proper channels.

Allowable contact is defined based on the type of work you are conducting at the CFA facility. Any contact outside of the work you are doing could be inappropriate contact.

Offenders may try to have a conversation with you through a fence or by yelling across the yard. DON'T DO IT.

Generally, an offender will not attempt to have an inappropriate conversation when staff are around.

Reporting contact or attempts to contact is required at any time an offender attempts to have a conversation, asks you to do something for them, asks you to bring something to them or asks you to contact someone for them.

Consequences of unauthorized contact or overfamiliarity will lead to being escorted out of the facility and possibly not being able to work at any other Department facility.

If the overfamiliarity is deemed a felony, the case will be turned over to the Michigan State Police or other appropriate Law Enforcement Agency and could lead to prosecution and incarceration for up to 15 years in prison.

**Dos and Don'ts of working in a CFA facility are as follows:**

DO stay with your escorting staff member. DO dress appropriately for your job:

-Clean shirt and pants

-Under garments worn

-Clothing which is loose fitting

-Clothing which does not expose DO consider where you are working. DO ask questions about everything.

DO report everything unusual or questionable. DO refer visitors to staff if they ask questions.



**Don't** leave tools & equipment unsecured. Make sure tools are inventoried.

**Don't** talk or visit with prisoners.

**Don't** do anything if the emergency siren sounds. You will receive direction from staff on what action to take.

**Don't** come to the facility without proper identification.

**Don't** bring any controlled items such as, butane lighters, knives, liquor, weapons, ammunition, dice, cameras or anything else into the prison.

**Don't** give money, cigarettes or any other items to prisoners.

**Don't** accept gifts or take anything from prisoners.

**Don't** carry any items of mail into or out of the prison for any prisoners.

**Don't** enter any area of the prison without staff permission or escort. **Don't** forget you may be searched at any time entering, exiting or while you are inside the prison.

**Don't** bring any of the following items to the prison in your vehicle: firearms, weapons, ammunition, liquor or cameras.

**Don't** leave your keys in your vehicle.

**Don't** leave your vehicle unsecured (unlocked) on prison property. **Don't** attempt to enter or exit the prison at any place other than where you are instructed to do so by staff.

**Don't** smoke or (chew tobacco) on prison property.

**Don't** forget to ask for staff assistance if you don't understand any of these rules.

## **IX. EMERGENCIES**

Sirens sounding inside of a CFA facility indicate a number of situations depending on what the siren sounds like.

The procedures to follow when a siren is sounded will be issued to you from the facility you are working.

Staff will direct you on what to do and where to go.

Each CFA facility is required to conduct a siren test monthly which may require non-employee's of the facility to exit the secured perimeter. This will cause a "work stop" for a couple of hours when this occurs.

When medical emergencies occur you should report it verbally to the nearest staff member, activate your PPD or use a nearby telephone. Do not attempt to leave the area unless none of the options mentioned are available.

## **X. WORKSITE PROTOCOLS**

Harassment of any kind is not tolerated at any Department facility.

The definition that the Department recognizes as being discriminatory harassment is: Unwelcome advances, requests for favors, and other verbal or non-verbal communication or conduct (e.g., comments, innuendo, threats, jokes, pictures, and gestures) based on race, color, national origin, disability, sex, sexual orientation, age, height, weight, marital status, religion, genetic information or partisan considerations.

Forms of harassment include but are not limited to: discriminatory harassment and sexual harassment.

Consequences of harassment are both personal and professional. Such actions can lead to civil suits as well as felony convictions.

Reporting harassment (i.e. victim of or witness to) should be done through proper channels. Any supervisor at a CFA facility is trained in proper reporting of complaints.

Authorized break areas/restrooms are to be the only areas utilized by non-employees of CFA facilities. This will help to ensure that restricted areas are not visited by unauthorized personnel.

Telephones for personal and business use will be as directed by the facility head.

Health care staff is not available for the purpose of providing care to anyone at CFA facilities except offenders.

Onsite care is not authorized for use unless it is a life-or-death emergency.

Locations that are available within the community can be utilized in accordance with their policies and ambulance services, if necessary, will be utilized in accordance with their policies as well.

CFA facilities have a Warden and Administrators assigned to act as facility heads. The Warden is the facility head and when absent assigns their designee.

The facility head has full rights to the facility. Some of those rights include and are not limited to:

Revoking permissions.

Adjusting authorities.

Alter working hours and days.

All items and personnel that are allowed inside.

Tours are not allowed without explicit authorization.

Proper authority is necessary for all activities and items as well as personnel for entrance into, exit out of and while on the grounds of any facility.

The facility Inspector is the person of contact for all questions, concerns and approvals.

Contact information for key personnel of the facility should be made available while you are working at the CFA facility.

Workplace safety is covered by Civil Service Commission Rule 2-20.

Rule 2-20 prohibits employees from (1) engaging in acts of violence and threats of violence and (2) possessing or carrying firearms or explosives unless expressly authorized by the appointing authority.

Rule 2-20 requires employees to report violations involving acts or threats of violence or possessing or carrying firearms or explosives. If an employee becomes aware of an act of violence or a threat of violence, the employee shall immediately report the act or threat to the appointing authority or the appointing authority's designee.

Consequences of violating Rule 2-20 will include being escorted from facility grounds, possibly not being approved for work at any Department facility and may be referred to the Michigan State Police or other appropriate Law Enforcement Agency which could lead to a felony conviction.

### **Health and Safety requirements.**

The Department is required by OSHA/MIOSHA standards to ensure the safety of its employees be maintained in accordance with applicable standards.

Reporting violations, hazards, emergencies and concerns should be done through proper channels which begins with the CFA facility head.

Consequences of non-compliance to MIOSHA standards, Department rules and any other applicable entity will be determined based on the circumstances and the issue at hand as well as in accordance with the stated standards.

## **XI. CONCLUSION**

After completing this training, it may seem as if there are so many rules to working inside a CFA facility that it may be intimidating. To simplify things, remember these keys:

You are working inside of a correctional facility (a prison) where everything you say and do will be observed.

If you have contact with offenders, offender's families etc. outside of your regular job duties report it to your supervisor.

If you are unsure about anything, ask a staff member for assistance.

Don't give or leave anything for an offender and don't take anything from an offender.

The remainder of the orientation program should be used to answer and/or clarify any questions and to address other issues which may be specific to a particular work site.

# ATTACHMENT 4 – MDOC VENDOR HANDBOOK

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## MICHIGAN DEPARTMENT OF CORRECTIONS VENDOR HANDBOOK

(Rev. January 2022)

Contractors providing services to the Michigan Department of Corrections (MDOC) under a Contract, Purchase Order, Delivery Order, Memorandum of Understanding, Grant, or other agreements are subject to the following rules, standards, and procedures. Any violation of the MDOC Contractor Handbook may result in a Stop Order being issued against the Contractor, the Contractor's removal from his/her assignment under the agreement and may result in additional sanctions from law enforcement.

### Definitions:

**MDOC:** Michigan Department of Corrections.

**Correctional Facilities Administration (CFA):** Contractors who enter and provide services within the secure perimeter of an MDOC correctional facility are categorized as CFA Contractors.

**Field Operations Administration (FOA):** Contractors who provide services in the community are categorized as FOA Contractors.

**Contraband:** Any article not specifically authorized by policy including Contractor personal property. (See Attachment A for permissible items allowed into a facility without a gate manifest.)

**Contractor:** an individual employed by a company, agency, or vendor that are contracted to provide services to the Michigan Department of Corrections or their sub-contractors.

### **Contractor Permitted Items: (CFA)**

See Attachment A – Allowable Items Without Gate Manifest.

### **(FOA)**

Contractors are permitted to take the following items in a FOA office: photo ID, money, cell phone (Contractors are prohibited from recording audio or video with cellular devices).

**Discriminatory Harassment:** Unwelcome advances, requests for favors, other verbal or non-verbal communication or conduct based on religion, race, color, national origin, age, sex, height, weight, marital status, partisan considerations, disability, or genetic information.

**Facility:** Any property owned, leased, or occupied by the MDOC.

**MDOC Program Manager:** Individual appointed by the State to monitor and coordinate the day-to-day activities of the Contract.

**Offender:** A prisoner or parolee under the jurisdiction of the MDOC or housed in a MDOC facility, a probationer who is supervised by an employee of the MDOC, or any person referred to the MDOC by the courts for investigation or supervision.

**Offender Contact Disclosure for Contractors Form:** Form completed at the time of initial LEIN clearance and renewed as needed as circumstances change. Contractors are required to disclose relation, acquaintance, or active communication with offenders under MDOC jurisdiction at any time during their performance on the contract.

**Overfamiliarity:** Conduct that has resulted in, or is likely to result in, a personal non-work-related association or intimacy. Establishing a friendship, mutual attraction, or intimate relationship with an offender, is strictly prohibited. Examples include, but are not limited to:

- 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 outside of routine work duties
- Being at the residence of an offender's family outside of routine work duties
- 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

**Procurement, Monitoring, and Compliance Division (PMCD):** Unit that provides oversight for the MDOC's contracts and ensures that Contractors are delivering services according to the contract requirements.

**Stop Order:** A notice that is posted at a worksite prohibiting an individual from entering or being allowed on the grounds of an MDOC worksite.

**Vendor:** A company or agency who employs individuals who provide contracted services to the Michigan Department of Corrections or their sub-contractors.

**Vendor Supervisor:** The Vendor's main point of contact to monitor and coordinate the day-to-day activities of the Contract.

### **General Requirements**

**MDOC Rules, Regulations, Policies, and Procedures.** Contractors will comply with all rules, regulations, and policies of the State that are communicated to Contractor in writing, including security procedures concerning systems and data and remote access, building security procedures, including the restriction of access by the State to certain areas of its premises or systems, and general health and safety practices and procedures. This Vendor Handbook serves as the initial communication of MDOC Rules, Regulations, Policies, and Procedures with the possibility of additional communication to follow.

**Background Checks.** The State, in its sole discretion, may perform background checks on Contractors.

**Contractor Roster.** To assist PMCD in maintaining complete and accurate contractor files and identifying those who access secure correctional facilities, criminal justice information, and have contact with offenders, Contractors are required to update contact information and additional information upon request.

**Training Requirements.** In accordance with MDOC instruction, Contractors providing services to the MDOC must complete applicable MDOC assigned training prior to providing services under the contract and annually thereafter. The training assigned will be specific to worksite, level of offender contact, and

the services provided under the contract. For Contractors who have no offender contact and no access to MDOC properties or data, training may not be a requirement.

Newly hired Contractors will be reimbursed for required MDOC training upon successful completion of their assigned MDOC Training Plan. New Contractor training is required to be completed prior to providing services under the contract and completed at a non-MDOC location (Home Office, Agency Office, etc.). Reimbursement occurs for completion of new contractor training only, as annual in-service training is to be completed during normal working hours. Contact the MDOC Program Manager with any questions concerning MDOC training.

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

**Political Activities.** Contractors cannot proselytize for any political group while providing services for the MDOC or at the location of where services are provided to the MDOC.

**Conflict of Interest.** If a Contractor has a family member or friend who is incarcerated, on parole or probation he/she must immediately notify their Contractor Supervisor, MDOC Contract Representative, and complete the Offender Contact Disclosure for Contractors form for proper assignment to avoid a conflict of interest.

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

**Role Model.** Contractors serve as role models to offenders and must 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 Contractor must be immediately reported to his/her Vendor Supervisor and MDOC Program Manager. Any action or inaction by a Contractor which jeopardizes the safety or security of the facility, MDOC employees, the public or offenders is prohibited.

**Fitness for Duty.** Contractors 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 Vendor Supervisor and MDOC Program Manager. Contractors shall immediately notify their Vendor Supervisor and MDOC Program Manager if they are taking medication which may interfere with their work responsibilities. Additionally, Contractors must adhere to MDOC COVID-19 protocols and testing measures.

**Use of Leave/Notice of Absence.** Contractors are required to obtain preapproval of leave from their immediate Vendor Supervisor and/or on site MDOC Supervisor if applicable.

**Punctuality.** Regular attendance and punctuality are required of all Contractors. All Contractors are expected to adhere to the work schedule approved by their supervisor and to be at their assignment at the start of their shift or workday. In addition, all Contractors must adhere to specific facility procedures for attendance accountability.

**Jail Time or Other Restricted Supervision.** No Contractor shall be allowed to provide services to an offender while under electronic monitoring supervision or device, house arrest, or sentenced to jail time even if granted a work release.

**ADA Compliance.** Contractors shall contact their employing Vendor for ADA issues and follow their Vendor's Disability Accommodation request process. Due to potential custody and security issues, the Vendor shall include the PMCD Contract Manager in the interactive process. Any costs associated with the accommodation are the responsibility of the Contracting Vendor, not the MDOC. If a Vendor has approved a reasonable accommodation their staff, PMCD shall be notified.

**Possession and/or Use of Medication.** Contractors shall immediately notify their Vendor Supervisor and MDOC Program Manager if taking prescribed medication which may interfere with the Contractor's work responsibilities. In addition, any Contractor who has duties involving the direct management or observation of offenders shall immediately provide written notice of a prescribed medication that could reasonably be expected to affect the work performed. Such medication includes, but is not limited to narcotic pain medication, psychotropic medication, mood altering medication, and antihistamines.

### **Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. § 15601**

A. Contractors shall comply with the Final Rule implementing PREA, all applicable PREA standards and the agency's policies. Contractors shall make itself familiar with and at all times shall 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 polices of the MDOC will be considered a breach of contract and may result in termination of the contract.

B. Contractors who may have contact with prisoners must complete PREA training prior to providing services.

C. As is deemed necessary, the MDOC 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.

D. The Contractor must report any information concerning violations of PREA as soon as made aware of the alleged occurrence to the MDOC immediately.

### **Contractor Work Rules**

1. **Humane Treatment of Individuals.** Contractors are expected to treat individuals in a humane manner in the workplace or while on duty. Examples of actions of a Contractor in violation of this rule include but is not limited to any action, language, or behavior that causes intimidation, humiliation, degradation, or belittlement of another person or group, displaying a weapon or object for the purpose of intimidation, and invoking unnecessary or unreasonable rules and requests.
2. **Use of Personal Position for Personal Gain.** Contractors shall not engage in actions that could constitute the use of their position for personal gain. Examples of actions of a Contractor in violation of this rule include but is not limited to obtaining goods or services that would not otherwise be available to the Contractor, displaying department issued credentials or referencing employment for non-work-related reason, and obtaining information, assistance, or leniency from other law enforcement or criminal justice agencies.
3. **Discriminatory Harassment.** Contractors 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 religion, race, color, national origin, age, sex, height, weight, marital status, partisan considerations, disability, or genetic information.
4. **Misuse of State or Other Agency Property or Equipment.** Contractors shall not misuse State or Vendor property. Examples of actions of a Contractor in violation of this



rule include but is not limited to use of computer for personal or unauthorized purposes, inappropriate use of the internet, and removal of items from State or Vendor premises without authorization.

5. **Conduct Unbecoming.** Contractors shall not behave in an inappropriate manner that may harm or adversely affect the reputation or public perception of the MDOC. Contractors are expected to be professional at all times. Contractors are also expected to support and uphold the law through their actions and personal conduct. In instances where a Contractor is arrested or charged with a criminal offense, this incident shall be reported to the Contractor's Vendor Supervisor and the MDOC Program Manager.
6. **Physical Contact.** Inappropriate physical contact is prohibited. Examples include but are not limited to, inappropriately placing of hands on another person, horseplay, or other types of body contact, including body contact with an object.
7. **Confidential Nature of Records.** Contractors shall respect the confidentiality of other Contractors, MDOC staff, and offenders. Contractors shall not share confidential information, health care information, or other information and reports to unauthorized persons.
8. **Use of Health Care Services.** Contractors shall only use the facility health care services in cases of emergency, and medical stabilization for serious on-the-job injuries.
9. **Class II Insubordination.** Willful acts of Contractors contrary to management directives that may compromise the MDOC's ability to carry out its responsibilities, such as operation of safe and secure facilities or protection of the public, are prohibited.
10. **Class I Insubordination.** Contractors are prohibited from failing to immediately follow management directives.
11. **Searches While on Facility Property.** All Contractors are subject to authorized searches while on facility property. Contractors who refuse to submit to, avoid or interfere with an authorized search will be relieved of providing services immediately pending investigation.
12. **Responding or Providing Assistance.** All Contractors of the MDOC, regardless of classification, have security responsibility. Contractors shall immediately respond to any request for assistance, including emergency preparedness drills and mobilizations. A Contractor shall come to the assistance of other Contractors, offenders, visitors, volunteers, etc., who are in distress, in an escalated situation, at risk of suffering harm or injury or in an emergent situation.
13. **Work Rule Rescinded.**
14. **Work Rule Rescinded.**
15. **Work Rule Rescinded.**
16. **Criminal Acts - Felony.** Contractors shall not engage in any conduct which results in a felony conviction (including diversion programs), whether by guilty plea, no contest plea,

delayed or deferred sentence or trial. Contractors shall report any felony arrest, charge, or convictions to their Vendor Supervisor and MDOC Program Manager within 24 hours.

- 17. Controlled Substance/Intoxicant – Possession, Introduction, or Attempted Introduction.** Possessing, introducing, or attempting to introduce controlled substances or intoxicants into any facility where offenders are supervised shall result in discharge and possible referral for prosecution. Contractors are responsible for any item in their area of control which includes, but is not limited to, the automobile they have driven, their clothing, and within purses and briefcases.
- 18. 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.
- 19. Work Rule Rescinded.**
- 20. Introduction or Possession of Contraband Items (CFA).** Contractors shall not introduce or possess unauthorized items such as escape paraphernalia, weapons, facsimiles of weapons, ammunition, wireless communication devices, cell phones, tobacco, or facsimiles of tobacco products in any facility where offenders are housed. Contractors are responsible for any item in their area of control which includes, but is not limited to, their clothing and within purses and briefcases.
- 21. Contraband in Vehicle on the Premises of a Facility Housing Offenders.** Contractors are responsible for ensuring that unauthorized items such as alcohol, controlled substances, weapons, ammunition, or facsimiles thereof are not in their vehicle.
- 22. Misdemeanor or Other Restrictions.** Any conduct by a Contractor which results in a misdemeanor conviction (including diversion programs), whether by guilty plea, no-contest plea, delayed or deferred sentence, or trial is prohibited. Exceptions include animal control misdemeanors, insurance related misdemeanors, and license related misdemeanors. Contractors shall report any misdemeanor arrest, charge, or convictions to their immediate Vendor Supervisor and MDOC Program Manager within 24 hours.
- 23. Work Rule Rescinded.**
- 24. Work Rule Rescinded.**
- 25. Work Rule Rescinded.**
- 26. Entry and Visiting in a Facility.** Contractors shall not visit non-public areas of a facility where offenders are housed for non-work-related purposes without prior approval of their Vendor Supervisor and MDOC Program Manager. Contractors who have family members incarcerated with the MDOC must complete the Offender Contact Disclosure for Contractors form and obtain MDOC approval prior to visiting an offender. Contractors visiting any facility where offenders are housed shall sign the facility visitor's log.

27. **Dereliction of Duty.** Contractors shall fully perform their job duties. Any action or omission of a Contractor indicating neglect of his/her job duties, including but not limited to safe and proper care and control of offender's health and well-being will be considered dereliction of duty.
28. **Use of Force.** Contractors shall use the least amount of force necessary to perform their duties. Contractors may act to reasonably to protect themselves and others from harm.
29. **Work Rule Rescinded.**
30. **Duty Relief and Exchange of Duties.** Contractors shall not leave an assignment or exchange duties without prior relief or authorization from their immediate Vendor Supervisor or MDOC Supervisor if applicable.
31. **Security Precautions.** Contractors shall take reasonable security precautions to ensure the safety and security of employees, the public, and offenders. Examples include but are not limited to, loss of security equipment (keys, tools, etc.), propping open security doors or doors that should remain locked, allowing an unknown or unidentified individual access into a building, and unauthorized distribution of MDOC exempt policy directives/operating procedures.
32. **Attention to Duty.** Contractors 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 a Contractor are prohibited. These items include but are not limited to unauthorized electronic devices, computer games, books, pamphlets, newspapers, or other reading materials while on duty.
33. **Reporting Violations.** Contractors shall immediately report the conduct of another Contractors or MDOC Employees that is in violation of MDOC rules, policies, and procedures. Contractors 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 Contractor's workday.
34. **Reporting Approach to Introduce Contraband, Violate Rules, Policies, Procedures, Director's Office Memorandums and Manuals.** Contractors shall report each time they are approached to introduce contraband or violate rules, policies, procedures, Director's Office Memorandums, or manuals. A verbal report of the approach shall be made immediately to the Vendor Supervisor, MDOC Program Manager, and on site MDOC staff with a complete written report of the approach must be made no later than the end of the Contractor's workday.
35. **Work Rule Rescinded.**
36. **Work Rule Rescinded.**
37. **Work Rule Rescinded.**
38. **Reporting Requirements.** Contractors shall timely submit accurate and complete oral and written reports when required by MDOC policy, procedure, or when requested by supervisor or other authorized personnel. Failure to provide reports that are accurate

and complete is a violation of this work rule. Vendors shall ensure their Contractor's complete reports as requested by the MDOC.

39. **Work Rule Rescinded.**
40. **Work Rule Rescinded.**
41. **Work Rule Rescinded.**
42. **Contractor Uniform Requirements.** Contractors must wear their required uniforms as approved by the Vendor and the MDOC. Contractors will not be permitted to enter the facilities or interact with offenders without the proper Vendor approved uniform/work attire. Examples of inappropriate attire are cut-off shorts, tube tops, bathing suits, see-through clothing, excessively ripped clothing, etc. Shirts and shoes are required.
43. **Work Rule Rescinded.**
44. **Work Rule Rescinded.**
45. **Work Rule Rescinded.**
46. **Work Rule Rescinded.**
47. **Falsifying, Altering, Destroying, Removing Documents or Filing False Reports.** Contractors shall not falsify, alter, destroy, or remove documents, logbooks, data entries, reports, receipts, etc... from the facility or office. Fraudulent reporting of a Contractor's time is expressly prohibited. Contractors who file a false compliant will be considered to be in violation of this rule.
48. **Giving or Receiving Gifts or Services.** Contractors 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, shoeshines, clothing, paper products, stamps, delivering letters/correspondence, etc.
49. **Work Rule Rescinded.**
50. **Overfamiliarity or Unauthorized Contact.** Contractors are prohibited from engaging in over-familiarity or non-work relationships with an offender, or an offender's family member, known acquaintance or listed visitor. For Contractors with relationships with active MDOC offenders or offender's family, the completion of the Offender Contact Disclosure for Contractors form must be completed. This form is included at the time of LEIN clearance and renewed as needed as circumstances change. Contractors are required to disclose relation, acquaintance, or active communication with offenders under MDOC jurisdiction at any time during their performance on the contract.
51. **Sexual Abuse of Offender.** Contractors shall not engage in sexual abuse of an offender.
52. **Sexual Harassment of Offender.** Contractors shall not engage in sexual harassment of an offender. Contractors shall not assist, advise, or encourage another to engage in

sexual harassment, nor shall they assist the violator in avoiding discovery. Sexual harassment can include, but is not limited to, verbal or written statements of a sexual nature, demeaning references to gender or derogatory verbal or written statements about body or clothing, and profane or obscene language or gestures of a sexual nature.

- 53. Workplace Safety.** Threats made by Contractors such as bomb threats, death threats, threats of assault, threats of assault, acts of physical violence are prohibited. Contractors shall not physically fight or assault any person at their worksite or facility grounds. Contractors may act to reasonably defend themselves against violence. If a Contractor becomes aware of a threat of violence or an act of violence, the Contractor shall immediately report this information to their Vendor Supervisor, on-site MDOC employee, and MDOC Program Manager.
- 54. Misuse of Recording Devices or Recorded Information.** Contractors are prohibited from using any type of recording device to record, transmit, or transcribe audio conversations, electronic information, photographic or video images. Contractors are prohibited from making copies or removing copies of communications without authorization which are routinely recorded and/or monitored as part of the daily operations of the Department (logbooks, security tapes, etc.).

Appendix A  
**ALLOWABLE ITEMS WITHIN CORRECTIONAL FACILITY**

Contractors 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, Dexitrim) 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

- 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 E - DATA SECURITY REQUIREMENTS

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- 1 Definitions.** For purposes of this Schedule, the following terms have the meanings set forth below. All initial capitalized terms in this Schedule that are not defined in this Schedule shall have the respective meanings given to them in the Contract.

“**Contractor Security Officer**” has the meaning set forth in **Section 2** of this Schedule.

“**FedRAMP**” means the Federal Risk and Authorization Management Program, which is a federally approved risk management program that provides a standardized approach for assessing and monitoring the security of cloud products and services.

“**FISMA**” means the Federal Information Security Modernization Act of 2014 (Pub.L. No. 113-283 (Dec. 18, 2014)).

“**Hosting Provider**” means any Permitted Subcontractor that is providing any or all of the Hosted Services under this Contract.

“**NIST**” means the National Institute of Standards and Technology.

“**PCI**” means the Payment Card Industry.

“**PSP**” or “**PSPs**” means the State’s IT Policies, Standards and Procedures

“**SSAE**” means Statement on Standards for Attestation Engagements.

“**Security Accreditation Process**” has the meaning set forth in **Section 6** of this Schedule.

- 2 Security Officer.** Contractor will appoint a Contractor employee to respond to the State’s inquiries regarding the security of the Hosted Services who has sufficient knowledge of the security of the Hosted Services and the authority to act on behalf of Contractor in matters pertaining thereto (“**Contractor Security Officer**”).

- 3 Contractor Responsibilities.** 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 any State Data in Contractor’s or its subcontractor’s possession; and
- (e) ensure that all Contractor Representatives comply with the foregoing.

The State has established Information Technology (IT) PSPs to protect IT resources under the authority outlined in the overarching State 1305.00 Enterprise IT Policy. 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 public and non-public State IT policies and standards, of which the publicly available ones are at:

[https://www.michigan.gov/dtmb/0,5552,7-358-82547\\_56579\\_56755---,00.html](https://www.michigan.gov/dtmb/0,5552,7-358-82547_56579_56755---,00.html)

- 4 Acceptable Use Policy.** To the extent that Contractor has access to the State’s IT environment, Contractor must comply with the State’s Acceptable Use Policy, see [ents/dtmb/1340.00.01 Acceptable Use of Information Technology Standard 458958 7.pdf](#).

All Contractor Personnel will be required, in writing, to agree to the State’s Acceptable Use Policy before accessing State systems. The State reserves the right to terminate Contractor’s and/or subcontractor(s) or any Contractor Personnel’s access to State systems if the State determines a violation has occurred.



- 5 Protection of the State's Information.** Throughout the Term and at all times in connection with its actual or required performance of the Services, Contractor will:
- 5.1 If Hosted Services are provided by a Hosting Provider, ensure each Hosting Provider maintains FedRAMP authorization for all Hosted Services environments throughout the Term, and in the event a Hosting Provider is unable to maintain FedRAMP authorization, the State, at its sole discretion, may either a) require the Contractor to move the Software and State Data to an alternative Hosting Provider selected and approved by the State at Contractor's sole cost and expense without any increase in Fees, or b) immediately terminate this Contract for cause pursuant to **Section 15.1** of the Contract;
  - 5.2 for Hosted Services provided by the Contractor, maintain either a FedRAMP authorization or an annual SSAE SOC 2 Type II audit based on State required NIST Special Publication 800-53 MOD Controls using identified controls and minimum values as established in applicable State PSPs;
  - 5.3 ensure that the Software and State Data is securely hosted, supported, administered, accessed, and backed up in a data center(s) that resides in the continental United States, and minimally meets Uptime Institute Tier 3 standards ([www.uptimeinstitute.com](http://www.uptimeinstitute.com)), or its equivalent;
  - 5.4 maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State Data that complies with the requirements of the State's data security policies as set forth in this Contract, and must, at a minimum, remain compliant with FISMA and NIST Special Publication 800-53 MOD Controls using identified controls and minimum values as established in applicable State PSPs;
  - 5.5 provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, encryption, transfer, commingling or processing of such information that ensure a level of security appropriate to the risks presented by the processing of State Data and the nature of such State Data, consistent with best industry practice and applicable standards (including, but not limited to, compliance with FISMA, NIST, CMS, IRS, FBI, SSA, HIPAA, FERPA and PCI requirements as applicable);
  - 5.6 take all reasonable measures to:
    - (a) secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Services against "hackers" and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use Contractor Systems or the information found therein; and
    - (b) prevent (i) the State and its Authorized Users from having access to the data of other customers or such other customer's users of the Services; (ii) State Data from being commingled with or contaminated by the data of other customers or their users of the Services; and (iii) unauthorized access to any of the State Data;
  - 5.7 ensure that State Data is encrypted in transit and at rest using FIPS validated AES encryption modules and a key size of 256 bits or higher;
  - 5.8 ensure the Hosted Services support Identity Federation/Single Sign-on (SSO) capabilities using Security Assertion Markup Language (SAML), Open Authentication (OAuth) or comparable State approved mechanisms;
  - 5.9 ensure the Hosted Services implements NIST compliant multi-factor authentication for privileged/administrative and other identified access.
- 6 Security Accreditation Process.** Throughout the Term, Contractor will assist the State, at no additional cost, with its **Security Accreditation Process**, which includes the development, completion and on-going maintenance of a system security plan (SSP) using the State's automated governance, risk and compliance (GRC) platform, which requires Contractor to submit evidence, upon request from the State, in order to validate Contractor's security controls within two weeks of the State's request. On an annual basis, or as otherwise required by the State such as for significant changes, re-assessment of the system's controls will be required to receive and maintain authority to operate (ATO). All identified risks from the SSP will be remediated through a Plan of Action and Milestones (POAM) process with remediation time frames based on the risk level of the identified risk.

For all findings associated with the Contractor's solution, at no additional cost, Contractor will be required to create or assist with the creation of State approved POAMs and perform related remediation activities. The State will make any decisions on acceptable risk, Contractor may request risk acceptance, supported by compensating controls, however only the State may formally accept risk. Failure to comply with this section will be deemed a material breach of the Contract.

**7 Unauthorized Access.** Contractor may not access, and shall not permit any access to, State systems, in whole or in part, whether through the Hosted Services or otherwise, without the State's express prior written authorization. Such authorization may be revoked by the State in writing at any time in its sole discretion. Any access to State systems must be solely in accordance with the Contract and this Schedule, and in no case exceed the scope of the State's authorization pursuant to this Section. All State-authorized connectivity or attempted connectivity to State systems shall be only through the State's security gateways and firewalls and in compliance with the State's security policies set forth in the Contract as the same may be supplemented or amended by the State and provided to Contractor from time to time.

## **8 Security Audits.**

8.1 During the Term, Contractor will maintain complete and accurate records of its data protection practices, IT security controls, and the security logs relating to State Data, including but not limited to any backup, disaster recovery or other policies, practices or procedures relating to the State Data and any other information relevant to its compliance with this Contract.

8.2 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 Services and from time to time during the term of this Contract. 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. If the State chooses to perform an on-site audit, Contractor will, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by the State or an independent data security expert that is reasonably acceptable to Contractor, provided that the State: (i) gives Contractor at least five (5) Business Days prior notice of any such audit; (ii) undertakes such audit no more than once per calendar year, except for good cause shown; and (iii) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of the Contract. The State may, but is not obligated to, perform such security audits, which shall, at the State's option and request, include penetration and security tests, of any and all Hosted Services and their housing facilities and operating environments.

8.3 During the Term, Contractor will, when requested by the State, provide a copy of Contractor's and Hosting Provider's FedRAMP System Security Plan(s) or SOC 2 Type 2 report(s) to the State within two weeks of the State's request. The System Security Plan and SSAE audit reports will be recognized as Contractor's Confidential Information.

8.4 With respect to State Data, Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.

8.5 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 8**.

**9 Application Scanning.** During the Term, Contractor must, at its sole cost and expense, scan all Contractor provided applications, and must analyze, remediate and validate all vulnerabilities identified by the scans as required by the State Secure Web Application and other applicable PSPs.

Contractor's application scanning and remediation must include each of the following types of scans and activities:

9.1 Dynamic Application Security Testing (DAST) – Scanning interactive application for vulnerabilities, analysis, remediation, and validation (may include Interactive Application Security Testing (IAST)).

- (a) Contractor must either a) grant the State the right to dynamically scan a deployed version of the Software; or b) in lieu of the State performing the scan, Contractor must dynamically scan a deployed version of the Software using a State approved application scanning tool and provide the State a vulnerabilities assessment after Contractor has completed such scan. These scans and assessments i) must be completed and provided to the State quarterly (dates to be provided by the State) and for each major release; and ii) scans must be completed in a non-production environment with verifiable matching source code and supporting infrastructure configurations or the actual production environment.
- 9.2 Static Application Security Testing (SAST) - Scanning Source Code for vulnerabilities, analysis, remediation, and validation.
- (a) For Contractor provided applications, Contractor, at its sole expense, must provide resources to complete static application source code scanning, including the analysis, remediation and validation of vulnerabilities identified by application Source Code scans. These scans must be completed for all Source Code initially, for all updated Source Code, and for all Source Code for each major release and Contractor must provide the State a vulnerability assessment after Contractor has completed the required scans.
- 9.3 Software Composition Analysis (SCA) – Third Party and/or Open Source Scanning for vulnerabilities, analysis, remediation, and validation.
- (a) For Software that includes third party and open source software, all included third party and open source software must be documented and the source supplier must be monitored by the Contractor for notification of identified vulnerabilities and remediation. SCA scans may be included as part of SAST and DAST scanning or employ the use of an SCA tool to meet the scanning requirements. These scans must be completed for all third party and open source software initially, for all updated third party and open source software, and for all third party and open source software in each major release and Contractor must provide the State a vulnerability assessment after Contractor has completed the required scans if not provided as part of SAST and/or DAST reporting.
- 9.4 In addition, application scanning and remediation may include the following types of scans and activities if required by regulatory or industry requirements, data classification or otherwise identified by the State.
- (a) If provided as part of the solution, all native mobile application software must meet these scanning requirements including any interaction with an application programming interface (API).
  - (b) Penetration Testing – Simulated attack on the application and infrastructure to identify security weaknesses.

## **10 Infrastructure Scanning.**

10.1 For Hosted Services, Contractor must ensure the infrastructure and applications are scanned using an approved scanning tool (Qualys, Tenable, or other PCI Approved Vulnerability Scanning Tool) at least monthly and provide the scan's assessments to the State in a format that is specified by the State and used to track the remediation. Contractor will ensure the remediation of issues identified in the scan according to the remediation time requirements documented in the State's PSPs.

## **11 Nonexclusive Remedy for Security Breach.**

11.1 Any failure of the Services to meet the requirements of this Schedule with respect to the security of any State Data or other Confidential Information of the State, including any related backup, disaster recovery or other policies, practices or procedures, is a material breach of the Contract for which the State, at its option, may terminate the Contract immediately upon written notice to Contractor without any notice or cure period, and Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination.

# **SCHEDULE E – APPENDIX H – SECURITY ADDENDUM**

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The following pages contain:

The legal authority, purpose, and genesis of the Criminal Justice Information Services Security Addendum (H2-H4);

An example of a contract addendum (H-5);

The Security Addendum itself (H6-H7);

The Security Addendum Certification page (H8).

**FEDERAL BUREAU OF INVESTIGATION**  
**CRIMINAL JUSTICE INFORMATION SERVICES SECURITY ADDENDUM**  
**Legal Authority for and Purpose and Genesis of the Security Addendum**

Traditionally, law enforcement and other criminal justice agencies have been responsible for the confidentiality of their information. Accordingly, until mid-1999, the Code of Federal Regulations Title 28, Part 20, subpart C, and the National Crime Information Center (NCIC) policy paper approved December 6, 1982, required that the management and exchange of criminal justice information be performed by a criminal justice agency or, in certain circumstances, by a noncriminal justice agency under the management control of a criminal justice agency.

In light of the increasing desire of governmental agencies to contract with private entities to perform administration of criminal justice functions, the FBI sought and obtained approval from the United States Department of Justice (DOJ) to permit such privatization of traditional law enforcement functions under certain controlled circumstances. In the Federal Register of May 10, 1999, the FBI published a Notice of Proposed Rulemaking, announcing as follows:

1. Access to CHRI [Criminal History Record Information] and Related Information, Subject to Appropriate Controls, by a Private Contractor Pursuant to a Specific Agreement with an Authorized Governmental Agency To Perform an Administration of Criminal Justice Function (Privatization). Section 534 of title 28 of the United States Code authorizes the Attorney General to exchange identification, criminal identification, crime, and other records for the official use of authorized officials of the federal government, the states, cities, and penal and other institutions. This statute also provides, however, that such exchanges are subject to cancellation if dissemination is made outside the receiving departments or related agencies. Agencies authorized access to CHRI traditionally have been hesitant to disclose that information, even in furtherance of authorized criminal justice functions, to anyone other than actual agency employees lest such disclosure be viewed as unauthorized. In recent years, however, governmental agencies seeking greater efficiency and economy have become increasingly interested in obtaining support services for the administration of criminal justice from the private sector. With the concurrence of the FBI's Criminal Justice Information Services (CJIS) Advisory Policy Board, the DOJ has concluded that disclosures to private persons and entities providing support services for criminal justice agencies may, when subject to appropriate controls, properly be viewed as permissible disclosures for purposes of compliance with 28 U.S.C. 534.

We are therefore proposing to revise 28 CFR 20.33(a)(7) to provide express authority for such arrangements. The proposed authority is similar to the authority that already exists in 28 CFR 20.21(b)(3) for state and local CHRI systems. Provision of CHRI under this authority would only be permitted pursuant to a specific agreement with an authorized governmental agency for the purpose of providing services for the administration of criminal justice. The agreement would be required to incorporate a security addendum approved by the Director of the FBI (acting for the Attorney General). The security 06/01/2020 CJISD-ITS-DOC-08140-5.9 H-3 addendum would specifically authorize access to CHRI, limit the use of the information to the specific purposes for which it is being provided, ensure the security and confidentiality of the information consistent with applicable laws and regulations, provide for sanctions, and contain such other provisions as the Director of the FBI (acting for the Attorney General) may require. The security addendum, buttressed by ongoing audit programs of both the FBI and the sponsoring governmental agency, will provide an appropriate balance between the benefits of privatization, protection of individual privacy interests, and preservation of the security of the FBI's CHRI systems.

The FBI will develop a security addendum to be made available to interested governmental agencies. We anticipate that the security addendum will include physical and personnel security constraints historically required by NCIC security practices and other programmatic requirements, together with personal integrity and electronic security provisions comparable to those in NCIC User Agreements between the FBI and criminal justice agencies, and in existing Management Control Agreements between criminal justice agencies and noncriminal justice governmental entities. The security addendum will make clear that access to CHRI will be limited to those officers and employees of the private contractor or its subcontractor who require the information to properly perform services for the sponsoring governmental agency, and that the service provider may not access, modify, use, or disseminate such information for inconsistent or unauthorized purposes.

Consistent with such intent, Title 28 of the Code of Federal Regulations (C.F.R.) was amended to read:

§ 20.33 Dissemination of criminal history record information.

a) Criminal history record information contained in the Interstate Identification Index (III) System and the Fingerprint Identification Records System (FIRS) may be made available:

- 1) To criminal justice agencies for criminal justice purposes, which purposes include the screening of employees or applicants for employment hired by criminal justice agencies.
- 2) To noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies; and
- 3) To private contractors pursuant to a specific agreement with an agency identified in paragraphs (a)(1) or (a)(6) of this section and for the purpose of providing services for the administration of criminal justice pursuant to that agreement. The agreement must incorporate a security addendum approved by the Attorney General of the United States, which shall specifically authorize access to criminal history record information, limit the use of the information to the purposes for which it is provided, ensure the security and confidentiality of the information consistent with these regulations, provide for sanctions, and contain such other provisions as the Attorney General may require. The power 06/01/2020 CJISD-ITS-DOC-08140-5.9 H-4 and authority of the Attorney General hereunder shall be exercised by the FBI Director (or the Director's designee).

This Security Addendum, appended to and incorporated by reference in a government-private sector contract entered into for such purpose, is intended to insure that the benefits of privatization are not attained with any accompanying degradation in the security of the national system of criminal records accessed by the contracting private party. This Security Addendum addresses both concerns for personal integrity and electronic security which have been addressed in previously executed user agreements and management control agreements.

A government agency may privatize functions traditionally performed by criminal justice agencies (or noncriminal justice agencies acting under a management control agreement), subject to the terms of this Security Addendum. If privatized, access by a private contractor's

personnel to NCIC data and other CJIS information is restricted to only that necessary to perform the privatized tasks consistent with the government agency's function and the focus of the contract. If privatized the contractor may not access, modify, use or disseminate such data in any manner not expressly authorized by the government agency in consultation with the FBI.



**EXAMPLE OF A CONTRACT ADDENDUM**

AMENDMENT NO. \_\_\_\_ TO THE CONTRACT BETWEEN  
[PARTY NO. 1] AND [PARTY NO. 2], ENTERED INTO [DATE]

[Name of Law Enforcement Agency] and [Party No. 2], upon notification and pursuant to Paragraph/Section No. \_\_\_\_ [the amendment clause of the original contract] of that certain contract entered into by these parties on [date] [and entitled " \_\_\_\_"], hereby amend and revise the contract to include the following:

1. Access to and use of criminal history record information and other sensitive information maintained in [state and] FBI-managed criminal justice information systems by [private party] are subject to the following restrictions:

- a.
- b.
- c.

and

d. The Security Addendum appended hereto, which is incorporated by reference and made a part thereof as if fully appearing herein.

This amendment is effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

On behalf of [Party No. 1]: \_\_\_\_\_

[Name]

\_\_\_\_\_

[Title]

\_\_\_\_\_

Date

On behalf of [Party No. 2]: \_\_\_\_\_

[Name]

\_\_\_\_\_

[Title]



**FEDERAL BUREAU OF INVESTIGATION  
CRIMINAL JUSTICE INFORMATION SERVICES  
SECURITY ADDENDUM**

The goal of this document is to augment the CJIS Security Policy to ensure adequate security is provided for criminal justice systems while (1) under the control or management of a private entity or (2) connectivity to FBI CJIS Systems has been provided to a private entity (contractor). Adequate security is defined in Office of Management and Budget Circular A-130 as “security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information.”

The intent of this Security Addendum is to require that the Contractor maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

This Security Addendum identifies the duties and responsibilities with respect to the installation and maintenance of adequate internal controls within the contractual relationship so that the security and integrity of the FBI's information resources are not compromised. The security program shall include consideration of personnel security, site security, system security, and data security, and technical security.

The provisions of this Security Addendum apply to all personnel, systems, networks and support facilities supporting and/or acting on behalf of the government agency.

**1.00 Definitions**

1.01 Contracting Government Agency (CGA) - the government agency, whether a Criminal Justice Agency or a Noncriminal Justice Agency, which enters into an agreement with a private contractor subject to this Security Addendum.

1.02 Contractor - a private business, organization or individual which has entered into an agreement for the administration of criminal justice with a Criminal Justice Agency or a Noncriminal Justice Agency.

**2.00 Responsibilities of the Contracting Government Agency.**

2.01 The CGA will ensure that each Contractor employee receives a copy of the Security Addendum and the CJIS Security Policy and executes an acknowledgment of such receipt and the contents of the Security Addendum. The signed acknowledgments shall remain in the possession of the CGA and available for audit purposes. The acknowledgement may be signed by hand or via digital signature (see glossary for definition of digital signature).

**3.00 Responsibilities of the Contractor.**

3.01 The Contractor will maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed and all subsequent versions), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

**4.00 Security Violations.**

4.01 The CGA must report security violations to the CJIS Systems Officer (CSO) and the Director, FBI, along with indications of actions taken by the CGA and Contractor.

4.02 Security violations can justify termination of the appended agreement.

4.03 Upon notification, the FBI reserves the right to:

- a. Investigate or decline to investigate any report of unauthorized use;
- b. Suspend or terminate access and services, including telecommunications links. The FBI will provide the CSO with timely written notice of the suspension. Access and services will be reinstated only after satisfactory assurances have been provided to the FBI by the CGA and Contractor. Upon termination, the Contractor's records containing CHRI must be deleted or returned to the CGA.

5.00 Audit

5.01 The FBI is authorized to perform a final audit of the Contractor's systems after termination of the Security Addendum.

6.00 Scope and Authority

6.01 This Security Addendum does not confer, grant, or authorize any rights, privileges, or obligations on any persons other than the Contractor, CGA, CJA (where applicable), CSA, and FBI.

6.02 The following documents are incorporated by reference and made part of this agreement: (1) the Security Addendum; (2) the NCIC 2000 Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20. The parties are also subject to applicable federal and state laws and regulations.

6.03 The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they augment the provisions of the CJIS Security Policy to provide a minimum basis for the security of the system and contained information and it is understood that there may be terms and conditions of the appended Agreement which impose more stringent requirements upon the Contractor.

6.04 This Security Addendum may only be modified by the FBI, and may not be modified by the parties to the appended Agreement without the consent of the FBI.

6.05 All notices and correspondence shall be forwarded by First Class mail to:

Information Security Officer

Criminal Justice Information Services Division, FBI

1000 Custer Hollow Road

Clarksburg, West Virginia 26306

## **SCHEDULE E - EXHIBIT 1 - CONTRACTOR'S DISASTER RECOVERY PLAN**

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If a truck breaks down while transporting material back to Rapid Shred's facility, a Rapid Shred employee will remain with the truck and material at all times. If the truck is repaired, the employee will continue back to the facility. If it is necessary to tow the truck to a repair facility, the Rapid Shred employee will remain with the truck and the storage compartment will remain locked. If needed, another Rapid Shred truck will be dispatched, and the Rapid Shred employees will transfer the material to the new truck so it can continue to the shredding facility.

If equipment failures prevent destruction to take place within contract timeframes, all materials will remain secured, and the clients notified. The clients will be told the timeframe to repair the equipment and the client will make the decision to have their material returned to them, remain secured in Grandville, or moved to a different Rapid Shred facility for destruction. This will all be documented on the work ticket so all chain-of-custody will be documented.

It should be noted that equipment failure has never caused this scenario to happen.

With multiple office locations, if Rapid Shred's Grandville office became non-operational, operations could easily shift to remote or another office. All scheduling and computer files are backed up at two different off-site locations and can be immediately restored. This remote function was proved during the initial days of COVID.